

CASE NO. _____ (CAPITAL CASE) (18A1190)
IN THE SUPREME COURT OF THE UNITED STATES

WESLEY RUIZ,
Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR,
Respondent.

**PETITIONER'S MOTION AND AFFIRMATION
FOR
LEAVE TO PROCEED *IN FORMA PAUPERIS***

Petitioner, Wesley Ruiz, through counsel, respectfully moves for leave to proceed *in forma pauperis* and submits as follows:

1. This case is before the Court on a petition for writ of certiorari.
2. Wesley Ruiz is a death sentenced prisoner in Texas.
3. On February 12, 2013, the United States District Court for the Northern District of Texas appointed counsel to represent Petitioner in this capital habeas proceeding, but required him to pay the \$5 filing fee. A copy of that Order is attached.
4. On January 11, 2019, the Fifth Circuit docketed his appeal, allowed him to proceed *in forma pauperis*, and appointed counsel. A copy of the docket sheet is attached.
5. On, September 8, 2020, the district court issued an order appointing the office of the Federal Community Defender for the Eastern District of Pennsylvania, with whom undersigned counsel is employed. A copy of that Order is attached.

6. Petitioner remains incarcerated today and there has been no change in his financial status. He is without funds to secure the services necessary to proceed in this Court (e.g., printing fees, etc.) or to pay any fees.

7. Undersigned counsel affirms that all statements related above are true and correct.

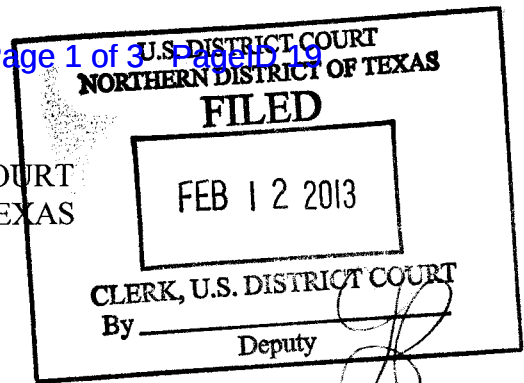
WHEREFORE, Petitioner requests that this Court allow him to proceed *in forma pauperis*.

Respectfully submitted,

/s/ Stuart B. Lev

STUART BRIAN LEV
Assistant Federal Defender
Federal Community Defender Office
for the Eastern District of Pennsylvania
The Curtis Center – Suite 545 West
Independence Square West
Philadelphia, PA 19106
(215) 928-0520
stuart_lev@fd.org
Counsel for Petitioner, Wesley Ruiz

Dated: June 17, 2021



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WESLEY LYNN RUIZ,

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Petitioner,

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V.

Civil Action No. 3:12-CV-5112-N

RICK THALER, Director,
Texas Department of Criminal Justice
Correctional Institutions Division,

(Death Penalty Case)

Respondent.

ORDER APPOINTING COUNSEL SUBJECT TO PAYMENT OF FILING FEE

On December 14, 2012, **Wesley Lynn Ruiz** ("Petitioner") filed a motion for appointment of counsel other than his state habeas counsel (doc. 1), which included an application to proceed *in forma pauperis* ("IFP"). Having reviewed the motion, the Court finds that Petitioner is entitled to the appointment of counsel by the provisions of 18 U.S.C. § 3599(a)(2). *See McFarland v. Scott*, 512 U.S. 849, 855-58 (1994). The Court further finds that attorney **Donald Vernay** possesses the background, knowledge, and experience to enable him to represent Petitioner with due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation, and is qualified and willing to accept this appointment as lead counsel.

Petitioner, however, has not paid the \$5 filing fee and his application to proceed IFP indicates a current balance of \$256.83 in his inmate trust account. This amount far exceeds the limit for proceeding IFP allowed under the standing orders of this district.¹ Therefore, this appointment of counsel is conditioned upon the payment of the \$5 filing fee.

¹In order to obtain IFP status in a postconviction habeas corpus proceeding, a prisoner must show that his inmate trust account and other resources do not exceed \$50.00. *See* Misc. Order 13 at ¶ 9 (N.D.Tex. Feb. 1, 1977).

