

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

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 2022

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ERNESTO SALGADO MARTINEZ, *Petitioner*,

v.

DAVID SHINN, et al., *Respondent*.

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MOTION FOR LEAVE TO PROCEED  
*IN FORMA PAUPERIS*

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Pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States, Petitioner Ernesto Salgado Martinez requests to file the attached petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Mr. Martinez is incarcerated in the Arizona State Prison Complex-Eyman, in Florence, Arizona, and has been so incarcerated since he was convicted in state court for first degree murder and sentenced to death on August 18, 1998. *See State v. Martinez*, 999 P. 2d 795 (Ariz. 2000). After state post-conviction relief was denied, the United States District Court for the District of Arizona appointed Tucson CJA panel attorneys Creighton Cornell and Jeff Bartolino to represent Mr. Martinez in his federal habeas proceedings pursuant to 21 U.S.C. § 848(q)(4)(B). *See Order of*

Appointment and General Procedures, *Martinez v. Schriro*, Dist. Ct. No. CV-05-1561-PHX-CKJ (Jul. 6, 2005), Dkt. 8.

On July 20, 2006, the court ordered Mr. Bartolino withdrawn and substituted the Federal Public Defender (“FPD”) as co-counsel with Mr. Cornell. Order, Dist. Ct. Dkt. 40. Undersigned counsel entered his appearance on July 21, 2006. Notice of Appearance, Dist. Ct. Dkt. 40. After relief was denied in the district court, the matter proceeded on appeal to the Ninth Circuit where Mr. Cornell and the FPD continued their representation of Martinez. *See Martinez v. Schriro*, Ninth Cir. No. 08-99009. After Mr. Cornell was suspended from the practice of law in May 2012, the Ninth Circuit ordered him terminated in this matter on July 13, 2012. Ninth Cir. ECF No. 80. The FPD has continued to represent Martinez in the Ninth Circuit through the present filing of the Petition for Writ of Certiorari. The FPD represented Martinez in the district court when the Ninth Circuit stayed the appeal on July 7, 2014, and remanded for consideration of procedurally defaulted claims pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012), and a Request for Indication Whether the District Court Would Consider a Rule 60(b) Motion. Order, *Martinez v. Ryan*, Ninth Cir. No. 08-99009, ECF No. 99.

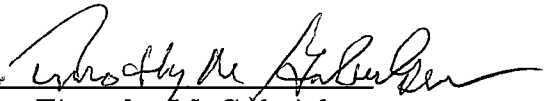
The FPD continued to represent Martinez and filed his combined Request for Indication/Supplemental *Martinez* Brief (*Martinez*, No. CV-05-01561-PHX-ROS (Mar. 12, 2015), ECF No. 115), a Replacement Opening Brief (*Martinez*, No. 08-99009 (May 1, 2017), ECF No. 118), a Petition for Rehearing and Petition for Rehearing En Banc (*Martinez*, No. 08-99009 (Sept. 10, 2019), ECF No. 170-1), and a timely Petition for Writ of Certiorari with this Court in Case No. 19-7627, on February 7, 2020.

The FPD filed his Motion for Relief from Judgment Pursuant to Rule 60(b) (*Martinez*, No. CV-05-01561-PHX-ROS (July 29, 2020), ECF No. 136), a Motion for Certificate of Appealability with the Ninth Circuit with which to challenge the district court denial of his Rule 60(b) motion (*Martinez*, No. 21-99006 (June 29, 2021), ECF No. 2), and a Petition for Panel Rehearing with Suggestion for Rehearing En Banc (*Martinez*, No. 21-99006 (May 31, 2022), ECF No. 7.)

Thus, counsel appointed to represent Martinez due to his indigency in the federal habeas proceedings have continuously represented him since 2005. Martinez has remained in prison for more than 27 years since his arrest on August 16, 1995. Martinez remains without funds to pay costs to prosecute the present Petition. Martinez respectfully asks that this Court grant this motion and allow him to proceed *in forma pauperis* with respect to the Petition for Writ of Certiorari he has filed on this date.

Respectfully submitted this 28th day of September, 2022.

Jon M. Sands  
Federal Public Defender  
Timothy M. Gabrielsen  
Assistant Federal Public Defender

By:   
Timothy M. Gabrielsen  
Counsel of Record for Petitioner