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2011 NOV 30 AM 11:15  
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1 **PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

2 Name Rocha John V  
3 (Last) (First) (Initial)

4 Prisoner Number G09098

5 Institutional Address California Medical Facility  
6 1600. California Drive Vacaville California 95696-2000

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

8 John Vance Rocha  
9 (Enter the full name of plaintiff in this action.)

**CV 11 5729 SI**

10 vs.

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

11 Warden Vimal Singh  
12 & Deputy D.A. Brian Welch  
13 & Kamala D. Harris

**PETITION FOR A WRIT  
OF HABEAS CORPUS**

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

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 Superior Court Santa Clara 135 West Mission Street  
15 County San Jose Calif. 95135  
16 Court Location

16 (b) Case number, if known CC631184

17 (c) Date and terms of sentence 1-29-2008 40 years To Life

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: California Medical Facility <sup>I-22174</sup>

22 Address: 1600 California Drive Vacaville  
23 California 95696-2000

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

26 One Count of Second Degree Murder Section 187  
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3. Did you have any of the following?

Arraignment: Yes  No   
Preliminary Hearing: Yes  No   
Motion to Suppress: Yes  No

4. How did you plead?

Guilty  Not Guilty  Nolo Contendere   
Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury  Judge alone  Judge alone on a transcript

6. Did you testify at your trial?

Yes  No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes  No   
(b) Preliminary hearing Yes  No   
(c) Time of plea Yes  No   
(d) Trial Yes  No   
(e) Sentencing Yes  No   
(f) Appeal Yes  No   
(g) Other post-conviction proceeding Yes  No

8. Did you appeal your conviction?

Yes  No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes  No

Year: 2009 Result: Denied

Supreme Court of California Yes  No

Year: 9-1-2010 Result: Denied

Any other court Yes  No

Year: \_\_\_\_\_ Result: \_\_\_\_\_

(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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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: This Petition should be granted because  
6 Appellant's Constitutional Due Process rights to a  
7 Supporting Facts: Fair Trial by a fully and accurately  
8 instructed Jury and to Fundamental Fairness  
9 were Violated by Trial Court's Refusal to  
10 instruct on Justifiable Homicide. Calcrim 506

11 Claim Two: The Court's Refusal of a Justifiable  
12 Homicide instruction Deprived Appellant  
13 Supporting Facts: of Complete instructions on his  
14 Theory of the Case and requires a reversal  
15 of his Judgment of Conviction.

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17 Claim Three:

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19 Supporting Facts: Appellant's Trial Counsel's  
20 Withdrawal of a involuntary Manslaughter  
21 Instruction and his Failure to Request  
22 That the officer's opinion's be Redacted From The

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 VideoTape constituted ineffective Assistance of  
26 Counsel.

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 United States V. Escobar de Bright

5 9th Cir. 1984 742 F.2d 1196, 1201.

6 Chapman V. California 1967 386 U.S 18

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.

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13 Executed on 11-7-2011  
14 Date

John Vance Rocha  
Signature of Petitioner

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20 (Rev. 6/02)