

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 **INSTRUCTIONS FOR FILING A PETITION FOR A WRIT OF HABEAS CORPUS**
4 **BY A PERSON IN STATE CUSTODY UNDER 28 U.S.C. §§ 2254**

5 **I. Scope of 28 U.S.C. §§ 2254**

6 You may file a petition for a writ of habeas corpus under 28 U.S.C. §§ 2254 if you are in
7 custody pursuant to the judgment of a state court in violation of the federal Constitution or federal laws.
8 You may challenge either the fact or duration of your state sentence; however, any challenge to
9 violations of the federal Constitution or federal law that affects the conditions, as opposed to the fact or
10 duration, of your confinement should be brought in a civil rights complaint under 42 U.S.C. §§ 1983. If
11 you want to file a civil rights complaint under 42 U.S.C. §§ 1983, you may do so on forms provided by
12 the clerk of the court.

13 Note that a petition for a writ of habeas corpus under 28 U.S.C. §§ 2254 will not be granted
14 unless it appears that you have exhausted the remedies available in state court.

15 **II. Filing a Petition**

16 To start a habeas action, you must send the court the following items: (1) an original petition
17 and (2) a check or money order for \$5.00 or an original Prisoner's Application to Proceed In Forma
18 Pauperis. In addition to these instructions, this packet includes a petition for a writ of habeas corpus
19 form and an Application to Proceed In Forma Pauperis. You must use the forms provided with this
20 packet and not any other version. You should keep a copy of the petition and in forma pauperis
21 application for your own records.

22 When you have completed the forms, mail the originals to Clerk of the United States District
23 Court for the Northern District of California, 450 Golden Gate Avenue, Box 36060, San Francisco,
24 CA 94102.

25 **NOTE:** If you previously filed a petition for a writ of habeas corpus in federal court that
26 challenged the same conviction you are challenging now and if that petition was denied or dismissed
27 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
28 for an order authorizing the district court to consider this petition. You may not file a second or
subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
U.S.C. §§ 2244(b).

29 **III. Filing Fees**

30 In order for the petition to be filed, it must be accompanied by the filing fee of \$5.00. If you are
31 unable to pay the filing fee, you may petition the court to proceed in forma pauperis. A Prisoner's
32 Application to Proceed In Forma Pauperis form for this purpose is included in this packet. You must
33 complete the application, sign it and declare under penalty of perjury that the facts stated therein are
34 correct. File the application with your petition and keep a copy for your records.

35 **IV. Petition Form**

36 Your petition must be legibly handwritten or typewritten, and you must sign it and declare under
37 penalty of perjury that the facts stated in it are correct. Read the entire petition form before answering
38 any questions. You will note that brief explanatory comments appear throughout the form. Read these
carefully before you answer the questions because they are intended to help you fill out the petition as
well as ensure that you file your petition in the proper court.

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Complete all applicable questions in the proper blank spaces. If you need additional space to answer a question, you may attach additional blank pages. Make clear the question to which any such continued answer refers.

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

V. After Petition Is Filed

You will be notified as soon as the court issues an order. It is your responsibility to keep the court informed of any changes of address to ensure that you receive court orders. Failure to do so may result in dismissal of your suit.

VI. Inquiries And Copying Requests

Because of the large volume of cases filed by inmates in this court and limited court resources, the court will not answer inquiries concerning the status of your case or provide copies of documents, except at a charge of fifty cents (\$0.50) per page. You must therefore keep copies of all documents submitted to the court for your own records.

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

2 Name _____
 (Last) (First) (Initial)

3 Prisoner Number _____

4 Institutional Address _____

5 _____

6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**

8 _____
(Enter the full name of plaintiff in this action.)

9 vs.

10 _____

11 _____

12 _____

13 _____
14 (Enter the full name of respondent(s) or jailor in this action)

15 _____

Case No. _____
(To be provided by the clerk of court)

**PETITION FOR A WRIT
OF HABEAS CORPUS**

16 **Read Comments Carefully Before Filling In**

17 **When and Where to File**

18 You should file in the Northern District if you were convicted and sentenced in one of these
19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in
24 one of the above-named fifteen counties, your petition will likely be transferred to the United States
25 District Court for the district in which the state court that convicted and sentenced you is located. If
26 you are challenging the execution of your sentence and you are not in prison in one of these counties,
27 your petition will likely be transferred to the district court for the district that includes the institution
28 where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
13 County Superior Court, Oakland):

14	_____	_____
15	Court	Location

16 (b) Case number, if known _____

17 (c) Date and terms of sentence _____

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
19 parole or probation, etc.) Yes _____ No _____

20 Where?

21 Name of Institution: _____

22 Address: _____

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 _____

27 _____

28 _____

- 1 3. Did you have any of the following?
- 2 Arraignment: Yes _____ No _____
- 3 Preliminary Hearing: Yes _____ No _____
- 4 Motion to Suppress: Yes _____ No _____
- 5 4. How did you plead?
- 6 Guilty _____ Not Guilty _____ Nolo Contendere _____
- 7 Any other plea (specify) _____
- 8 5. If you went to trial, what kind of trial did you have?
- 9 Jury _____ Judge alone _____ Judge alone on a transcript _____
- 10 6. Did you testify at your trial? Yes _____ No _____
- 11 7. Did you have an attorney at the following proceedings:
- 12 (a) Arraignment Yes _____ No _____
- 13 (b) Preliminary hearing Yes _____ No _____
- 14 (c) Time of plea Yes _____ No _____
- 15 (d) Trial Yes _____ No _____
- 16 (e) Sentencing Yes _____ No _____
- 17 (f) Appeal Yes _____ No _____
- 18 (g) Other post-conviction proceeding Yes _____ No _____
- 19 8. Did you appeal your conviction? Yes _____ No _____
- 20 (a) If you did, to what court(s) did you appeal?
- 21 Court of Appeal Yes _____ No _____
- 22 Year: _____ Result: _____
- 23 Supreme Court of California Yes _____ No _____
- 24 Year: _____ Result: _____
- 25 Any other court Yes _____ No _____
- 26 Year: _____ Result: _____
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- 28 (b) If you appealed, were the grounds the same as those that you are raising in this

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petition? Yes ____ No ____

(c) Was there an opinion? Yes ____ No ____

(d) Did you seek permission to file a late appeal under Rule 31(a)?
Yes ____ No ____

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ____ No ____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

II. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):

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a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

III. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

IV. Name of Court: _____
Type of Proceeding: _____
Grounds raised (Be brief but specific):
a. _____
b. _____
c. _____
d. _____
Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?
Yes _____ No _____

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: _____
6 _____

7 Supporting Facts: _____
8 _____
9 _____
10 _____

11 Claim Two: _____
12 _____

13 Supporting Facts: _____
14 _____
15 _____
16 _____

17 Claim Three: _____
18 _____

19 Supporting Facts: _____
20 _____
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22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 _____
26 _____
27 _____
28 _____

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 _____
5 _____
6 _____

7 Do you have an attorney for this petition? Yes _____ No _____

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on _____
14 Date Signature of Petitioner

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20 (Rev. 6/02)