



Judicial Council of California

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<https://courts.ca.gov/policy-administration/invitations-comment>

INVITATION TO COMMENT

W26-05

Title

Criminal Procedure: Rule and Form
Revisions Related to the Racial Justice Act

Action Requested

Review and submit comments by January 7,
2026

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 4.551 and
8.385; revise forms HC-001, CR-187, and
CR-188

Proposed Effective Date

July 1, 2026

Contact

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Proposed by

Appellate Advisory Committee
Hon. Allison M. Danner, Chair

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Criminal Law Advisory Committee
Hon. Lisa Rodriguez, Chair

Executive Summary and Origin

The Racial Justice Act prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin. To implement recent legislation related to the Racial Justice Act and address urgent issues identified by courts on existing court forms implementing the Act, the Appellate Advisory Committee and the Criminal Law Advisory Committee propose amending two rules of court and revising three forms.

Background

The Racial Justice Act of 2020¹ enacted Penal Code section 745,² which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin and allows claims for relief based on violations of the Act. To raise a violation of the Racial

¹ Assembly Bill 2542 (Stats. 2020, ch. 317).

² All further references are to the Penal Code unless otherwise specified.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

Justice Act under section 745(a),³ a moving party may file a motion in the trial court, a petition for writ of habeas corpus, or a motion to vacate a conviction or sentence under section 1473.7. Section 745 was subsequently amended in 2023 and 2024 to apply retroactively to final judgments and, for claims based on the trial record, allow a defendant to raise a Racial Justice Act claim on direct appeal and to move to stay the appeal and request remand to the superior court.⁴

To implement the Racial Justice Act and subsequent legislation, the Judicial Council approved rule and form changes effective September 1, 2024.⁵ The committees propose further changes based on recent legislation and feedback from Court of Appeal staff about issues with presenting and processing Racial Justice Act claims on *Petition for Writ of Habeas Corpus* (form HC-001).

Effective January 1, 2026, Assembly Bill 1071 (Stats. 2025, ch. 721)⁶ clarifies the legislative intent around court procedures related to the Racial Justice Act, and amends relevant statutes to state that:

- A defendant or petitioner may file a motion for disclosure of all relevant evidence in any proceeding alleging a violation of the Racial Justice Act, including in preparation for filing a petition for writ of habeas corpus under section 1473(e)(2) or a motion to vacate a conviction under section 1473.7(a)(3);⁷
- The definitions in section 745(h) apply to Racial Justice Act claims in petitions for writ of habeas corpus and motions to vacate convictions;⁸
- Before a judgment has been entered, the remedies listed in section 745(e)(1) are mandatory rather than discretionary if the court finds a violation of the Racial Justice Act;⁹
- Counsel must be appointed in a habeas proceeding if a petitioner “pleads a plausible allegation” of a violation of the Racial Justice Act;¹⁰ and

³ This invitation to comment uses “claim under section 745(a)” and “violation of section 745(a)” interchangeably with “claim under the Racial Justice Act” and “violation of the Racial Justice Act.”

⁴ Assembly Bill 256 (Stats. 2022, ch. 739) and Assembly Bill 1118 (Stats. 2023, ch. 464).

⁵ Judicial Council of Cal., Advisory Com. Rep., *Criminal Procedure: Racial Justice Act* (Apr. 19, 2024), <https://jcc.legistar.com/View.ashx?M=F&ID=12870891&GUID3=E9B6569C-6089-48C2-B898-6A9FA49A83D4>.

⁶ See Link A.

⁷ § 745(d), effective January 1, 2026.

⁸ § 745(h), effective January 1, 2026.

⁹ § 745(e)(1), effective January 1, 2026.

¹⁰ § 1473(e)(5), effective January 1, 2026.

- A prima facie determination of a violation of the Racial Justice Act in a habeas proceeding is based on a petitioner's showing and the record; the court may request an informal response from the state.¹¹

Additionally, section 1 of the bill includes legislative findings and declarations that the threshold showing for appointment of counsel for a habeas proceeding does not require a prima facie showing, as held by *McIntosh v. Superior Court* (2025) 110 Cal.App.5th 33, and should be construed as a minimal pleading requirement.

Also effective January 1, 2026, Senate Bill 734 (Stats. 2025, ch. 784),¹² in relevant part, amends several statutes to state that if a person is represented by counsel and is raising a claim under section 745(a)(1) or (2) based on the conduct of a law enforcement officer, counsel must serve a copy of the petition or motion on the law enforcement agency that employs the officer.¹³

In addition to these legislative changes, the committees considered feedback from the courts on the presentation and processing of Racial Justice Act claims in habeas proceedings. Form HC-001 was revised effective September 1, 2024, to allow Racial Justice Act claims to be raised alongside other claims challenging orders of commitment, criminal convictions or sentences, and conditions of confinement. Based on issues arising from these revisions, Court of Appeal staff requested a separate petition for writ of habeas corpus form for Racial Justice Act claims. Staff stated that petitioners without Racial Justice Act claims were marking checkboxes exclusive to Racial Justice Act claims, causing additional workload for the courts when denying the petition. Court of Appeal staff also noted that separate petitions would be helpful from an administrative standpoint because of the different standards and procedures for Racial Justice Act claims and other claims, such as appointment of counsel, requests for discovery, and the applicability of certain habeas procedural bars. Further, staff and judicial officers with both the trial and appellate courts noted that the current version of form HC-001 does not have adequate space for a petitioner to explain the basis of a Racial Justice Act claim. Court of Appeal staff also stated that additional information on discovery and appointment of counsel would be helpful for courts considering these requests.

The Proposal

The committees propose amending California Rules of Court, rules 4.551 and 8.385 and revising forms HC-001, CR-187, and CR-188 to implement these changes in law and address the issues raised by courts.

To reflect each committee's respective subject matter expertise, the Criminal Law Advisory Committee led the development of the proposed amendments to rule 4.551 and revisions to forms CR-187 and CR-188, as they primarily impact the trial courts. The Appellate Advisory

¹¹ § 1473(e)(7)(A), effective January 1, 2026.

¹² See Link B.

¹³ §§ 745(c)(3), 1473(e)(6), 1473.7(a)(3)(B), effective January 1, 2026.

