Miscellaneous Order #13

U. S. DISTRICT COURT MORTHERN DISTRICT OF TEXAS

FILED

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MISCELLANEOUS ORDER NO. 1104 (Dallas)

ESTABLISHING A PROCEDURE TO BE FOLLOWED IN PETITIONS OF STANDARD MCELROY, JR., CLERK AND/OR MOTIONS FOR POST CONVICTION RELIEF FILED PURSUANDY.

TO THE PROVISIONS OF 28 U.S.C., SECTIONS 2254 and 2255, AND DEDUTY 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. <u>RULES GOVERNING</u>. 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. Et 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 fair 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 afternative, 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. <u>LIMITATION ON ASSERTION OF CLAIMS</u>. 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.M. Jaylos
CHIEF JUDGE, UNITED STATES DISTRICT COURT
Halles Al Arribad
UNITED STATES DISTRICT JUDGE
Lobu Hill
UNITED STATES DISTRICT JUDGE
Sarah T. Hugla
UNITED STATES DISTRICT JUDGE
Q
UNITED STATES DISTRICT JUDGE
UNITED STATES DISTRICT JUDGE
DTI CL
UNITED STATES DESTRICT JUDGE

PETITION FOR WRIT OF HABEAS CORPUS BY PERSON IN STATE CUSTODY

Full name and	prison n	umber	(if any)	 Place of confinement .
of Petitioner				
vs.	to the second			Case No.
				(To be supplied by the Clerk of the District Court)
Name of Respon	ndent			

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

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

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



PETITION

Date of judgment of convi	ction
Length of sentence	Sentencing judge
Nature of offense or offe	enses for which you were convicted:
What was your plea? (Che	eck one)
(a) Not guilty ()	
(b) Guilty ()	그런 그는 하나 하고 된다 속 살으로
(c) Nolo contendere (
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	indictment, give details:
Kind of trial: (Check on	(a)
(a) Jury ()	
(b) Judge only ()	
	ial? Yes () No ()
If you did appeal, answer	
(a) Name of court	
(b) Result	
(c) Date of result	
	eal or filed a petition for certiorari in the
Supreme Court, give detai	

11.	If your	answer to 10 was "yes", give the following information:
	(a)(l)	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 informa-
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	(1)	Name of court:
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	(3)	Grounds raised
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		or motion? Yes () No ()
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13.

14.	Do yo	ou have any petition or appeal now pending in any court, either state
	or fe	ederal, as to the judgment under attack? Yes () No ()
15.	Give	the name and address, if known, of each attorney who represented you in
	the i	following stages of the judgment attacked herein:
	(a)	At preliminary hearing
	(P)	At arraignment and plea
	(c)	At trial
	(4)	At sentencing
	(4)	a sentencing
	(e)	On appeal
	(£):	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 y	ou have any future sentence to serve after you complete the sentence
	impo	sed 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:
	(P)	And give date and length of sentence to be served in future:
	(c)	Mave you filed, or do you contemplate filing, any petition attacking
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or time during whi	ich you received such assistance, up to and including
the present.	
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entitled in this	proceeding.
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	City, County, State
	Name of Petitioner
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Therefore, I,	Name of Petitioner erify, or state) under penalty of perjury that I have note and correct. (28 U.S.C. 1746).



AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

proc I st	I,
stru	I further declare that the responses which I have made to questions and in-
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.

