

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

222 West 7th Avenue #4
Anchorage, Alaska 99513-7564
(907) 677-6100

**INSTRUCTIONS FOR FILING A PETITION FOR
WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254**

READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY IN PREPARING YOUR PETITION

If you are proceeding without an attorney, you should carefully read this Court's handbook, "Representing Yourself in Alaska's Federal Court," which can be obtained from the Clerk's Office or on-line at the court's website <http://www.akd.uscourts.gov>.

A. GENERAL INFORMATION ABOUT THE PETITION FOR WRIT OF HABEAS CORPUS FORM

1. **The filing fee for filing a habeas petition is \$5.00, and must accompany the petition.** If you cannot afford the fee you may file a **Prisoner's Application to Waive Prepayment of Fees**. The instructions and forms for applying to waive prepayment of fees are available from the Clerk's Office. Please follow the instructions carefully. The form must be **fully completed** by **all prisoners** wishing to waive prepayment of fees, including the Certificate and Calculation portion, which must be completed by a corrections official.

2. **You must use the form provided by the Clerk of the Court.** The petition for writ of habeas corpus form is designed to help you, a person in **state custody**, prepare a petition seeking relief under 28 U.S.C. § 2254. The petition must be typewritten or legibly handwritten. All information must be clearly and concisely written, in the space provided on the form. **Do not write in the margins or on the back of pages.** If needed, you may attach additional pages of standard letter size paper. If you are using additional sheets, be sure to make clear to which question(s) on the form the additional information refers. You must fully complete the petition or the Court will return the petition to you for completion. Read the Federal Habeas Rules (entitled "Rules Governing Section 2254 Cases in the United States District Courts"), this Court's Local Habeas Corpus Rules, and Rule 11 of the Federal Rules of Civil Procedure. Because you must **sign the petition under penalty of perjury**, a false statement or answer to any question in the petition can subject you to federal prosecution. Federal Rule of Civil Procedure 11 provides for sanctions.

3. **File the petition with the Clerk of the Court.** Mail your **original petition** and **two copies**, with the **\$5.00 filing fee**, or fully completed application to waive prepayment of fees, to the Clerk's Office at the above address. You should always keep a copy for your own records. **Copies** made by the Court are **\$.50 per page**, even if prepayment of fees has been waived, unless otherwise ordered by the court.

DO NOT SEND YOUR PETITION OR ANY OTHER MOTION OR COMMUNICATION DIRECTLY TO A JUDGE.

4. ***Do not file exhibits with the petition.*** **EXCEPT:** You should attach to the petition a copy of the **state court written decision(s)** regarding the conviction you are challenging.

B. GENERAL INFORMATION ABOUT PETITIONS FOR WRIT OF HABEAS CORPUS

1. ***You must be challenging a state court conviction.*** To be able to file a petition for writ of habeas corpus under 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 being confined based on a state court conviction. However, individuals on probation or parole are still “in custody” within the meaning of the statute.

2. ***You may challenge only one state court conviction in each petition.*** Only **one judgment** of conviction can be challenged in a petition for writ of habeas corpus under § 2254. Therefore, if you have multiple judgments, each must be challenged in a separate petition.

3. ***You must first have exhausted your remedies in state court.*** Because you are challenging the validity of a **state** court conviction in **federal** court, you must first challenge the conviction and/or sentence in the state courts. There are two ways to meet this requirement. The first is to appeal to the Alaska Court of Appeals and Alaska Supreme Court from the trial court. This is called a **direct appeal**. On direct appeal, you should have argued the same reasons 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** or an **application for post-conviction relief under Alaska statutes/court rules** with the state’s trial court, which must also be appealed to the Alaska Court of Appeals and Alaska’s Supreme Court.

A federal court *cannot* order your release, or that you be given a new trial or sentencing hearing, unless you have first presented your claims to the state court. Presenting your claims to a state court is called **“exhaustion,”** which simply means that you have exhausted (or **completed**) **all procedures available** in the state courts for challenging your conviction and/or sentence before presenting your claims to a federal court. Simply raising your claims in the trial court is not enough. If you lose in the trial court, you must complete the appellate process for exhaustion to occur. That is, to meet the exhaustion requirement you must present your claims to the Alaska Court of Appeals and Alaska’s Supreme Court.

“Exhaustion” requires that you fairly present to the state courts *all* 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, then the new claims (or facts) are “unexhausted.” A federal court cannot grant you relief on the unexhausted claims.

