

ORIGINAL

JOHN BELL F31817

NAME  
 415 US. HWY 49 NORTH G17-101

PRISON IDENTIFICATION / BOOKING NUMBER  
 TUTWILER, MS. 38963

ADDRESS OR PLACE OF CONFINEMENT

FILED  
 CLERK, U.S. DISTRICT COURT

MAR - 3 2015

CENTRAL DISTRICT OF CALIFORNIA  
 BY [Signature] DEPUTY

Fee Due

NOTE: It is your responsibility to notify the Clerk of Court in writing of any change of address.

NOTE: If represented by an attorney; his name, address and telephone number.

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

JOHN BELL  
 FULL NAME  
 (Include name under which you were convicted)

Petitioner,

CASE NUMBER:  
 CV-EDCV15-00383 FMO(JC)

To be supplied by the Clerk of the United States District Court.

v.

PETITION FOR WRIT OF HABEAS CORPUS  
 BY A PERSON IN STATE CUSTODY  
 28 U.S.C. § 2254

FRED FIGUEROA  
 NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED  
 PERSON HAVING CUSTODY OF PETITIONER

Respondent.

PLACE/COUNTY OF CONVICTION \_\_\_\_\_  
 PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT  
 (List by case number)

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

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment)

INSTRUCTIONS - READ CAREFULLY

This petition shall be legibly handwritten or typewritten, and signed by the petitioner, under penalty of perjury. You must set forth CONCISELY the answer to each question in the proper space on the form. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

You must not attach separate pages to this petition, except that ONE separate additional page is permitted in answering Question No. 10.

Upon receipt of a fee of \$5.00 your petition will be filed if it is in proper order.

If you are seeking leave to proceed in forma pauperis (without paying the \$5.00 filing fee and other court costs), then you must also complete and execute the declaration on the last two pages, setting forth information which establishes your inability to pay the fees and costs of the proceedings or to give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds \$25.00, you must pay the filing fee as required by the rule of the district court.

When the petition is completed, the original and two (2) copies must be mailed to the Clerk of the United States District Court for the Central District of California, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012, Attention: Intake/Docket Section.

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY  
 28 U.S.C. § 2254

LODGED  
 CLERK, U.S. DISTRICT COURT

FEB 27 2015

CENTRAL DISTRICT OF CALIFORNIA  
 BY \_\_\_\_\_ DEPUTY

Only one (1) sentence, conviction or parole matter may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.

Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1.  A conviction.
2.  A sentence.
3.  Jail or prison conditions.
4.  Prison discipline.
5.  A parole problem.
6.  Other.

### PETITION

1. Venue

- (a) Place of detention TCCF/COCF TUTWILER, MS.
- (b) Place of conviction SAN BERNADINO COUNTY (RANCHO CUCAMONGA DISTRICT)
- (c) Place sentenced SAN BERNADINO RANCHO CUCAMONGA DISTRICT

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

- (a) Nature of offenses involved (include all counts) SECOND DEGREE ROBBERY; KIDNAPING;  
PRIOR CONVICTION(SECOND DEGREE ROBBERY)

- (b) Penal or other code section or sections: 212.5; 207(A)(1); 1170.12; 667(A)(1)

- (c) Case number: FWV120085

- (d) Date of conviction: 10.09.2012

- (e) Date of sentence: 11.05.2012

- (f) Length of sentence on each count: #3: 8 years (doubled); #2: 1 year (doubled);  
#1: 1 year (doubled) enhancement for prior serious felony 5 year

- (g) Plea (check one)

- Not guilty  
 Guilty  
 Nolo Contendere

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

28 U.S.C. § 2254

- (h) Kind of trial: *(check one)*
- Jury
  - Judge only
  - Judge alone on transcript

- (i) Did you testify at the trial?
- Yes
  - No

3. Did you appeal from the conviction of sentence?

- Yes     No

4. If you did appeal, give the following information for each appeal:

- (a) (1) Name of court: THE CALIFORNIA COURT OF APPEAL 4th APP. DIV. 2  
(2) Result: ABANDONMENT OF APPEAL

