

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS ESPINOZA,

Petitioner,

v.

W.L. MONTGOMERY, Acting Warden,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

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

Pursuant to 18 U.S.C. § 3006A(d)(7), 28 U.S.C. § 1915, and this Court's Rule 39.1, petitioner Carlos Espinoza asks leave to file the accompanying Petition for Writ of Certiorari, without prepayment of costs, and to proceed in forma pauperis.

This proceeding is a petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit, affirming the denial of a habeas corpus petition, 28 U.S.C. § 2254.

The U.S. Court of Appeals for the Ninth Circuit found Carlos Espinoza eligible for appointment of counsel under the Criminal Justice Act, 18 U.S.C. § 3006A(a)(2)(B), on April 1, 2019 (order attached). Pursuant to that appointment, the undersigned counsel represented Espinoza before the Ninth Circuit.

Because the circuit court granted *informa pauperis* status and appointed counsel, no affidavit of indigency is required. Supreme Court Rule 39.1. Carlos Espinoza respectfully asks this Court to allow him to proceed in *forma pauperis*.

Dated: March 16, 2021

Respectfully submitted,

JONATHAN SOGLIN
Executive Director

/s/ J. Bradley O'Connell
J. BRADLEY O'CONNELL
Counsel of Record
Bar. No. 104755
Assistant Director
First District Appellate Project
475 14th Street, Suite 650
Oakland, CA 94612
Telephone: (415) 495-3119
Email: jboc@fdap.org

Attorneys for Petitioner

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

APR 1 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARLOS A. ESPINOZA,

Petitioner-Appellant,

v.

W. L. MONTGOMERY, Acting Warden,

Respondent-Appellee.

No. 18-16835

D.C. No. 4:17-cv-02159-YGR
Northern District of California,
Oakland

ORDER

Before: SILVERMAN and CALLAHAN, Circuit Judges.

The request for a certificate of appealability is granted with respect to the following issue: whether juror misconduct violated appellant's rights to due process and a fair and impartial jury. *See* 28 U.S.C. § 2253(c)(3); *see also* 9th Cir. R. 22-1(e).

Counsel is appointed *sua sponte* for purposes of this appeal. *See* 18 U.S.C. § 3006A(a)(2)(B); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Counsel will be appointed by separate order.

If appellant does not wish to have appointed counsel, appellant shall file a motion asking to proceed *pro se* within 14 days of the date of this order.

The Clerk shall electronically serve this order on the appointing authority for the Northern District of California, who will locate appointed counsel. The appointing authority shall send notification of the name, address, and telephone

number of appointed counsel to the Clerk of this court at
counselappointments@ca9.uscourts.gov within 14 days of locating counsel.

The opening brief is due July 31, 2019; the answering brief is due August 30, 2019; the optional reply brief is due within 21 days after service of the answering brief.

The Clerk shall serve on appellant a copy of the “After Opening a Case - counseled Cases” document.

If W. L. Montgomery, Acting Warden, is no longer the appropriate appellee in this case, counsel for appellee shall notify this court by letter of the appropriate substitute party within 21 days of the filing date of this order. *See* Fed. R. App. P. 43(c).