

IN THE
Supreme Court of the United States

ANTHONY ROY SPAIN,
Petitioner,

vs.

STATE OF OKLAHOMA,
Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS**

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Pursuant to Rule 39.1, Petitioner Anthony Spain requests leave to file the attached petition for a writ of certiorari *in forma pauperis*. By order dated February 3, 2021, the United States District Court for the Eastern District of Oklahoma appointed the Federal Public Defender for the District of Arizona to represent Mr. Spain in federal criminal proceedings, as required by 18 U.S.C. § 3006A(a)(1)(A). As explained in the petition, the federal charges were brought in the wake of this Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). The federal charges were dismissed after the Oklahoma Court of Criminal Appeals ruled that *McGirt* does not apply retroactively to cases on collateral review. *See State ex rel. Matloff v. Wallace*, 497 P.3d 686 (Okla. Crim. App. 2021), *cert. denied sub nom. Parish v. Oklahoma*, 142 S. Ct. 757 (2022). Mr. Spain's counsel's appearance in these proceedings, therefore, is ancillary to the federal charges. *See* 18 U.S.C. § 3006A(c). Accordingly, Mr. Spain is eligible to proceed *in forma pauperis* before this Court.

KEITH J. HILZENDEGER
Counsel of Record
ASSISTANT FEDERAL PUBLIC DEFENDER
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
(602) 382-2700 voice
keith_hilzendeger@fd.org