-) No (•			
	answer 1s "ye	s", describe th	e property an	d state its app	roximate
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				support, state	
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	Petitioner or Plaintiff	
vs.)) CIVIL ACTION NO.
	Respondent or Defendant	
	ORDER SPECIFYING FURTHER ACT	ISTRICT COURT IN FORMA PAUPERIS AND/OR IION TO BE TAKEN BY THE CLERK
()	A filing fee in the amount of \$	
		S.C. \$1915, permission is granted for the
	above named petitioner or plaintiff until judgment has been entered here	to proceed in forma pauperis in this court
The p	leadings filed herewith shall be style the following indicated action:	ed and numbered as above. The Clerk shall
()	A true copy of this order shall be a his attorney of record. No further of the Court.	mailed to each petitioner or plaintiff or process shall issue except on further order
()	A true copy of this order shall be m	sailed to each petitioner or plaintiff or
	his attorney of record, and a true of	copy of this order, together with a true copy be served on each respondent or defendant who
**	is hereby designated as a party to t	his action. Respondent or defendant may file
	service, should he wish to do so, un	a period of twenty (20) days from date of less judgment of dismissal or denial of relief
	be entered by the Court within that	period of time, but no summons or show cause pleading shall be required unless or until
	further order of this Court. The Co	urt may enter judgment at any time granting
	or denying habeas corpus relief, or	dismissing or denying in whole or in part shall be bound thereby. A judgment granting
	relief other than habeas corpus shal	1 not be entered against any respondent or
	defendant except after service of pranswer be filed herein.	ocess if and as required by law or until an
()	A show cause order has been executed in such order, together with a true	herein and service shall be made as directed copy of this order.
()	A true copy of this order and all pl	eadings of petitioner or plaintiff shall be
	served by mail on the United States Responsive pleadings must be filed b	Attorney for the Northern District of Texas. y him within sixty (60) days from the date
	of this order. A true copy of all r	esponsive pleadings should be served on
	Attorney should be only with permiss	pleadings by petitioner or United States ion or by order of the Court.
()		
After	docketing and issuance of process, th	is 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.
ENTERE	D this day of	

UNITED STATES MAGISTRATE

હેલ્ <i>ત્રે</i>			Petitioner
a year			

CIVIL ACTION	NO.	

VS.

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

of Petiti		number (if any)	Place of confinement	
8			Case No.	
			(To be supplied by the Clo	erk of the
e e e e e e e e e e e e e e e e e e e			District Court)	
ame of R	espondent		그 그 이 사람이 하셨다고 있는데 함께 하다.	
	respondent			
	PETITION		WHY HIS PETITION SHOULD NOT BE	:
	•	BARRED UNDE	A ROLE 9	
		EXPLANATION AND INSTRI	JCTIONS READ CAREFULLY	
I)	Rule 9. De	elayed or Sucessive Po	etitions.	
	state of whability to shows that	ich the respondent is respond to the petiti it is based on ground e of reasonable dilig	cion may be dismissed if it appears an officer has been prejudic ion by delay in its filing units of which he could not have gence before the circumstances	ed in its less the petitioner had knowledge by
	(b) Succes	o fiele that it fell	cond or successive petition m	may be dismissed
	relief and grounds are	the prior determinati alleged, the judge i	s to allege new or different g on was on the merits or, if r inds that the failure of the petition constituted an abuse	new and different petitioner to
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San Angelo, Texas 76902

Abilene, Texas 79604

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.
	<u>response</u>
•	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 ()
	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.
• • • • • • • • • • • • • • • • • • •	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.
	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.

(V)



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declare	(or certify, verify,	or state) under	r penalty of pe	rjury that	I have read	the
foregoi	ng and it is true and	correct. (28	J.S.C. 1746).			
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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN

DISTRICT	OF.	TE
DIVISION		

UNITED STATES OF AMERICA	?
vs.) CRIMINAL NO.
(Full Name of Movant)) Place of confinement
MOTION UNDER 28 U.S.C., SECTION 2255, T BY A PERSON IN	O VACATE, SET ASIDE, OR CORRECT SENTENCE FEDERAL CUSTODY
(This motion must always be filed in th	e 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 Fort Worth Division · Lubbock Division Amarillo Division Room 15C22 202 U. S. Courthouse Room C221 P. O. Box 886 1100 Commerce St. Fort Worth, Texas 76102 1205 Texas Ave. Amarillo, Tx 79105 Dallas, Texas 75242 Lubbock, Texas 79401

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

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



HOTION

Ľ	ate of judgment of conviction
Ι	ength of sentence Sentencing Judge
	lature of offense or offenses for which you were convicted
- 1	That was your plea? (Check one)
	(a) Not guilty ()
	(c) Nolo contendere ()
	If you entered a guilty plea to one count or indictment, and a not guilty
1	to another count or indictment, give details:
•	
	Kind of trial: (Check one)
	(a) Jury ()
	(b) Judge only ()
	Did you testify at the trial? Yes () No ()
	Did you appeal from the judgment of conviction? Yes () No ()
	If you did appeal, answer the following:
	(a) Name of court
4	(b) Result
	(c) Date of result
	Other than a direct appeal from the judgment of conviction and sentence,



