U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAR 18 1977
JOSEPH McELROY, JR., CLERK
Deputy

Miscellaneous Order #13

~~MISCELLANEOUS ORDER NO. 1104 (Dallas)~~

ESTABLISHING A PROCEDURE TO BE FOLLOWED IN PETITIONS AND/OR MOTIONS FOR POST CONVICTION RELIEF FILED PURSUANT TO THE PROVISIONS OF 28 U.S.C., SECTIONS 2254 and 2255, AND DELEGATION OF POWERS TO CERTAIN UNITED STATES MAGISTRATES

In order to implement the Rules of practice and procedure governing actions under 28 U.S.C. §§2254 and 2255, promulgated by Order of the Supreme Court of the United States and as modified by P. L. 94-426 enacted September 28, 1976, and by Section 2 of P. L. 94-577 enacted October 21, 1976, and to provide for appropriate forms and pleadings in such cases, IT IS ORDERED:

1. RULES GOVERNING. The rules governing procedure in actions under 28 U.S.C. §§2254 and 2255 shall be applicable, together with the additional directives hereinafter provided.

2. LETTERS AND PLEADINGS. All letters or pleadings seeking post conviction relief, whether prepared on forms provided by the Court or otherwise, shall be promptly referred, prior to filing, to one of the United States Magistrates at Dallas, Fort Worth, Lubbock, or other designated Magistrate (hereinafter sometimes called Magistrate), for review and determination whether the material submitted substantially complies with the rules of practice and procedure governing actions under Sections 2254 and 2255. If a Magistrate finds the petition or motion not to be in proper form or substance, he may direct that it be returned, as provided in Rule 2 governing procedings under Sections 2254 and 2255.

a. Section 2254 Actions - The Magistrate shall direct the Clerk to make such reply, if any, as may seem appropriate to letters and inquiries; and to file petitions or motions found to be in the proper form and substance in cases in which the petition is accompanied by the appropriate fee or in cases where the petitioner has been permitted to proceed in forma pauperis.

b. Section 2255 Actions - After determining the material submitted in a motion is in substantially proper form, the Magistrate shall refer the matter to the United States District Judge who originally handled the case, or in the alternative, to the Judge with responsibility for the docket where the case will be assigned; such Judge shall direct the Clerk to take appropriate action, or may return the matter to the appropriate Magistrate for handling.

3. FORM OF PETITION AND/OR MOTION. The United States District Court for the Northern District of Texas has determined that slight modifications are needed in some of the model forms promulgated by the enabling order and legislation although retaining substantially the said model forms. Blank copies of the adopted forms are attached hereto and incorporated herein and shall be made available without charge

by the Clerk of the District Court to petitioners and movants upon written request. The following petitions, motions, and orders are adopted for use in this District:

a. Miscellaneous Order Establishing a Procedure to be Followed in Petitions and/or Motions for Post Conviction Relief filed Pursuant to the Provisions of 28 U.S.C., Sections 2254 and 2255, and Delegation of Powers to Certain United States Magistrates;

b. Section 2254 Petitions:

(1) Petition for Writ of Habeas Corpus by Person in State Custody (9 pages), and

(2) Affidavit in Support of Request to Proceed in Forma Pauperis (2 pages);

(3) Order Permitting Proceeding in the District Court In Forma Pauperis and/or Order Specifying Further Action to be taken by the Clerk (1 page);

(4) Order to Show Cause and Notice and Instruction to Parties (1 page); and

(5) Petitioner's Response as to Why His Petition Should not be Barred Under Rule 9;

c. Section 2255 Motions:

(1) Motion under 28 U.S.C., Section 2255, To Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (9 pages), and

(2) Affidavit in Support of Request to Proceed In Forma Pauperis (2 pages); and

(3) Order and Instructions to Parties in a Motion Under 28 U.S.C., Section 2255 (1 page);

(4) Movant's Response as to Why His Motion Should Not be Barred Under Rule 9.

4. LIMITATION ON ASSERTION OF CLAIMS. A petition or motion shall be limited to assertion of claims for relief against one judgment only, except that an attack may be asserted against more than one judgment if the trial or proceedings in which the judgments were entered were heard or tried in one court at the same time in consolidated proceedings.

5. PLEADINGS.

A. Original petition or motion. Each ground for relief and supporting factual allegations must be brief, concise and limited to factual statements. No arguments or citations of authority may be included in the petition. Briefs, as required or permitted, must be by separate instrument complying with the requirements set forth in paragraph 6 below. All allegations must be in the space provided on the form therefor and no extra sheets or additional pages of any kind will be permitted. If additional space is needed, the reverse side of the sheet may be utilized.

B. Responsive pleadings. Respondent's answer should conform to the requirements of Rules 5. Briefs as required or permitted must be by separate instrument complying with the requirements set forth in paragraph 6. The show cause or other process, if any, issued in the case shall specify such pleadings as may be required or permitted, the time within which such pleadings are to be filed, and other appropriate instructions to be observed.

