

**COPY**

**FILED**  
THOMAS A WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

JUL 01 2014

Case No. \_\_\_\_\_

(The Clerk of the convicting court will fill this line in.)

C-371-010245-1230331-A

TIME \_\_\_\_\_  
BY \_\_\_\_\_ DEPUTY

**IN THE COURT OF CRIMINAL APPEALS OF TEXAS**

**APPLICATION FOR A WRIT OF HABEAS CORPUS  
SEEKING RELIEF FROM FINAL FELONY CONVICTION  
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07**

**NAME:** Robert David Mielnicki \_\_\_\_\_

**DATE OF BIRTH:** 3/30/1982 \_\_\_\_\_

**PLACE OF CONFINEMENT:** O.L. Luther Unit, 1800 Luther Drive, Navasota, TX 77868 \_\_\_\_\_

**TDCJ-CID NUMBER:** 01748129 \_\_\_\_\_ **SID NUMBER:** 07698808 \_\_\_\_\_

(1) **This application concerns (check all that apply):**

- |  |  |
|--|--|
| <input type="checkbox"/> a conviction          | <input type="checkbox"/> parole  |
| <input checked="" type="checkbox"/> a sentence | <input type="checkbox"/> mandatory supervision                                   |
| <input type="checkbox"/> time credit           | <input type="checkbox"/> out-of-time appeal or petition for discretionary review |

(2) **What district court entered the judgment of the conviction you want relief from? (Include the court number and county.)**

371st District Court, Tarrant County  
\_\_\_\_\_

(3) **What was the case number in the trial court?**

1230331  
\_\_\_\_\_

(4) **What was the name of the trial judge?**

The Hon. Mollee Westfall; The Hon. Cheyenne Minick (magistrate taking the plea)  
\_\_\_\_\_

THOMAS & WILDER, ATTORNEYS AT LAW  
TARRANT COUNTY, TEXAS

JUL 0 1 2014

RECORDED

BY \_\_\_\_\_  
DEPUTY \_\_\_\_\_  
TIME \_\_\_\_\_

[Faint, mostly illegible text, likely a legal document or contract]

(5) **Were you represented by counsel? If yes, provide the attorney's name:**

Yes. Kenneth R. Gordon and Mary Young.

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(6) **What was the date that the judgment was entered?**

9/19/2011

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(7) **For what offense were you convicted and what was the sentence?**

Robbery by Threats; 15 years TDCJ to run concurrent with federal case

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(8) **If you were sentenced on more than one count of an indictment in the same court at the same time, what counts were you convicted of and what was the sentence in each count?**

n/a

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(9) **What was the plea you entered? (Check one.)**

guilty-open plea  
 not guilty

guilty-plea bargain  
 *nolo contendere*/no contest

**If you entered different pleas to counts in a multi-count indictment, please explain:**

n/a

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(10) **What kind of trial did you have?**

no jury

jury for guilt and punishment  
 jury for guilt, judge for punishment

(11) Did you testify at trial? If yes, at what phase of the trial did you testify?

guilty plea  
\_\_\_\_\_

(12) Did you appeal from the judgment of conviction?

yes

no

If you did appeal, answer the following questions:

(A) What court of appeals did you appeal to? n/a

(B) What was the case number? n/a

(C) Were you represented by counsel on appeal? If yes, provide the attorney's name:  
n/a

(D) What was the decision and the date of the decision? n/a

(13) Did you file a petition for discretionary review in the Court of Criminal Appeals?

yes

no

If you did file a petition for discretionary review, answer the following questions:

(A) What was the case number? n/a

(B) What was the decision and the date of the decision? n/a

(14) Have you previously filed an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure challenging *this conviction*?

yes

no

If you answered yes, answer the following questions:

(A) What was the Court of Criminal Appeals' writ number? n/a

(B) What was the decision and the date of the decision? n/a

(C) Please identify the reason that the current claims were not presented and could not have been presented on your previous application.

n/a  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(15) Do you currently have any petition or appeal pending in any other state or federal court?

yes  no

If you answered yes, please provide the name of the court and the case number:

n/a  
\_\_\_\_\_

(16) If you are presenting a claim for time credit, have you exhausted your administrative remedies by presenting your claim to the time credit resolution system of the Texas Department of Criminal Justice? (This requirement applies to any final felony conviction, including state jail felonies)

yes  no

If you answered yes, answer the following questions:

(A) What date did you present the claim? n/a

(B) Did you receive a decision and, if yes, what was the date of the decision?

n/a  
\_\_\_\_\_

If you answered no, please explain why you have not submitted your claim:

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- (17) **Beginning on page 6, state *concisely* every legal ground for your claim that you are being unlawfully restrained, and then briefly summarize the facts supporting each ground. You must present each ground on the form application and a brief summary of the facts. *If your grounds and brief summary of the facts have not been presented on the form application, the Court will not consider your grounds.* If you have more than four grounds, use pages 14 and 15 of the form, which you may copy as many times as needed to give you a separate page for each ground, with each ground numbered in sequence. The recitation of the facts supporting each ground must be no longer than the two pages provided for the ground in the form.**

**You may include with the form a memorandum of law if you want to present legal authorities, but the Court will *not* consider grounds for relief set out in a memorandum of law that were not raised on the form. The citations and argument must be in a memorandum that complies with Texas Rule of Appellate Procedure 73 and does not exceed 15,000 words if computer-generated or 50 pages if not. If you are challenging the validity of your conviction, please include a summary of the facts pertaining to your offense and trial in your memorandum.**

**GROUND ONE:**

The plea in this case was involuntary. This guilty plea was conditioned on this sentence

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running concurrently with a federal sentence in 6:07-CR-00022 (now 4:11-CR-051-A); it is not.

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**FACTS SUPPORTING GROUND ONE:**

Mielnicki was convicted of conspiracy to rob a federal credit union and robbery of a federal

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credit union in the Eastern District of Oklahoma in 2007. He was sentenced to 48 months on

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each count to run concurrently. He was released from Bureau of Prisons custody and

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placed on supervised release for 36 months. Jurisdiction over Mielnicki's supervised release was

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transferred from the Eastern District of Oklahoma to the Northern District of Texas.

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During the supervised release period Mielnicki committed this robbery. He was indicted for it

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and entered a guilty plea with an agreed upon sentence of 15 years. This was conditioned on this

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sentence running concurrently with any sentence on the revocation of his supervised release.

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His supervised release was subsequently revoked, but the sentence for the supervised release

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revocation was specifically ordered to be consecutive to this sentence. Mielnicki has not

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started serving his federal sentence yet. This sentence should be vacated and his guilty plea

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withdrawn because it was involuntary.

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**GROUND TWO:**

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**FACTS SUPPORTING GROUND TWO:**

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**GROUND THREE:**

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**FACTS SUPPORTING GROUND THREE:**