Committee led the development of the proposed amendments to rule 8.385 on petitions for writ of habeas corpus in the appellate courts. Both committees developed the proposed revisions to form HC-001.

Rule 4.551, Habeas corpus proceedings

Rule 4.551 establishes procedures for habeas corpus petitions filed in the trial court in noncapital cases. The committees propose the following amendments to reflect changes under AB 1071:

- Amend subdivision (c), Order to show cause, to add a new provision stating that when a petition raises a Racial Justice Act claim, the court must issue an order to show cause if the petitioner has made a prima facie showing as defined under section 745(h), and state that the determination must be based on the petitioner's showing and the record.
- Amend subdivision (d), Appointment of counsel, to address appointment of counsel for Racial Justice Act claims first in subdivision (1), followed by appointment of counsel for all other claims in subdivision (2).
- Amend subdivision (d)(1)(B) to state that in Racial Justice Act claims, appointment of counsel is limited to the facial sufficiency of the allegations of the petition alone.
- Add an advisory committee comment stating that the standard set out in subdivision (d)(1)(B) is consistent with *McIntosh v. Superior Court* (2025) 110 Cal.App.5th 33, as indicated in the Legislature's statement of intent in Assembly Bill 1071 (Stats. 2025, ch. 721).
- To implement section 1473(e)(6), add an advisory committee comment stating that as in other cases, when considering a petition raising a claim under Penal Code section 745(a), the court may request an informal response by the People.
- Remove the advisory committee comment stating that the issue of whether the prima facie showing for a petition for writ of habeas corpus under section 1473(e) is the same as in section 745(h)(2) or defined in rule 4.551(c)(1) is unresolved, because this question has been resolved by section 745(h)(2).

Rules 8.385, Habeas proceedings on appeal

Rule 8.385 establishes procedures for petitions for a writ of habeas corpus filed in the Supreme Court or Court of Appeal. The committees propose the following amendments to reflect changes under AB 1071:

- Amend subdivision (d), Order to show cause, to add a new provision stating that when a petition raises a Racial Justice Act claim, the court must issue an order to show cause if the petitioner has made a prima facie showing as defined under section 745(h), and state that the determination must be based on the petitioner's showing and the record.
- Amend subdivision (d)(1) to add the language of the prima facie standard.
- Amend subdivision (g)(2)(B) to state that appointment of counsel is limited to the facial sufficiency of the allegations of the petition alone.

- Add an advisory committee comment stating that the standard set out in subdivision(g)(2)(B) is consistent with *McIntosh v. Superior Court* (2025) 110 Cal.App.5th 33, as indicated in the Legislature’s statement of intent in Assembly Bill 1071 (Stats. 2025, ch. 721).
- To implement section 1473(e)(6), add an advisory committee comment stating that as in other cases, when considering a petition raising a claim under Penal Code section 745(a), the court may request an informal response by the state.

Petition for Writ of Habeas Corpus (form HC-001)

Form HC-001 can be used to petition a superior court, a Court of Appeal, or the Supreme Court for a writ of habeas corpus. Under the California Rules of Court, a self-represented person must use form HC-001 to petition any of these courts for a writ of habeas corpus, with exceptions for good cause.¹⁴ Form HC-001 is designed to provide the court with sufficient information to either issue an order to show cause, deny the petition, or request an informal response.

The committees recommend adding an instruction to page 1 of the form to incorporate the service requirements of SB 734: An attorney filing this petition on behalf of a petitioner, based on a claim under Penal Code section 745(a)(1) or (2) that involves conduct by a law enforcement officer, must serve a copy of this petition on the law enforcement agency that employs the officer.

In response to concerns raised by Court of Appeal staff, the committees discussed whether to develop a separate form for petitions for writ of habeas corpus based on Racial Justice Act claims. In addition to the feedback from appellate courts, several large trial courts provided feedback on the impact of separate habeas petition forms as compared to the current joint form, with some courts preferring separate and others preferring joint. The committees also considered how separate petition forms might impact self-represented litigants, especially those with mixed claims who are only aware of and file only one type of petition form. The committees were also concerned about possible issues with successive petitions and timeliness.

To address these concerns, the committees propose keeping all claims on form HC-001. To more clearly differentiate between Racial Justice Act and other claims, the committees propose organizing the petition into three subparts (A, B, and C):

- Part A is required for all petitioners and asks for information relevant to all claims. Part A contains items 1 through 5, 7 through 9, and 11 through 17 from the current version of the form, and these items have been numbered 1 through 16.
- Part B is for all claims except for those under the Racial Justice Act. Part B contains items 6 and 10, which have been renumbered 1, 2, and 3 (item 6 is now two separate items).

¹⁴ Cal. Rules of Court, rules 4.551(a)(1), 8.380(a). Note that rule 4.571 contains different requirements for death penalty–related habeas corpus proceedings.

- Part C is for Racial Justice Act claims. Part C contains item 18, which has been divided into parts and numbered 1 through 9.

The subparts are explained in an instruction on page 1, in a sentence preceding each subpart, and at the end of part A.

For claims not under the Racial Justice Act, in part B, the committees propose the following revisions:

- Add a declaration under penalty of perjury about the truth and correctness of the petition.

The revisions for claims under the Racial Justice Act, in part C, also incorporate feedback to add more space for the petitioner to explain the basis of the claim and additional information to assist with decisions on requests for counsel and discovery. Specifically, the committees propose the following revisions:

- Renumber item 18a on the category of retroactivity as item 1, and revise to remove references to whether the petitioner is currently serving a sentence and whether the petition was filed after January 1, 2025, or 2026, and replace with a checkbox indicating that judgment was for a felony conviction.¹⁵
- Renumber item 18b on the basis of the claim as item 2, and add an introductory sentence and space for the petitioner to explain the basis of the Racial Justice Act claim.
- Renumber item 18d on appointment of counsel as item 4, and add a question about whether the petitioner was represented by appointed counsel in trial and/or on appeal, to assist with an indigency determination.
- Renumber item 18f on discovery as item 6, and to use plain language.
- Add new items 7 and 8 on whether the petitioner previously attempted to obtain evidence and whether the petitioner asked a court for discovery prior to filing the petition. These items are intended to assist courts with considering requests for discovery.