C. Traverse pleadings. The rules governing proceedings under 28 U.S.C. §§2254 and 2255 do not provide for the filing of traverse pleadings except in cases where the respondent has moved under Rules 9 for dismissal of a delayed or successive petition. Unless respondent has moved under Rules 9 for dismissal of a delayed or successive petition, no traverse shall be filed except as required or permitted by further written order of the Court. In the event respondent does move to dismiss a delayed or successive petition under Rule 9, petitioner shall file a response thereto as directed in the Show Cause Order within a period of 30 days from date of service of respondent's answer. This response must be limited to a short, clear, concise, and factual statement as to why petitioner feels his case should not be dismissed. It must not contain his conclusions, opinions, arguments, or briefs. A brief replying to that of respondent may be filed in any case but must comply with the provisions of paragraph 6 below.

6. BRIEFS. Briefs, as required or permitted by the provisions of this paragraph, should be submitted on letter size paper, 8 1/2" x 11", and should be double spaced. Each argument with supporting citations advanced in the brief should clearly specify the specific ground of the petition or numbered paragraph of the pleading it seeks to support or oppose. A copy of any brief must be served by mail on the opposing party or counsel, if he is represented by counsel, and a certificate reflecting such service shall be included in the brief. Briefs are required or permitted, as follows:

A. Petitioner or movant's original brief. It is not necessary to submit a brief with the original petition. If a brief is submitted, it shall comply with the requirements stated above.

B. Respondent's brief. Respondent shall file such brief as he may wish to file, if any, at the time of the filing of his answer.

C. Reply briefs. A reply brief is not required. However, in any case in which respondent has filed a brief, a reply brief may be filed by petitioner or movant, should he wish to do so, within a period of 30 days following service of

respondent's brief. Each paragraph of such brief must specify the precise paragraph or part of respondent's brief to which reply is being made, and must be limited to a reply to respondent's argument. Under no circumstances will any statement or argument set forth in an original or reply brief be considered as a part of the pleadings so as to advance new grounds for relief or to supplement any ground or supporting facts set out in the petition. (See Instruction (2) on front page of petition or motion form.)

7. POWERS OF MAGISTRATES. The duties imposed upon the Judges of the District Court by Rules 2, 3, 4, 6, and 7, governing proceedings under 28 U.S.C. §§2254 and 2255 may be performed by a full time United States Magistrate or any part time Magistrate designated by the Judges of the District Court (which at this time is limited to the Magistrate at Lubbock, Texas) as set forth in this Order except that when such duties involve the making of an order under Rule 4 dismissing the petition or motion the Magistrate shall submit to the Court his report as to the facts and his recommendation with respect to the order to be made by the Court. In connection with the discharge of duties under Rules 2 and 3, the Magistrate shall carefully review the petition or motion to see that it is in the proper form and substance, as required by Rules 2 and 3 and the directives stated hereinabove. In connection with the discharge of the duties under Rule 4, in 28 U.S.C. §§2254 cases and in 28 U.S.C. §§2255 cases assigned for handling by a Magistrate, the Magistrate should forthwith direct appropriate pleadings within a specified time to be set forth in the process to be issued, which time may be extended on written request for good cause shown, or shall promptly refer the case to a Judge of the Court, together with his recommendation for summary dismissal and his reasons therefor. If the Judge to whom the case is referred determines that summary dismissal is not appropriate, he shall again refer the case to the United States Magistrate who shall then order the Clerk to issue appropriate process. In exercising his duties under Rules 6 and 7, the Magistrate shall grant requests for discovery and shall order expansion of the record in those cases where he deems discovery or expansion necessary to properly determine the issues on their merits. If requested discovery or expansion of the record, though not necessary to the disposition of the issues, would be helpful or might otherwise expedite the proceedings, and the discovery can be made or the expansion accomplished without undue inconvenience or expense, it shall be ordered. If the discovery or expansion of the record is not necessary to enable the Court to properly decide the case and would be cumbersome, inconvenient, and/or expensive to the parties, it shall not be allowed or ordered.

8. HEARINGS.

A. Section 2254 - If the Magistrate determines that any hearing, including an evidentiary hearing, should be conducted in the proceeding, he shall, unless otherwise directed in a particular case, conduct such hearing as provided under Rules 8 of the rules governing proceedings under Section 2254. He shall follow the procedure set forth therein and transmit his proposed Findings and Recommendations as provided therein.

B. Section 2255 - If the Magistrate determines that a hearing may be advisable in the proceeding, he shall consult with the Judge to whom the case is assigned to determine whether the Judge or Magistrate should conduct such hearing.

