

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

<hr style="border: 0; border-top: 1px solid black; margin-bottom: 10px;"/> <p style="text-align: center;">Petitioner - Appellant,</p> <p style="text-align: center;">v.</p> <hr style="border: 0; border-top: 1px solid black; margin-top: 10px;"/> <p style="text-align: center;">Respondent - Appellee.</p>	<p>Case No. _____</p> <p style="text-align: center;">Appellant’s Combined Opening Brief and Application for a Certificate of Appealability</p>
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INSTRUCTIONS TO LITIGANTS PROCEEDING WITHOUT COUNSEL

The court will accept a completed copy of this form as a combined opening brief and application for a certificate of appealability. You may attach additional pages as needed. In the alternative, you may prepare your own combined opening brief and application for a certificate of appealability.

Your combined opening brief and application for a certificate of appealability must include all the arguments you intend to make on appeal. Citations to legal authorities (cases, statutes, etc.) are encouraged but not required. The purpose of an appeal is to determine if the district court erred in its decision-making based on the arguments, pleadings, and evidence that were submitted to that court. This court generally does not consider new evidence and will base its decision on the existing district court record. **Because you are proceeding without an attorney, the record of proceedings from the district court has been or will be transmitted to this court from the district court where your case was heard. You are not required to attach district court documents to your combined opening brief and application for a certificate of appealability.**

If the district court did not issue an order granting a certificate of appealability on an issue or issues you wish to raise with this court on appeal, you must show you are entitled to a certificate of appealability. To do so, you must make a “substantial showing of the denial of a constitutional right.” Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). This generally requires a “showing that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” 28 U.S.C. § 2253(c); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Regardless of the form used, the combined opening brief and application for a certificate of appealability cannot exceed 30 pages in length unless you certify that it contains no more than 13,000 words. If the total number of pages you submit exceeds 30, you must count the number of words in the document and certify that word count. The form for providing certification is on the last page of this document. If the combined opening brief and application for a certificate of appealability is over 30 pages in length and the word count has not been certified, or if the word count exceeds 13,000, your combined opening brief and application for a certificate of appealability will not be filed and your appeal is subject to dismissal.

Whether you use this form or your own for your combined opening brief and application for a certificate of appealability, you must send a copy of the document to this court by placing it in the mail on or before the due date. If the document is being mailed using a prison mail system, you must affirm under the penalty for perjury the date the document was placed, first class postage prepaid, in the prison mail system. *See* Fed. R. App. P. 25(a)(2)(C). One copy of the combined opening brief and application for a certificate of appealability to this court is sufficient. You must also mail a copy of the document to the attorney representing the appellee (the respondent or government in the district court proceedings).

On the last page of this form, you will find two subsections that must be filled out and signed. We advise you to complete that page and attach it to the end of your own combined opening brief and application for a certificate of appealability if you elect not to use this form.

The appellee is not obligated to respond to your combined brief and application for a certificate of appealability. 10th Cir. R. 22.1(B). **It is not a default or concession in any way if the appellee does not respond.** If the appellee does respond, or is ordered to, you may file a reply brief. Otherwise, your combined opening brief and application for a certificate of appealability is the only brief the court will consider.

The court disfavors motions for extensions of time to file briefs. 10th Cir. R. 27.4(A). If you must file a motion asking for an extension of time, file it well in advance of the due date. If the court grants you an extension of time to file your combined brief and application for a certificate of appealability and the order designates the extension as final, you risk your appeal being dismissed for failure to prosecute if you nevertheless ask for additional time again.

Unless the district court granted you leave to proceed on appeal *in forma pauperis*, you were directed by this court to either pay the filing fee for this appeal or alternatively, to file a motion with this court asking leave to proceed *in forma pauperis*. You must also comply fully with those directives before the court will consider your appeal.

**APPELLANT'S COMBINED OPENING BRIEF
AND APPLICATION FOR A CERTIFICATE OF APPEALABILITY**

1. Statement of the Case. (Briefly summarize the events that took place in the district court. For example, identify when you filed your habeas application and any significant motions and orders that were entered.)

2. Prior proceedings. (Identify any prior state, federal, or administrative proceedings in which you also sought relief from the conviction and sentence at issue in this appeal.)

3. Statement of Facts Relevant to the Issues Presented for Review. (State the facts necessary and relevant to understanding the legal issues you seek to raise on appeal).

4. Statement of Issues and Arguments. (Identify each instance in which you think the district court was wrong and provide arguments as to why you think error occurred, keeping in mind the legal standard for granting a certificate of appealability. Wherever possible, cite authorities that support your claims. You may argue, for example, that the district court applied the law incorrectly, that the district court erred in its recitation or understanding of the facts, that the district court failed to consider some important argument that you raised with that court, or any other claims of error that you think warrants a different outcome.)

This form provides space for three issues and arguments. You need not have three; you may have only one. You may also have more than three or may need additional space to state your issues and arguments, in which case you can add additional paper, following the same general format.

a. First Issue. Claim of error and arguments:

b. Second Issue. Claim of error and supporting arguments:

c. Third Issue. Claim of error and supporting arguments.

5. Relief Requested. (State what you are asking this court to do).

Signature

Date

FILL OUT AND SIGN EACH OF THE FOLLOWING TWO SECTIONS

I affirm under the penalty for perjury that I placed this Appellant's Combined Opening Brief and Application for a Certificate of Appealability with first-class postage prepaid in the prison mail system or, if I was not incarcerated, in the United States Mail, addressed to the Clerk of the U.S. Court of Appeals for the Tenth Circuit, 1823 Stout St., Denver, CO 80257. In addition, I hereby certify that a copy of this form was placed with first-class postage prepaid in the prison mail system or, if I was not incarcerated, in the United States Mail, addressed to:

(identify the name and address of the opposing governmental attorney)

on the following date:

month day year _____
signature

I certify that the total number of pages I am submitting as my Appellant's Combined Opening Brief and Application for a Certificate of Appealability is 30 pages or less or alternatively, if the total number of pages exceeds 30, I certify that I have counted the number of words and the total is _____, which is less than 13,000. I understand that if my Appellant's Combined Opening Brief and Application for a Certificate of Appealability exceeds 13,000 words, my brief may be stricken and the appeal dismissed.

month day year _____
signature