

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

I. SCOPE OF 28 U.S.C. § 2254

You may file a petition for a writ of habeas corpus under 28 U.S.C. § 2254 if you are in custody pursuant to the judgment of a state court in violation of the federal constitution or federal statutes. You may challenge either the fact or duration of your state sentence.

Any challenge to violations of federal law that affect the *conditions*—as opposed to the fact or duration—of your confinement should be brought in a civil rights complaint under 42 U.S.C. § 1983. If you wish to file a civil rights complaint under § 1983, you may do so on the forms provided by the clerk. Ask for the packet titled *Instructions for Filing a Civil Rights Complaint by a Prisoner under 42 U.S.C. § 1983*.

IMPORTANT NOTES

- If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction or sentence you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the U.S. Court of Appeals for the Ninth Circuit for an order authorizing this court to consider this petition. You may not file a second or successive federal habeas petition without first obtaining such an order. 28 U.S.C. § 2244(b).
- A petition for a writ of habeas corpus under 28 U.S.C. § 2254 will not be granted unless you have exhausted the remedies available in state court.
- Only one sentence or conviction may be challenged in a single petition. If you challenge more than one sentence or conviction, you must do so by separate petitions.

II. FILING A PETITION

A. Where to File

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

If you are challenging your conviction or sentence and you were *not* convicted and sentenced in one of the above-named counties, your petition will likely be transferred to the federal district court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not incarcerated in one of the counties listed above, your petition will likely be transferred to the federal district court for the district that includes the institution where you are confined. *Habeas Corpus Local Rule 2254-3(b)*.

B. Whom to Name as Respondent

Name the person who has actual custody of you, which usually means the warden or jailor. Do not name the state, a city, a county or a court. These are not proper respondents. If you are not presently in custody pursuant to the judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), name the person in whose custody you are now and the Attorney General of the state in which the

judgment you seek to challenge was entered.

C. How to File

To file a habeas action, send the court the following items:

- Your original, completed petition form
Your petition must be legibly handwritten or typewritten, and you must sign it and declare under penalty of perjury that the facts stated in it are correct. Read the entire form and explanatory comments that appear throughout it before you answer the questions. Complete all applicable questions in the blanks provided; attach additional pages if you need more space for any of your answers, clearly noting the question number to which any such continued answer refers.
- A check or money order for \$5 or a completed application to proceed in forma pauperis (IFP)
The fee for filing a petition for a writ of habeas corpus is \$5. If you cannot afford to pay the fee at the time you file your petition, you may apply to proceed IFP using the forms provided by the clerk. Ask for the packet titled *Instructions for Filing an Application to Proceed In Forma Pauperis by a Prisoner under 28 U.S.C. § 1915*.

Make copies for your records and mail the original copies of your completed forms to: Clerk, U.S. District Court for the Northern District of California, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

III. MAGISTRATE JUDGE JURISDICTION

Magistrate judges are selected through a statutorily prescribed merit selection process and are appointed by the judges of this court. The court encourages parties to consent to magistrate judge jurisdiction as it may result in an earlier resolution of the matter; the rules and procedures used to decide your case will be the same regardless of whether a district judge or a magistrate judge decides your case. But you are free to decline magistrate judge jurisdiction and request that your case be decided by a district judge. Please indicate on the *Consent or Declination to Magistrate Judge Jurisdiction* form provided by the clerk whether you consent or decline to consent to magistrate judge jurisdiction.

IV. AFTER YOUR PETITION IS FILED

The clerk will assign a case number and judge to your petition and mail you a copy of the first page, which will have the case number and judge's initials stamped on it. Please retain this copy for your records and put the case number on any case-related document you send to the court. If your petition is deficient in any way, the clerk may send you a notice that will require your response. If your case is assigned to a magistrate judge before you consented or declined to consent to magistrate judge jurisdiction, the clerk may send you a *Consent or Declination to Magistrate Judge Jurisdiction* form that will require your response. Please note that it is your responsibility to inform the court in writing without delay if your address changes. You will be notified at the address the court has on record whenever the court issues an order. A failure to respond to notices or orders or a failure to update your address may result in the dismissal of your case.

V. INQUIRIES AND COPYING REQUESTS

Because of the large volume of cases filed 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. It is therefore recommended that you make and keep a copy of every document you submit to the court for your records.

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

Name: _____
LAST FIRST MIDDLE INITIAL

Prisoner Number: _____

Institutional Address: _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

_____)	Case Number: _____
)	(Provided by the clerk upon filing)
Petitioner,)	
vs.)	PETITION FOR A WRIT OF HABEAS CORPUS
_____)	
Respondent(s).)	
_____)	

I. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

A. What sentence are you challenging in this petition?

1. Name and location of court that imposed sentence (for example: Alameda County Superior Court, Oakland):
2. Court _____
3. Location _____
4. Case number, if known _____
5. Date and terms of sentence _____
6. Are you now in custody serving this term? ("In custody" means in jail, on parole or probation, etc.) YES NO

1 If yes, provide name and address of institution:

2 _____
3 _____

4 B. For what crime were you given this sentence?

5 **Note:** If your petition challenges a sentence for more than one crime, list each crime separately
using California Penal Code numbers, if known. If you are challenging more than one sentence,
you should file a different petition for each sentence.

7 _____
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10 C. Did you have any of the following proceedings?

11 Arraignment: YES NO

12 Preliminary Hearing: YES NO

13 Motion to Suppress: YES NO

14 D. How did you plead? Guilty Not Guilty Nolo Contendere

15 Any other plea (specify) _____

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

17 Jury Judge alone Judge alone on a transcript

18 F. Did you testify at your trial? YES NO

19 G. Did you have an attorney at the following proceedings:

20 1. Arraignment YES NO

21 2. Preliminary hearing YES NO

22 3. Time of plea YES NO

23 4. Trial YES NO

24 5. Sentencing YES NO

25 6. Appeal YES NO

26 7. Other post-conviction proceeding YES NO

27 H. Did you appeal your conviction? YES NO

28 1. If you appealed, to what court(s) did you appeal?

1 Court of Appeal..... YES Year:_____ NO
 2 Result: _____
 3 Supreme Court of California..... YES Year:_____ NO
 4 Result: _____
 5 Any other court YES Year:_____ NO
 6 Result: _____

7 2. If you appealed, were the grounds the same as those that you are raising in this
 8 petition?..... YES NO
 9 3. Did the court issue an opinion?..... YES NO
 10 4. Did you seek permission to file a late appeal under Rule 31(a)?..... YES NO
 11 If you did, give the name of the court and the result: _____
 12 _____

13 I. Other than appeals, have you previously filed any petitions, applications or motions with
 14 respect to this conviction in any court, state or federal?..... YES NO

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

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

21 1. Name of court: _____
 22 Type of proceeding: _____
 23 Grounds raised (be brief but specific):
 24 a. _____
 25 b. _____
 26 c. _____
 27 d. _____
 28 Result: _____ Date of result: _____

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2. Name of court: _____

Type of proceeding: _____

Grounds raised (be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of result: _____

3. Name of court: _____

Type of proceeding: _____

Grounds raised (be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of result: _____

4. Name of court: _____

Type of proceeding: _____

Grounds raised (be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of result: _____

J. Is any petition, appeal or other post-conviction proceeding now pending in any court?

..... YES NO

Name and location of court: _____

1 **II. GROUNDS FOR RELIEF**

2 State briefly every reason why you believe you are being confined unlawfully. Give facts to
3 support each claim. For example, what right or privilege were you denied? What happened?
4 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if
5 you need more space. Answer the same questions for each claim.

6 **Note:** You must present ALL your claims in your first federal habeas petition. Subsequent petitions
7 may be dismissed without review on the merits. 28 USC § 2244(b); *McCleskey v. Zant*, 499 U.S.
8 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

9 Claim One: _____

10 Supporting facts: _____

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14 Claim Two: _____

15 Supporting facts: _____

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20 Claim Three: _____

21 Supporting facts: _____

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

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

Do you have an attorney for this petition?..... YES NO

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

WHEREFORE, petitioner prays that the court grant him/her the relief to which he/she may be entitled in this action. I verify under penalty of perjury that the foregoing is true and correct.

Executed on:

Date

Signature of Petitioner