4. ***You must be alleging a violation of the U.S. Constitution or federal law.*** In a writ for 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.*

5. ***You may only challenge your conviction in federal court one time.*** You are entitled to a 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, you cannot begin 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**. Rarely will a successive petition be reviewed on the merits. Before you file a successive petition with this Court, you must 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 & 2254 to see whether you qualify.

6. ***You must file the petition within one year.*** A federal petition for writ of habeas corpus under § 2254 must be filed within one (1) year of the date on which your state court conviction became final. This time begins to run when the conviction is final, that is, when the direct appeal process is completed. Also, the time during which a properly filed post-conviction petition for writ of habeas corpus is pending in the state courts (in both the trial court and on appeal) is not counted toward the one year deadline. However, the one-year period continues to run while a later-dismissed petition is pending in federal court; so, if you mistakenly file your petition and it is ultimately dismissed without prejudice (for example, because you failed to exhaust your state court remedies), the time continues to run the entire time your habeas case is open in federal court. Thus, you should timely and fully exhaust all possible state court remedies, all the way to the Alaska Supreme Court, and bring your federal petition within the one-year time period.

If you fail to meet the one year deadline, you may be forever barred from having a federal court review the validity of your state court conviction and/or sentence.

C. COMPLETING THE PETITION FOR WRIT OF HABEAS CORPUS FORM

1. ***Provide your name and address.*** Print or type your name and mailing address on the lines provided at the top of the petition. If you have a prison or jail inmate number, be sure to write it on the line provided.
2. ***Identify the person who has legal custody of you.*** Space is provided on the first page, in the **caption**, for your name and the name of the person who is in charge of the facility in which you are confined. That person is the respondent. The State of Alaska is *NOT* the respondent.
3. ***Provide complete information about your conviction.*** Fill in all 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 filing is the date you handed this petition to a correctional officer for mailing to this Court.

4. ***State with specificity the grounds you assert entitle you to relief under federal law.*** 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 federally protected rights. **YOU MAY ALLEGE THE VIOLATION OF ONLY ONE FEDERAL RIGHT PER GROUND.** The form lists the most frequently raised grounds for relief in habeas corpus proceedings, to assist you. If you are alleging more than three grounds, attach additional pages for each additional ground and information regarding exhaustion of that additional ground. You should make a photocopy of pages 5 and 6 (or use the continuation sheet), and re-number the additional ground, “Ground 4.” Number the additional pages 10A, 10B, 10C, *etc.* and insert them immediately behind page 10.

5. ***State the facts.*** You also need to state the facts that support each ground in the space provided. *For example*, if you are alleging ineffective counsel, you need to state what your attorney did or did not do that resulted in your being denied your Sixth Amendment right to the effective assistance of counsel. In order to avoid a claim that you did not fully exhaust this ground or the supporting facts, you should not change which constitutional right you claim was violated and you should not add new facts that were not presented to the state courts.

6. ***Show that you have exhausted your remedies in state court.*** Following each ground and supporting facts, you need to explain when, where and how you presented that ground to the state court. 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.**

7. ***Sign the petition.*** You must sign your name and write your prison or jail 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. If someone wrote this petition for you (such as an inmate law clerk or “jailhouse lawyer”), then that person must also sign the petition.

8. ***File the petition in the district court in the state in which you were convicted.*** Generally, you should file your habeas petition in the state where you were sentenced.

9. ***Do you need appointed counsel?*** The Court may appoint an attorney for a habeas petitioner who cannot afford one. If you wish to be considered for court-appointed counsel, you must file a motion on this Court's form USDCA 40, Application for Appointment of Counsel, and CJA 23, Financial Affidavit

D. FINAL NOTES

Use the case number on all future documents filed. After filing the initial petition beginning your action, you must write the correct **case number** on the front page of all documents you send to the Court. You should file an *original and a copy* of all petitions and motions, and keep a copy for yourself.

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

COURT USE ONLY

**PETITION FOR
WRIT OF *HABEAS CORPUS*
[28 U.S.C. § 2254]**

Name: _____ Prisoner No. _____

Place of Confinement:

Name of Petitioner (include name under which convicted) Respondent (authorized person having custody of petitioner **not the State of Alaska**)

V.

