

Name: BRANDON FAVOR, LLP

Address: POST BOX 1031

TEHACHAPI, CALIFORNIA 93581

CDC or ID Number: _____

FILED

MC-275

DEC 23 2016

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
cf
DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

(Court)

<u>KEVIN MOORE</u> Petitioner	vs.	<u>THE PEOPLE OF THE STATE OF CALIFORNIA</u> Respondent
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PETITION FOR WRIT OF HABEAS CORPUS

No. 1:16 CV 001912 EPG HC

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

RECEIVED

DEC 23 2016

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY CLERK

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- A conviction
- A sentence
- Jail or prison conditions
- Other (specify): BRIEF
- Parole
- Credits
- Prison discipline

1. Your name: Kevin Moore
2. Where are you incarcerated? Unavailable
3. Why are you in custody? Criminal conviction Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Unavailable

b. Penal or other code sections: Unavailable

c. Name and location of sentencing or committing court: Unavailable

d. Case number: Unavailable

e. Date convicted or committed: Unavailable

f. Date sentenced: Unavailable

g. Length of sentence: Unavailable

h. When do you expect to be released? PENDING INVESTIGATION RELIEF / BOND RELIEF

i. Were you represented by counsel in the trial court? Yes No *If yes, state the attorney's name and address:*

4. What was the LAST plea you entered? (Check one):

- Not guilty
- Guilty
- Nolo contendere
- Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

- Jury
- Judge without a jury
- Submitted on transcript
- Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

NON-STATUTORY RELIEF

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See In re Swain (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Petitioner Kevin Moore while housed under state custody expressed claims where witness persons served relief under district attorney, petitioner waived all other attributes. petitioner's relief under state conviction is under immediate counsel ship sought reframe where relief provided serves relief by all parties, petitioner seeks immediate relief respectively under MOTION FOR BOND OR RELEASE ON OWN RECOGNIZANCE PENDING APPEAL

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007)
Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012)
Hager v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008)

8. Did you appeal from the conviction, sentence, or commitment? Yes No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"): _____
- b. Result: _____ c. Date of decision: _____
- d. Case number or citation of opinion, if known: _____
- e. Issues raised: (1) _____
 (2) _____
 (3) _____
- f. Were you represented by counsel on appeal? Yes No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? Yes No If yes, give the following information:
- a. Result: _____ b. Date of decision: _____
- c. Case number or citation of opinion, if known: _____
- d. Issues raised: (1) _____
 (2) _____
 (3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

Legal assistance, now established evidence for relief

11. Administrative review:

- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

SECOND LEVEL EXHAUSTED

- b. Did you seek the highest level of administrative review available? Yes No
 Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes If yes, continue with number 13 No If no, skip to number 15

13. a. (1) Name of court: _____
(2) Nature of proceeding (for example, "habeas corpus petition"): _____
(3) Issues raised: (a) _____
(b) _____
(4) Result (attach order or explain why unavailable): _____
(5) Date of decision: _____

b. (1) Name of court: _____
(2) Nature of proceeding: _____
(3) Issues raised: (a) _____
(b) _____
(4) Result (attach order or explain why unavailable): _____
(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1943) 34 Cal.2d 300, 304.)

LEGAL COUNSEL, RELIEF UNFOUND, NEWLY DISCOVERED EVIDENCE

16. Are you presently represented by counsel? Yes No If yes, state the attorney's name and address, if known:
MILLER & MILLER ASSOCIATES 3307 W. 43RD ST. LOS ANGELES, CA 90008

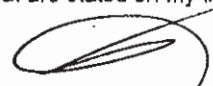
COCHRAN LAW FIRM 4929 WILSHIRE BLVD. LOS ANGELES, CALIFORNIA 90010-3629

17. Do you have any petition, appeal, or other matter pending in any court? Yes No If yes, explain:
MOTION FOR BOND, CIVIL COMPLAINT, COUNSEL FOR APPOINTMENT OF COUNSEL
(MOTION)