Motion to Vacate Conviction or Sentence (form CR-187) and Order on Motion to Vacate Conviction or Sentence (form CR-188)

Motion to Vacate a Conviction or Sentence (form CR-187) allows a petitioner to file a motion for relief under sections 1016.5 and 1473.7(a)(1)–(3). *Order on Motion to Vacate Conviction or Sentence* (form CR-188) allows a court to grant or deny the requested relief.

¹⁵ Item 18a incorporates the phased-in retroactive application of section 745(a), as stated in section 745(j). As the last phase-in date is January 1, 2026, the committees recommend removing the checkboxes implementing the phase-in dates and categories.

Under section 1473.7(a)(3), a person who is out of custody may file a motion to vacate a conviction or sentence based on a Racial Justice Act claim. The committees propose the following revisions to form CR-187:

- Add a note stating that “an attorney filing this motion on behalf of a moving party, based on a claim under Penal Code section 745(a)(1) or (2) that involves conduct of a law enforcement officer, must serve the motion on the law enforcement agency that employs the officer,” to implement SB 734.
- Replace references to Penal Code section 745(a) with “the Racial Justice Act” in items 5a and f to use plain language and align with form HC-001.
- Replace items 5a(3) and (4) with a single checkbox indicating that the judgment is for a felony conviction.¹⁶
- Replace “disclosure” with “discovery” in item 5f, and revise the subitems to use plain language and align with form HC-001.
- Add a citation to *People v. Gutierrez* (2025) 113 Cal.App.5th 906,¹⁷ to item 6 on requesting counsel.

The committees propose the following revision to form CR-188:

- Remove item 5b, which allows the court to dismiss a prematurely filed motion under the time frames in Penal Code section 745(j). Because phased-in retroactivity is complete as of January 1, 2026, dismissal based on the premature filing of a motion will no longer apply.
- Replace references to Penal Code section 745(a) with “the Racial Justice Act” in item 5 to use plain language and align with form HC-001.
- Replace “disclosure” with “discovery” in item 5c to use plain language and align with form HC-001.

Alternatives Considered

The committees did not consider the alternative of not amending the rules and forms because they determined that revisions were necessary to implement new legislation. To the extent the proposed revisions were not required by the terms of the legislation, the committees considered taking no action but ultimately determined the revisions were warranted in light of the benefits the revisions would provide to the courts and court users.

¹⁶ Item 5a incorporates the phased-in retroactive application of section 745(a), as stated in section 745(j). As the last phase-in date is January 1, 2026, the committees recommend removing the checkboxes implementing the phase-in dates and categories.

¹⁷ In *Gutierrez*, the Court of Appeal, Second Appellate District, Division Five, held that there is a right to appointed counsel under Penal Code section 1473.7(a)(3) when an indigent defendant makes a prima facie showing of entitlement to relief.

Rule 4.551(b)(2) requires the court and the respondent to notify and serve the petitioner with information and filings related to an informal response. A member of the Criminal Law Advisory Committee recommended amending the rule to add petitioner's counsel as an additional party to be notified and served, since a petitioner with a Racial Justice Act claim may have counsel appointed prior to the court requesting an informal response. The committees did not move forward with the recommendation because counsel should already receive service under the rule, as the default practice is to notify and serve counsel when a statute or rule refers to a petitioner or a defendant. However, the committees request specific comments on whether including a reference to petitioner's counsel in rule 4.551(b)(2) would be helpful.

Effective January 1, 2026, Assembly Bill 1036 (Stats. 2025, ch. 444)¹⁸ amends Penal Code section 1054.9 to expand access to discovery in a postconviction proceeding to defendants convicted of felonies resulting in incarceration in state prison.¹⁹ AB 1036 also broadens the definition of discovery materials for purposes of the statute. The committees request specific comments on whether to incorporate section 1054.9's provisions into forms HC-001, CR-187, and CR-188, such as revising the forms to add a question on whether the petitioner/moving party made efforts to obtain discovery materials from trial counsel prior to a request for discovery to the court²⁰ or adding a separate items to the form for discovery materials as defined in section 1054.9(c) that are requested by persons eligible under section 1054.9(a).

Finally, a member of the Criminal Law Advisory Committee suggested that proposed rule 4.551(d)(2) on appointment of counsel in a habeas proceeding should be amended to start with "in all cases" to clarify that the general rule that counsel must be appointed when an order to show cause issues also applies to Racial Justice Act proceedings. The committees request specific comments on this issue.

Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal are largely attributable to recent legislation. Expected costs include training, case management system updates, and the production of new forms. The revisions to form HC-001 should reduce operational demands by reducing the number of litigants who check the box for a Racial Justice Act claim without including facts to support such a claim.

¹⁸ See Link C.

¹⁹ Prior to AB 1036, this was limited to defendants convicted of a serious felony or a violent felony resulting in a sentence of 15 years or more.

²⁰ § 1054.9(a).

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Would it be helpful to refer to petitioner's counsel as an additional party to notify and serve with information and filings related to an informal response in rule 4.551(b)(2), or is the existing reference to notifying and serving the petitioner sufficient?
- Should the forms incorporate Penal Code section 1054.9's provisions on certain discovery materials sought by certain petitioners and moving parties?
- Should rules 4.551(d)(2) and 8.385(g)(1) state that the general rule requiring appointment of counsel upon issuance of an order to show cause applies in all cases, including Racial Justice Act proceedings?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 4.551 and 8.385, at pages 10–13
2. Forms HC-001, CR-187, and CR-188, at pages 14–32
3. Link A: Assembly Bill 1071,
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260AB1071
4. Link B: Senate Bill 734,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB734
5. Link C: Assembly Bill 1036,
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260AB1036

Rules 4.551 and 8.385 of the California Rules of Court would be amended effective July 1, 2026, to read:

Rule 4.551. Habeas corpus proceedings

(a) Petition; form and court ruling

* * *

(b) Informal response

- (1) Before passing on the petition, the court may request an informal response from:
 - (A) The respondent or real party in interest; or
 - (B) The custodian of any record pertaining to the petitioner's case, directing the custodian to produce the record or a certified copy to be filed with the clerk of the court.
- (2) A copy of the request must be sent to the petitioner. The informal response, if any, must be served on the petitioner by the party of whom the request is made. The informal response must be in writing and must be served and filed within 15 days. If any informal response is filed, the court must notify the petitioner that he or she may reply to the informal response within 15 days from the date of service of the response on the petitioner. If the informal response consists of records or copies of records, a copy of every record and document furnished to the court must be furnished to the petitioner.
- (3) After receiving an informal response, the court may not deny the petition until the petitioner has filed a timely reply to the informal response or the 15-day period provided for a reply under (b)(2) has expired.