If after all pleadings as ordered have been filed, the Magistrate determines that no evidentiary hearing is required, he shall submit his Findings and Recommendations for disposition of the case on the pleadings to a Judge of the Court for his review and for such further proceedings, if any, as the Judge may deem appropriate.

9. IN FORMA PAUPERIS FILING. A petitioner whose prison account or other resources exceed fifty ($50.00) dollars must pay appropriate filing fees and may not prosecute a petition in forma pauperis in this District.

10. EFFECTIVE DATE. This Order shall become effective February 1, 1977.

W. W. Taylor
CHIEF JUDGE, UNITED STATES DISTRICT COURT

Walter H. Rhodes
UNITED STATES DISTRICT JUDGE

Robert Hill
UNITED STATES DISTRICT JUDGE

Sarah T. Hughes
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

Eldon B. Mahon
UNITED STATES DISTRICT JUDGE

Pat Timoney
UNITED STATES DISTRICT JUDGE

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

PETITION FOR WRIT OF HABEAS CORPUS BY PERSON IN STATE CUSTODY

Full name and prison number (if any) of Petitioner

Place of confinement

VS.

Case No. _____
(To be supplied by the Clerk of the District Court)

Name of Respondent

INSTRUCTIONS - READ CAREFULLY

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner upon a declaration under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any question use reverse side of sheet.

(2) Additional pages are not permitted. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum. Under no circumstances will any statement or argument set forth in an original or reply brief be considered as a part of the pleadings so as to advance new grounds for relief or to supplement any ground or supporting facts set out in the application.

(3) Upon receipt of a fee of $5.00, your application will be filed if it is in proper order.

(4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the affidavit on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds $50.00, you must pay the filing fee as required by the rule of the district court.

(5) Only one judgment may be challenged in a single petition, except that relief may be sought involving judgments entered, heard or tried in a consolidated proceedings at the same time. If you seek to challenge judgments entered by different courts or at different times, you must file separate petitions as to each judgment.

(6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.

(7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Northern District of Texas at the appropriate division office:

Dallas Division Room 15C22 1100 Commerce St. Dallas, Texas 75242	Fort Worth Division 202 U. S. Courthouse Fort Worth, Texas 76102	Lubbock Division Room C221 1205 Texas Ave. Lubbock, Texas 79401	Amarillo Division P. O. Box 886 Amarillo, Tx 79105
ABilene Division P. O. Box 1218 Abilene, Texas 79604	San Angelo Division P. O. Box 328 San Angelo, Texas 76902	Wichita Falls Division P. O. Box 1234 Wichita Falls, Texas 76307	

(8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION

1. Name and location of court which entered the judgment of conviction under attack _____

2. Date of judgment of conviction _____

3. Length of sentence _____ Sentencing judge _____

4. Nature of offense or offenses for which you were convicted: _____

_____

_____

_____

5. What was your plea? (Check one)

   (a) Not guilty ( )

   (b) Guilty ( )

   (c) Nolo contendere ( )

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

_____

_____

_____

6. Kind of trial: (Check one)

   (a) Jury ( )

   (b) Judge only ( )

7. Did you testify at the trial? Yes ( ) No ( )

8. Did you appeal from the judgment of conviction? Yes ( ) No ( )

9. If you did appeal, answer the following:

   (a) Name of court _____

   (b) Result _____

   (c) Date of result _____

   If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: _____

_____

_____

_____

10. 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 ( )

11. If your answer to 10 was "yes", give the following information:

(a)(1) Name of court _____

(2) Nature of proceeding _____

_____

(3) Grounds raised _____

_____

_____

_____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

_____

(3) Grounds raised _____

_____

_____

_____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result _____

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

_____

(3) Grounds raised _____

_____

_____

_____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result _____

(6) Date of result _____

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in federal court you must ordinarily first exhaust your state remedies as to each ground on which you request action by the federal court. This includes not only all grounds which have actually been raised and which you should have listed in the foregoing paragraphs, but any other ground available to you relating to this conviction. If you have not presented to the state courts, either on direct appeal or in habeas corpus applications, all available grounds relating to your conviction, you should withhold the filing of this application until all available grounds have been presented to and finally ruled on by the state courts. A failure to fully exhaust your state remedies before making application to this court will result in a dismissal of your application for failure to exhaust state remedies. This application must set forth all available grounds on which you base your allegations that you are being held in custody unlawfully. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

A. Ground one: _____

_____

Supporting FACTS (tell your story briefly without citing cases or law):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

B. Ground two: _____

Supporting FACTS (tell your story briefly without citing cases or law):

C. Ground three: _____

Supporting FACTS (tell your story briefly without citing cases or law):

D. Ground four: _____

Supporting FACTS (tell your story briefly without citing cases or law):

E. Ground five: _____

Supporting FACTS (tell your story briefly without citing cases or law):

F. Ground six: _____

Supporting FACTS (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C, D, E and F were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

_____

_____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ( ) No ( )

15. 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 _____

_____

16. 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 ( )

17. 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 sentence to be served in 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 ( )

18. a. Have you had the assistance of an attorney, other law-trained personnel, or writ writers since the conviction your petition is attacking was entered?

