

HABEAS CORPUS FORM INSTRUCTIONS

Preface

The following instructions are not intended to be an exhaustive recitation of the law governing habeas corpus, but it is a starting point. It should not be construed as legal advice.

It is best to consult with a legal practitioner for help in preparation and pursuit of your habeas corpus petition. The Court has a list of all legal practitioners who are authorized to practice before the Tohono O'odham Courts.

General Instructions:

Each applicable question in this form must be answered fully, but concisely. The petition should be typed, but may be in legible handwriting in black or blue ink. When necessary, an answer to a particular question may be completed by adding an additional blank page, making clear to which question such continued answer refers. Do not write on the back of the page.

Any false statement of fact made and sworn to under oath in this petition could serve as the basis for prosecution and conviction for perjury. Therefore, exercise care to assure that all answers are true and correct.

NO ISSUE WHICH HAS ALREADY BEEN RAISED AND DECIDED IN A PREVIOUS PETITION MAY BE USED AS A BASIS FOR THIS PETITION.

TAKE CARE TO INCLUDE EVERY GROUND FOR RELIEF WHICH IS KNOWN AND WHICH HAS NOT BEEN RAISED AND DECIDED PREVIOUSLY, SINCE FAILURE TO RAISE ANY SUCH GROUND IN THIS PETITION WILL BAR ITS BEING RAISED LATER.

I. Preliminary Considerations Before Filing a Habeas Corpus Petition

Prisoners being held under a Tohono O'odham criminal conviction may file a petition for writ of habeas corpus to test the validity of their conviction or sentence.

- A. The Claim. The petition must allege that the conviction or sentence was in violation of the Indian Civil Rights Act or Tohono O'odham Constitution. The Tohono O'odham Courts do not have jurisdiction to consider claims which are based solely on federal or state court convictions.
- B. Habeas Petitions Should Not Contain Prison Conditions Claims. Habeas corpus is not the appropriate cause of action if you want to challenge the conditions of confinement or obtain money damages. For example, claims for improper medical care should be brought in a civil rights lawsuit.
- C. Successive Petition Considerations. You should be aware that if you do not bring all claims related to a particular judgment in a single habeas corpus action, you will not be able to bring a second action.
- D. Proper Respondent. The proper respondent in a habeas corpus action is the head of the Tohono O'odham Adult Corrections Facility or the head of the Tohono O'odham Department of Public Safety.

II. Completing the Habeas Corpus Petition

Complete the habeas corpus petition according to the directions on the form which is enclosed in this packet. Your petition should be typed, or legibly handwritten in blue or black ink.

For each claim, it is important that you state the legal ground under which your claim arises, such as a provision of the Tohono O’odham Constitution, the Indian Civil Rights Act, or Tohono O’odham case. Stating the ground for your claim should be done very briefly. You should not make extensive legal arguments anywhere in your petition, nor should you file a legal memorandum or brief with your petition. Importantly, the petition should include all of the facts which support your claim.

Notarization is required; you must sign the petition before a notary public. You must send a “Notice of Change of Address” to the Clerk of Court each time you change addresses in order to be sure that you receive all court orders and correspondence in this matter.

III. Filing Fees

There is no filing fee to file the petition for writ of habeas corpus.

IV. Filing Your Action

To file your action, you will need to send the original signed and notarized habeas corpus petition to the Clerk of Court, Tohono O’odham Justice Center, P.O. Box 761, Sells, Arizona 85634 with two copies. You will also need to file a summons in which you fill out the name and address of the respondent. If you would like to have a conformed copy of filed documents, which is a copy that bears the Clerk’s filing date stamp to let you know the exact date a document was filed, then you must include an additional copy of the habeas corpus petition, along with a note or letter and a self-addressed envelope requesting that the Clerk return a conformed copy to you. You should always keep a copy of the petition and other documents you have filed for your records.

If you are represented by legal counsel, it is your responsibility through your legal counsel to serve a copy of your petition and the summons on the respondent and to the Tohono O’odham Office of the Attorney General. The copies may be served personally, or by mail as authorized by the Tohono O’odham Rules of Civil Procedure (“Rules”). If you are not represented by legal counsel, the court clerk will arrange for a copy of your petition and summons to be served on the respondent and to the Tohono O’odham Office of the Attorney General.

NOTE: All copies of the petition must be identical to the original.

V. Pleadings, Papers and Discovery

After the respondent has been served, the respondent has thirty (30) days in which to answer or otherwise plead in response to the petition. The respondent may file an answer or pre-answer motion requesting dismissal of part or all of your case. Do not file a motion for default judgment if a pre-answer motion is filed rather than an answer. A pre-answer motion is permitted by the Rules.

The Rules generally do not permit discovery to be undertaken in a habeas corpus case. Exceptions are sometimes made if there is a preliminary procedural issue which has never been resolved by a court. Discovery is not allowed in any case for any reason without a prior court order.

