

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

(If you were sentenced under a *federal* judgment which you wish to attack, you should file a motion under 28 U.S.C. § 2255 in the federal court which entered the judgment.)

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

Instructions-Read Carefully

- (1) You must legibly handwrite or type this petition and sign it under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. You must answer all questions concisely in the proper space on the form.
- (2) You may not attach additional pages except with respect to the facts which you rely upon to support your grounds for relief and except for court orders and decisions that this form requests. You need not cite any legal authorities. If you submit briefs or legal arguments, you should submit them in a separate memorandum.
- (3) Upon receipt of a fee of \$5, your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If the court does not grant your request to proceed *in forma pauperis*, you must pay the filing fee as required by the rules of the district court.
- (5) You may only challenge judgments entered by one court in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) You must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When you fully complete the petition, you must mail the original and at least two copies to:

Clerk of the Court
United States District Court
Western District of New York
2 Niagara Square
Buffalo, NY 14202

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

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

United States District Court	<i>District</i>	
<i>Name</i>	<i>Prisoner No.</i>	<i>Case No.</i>
<i>Place of Confinement</i>		
<i>Name of Petitioner (include name under which convicted)</i>		<i>Name of Respondent (authorized person having custody of petitioner)</i>
		V.
<i>The Attorney General of the State of:</i>		

PETITION

1. Name and location of court which entered the judgment of conviction under attack _____

2. Date of judgment of conviction _____

3. Length of sentence _____

4. Nature of offense involved (all counts) _____

5. What was your plea? (Check one)
 - (a) Not guilty
 - (b) Guilty
 - (c) Nolo contendere
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury
 - (b) Judge only

7. Did you testify at the trial?
 Yes No

8. Did you appeal from the judgment of conviction?
 Yes No

9. If your answer to 8. was "yes," attach a copy of the appeals court decision to this petition and answer the following:

(a) Name of court (e.g., NYS Sup. Court, 4th Dept.) _____

(b) Result _____

(c) Date of result and citation, if known _____

(d) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

10. Did you seek further review of the appeals court decision by a higher state court (e.g., the NYSCourt of Appeals)?

Yes No

11. If your answer to 10. was "yes," attach a copy of the higher state court decision to this petition and answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result and citation, if known _____

(d) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

12. Did you file a petition for certiorari in the United States Supreme Court?

Yes No

13. If your answer to 12. was "yes," attach a copy of the United States Supreme Court decision to this petition and please answer the following with respect to each direct appeal you asked the United States Supreme Court to review:

(a) Result _____

(b) Date of result and citation, if known _____

(c) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g. a petition under NY CPL § 440, a state habeas petition, or a previous petition under 28 U.S.C. 2254) with respect to this judgment in any court, state or federal?

Yes No

15. If your answer to 14. was "yes," attach a copy of that court's decision to this petition and give the following information:

(a) Name of court _____

(b) Nature of proceeding _____

(c) Date Filed _____

(d) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

(e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes No

(f) Result _____

(g) Date of result _____

16. If your answer to 14. was "yes" and you also filed a second petition, application, or motion, attach a copy of that court's decision to this petition and give the same information:

(a) Name of court _____

(b) Nature of proceeding _____

(c) Date Filed _____

(d) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

(e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes No

(f) Result _____

(g) Date of result _____

As to any third, fourth, etc. petition, application, or motion, attach a copy of that court's decision to this petition and give the same information asked for under 15. and 16.

17. If your answer to 14. was "yes" and if the court did not grant the petition(s), application(s), or motion(s) you listed under 15. and 16., did you appeal to an intermediate court of appeals (e.g., the New York State Court of Appeals or the Second Circuit Court of Appeals)?

Yes No

18. If your answer to 17. was "yes," attach a copy of the appeals court decision to this petition and answer the following regarding each petition, application, or motion:

(a) Name of court _____

(b) Date Filed _____

(c) Result _____

(d) Date of result and citation, if known _____

- (e) List all grounds you raised (1) _____
- _____
- (2) _____
- _____
- (3) _____
- _____
- (4) _____
- _____

19. Did you appeal to the highest state court (e.g., the NYS Court of Appeals) or the United States Supreme Court for review of decisions regarding the petition(s), application(s), or motion(s) you listed in 15. and 16.?

- (a) First petition Yes No
- (b) Second petition Yes No
- (c) Third petition Yes No

[List any other petition and indicate yes or no.]

20. For each "yes" answer in 19., attach a copy of that court's decision to this petition and give the following information:

- (a) Name of court _____
- (b) Date filed _____
- (c) Result _____
- (d) Date of result and citation, if known _____
- (e) List all grounds you raised (1) _____
- _____
- (2) _____
- _____
- (3) _____
- _____
- (4) _____
- _____

21. If you did *not* appeal from the adverse action on any petition, application, or motion, explain briefly why you did not:

22. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize briefly the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. See 28 U.S.C. §2254(b). If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date. See 28 U.S.C. §2244(b).

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with 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 obtained 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.

A. Ground one: _____

Supporting FACTS (state briefly without citing cases or law): _____

B. Ground two: _____

Supporting FACTS (state briefly without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (state briefly without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (state briefly without citing cases or law): _____

23. If you did not previously present any of the grounds listed in 22A, 22B, 22C, and 22D in any other court, state or federal, state briefly what grounds you did not present and give your reasons for not presenting them:

24. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes No

(a) Name of court _____

(b) Nature of proceeding _____

(c) Date filed _____

(d) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you challenge in this petition:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(Date)

Signature of Petitioner