Yes ( ) No ( )

b. If you checked "yes" above, specify as precisely as you can the period(s) of time during which you received such assistance, up to and including the present. _____

_____

_____

_____

c. Describe the nature of the assistance, including the names of those who rendered it to you. _____

_____

_____

_____

_____

_____

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

Executed at _____
City, County, State

Wherefore, I, _____
Name of Petitioner

declare (or certify, verify, or state) under penalty of perjury that I have read the foregoing and it is true and correct. (28 U.S.C. 1746).

Executed on the _____ day of _____, 19___.

_____
Signature of Petitioner

AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, _____, declare, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

I further declare that the responses which I have made to questions and instructions below are true.

1. Are you presently employed?

   Yes ( ) No ( )

   a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

   _____

   _____

   b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

   _____

   _____

2. Have you received within the past twelve months any money from any of the following sources?

   a. Business, profession or form of self-employment?

      Yes ( ) No ( )

   b. Rent payments, interest or dividends?

      Yes ( ) No ( )

   c. Pensions, annuities or life insurance payments?

      Yes ( ) No ( )

   d. Gifts or inheritances?

      Yes ( ) No ( )

   e. Any other sources?

      Yes ( ) No ( )

   If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

   _____

   _____

   _____

3. Do you own cash, or do you have money in a checking or savings account?

   Yes ( ) No ( ) (Include any funds in prison accounts.)

   If the answer is "yes", state the total value of the items owned.

   _____

   _____

   _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ( ) No ( )

If the answer is "yes", describe the property and state its approximate value. _____

_____

_____

_____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

_____

_____

_____

_____

_____

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury. I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).

Executed on the _____ day of _____, 19____.

CERTIFICATE

I hereby certify that the petitioner herein has the sum of $_____ on account to his credit at the _____ institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said _____ institution: _____

_____

_____

_____
Authorized Officer of Institution

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

Petitioner or Plaintiff	)	
VS.	)	CIVIL ACTION NO. _____
Respondent or Defendant	)	

ORDER PERMITTING PROCEEDING IN THE DISTRICT COURT IN FORMA PAUPERIS AND/OR ORDER SPECIFYING FURTHER ACTION TO BE TAKEN BY THE CLERK

( ) A filing fee in the amount of $_____ has been tendered.

( ) Pursuant to the provisions of 28 U.S.C. §1915, permission is granted for the above named petitioner or plaintiff to proceed in forma pauperis in this court until judgment has been entered herein.

The pleadings filed herewith shall be styled and numbered as above. The Clerk shall take the following indicated action:

( ) A true copy of this order shall be mailed to each petitioner or plaintiff or his attorney of record. No further process shall issue except on further order of the Court.

( ) A true copy of this order shall be mailed to each petitioner or plaintiff or his attorney of record, and a true copy of this order, together with a true copy of the pleadings filed herein, shall be served on each respondent or defendant who is hereby designated as a party to this action. Respondent or defendant may file a responsive pleading herein within a period of twenty (20) days from date of service, should he wish to do so, unless judgment of dismissal or denial of relief be entered by the Court within that period of time, but no summons or show cause order shall issue and no responsive pleading shall be required unless or until further order of this Court. The Court may enter judgment at any time granting or denying habeas corpus relief, or dismissing or denying in whole or in part relief sought herein and all parties shall be bound thereby. A judgment granting relief other than habeas corpus shall not be entered against any respondent or defendant except after service of process if and as required by law or until an answer be filed herein.

( ) A show cause order has been executed herein and service shall be made as directed in such order, together with a true copy of this order.

( ) A true copy of this order and all pleadings of petitioner or plaintiff shall be served by mail on the United States Attorney for the Northern District of Texas. Responsive pleadings must be filed by him within sixty (60) days from the date of this order. A true copy of all responsive pleadings should be served on petitioner. Thereafter any further pleadings by petitioner or United States Attorney should be only with permission or by order of the Court.

( ) Summons shall issue to the following defendants:

_____

_____

After docketing and issuance of process, this action should be:

( ) Referred to Magistrate _____ for further proceedings and/or his findings and recommendations.

( ) Referred to a Judge of the Court for such further action as he may deem appropriate.

ENTERED this _____ day of _____, 19____.