(3) Date of result: 5-14-2012

(4) Citation or number of opinion: case no. E057802

(5) Grounds raised *(list each)*:

- (a) Tampering with evidence
- (b) presentence credit issue
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_
- (f) \_\_\_\_\_
- (g) \_\_\_\_\_

- (b) (1) Name of court: \_\_\_\_\_  
(2) Result: \_\_\_\_\_

(3) Date of result: \_\_\_\_\_

(4) Citation or number of opinion: \_\_\_\_\_

(5) Grounds raised *(list each)*:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_
- (f) \_\_\_\_\_
- (g) \_\_\_\_\_

5. If you did not appeal:

(a) State your reasons \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Did you seek permission to file a late appeal?

Yes  No

6. Other than a direct appeal, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal?

Yes  No

7. If you answer to 6 was "Yes", give the following information:

(a) (1) Name of court: SUPERIOR COURT, COUNTY SAN BERNADINO (RANCHO DISTRICT)

(2) Nature of proceeding: HABEAS CORPUS

(3) Grounds raised: ILLEGAL?UNAUTHORIZED SENTENCE; PRE-SENTENCE CREDITS  
INEFFECTIVE ASSISTANCE OF COUNSEL

(4) Result: DENIED

(5) Date of result: JULY 9, 2014

(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.

CASE NO. WHCSS1400141

(b) (1) Name of court: CALIFORNIA COURT OF APPEAL 4th APP.DISTRICT DIV.2

(2) Nature of proceeding: HABEAS CORPUS

(3) Grounds raised: ILLEGAL?UNAUTHORIZED SENTENCE; INEFFECTIVE ASSISTANCE  
OF COUNSEL; PRE SENTENCE CREDITS

(4) Result: DENIED

(5) Date of result: 9-19-2015

(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.

(c) (1) Name of court: CALIFORNIA SUPREME COURT

(2) Nature of proceeding: HABEAS CORPUS

(3) Grounds raised: ILLEGAL/UNAUTHORIZED SENTENCE; PRE-SENTENCE CREDITS;  
INEFFECTIVE ASSISTANCE OF COUNSEL

(4) Result: DENIED

(5) Date of result: JANUARY 14, 2015

(6) Citation or number of any written opinions or orders entered pursuant to each such disposition.  
CASE NO. S222115

(8) Was an evidentiary hearing held?

Yes  No

If so, state the name of the court, and the result: \_\_\_\_\_

(9) If your answer to 6 was "No", explain briefly why you did not seek post-conviction relief in the state courts.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CAUTION: Exhaustion Requirement:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted as to some grounds, you must first present all other grounds to the state court.

10. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly, the facts supporting each ground. If necessary, attach a **SINGLE** page only behind this page.

**CAUTION:** If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

(a) Ground one: INEFFECTIVE ASSISTANCE OF COUNSEL DURING SENTENCING AND ON  
APPEAL

Supporting **FACTS** (tell your story **BRIEFLY** without citing cases or law):

**CAUTION:** You must state facts, not conclusions, in support of your grounds. (e.g., if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do). A rule of thumb is - who did exactly what to violate your rights at what time or place.

COUNSEL FAILED TO OBJECT TO IMPOSITION OF KIDNAPPING CHARGE ALTHOUGH  
BARRED BY PENAL CODE SECT. 654. FAILURE TO OBJECT TO SENTENCE BEING  
VIOLATIVE OF PEN. CODE 1170.1(A); INEFFECTIVE ASSISTANCE FOR FAILURE TO  
OBJECT TO IMPOSITION OF 5 YEAR PRIOR FOR "SERIOUS FELONY", WHEN THE SAID  
WAS CONSTITUTIONALLY INFIRM AND LACKING PROOF

(b) Ground two: THE SENTENCE AS IMPOSED AND COMTEMPLATED BY THE PROSECUTION IS VIOLATIVE OF BOTH STATE AND FEDERAL LAW.