You should not file pleading or papers not authorized by the Rules. For example, affidavits generally are not allowed for the purpose of bringing new evidence into the court. You do not need to file an affidavit to point to various parts of the record which you believe support your claim. You can do this in a brief in response to a motion to dismiss, or in a statement of disputed material facts in response to a motion for summary judgment. Affidavits are permissible when preliminary procedural facts are at issue, for example, if you need to declare when and how you filed your habeas corpus petition when the statute of limitations is at issue.

You should not file other unauthorized papers, such as sur-replies (a reply to a reply), a brief in support of habeas corpus petition (briefs should be filed only in support of motions or in response to motions), or a memorandum of law which is not part of a brief in support of or in response to a motion. It is also improper to use a letter rather than a motion to ask the Court to take any action in your case.

Each time you file a document, you must also send the respondent's attorney a copy of the document. Each original document must include a certificate stating the date a copy of the document was mailed to the respondent's attorney and the address to which it was mailed. Any document received which fails to include a certificate of service may be disregarded by the court or returned. An example of a certificate of service is:

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

Name: _____

Address: _____

Attorney for Respondent(s)

(Signature)

VI. Criminal Court Record

The respondent will supply the Court with a copy of those portions of the Criminal Court record which the respondent deems relevant to the Court's determination of the claims at hand. For example, if the habeas corpus petition challenges only sentencing, then the respondent would usually supply the Court with only the sentencing records, rather than the entire transcript of the trial. The respondent will not supply you with a copy of your trial court record, because it is presumed that you have a copy of your record. If you do not have such a copy, you can request a copy of the record from the Court using a request for records.

If the respondent does not lodge all portions of the court record which you deem relevant to a determination of the claims, you can file a motion to expand the record.

VII. Petitioner's Burden of Proof

It is important to know that the habeas corpus claims are determined by the Civil Court's review of the written Criminal Court record. The habeas corpus action is not an opportunity to re-litigate your criminal case. You bear the burden of proof to show that your conviction violates the Tohono O'odham Constitution, Indian Civil Rights Act, Tribal Law and Order Act, or other law applicable to the Tohono O'odham Nation.

VIII. Dispositive Motions

Habeas corpus petitions are generally decided by *dispositive motion*. A dispositive motion is a motion that has the potential to “dispose of” or end the case. Because habeas corpus actions are determined on the trial court record, trials (including jury trials) are not available in habeas corpus proceedings. Two common dispositive motions are the motion to dismiss and the motion for summary judgment.

A *motion to dismiss* is brought pursuant to the Rules of Civil Procedure, or pursuant to the Court’s duty to dismiss claims upon which the petitioner is not entitled to proceed. For example, a motion to dismiss may be brought if it appears that you have failed to state a claim upon which habeas corpus relief can be granted.

A *motion for summary judgment* is brought under the Rules of Civil Procedure. It can include any technical reason for dismissal, as well as the reason that the claim should be dismissed on its merits.

To oppose a motion for summary judgment which challenges *the merits* of your claims, you should file a response, outlining the facts which are in the trial court record which support your opposition, and arguing any applicable law. If the respondent files a *statement of undisputed material facts*, you should file a statement of disputed material facts in response if you dispute any of the facts. You cannot include new facts not found in the trial court record.

To oppose a motion to dismiss or a motion for summary judgment when a preliminary procedural question is at issue, you are entitled to bring forward any facts which are not contained in the trial court record.

After you have filed your response to a dispositive motion, the respondent may or may not file a reply. If a reply is filed, you are not entitled to respond to the reply.

The Court will take the motion under advisement and consider everything in the record which is properly before it. You will need to request oral argument on the motion if you want a hearing. After consideration of the motion and the arguments at a hearing, if there are oral arguments, the Court will issue a written Order. If the dispositive motion is granted, the case usually will be dismissed.

IX. Evidentiary Hearings.

Evidentiary hearings are held in habeas corpus proceedings only very rarely. Generally the trial court record is sufficient for the Court to determine the outcome of the case. A petitioner is not entitled to produce new evidence or have an evidentiary hearing on the merits of his or her case if he or she failed to develop the factual basis of the claim in the trial court proceedings as a result of his or her own fault and lack of diligence. A petitioner who is not entitled to present new evidence must rely on facts contained in the trial court record to show his or her entitlement to relief.

In some instances, an evidentiary hearing may be required on a preliminary procedure issue. The subject of the hearing would be to determine whether there are facts which show that the case should be able to proceed or be dismissed. The merits of the claim are not reviewed. The only issue to be determined is whether the petitioner can overcome preliminary procedural problems which would otherwise prevent the court from reviewing the merits of the claims at a later date.

X. Judgment and Appeal

If your case is unsuccessful, then you may wish to appeal it. You must file your appeal pursuant to the Tohono O’odham Rules of Appellate Procedure.