

## INFORMATION AND INSTRUCTIONS

### APPLICATION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2254 (Persons in State Custody)

1) The attached forms are to assist you in preparation of a petition for *habeas corpus* relief. In order for your petition to be considered by the District Court, it must be typewritten or legibly handwritten. All questions must be answered concisely in the appropriate spaces on the form. The petition must be signed and include a declaration under penalty of perjury. You are cautioned that any false statement of material fact may serve as basis for prosecution and conviction for perjury. You should therefore exercise care to assure that all answers are true, correct, and complete.

#### A. The Application

2) Extra pages are not permitted, except that up to two (2) additional pages (8 1/2 " x 11") may be attached if necessary to complete your answers to question #1. Citation of legal authority is not necessary and no briefs or arguments are to be submitted unless specifically requested by an order of the court.

3) The law governing applications for a writ of habeas corpus pursuant to 28U.S.C. § 2254 has changed dramatically. You should consult these statutory changes in 28U.S.C. §§ 2244, 2253, and 2254, ***as amended by***, Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, §§ 101-106, 110 Stat. 1214 (Apr. 24, 1996).

4) In your petition, you should raise all available grounds for relief. If you fail to do so, you may be barred from presenting additional grounds at a later date. Rule 9 of the Supreme Court Rules governing §2254 cases provides that a second or successive petition may be dismissed if the judge finds that it fails to allege new and different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds the failure of the petitioner to assert those grounds in a prior petition constitutes an abuse of the writ.

5) The following list of the most frequently raised grounds for relief in post-conviction proceedings is furnished for your information only. This list is not complete, and you may raise any other grounds for relief you may have:

- a) denial of effective assistance of counsel;
- b) denial of right of appeal;
- c) conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge or the consequences of the plea;
- d) conviction obtained by use of coerced confession;
- e) conviction obtained by use of evidence obtained pursuant to an unlawful search and seizure;
- f) conviction obtained by use of evidence obtained pursuant to an unlawful arrest;
- g) conviction obtained by a violation of the privilege against self-incrimination;
- h) conviction obtained by the unconstitutional failure of the prosecution to disclose evidence favorable to the defendant;
- i) conviction obtained by a violation of the protection against double jeopardy;
- j) conviction obtained by the action of a grand or petit jury which was unconstitutionally selected and impaneled;
- k) conviction was obtained by the knowing use of perjured testimony;
- l) denial of compulsory process to obtain witnesses favorable to the defendant;
- m) sentence imposed is cruel and unusual punishment;
- n) conviction obtained by the use of evidence obtained pursuant to an unlawful lineup or identification procedure;
- o) denial of a speedy trial;
- p) conviction was obtained as a result of a plea of guilty or trial while the defendant was mentally incompetent.

6) On a single petition, you may challenge the judgments of only one court. If you seek to challenge several judgments entered by different courts, either in the same state or in different states, you must file separate petitions as to each court.

**7) Your attention is directed to the requirement that you first exhaust available state judicial remedies on all grounds before presenting them to the Federal Court.**

8) You must name as Respondent the person who has custody over you, i.e. the Warden of the institution where you are currently incarcerated.

### **B. The Filing Fee and 28 U.S.C. § 1915**

9) The application for a writ of habeas corpus must be accompanied by the full \$5.00 filing fee. If you want to commence an action without prepayment of fees or security therefor, you must file a motion for leave to proceed pursuant to 28 U.S. C. § 1915. Under § 1915, you also must submit an affidavit and a certified copy of your trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of the habeas corpus application. The certified copy of the trust fund account statement (or institutional equivalent) must be obtained from the appropriate official of each penal institution at which you are or were confined during the six-month period. The court will not consider the merits of the claims

asserted in any habeas corpus petition filed without either the \$5.00 filing fee or a properly completed motion, affidavit and certified copy of your trust fund account statement (or institutional equivalent) as required by § 1915.

10) The motion and affidavit for leave to proceed pursuant to 28 U.S.C. § 1915 must be typewritten or legibly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. You must sign the motion and affidavit. You should exercise care to assure that all answers are true, correct and complete.

