

**NO. 25-805**

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**KERRY KRUSKAL,**  
Petitioner,

v.

**ALAN MAESTAS, MAESTAS LAW FIRM, P.C.,  
f/k/a MAESTAS & BOOTHBY, P.C.; KIMBERLY  
ALDERMAN; DWIGHT THOMPSON; JONATHAN  
HULL; PAULA GANZ; and SANTIAGO CHAVEZ,**  
Respondents.

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**On Petition for a Writ of Certiorari to the  
Supreme Court of the State of New Mexico**

**PETITION FOR REHEARING**

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**Kerry Kruskal**  
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## PETITION FOR REHEARING

(Rule 44.2 Order Denying Petition for Writ of  
Certiorari)

Pursuant to Rule 44.2, Petitioner, proceeding pro se and in forma pauperis, respectfully petitions for rehearing of the Court's order denying certiorari. This petition is submitted in good faith and not for purposes of delay.

Rehearing is warranted on the sole ground permitted by Rule 44.2: the denial of certiorari rested on the incorrect assumption that the state's court judgment was supported by an adequate and independent state procedural ground. That assumption is incorrect. The asserted procedural default resulted from affirmatively misleading instructions issued by the New Mexico Court of Appeals and the absence of notice that failure to restate previously raised issues would result in waiver. A procedural rule applied in this manner is not adequate to bar federal review.

The New Mexico Court of Appeals issued written notice directing Petitioner to file a Brief in Chief and expressly describing that filing as an opportunity to make new arguments. As a pro se litigant, Petitioner reasonably understood this instruction to mean that issues already fully presented in the docketing statement remained before the court, and that the Brief in Chief functioned as an additional opportunity for argument rather than as a complete replacement. If the appellate court had not sent this instruction, Kruskal would not have made this procedural error.

**What they intended to be a helping hand ended up tripping Kruskal up.**

Under New Mexico appellate practice, however, the Brief in Chief is silently treated as a full substitution for the docketing statement, such that all previously raised issues are deemed abandoned unless restated. The court's notice did not disclose this substitution rule and did not warn that failure to re-plead existing issues would result in waiver.

The absence of notice was outcome determinative. Petitioner did not forgo claims by neglect or strategy. The forfeiture resulted directly from misleading instruction combined with an undisclosed waiver rule. Petitioner attempted in good faith to comply with the court's perceived requirements, relying on state law authority and addressing preservation concerns. Review was nevertheless denied based on a substitution doctrine that had never been disclosed. A procedural default created by misleading guidance and lack of notice cannot constitute an adequate state ground barring federal review. Especially when state law concurs with federal law regarding pro se pleadings.

This Court has long held that pro se pleadings must be liberally construed and evaluated by substance rather than technical form. *Haines v. Kerner*, 404 U.S. 519 (1972). New Mexico applies the same rule, evaluating whether filings provide fair notice of the issues rather than whether arguments are redundantly repeated across multiple documents. Petitioner's docketing statement plainly satisfied this standard by clearly

identifying the issues, supporting facts, and governing law. Nothing in New Mexico law requires a pro se litigant to restate verbatim the contents of a docketing statement in a Brief in Chief, and the court cited no authority imposing such a requirement.

Instead, the state court's conclusion appears to rest on its reliance on *Crutchfield* for the proposition that a pro se litigant is held to the same standards as an attorney.

*Crutchfield* does not define what is expected of attorneys; it defines what is expected of pro se litigants. It holds that pro se parties must comply with basic procedural rules, but courts must liberally construe their filings and may not demand attorney-level precision. The obligations of attorneys, by contrast, arise from a separate line of cases—such as *Link v. Wabash*, *Pioneer*, and state professional-responsibility decisions—which impose strict procedural compliance, strategic issue framing, and professional competence. Treating *Crutchfield* as if it governed attorney standards reverses its logic; it protects pro se litigants from being held to the very standards that apply only to trained counsel.

That reliance is misplaced. *Crutchfield* addresses expectations for attorneys practicing before the court and contains no language extending those standards to unrepresented litigants. Nothing in that decision states or implies that a pro se litigant must comply with attorney-level briefing or pleading requirements. By attributing to *Crutchfield* a holding it does not contain, the state court imposed attorney-level

standards on Petitioner in conflict with *Haines* and with New Mexico's own rule that pro se filings are evaluated by substance rather than technical form.

The court further compounded this error by previously stating that federal law did not apply because the case arose in state court. That proposition is incorrect. State courts are bound by federal constitutional law, and the Supremacy Clause requires application of this Court's due process standards to state procedural rules. A state court may not insulate a state-created procedural default from federal review by declaring federal law inapplicable solely because the proceeding occurs in a state forum.

A state procedural rule bars federal review only if it is firmly established, regularly followed, and applied in a manner that affords fair notice and a meaningful opportunity to comply. Here, waiver resulted not from a clear and disclosed rule, but from a silent substitution doctrine applied after the court affirmatively misled a pro se litigant. A procedural default created in this manner is not adequate to bar federal review. The federal constitutional defect became apparent only after the state court's final reasoning revealed its refusal to apply governing federal standards, and Petitioner could not have presented this precise conflict earlier.

## CONCLUSION

For these reasons, Petitioner respectfully requests rehearing of the order denying the petition for a writ of certiorari.

I certify that this petition is presented in good faith and not for purposes of delay and is limited to the grounds permitted by Rule 44.2.

Respectfully submitted,

Kerry Kruskal  
PO Box 49  
Arroyo Seco, NM 87514

## CERTIFICATE OF PETITIONER

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

  
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