Petitioner's motion for appointment of counsel (doc. 1) is conditionally **GRANTED**, and attorney **Donald Vernay** is appointed as lead counsel to represent Petitioner in this cause; provided however that Petitioner shall satisfy the filing-fee requirement within **60 days** of the date of this order or this proceeding shall be terminated and the appointment of counsel herein rendered null and void.²

Subject to the satisfaction of the filing-fee requirement set out above, appointed counsel are entitled to compensation (currently at the rate of \$178.00/hour) in accordance with Volume VII, Part A, Chapter 6, of the *Guide to Judiciary Policy*, which Counsel is directed to read along with the instructions for forms CJA 30 and CJA 31 in order to ensure proper compensation for time and expenses incurred herein, and the presumptive limits contained in the *Special Procedures for Reviewing Attorney Compensation Requests in Death Penalty Cases* by the Judicial Council of the Fifth Circuit. Counsel are also advised of the requirement of pre-approval for the use of associate counsel under the Criminal Justice Act (CJA) plan adopted by this district.³ Counsel shall be entitled to interim payments for services rendered in this cause.

A copy of this order and CJA 30 forms shall be provided to appointed counsel at the following address:

LEAD COUNSEL **Donald Vernay**
1604 Golf Course Road SE
Rio Rancho, NM 87124
(505) 892 2766
Texas Bar No. 24035581

²This does not prevent the Court from extending this deadline upon a proper motion.

³The CJA plan provides that "An appointed counsel may not claim compensation for services furnished by a partner or associate, or counsel who is not a partner or associate, without prior authorization by the court." See Misc. Order 3 at VIII(B) (N.D.Tex. Sep. 15, 2000).

minimal243@yahoo.com

SO ORDERED.

DATED: February 12, 2013.

A handwritten signature in black ink, appearing to read "Paul D. Stickney", written over a horizontal line.

PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

PACER fee: Exempt

General Docket
United States Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 19-70003
Nature of Suit: 3535 Habeas Corpus - Death Penalty
Ruiz v. Davis
Appeal From: Northern District of Texas, Dallas
Fee Status: In Forma Pauperis

Docketed: 01/11/2019
Termed: 07/07/2020

Case Type Information:

- 1) Death Penalty w/ out Counsel
- 2) State
- 3)

Originating Court Information:

District: 0539-3 : [3:12-CV-5112](#)
Originating Judge: David C. Godbey, U.S. District Judge
Date Filed: 09/23/2013
Date NOA Filed:
01/07/2019

Date Rec'd COA:
01/07/2019

Prior Cases:

None

Current Cases:

None

Panel Assignment: Not available

Wesley Lynn Ruiz (#00999536)
Petitioner - Appellant

Shawn Nolan
Direct: 215-928-0520
Email: Shawn_Nolan@fd.org
[COR LD NTC Fed Public Defender]
Federal Community Defender Office
Eastern District of Pennsylvania
601 Walnut Street
Curtis Center
Philadelphia, PA 19106-0000

Peter James Walker
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Eastern District of Pennsylvania
Suite 545-W.
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v.

Lorie Davis, Director, Texas Department of Criminal Justice,
Correctional Institutions Division
Respondent - Appellee

Tomee Morgan Heining, Assistant Attorney General
Email: tomee.heining@oag.texas.gov
[COR LD NTC Government]
Office of the Attorney General
Postconviction Litigation Division
300 W. 15th Street
William P. Clements Building
Austin, TX 78701-0000













Wesley Lynn Ruiz,

Petitioner - Appellant













v.

Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division,

Respondent - Appellee

01/11/2019	<input type="checkbox"/> 	DEATH PENALTY CASE docketed. NOA filed by Appellant Wesley Lynn Ruiz [19-70003] (MRW) [Entered: 01/11/2019 12:48 PM]
01/11/2019	<input type="checkbox"/> 	CJA APPOINTMENT for Attorney Mr. John Steven Bush for Wesley Lynn Ruiz. Counsel must use the eVoucher system to file the voucher at disposition of the case. Please see the attached document for further guidance.
		ORIGINATING COURT DISTRICT: NTX ORIGINATING CASE NUMBER: 3:12-CV-5112
		DATE OF APPOINTMENT: 01/07/2019 [19-70003] (MRW) [Entered: 01/11/2019 12:57 PM]
01/14/2019	<input type="checkbox"/> 	INITIAL CASE CHECK by Attorney Advisor complete, Action: Case OK to Process. [8959739-2] Initial AA Check Due satisfied. [19-70003] (MRW) [Entered: 01/14/2019 08:39 AM]
01/14/2019	<input type="checkbox"/>	ELECTRONIC RECORD ON APPEAL REQUESTED FROM DISTRICT COURT for 3:12-CV-5112. Electronic ROA due on 01/29/2019. [19-70003] (MRW) [Entered: 01/14/2019 08:41 AM]
01/30/2019	<input type="checkbox"/>	ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? No. State Court Papers included? Yes. Electronic ROA deadline satisfied. [19-70003] (MRW) [Entered: 01/30/2019 12:31 PM]
01/30/2019	<input type="checkbox"/> 	LETTER ISSUED. Motion for COA and brief in support are required. Motion due on 03/11/2019 for Appellant Wesley Lynn Ruiz. Brief in Support due on 03/11/2019 for Appellant Wesley Lynn Ruiz [19-70003] (MRW) [Entered: 01/30/2019 12:38 PM]
01/30/2019	<input type="checkbox"/> 	APPEARANCE FORM for the court's review. Lead Counsel? Yes. [19-70003] (Tomee Morgan Heining) [Entered: 01/30/2019 03:27 PM]
01/30/2019	<input type="checkbox"/> 	APPEARANCE FORM received from Mr. John Steven Bush for Wesley Lynn Ruiz for the court's review. Lead Counsel? Yes. [19-70003] (J. Steven Bush) [Entered: 01/30/2019 04:30 PM]
01/31/2019	<input type="checkbox"/>	APPEARANCE FORM FILED by Attorney John Steven Bush for Appellant Wesley Lynn Ruiz in 19-70003 [19-70003] (MRW) [Entered: 01/31/2019 09:41 AM]
01/31/2019	<input type="checkbox"/>	APPEARANCE FORM FILED by Attorney Tomee Morgan Heining for Appellee Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division in 19-70003 [19-70003] (MRW) [Entered: 01/31/2019 09:42 AM]
03/08/2019	<input type="checkbox"/> 	UNOPPOSED MOTION filed by Appellant Wesley Lynn Ruiz to extend time to comply with COA requirements until 04/10/2019 [9000191-2]. Date of service: 03/08/2019 via email - Attorney for Appellant: Bush; Attorney for Appellee: Heining [19-70003] (J. Steven Bush) [Entered: 03/08/2019 10:54 AM]
03/08/2019	<input type="checkbox"/> 	COURT ORDER granting Motion to extend time to comply with COA requirements filed by Appellant Wesley Lynn Ruiz [9000191-2] Motion due deadline updated to 04/10/2019 for Appellant Wesley Lynn Ruiz. Brief in Support deadline updated to 04/10/2019 for Appellant Wesley Lynn Ruiz [19-70003] (MRW) [Entered: 03/08/2019 04:19 PM]
04/09/2019	<input type="checkbox"/> 	OPPOSED MOTION for certificate of appealability [9025901-2]. Motion due deadline satisfied.. Response/Opposition due on 05/09/2019. [19-70003] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: OPPOSED MOTION filed by Appellant Wesley Lynn Ruiz for certificate of appealability [9025901-2]. Date of service: 04/09/2019 via email - Attorney for Appellant: Bush; Attorney for Appellee: Heining [19-70003] (J. Steven Bush) [Entered: 04/09/2019 04:13 PM]
04/09/2019	<input type="checkbox"/>	BRIEF IN SUPPORT filed by Appellant Wesley Lynn Ruiz in support of Motion for certificate of appealability [9025901-2] (INCORPORATED IN MOTION FOR COA) Brief in Support deadline satisfied. [9026097-1] [19-70003] (MRW) [Entered: 04/10/2019 08:30 AM]
05/09/2019	<input type="checkbox"/> 	RESPONSE/OPPOSITION filed by Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9049563-1] to the Motion for certificate of appealability filed by Appellant Wesley Lynn Ruiz [9025901-2] Date of Service: 05/09/2019 via email - Attorney for Appellant: Bush; Attorney for Appellee: Heining. [19-70003] (Tomee Morgan Heining) [Entered: 05/09/2019 05:07 PM]
05/09/2019	<input type="checkbox"/>	CRIMINAL JUSTICE ACT 30 voucher received from Mr. John Steven Bush for Wesley Lynn Ruiz.. Counsel should allow a minimum of 30 days for processing before inquiring about payment status. [19-70003] (EH) [Entered: 05/13/2019 08:25 AM]
05/30/2020	<input type="checkbox"/> 	MOTION to appoint counsel [9323687-3]. [19-70003] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: MOTION filed by Attorney Mr. J. Steven Bush for Appellant Wesley Lynn Ruiz to withdraw as counsel [9323687-2]. Date of Service: 05/30/2020 via email - Attorney for Appellant: Bush; Attorney for Appellee: Heining [19-70003] (J. Steven Bush) [Entered: 05/30/2020 12:45 PM]
07/07/2020	<input type="checkbox"/> 	UNPUBLISHED OPINION FILED. [19-70003 Dismissed] Judge: PRO, Judge: DRW, Judge: ASO; denying Motion for certificate of appealability filed by Appellant Wesley Lynn Ruiz [9025901-2]; granting Motion to

