

No. \_\_\_\_\_

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OCTOBER TERM, 2020  
IN THE SUPREME COURT OF THE UNITED STATES

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Joseph Weldon Smith, Petitioner,

v.

Renee Baker, Warden, et al., Respondents.

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

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

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**CAPITAL CASE**

RENE L. VALLADARES  
Federal Public Defender of Nevada  
DAVID ANTHONY\*  
BRAD D. LEVENSON  
ELLESSE HENDERSON  
ROBERT FITZGERALD  
Assistant Federal Public Defenders  
411 E. Bonneville, Ste. 250  
Las Vegas, Nevada 89101  
(702) 388-6577  
(702) 388-5819 (Fax)

\* *Counsel of Record*

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Pursuant to Supreme Court Rule 39.1, Petitioner Joseph W. Smith requests leave to file the attached Petition for Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis*. Smith has been granted leave to do so in the United States District Court, District of Nevada, for federal habeas corpus proceedings, March 20, 2007, Case No. 2:07-cv-00318-JCM-CWH, Ex. 1.

DATED this 19th day of May, 2021.

Respectfully submitted,

Rene Valladares  
Federal Public Defender of Nevada

*s/ David Anthony*  
DAVID ANTHONY  
*Counsel of Record*  
Assistant Federal Public Defender  
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Counsel for Petitioner

# EXHIBIT 1

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

9 | JOSEPH WELDON SMITH

**Petitioner,**

11 | VS.

12 E.K. McDANIEL, *et al.*,

## 13 || Respondents.

2:07-CV-00318-JCM-RJJ

## ORDER

16 This action is a petition for a writ of habeas corpus under 28 U.S.C. §2254 by Joseph  
17 Weldon Smith, a Nevada prisoner sentenced of death. Smith's *pro se* habeas corpus petition (docket  
18 #1) was filed on March 13, 2007. He has paid the \$5 filing fee for this action.

19                   Despite having paid the \$5 filing fee, Smith also filed an Application to Proceed *in*  
20 *Forma Pauperis* (docket #2). In view of the information Smith has provided with his application,  
21 regarding his financial status, the court will grant his motion in part and deny it in part. The court  
22 will not waive payment of the \$5 filing fee, but will grant Smith leave to proceed *in forma pauperis*  
23 with respect to subsequent fees and costs.

24 Smith also filed a Motion for Appointment of Counsel (docket #3). Smith's  
25 Application to Proceed *in Forma Pauperis* shows that he lacks the resources necessary to employ  
26 counsel to prosecute this capital habeas corpus proceeding. Therefore, pursuant to 21 U.S.C.

1 §848(q)(4)(B), in the interest of justice, the Federal Public Defender for the District of Nevada  
2 ("FPD") shall be appointed to represent Smith. If the FPD is unable to represent Smith, due to a  
3 conflict of interest or any other reason, then alternate counsel for Smith will be located, and  
4 appointed by the court. Smith's appointed counsel will represent him in all future federal  
5 proceedings in this court relating to this matter, including subsequent actions, and appeals therefrom,  
6 pursuant to 21 U.S.C. §848(q)(8), until allowed to withdraw.

7 **IT IS THEREFORE ORDERED** that petitioner's Application to Proceed  
8 *in Forma Pauperis* (docket #2) is **GRANTED IN PART AND DENIED IN PART**. The  
9 Application to Proceed *in Forma Pauperis* is **DENIED** with respect to waiver of payment of the  
10 filing fee, but **GRANTED** with respect to subsequent fees and costs.

11 **IT IS FURTHER ORDERED** that petitioner's Motion for Appointment of Counsel  
12 (docket #3) is **GRANTED**. The Federal Public Defender for the District of Nevada is appointed to  
13 represent petitioner, and shall have **thirty (30) days** from the date of entry of this Order to undertake  
14 representation of petitioner or to indicate to the court its inability to represent petitioner in these  
15 proceedings.

16 **IT IS FURTHER ORDERED** that the Clerk of Court shall **SERVE** a copy of this  
17 Order on Michael Pescetta, Capital Habeas Division, Office of the Federal Public Defender,  
18 411 East Bonneville Ave., Ste. 250, Las Vegas, NV 89101.

19 **IT IS FURTHER ORDERED** that the Clerk shall **SERVE** the respondents, by  
20 certified mail, with a copy of this order and a copy of the habeas corpus petition (docket #1).  
21 Respondents' counsel shall file a Notice of Appearance of Counsel within **thirty (30) days** from the  
22 date of entry of this order, but shall not answer the habeas corpus petition until the court orders  
23 otherwise.

24 DATED: March 20, 2007.

25   
26 UNITED STATES DISTRICT JUDGE