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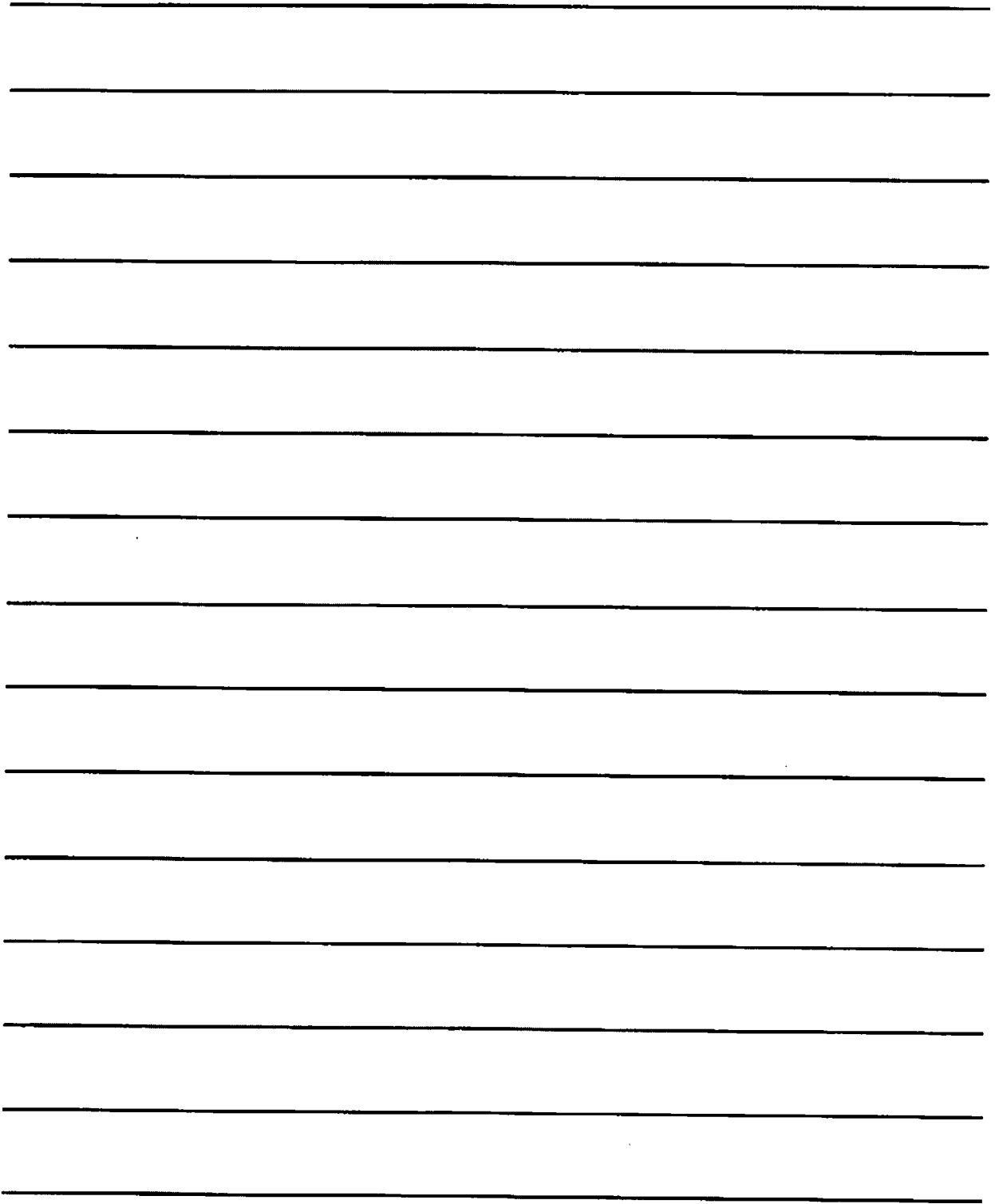
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**GROUND FOUR:**

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**FACTS SUPPORTING GROUND FOUR:**