(c) Order to show cause

- (1) Except as provided in (2), the court must issue an order to show cause if the petitioner has made a prima facie showing that the petitioner is entitled to relief. In doing so, the court takes petitioner's factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if the petitioner's factual allegations were proved. If so, the court must issue an order to show cause.
- (2) When a petition raises a claim under Penal Code section 745(a), the court must issue an order to show cause if the petitioner has made a prima facie showing, which means that the petitioner has produced facts that, if true, establish that there is a substantial likelihood that a violation of section

1 745(a) has occurred. A prima facie determination must be based on the
2 petitioner's showing and the record.

- 3
4 (3) An order to show cause is a determination that the petitioner has made a
5 showing that they may be entitled to relief. It does not grant the relief sought
6 in the petition.
7

8 **(d) Appointment of counsel**
9

- 10 (1) ~~On issuing an order to show cause, the court must appoint counsel for any~~
11 ~~unrepresented petitioner who desires but cannot afford counsel.~~
12
13 (2) When a petition raises a claim under Penal Code section 745(a) and requests
14 appointment of counsel, the court must appoint counsel if the petitioner
15 cannot afford counsel and either: ~~the petition alleges facts that would~~
16 ~~establish a violation of section 745(a) or~~
17
18 (A) ~~†The State Public Defender requests that counsel be appointed; or~~
19 ~~Newly appointed counsel may amend a petition filed before their~~
20 ~~appointment.~~
21
22 (B) The petition alleges facts that would establish a violation of section
23 745(a). This inquiry is limited to the facial sufficiency of the
24 allegations of the petition alone.
25

26 Newly appointed counsel may amend a petition filed before their
27 appointment.
28

- 29 (2) On issuing an order to show cause, the court must appoint counsel for any
30 unrepresented petitioner who desires but cannot afford counsel.
31

32 **(e)–(i) * * ***
33

34 **Advisory Committee Comment**
35

36 Except for claims raising a violation of Penal Code section 745(a) which are addressed in
37 subdivision (d)(1), the court must appoint counsel on the issuance of an order to show cause. (*In*
38 *re Clark* (1993) 5 Cal.4th 750, 780 and *People v. Shipman* (1965) 62 Cal.2d 226, 231–232.) The
39 Court of Appeal has held that under Penal Code section 987.2, counties bear the expense of
40 appointed counsel in a habeas corpus proceeding challenging the underlying conviction.
41 (*Charlton v. Superior Court* (1979) 93 Cal.App.3d 858, 862.) Penal Code section 987.2
42 authorizes appointment of the public defender, or private counsel if there is no public defender
43 available, for indigents in criminal proceedings.
44

1 The issue of whether the prima facie showing for a petition for writ of habeas corpus under
2 section 1473(e) is the same as in section 745(h)(2) or defined in subdivision (e)(1) of this rule
3 (see *In re Marquez* (2007) 153 Cal.App.4th 1, 11) is unresolved.
4

5 **Subdivision (a)(4) and (7).** * * *

6
7 **Subdivision (b).** As in other cases, when considering a petition raising a claim under Penal Code
8 section 745(a), the court may request an informal response by the People.
9

10 **Subdivision (d).** The standard set out in section (1)(B) is consistent with *McIntosh v. Superior*
11 *Court* (2025) 110 Cal.App.5th 33, as indicated in the Legislature's statement of intent in
12 Assembly Bill 1071 (Stats. 2025, ch. 721).
13

14 **Rule 8.385. Proceedings after the petition is filed**

15
16 **(a)–(c)** * * *

17
18 **(d) Order to show cause**
19

20 (1) Except as provided in (2), if the petitioner has made the required prima facie
21 showing that he or she is entitled to relief, the court must issue an order to
22 show cause. In doing so, the court takes petitioner's factual allegations as
23 true and makes a preliminary assessment regarding whether the petitioner
24 would be entitled to relief if the petitioner's factual allegations were proved.
25 If so, the court must issue an order to show cause.
26

27 (2) When a petition raises a claim under section 745(a), the court must issue an
28 order to show cause if the petitioner has made a prima facie showing, which
29 means that the defendant has produced facts that, if true, establish that there
30 is a substantial likelihood that a violation of section 745(a) occurred. A prima
31 facie determination must be based on the petitioner's showing and the record.
32

33 (3) An order to show cause does not grant the relief sought in the petition.
34

35 **(e)–(f)** * * *

36
37 **(g) Appointment of counsel**
38

39 (1) Except as provided in (2), if the return is ordered to be filed in the Supreme
40 Court or the Court of Appeal, the court in which the return is ordered filed
41 must appoint counsel for any unrepresented petitioner who desires but cannot
42 afford counsel.
43

1 (2) When a petition raises a claim under Penal Code section 745(a) and requests
2 appointment of counsel, the court must appoint counsel if the petitioner
3 cannot afford counsel and either ~~the petition alleges facts that would establish~~
4 ~~a violation of section 745(a) or;~~

5
6 (A) The State Public Defender requests that counsel be appointed; or

7
8 (B) The petition alleges facts that would establish a violation of section
9 745(a). This inquiry is limited to the facial sufficiency of the
10 allegations of the petition alone.

11
12 Newly appointed counsel may amend a petition filed before their
13 appointment.

14
15 **Advisory Committee Comment**

16
17 **Subdivision (a).** * * *

18
19 **Subdivision (b).** As in other cases, when considering a petition raising a claim under Penal Code
20 section 745(a), the court may request an informal written response from the state.

