

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

NOV 3 1998

PATRICK FISHER
Clerk

FERNANDO HERNANDEZ,

Petitioner - Appellant,

v.

TIM LEMASTER, Warden, New
Mexico State Penitentiary;
ATTORNEY GENERAL FOR THE
STATE OF NEW MEXICO,

Respondent - Appellee.

No. 98-2125
(D.C. No. CIV 97-830 JP/DJS)
(District of New Mexico)

ORDER AND JUDGMENT*

Before **ANDERSON, McKAY** and **LUCERO**, Circuit Judges.

Upon careful consideration of appellant's brief, the district court's order and magistrate's findings, and the applicable law, we AFFIRM for substantially the reasons stated in the district court's order.

* The case is unanimously ordered submitted without oral argument pursuant to Fed. R. App. P. 34(a) and 10th Cir. R. 34.1.9. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge