

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. EDCV 19-01476-SVW (AS) Date August 13, 2019

Title Thomas Vincent Rodriguez v. Unnamed

Present: The Honorable Alka Sagar, United States Magistrate Judge

Alma Felix

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Petitioner:

Attorneys Present for Respondent:

N/A

N/A

Proceedings: (IN CHAMBERS) ORDER REQUIRING THE FILING OF FIRST AMENDED PETITION

This Court is in receipt of Petitioner’s “Petition for Writ of Habeas Corpus” (“Petition”), filed on August 8, 2019. (Docket Entry No. 1). The Petition states that he is awaiting trial in San Bernardino County Superior Court, Case No. EAP PS1900109. (Petition at 2). The Petition solely alleges that “[v]erification’ each case has been imposed illegal in San Bernardino trial court.” (Petition at 3). Although the Petition asserts that a bank account is attached to the Petition (Petition at 4), no bank account is attached.

Petitioner’s pleading is deficient in the following respects: (1) It is not clear whether Petitioner is attempting to file a Petition for Writ of Habeas Corpus by a Person in State Custody (pursuant to 28 U.S.C. § 2254) , a Petition for Writ of Habeas Corpus (pursuant to 28 U.S.C. § 2241), or some other pleading (i.e., a civil rights action pursuant to 42 U.S.C. § 1983); (2) The Court is unable to discern what claim(s) Petitioner intends to assert; (3) Petitioner has failed to name the proper Respondent (the name of the officer having custody over him); (4) Petitioner has failed to plainly state “[t]he statutory or other basis for the exercise of jurisdiction by this Court,” in violation of Central District Local Rule 8-1 and Fed.R.Civ.P. Rule 8(a); (5) Assuming the pleading is a Petition for Writ of Habeas Corpus by a Person in State Custody, Petitioner has failed to specify any understandable ground for relief and does not include any supporting facts, in violation of Rule 2(c), Rules Governing Section 2254 Cases in the United States District Courts; (6) Petitioner has alleged vague and conclusory “claims,” in violation of Fed.R.Civ.P. Rule 8(a) and 8(d); (7) Petitioner has failed to allege any claim(s), much less any claims which

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go to the fact or duration of his confinement. See Preiser v. Rodriguez, 411 U.S. 475, 489 (1973); and (8) It is not clear whether Petitioner has exhausted his state remedies with respect to each “claim” alleged in the Petition.

Within twenty-one (21) days of the date of this Minute Order (by no later than **September 3, 2019**), Petitioner is ORDERED to file a First Amended Petition for Writ of Habeas Corpus by a Person in State Custody, pursuant to 28 U.S.C. § 2254 (“First Amended Petition”), or a First Amended Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241 (“First Amended Petition”), on the proper Central District Form (which the Clerk of the Court is directed to provide to Petitioner). The First Amended Petition shall be complete in itself, must not incorporate by reference any other pleading, and should set forth clearly each claim which Petitioner intends to raise in this proceeding and the factual bases for each claim.

Petitioner is advised that his failure to comply with the above requirements may result in a recommendation that this action be dismissed for failure to comply with the Court’s Order and/or for failure to prosecute pursuant to Fed.R.Civ.P. 41(b). See Pagtalunan v. Galaza, 291 F.3d 639 (9th Cir. 2002)(district court may dismiss habeas petition for failure to obey court order or failure to prosecute).

Initials of Preparer 0 : 00
AF

NAME

PRISON IDENTIFICATION/BOOKING NO.

ADDRESS OR PLACE OF CONFINEMENT

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER:

CV

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

FULL NAME (Include name under which you were convicted)

Petitioner,

v.

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

Respondent.

AMENDED

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

28 U.S.C. § 2254

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

CV

CV

INSTRUCTIONS - PLEASE READ CAREFULLY

- 1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum. the grounds for relief from the conviction and/or sentence that you challenge.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
6. You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed in forma pauperis (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, 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 at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
7. When you have completed the form, send the original and two copies to the following address:
Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1. a conviction and/or sentence.
2. prison discipline.
3. a parole problem.
4. other.

PETITION

1. Venue

- a. Place of detention _____
- b. Place of conviction and sentence _____

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) : _____

- b. Penal or other code section or sections: _____

- c. Case number: _____
- d. Date of conviction: _____
- e. Date of sentence: _____
- f. Length of sentence on each count: _____

g. Plea (check one):

- Not guilty
 Guilty
 Nolo contendere

h. Kind of trial (check one):

- Jury
 Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? Yes No

If so, give the following information for your appeal (and attach a copy of the Court of Appeal decision if available):

- a. Case number: _____
- b. Grounds raised (list each):
 - (1) _____
 - (2) _____

- (3) _____
- (4) _____
- (5) _____
- (6) _____

c. Date of decision: _____

d. Result _____

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? Yes No

If so give the following information *(and attach copies of the Petition for Review and the Supreme Court ruling if available)* :

a. Case number: _____

b. Grounds raised *(list each)*:

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____
- (6) _____

c. Date of decision: _____

d. Result _____

5. If you did not appeal:

a. State your reasons _____

b. Did you seek permission to file a late appeal? Yes No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

Yes No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

- a. (1) Name of court: _____
- (2) Case number: _____
- (3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

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

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? Yes No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

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

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? Yes No

c. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

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

- (a) _____
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? Yes No

7. Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

8. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

b. Ground two: _____

(1) Supporting FACTS: _____

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No
(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No
(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

c. Ground three: _____

(1) Supporting FACTS: _____

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No
(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No
(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

d. Ground four: _____

(1) Supporting FACTS: _____

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No
(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No
(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

e. Ground five: _____

(1) Supporting FACTS: _____

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

9. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: _____

10. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

Yes No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

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

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? Yes No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

