

No.

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IN THE  
**Supreme Court of the United States**

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EMMANUEL DIAZ,

*Petitioner,*

v.

PEOPLE OF THE STATE OF NEW YORK,

*Respondent.*

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**MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS**

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Petitioner asks leave to file the attached petition for a writ of certiorari without payment of costs and to proceed *in forma pauperis*.

Petitioner had previously been granted leave to proceed *in forma pauperis* in the Court of Appeals of the State of New York, as well as in the Appellate Division, Second Department. The documents evincing his *in forma pauperis* status are attached.

May 15, 2019

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Dina Zloczower  
*Of Counsel*

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**AFFIDAVIT OR DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Emmanuel Diaz, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

| Income source  | Average monthly amount during<br>the past 12 months |             | Amount expected<br>next month |             |
|--|---|-------------|-------------------------------|-------------|
|  | You   | Spouse      | You                           | Spouse      |
| Employment   | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Self-employment  | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Income from real property<br>(such as rental income)                       | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Interest and dividends   | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Gifts  | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Alimony  | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Child Support  | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Retirement (such as social<br>security, pensions,<br>annuities, insurance) | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Disability (such as social<br>security, insurance payments)                | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Unemployment payments  | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Public-assistance<br>(such as welfare)                                     | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| Other (specify): <u>N/A</u>  | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |
| <b>Total monthly income:</b>   | \$ <u>0</u>   | \$ <u>0</u> | \$ <u>0</u>                   | \$ <u>0</u> |

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|----------|---------|---------------------|-------------------|
| N/A      | N/A     | N/A                 | \$ 0              |
| N/A      | //      | //                  | \$ 0              |
| N/A      | //      | //                  | \$ 0              |

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|----------|---------|---------------------|-------------------|
| N/A      | N/A     | N/A                 | \$ 0              |
| //       | //      | //                  | \$ 0              |
| //       | //      | //                  | \$ 0              |

4. How much cash do you and your spouse have? \$ 0  
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

| Financial institution | Type of account | Amount you have | Amount your spouse has |
|-----------------------|-----------------|-----------------|------------------------|
| N/A                   | N/A             | \$ N/A          | \$ N/A                 |
| //                    | //              | \$ //           | \$ //                  |
| //                    | //              | \$ //           | \$ //                  |

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home  
Value \_\_\_\_\_

☐ Other real estate  
Value \_\_\_\_\_

☐ Motor Vehicle #1  
Year, make & model \_\_\_\_\_  
Value \_\_\_\_\_

☐ Motor Vehicle #2  
Year, make & model \_\_\_\_\_  
Value \_\_\_\_\_

☐ Other assets  
Description \_\_\_\_\_  
Value \_\_\_\_\_

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

| Person owing you or your spouse money | Amount owed to you | Amount owed to your spouse |
|---------------------------------------|--------------------|----------------------------|
| <u>N/A</u>                            | \$ <u>0</u>        | \$ <u>0</u>                |
| <u>11</u>                             | \$ _____           | \$ _____                   |
| <u>11</u>                             | \$ _____           | \$ _____                   |

7. State the persons who rely on you or your spouse for support.

| Name       | Relationship | Age        |
|------------|--------------|------------|
| <u>N/A</u> | <u>N/A</u>   | <u>N/A</u> |
| _____      | _____        | _____      |
| _____      | _____        | _____      |

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

|  | You           | Your spouse   |
|--|---------------|---------------|
| Rent or home-mortgage payment<br>(include lot rented for mobile home)                    | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No |               |               |
| Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No |               |               |
| Utilities (electricity, heating fuel,<br>water, sewer, and telephone)                    | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Home maintenance (repairs and upkeep)  | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Food   | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Clothing   | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Laundry and dry-cleaning   | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Medical and dental expenses  | \$ <u>N/A</u> | \$ <u>N/A</u> |

|   | You           | Your spouse   |
|---|---------------|---------------|
| Transportation (not including motor vehicle payments)                                       | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Recreation, entertainment, newspapers, magazines, etc.                                      | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Insurance (not deducted from wages or included in mortgage payments)                        |               |               |
| Homeowner's or renter's   | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Life  | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Health  | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Motor Vehicle   | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Other: _____  | \$ _____      | \$ _____      |
| Taxes (not deducted from wages or included in mortgage payments)                            |               |               |
| (specify): _____  | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Installment payments  |               |               |
| Motor Vehicle   | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Credit card(s)  | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Department store(s)   | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Other: _____  | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Alimony, maintenance, and support paid to others  | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Regular expenses for operation of business, profession, or farm (attach detailed statement) | \$ <u>N/A</u> | \$ <u>N/A</u> |
| Other (specify): _____  | \$ <u>N/A</u> | \$ <u>N/A</u> |
| <b>Total monthly expenses:</b>  | \$ <u>N/A</u> | \$ <u>N/A</u> |

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☒ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

*I'm incarcerated, and I do not have no source of income.*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 20<sup>th</sup> of April, 2019

*Tyler Chase*  
Notary Public

*Emmanuel Digo*  
(Signature)

**TYLER CHASE**  
Notary Public - State of New York  
No. 01CH8381894  
Qualified in Seneca County  
My Commission Expires October 15, 2022

# *State of New York*

## *Court of Appeals*

*Decided and Entered on the  
fifth day of September, 2017*

**Present,** Hon. Janet DiFiore, *Chief Judge, presiding.*

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Mo. No. 2017-873  
The People &c.,  
Respondent,  
v.  
Emmanuel Diaz,  
Appellant.

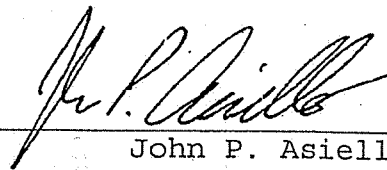
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Appellant having moved for the assignment of counsel;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is granted and the following  
is assigned as counsel to the appellant on this appeal:

Lynn W. L. Fahey, Esq., Appellate Advocates, 111 John Street,  
9th Floor, New York, NY 10038.



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John P. Asiello  
Clerk of the Court

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

M174064

V/

RANDALL T. ENG, P.J.  
WILLIAM F. MASTRO  
REINALDO E. RIVERA  
PETER B. SKELOS  
MARK C. DILLON, JJ.

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2014-03060

The People, etc., respondent,  
v Emmanuel Diaz, appellant.

DECISION & ORDER ON MOTION  
Motion for Poor Person Relief  
and to Assign Counsel

(Ind. No. 6408/12)

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Motion by the appellant pro se for leave to prosecute an appeal from a judgment of the Supreme Court, Kings County, rendered February 24, 2014, as amended March 4, 2014, as a poor person, and for the assignment of counsel.

Upon the papers filed in support of the motion and the papers filed in relation thereto, it is

ORDERED that the motion is granted; and it is further,

ORDERED that the appeal will be heard on the original papers (including a certified transcript of the proceedings, if any) and on the appellant's and the respondent's briefs; the parties are directed to file nine copies of their respective briefs and to serve one copy on each other; and it is further,

ORDERED that the stenographer of the trial court is directed promptly to make, certify, and file two transcripts of the proceedings of any pretrial hearings, of the plea of guilty or of the trial, and of the imposition of sentence in this action, except for those minutes previously transcribed and certified (*see* 22 NYCRR 671.9); and it is further,

ORDERED that in the event that the case was tried to a conclusion before a jury, the stenographer shall also make, certify, and file two transcripts of the minutes of proceedings during jury selection; and it is further,

ORDERED that the Clerk of the trial court shall furnish one certified transcript of each of the proceedings set forth above to the appellant's counsel, without charge (*see* CPL 460.70); assigned counsel is directed to turn over those transcripts to the respondent when counsel serves the appellant's brief on the respondent; and it is further,

ORDERED that in the event the stenographer has already prepared a copy of any of

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the minutes for a codefendant, then the Clerk of the trial court is directed to reproduce a copy thereof for assigned counsel; and it is further,

ORDERED that upon service of a copy of this decision and order on motion upon it, the Department of Probation is hereby authorized and directed to provide assigned counsel with a copy of the presentence report prepared in connection with the appellant's sentencing, including the recommendation sheet and any prior reports on the appellant which are incorporated in or referred to in the report; and it is further,

ORDERED that in the event an issue as to the legality, propriety, or excessiveness of the sentence is raised on appeal, or if assigned counsel cites or relies upon the probation report in a brief or motion in any other way, counsel shall provide a complete copy of such report and any attachments to the Court and the District Attorney's office prior to the filing of such brief or motion; and it is further,

ORDERED that pursuant to County Law § 722 the following named attorney is assigned as counsel to prosecute the appeal:

Lynn W. L. Fahey, Esq.  
Appellate Advocates  
2 Rector Street - 10th Floor  
New York, New York 10006

and it is further,

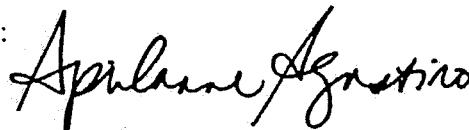
ORDERED that the appellant's time to perfect the appeal is enlarged; assigned counsel shall prosecute the appeal expeditiously in accordance with this Court's rules (*see* 22 NYCRR 670.1, *et seq.*) and written directions; and it is further,

ORDERED that in the event the file has been sealed, it is hereby unsealed for the limited purpose of allowing assigned counsel or his or her representative access to the record for the purpose of preparing the appeal; such access shall include permission to copy the papers insofar as they pertain to the appellant; and it is further,

ORDERED that assigned counsel is directed to serve a copy of this decision and order on motion upon the clerk of the court from which the appeal is taken.

ENG, P.J., MASTRO, RIVERA, SKELOS and DILLON, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court

*Appellant's Address:*  
14-A-1007  
Downstate Corr. Fac.  
Box F  
Fishkill, N.Y. 12524

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