11) If you are proceeding pursuant to 28 U.S. C. § 1915 and the motion, affidavit and certified copy of your trust fund account statement (or institutional equivalent) are in proper form, you will be ordered to pay within thirty days an initial partial filing fee in an amount to be determined by the court pursuant to § 1915(b)(1). The court will not review the merits of your habeas corpus application until the initial partial filing fee is paid. If you fail to pay the initial partial filing fee within thirty days or fail to show that you have no assets and no means by which to pay the initial partial filing fee, the habeas corpus application will be dismissed without prejudice. If the initial partial filing fee is paid within thirty days, the court will review the application pursuant to § 1915(e)(2)(B) to determine if it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

12) You are reminded that, even if you are allowed to proceed pursuant to 28 U.S.C. § 1915, you must pay the full filing fee as required by law, i.e., \$5.00. It is your responsibility to ensure that monthly payments are sent to the court as required by § 1915(b)(2) until the filing fee is paid in full. It is your responsibility to have the institution where you are confined forward the payments from your trust fund account to the clerk of the court each time the amount in your account exceeds \$10.00. **The habeas corpus application may be dismissed at any point if you fail to make the required monthly payments.**

13) When your petition is fully completed in proper order, the original and two (2) copies together with the required filing fee of \$5.00, or motion to proceed pursuant to 28 U.S.C. § 1915 and financial certificate, must be mailed to the Clerk of the United States District Court whose address is:

**ROBERT M. MARCH, CLERK**  
**U.S. District Court**  
**PO Box 689**  
Albuquerque, NM 87103

14) You must furnish an original and one copy of all papers, correspondence or other documents (except the original petition which requires an original and two (2) copies) submitted to the court for filing and consideration. In addition, after the respondent has been served with the petition, you must furnish the respondent or his/her attorney with a copy of all such

documents submitted to the court. Each original document (except the original petition) must include a certificate stating the date a copy of the document was mailed to the respondent or his/her attorney and the address to which it was mailed. A certificate of service may be in the following form:

*I hereby certify that a copy of the foregoing pleading/document was mailed to*  
\_\_\_\_\_ *at* \_\_\_\_\_  
*(opposing party or counsel)* \_\_\_\_\_ *(Address)*  
  
on \_\_\_\_\_, 20\_\_.  
*(Date)*  
  
\_\_\_\_\_  
*(Signature)*

14) United States District Judges, United States Magistrate Judge, law clerks, the Clerk of the Court and deputy clerks are officers of the court and **are prohibited from giving legal advice.** Questions of this nature should be directed to an attorney.

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Full Name/Prisoner Number

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Complete Prison Address (Place of Confinement)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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Civil Action No. \_\_\_\_\_  
(To be supplied by the Court)

\_\_\_\_\_, Applicant,  
(Full Name and Prisoner Number)

v.

\_\_\_\_\_. Respondent,  
(Name of Warden, Superintendent, jailor  
or authorized person having custody of  
applicant) (Do not use et al.)

and

The Attorney General of the State of

\_\_\_\_\_, Additional Respondent.

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APPLICATION FOR A WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2254  
BY A PERSON IN STATE CUSTODY

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Note: If the applicant is attacking a judgment which imposed a sentence to be served in the future, applicant must fill in the name of the state where the judgment of conviction was entered. If the applicant has a sentence to be served in the future under a federal judgment, which he/she wishes to attack, he/she should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.

### CONVICTION UNDER ATTACK

1) Name and location of the court which entered the judgment of conviction under attack \_\_\_\_\_  
\_\_\_\_\_

2) Date judgment of conviction was entered \_\_\_\_\_

3) Case number \_\_\_\_\_

4) Type and length of sentence imposed \_\_\_\_\_

5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes \_\_\_\_ No \_\_\_\_

6) Nature of the offense involved (all counts) \_\_\_\_\_  
\_\_\_\_\_

7) What was your plea? (check one)

Not Guilty \_\_\_\_ Guilty \_\_\_\_ Nolo Contendere \_\_\_\_

If you entered a guilty plea to one count or indictment, and a not guilty plea to another court or indictment, give details:

\_\_\_\_\_  
\_\_\_\_\_

8) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement  
\_\_\_\_\_  
\_\_\_\_\_

9) Kind of trial (check one) Jury \_\_\_\_ Judge only \_\_\_\_

10) Did you testify at trial? Yes \_\_\_\_ No \_\_\_\_

DIRECT APPEAL

11) Did you appeal from the judgment of conviction? Yes \_\_\_ No \_\_\_

12) If you did appeal, give the name and location of the court where the appeal was filed, the result, the case number and date of the court's decision (or attach a copy of the court's opinion or order):

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13) If you did not appeal, explain briefly why you did not:

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a) Did you seek permission to file a late appeal? Yes \_\_\_ No \_\_\_

**POST-CONVICTION PROCEEDINGS**

14) Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes \_\_\_ No \_\_\_

15) If your answer to 14 was "Yes," give the following information:

a) FIRST petition, application or motion.

1. Name of court \_\_\_\_\_

2. Nature of proceeding \_\_\_\_\_

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3. Claims raised \_\_\_\_\_

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4. Did you receive an evidentiary hearing on your petition, application or motion? Yes \_\_\_ No \_\_\_

5. Result \_\_\_\_\_

6. Date of result \_\_\_\_\_

7. Did you appeal the result to the highest state court having jurisdiction?  
Yes \_\_\_ No \_\_\_ If you did appeal, give the name of the court where the  
appeal was filed, the result, the case number, citation and date of the court's  
decision (or attach a copy of the court's opinion or order)

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8. If you did not appeal, briefly explain why you did not

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b) As to any SECOND petition, application or motion, give the following  
information:

1. Name of court \_\_\_\_\_

2. Nature of proceeding \_\_\_\_\_

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3. Claims raised \_\_\_\_\_

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4. Did you receive an evidentiary hearing on your petition, application or  
motion? Yes \_\_\_ No \_\_\_

5. Result \_\_\_\_\_

6. Date of result \_\_\_\_\_

7. Did you appeal the result to the highest state court having jurisdiction?  
Yes \_\_\_ No \_\_\_ If you did appeal, give the name of the court where the  
appeal was filed, the result, the case number, citation and date of the court's  
decision (or attach a copy of the court's opinion or order) \_\_\_\_\_

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8. If you did not appeal, briefly explain why you did not \_\_\_\_\_

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c) As to any THIRD petition, application or motion, give the following information:

1. Name of court \_\_\_\_\_

2. Nature of proceeding \_\_\_\_\_

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3. Claims raised \_\_\_\_\_

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4. Did you receive an evidentiary hearing on your petition, application or motion? Yes \_\_\_ No \_\_\_

5. Result \_\_\_\_\_

6. Date of result \_\_\_\_\_

7. Did you appeal the result to the highest state court having jurisdiction? Yes \_\_\_ No \_\_\_ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) \_\_\_\_\_

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8. If you did not appeal, briefly explain why you did not \_\_\_\_\_

### **CLAIMS**

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16) State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims and supporting facts. You should raise in this petition all claims for relief which relate to the conviction under attack.

In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request action by the federal court.

**Claim One:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim)

(2) Statement of exhaustion of state remedies as to claim one:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?  
Yes \_\_\_ No \_\_\_

(b) If you did not raise this issue in your direct appeal, explain briefly  
why you did not \_\_\_\_\_

\_\_\_\_\_

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition  
for habeas corpus in a state trial court? Yes \_\_\_ No \_\_\_

(d) If your answer to (c) is "Yes," state the type of motion or petition, the  
name and location of the court where the motion or petition was filed, the case  
number (if known), the result and the date of the court's decision

\_\_\_\_\_

\_\_\_\_\_

(e) Did you receive an evidentiary hearing on your motion or petition? Yes \_\_\_  
No \_\_\_

(f) Did you appeal from the denial of your motion or petition?