Supporting FACTS (tell your story BRIEFLY without citing cases or law):THE SENTENCE IMPOSED IS IN VIOLATION OF 1170.1(A) IN THAT IT IS CONSTRUCTED SO AS TO HAVE THE ENAHNCEMENTS TOTAL MORE THAN THE BASE TERM. MOREOVER SENTENCE IMPOSED FOR PRIOR "SERIOUS FELONY" IS UNSUBSTANTIATED BY FACTS SUFFICIENT FOR PROOF. PETITIONER WAS NOT INFORMED THAT HE HAD A RIGHT TO A JURY TRIAL ON THE ALLEGED PRIOR "SERIOUS FELONY".

(c) Ground three: KIDNAPPING CHARGE IS IN VIOLATION OF PENAL CODE 654 AND THEREBY VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT

Supporting FACTS (tell your story BRIEFLY without citing cases or law):THE PROSECUTION OFFERED A PLEA DEAL WHICH IN ITS CONSTRUCTION IS VIOLATIVE OF PENAL CODE 654's PROHIBITION OF PUNISHING AN ACT UNDER TWO DIFFERENT PROVISIONS OF LAW WHEN BARRED BY STATUE, THE ROBBERY OVERRUNS THE KIDNAPPING DUE TO IT BEING INCIDENTAL TO THE ROBBERY

(d) Ground four: THE COURT FAILED TO AWARD PRESENTENCE CREDITS ACCORDING TO NEWLY PASSED PRECEDENT

Supporting FACTS (tell your story BRIEFLY without citing cases or law):PETITIONER WAS ELIGIBLE TO RECEIVE DAY FOR DAY CREDITS BUT WAS NO AWARDED THE SAID. IN FACT THE DAY FOR DAY CREDITS WERE APART OF THE PLEA AGREEMENT.

11. If any of the grounds listed in 10 were not previously presented to this court or any other court, state briefly which grounds were not presented, and give your reasons: \_\_\_\_\_

12. Do you have any petition, appeal or parole matter pending in any court, either state or federal as to the judgment of conviction under attack?

Yes  No

13. Are you presently represented by counsel?

Yes  No

If so, name, address and telephone number: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Case name and court: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**WHEREFORE**, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
*Signature of Attorney (if any)*

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on

2-20-2015

*Date*

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

(Petitioner)

FRED FIGUEROA

(Respondent[s])

DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

I, JOHN BELL, declare that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed?

[ ] Yes [X] No

(a) If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

(b) If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received, within the past twelve (12) months, any money from the following sources:

- (a) Business, profession or form of self-employment? [ ] Yes [X] No
(b) Rent payments, interest or dividends? [ ] Yes [X] No
(c) Pensions, annuities or life insurance payments? [ ] Yes [X] No
(d) Gifts or inheritances? [ ] Yes [X] No
(e) Any other source? [ ] Yes [X] No

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve (12) months:

3. Do you own any cash, or do you have money in a checking or savings account?

(Include any funds in prison accounts)

[ ] Yes [X] No

If the answer is "yes", state the total value of the items owned:

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property?

(Exclude ordinary household furnishings and clothing)

[ ] Yes [X] No

If the answer is "yes", describe the property and state its approximate value:



5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on  
2-20-2015

*Date*

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

**CERTIFICATE**

I hereby certify that the Petitioner herein has the sum of \$ 0 on account to his credit at the  
TCCE/COCE institution where he is confined. I further certify that  
Petitioner likewise has the following securities to his credit according to the records of said institution:

SEE ATTACHED ACCOUNT SUMMARY (EXHIBIT A)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: 2-21-2015

S. Spaight  
Authorized Officer of Institution  
Library Director  
Title of Officer

# EXHIBIT COVER PAGE

# A

EXHIBIT

Description of this exhibit:

TRUST ACCOUNT SUMMARY

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

Alerts: **DETAINER/SEC THREAT GRP MEMBER**

Name: **BELL, JOHN** Agency ID#: **F31817** CCA #: **2097410** Unit: **G**

Agency: **CALIFORNIA DEPT. OF CORRECTIONS** Admit Date: **03/09/2014** Rel. Date: **00/00/0000** Pod: **17** Cell: **101**

