

INFORMATION AND INSTRUCTIONS
FOR FILING A PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

You should follow these instructions carefully. The failure to do so may result in your petition not being filed and considered by the court, or at least being delayed. If you add additional pages, be sure to identify what is being continued or the number of the additional ground(s).

A. Information About the Petition for Writ of Habeas Corpus Form and Procedure:

1. The petition for writ of habeas corpus form is designed to help you prepare a petition seeking relief pursuant to 28 U.S.C. § 2254. Local Special Rule 3-1 requires the use of the petition for writ of habeas corpus form by anyone not represented by counsel -- that is, if they are proceeding pro se. For your petition to be considered by the District Court, it must be typewritten or legibly handwritten. (See Local Rule IA 10-1.) **DO NOT WRITE ON THE BACK OF ANY OF THE PAGES.** Any writing on the back of any page might not be considered by the court. All information must be clearly and concisely written, only in the space provided on the form, and only one line of writing per line provided. Do not write in the margins. If needed, you may attach additional pages of standard letter-size paper to add further information about grounds or to state additional grounds. Be sure you make clear to which grounds the information on the additional pages applies.

2. You must sign the petition, and your signature constitutes a certificate that: 1) you have read the petition; 2) to the best of your knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and law; and 3) it is not being filed for any improper purpose. You should review Rule 11 of the Federal Rules of Civil Procedure. Note also that Rule 11 provides for the imposition of sanctions if the petition is signed in violation of the rule. Additionally, if a court finds that you have engaged in sanctionable conduct (such as pursuing a frivolous or malicious action), and if you are under the control of the Nevada Department of Corrections, you can be disciplined under the Code of Penal Discipline, which can include all sanctions authorized under the Code, including punitive confinement and the loss of good time credits. Lastly, the petition must be signed under penalty of perjury. A false statement or answer to any question in the petition can subject you to federal prosecution (see 28 U.S.C. § 1746 and 18 U.S.C. § 1621) as well as state prosecution (see Nev. Rev. Stat. § 199.145).

3. If you are seeking to proceed in forma pauperis, you will need to fill out the appropriate federal forms and attach supporting documentation. Should the court determine that you do not qualify to proceed in forma pauperis, the court will order you to pay the five dollar (\$5.00) filing fee.

4. If you are currently residing in a county that is part of the unofficial Northern Division, then you should mail your petition to the Reno address. If you are currently residing in a county that is part of the unofficial Southern Division, then you should mail your petition to the Las Vegas address. The counties in the unofficial Southern Division are Clark, Esmeralda, Lincoln, and Nye. All other counties are in the unofficial Northern Division. (See Local Rule LR IA 1-6 and Local Rule LR IA 1-8.) Once your case is filed, a copy will be sent to you by the clerk of court. When you have finished writing your petition, you should mail only the original with the proper filing fee

or an application to proceed in forma pauperis (see the separate "Information and Instructions for Filing an Application to Proceed In Forma Pauperis" to determine whether you need to submit a filing fee) to:

Clerk, U.S. District Court
District of Nevada
400 South Virginia Street
Room 301
Reno NV 89501

OR

Clerk, U.S. District Court
District of Nevada
333 Las Vegas Boulevard South
Room 1334
Las Vegas NV 89101

5. Except for the initial petition and initial application to proceed in forma pauperis submitted to commence an action, you must write the correct case number on the front page of all documents you submit to the court. Once the respondents have appeared in the case, you need not serve the respondents copies of documents you file in the case. Any document you file after the respondents have appeared will be considered served on the respondents when it appears on the district court docket.

6. If you wish to have a file-stamped copy of any filed document returned to you, you must furnish one additional copy of the document to the clerk with your filing.

7. Exhibits should not be submitted with the petition. Instead, the relevant information in an exhibit should be paraphrased in the petition. You should, however, attach to the petition a copy of all final state court written decisions regarding the conviction you are challenging.

8. You must immediately notify the clerk and the opposing party or their attorney in writing of any change in your mailing address. (See LR IA 3-1.)

9. If you need to change any of the information in the initial petition, you can only do so by filing an amended petition, which must also be written on the petition for writ of habeas corpus form. Local Rule LR 15-1 requires that any amended pleading be complete in itself, without reference to any prior pleading. This is because an amended petition supersedes prior petition. Consequently, the amended petition must contain all the grounds for relief that you wish to pursue.

10. It is inappropriate to write a letter to any of the district judges, magistrate judges, or the staff of any of the judicial officers. The only appropriate way to communicate with these persons is by filing a written motion. The judges of this court, the clerk of court, deputy clerks and other court staff are officers of the court, and as such they are prohibited from giving legal advice. Questions of this nature should be directed to an attorney who is not a member of the court's staff.

B. General Information About Petitions for Writ of Habeas Corpus:

1. To be able to file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, you must be challenging the validity of a state court conviction and/or sentence, or the computation of time toward the sentence, and you must be "in custody." Most petitioners meet the "in custody" requirement because when they file their petition they are confined based on a state court conviction. However, individuals on probation or parole are still "in custody" within the meaning of the statute.

2. Only one judgment of conviction can be challenged in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Therefore, if you have multiple judgments, then each must be challenged in a separate petition.

For example, if you have two judgments of conviction, one from Clark County and the other from Washoe County, then you would have to file two petitions. Also, if you have two judgments of conviction from the same county, but each is from separate proceedings that resulted in two judgments, then you have to file separate petitions (i.e., one for each judgment). But if you had multiple charges or indictments that were tried together or that were part of a plea bargain, and which resulted in a single judgment of conviction (even though there are multiple sentences), then the validity of the conviction(s) and/or sentence(s) can be challenged in a single petition. The reason only one petition is required in that case is because there is only one judgment of conviction.

3. Because you are challenging the validity of a state court conviction and/or sentence in a federal court, you need to first challenge the validity of the conviction and/or sentence in the state courts. This is the "exhaustion" requirement. There are two ways to meet this requirement. The first is to appeal from the judgment of the trial court. This is called a direct appeal. On the direct appeal you should have argued every reason why you believe the conviction and/or sentence is invalid. The second way to challenge the validity of the conviction and/or sentence is to start a separate proceeding by filing a petition for writ of habeas corpus with the trial court. (See § 34.720 - § 34.830 of the Nevada Revised Statutes.) Claims of ineffective assistance of counsel generally will not be considered on a direct appeal. Instead, such claims usually must be raised in a petition for writ of habeas corpus.

To meet the exhaustion requirement, you must fairly present your claims to the state appellate court. Simply raising your claims in the trial court is not enough. You must give the state appellate court an opportunity to rule on your claims, and you must present that opportunity in accordance with state procedure. State procedure requires that you file a direct appeal from the conviction and, if appropriate, a post-conviction petition for writ of habeas corpus in the trial court followed by an appeal.

Exhaustion requires that you fairly present to the state courts all of your claims and the facts that support each claim. If you present some claims to the state court, but present new ones (or new supporting facts) in your federal petition that were not fairly presented to the state court, then the new claims (or facts) are "unexhausted," and a federal court cannot grant you relief based on these "unexhausted" claims. You can file a federal petition containing unexhausted claims, but you will have to move to stay the petition to return to state court to fully exhaust your federal petition.

4. In a petition for writ of habeas corpus, the various reasons you contend the conviction and/or sentence is invalid are stated in "grounds." Each ground in a federal petition must contend that the conviction and/or sentence is invalid because it was obtained in violation of a federal constitutional right or is contrary to federal law that is applicable to the states. A federal court cannot review the validity of the conviction and/or sentence unless a federally protected right is involved.

For example, a state court's failure to follow state procedural rules, such as the admissibility of evidence, is not something that can be reviewed in a federal petition, unless the failure infringed upon a federally protected right.

5. You generally are entitled to federal review of your state court conviction and/or sentence only one time. Once you have had the merits of your grounds reviewed by a federal court, then you are limited in the ways in which to commence a second federal action challenging the same conviction and/or sentence. A second action, after the first was reviewed on the merits, is called a successive petition. Note that the successive petition is filed in a second action. An amended petition filed in the first action is not a successive petition.

There are a few exceptions, that will allow successive petition to be reviewed on the merits. Before you file a successive petition with this court, you will need to first get permission from the Ninth Circuit Court of Appeals. If you are attempting to file a successive petition, you should review 28 U.S.C. §§ 2244 and 2254 to see whether you will qualify.

6. A federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 must be filed within one year of the date on which your state conviction became final. The time begins to run when the conviction is final; that is, when the direct appeal process is completed, and the time for seeking certiorari in the United States Supreme Court has expired. Also, the time during which a properly filed post-conviction petition for writ of habeas corpus is pending in the state courts (both the trial court and the state appellate courts) is not counted towards the one year deadline.