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:
FEDERAL JURISDICTION TO RELIEVE BURDEN UNDER STATE PERFORMANCE

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: DECEMBER 20, 2016



(SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): BRANDON FAVOR, LLP MILLER & MILLER ASSOCIATES HALVOR THOMAS MILLER, JR. TELEPHONE NO.: 323-295-6679 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): KEVIN MOORE	FOR COURT USE ONLY CASE NUMBER:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KING STREET ADDRESS: 126 SOUTH DRIVE MAILING ADDRESS: CITY AND ZIP CODE: HANFORD 93230-5997 BRANCH NAME:	
PLAINTIFF/PETITIONER: KEVIN MOORE DEFENDANT/RESPONDENT: THE PEOPLE OF THE STATE OF CALIFORNIA	
DECLARATION	

Petitioner MOORE expressed need for LEGAL ASSISTANCE while housed at KVSP, no legal documents were copied for submission or additional assistance

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **December 23, 2016**

BRANDON FAVOR

 (TYPE OR PRINT NAME)



 (SIGNATURE OF DECLARANT)

- Attorney for
- Plaintiff
- Petitioner
- Defendant
- Respondent
- Other (Specify): **INVOLVED PARTY'S**

1 Name: MILLER & MILLER ASSOCIATES

2 Address: 3307 WEST 43RD STREET LOS ANGELES, CALIFORNIA 90008

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4
5 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 IN AND FOR THE COUNTY OF KING

8 PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff and Respondent,)

9 vs.)

10
11 KENIN MOORE)
Defendant and Appellant,)

Case No.: _____

) NOTICE OF MOTION AND
) MOTION FOR BAIL OR
) RELEASE ON OWN RECOGNIZANCE
) PENDING APPEAL

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14 TO THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT AND THE
15 DISTRICT ATTORNEY OF _____ COUNTY, STATE OF CALIFORNIA:

16 PLEASE TAKE NOTICE that on _____, 20____, at the hour of
17 _____, or as soon thereafter as can be heard, defendant/appellant will move the court
18 for an order admitting defendant/appellant to release pending appeal from judgment and/or
19 sentencing in the above court on or about _____, 20_____.

20 This motion will be based on the records, papers, and files in the case, on the attached
21 declaration(s), points and authorities, and upon such oral and/or documentary evidence as may
22 be produced at said hearing on the motion.

23 DATED: December 20, 2016

24 

1 DECLARATION OF KEVIN MOORE

(Mark appropriate boxes and modify as needed)

2
3 I, Kevin Moore, hereby declare:

4 1. That I am the defendant/appellant in the above-entitled cause of action.

5 2. That I did suffer criminal conviction on or about _____, 20____,

6 from the Superior Court of Los Angeles County, in Case No. _____.

7 3. That I hereby incorporate by reference each and every statement contained herein
8 which has the box preceding same marked.

9 4. That I have been a resident of the State of California for approximately _____ years.

10 5. That I am appealing fro the aforementioned conviction.

11 6. That I am appealing from said conviction(s) and/or sentencing will be overturned
12 based on errors in law and/or constitutional grounds.

13 7. That when released on Own Recognizance or on appeal bond I will comply with
14 conditions as ordered by the court.

15 8. That should my conviction(s) not be overturned on appeal I will surrender to the court
16 at the time and place ordered by the court.

17 9. That I am not a flight risk of any kind and have appeared before the court on the
18 above cause of action on approximately _____ occasions over some _____
19 days of court proceedings.

20 10. That I have been on bail and/or O.R. on other occasions in the past and to my
21 recollection have never willfully failed to appear.

22 11. That I have employment where I have worked for _____ years.

23 12. That I am not employed but do receive public assistance or other income and
24 therefore have substantial ties to the community.

25 13. That I own property or am purchasing property in the community and have numerous
other ties in the community.

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14. That I have family in the local area including, but not limited to:

Children: *(List names and ages)* _____

Wife: _____

Other Relatives: _____

15. That I have an active and on-going relationship with each of my children. That I am, and continue to be, actively involved in their educational activities, their sports and leisure time, and family activities.

16. That I am active in volunteer work in the community.

17. That without the requested release pending appeal it is likely that the sentence I received will be completely or largely served prior to completion of review by the Appellate Court.

18. That while on bail in the above cause of action I have provided valuable assistance to my defense counsel.

19. That while released on appeal I will be able to provide valuable assistance to counsel on appeal in many aspects of my case.

20. That the conviction(s) I suffered did not involve violence.

21. That I suffer serious health problems for which I am under treatment for or which 1 requires specialized attention from my personal physician.

22. That my release is urgent due to family hardship.

23. That my release is urgent due to hardship to my business or employees resulting from my absence.

24. OTHER _____

25. MEDICAL REFUGE _____

26. OTHER _____

VERIFICATION

I have read the above declaration and swear under penalty of perjury that the statements made herein are true and correct, except as to those matters alleged upon information and belief, and as to those matters I do believe them to be true.

Executed this 20th day of DECEMBER, 20 16, at TERRACAPLE, California pursuant to Code of Civil Procedures, Sections 446 and 2015.5.



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1 answered. Whether or not the great weight of authority may support the defendant's arguments
2 is not relevant since the arguments are significant and made in good faith.

3 Although extraordinary circumstances may be given consideration in determining
4 whether or not a defendant should be released on either own recognizance or on bail release is
5 not limited to those situations in which extraordinary circumstances exist. (In re Podesto, supra;
6 In re Brumback (1955) 46 Cal.2d 810.)

7 "A court should look to the circumstances of a particular defendant, and should not adopt
8 an ironclad, mechanical policy of denying bail to all who commit a particular crime," (In re
9 Podesto, supra, at fn. 10; see also: In re William M. (1970) 3 Cal.3d 16; In re Minnis (1972) 7
10 Cal.3d 639.) On the other hand, failure to consider all factors and granting or denying
11 defendant's motion seeking release on appeal based on a politically charged atmosphere, or the
12 trial court's abstract judgment or defendant's character violated defendant's rights to equal
13 protection and due process. (See: Van Atta v. Scott (1980) 27 Cal.3 438; People v. Arnold
14 (1976) 58 Cal.App.3d Supp1.)

15 The defendant herein has significant and real ties to the community. The likelihood of
16 defendant fleeing the jurisdiction of this court is not only minimal but highly improbable. As
17 stated in the attached declaration, there is little chance that defendant would leave all of his
18 community, family or social relations and life contacts behind.

19 The likelihood of a defendant's flight is determined by the court by considering factors
20 which indicate that an individual is a stable member of the community and that defendant's
21 contacts, relationships and other ties are such that the threat of imprisonment is not likely to
22 induce defendant to flee. Such is the case at bar.

23 It is clear the defendant's past conduct before the courts demonstrates a high probability
24 that defendant will appear as ordered.

25 In light of the above, and the fact that defendant's sentence may very likely be fully or
substantially served before his appeal is heard, it is respectfully requested that defendant be

1 allowed to remain free on his own recognizance or in the alternative, to remain free on appeal
2 bond.

3 DATED: DECEMBER 20, 2016

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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of KING
State of CALIFORNIA. I am over the age of 18 years. The name and address of my
residence or business is 21900 END OF HIGHWAY 202, POST BOX 1031, TEHACHAPI,
CALIFORNIA 93581

On December 21, 2016, I served the PETITION FOR WRIT OF HABEAS
(Date) (Description of document(s))

CORPUS
(Description of document(s) continued)

on the parties listed below (include name, address and, where applicable, fax number) by (check
the applicable method or methods):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery
by the United States Postal Service or private delivery service following ordinary business
practices with postage or other costs prepaid;

personal delivery;

facsimile transmission in accordance with the requirements of PERB Regulations
32090 and 32135(d).

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)
MILLER & MILLER ASSOCIATES 3307 WEST 43RD STREET LOS ANGELES, CA 90008
ATTORNEY GENERAL 300 SOUTH SPRING STREET, LOS ANGELES, CALIFORNIA 90013
UNITED STATES DISTRICT COURT - EASTERN (FRESNO), FRESNO, CA 93721-2201
DISTRICT ATTORNEY 210 W. TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012-3210

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on December 21, 2016, at TEHACHAPI CALIFORNIA
(Date) (City) (State)

BRANDON FAVIN
(Type or print name)


(Signature)