## Instructions for Filing a Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody in the United States District Court for the District of Arizona

- 1. Who May Use This Form. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence on the grounds that your conviction or sentence violates the United States Constitution or other federal law. You also may use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment. This form should not be used in death penalty cases. If you were sentenced to death, you are entitled to the assistance of counsel and you should request the appointment of counsel.
- 2. The Form. Local Rule of Civil Procedure (LRCiv) 3.5(a) provides that habeas corpus petitions must be filed on the court-approved form. The form must be typed or neatly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable. You do not need to cite law. If you want to file a brief or arguments, you must attach a separate memorandum.
- 3. <u>Your Signature</u>. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
- 4. <u>The Filing Fee.</u> The filing fee for this action is \$5.00. If you are unable to pay the filing fee, you may request permission to proceed in forma pauperis by completing and signing the Application to Proceed In Forma Pauperis provided with the petition form. You must have an official at the prison or jail complete the certificate at the bottom of the application form. If the amount of money in your account exceeds \$25.00, you must pay the \$5.00 filing fee. LRCiv 3.5(b).
- 5. Original and Judge's Copy. You must send an **original plus one copy** of your petition and of any other document submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
- 6. Where to File. You should **file your petition in the division where you were convicted**. *See* LRCiv 5.1(b). If you are challenging a judgment of conviction entered in Maricopa, Pinal, Yuma, La Paz, or Gila County, file your petition in the Phoenix Division. If you are challenging a judgment of conviction entered in Apache, Navajo, Coconino, Mohave, or Yavapai County, file your petition in the Prescott Division. If you are challenging a judgment of conviction entered in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file your petition in the Tucson Division. *See* LRCiv 5.1(b) and 77.1(a).

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Mail the original and one copy of your petition with the \$5.00 filing fee or the application to proceed in forma pauperis to:

Phoenix & Prescott Divisions:ORTucson Division:U.S. District Court ClerkU.S. District Court ClerkU.S. Courthouse, Suite 130U.S. Courthouse, Suite 1500401 West Washington Street, SPC 10405 West Congress StreetPhoenix, Arizona 85003-2119Tucson, Arizona 85701-5010

- 7. <u>Change of Address</u>. You must immediately notify the Court and respondents in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**
- 8. <u>Certificate of Service</u>. You must provide the respondents with a copy of any document you submit to the Court (except the initial petition and application to proceed in forma pauperis). Each original document (except the initial petition and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the respondents and the address to which it was mailed. Fed. R. Civ. P. 5(a), (d). Any document received by the Court that does not include a certificate of service may be stricken. This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.

A certificate of service should be in the following form:

I hereby certify the	at a copy of the foregoing document was mail-	ed
this	(month, day, year	r) to:
Name:		
Address:		
Atto	rney for Respondent(s)	
(Signature)		

- 9. <u>Amended Petition</u>. If you need to change any of the information in the initial petition, you must file an amended petition. The amended petition must be written on the court-approved petition for writ of habeas corpus form. You may amend your pleading once without leave (permission) of Court within 21 days after serving it or within 21 days after any respondent has filed an answer, whichever is earlier. *See* Fed. R. Civ. P. 15(a). Thereafter, you must file a motion for leave to amend and lodge (submit) a proposed amended petition. LRCiv 15.1. An amended petition may not incorporate by reference any part of your prior petition. LRCiv 15.1(a)(2). **Any grounds not included in the amended petition are considered dismissed**.
- 10. <u>Exhibits</u>. If available, you should attach a copy of all state and federal court written decisions regarding the conviction you are challenging. **Do not submit any other exhibits with the petition.** Instead, you should paraphrase the relevant information in the petition. The respondents are obligated to provide relevant portions of the record.

Any exhibits you attach should be individually labeled (e.g. "Exhibit 1," "Exhibit 2," etc.) and attached at the **end** of your petition. **Exhibits should not be placed in the middle of your petition.** 

11. <u>Letters and Motions</u>. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

## 12. Warnings.

- a. <u>Judgment Entered by a Single Court</u>. You may challenge the judgment entered by only one court. Multiple counts which resulted in a judgment by the same court may be challenged in the same petition. If you wish to challenge judgments entered by more than one court, however, you must file separate petitions for each judgment.
- b. <u>Grounds for Relief</u>. You must raise all grounds for relief that relate to this conviction or sentence. Any grounds not raised in this petition will likely be barred from being raised in any subsequent federal action.
- c. <u>Exhaustion</u>. In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request action by the federal court. If you did not fairly present each of your grounds to the Arizona Court of Appeals, your petition may be dismissed. If you did not present one or more of your grounds to the Arizona Court of Appeals, explain why you did not.

## FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your petition being stricken or dismissed by the Court. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the petition is being continued and number all pages.

Name and Prisoner/Booking Number	<del>_</del>
Place of Confinement	
Mailing Address	_
City, State, Zip Code	<u> </u>
(Failure to notify the Court of your change of address may resu	lt in dismissal of this action.)
IN THE UNITED STAT FOR THE DISTRI	
(Full Name of Petitioner)	
Petitioner, v.	CASE NO (To be supplied by the Clerk)
(Name of the Director of the Department of Corrections, Jailor or authorized person having custody of Petitioner),  Respondent, and	PETITION UNDER 28 U.S.C. § 2254 FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY (NON-DEATH PENALTY)
The Attorney General of the State of,  Additional Respondent.	
	TION
	gment of conviction you are challenging:
(b) Criminal docket or case number:	
2. Date of judgment of conviction:	
3 In this case, were you convicted on more than one co	ount or crime? Vec \( \text{Vec} \( \text{No} \( \text{T} \)

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4.	Identify all counts and crimes for which you were convicted and sentenced in this case:
5.	Length of sentence for each count or crime for which you were convicted in this case:
6.	(a) What was your plea?  Not guilty  Guilty  Nolo contendere (no contest)
	(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:
	(c) If you went to trial, what kind of trial did you have? (Check one) Jury $\square$ Judge only $\square$
7.	Did you testify at the trial? Yes $\square$ No $\square$
8.	Did you file a direct appeal to the Arizona Court of Appeals from the judgment of conviction? Yes $\square$ No $\square$
	If yes, answer the following:
	(a) Date you filed:
	(b) Docket or case number:
	(c) Result:
	(d) Date of result:
	(e) Grounds raised:

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

9.	Did	you appeal to the Arizona Supreme Court? Yes □ No □
	If ye	es, answer the following:
	(a)	Date you filed:
		Docket or case number:
	(c)	Result:
		Date of result:
		Grounds raised:
	Atta	ch, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.
10.	Did	you file a petition for certiorari in the United States Supreme Court? Yes □ No □
	If ye	es, answer the following:
	(a)	Date you filed:
	(b)	Docket or case number:
	(c)	Result:
	(d)	Date of result:
		Grounds raised:
	Atta	ch, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.
	Othen cern	er than the direct appeals listed above, have you filed any other petitions, applications or motions ing this judgment of conviction in any state court? Yes $\Box$ No $\Box$
	If ve	es, answer the following:

(a)	Fire	st Petition.
	(1)	Date you filed:
	(2)	Name of court:
	(3)	Nature of the proceeding (Rule 32, special action or habeas corpus):
	(4)	Docket or case number:
		Result:
		Date of result:
	(7)	Grounds raised:
	Atta	ch, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.
(b)	Sec	cond Petition.
	(1)	Date you filed:
	(2)	Name of court:
		Nature of the proceeding (Rule 32, special action or habeas corpus):
		Docket or case number:
		Result:
	, ,	
	(6)	Date of result:
	(7)	Grounds raised:
	-	

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c)	Thi	ird Petition.								
	(1)	Date you filed: _								
	(2)	Name of court: _								
	(3)	Nature of the pro	ceedi	ng (Ru	le 32, s <sub>l</sub>	pecial action or	habeas corpus)	):		
	(4)	Docket or case n	umbe	r:						
	(5)	Result:								
	(6)	Date of result: _								
	(7)	Grounds raised:								_
	Atta	ch, if available, a cop	py of a	ny brief	filed on	your behalf and a	copy of the deci	ision by th	e cour	t.
(d)	Die	d you appeal the a			•	petition, applica appeals:		n to the: ona Supr	eme (	Court:
	(1)	First petition:	Yes		No		Yes		No	
	(2)	Second petition:	Yes		No		Yes		No	
	(3)	Third petition	Yes		No		Yes		No	
(e)	If y	ou did not appeal	to the	e Arizo	na Cou	rt of Appeals, ex	xplain why you	ı did not:		

12. For this petition, **state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States**. Attach additional pages if you have more than four grounds. State the <u>facts</u> supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

OUI	ND ONE:	
(a)	Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim	n.):
b) l	Did you present the issue raised in Ground One to the Arizona Court of Appeals? Yes □	N
(c) l	If yes, did you present the issue in a:	
	Direct appeal	
	First petition	
	Second petition □ Third petition □	
(d)	If you did not present the issue in Ground One to the Arizona Court of Appeals, explain why: _	
(e) l	Did you present the issue raised in Ground One to the Arizona Supreme Court? Yes □	N

OU	ND TWO:	
a)	Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your cla	im.):
b)	Did you present the issue raised in Ground Two to the Arizona Court of Appeals? Yes □	N
c)	If yes, did you present the issue in a:	
	Direct appeal □ First petition □	
	Second petition	
	Third petition	
	Time petition	
d)	If you did not present the issue in Ground Two to the Arizona Court of Appeals, explain why: _	
(۵	Did you present the issue raised in Ground Two to the Arizona Supreme Court? Yes □	N

OU	ND THREE:	_
		_
a)	Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.	):
		_
		_
		_
		_
		_
		_
		_
		_
		_
		_
		_
		_
<b>5</b> )	Did you present the issue raised in Ground Three to the Arizona Court of Appeals? Yes □	N
c)	If yes, did you present the issue in a:	
	Direct appeal	
	First petition □ Second petition □	
	Third petition	
d)	If you did not present the issue in Ground Three to the Arizona Court of Appeals, explain why:	
		_
		-
e)	Did you present the issue raised in Ground Three to the Arizona Supreme Court? Yes □	\

OU	ND FOUR:	
a)	Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your clair	1.):
))	Did you present the issue raised in Ground Four to the Arizona Court of Appeals? Yes □	N
2)	If yes, did you present the issue in a:	
	Direct appeal	
	First petition □ Second petition □	
	Third petition	
d)	If you did not present the issue in Ground Four to the Arizona Court of Appeals, explain why:	
e)	Did you present the issue raised in Ground Four to the Arizona Supreme Court? Yes □	N

## Please answer these additional questions about this petition:

13. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction that you challenge in this petition? Yes $\square$ No $\square$
If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available:
14. Do you have any petition or appeal <u>now pending</u> (filed and not decided yet) in any court, either state of federal, as to the judgment you are challenging? Yes $\square$ No $\square$
If yes, give the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:
15. Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging? Yes $\square$ No $\square$
If yes, answer the following:
(a) Name and location of the court that imposed the sentence to be served in the future:
(b) Date that the other sentence was imposed:
(c) Length of the other sentence:
(d) Have you filed, or do you plan to file, any petition challenging the judgment or sentence to be served in the future? Yes $\square$ No $\square$

16. TIMELINESS OF PETITION: If your judgment of conviction became final more than one year ago, you must						
explain why the one-year statute of limitations in 28 U.S.C. § 2244(d) does not bar your petition.*						
*Section 2244(d) provides in part that:						
(1) A 1-year period of limitation shall apply to a	n application for a writ of habeas corpus by a person in The limitation period shall run from the latest of-					
(A) the date on which the judgment be expiration of the time for seeking such rev	came final by the conclusion of direct review or the iew;					
(B) the date on which the impediment to	filing an application created by State action in violation					
	States is removed, if the applicant was prevented from					
filing by such State action;						
	right asserted was initially recognized by the Supreme gnized by the Supreme Court and made retroactively					
applicable to cases on collateral review; or						
	eate of the claim or claims presented could have been					
discovered through the exercise of due dili						
	ation 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.						
	C					
17. Petitioner asks that the Court grant the following relie	it:					
-						
or any other relief to which Petitioner may be entitled. cases.)	(Money damages are not available in habeas corpus					
	true and correct and that this Petition for Writ of Habeas					
Corpus was placed in the prison mailing system on	(month, day, year).					
Signature of Petitioner						
Signature of attorney, if any	Date					