_____
UNITED STATES MAGISTRATE

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

Petitioner	)	
VS.	)	CIVIL ACTION NO. _____
W. J. ESTELLE, DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, Respondent.	)	

ORDER TO SHOW CAUSE AND NOTICE AND INSTRUCTIONS TO PARTIES

You will take notice that a Petition for a Writ of Habeas Corpus, numbered and styled as above, has been filed in this Court pursuant to the provisions of Title 28, United States Code, Section 2241, et seq. Pleadings and briefs are required or permitted as follows:

RESPONDENT'S ANSWER. Respondent is directed to answer this petition within thirty (30) days, answering in substance as required by Rule 5 of the Rules governing 28 U.S.C. §2254 cases in the United States District Courts. A motion under Rule 9 for dismissal of a delayed or successive application may be included in this answer. A true copy of such answer, together with a copy of any brief filed therewith, shall be served on petitioner by mailing such instruments to him at his address set out in his petition or to his attorney of record, if any, and a certificate shall be filed with the Clerk evidencing such service.

TRAVERSE PLEADINGS. The rules governing proceedings under 28 U.S.C. §2254 do not provide for the filing of traverse pleadings except in cases where the Respondent has moved under Rule 9 for dismissal of a delayed or successive application. Unless Respondent has moved under Rule 9 for dismissal of a delayed or successive petition, no traverse shall be filed except as required or permitted by further written order of the Court. In the event Respondent does move to dismiss a delayed or successive petition under Rule 9, petitioner shall file a response thereto as directed in this Order within a period of 30 days from date of service of Respondent's answer. This response must be limited to a short, clear, concise, and factual statement as to why petitioner feels his case should not be dismissed. It must not contain his conclusions, opinions, arguments, or briefs. A brief replying to that of Respondent may be filed in any case but must comply with the provisions of the following paragraph.

BRIEFS. Briefs, as required or permitted by the provisions of this paragraph, should be submitted on letter size paper, 8 1/2" x 11", and should be double spaced. Each argument with supporting citations advanced in the brief should clearly specify the specific ground of the petition or numbered paragraph of the pleading it seeks to support or oppose. A copy of any brief must be served by mail on the opposing party or counsel, if he is represented by counsel, and a certificate reflecting such service shall be included in the brief. Briefs are required or permitted, as follows:

1. Respondent's brief. Respondent shall file such brief as he may wish to file, if any, at the time of the filing of his answer.

2. Reply briefs. A reply brief is not required. However, in any case in which Respondent has filed a brief, a reply brief may be filed by petitioner should he wish to do so, within a period of 30 days following service of Respondent's brief. Each paragraph of such brief must specify the precise paragraph or part of Respondent's brief to which reply is being made, and must be limited to a reply to Respondent's argument. Under no circumstances will any statement or argument set forth in an original or reply brief be considered as a part of the pleadings so as to advance new grounds for relief or to supplement any ground or supporting facts set out in the petition. (See Instruction (2) on front page of petition form.)

In every case a copy of the petition and any Order shall be served by certified mail on the Respondent and the Attorney General, unless an agreement has been reached with the Attorney General providing for alternative means of service. A true copy of this Order shall be mailed to petitioner or his attorney of record.

_____
UNITED STATES MAGISTRATE

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

_____ _____
Full name and prison number (if any) of Petitioner | Place of confinement

vs. | Case No. _____
(To be supplied by the Clerk of the District Court)

_____
Name of Respondent

PETITIONER'S RESPONSE AS TO WHY HIS PETITION SHOULD NOT BE BARRED UNDER RULE 9

EXPLANATION AND INSTRUCTIONS -- READ CAREFULLY

(I) Rule 9. Delayed or Sucessive Petitions.

(a) Delayed Petitions. A petition may be dismissed if it appears that the state of which the respondent is an officer has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

(b) Successive Petitions. A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

(II) Your petition for habeas corpus has been found to be subject to dismissal under Rule 9 ( ) for the following reason(s):_____

_____
_____
_____
_____

(III) This form has been sent so that you may explain why your petition contains the defect(s) noted in (II) above. It is required that you fill out this form and send it back to the court within _____ days. Failure to do so will result in the automatic dismissal of your petition.

(IV) When you have fully completed this form, the original and two copies must be mailed to the Clerk of the United States District Court at the appropriate Division office:

Dallas Division
Room 15C22
1100 Commerce St.
Dallas, Texas 75242

Fort Worth Division
202 U. S. Courthouse
Fort Worth, Texas 76102

Lubbock Division
Room C221
1205 Texas Ave.
Lubbock, Texas 79401

Amarillo Division
P.O. Box 886
Amarillo, Texas 791C

Abilene Division
P.O. Box 1218
Abilene, Texas 79604

San Angelo Division
P.O. Box 328
San Angelo, Texas 76902

Wichita Falls Division
P.O. Box 1234
Wichita Falls, Texas 76307

(V) This response must be legibly handwritten or typewritten, signed by the petitioner upon a declaration under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(VI) Additional pages are not permitted except with respect to the facts which you rely upon in item 4 or 5 in the response. Any citation of authorities should be kept to an absolute minimum and is only appropriate if there has been a change in the law since the judgment you are attacking was rendered.