For example, if you waited four months after the direct appeal process before you filed the petition for writ of habeas corpus in the state court, then you would have to file your federal petition for writ of habeas corpus within eight months after the state post-conviction proceedings were finished. If you fail to meet the one year deadline, then you may be forever barred from having a federal court review the validity of your state court conviction and/or sentence.

7. You do not have a constitutional right to the appointment of counsel in federal habeas corpus proceedings. The court has the discretion whether to appoint the federal public defender or other attorney to represent you in these proceedings. If you wish to have counsel appointed, you need to file a motion in which you explain why you should have counsel.

C. Completing the Petition for Writ of Habeas Corpus Form:

1. Print your name and mailing address on the lines provided. If you have an inmate number, be sure to write it on the line provided.

2. Space is provided for your name and that of the person who is in charge of the facility in which you are confined.

3. If you have been sentenced to death and an execution date has been set, then state the date and time of the scheduled execution.

4. Fill in all of the requested information about your conviction and sentence in the spaces provided. Be sure to write in the requested dates regarding state court proceedings, as well as the date you mailed this petition. If you are in jail, prison, or some other type of confinement that prevents you from being able to come to the courthouse to file the petition yourself, then the date of mailing is the date you handed the petition to a correctional officer for mailing to this court. This information is needed to determine whether you meet the one year filing deadline.

5. The form provides space for asserting three grounds for relief. This is where you specify how the conviction and/or sentence was obtained in violation of your constitutional rights. If you are alleging more than three grounds, attach an additional page for each additional ground (so that there is only one ground per page) and an additional page that provides the information regarding exhaustion of that additional ground. You should make a photocopy of pages 3 and 4 and re-number the ground. Number the additional pages "8-A," "8-B," etc., and insert them immediately behind page 8.

6. In each ground, you must identify which constitutional right was violated. You need to identify which constitutional amendment was violated and which provision of that amendment. For example, if you are alleging that your attorney was ineffective, you would state that your Sixth Amendment right to the effective assistance of counsel was violated. In the space provided, you need to state the facts that support your ground. Using the above example, you need to explain what your attorney did, or did not do, that resulted in your being denied the right to the effective assistance of counsel.

In order to avoid a claim that you did not fully exhaust a ground or the supporting facts, you should not change which constitutional right you claim was violated nor add new facts that were not presented to the state courts. For example, if in state court you contended in a specific ground that your Fifth Amendment rights were violated but did not contend in that ground that your Sixth Amendment rights were violated, then you should not assert a Sixth Amendment right regarding that ground in this federal petition. If you do, the respondents may claim that the Sixth Amendment claim in that ground is unexhausted.

7. On the page following each ground, you need to explain when, where, and how you presented the ground to the state courts. This information is needed to determine whether there has been complete exhaustion. Remember, if you have not exhausted a ground, a federal court cannot grant you relief based on that unexhausted ground.

8. You must sign your name and write your inmate number (if you have one) on the lines provided at the end of the form. The signature must be an original signature, not a photocopy. Remember the warning at the beginning of these instructions about the requirements of Rule 11 of the Federal Rules of Civil Procedure. If someone wrote the petition for writ of habeas corpus for you (such as an inmate law clerk or "jailhouse lawyer"), then that person must write their name on the line next to your signature.

Name

Inmate Number

Place of Confinement

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

_____, Petitioner,)
(Full Name))

vs.)

CASE NO. _____

(To be supplied by the clerk)

_____, Respondent,)
(Name of Warden, Superintendent, jailor or)
authorized person having custody of petitioner))

and)

PETITION FOR A
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY
(NOT SENTENCED TO DEATH)

The Attorney General of the State of Nevada.)

1. Name and location of court, and name of judge that entered the judgment of conviction you are challenging: _____
_____.
2. Full date judgment of conviction was entered: ___/___/___(month/day/year).
3. Did you appeal the conviction? ___Yes ___No. Date appeal decided: ___/___/___.
4. Did you file a petition for post-conviction relief or petition for habeas corpus in the state court? ___Yes ___No. If yes, name the court and date the petition was filed: _____
_____/___/_____. Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? ___Yes ___No. Date the appeal was decided: ___/___/_____. Have all of the grounds stated in this petition been presented to the state supreme court? ___Yes ___No. If no, which grounds have not? _____
_____.
5. Is this the first federal petition for writ of habeas corpus challenging this conviction? ___Yes ___No. If no, what was the prior case number? _____. In what court was the prior action filed? _____. Was the prior action

____denied on the merits or ____dismissed for procedural reasons (check one)? Date of decision: ____/____/____. Are any of the issues in this petition raised in the prior petition? ____Yes ____No. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition? ____Yes ____No.