PETITION

1. Name and location of the court that entered the judgment of conviction under attack:

2. Date of Judgment of Conviction: _____
Case Number _____
3. What was your Plea? (Check one)
Guilty Not Guilty Nolo Contendere
- a. If you entered a guilty plea to one count of the indictment and a not guilty plea to another count give details: _____

b. If you entered a plea of guilty under a plea bargain agreement state the terms and conditions of the agreement: _____

4. Were you sentenced on more than one count of an indictment, in the same court at the same time?
Yes No

5. What was (were) the count(s) of which you were convicted? (All Counts) _____

6. Type of Trial (Check one only) Jury Judge Only

7. Did you testify at trial? Yes No

8. Length of sentence _____

9. Do you have any **future state court sentence** to serve after you complete the sentence imposed by the judgment under attack? Yes No

If "yes," you must add the state's Attorney General as an additional respondent. If you have a sentence to be served now or in the future under a **federal** judgment that you wish to attack, you should file a motion under 28 U.S.C. § 2255, in the federal court that entered the judgment.

a. **If yes**, give the name and location of the court that imposed the sentence to be served in the future:

b. Length of sentence _____ Date to begin _____

c. Have you filed, or do you contemplate filing, any petition attacking the judgment that imposed the sentence to be served in the future? Yes No

10. Did you file a petition for certiorari in the United States Supreme Court? Yes No
- a. If yes, Docket No. (if you know) _____
- b. Result: _____
- c. Date of Result: _____
- d. Case Citation (if you know) _____
- e. Grounds raised: _____
- _____
- _____
- _____

CAUTION: *In order to proceed in federal court, you must first **exhaust** your state court remedies as to each ground on which you request action by the federal court.* You are cautioned that there is a **one-year limitations period** in which to file a habeas petition in federal court, and that a petition brought under § 2254 will be dismissed if not brought within that period, unless there are “extraordinary circumstances” beyond your control that made it impossible to file your petition on time. The one year limitations period is tolled (suspended) during any **state** court post-conviction proceedings.^{1/} If you file a petition in federal court before you have fully exhausted your claim(s) in state court, the federal petition will **not** toll the statute of limitations.

^{1/} 28 U.S.C. § 2244(d)(1): A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

11. If your judgment of conviction became final over one year ago, explain why the one-year statute of limitations does not bar your petition: _____

GROUNDS FOR RELIEF

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. You may also have grounds that are not listed here. Do not check any of these listed grounds. If you select any of these grounds for relief, you must allege **facts**. The petition will be returned to you if you merely check specific grounds.

- a. Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with an understanding of the nature of the charge and the consequences of the plea.
- b. Conviction obtained by use of coerced confession.
- c. Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- d. Conviction obtained by use of evidence gained pursuant to an unlawful arrest.
- e. Conviction obtained by a violation of the privilege against self-incrimination.
- f. Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- g. Conviction obtained by a violation of the protection against double jeopardy.
- h. Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- i. Denial of effective assistance of counsel.
- j. Denial of right of appeal

State each ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize *briefly and concisely* the facts supporting each ground. If you claim more than three grounds, make copies of blank pages 5 - 6, and attach those pages stating additional grounds and *facts* that support those grounds. 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 future action.

12. **Ground 1** (a – j) _____ (just one), or other: _____

Supporting FACTS (State *briefly*, without citing cases or law) _____

13. **Exhaustion of state court remedies regarding Ground 1:**

 **Direct Appeal:**

a. Did you raise *this issue* on direct appeal from the conviction to the Alaska Court of Appeals?

Yes No Result: _____

Case No. _____ Date of Decision: _____

If no, why not? _____

b. Did you raise *this issue* on direct appeal from the conviction to the Alaska Supreme Court?

Yes No Result: _____

Case No. _____ Date of Decision: _____

If no, why not? _____

 **Post-Conviction:**

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

Yes No Name of Court: _____

Case No. _____ Date Petition Filed _____

Did you receive an evidentiary hearing? Yes No

Result _____ Date of Result: _____

If you did not raise this issue, why not? _____

d. Did you appeal *this issue* to the Alaska Court of Appeals? Yes No

Result: _____

Case No. _____ Date of Result: _____

If no, Why not? _____

e. Did you appeal *this issue* to the Alaska Supreme Court? Yes No

Result: _____

Case No. _____ Date of Result: _____

If no, Why not? _____

Other Proceedings:

f. 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: _____

14. **Ground 2** (a – j) ____ (just one), or other: _____

Supporting FACTS (State *briefly*, without citing cases or law) _____

15. **Exhaustion of state court remedies regarding Ground 2:**

 **Direct Appeal:**

a. Did you raise *this issue* on direct appeal from the conviction to the Alaska Court of Appeals?