(VII) Respond to 4 or 5 below, not to both, unless (II) above indicates that you must answer both sections.

RESPONSE

1. Have you had the assistance of an attorney, other law-trained personnel, or writ writers since the conviction your petition is attacking was entered?

   Yes ( ) No ( )

2. If you checked "yes" above, specify as precisely as you can the period(s) of time during which you received such assistance, up to and including the present. _____

3. Describe the nature of the assistance, including the names of those who rendered it to you. _____

4. If your petition is in jeopardy because of delay prejudicial to the state under Rule 9(a), explain why you feel the delay has not been prejudicial and/or why the delay is excusable under the terms of 9(a). This should be done by relying upon FACTS, not your opinions or conclusions.

5. If your petition is in jeopardy under Rule 9(b) because it asserts the same grounds as a previous petition, explain why you feel it deserves a reconsideration. If its fault under Rule 9(b) is that it asserts new grounds which should have been included in a prior petition, explain why you are raising these grounds now rather than previously. Your explanation should rely on FACTS, not your opinions or conclusions. _____

Executed at _____
City, County, State

Wherefore, I, _____
Name of Petitioner

declare (or certify, verify, or state) under penalty of perjury that I have read the foregoing and it is true and correct. (28 U.S.C. 1746).

Executed on the _____ day of _____, 19 _____.

_____
Signature of Petitioner

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

UNITED STATES OF AMERICA	)	
	)	
VS.	)	CRIMINAL NO. _____
	)	
	)	
_____	)	_____
(Full Name of Movant)	)	Place of confinement

MOTION UNDER 28 U.S.C., SECTION 2255, TO VACATE, SET ASIDE, OR CORRECT SENTENCE
BY A PERSON IN FEDERAL CUSTODY

(This motion must always be filed in the court where sentence was imposed.)

INSTRUCTIONS - READ CAREFULLY

(1) This motion must be legibly handwritten or typewritten, signed by the movant upon a declaration under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any question use reverse side of sheet.

(2) Additional pages are not permitted. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum. Under no circumstances will any statement or argument set forth in an original or reply brief be considered as a part of the pleadings so as to advance new grounds for relief or to supplement any ground or supporting facts set out in the motion.

(3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.

(4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type you may request permission to proceed in forma pauperis, in which event you must execute the affidavit on the last page, setting forth information establishing your inability to pay the costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each judgment.

(6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.

(7) When the motion is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Northern District of Texas at the appropriate division office:

Dallas Division Room 15C22 1100 Commerce St. Dallas, Texas 75242	Fort Worth Division 202 U. S. Courthouse Fort Worth, Texas 76102	Lubbock Division Room C221 1205 Texas Ave. Lubbock, Texas 79401	Amarillo Division P. O. Box 886 Amarillo, Tx 79105

Abilene Division P. O. Box 1218 Abilene, Texas 79604	San Angelo Division P. O. Box 328 San Angelo, Texas 76902	Wichita Falls Division P. O. Box 1234 Wichita Falls, Texas 76307

(8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION

1. Name and location of court which entered the judgment of conviction under attack:

_____

2. Date of judgment of conviction _____

3. Length of sentence _____ Sentencing Judge _____

4. Nature of offense or offenses for which you were convicted _____

_____

_____

_____

_____

5. What was your plea? (Check one)

   (a) Not guilty ( )

   (b) Guilty ( )

   (c) Nolo contendere ( )

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

_____

_____

_____

_____

_____

_____

6. Kind of trial: (Check one)

   (a) Jury ( )

   (b) Judge only ( )

7. Did you testify at the trial? Yes ( ) No ( )

8. Did you appeal from the judgment of conviction? Yes ( ) No ( )

9. If you did appeal, answer the following:

   (a) Name of court _____

   (b) Result _____

   (c) Date of result _____

10. 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 federal court? Yes ( ) No ( )

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

_____

(3) Grounds raised _____

_____

_____

_____

_____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

_____

(3) Grounds raised _____

_____

_____

_____

_____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application or motion: Yes ( ) No ( )

(5) Result _____

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

_____

(3) Grounds raised _____

_____

_____

_____

_____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result _____

(6) Date of result _____

(d) Did you appeal, to an appelate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ( ) No ( )

(2) Second peition, etc. Yes ( ) No ( )

(3) Third petition, etc. Yes ( ) No ( )

(e) If you did <u>not</u> appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

_____

_____

_____

_____

_____

_____

12. State <u>concisely</u> every ground on which you claim that you are being held unlawfully.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

A. Ground One: _____

_____

Supporting FACTS (Tell your story <u>briefly</u> without citing cases or law):

_____

_____

_____

_____

_____

B. Ground two: _____

Supporting FACTS (tell your story briefly without citing cases or law):

C. Ground three: _____

Supporting FACTS (tell your story briefly without citing cases or law):