21
22 **Subdivision (c).** * * *

23
24 **Subdivision (d).** * * *

25
26 **Subdivision (g).** The standard set out in section (2)(B) is consistent with *McIntosh v. Superior*
27 *Court* (2025) 110 Cal.App.5th 33, as indicated in the Legislature's statement of intent in
28 Assembly Bill 1071 (Stats. 2025, ch. 721).

Name: _____

Address: _____

CDCR or ID Number: _____

(Court)

DRAFT
Not approved by the
Judicial Council
11/19/2025

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)

Petitioner	v.	Respondent
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INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction or sentence and are filing this petition in the superior court, you should file it in the county that made the order.
 - If you are challenging the conditions of your confinement and are filing this petition in the superior court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
 - Answer all questions in Part A. Also fill out Part B for all claims except for those based on a violation of the Racial Justice Act (RJA). For RJA claims, fill out Part C. If you have RJA claims and other claims, fill out both Parts B and C.
 - This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
 - Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
 - If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
 - If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
 - If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
 - Notify the Clerk of the Court in writing if you change your address after filing your petition.
 - An attorney filing this petition on behalf of a petitioner, based on a claim under Penal Code section 745(a)(1) or (2) that involves conduct by a law enforcement officer, must serve a copy of this petition on the law enforcement agency that employs the officer.

Approved by the Judicial Council of California for use under rules 4.551 (as amended July 1, 2026) and 8.380 (as amended January 1, 2020) of the California Rules of Court. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.



Part A (must be filled out by all petitioners)

This petition concerns (check all that apply):

- | | | |
|--|--|---|
| <input type="checkbox"/> A conviction | <input type="checkbox"/> Parole | <input type="checkbox"/> A conviction or sentence involving a violation of the Racial Justice Act under Penal Code section 745(a)
(Part C must be completed if this box is checked) |
| <input type="checkbox"/> A sentence | <input type="checkbox"/> Credits | |
| <input type="checkbox"/> Jail or prison conditions | <input type="checkbox"/> Prison discipline | |
| <input type="checkbox"/> Other (specify): _____ | | |

1. Your name: _____

2. a. Where are you incarcerated? _____

b. If you are not incarcerated, are you on supervised release, such as probation, parole, mandatory supervision, or postrelease community supervision?

- ☐ Yes (specify): _____
- ☐ No

3. Why are you in custody or on supervised release?

- ☐ Criminal conviction
- ☐ Civil commitment

4. Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections: _____

c. Name and location of sentencing or committing court: _____

d. Case number: _____

e. Date convicted or committed: _____

f. Date sentenced/Date of judgment: _____

g. Length of sentence: _____

h. When do you expect to be released? _____

i. Were you represented by counsel in the trial court?

- ☐ No
- ☐ Yes If yes, state the attorney's name and address:

5. What was the LAST plea you entered? (check one):

- ☐ Not guilty
- ☐ Guilty
- ☐ Nolo contendere
- ☐ Other: _____

6. If you pleaded not guilty, what kind of trial did you have?

- ☐ Jury
- ☐ Judge without a jury
- ☐ Submitted on transcript
- ☐ Awaiting trial



7. Did you appeal from the conviction, sentence, or commitment?

☐ No

☐ Yes If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):

b. Result: _____

c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. All issues raised:

(1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal?

☐ No

☐ Yes If yes, state the attorney's name and address, if known:

8. Did you seek review in the California Supreme Court?

☐ No

☐ Yes If yes, give the following information:

a. Result: _____

b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. All issues raised:

(1) _____

(2) _____

(3) _____

9. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal (see *In re Dixon* (1953) 41 Cal.2d 756, 759):

10. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, sentence, commitment, or issue in any court, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767–769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)

☐ No If no, skip to number 13.

☐ Yes If yes, continue with number 11.

11. a. (1) Nature of proceeding (for example, "habeas corpus petition"): _____

(2) Name of court: _____

(3) Result (*attach order or explain why unavailable*): _____

(4) Date of decision: _____

(5) Case number or citation of opinion, if known: _____

(6) All issues raised:

(a) _____

(b) _____

(c) _____



- b. (1) Nature of proceeding: _____
- (2) Name of court: _____
- (3) Result (*attach order or explain why unavailable*): _____
- (4) Date of decision: _____
- (5) Case number or citation of opinion, if known: _____
- (6) All issues raised:
- (a) _____
- (b) _____
- (c) _____

12. If any of the courts listed in number 11 held a hearing, state name of court, date of hearing, nature of hearing, and result:

13. Explain any delay in discovering or presenting the claims for relief and in raising the claims in this petition. (See *In re Robbins* (1998) 18 Cal.4th 770, 780; Pen. Code, § 1473(e).)

14. Are you presently represented by counsel?

- ☐ No
- ☐ Yes If yes, state the attorney's name and address, if known:

15. Do you have any petition, appeal, or other matter pending in any court?

- ☐ No
- ☐ Yes If yes, explain:

16. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

Before moving to Parts B and C of this form, read this chart to decide which parts of the form you must complete.

Do you have a Racial Justice Act claim?	You must fill out:
No	Part A and B only
Yes, I only have a Racial Justice Act claim.	Part A and C only
Yes, I have a Racial Justice Act claim and other claims.	Parts A, B, and C



- 1. Claim 1:** State briefly your claim for relief. For example, "The trial court imposed an illegal enhancement." (*If you have additional claims for relief, use a separate page for each claim. State claim 2 on page 6. For additional claims, make copies of page 6 and number the additional claims in order.*)

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*).

b. Supporting documents:

Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

c. Supporting cases, rules, or other authority (*optional*):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If you need more space, add additional pages.)



This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

[illegible]

3. Administrative review:

- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Dexter* (1979) 25 Cal.3d 921, 925.) Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available?

- ☐ Yes
☐ No

Attach documents that show you have exhausted your administrative remedies. (See People v. Duvall (1995) 9 Cal.4th 464, 474.)

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



Signature of Petitioner

If you do not have a Racial Justice Act claim, fill out Part A and Part B only and stop here.



PART C – only fill out Part C for claims involving a violation of the Racial Justice Act under Penal Code section 745(a).