Yes \_\_\_ No \_\_\_

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes \_\_\_ No \_\_\_. and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

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(h) If your answer to question (e), (f) or (g) is "No," briefly explain \_\_\_\_\_

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Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

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**Claim Two:** \_\_\_\_\_

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(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim)

(2) Statement of exhaustion of state remedies as to claim two:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue? Yes \_\_\_ No \_\_\_

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not \_\_\_\_\_  
\_\_\_\_\_

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes \_\_\_ No \_\_\_

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision  
\_\_\_\_\_  
\_\_\_\_\_

(e) Did you receive an evidentiary hearing on your motion or petition? Yes \_\_\_ No \_\_\_

(f) Did you appeal from the denial of your motion or petition? Yes \_\_\_ No \_\_\_

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes \_\_\_ No \_\_\_, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(h) If your answer to question (e), (f) or (g) is "No," briefly explain \_\_\_\_\_  
\_\_\_\_\_

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

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**Claim Three:** \_\_\_\_\_

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(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim)

(2) Statement of exhaustion of state remedies as to claim three:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?  
Yes \_\_\_ No \_\_\_

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not \_\_\_\_\_

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Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes \_\_\_ No \_\_\_

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

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(e) Did you receive an evidentiary hearing on your motion or petition?

Yes \_\_\_ No \_\_\_

(f) Did you appeal from the denial of your motion or petition?

Yes \_\_\_ No \_\_\_

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes \_\_\_ No \_\_\_. and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

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(h) If your answer to question (e), (f) or (g) is "No," briefly explain \_\_\_\_\_

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Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

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17) Have all claims for relief raised in this petition been presented to the highest state court having jurisdiction? Yes \_\_\_ No \_\_\_

18) If you answered "No" to question 17, state which claims have not been so presented and briefly give your reasons(s) for not presenting them \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

19) If any of the claims listed in this application were not previously presented in any other court, state or federal, state briefly what claims were not so presented, and give your reasons for not presenting them \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

20) Have you previously filed any type of petition, application or motion in a federal court regarding the conviction under attack? Yes \_\_\_ No \_\_\_

If "Yes," answer the following and attach a copy of the court's decision for each petition, application, or motion filed:

- a) Name and location of court \_\_\_\_\_
- b) Type of proceeding \_\_\_\_\_
- c) The issues raised \_\_\_\_\_
- d) The result \_\_\_\_\_

### SUCCESSIVE APPLICATIONS

This court is required to dismiss any claim presented in a second or successive petition that the federal court of appeals has authorized to be filed unless the applicant shows that each claim satisfies the requirements of 28 U.S.C. § 2244, *as amended by* Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 106, 110 Stat. 1214 (Apr. 24, 1996).

21) If you are raising a claim which you have not presented in a prior application, have you obtained an order from the United States Court of Appeals for the Tenth Circuit authorizing this district court to consider the application? Yes \_\_\_ No \_\_\_ Please attach a copy of the order.

22) Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack? Yes \_\_\_ No \_\_\_ If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding

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**LEGAL REPRESENTATION**

23) Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing \_\_\_\_\_

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(b) At arraignment and plea \_\_\_\_\_

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(c) At trial \_\_\_\_\_

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(d) At sentencing \_\_\_\_\_

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(e) On appeal \_\_\_\_\_

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(f) In any post-conviction proceeding \_\_\_\_\_

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(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

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**OTHER CONVICTIONS**

24) Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes \_\_\_ No \_\_\_

25) Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes \_\_\_ No \_\_\_

(a) If so, give name and location of court which imposed sentence to be served in the future \_\_\_\_\_

\_\_\_\_\_

(b) and give date and length of service to be served in the future \_\_\_\_\_

\_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes \_\_\_ No \_\_\_

Wherefore, applicant prays that the court grant him such relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

\_\_\_\_\_  
Applicant's Original Signature

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attorney's Full Address and  
Telephone Number

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the applicant in this action, that he/she has read this petition and that the information contained in the petition is true and correct. 28 U. S. C. § 1746; 18 U. S. C. § 162 1.

Executed at \_\_\_\_\_ on \_\_\_\_\_  
(Location) (Date)

\_\_\_\_\_  
Applicant's Original Signature