|  |
| --- |
| Parts in blue print are instructions to user, not to be included in filed document unless so noted. [Parts and references in green font, if any, refer to juvenile proceedings. See Practice Note, this web page, for guidance in adapting forms to juvenile cases.]  ***PRACTICE TIPS***  See [ADI Manual](http://www.adi-sandiego.com/panel/manual.asp), chapter 7, sections 7.5, et. seq. and 7.5.4 [abbreviated petition to exhaust state remedies] and ADI Practice Article, [Exhausting State Remedies](https://www.adi-sandiego.com/legal-resources/criminal-law/). For form and content of petition, see California Rules of Court, rules 8.204 and 8.504.  Under California Rules of Court, rule 8.504(b)(7), “[t]he title of the case and designation of the parties on the cover of the petition must be identical to the title and designation in the Court of Appeal opinion or order that is the subject of the petition.”  The words “Petition for Review to Exhaust State Remedies” must appear “prominently” on the cover as required by rule 8.508(b)(1).) |

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

|  |  |
| --- | --- |
| THE PEOPLE OF THE STATE OF CALIFORNIA,  Plaintiff and Respondent,  v.  [NAME],  Defendant and Appellant. | Supreme Court  No. *[number]*  Court of Appeal  No. *[number]*  Superior Court  No. *[number]* |

Appeal from the Superior Court of [name of county] County

Honorable [name of trial judge], Judge

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**PETITION FOR REVIEW TO EXHAUST STATE REMEDIES**

**(Rule 8.508)**

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**After the *[Published/Unpublished]* Decision of the Court of Appeal, Fourth Appellate District, Division *[Number]*, Affirming the Judgment of Conviction.**

*[Attorney’s Name]*

State Bar No. [number]

[Address]

[Phone number]

*[Email address and fax number if available]*

Attorney for Defendant and Appellant *[name]*

By Appointment of the Court of

Appeal Under the Appellate

Defenders, Inc. Program

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**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

|  |  |
| --- | --- |
| THE PEOPLE OF THE STATE OF CALIFORNIA,  Plaintiff and Respondent,  v.  [NAME],  Defendant and Appellant. | Supreme Court  No. *[number]*  Court of Appeal  No. *[number]*  Superior Court  No. *[number]* |

Appeal from the Superior Court of [name of county] County

Honorable [name of trial judge], Judge

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**PETITION FOR REVIEW TO EXHAUST STATE REMEDIES**

**(Rule 8.508)**

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

TO THE HONORABLE [NAME], CHIEF JUSTICE, *AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:*

This petition for review follows the *[published/unpublished]* decision of the Court of Appeal, Fourth Appellate District, Division *[number]*, filed on *[date]*. A copy of the opinion is attached to this petition as an appendix. The petition is under California Rules of Court, rule 8.508 (rule or rules). It presents no grounds for review under rule 8.500(b) and is filed solely to exhaust state remedies for purposes of federal habeas corpus.

*[****Important****: The last sentence in the paragraph above is required by rule 8.508(b)(3)(A).]*

**STATEMENT OF CASE AND FACTS**

*[Rule 8.508(b)(3)(B) requires “[a]* ***brief*** *statement of the underlying proceedings, including the nature of the conviction and the punishment imposed,” and rule 8.508(b)(3)(C) requires “[a]* ***brief*** *statement of the factual and legal bases of the claim.” (Emphasis added.) While traditional statements of case and facts are not required in the petition for review, counsel may use the statements of case and facts from the appellant’s opening brief or, if the statement in the Court of Appeal opinion is adequate, adopt it by stating: “Petitioner adopts the statement presented in the Court of Appeal’s decision for purpose of this petition.” Cite to the opinion pages as: Appendix, pages to\_. See ADI Manual, Chapter 7, §§ 7.5.3.2 and 7.5.4 and ADI Practice Article, Exhaust Petition, 1.A. and II.]*

*[Petition for rehearing:**Under rule 8.504(b)(3), “[i]f a petition for rehearing could have been filed in the Court of Appeal, the petition for review must state whether it was filed and, if so, how the court ruled.” (Emphasis added.)]*

**ARGUMENT**

**I.**

**TYPES OF ARGUMENTS:** *The purpose of a petition for review to exhaust state remedies is solely to preserve issues for later federal review. Only* ***federal*** *issues should be included in it.*

*Important: If you have other issues than federal ones or believe any issue should actually be reviewed by the Supreme Court, file a regular petition for review under rule 8.504 and include both state and federal issues in it. A regular petition will also exhaust state remedies. ADI has a form for a regular petition under “Petition for Review” template, on the* [*forms and samples page*](https://appellatedefenders.sharepoint.com/sites/Onboarding/files/Website/FORMS%20&%20SAMPLES/Forms%202024/forms%20and%20samples%20page).

**ARGUMENT HEADING(S):** *Argue each issue with a one-sentence heading at the beginning, as in the briefs. The heading should summarize your position. If you have more than one argument, then label each as Argument I, II, and so forth. You can use or modify the argument headings from your briefs.*

*Note:**The federal nature of the argument in each heading must be clearly stated. For example: “The Confession Was Obtained in Violation of Miranda and the Fifth Amendment, Because the Officers Continued Questioning After Defendant Had Unequivocally Invoked the Right to Remain Silent.”*

**TEXT OF ARGUMENTS:** *Rule 8.508(b)(3)(C) requires “a brief statement of the factual and legal bases of the claim.” After each heading, give a short legal argument in support of the position taken. The specific federal legal bases include citation to the federal constitutional provisions, decisions of the United States Supreme Court supporting the argument, and any other relevant federal authorities. The articulation of a federal legal theory requires explaining why the facts amount to a violation of those federal provisions.*

*You may use the arguments in your briefs as a guide. You may also discuss any points made in the Court of Appeal opinion.*

***Purpose****: Your goal is to make sure your federal issues are clearly and completely presented to the California Supreme Court, so that you will satisfy federal “exhaustion” requirements. See ADI Manual, Chapter 7, § 7.7.2.2.*

*For each issue, be sure to:*

*(a) set out the facts in the case that constituted a federal constitutional violation;*

*(b) point to the specific part of the United States Constitution (such as the Fifth Amendment right against self-incrimination) and the particular federal constitutional theory (such as the right not to be interrogated after invoking the right to remain silent) on which the claim is based; and*

*(c) cite/discuss federal authorities (especially decisions of the United States Supreme Court, such as Miranda v. Arizona) related to the claim*

**CONCLUSION**

For the reasons stated, the petition for review should be granted.

Dated: *[date]* Respectfully submitted,

*[Attorney’s name]*

State Bar No. *[number]*

Attorney for Defendant and

Appellant [*Name]*

**CERTIFICATION OF WORD COUNT**

*[See ADI Manual, chapter 7, § 7.5.2.3.]*

I, *[appellate counsel’s name]*, hereby certify in accordance with California Rules of Court, rule 8.504(d), that this petition contains *[number]* words as calculated by the *[name of program]* software in which it was written.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: *[date]* Respectfully submitted,

*[Attorney’s name]*

State Bar No. *[number]*

**APPENDIX**

**PROOF OF SERVICE**