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

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? Yes No

11. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? Yes No

If so, give the following information *(and attach a copy of the petition if available)*:

(1) Name of court: _____

(2) Case number: _____

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: _____

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

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

12. Are you presently represented by counsel? Yes No

If so, provide name, address and telephone number: _____

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 _____
Date

Signature of Petitioner

Petitioner

Respondent(s)

**ELECTION REGARDING
CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE JUDGE**

- A magistrate judge is available under 28 U.S.C. § 636 (c) to conduct all proceedings in this case, including dispositive matters, and entry of final judgment. However, a magistrate judge may be assigned to rule on dispositive matters only if all parties voluntarily consent.
- Parties are free to withhold consent to magistrate judge jurisdiction without adverse substantive consequences.
- If both parties consent to have a magistrate judge decide the case, any appeal would be made directly to the Ninth Circuit Court of Appeals, as if a district judge had decided the matter.
- Unless both parties consent to have a magistrate judge decide the case, the assigned magistrate judge will continue to decide only non-dispositive matters, and will issue a Report and Recommendation to the district judge as to all dispositive matters.

Please check the “yes” or “no” box regarding your decision to consent to a United States Magistrate Judge, and sign below.

Yes, I voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in this case, decide all dispositive and non-dispositive matters, and order the entry of final judgment.

No, I do not consent to have a United States Magistrate Judge conduct all further proceedings in this case.

Executed on _____

Date

Signature of Petitioner/Counsel for Petitioner

Petitioner

Respondent(s)

**DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS**

I, _____, 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 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 months, any money from any of the following sources?

a. Business, profession or form of self-employment? Yes No

b. Rent payments, interest or dividends? Yes No

c. Pensions, annuities or life insurance payments? Yes No

d. Gifts or inheritances? Yes No

e. Any other sources? Yes 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 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 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? (*Excluding ordinary household furnishings and clothing*) Yes 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 _____
Date

Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ _____ on account to his credit at the _____ 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: _____

Date

Authorized Officer of Institution/Title of Officer

NAME

PRISON IDENTIFICATION/BOOKING NO.

ADDRESS OR PLACE OF CONFINEMENT

Note: If represented by an attorney, provide name, address & telephone number. *It is your responsibility to notify the Clerk of Court in writing of any change of address.*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FULL NAME (Include name under which you were convicted)

Petitioner,

v.

NAME OF WARDEN, (or other authorized person having custody of petitioner)

Respondent.

CASE NUMBER:

CV

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

CR

Criminal case under which sentence was imposed.

**PETITION FOR WRIT OF HABEAS CORPUS BY
A PERSON IN FEDERAL CUSTODY
(28 U.S.C § 2241)**

INSTRUCTIONS - READ CAREFULLY

This petition shall be legibly handwritten or typewritten, 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.9.

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 execute the declaration on the last page, 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 3 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.

Only one 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.

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. Place of detention _____
2. Name and location of court which imposed sentence _____

3. The indictment number or numbers (if known) upon which, and the offense or offenses for which, sentence was imposed:
 - a. _____
 - b. _____
 - c. _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - a. _____
 - b. _____
 - c. _____
5. Check whether a finding of guilty was made:
 - a. After a plea of guilty
 - b. After a plea of not guilty
 - c. After a plea of nolo contendere
6. If you were found guilty after a plea of not guilty, check whether that finding was made by:
 - a. a jury
 - b. a judge without a jury
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes No
8. If you did appeal, give the following information for each appeal:

CAUTION: *If you are attacking a sentence imposed under a federal judgment, you must first file a direct appeal or motion under 28 U.S.C. §2255 in the federal court which entered the judgment.*

- a. (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) _____

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) _____

9. 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. You must state facts, not conclusions in support of your grounds. A rule of thumb to follow is - who did exactly what to violate your rights at what time and place.*

a. Ground one: _____

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

b. Ground two: _____

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

c. Ground three: _____

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

d. Ground four: _____

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

10. Have you filed previous petitions for habeas corpus, motions under Section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction? Yes No

11. If your answer to Question No. 10 was yes, give the following information:

a. (1) Name of Court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Result _____

(5) Date of result _____

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

- b. (1) Name of Court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- _____
- _____
- (4) Result _____
- (5) Date of result _____
- (6) Citation or number of any written opinions or orders entered pursuant to each disposition.
- _____
- _____

12. If you did not file a motion under Section 2255 of Title 28, United States Code, or if you filed such a motion and it was denied, state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention:

13. Are you presently represented by counsel? Yes No

If so, provide name, address and telephone number _____

Case name and court _____

14. If you are seeking leave to proceed in forma pauperis, have you completed the declaration setting forth the required information? Yes No

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 _____
Date

Signature of Petitioner

**DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS**

Petitioner

Respondent(s)

I, _____, 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 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 months, any money from any of the following sources?
- a. Business, profession or form of self-employment? Yes No
- b. Rent payments, interest or dividends? Yes No
- c. Pensions, annuities or life insurance payments? Yes No
- d. Gifts or inheritances? Yes No
- e. Any other sources? Yes 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 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 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? (*Excluding ordinary household furnishings and clothing*) Yes 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 _____
Date

Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$_____ on account to his credit at the _____ 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:

Date

Authorized Officer of Institution

Title of Officer