1. Indicate which of the following apply to the case in which you are making a claim for violation of the Racial Justice Act (*check all that apply*):

- a. ☐ Judgment is not final (for example, because an appeal is pending).
- b. ☐ Judgment is for a felony conviction.

2. For each box checked below, you must fill in the specific facts that support a violation of the Racial Justice Act. This may include statistical or other evidence in support of a claim comparing your charge or sentence with the charges or sentences of defendants of other races, ethnicities, or national origins. If you need more space, add additional pages.

I request relief based on the following (*choose all that apply*):

- a. ☐ The judge, an attorney, a law enforcement officer, an expert, or a juror in the case exhibited bias or animus toward me because of my race, ethnicity, or national origin:

- b. ☐ During in-court trial proceedings, the judge, an attorney, a law enforcement officer, an expert, or a juror used discriminatory language about my race, ethnicity, or national origin:

- c. ☐ I was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, **and** the prosecution more frequently sought or obtained convictions for more serious offenses against people who share my race, ethnicity, or national origin in the county where the convictions were sought or obtained:

- d. ☐ I received a longer or more severe sentence compared to similarly situated individuals convicted of the same offense **and**:

(1) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants who share my race, ethnicity, or national origin than on others in that county; *and/or*

(2) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in that county:

3. Is your claim based on a statement or conduct by a judge?

- ☐ Yes If yes, please state the judge's name:
- ☐ No

4. a. Do you want appointed counsel?

- ☐ Yes
- ☐ No

b. If yes, can you afford to hire counsel?

- ☐ Yes
- ☐ No

c. Were you represented by appointed counsel in this case (at the trial court and/or on appeal)?

- ☐ Yes
- ☐ No

5. a. Do you request permission to amend a pending petition for writ of habeas corpus with this claim?

- ☐ Yes
- ☐ No

b. If yes, in what court is your petition pending? _____

c. If yes, what is the case number of your pending petition? _____



6. Do you request **discovery** relevant to a potential violation of the Racial Justice Act?

- ☐ Yes
☐ No

a. ☐ Describe, as specifically as you can, the type of records or information you seek:

b. ☐ List the reasons you need the records or information:

7. Have you tried before to obtain evidence to support your claims?

- a. ☐ Yes
b. ☐ No

If yes, please attach any information or documents you found that support your claim.

8. Before filing this petition, did you ask a court for discovery (to get evidence)?

- a. ☐ Yes
b. ☐ No

If yes, what was the result? Please attach any information or court order you received.

9. Are you raising this claim for the first time?

- ☐ Yes
☐ No

If no, are you raising it again because of new evidence that could not have been previously known to you?

a. ☐ Yes (explain):

b. ☐ No (explain):

If you need additional space to answer any question on this petition, add an extra page and indicate that your answer is "continued on additional page."

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



Signature of Petitioner

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY 11/18/2025 DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	FOR COURT USE ONLY DATE: TIME: DEPARTMENT:

MOTION TO VACATE CONVICTION OR SENTENCE

☐ Pen. Code, § 1016.5
 ☐ Pen. Code, § 1473.7(a)(1)
 ☐ Pen. Code, § 1473.7(a)(2)
 ☐ Pen. Code, § 1473.7(a)(3)

Instructions—Read carefully if you are filing this motion for yourself

- The term "Moving Party" as used in this form refers to the person asking for relief.
- This motion must be clearly handwritten in ink or typed. Make sure all answers are true and correct. If you make a statement that you know is false, you could be convicted of perjury (lying under oath).
- You must file a separate motion for each separate case number.
- Fill in the requested information. If you need more space, add an extra page and note that your answer is "continued on added page," or use *Attachment to Judicial Council Form* (form MC-025) as your additional page.
- Serve the motion on the prosecuting agency.
- An attorney filing this motion on behalf of a moving party, based on a claim under Penal Code section 745(a)(1) or (2) that involves conduct of a law enforcement officer, must serve the motion on the law enforcement agency that employs the officer.
- File the motion in the superior court in the county where the conviction or sentence was imposed.** Only the original motion needs to be filed unless local rules require additional copies.
- Notify the clerk of the court in writing if you change your address after filing your motion.

1. This motion concerns a conviction or sentence in case number _____ . On (date): _____ ,
 the Moving Party was convicted of a violation of the following offenses (*list all offenses included in the conviction*):

CODE	SECTION	TYPE OF OFFENSE (<i>felony, misdemeanor, or infraction</i>)

If you need more space to list offenses, use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.



PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

2. ☐ **MOTION UNDER PENAL CODE SECTION 1016.5**a. **GROUND FOR RELIEF: The Moving Party requests relief based on the following:**

- (1) Before acceptance of a plea of guilty or nolo contendere to the offense, the court failed to advise the Moving Party that the conviction might have immigration consequences, as required under Penal Code section 1016.5(a).
- (2) The conviction that was based on the plea of guilty or nolo contendere may result in immigration consequences for the Moving Party, including possible deportation, exclusion from admission to the United States, or denial of naturalization.
- (3) The Moving Party likely would not have pleaded guilty or nolo contendere if the court had advised the Moving Party of the immigration consequences of the plea. (*People v. Arriaga* (2014) 58 Cal.4th 950.)

b. **Supporting Facts**

Tell your story. Describe the facts you allege regarding (1) the court's failure to advise you of the immigration consequences, (2) the possible immigration consequences, and (3) the likelihood that you would not have pleaded guilty or nolo contendere if you had been advised of the immigration consequences by the court. (*If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.*)

3. ☐ **MOTION UNDER PENAL CODE SECTION 1473.7(a)(1), Legal Invalidity With Actual or Potential Immigration Consequences**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison or on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. **GROUND FOR RELIEF: Moving Party requests relief based on the following:**

The conviction or sentence is legally invalid due to a prejudicial error (a mistake that causes harm) that damaged the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence. (Note: A determination of legal invalidity may, *but is not required to*, include a finding of ineffective assistance of counsel.) If you are claiming that your conviction or sentence is invalid due to ineffective assistance of counsel, before the hearing is held on this motion, you (or the prosecutor) must give timely notice to the attorney who you are claiming was ineffective in representing you.



PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

3. b. **Supporting Facts**

Tell your story. What facts show prejudicial error? Include information that shows that the conviction or sentence you are challenging is currently causing or has the possibility of causing your removal from the United States, or the denial of your application for an immigration benefit, lawful status, or naturalization.

CAUTION: You must *state facts, not conclusions*. For example, if claiming ineffective assistance of counsel, you must state facts detailing what the attorney did or failed to do and how that affected your conviction or sentence.

Note: The court presumes your conviction or sentence is not legally valid if

- (1) you pleaded guilty or nolo contendere based on a law that provided that the arrest and conviction would be deemed never to have occurred if specific requirements were completed;
- (2) you completed those specific requirements; and
- (3) despite completing those requirements, your guilty or nolo contendere plea has been, or possibly could be, used as a basis for adverse immigration consequences.

(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.)

c. **Reasonable Diligence (check all that apply)**

- (1) (a) ☐ On *(date)*: _____, the Moving Party received a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal or the denial of an application for an immigration benefit, lawful status, or naturalization.
- (b) ☐ The Moving Party has not received a notice to appear in immigration court or other notice from immigration authorities as described above.
- (2) (a) ☐ On *(date)*: _____, the Moving Party received notice that a final removal order was issued against the Moving Party, based on the conviction or sentence that the Moving Party seeks to vacate.
- (b) ☐ The Moving Party has not received a final notice of removal as described above.

(If you are requesting appointment of counsel, you may skip the following item, 3c(3).)

- (3) This motion may be denied because of a delay in filing it. If you received *both* notices mentioned above, explain why you did not bring and could not bring this motion earlier. If you received both notices before this law went into effect on January 1, 2017, when did you become aware of the law? Did something happen to give you a reason to look for conviction relief?



PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

4. ☐ **MOTION UNDER PENAL CODE SECTION 1473.7(a)(2), Newly Discovered Evidence of Actual Innocence**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison or on bail, probation, mandatory supervision, post release community supervision (PRCS), or parole).

a. **GROUND FOR RELIEF: Moving Party requests relief based on the following:**

- (1) Newly discovered evidence of actual innocence exists that requires vacating the conviction or sentence as a matter of law or in the interests of justice.
- (2) The Moving Party discovered the new evidence of actual innocence on *(date)*:

b. **Supporting Facts**

Tell your story. Describe the newly discovered evidence and how it proves your actual innocence. Explain why you could not discover this evidence at the time of your trial. Explain why you did not bring and could not bring this motion earlier. *(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.)*

5. ☐ **MOTION UNDER PENAL CODE SECTION 1473.7(a)(3), Conviction or Sentence Based on Race, Ethnicity, or National Origin in Violation of Penal Code section 745(a) (Racial Justice Act)**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison or on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. **Filing Date**

If you have a claim for violation of **the Racial Justice Act**, indicate which of the following apply to the case in which you are making this claim *(check all that apply)*:

- (1) ☐ Judgment is not final (for example, because an appeal is pending).
- (2) ☐ The Moving Party is facing actual or potential immigration consequences related to the conviction or sentence.
- (3)** ☐ Judgment is for a felony conviction.



PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

5. b. **GROUND FOR RELIEF: Moving Party requests relief based on the following** (*choose all that apply*):

- (1) ☐ The judge, an attorney, a law enforcement officer, an expert, or a juror in the case exhibited bias or animus toward the Moving Party because of the Moving Party's race, ethnicity, or national origin.
- (2) ☐ During in-court trial proceedings, the judge, an attorney, a law enforcement officer, an expert, or a juror used racially discriminatory language about the Moving Party's race, ethnicity, or national origin. (Racially discriminatory language does not include relaying language used by someone else that is relevant to the case, or giving a racially neutral and unbiased physical description of the suspect.)
- (3) ☐ The Moving Party was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, **and** the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the Moving Party's race, ethnicity, or national origin in the county where the convictions were sought or obtained.
- (4) ☐ The Moving Party received a longer or more severe sentence compared to similarly situated individuals convicted of the same offense **and**:
- (a) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants who share the Moving Party's race, ethnicity, or national origin than on others in that county; *and/or*
- (b) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in that county.

c. **Discovery of Violation**

The Moving Party learned of the grounds described in item 5b above on or about (date): _____

d. **Supporting Facts**

CAUTION: You must state facts, not conclusions. A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*).

- e. ☐ Judicial Conflict. The motion is based on a statement or conduct by a judge (*check if applicable*).

The judge's name is:

- f. ☐ **Motion for Discovery.** The Moving Party is requesting **discovery** relevant to a potential violation of **the Racial Justice Act** (*check if applicable*).

(1) **Describe, as specifically as you can, the type of records or information you seek:**

(2) **List the reasons you need the records or information:**



PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

6. ☐ **REQUEST FOR COUNSEL** (*People v. Fryhaat* (2019) 35 Cal.App.5th 969, 981; *People v. Gutierrez* (2025) 113 Cal. App.5th 906)

- a. The Moving Party requests appointment of counsel upon a finding by the court that there is a prima facie case for relief, and
- b. The Moving Party is indigent and has completed and attached *Defendant's Financial Statement* (form CR-105) showing that the Moving Party cannot afford to hire a lawyer. Form CR-105 is available online at courts.ca.gov/forms.

7. ☐ The Moving Party requests that the court hold the hearing on this motion without the Moving Party's personal presence because the Moving Party is (*check one*):


- a. ☐ in federal custody awaiting deportation.
- b. ☐ otherwise in custody at (*facility*):
- c. ☐ outside of the United States and lacks permission to enter.
- d. ☐ other (*specify*):

8. The Moving Party requests that the court vacate the conviction or sentence in the above-captioned matter.

9. If the Moving Party entered a plea of guilty or nolo contendere, the Moving Party requests that the court allow the withdrawal of the plea of guilty or nolo contendere in the above-captioned matter.