ICAS: **HIGH** Admit Type: **3** Bed: **A**

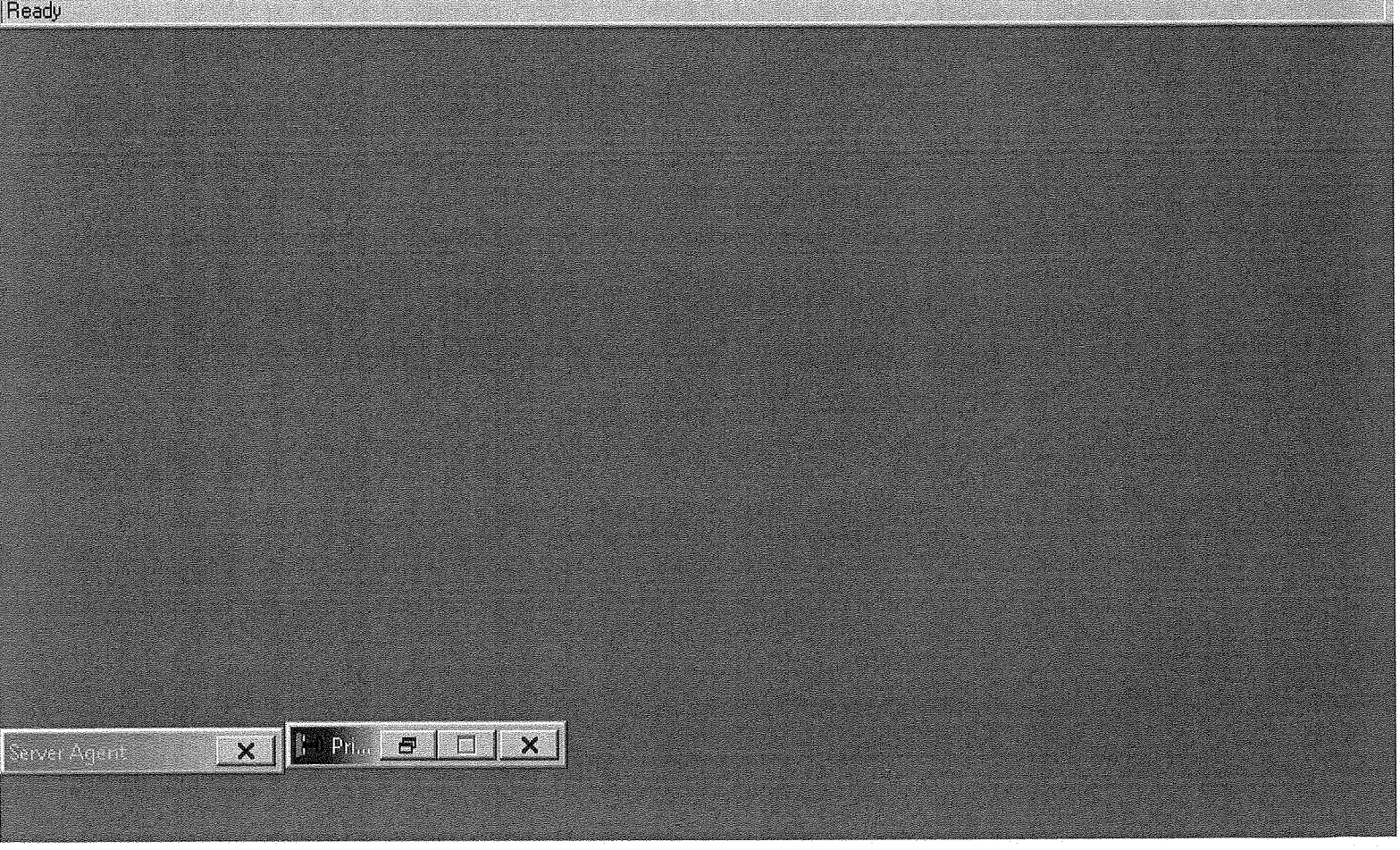
Include Balance on Receipt  Inmate Receipt  Include Cost Recovery Disbursement  Include Officer Signature Line



- Alias
- Charges
- Classify
- Clothing
- Cmmsry Hist
- Ctgr Lmt
- Detainers
- Education
- Housing
- ID#'s
- Mail Log
- Physical
- Property
- Questions
- QTY Restrict
- Release
- \$Rstrctions
- Separates
- Social
- Status
- Transaction
- HXTrels
- Visitation

Trans Date/Time	Back Date/Time	Code	Switch	Trans Amount	Deposit From/Withdrawal To	Receipt#	Check #	Re
02/13/2015 12:17		CT	2	2.57	STATE OF CA RESTITUTION 1	334756045		
02/13/2015 07:39	02/05/2015 09:21	JN	1	4.68	INMATE WAGES - JANUARY	334674960	OTHER	
01/16/2015 12:57		CT	2	5.72	STATE OF CA RESTITUTION 1	334528472		
01/16/2015 08:57	01/06/2015 07:57	JN	1	10.40	INMATE WAGES - DECEMBER	334415731	OTHER	
12/17/2014 14:47		CR	2	5.55	CCA RESTITUTION	334278391		
12/12/2014 10:11		CT	2	6.16	STATE OF CA RESTITUTION 1	334234262		
12/12/2014 07:58	12/08/2014 15:16	JN	1	11.20	INMATE WAGES - NOVEMBER	334180831	OTHER	
12/01/2014 09:59		CO	2	6.74	COMMISSARY SUMMARY POSTING	334103150		
11/14/2014 10:54		CT	2	7.04	STATE OF CA RESTITUTION 1	333985492		
11/14/2014 07:52	11/06/2014 10:03	JN	1	12.80	INMATE WAGES - OCTOBER	333899690	OTHER	
11/10/2014 10:21		CO	2	7.51	COMMISSARY SUMMARY POSTING	333931647		
10/14/2014 11:54		GRV	2	-2.69	COMMISSARY SUMMARY REVERS.	333700065		
10/13/2014 10:19		CO	2	2.69	COMMISSARY SUMMARY POSTING	333666873		
10/10/2014 11:13		CT	2	7.04	STATE OF CA RESTITUTION 1	333669889		

Current Account Balance: **\$6.95** Cost Recovery Balance: **\$0.00**



PROOF OF SERVICE

Declaration Of Service By Mail

I, BRUCE THORNS declare that I am over the age of eighteen (18) and that I am not a party to this action. On 2-21 2015

I deposited a copy of the following document(s):

Habeas Coprus plus exhibit 3 copies total

In a sealed envelope with postage prepaid into the United States mail outlet located at Tallahatchie County Correctional Institution 415 U.S. Highway 49 North, Tutwiler, Mississippi 38963, and addressed as follows:

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
UNITED STATES COURT HOUSE  
312 NORTH SPRING STREET  
LOS ANGELES, CA. 90012  
ATTN: INTAKE / DOCKET SECTION

I declare under penalty of perjury pursuant to 28 U.S.C.A. § 1746

and State laws, that the foregoing is true and correct and that this declaration was executed at Tallahatchie County Correctional Facility, 415 U.S. Highway 49 North, Tutwiler, MS. 38963.

DATED: 2-21, 2015

Signature

Bruce Thorns

MIC JOHN BELL F31B17  
TRCF: G17. 101  
415 U.S. HWY 49, NORTH  
TUTWILER, MS. 38963



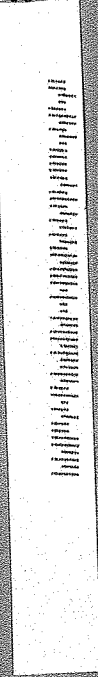
RECEIVED  
CLERK U.S. DISTRICT COURT  
FEB 27 2015  
CENTRAL DISTRICT OF CALIFORNIA

2254

LEGAL MAIL

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
UNITED STATES COURT HOUSE  
312 NORTH SPRING STREET  
LOS ANGELES, CA. 90012  
ATTN: INTAKE / DCKET SECTION

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