

FILED
 UNITED STATES DISTRICT COURT
 DENVER, COLO.

DEC 20 2005

GREGORY C. LANGHAM
 CLERK

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLORADO

05 - CV - 02581 - OES

Civil Action No. _____

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

ARTURO PENA CUEVAS, ID #120091,

Applicant,

v.

TRINIDAD CORRECTIONAL FACILITY, PO Box 2000, Trinidad, CO 81082, and
 JHON [sic] SUTHER, The Attorney General of the State of Colorado,

Respondents.

**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND
 DIRECTING APPLICANT TO CURE DEFICIENCY**

Applicant has submitted an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. He has failed either to pay the \$5.00 filing fee or to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. The court has determined that the document is deficient as described in this order. Notwithstanding the deficiencies, the clerk of the court will be directed to commence a civil action. Applicant will be directed to cure the following if he wishes to pursue his claims. Any papers which the Applicant files in response to this order must include the civil action number on this order.

28 U.S.C. § 1915 Motion and Affidavit:

- (1) X is not submitted
- (2) is missing affidavit
- (3) is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing

- (4) ___ is missing required financial information
- (5) ___ is missing an original signature by the prisoner
- (6) ___ is not on proper form (must use the court's current form)
- (7) ___ names in caption do not match names in caption of complaint, petition or habeas application
- (8) ___ An original and a copy have not been received by the court. Only an original has been received.
- (9) X other: motion is necessary only if filing fee is not paid in advance.

Complaint, Petition or Application:

- (10) ___ is not submitted
- (11) ___ is not on proper form (must use the court's current form)
- (12) ___ is missing an original signature by the prisoner
- (13) ___ is missing page nos. ___
- (14) ___ uses et al. instead of listing all parties in caption
- (15) ___ An original and a copy have not been received by the court. Only an original has been received.
- (16) ___ Sufficient copies to serve each defendant/respondent have not been received by the court.
- (17) ___ names in caption do not match names in text
- (18) ___ other _____

Accordingly, it is

ORDERED that the clerk of the court commence a civil action in this matter. It is

FURTHER ORDERED that the Applicant cure the deficiencies designated above **within thirty (30) days from the date of this order.** Any papers which the Applicant files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that the clerk of the court mail to the Applicant, together with a copy of this order, two copies of the following forms: Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action. It is

FURTHER ORDERED that, if the Applicant fails to cure the designated deficiencies **within thirty (30) days from the date of this order,** the application and

the action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED at Denver, Colorado, this 20 day of December, 2005.

BY THE COURT:



O. EDWARD SCHLATTER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO


CERTIFICATE OF MAILING

Civil Action No. **05 - CV - 02581 - OES**

Arturo Pena Cuevas
Prisoner No. 120091
Trinidad Corr. Facility
PO Box 2000
Trinidad, CO 81082

I hereby certify that I have mailed a copy of the **ORDER and two copies of Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action** to the above-named individuals on 12/20/05

GREGORY C. LANGHAM, CLERK

By:  _____
Deputy Clerk