Date:

 Name of moving party or attorney for moving party



 Signature of Moving Party or Attorney

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY 11/18/2025 DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
ORDER ON MOTION TO VACATE CONVICTION OR SENTENCE <input type="checkbox"/> Pen. Code, § 1016.5 <input type="checkbox"/> Pen. Code, § 1473.7(a)(1) <input type="checkbox"/> Pen. Code, § 1473.7(a)(2) <input type="checkbox"/> Pen. Code, § 1473.7(a)(3)	FOR COURT USE ONLY DATE: TIME: DEPARTMENT:

1. FOR APPOINTMENT OF COUNSEL

- a. ☐ The court **grants** the request for appointment of counsel.
- b. ☐ The court **denies** the request for appointment of counsel because the Moving Party has not shown (*choose all that apply*):
☐ a prima facie case ☐ indigency.

2. FOR PENAL CODE SECTION 1016.5 RELIEF

- a. ☐ The court **grants** the Moving Party's request to vacate the judgment and to permit the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.
- b. ☐ The court **denies** the Moving Party's request to vacate the judgment and to permit the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.

3. FOR PENAL CODE SECTION 1473.7(a)(1) RELIEF

- a. **Request to Waive Personal Appearance (if applicable)**
- (1) ☐ The court finds good cause to **grant** the request that the court hold the hearing without the personal presence of the Moving Party.
- (2) ☐ The court **denies** the request that the court hold the hearing without the personal presence of the Moving Party.
- b. **Timeliness**
- (1) ☐ The court **deems the motion timely** because the Moving Party did not receive, or acted with reasonable diligence after receiving, notice from immigration authorities.
- (2) ☐ The court exercises its discretion to **deem the motion timely**.
- (3) ☐ The court **deems the motion untimely and dismisses the motion** after a hearing (*People v. Alatorre* (2021) 70 Cal. App.5th 747).
- c. **Vacatur of Conviction or Sentence**
- (1) ☐ The court **grants** the Moving Party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error damaging the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence.
☐ The court permits the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.
- (2) ☐ The court **denies** the Moving Party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error damaging the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence.



CASE NUMBER:

DEFENDANT:

4. FOR PENAL CODE SECTION 1473.7(a)(2) RELIEF**a. Request to Waive Personal Appearance (if applicable)**

- (1) ☐ The court finds good cause to **grant** the request that the court hold the hearing without the personal presence of the Moving Party.
- (2) ☐ The court **denies** the request that the court hold the hearing without the personal presence of the Moving Party.

b. Undue Delay

- (1) ☐ The court finds that the Moving Party **filed without undue delay** from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence of actual innocence.
- (2) ☐ The court finds that the Moving Party **failed to file the motion without undue delay** from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence of actual innocence, and **dismisses** the motion after a hearing.

c. Vacatur of Conviction or Sentence

- (1) ☐ The court **grants** the Moving Party's request to vacate the conviction or sentence based on newly discovered evidence of actual innocence.
☐ The court permits the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.
- (2) ☐ The court **denies** the Moving Party's request to vacate the conviction or sentence based on newly discovered evidence of actual innocence.
- (3) The court's basis for the ruling:

5. FOR PENAL CODE SECTION 1473.7(a)(3) RELIEF**a. Request to Waive Personal Appearance (if applicable)**

- (1) ☐ The court finds good cause to **grant** the request that the court hold the hearing without the personal presence of the Moving Party.
- (2) ☐ The court **denies** the request that the court hold the hearing without the personal presence of the Moving Party.

b. Undue Delay

- (1) ☐ The court finds that the Moving Party filed **without undue delay** from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence that provides a basis for relief under **the Racial Justice Act**.
- (2) ☐ The court finds that the Moving Party **failed to file the motion without undue delay** from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence that provides a basis for relief under **the Racial Justice Act**, and **dismisses the motion** after a hearing.

c. Motion for Discovery

- (1) ☐ The court grants the Moving Party's request for the following records or information relevant to a potential **Racial Justice Act violation**:
- (2) ☐ The court denies the Moving Party's request for **discovery** of records or information.



CASE NUMBER:

DEFENDANT:

5. **d. Vacatur of Conviction or Sentence**(1) The court finds the following violations of the **Racial Justice Act** occurred (*check all that apply*):

- (a) ☐ The judge, an attorney, a law enforcement officer, an expert, or a juror in the case exhibited bias or animus toward the Moving Party because of the Moving Party's race, ethnicity, or national origin.
- (b) ☐ During in-court trial proceedings, the judge, an attorney, a law enforcement officer, an expert, or a juror used racially discriminatory language about the Moving Party's race, ethnicity, or national origin. (Racially discriminatory language does not include relaying language used by someone else that is relevant to the case, or giving a racially neutral and unbiased physical description of the suspect.)
- (c) ☐ The Moving Party was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origin who have engaged in similar conduct and are similarly situated, **and** the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the Moving Party's race, ethnicity, or national origin in the county where the convictions were sought or obtained.
- (d) ☐ The Moving Party received a longer or more severe sentence compared to similarly situated individuals convicted of the same offense **and**:
- (i) ☐ longer or more severe sentences were more frequently imposed for the same offense on people who share the Moving Party's race, ethnicity, or national origin than on others in the county; *and/or*:
- (ii) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in that county.

(2) ☐ The court **grants** the Moving Party's request to vacate the conviction and sentence based on a violation of **the Racial Justice Act** and finds the conviction and sentence legally invalid.(a) ☐ Refer to the court minute order from (*date*): _____**OR** (*check all that apply*):(b) ☐ The court orders the following new proceedings consistent with **the Racial Justice Act**:(c) ☐ The court finds a violation of Penal Code section 745(a)(3) and modifies the judgment to the following lesser included or lesser related offense:(d) ☐ The court permits the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.(e) ☐ The court grants the following remedies:

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5. d. (3) ☐ The court **grants** the Moving Party's request to vacate the sentence based on a violation of the Racial Justice Act and finds the sentence was legally invalid.
- (a) ☐ Refer to the court minute order from (date): _____
- OR** (check all that apply):
- (b) ☐ The court imposes the following new sentence:
- (c) ☐ The court grants the following remedies:
- (4) ☐ The court **denies** the Moving Party's request to vacate the conviction or sentence based on a violation of the Racial Justice Act.
- (5) The court's basis for the ruling:

Date:

Judicial Officer