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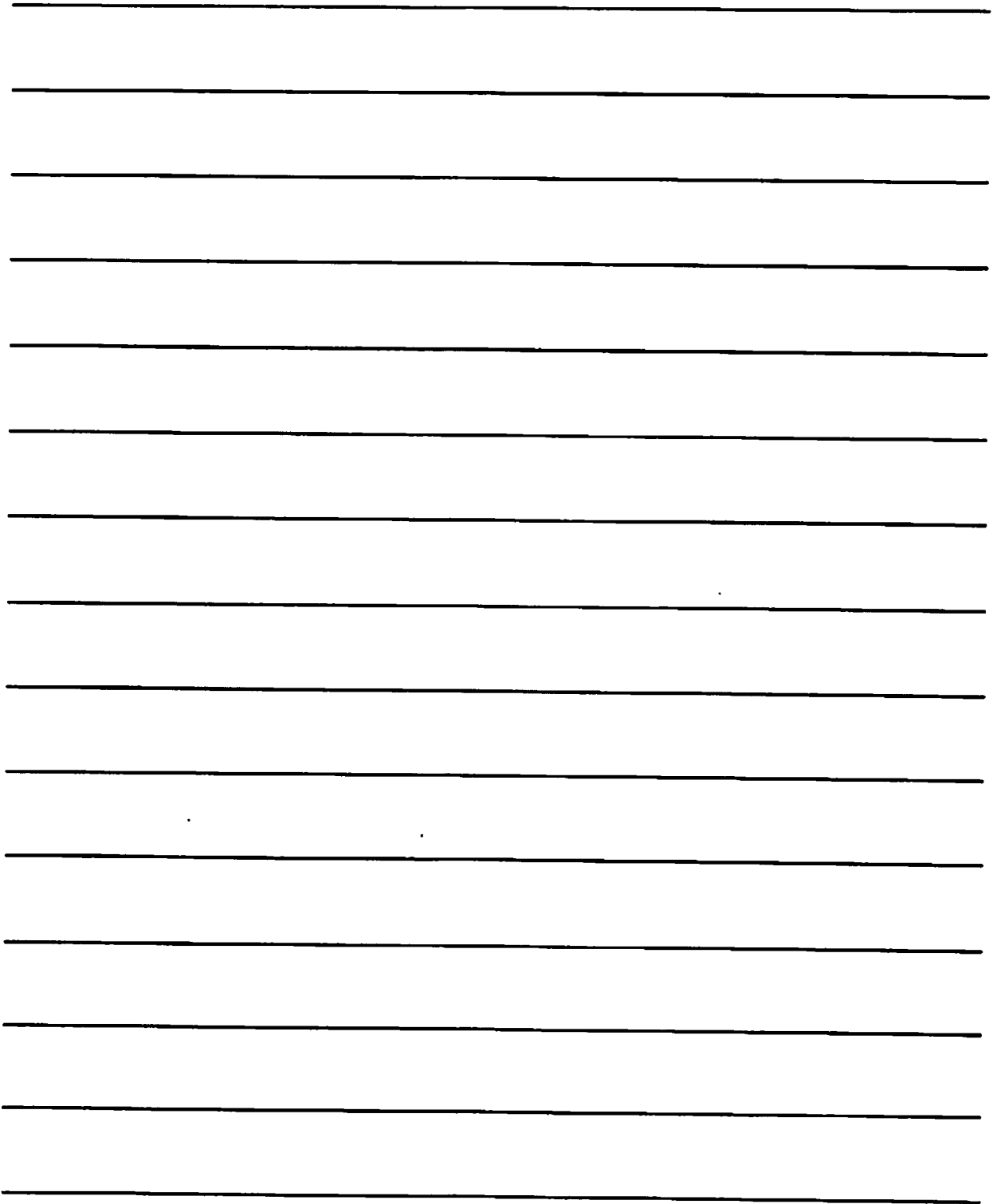
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**GROUND:**

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**FACTS SUPPORTING GROUND:**