6. Do you have any petition, application, motion, or appeal (or by any other means) now pending in any court regarding the conviction that you are challenging in this action? ____Yes ____No. If yes, state the name of the court and the nature of the proceedings: _____

7. Case number of the judgment of conviction being challenged: _____.

8. Length and terms of sentence(s): _____.

9. Start date and projected release date: _____.

10. What was (were) the offense(s) for which you were convicted?: _____

11. What was your plea? ____Guilty ____Not Guilty ____Nolo Contendere. If you pleaded guilty or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement: _____

12. Who was the attorney that represented you in the proceedings in state court? Identify whether the attorney was appointed, retained, or whether you represented yourself pro se (without counsel).

| | <u>Name of Attorney</u> | <u>Appointed</u> | <u>Retained</u> | <u>Pro Se</u> |
|---------------------------------|-------------------------|------------------|-----------------|---------------|
| Arraignment and Plea | _____ | _____ | _____ | _____ |
| Trial/Guilty Plea | _____ | _____ | _____ | _____ |
| Sentencing | _____ | _____ | _____ | _____ |
| Direct Appeal | _____ | _____ | _____ | _____ |
| 1st Post-Conviction Petition | _____ | _____ | _____ | _____ |
| Appeal from Post-Conviction | _____ | _____ | _____ | _____ |
| 2nd Post-Conviction Petition | _____ | _____ | _____ | _____ |
| Appeal from 2nd Post-Conviction | _____ | _____ | _____ | _____ |

Did you raise this issue in a petition for post-conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

_____.

If yes, name of court: _____. Date petition filed: ____/____/____. Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

_____.

If yes, did you raise this issue? Yes No. If no, explain why not: _____

_____.

< **Second Post-Conviction:**

Did you raise this issue in a second petition for post-conviction relief or state petition for habeas corpus? Yes No. If no, explain why not: _____

_____.

If yes, name of court: _____. Date petition filed: ____/____/____. Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

_____.

If yes, did you raise this issue? Yes No. If no, explain why not: _____

_____.

< **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

_____.

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 2

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my

_____ Amendment right to _____, based on these facts:

Exhaustion of state court remedies regarding Ground 2:

< Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court? Yes No. If no, explain why not: _____

< First Post-Conviction:

Did you raise this issue in a petition for post-conviction relief or state petition for habeas corpus? Yes No. If no, explain why not: _____

If yes, name of court: _____ . Date petition filed: ___/___/___ . Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

< Second Post-Conviction:

Did you raise this issue in a second petition for post-conviction relief or state petition for habeas corpus? ___Yes ___No. If no, explain why not: _____
_____.

If yes, name of court: _____. Date petition filed: ___/___/____. Did you receive an evidentiary hearing? ___Yes ___ No. Did you appeal to the Nevada Supreme Court? ___Yes ___No. If no, explain why not: _____
_____.

If yes, did you raise this issue? ___Yes ___No. If no, explain why not: _____
_____.

< Other Proceedings:

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___Yes ___No. If yes, explain: _____
_____.

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 3

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my _____Amendment right to _____, based on these facts:

Exhaustion of state court remedies regarding Ground 3:

< Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court? ___Yes
___ No. If no, explain why not: _____

< First Post-Conviction:

Did you raise this issue in a petition for post-conviction relief or state petition for habeas corpus?
___Yes ___ No. If no, explain why not: _____

If yes, name of court: _____. Date petition filed: ___/___/____. Did you
receive an evidentiary hearing? ___Yes ___ No. Did you appeal to the Nevada Supreme Court?
___Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___Yes ___ No. If no, explain why not: _____

< Second Post-Conviction:

Did you raise this issue in a second petition for post-conviction relief or state petition for habeas
corpus? ___Yes ___ No. If no, explain why not: _____

If yes, name of court: _____. Date petition filed: ___/___/____. Did you
receive an evidentiary hearing? ___Yes ___ No. Did you appeal to the Nevada Supreme Court?
___Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___Yes ___ No. If no, explain why not: _____

< Other Proceedings:

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___Yes ___No. If yes, explain: _____

Date you are mailing (or handing to correctional officer) this petition to this court: ___/___/____. Attach to this petition a copy of all state court written decisions regarding this conviction.

WHEREFORE, petitioner prays that the court will grant him such relief to which he is entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody.

(Name of person who wrote this complaint if not Petitioner)

(Signature of Petitioner)

(Date)

(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at _____ on _____
(Location) (Date)

(Signature)

(Inmate number)