Yes No Result: _____

Case No. _____ Date of Decision: _____

If no, why not? _____

b. Did you raise *this issue* on direct appeal from the conviction to the Alaska Supreme Court?

Yes No Result: _____

Case No. _____ Date of Decision: _____

If no, why not? _____

 **Post-Conviction:**

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

Yes No Name of Court: _____

Case No. _____ Date Petition Filed _____

Did you receive an evidentiary hearing? Yes No

Result _____ Date of Result: _____

If you did not raise this issue, why not? _____

d. Did you appeal *this issue* to the Alaska Court of Appeals? Yes No

Result: _____

Case No. _____ Date of Result: _____

If no, Why not? _____

e. Did you appeal *this issue* to the Alaska Supreme Court? Yes No

Result: _____

Case No. _____ Date of Result: _____

If no, Why not? _____

 **Other Proceedings:**

f. 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: _____

16. **Ground 3** (a – j) ____ (just one), or other: _____

Supporting FACTS (State *briefly*, without citing cases or law) _____

17. **Exhaustion of state court remedies regarding Ground 3:**

☞ Direct Appeal:

a. Did you raise *this issue* on direct appeal from the conviction to the Alaska Court of Appeals?

Yes No Result: _____

Case No. _____ Date of Decision: _____

If no, why not? _____

b. Did you raise *this issue* on direct appeal from the conviction to the Alaska Supreme Court?

Yes No Result: _____

Case No. _____ Date of Decision: _____

If no, why not? _____

☞ Post-Conviction:

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

Yes No Name of Court: _____

Case No. _____ Date Petition Filed _____

Did you receive an evidentiary hearing? Yes No

Result: _____ Date of Result: _____

If you did not raise this issue, why not? _____

d. Did you appeal *this issue* to the Alaska Court of Appeals? Yes No

Result: _____

Case No. _____ Date of Result: _____

If no, Why not? _____

e. Did you appeal *this issue* to the Alaska Supreme Court? Yes No

Result: _____

Case No. _____ Date of Result: _____

If no, Why not? _____

☞ Other Proceedings:

- f. 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: _____

18. Have ***all grounds*** raised in this petition been presented to the highest state court having jurisdiction?

Yes No

- a. If no, which grounds have not been presented? _____

- b. Explain reasons for not presenting grounds: _____

Attach a copy the highest state court written decision(s) regarding this conviction.

If you have not attached copies of your state court written decision(s), why not? _____

SUCCESSIVE PETITIONS

19. Is this the first *federal* petition for writ of *habeas corpus* challenging this conviction? Yes No

- a. If no, in what court was the prior action filed? _____

_____ Case No. _____

- b. Was the prior case: (Check one) Denied on the merits or Dismissed on procedural grounds

- c. Date of decision _____

- d. Are there any issues raised in this petition that were raised in the prior petition? Yes No

- e. 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

If yes, please attach a copy of the order. Attached? Yes No

***** YOU MUST OBTAIN PERMISSION BEFORE FILING YOUR SUCCESSIVE PETITION. *****

20. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment being attacked:

a. Preliminary Hearing _____

b. Trial _____

c. Sentencing _____

d. Appeal _____

e. Post-conviction Proceeding _____

f. Appeal from adverse ruling in Post-Conviction Proceeding _____

21. 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: _____

Date you are mailing (or handing to correctional officer) this petition to the Court: _____

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

Signature of Petitioner

Signature of Attorney (if any)

(Signature of person who prepared this petition, if not
Petitioner)

Typewritten/Printed Name of Attorney

Typewritten/Printed Name of Person who prepared this
petition

Address of Attorney:

Address of Person who Prepared Petition:

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.**

Executed at: _____ Date: _____

Location where signed

Signature of Petitioner

Inmate Number

Did you receive an evidentiary hearing? Yes No

Result _____ Date of Result: _____

If you did not raise this issue, why not? _____

d. Did you appeal *this issue* to the Alaska Court of Appeals? Yes No

Result: _____

Case No. _____ Date of Result: _____

If no, Why not? _____

e. Did you appeal *this issue* to the Alaska Supreme Court? Yes No

Result: _____

Case No. _____ Date of Result: _____

If no, Why not? _____

 **Other Proceedings:**

f. 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: _____
