

**Instructions for**  
**§ 2254 PETITIONER'S RESPONSE AS TO WHY THE PETITION**  
**SHOULD NOT BE BARRED BY 28 U.S.C. § 2244(d)(1)**

1. A petition for writ of habeas corpus must be dismissed if the judge finds that it is untimely. 28 U.S.C. §2244(d)(1) establishes a one-year period of limitations for an application for a writ of habeas corpus by a person in custody pursuant to a judgment of a State court. The limitation period shall run from the latest of (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review; (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action; (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence. 28 U.S.C. § 2244(d)(1).

2. However, “[t]he time during which a properly filed application for State post-conviction or other collateral review ... is pending shall not be counted toward any period of limitation under this section. 28 U.S.C. § 2244(d)(2).

3. Your petition for habeas corpus has been found to be subject to dismissal under 28 U.S.C. §2244(d)(1) and Rule 9 of the Rules Governing Section 2254 Cases in the United States District Courts for the reasons set forth in the Decision and Order accompanying this form.

4. This form has been sent so that you may explain why your petition is not untimely as noted in the Decision and Order. You must fill out this form and return it to the Court by the deadline specified in the Decision and Order. **Failure to do so will result in the automatic dismissal of your petition.** Petitioner should be sure to include in the Response specific and detailed information addressing all of the Court’s concerns; petitioner should also include all pertinent dates when any collateral attacks (such as NY CPL 440 motions) were filed and when each was finally determined, if petitioner had filed any collateral attacks.

5. **When you have fully completed the following two pages, the original must be mailed to:**

**Clerk of the United States District Court**  
**U.S. Courthouse**  
**2 Niagara Square**  
**Buffalo, New York 14202.**

6. This response must be legibly handwritten or typewritten and signed by the petitioner 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.

7. Additional pages are not permitted except with respect to the facts on which you rely in item 3 in the response. Do not cite case law unless there has been a change in the law since the judgment you are attacking was rendered.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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\_\_\_\_\_,  
(Petitioner's name and inmate number)

Petitioner,

\_\_\_\_\_-CV-\_\_\_\_\_

v.

\_\_\_\_\_,  
(Respondent's name)

Respondent.

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**PETITIONER'S RESPONSE AS TO WHY THE PETITION  
SHOULD NOT BE BARRED BY 28 U.S.C. § 2244(d)(1)**

1. If your petition is in jeopardy under 28 U.S.C. § 2244(d)(1) because it appears to be untimely, explain why you feel that the petition is not untimely. Your explanation should rely on **facts**, not your opinions or conclusions.

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2. Have you filed any collateral attacks (such as NY CPL 440 motions) on your conviction?  
YES \_\_\_\_\_ NO \_\_\_\_\_.

3. If you answered YES to question 2, list each collateral attack you filed, the date it was filed, the date it was determined, and, if you appealed the determination, the date the appeal was decided.

Be thorough and detailed; a collateral attack may toll the running of the statute, *see* 28 U.S.C. § 2244(d)(2), and without complete information, you may not receive the full benefit of the tolling period.

Type of collateral motion filed	Date collateral motion filed	Date collateral motion decided	Date appeal filed	Date appeal decided

**I declare under penalty of perjury that the foregoing is true and correct.**

Date: \_\_\_\_\_  
\_\_\_\_\_ (Petitioner's Signature and Inmate Number)