
Full Name/Prisoner Number

Complete Prison Address (Place of Confinement)

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

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.

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

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):

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

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 _____

3. Claims raised _____

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)

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

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

1. Name of court _____

2. Nature of proceeding _____

3. Claims raised _____

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) _____

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

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

1. Name of court _____

2. Nature of proceeding _____

3. Claims raised _____

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) _____

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

CLAIMS

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)

(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

Claim Two: _____

(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

Claim Three: _____

(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 m 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

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

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 _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

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

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