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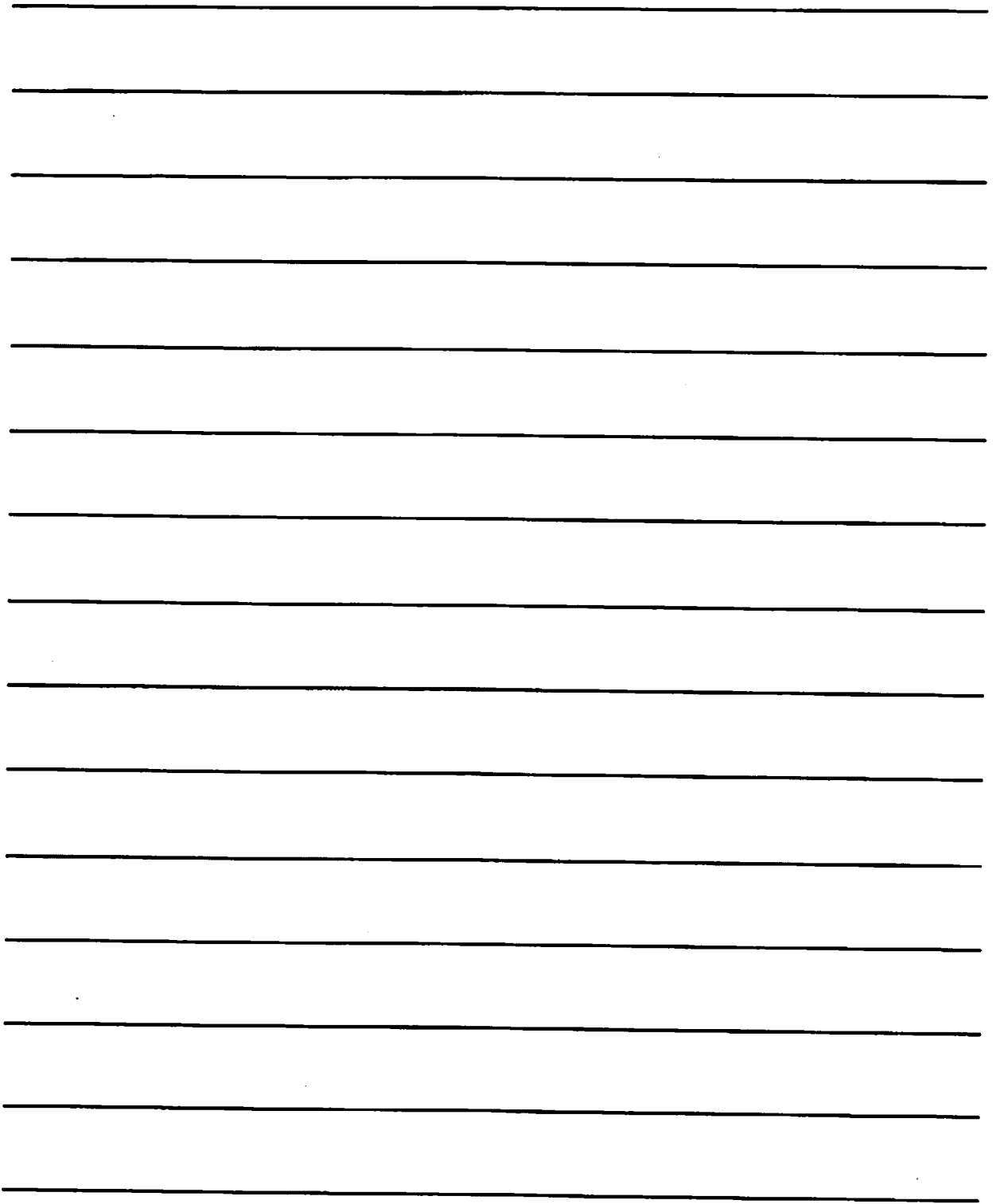
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**WHEREFORE, APPLICANT PRAYS THAT THE COURT GRANT APPLICANT RELIEF TO WHICH HE MAY BE ENTITLED IN THIS PROCEEDING.**

**VERIFICATION**

This application must be verified or it will be dismissed for non-compliance. For verification purposes, an applicant is a person filing the application on his or her own behalf. A petitioner is a person filing the application on behalf of an applicant, for example, an applicant's attorney. An inmate is a person who is in custody.

The inmate applicant must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public. If the inmate is represented by a licensed attorney, the attorney may sign the "Oath Before a Notary Public" as petitioner and then complete "Petitioner's Information." A non-inmate applicant must sign the "Oath Before a Notary Public" before a notary public unless he is represented by a licensed attorney, in which case the attorney may sign the verification as petitioner.

A non-inmate non-attorney petitioner must sign the "Oath Before a Notary Public" before a notary public and must also complete "Petitioner's Information." An inmate petitioner must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public and must also complete the appropriate "Petitioner's Information."

**OATH BEFORE A NOTARY PUBLIC**

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being duly sworn, under oath says: "I am the applicant / petitioner (circle one) in this action and know the contents of the above application for a writ of habeas corpus and, according to my belief, the facts stated in the application are true."

\_\_\_\_\_  
Signature of Applicant / Petitioner (circle one)

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

**PETITIONER'S INFORMATION**

Petitioner's printed name: LEIGHT W. DAVIS

State bar number, if applicable: 24029505

Address: 1901 CENTRAL DR.  
SUITE 708 LB 57  
BEDFORD TX 76021

Telephone: 817-868-9500

Fax: 817-887-2401  
LEIGHTW.DAVIS@GMAIL.COM

**INMATE'S DECLARATION**

I, Robert David Mielnicki, am the applicant / petitioner (circle one) and being presently incarcerated in O.L. Luther Unit, declare under penalty of perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed on APR 1 3<sup>rd</sup>, 2014.

Robert D. Mielnicki Jr.  
Signature of Applicant / Petitioner (circle one)

**PETITIONER'S INFORMATION**

Petitioner's printed name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Signed on JUNE 27, 2014.

  
\_\_\_\_\_  
Signature of Petitioner