withdraw as counsel filed by Mr. J. Steven Bush [\[9323687-2\]](#); carrying with the case Motion to appoint counsel filed by Mr. J. Steven Bush [\[9323687-3\]](#) [19-70003] (CCR) [Entered: 07/07/2020 03:42 PM]

07/07/2020	<input type="checkbox"/> 	MANDATE ISSUED. [19-70003] (CCR) [Entered: 07/07/2020 03:47 PM]
	27 pg, 365.64 KB	
07/08/2020	<input type="checkbox"/> 	TECHNICAL REVISION MADE TO OPINION. [9350066-2] [19-70003] (CCR) [Entered: 07/08/2020 08:16 AM]
	13 pg, 145.95 KB	
07/14/2020	<input type="checkbox"/> 	COURT DIRECTIVE ISSUED recalling this Court's mandate. [19-70003] (MRW) [Entered: 07/14/2020 07:59 AM]
	1 pg, 82.48 KB	
08/11/2020	<input type="checkbox"/>	CRIMINAL JUSTICE ACT 30 voucher received from Mr. J. Steven Bush for Wesley Lynn Ruiz. Timely? Yes. Counsel should allow a minimum of 30 days for processing before inquiring about payment status. [19-70003] (GMC) [Entered: 08/11/2020 12:59 PM]
09/09/2020	<input type="checkbox"/> 	DISTRICT COURT ORDER of 09/08/2020 appointing Shawn Nolan as counsel for Appellant Wesley Lynn Ruiz in 19-70003. [19-70003] (MRW) [Entered: 09/09/2020 11:18 AM]
	2 pg, 108.6 KB	
09/09/2020	<input type="checkbox"/> 	MANDATE ISSUED. [19-70003] (MRW) [Entered: 09/09/2020 11:27 AM]
	14 pg, 239.25 KB	
09/22/2020	<input type="checkbox"/> 	APPEARANCE FORM for the court's review. Lead Counsel? Yes. [19-70003] (Peter James Walker) [Entered: 09/22/2020 09:39 AM]
	1 pg, 111.21 KB	
09/23/2020	<input type="checkbox"/>	APPEARANCE FORM FILED by Attorney(s) Peter James Walker for party(s) Appellant Wesley Lynn Ruiz, in case 19-70003 [19-70003] (MRW) [Entered: 09/23/2020 02:19 PM]
09/24/2020	<input type="checkbox"/> 	OPPOSED MOTION to extend the time to file a rehearing until 10/06/2020 [9407139-3]. [19-70003] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: OPPOSED MOTION filed by Appellant Wesley Lynn Ruiz to recall this Court's mandate. Date of service: 09/24/2020 via email - Attorney for Appellee: Heining; Attorney for Appellants: Nolan, Walker [19-70003] (Peter James Walker) [Entered: 09/24/2020 11:51 AM]
	11 pg, 38.94 KB	
09/29/2020	<input type="checkbox"/> 	COURT ORDER granting Motion to recall mandate filed by Appellant Wesley Lynn Ruiz [9407139-2] ; granting Motion to extend the time to file a petition for rehearing filed by Appellant Wesley Lynn Ruiz [9407139-3] until 10/06/2020 Submit Rehearing due deadline updated to 10/06/2020 for Nobody [19-70003] (MRW) [Entered: 09/29/2020 10:42 AM]
	15 pg, 288.94 KB	
10/06/2020	<input type="checkbox"/> 	CORRECTED PETITION for rehearing [9415542-2] Submit Rehearing due deadline canceled. [19-70003] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: PETITION filed by Appellant Wesley Lynn Ruiz for rehearing [9415542-2]. Date of Service: 10/06/2020 via email - Attorney for Appellee: Heining; Attorney for Appellants: Nolan, Walker; US mail - Attorney for Appellant: Nolan [19-70003] (Peter James Walker) [Entered: 10/06/2020 06:58 PM]
	36 pg, 297.48 KB	
12/11/2020	<input type="checkbox"/> 	COURT DIRECTIVE ISSUED requesting a response to the Petition for rehearing filed by Appellant Wesley Lynn Ruiz in 19-70003 [9415542-2] Response/Opposition due on 12/31/2020. [19-70003] (MRW) [Entered: 12/11/2020 11:50 AM]
	1 pg, 83.43 KB	
12/17/2020	<input type="checkbox"/> 	LETTER filed by Appellant Wesley Lynn Ruiz referencing Petition filed by Appellant Wesley Lynn Ruiz [9415542-2] . Date of Service: 12/17/2020 via email - Attorney for Appellee: Heining; Attorney for Appellants: Nolan, Walker [19-70003] (Peter James Walker) [Entered: 12/17/2020 01:58 PM]
	37 pg, 286.15 KB	
12/30/2020	<input type="checkbox"/> 	RESPONSE/OPPOSITION filed by Ms. Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division [9472414-1] to the Letter filed by Appellant Wesley Lynn Ruiz [9465449-2] , Court Order [9461297-2] Date of Service: 12/30/2020 via email - Attorney for Appellee: Heining; Attorney for Appellant: Walker; US mail - Attorney for Appellant: Nolan. [19-70003] (Tomee Morgan Heining) [Entered: 12/30/2020 03:58 PM]
	31 pg, 269.6 KB	
01/22/2021	<input type="checkbox"/> 	COURT ORDER denying Petition for rehearing filed by Appellant Wesley Lynn Ruiz [9415542-2] Mandate issue date is 02/01/2021 [19-70003] (MRW) [Entered: 01/22/2021 02:48 PM]
	5 pg, 159.07 KB	
02/01/2021	<input type="checkbox"/> 	MANDATE ISSUED. Mandate issue date satisfied. [19-70003] (MRW) [Entered: 02/01/2021 07:50 AM]
	14 pg, 255.55 KB	