D. Ground four: _____

Supporting FACTS (tell your story <u>briefly</u> without citing cases or law):

E. Ground five: _____

Supporting FACTS (tell your story briefly without citing cases or law):

F. Ground six: _____

Supporting FACTS (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C, D, E and F were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

_____

_____

_____

_____

_____

_____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack? Yes ( ) No ( )

15. 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

_____

_____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time? Yes ( ) No ( )

17. 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 sentence to be served in the future: _____

_____

_____

(c) Have you filed, or do you contemplete filing, any petition attacking the judgment which imposed the sentence to be served in the future:

Yes ( ) No ( )

18. (a) Have you had the assistance of an attorney, other law-trained personnel, or writ writers since the conviction your petition is attacking was entered?

Yes ( ) No ( )

(b) If you checked "yes" above, specify as precisely as you can the period(s) of time during which you received such assistance, up to and including the present. _____

_____

_____

_____

(c) Describe the nature of the assistance, including the names of those who rendered it to you. _____

_____

_____

_____

_____

_____

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

Executed at _____
City, County, State

Wherefore, I, _____
Name of Movant

declare (or certify, verify, or state) under penalty of perjury that I have read the foregoing and it is true and correct. (28 U.S.C. 1746).

Executed on the _____ day of _____, 19___.

_____
Signature of Movant

AFFIDAVIT IN SUPPORT OF REQUEST
TO PROCEED IN FORMA PAUPERIS

I, _____, declare, depose and say that I am the movant in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

I further declare that the responses which I have made to questions and instructions below are true.

1. Are you presently employed?

   Yes ( ) No ( )

   a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

   _____

   _____

   b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

   _____

   _____

2. Have you received within the past twelve months any money from any of the following sources?

   a. Business, profession or form of self-employment?

      Yes ( ) No ( )

   b. Rent payments, interest or dividends?

      Yes ( ) No ( )

   c. Pensions, annuities or life insurance payments?

      Yes ( ) No ( )

   d. Gifts or inheritances?

      Yes ( ) No ( )

   e. Any other sources?

      Yes ( ) No ( )

   If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

   _____

   _____

   _____

3. Do you own cash, or do you have money in a checking or savings account?

   Yes ( ) No ( ) (Include any funds in prison accounts.)

   If the answer is "yes", state the total value of the items owned.

   _____

   _____

   _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ( ) No ( )

If the answer is "yes", describe the property and state its approximate value. _____

_____

_____

_____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

_____

_____

_____

_____

_____

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury. I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).

Executed on the _____ day of _____, 19____.

_____
Signature of Movant

CERTIFICATE

I hereby certify that the movant herein has the sum of $_____ on account to his credit at the _____ institution where he is confined. I further certify that movant likewise has the following securities to his credit according to the records of said _____ institution: _____

_____

_____

_____
Authorized Officer of Institution

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

UNITED STATES OF AMERICA	)	
	)	
VS.	)	CRIMINAL NO. _____
	)	
_____	)	
Movant	)	

ORDER AND INSTRUCTIONS TO PARTIES IN A MOTION UNDER 28 U.S.C., SECTION 2255

IT IS ORDERED that the Clerk shall file pleadings received from the above named Movant as a motion to vacate, set aside, or correct the sentence imposed against him in the above styled and numbered cause. No filing fee is required. The motion and all further pleadings shall be styled and numbered as set forth hereinabove. The Clerk shall take such further action and the parties shall comply with the following directives as indicated:

SERVICE OF PROCESS. The Clerk shall forthwith serve by mail a true copy of this Order on Movant and a true copy of this Order, together with a true copy of the motion, shall be served by mail on the United States Attorney for the Northern District of Texas.

RESPONSIVE PLEADINGS. Responsive pleadings shall be as follows:

( ) The United States Attorney shall not be required to answer this motion or otherwise move with respect to it except on further Order of the Court.

( ) The United States Attorney shall, within 60 days from the date of this Order, file an answer complying with the provisions of Rule 5 of the Rules governing Section 2255 proceedings for the United States District Courts. A motion under Rule 9 for dismissal of a delayed or successive motion may be included in this answer. A true copy of the answer, together with a copy of any brief filed therewith, shall be served by mail on Movant and a certificate shall be filed with the Clerk evidencing such service.

TRAVERSE PLEADINGS. The rules governing proceedings under 28 U.S.C. §2255 do not provide for the filing of traverse pleadings except in cases where the Respondent has moved under Rule 9 for dismissal of a delayed or successive motion. Unless Respondent has moved under Rule 9 for dismissal of a delayed or successive motion, no traverse shall be filed except as required or permitted by further written order of the Court. In the event Respondent does move to dismiss a delayed or successive motion under Rule 9, Movant shall file a response thereto as directed in this Order within a period of 30 days from date of service of Respondent's answer. This response must be limited to a short, clear, concise, and factual statement as to why Movant feels his case should not be dismissed. It must not contain his conclusions, opinions, arguments, or briefs. A brief replying to that of Respondent may be filed in any case but must comply with the provisions of the following paragraph.

