

2241 HABEAS CORPUS INSTRUCTIONS

THIS FORM SHOULD NOT BE USED IF CHALLENGING A STATE OR FEDERAL JUDGMENT OF CONVICTION OR SENTENCE.

1. **Who May Use This Form**. This form may be used by: (1) person(s) detained at the FDC-Honolulu, who are challenging their detention by federal immigration authorities; (2) **federal prisoners detained at the FDC-Honolulu**, who are challenging the execution of their sentence (as opposed to challenging the validity of their conviction or sentence, i.e., challenging a federal parole or good time credit decision); or (3) **Hawaii pre-trial detainees or those awaiting extradition** who contest their custody (i.e., state prisoners who have not yet been convicted, and are not being detained subject to a judgment of conviction by a state court).

A federal prisoner attacking the legality of his or her sentence, seeking to vacate that sentence, must file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment. **Any claim that may be brought, or has already been brought, in a motion under 28 U.S.C. § 2255 may not be brought using this form unless it appears that the § 2255 motion is inadequate or ineffective to test the legality of the challenged.**

A state prisoner in custody pursuant to a state court judgment of conviction **must bring his or her habeas PETITION under 28 U.S.C. § 2254**, even if the PETITIONER is not challenging the underlying conviction or sentence of a state court. *See White v. Lambert*, 370 F.3d 1002, 1007 (9th Cir. 2004).

2. **Form Completion**. The form must be typed or neatly handwritten and completely filled in to the extent applicable. All questions must be clearly and concisely answered in the appropriate space on the form. If needed, additional pages may be attached. Do not cite case law. To file a brief or argument, attach a separate memorandum to the form.

3. **Signature**. An original signature is required. Any false statement of material fact may result in prosecution for perjury.

4. **Filing Fee**. The filing fee for this action is \$5.00. If unable to pay the filing fee, request permission to proceed *in forma pauperis* by submitting a completed Application to Proceed *In Forma Pauperis*. A prison official must complete the certificate at the bottom of the application form. When the prison trust account exceeds \$25.00, a \$5.00 filing fee must be paid.

5. **Original and Judge's Copy.** Provide an original plus two copies of the PETITION and subsequent documents submitted to the court. The court provides **one** file-stamped copy of the PETITION to the petitioner free of charge. The court returns the first page of subsequently filed documents, to confirm that it has received the document. To receive a complete copy of subsequently-filed documents, submit an additional copy of that document that is, submit an original plus **3** copies.

6. **Change of Address.** Immediately notify the court and respondents **in writing** of any changes address. Failure to notify the court of a change of address may result in case dismissal.

7. **Certificate of Service.** Provide respondents with a copy of any documents submitted to the court, except the initial PETITION and application to proceed *in forma pauperis*. The Court serves the PETITION on respondents. Petitioner's must serve subsequent filings on respondent and must include a certificate of service on the last page of the document showing 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. A certificate of service should be in the following format:

I hereby certify that a copy of the foregoing document was mailed this (month, day, year) to:

Name:

Address:

Attorney for Respondent(s)

(Signature)

8. **Amended Petition.** To change any of the information in the PETITION, file an AMENDED PETITION. The AMENDED PETITION must be on this court's approved form. The PETITION may be amended once, without leave of court, before a respondent has answered. See Fed. R. Civ. P. 15(a). After a respondent has filed an answer, the PETITION may not be amended without leave of court. To amend the PETITION, submit a motion for leave to amend and a proposed amended petition. The PETITION must be amended in its entirety. **Any grounds for relief that are not included in the AMENDED PETITION are considered waived.**

9. **Exhibits**. If available, attach a copy of all federal court and administrative written decisions regarding the challenged detention. The relevant information should be paraphrased in the PETITION.

10. **Letters and Motions**. It is generally inappropriate to write a letter to any judge or the staff of any judge. This is considered improper ex parte communication. The only appropriate way to communicate with the court is by filing a written pleading or motion.

11. **Exhaustion**. In order to proceed with certain issues, such as parole or good time credit issues, all administrative and judicial remedies must be exhausted.