•	If y	our	answer to 10 was "yes," give the following information:
	(a)	(1)	Name of court_
		(2)	Nature of proceeding
		(3)	Grounds raised
	٠,		
,	•		
		(4)	Did you receive an evidentiary hearing on your petition, application
			or motion? Yes () No ()
		(5)	Result
		(6)	Date of result
•		(2)	Nature of proceeding
		(3)	Grounds raised
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	(c)	(6)	Result Date of result
	(c)	(6) As	Result



(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 petition, etc. Yes () No () (3) Third petition, etc. Yes () No () (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: State concisely every ground on which you claim that you are being held unlawfur from presenting additional grounds in this motion, you may be barr from presenting additional grounds at a later date. A. Ground One: Supporting FACTS (Tell your story briefly without citing cases or law):	(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No () (5) Result (6) Date of result (6) 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 petition, etc. Yes () No () (3) Third petition, etc. Yes () No () (a) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: State concisely every ground on which you claim that you are being held unlawful from presenting additional grounds in this motion, you may be barr from presenting additional grounds at a later date. A. Ground One:									:	
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o you have any petition or appeal now pending in any court as to the junder attack? Yes () No () ive the name and address, if known, of each attorney who represented you he 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	or not presenting them:	•		
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g) On appeal from any adverse ruling in a post-conviction proceeding		•		
	ere you sentenced on more	than one count	of an indictment	, or on more
ere you sentenced on more than one count of an indictment, or on more	one indictment, in the sam	e court and at	approximately the	same time?
[4] [1] [1] [1] [1] [4] [4] [4] [4] [4] [4] [4] [4] [4] [4				
ere you sentenced on more than one count of an indictment, or on more	es () No ()			



	(-)	in the future.
		in the future:
	(b)	And give date and leaght of
	·	And give date and length of sentence to be served in the future:
	. est	
	(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
	1	Wherefore, movant prays that the court grant movant relief to which he may
be en		ed in this proceeding.
	7	Executed at
		City, County, State
	į	Name of Movant
dec1a	re (c	or certify, verify, or state) under penalty of perjury that I have read the
		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

ti	declare, depose and say that the movant in the above entitled case; that in support of my motion to ded without being required to prepay fees, costs or give security therefor, the that because of my poverty I am unable to pay the costs of said proceeder to give security therefor; that I believe I am entitled to relief.
u	I further declare that the responses which I have made to questions and intions below are true.
	Are you presently employed?
	res () No ()
	a. If the answer is "yes", state the amount of your salary or wages per mon and give the name and address of your employer.
	o. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.
	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 ()
	. Rent payments, interest or dividends?
	Yes () No ()
	. Pensions, annuities or life insurance payments?
	Yes () No ()
	1. Gifts or inheritances?
	Yes () No ()
	. 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.
	oo you own cash, or do you have money in a checking or savings account?
	res () No () (Include any funds in prison accounts.)
	f the answer is "yes", state the total value of the items owned.

valuable property (ex				:
Yes () No				
If the answer is value.	"yes", describe	the property a	nd state its a	approximate
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UNITED STATES OF AMERICA	•	
vs.) CRIMINAL NO.	
•	}	
Movant	3	

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	DISTR	CT	COUR'1
FOR	THE	NORTH	ern di	STRICT	OF	TEXAS

	STATES OF AMERICA)	
) CRIMINAL NO.	
(Full Name of Movant	E)) Place of Confinement	
	MOVANT'	S RESPONSE AS TO	WHY HIS MOTION SHOULD NOT BE	
			INDER RULE 9	•
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		THOTKOCITONS	- READ CAREFULLY	
)	Rule 9. Delayed o	or Successive Moti	ons.	
	(a) Dalamai Wass			
	he dismissed if it	. appears that the	relief made pursuant to these	e rules may
	ability to remand	to the motion be	government has been prejudice delay in its filing unless t	ed in its
	shows that it is b	eased on grounds of	of which he could not have had	knowledge
	by the exercise of	reasonable dilig	sence before the circumstances	prejudicial
	to the government	occurred.		
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	(b) Successive Mo	tions. A second	or successive motion may be di	ismissed if
	the judge tinds th	at it fails to al	lege new or different grounds	for relief
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(VII) Respond to 4 or 5, not to both, unless (II) above indicates that you must answer both sections.

(VI) Additional pages are not permitted except with respect to the <u>facts</u> 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.

must be answered concisely in the proper space, on the form.

may serve as the basis for prosecution and conviction for perjury. All questions

RESPONSE

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