BRIEFS. Briefs, as required or permitted by the provisions of this paragraph, should be submitted on letter size paper, 8 1/2" x 11", and should be double spaced. Each argument with supporting citations advanced in the brief should clearly specify the specific ground of the motion or numbered paragraph of the pleading it seeks to support or oppose. A copy of any brief must be served by mail on the opposing party or counsel, if he is represented by counsel, and a certificate reflecting such service shall be included in the brief. Briefs are required or permitted, as follows:

1. Respondent's brief. Respondent shall file such brief as he may wish to file, if any, at the time of the filing of his answer.

2. Reply briefs. A reply brief is not required. However, in any case in which Respondent has filed a brief a reply brief may be filed by Movant, should he wish to do so, within a period of 30 days following service of Respondent's brief. Each paragraph of such brief must specify the precise paragraph or part of Respondent's brief to which reply is being made, and must be limited to a reply to Respondent's argument. Under no circumstances will any statement or argument set forth in an original or reply brief be considered as a part of the pleadings so as to advance new grounds for relief or to supplement any ground or supporting facts set out in the motion. (See Instruction (2) on front page of motion form.)

ENTERED this _____ day of _____, 19____.

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

UNITED STATES OF AMERICA	)	
	)	
VS.	)	CRIMINAL NO. _____
	)	
	)	
_____	)	_____
(Full Name of Movant)	)	Place of Confinement

MOVANT'S RESPONSE AS TO WHY HIS MOTION SHOULD NOT BE BARRED UNDER RULE 9

INSTRUCTIONS - READ CAREFULLY

(I) Rule 9. Delayed or Successive Motions.

(a) Delayed Motions. A motion for relief made pursuant to these rules may be dismissed if it appears that the government has been prejudiced in its ability to respond to the motion by delay in its filing unless the movant shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(b) Successive Motions. A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

(II) Your motion to vacate, set aside, or correct sentence has been found to be subject to dismissal under rule 9 ( ) for the following reason(s): _____

_____

_____

_____

_____

(III) This form has been sent so that you may explain why your motion contains the defect(s) noted in (II) above. It is required that you fill out this form and send it back to the court within _____ days. Failure to do so will result in the automatic dismissal of your motion.

(IV) When you have fully completed this form, the original and two copies must be mailed to the Clerk of the United States District Court for the Northern District of Texas at the appropriate division office:

Dallas Division Room 15C22 1100 Commerce St. Dallas, Tx 75242	Fort Worth Division 202 U. S. Courthouse Fort Worth, Tx 76102	Lubbock Division Room C221 1205 Texas Ave. Lubbock, Tx 79401	Amarillo Division P. O. Box 886 Amarillo, Tx 79105
Abilene Division P. O. Box 1218 Abilene, Tx 79604	San Angelo Division P. O. Box 328 San Angelo, Tx 76902	Wichita Falls Division P. O. Box 1234 Wichita Falls, Tx 76307	

(V) This response must be legibly handwritten or typewritten, signed by the movant, upon a declaration under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(VI) Additional pages are not permitted except with respect to the facts which you rely upon in item 4 or 5 in the response. Any citation of authorities should be kept to an absolute minimum and is only appropriate if there has been a change in the law since the judgment you are attacking was rendered.

(VII) Respond to 4 or 5, not to both, unless (II) above indicates that you must answer both sections.

RESPONSE

1. Have you had the assistance of an attorney, other law-trained personnel, or writ writers since the conviction your motion is attacking was entered?

   Yes ( ) No ( )

2. If you checked "yes" above, specify as precisely as you can the period(s) of time during which you received such assistance, up to and including the present. _____

3. Describe the nature of the assistance, including the names of those who rendered it to you. _____

4. If your motion is in jeopardy because of delay prejudicial to the government under rule 9(a), explain why you feel the delay has not been prejudicial and/or why the delay is excusable under the terms of 9(a). This should be done by relying upon FACTS, not your opinions or conclusions. _____

5. If your motion is in jeopardy under rule 9(b) because it asserts the same grounds as a previous motion, explain why you feel it deserves a reconsideration. If its fault under rule 9(b) is that it asserts new grounds which should have been included in a prior motion, explain why you are raising these grounds now rather than previously. Your explanation should rely on FACTS, not your opinions or conclusions. _____

Executed at _____
City, County, State

Wherefore, I, _____
Name of Movant

declare (or certify, verify, or state) under penalty of perjury that I have read the foregoing and it is true and correct. (28 U.S.C. 1746).

Executed on the _____ day of _____, 19____.

_____
Signature of Movant