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WESLEY RUIZ,	§	
	§	
Petitioner,	§	
	§	
v.	§	No. 3:12-cv-5112-N
	§	
BOBBY LUMPKIN, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

ORDER

The matters before the Court are (1) Respondent's motion to appointment counsel, filed July 14, 2020, *see* Dkt. No. 42, and (2) Petitioner's unopposed motion to appointment counsel, filed September 8, 2020, *see* Dkt. No. 44.

This court denied Petitioner's federal habeas corpus petition on December 14, 2018. *Ruiz v. Davis*, 2018 WL 6591687 (N.D. Tex. Dec. 14, 2018) [Dkt. No. 36]. The Fifth Circuit subsequently denied Petitioner a Certificate of Appealability and granted a motion to withdraw filed by his appellate counsel. *Ruiz v. Davis*, ___ F. App'x ___, 2020 WL 3815296 (5th Cir. July 7, 2020) [Dkt. No. 39]. The Fifth Circuit then withdrew its mandate to permit this court an opportunity to appoint new counsel for Petitioner [Dkt. No. 40].

Both Respondent and Petitioner have filed motions requesting this court appoint new counsel to represent Petitioner. *See* Dkt. Nos. 42 & 44. The Court finds that the Federal Community Defender Office of the Eastern District of Pennsylvania,

a capital habeas unit headed by attorney Shawn Nolan, fully qualifies for appointment of Petitioner in this capital habeas proceeding under the provisions of 18 U.S.C. § 3599(d). In accordance with 18 U.S.C. § 3599, this court will grant the parties' motions requesting appointment of new counsel for Petitioner.

It is hereby ORDERED that:

1. Respondent's motion for appointment of counsel [Dkt. No. 42] is GRANTED.
2. Petitioner's motion for appointment of counsel [Dkt. No. 44] is GRANTED.
3. The Federal Community Defender Office of the Eastern District of Pennsylvania, specifically supervising attorney Shawn Nolan, whose mailing address is 601 Walnut Street, Suite 545 West, Philadelphia, Pennsylvania 19106, and whose office telephone number is (215) 928-0520, is appointed as counsel of record for Petitioner in this cause.
4. The Clerk shall immediately transmit a copy of this Order to both the United States Court of Appeals for the Fifth Circuit and to Petitioner.

SO ORDERED.

DATED: September 8, 2020

A handwritten signature in black ink, appearing to be 'D. Horan', with a long horizontal line extending to the right.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE