

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Brittany H. Constable v. Jeff McCombre

Constable v. McCombre · No. 2:25-cv-2848-JDP (P) · Decided December 1, 2025

SUMMARY

The United States District Court for the Eastern District of California dismissed Brittany H. Constable’s 28 U.S.C. § 2254 habeas petition with leave to amend. The court concluded that the allegations concerning stolen information and name misuse were not cognizable in habeas and that the alleged overdetention and Miranda claims were insufficiently clear, including as to exhaustion.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 BRITTANY H. CONSTABLE,¹ Case No. 2:25-cv-2848-JDP (P) 12
Petitioner, 13 v. ORDER 14 JEFF MCCOMBRE, 15 Respondent. 16 17 18 Petitioner, a state
prisoner, brings this action under section 2254. ECF No. 1. Her petition 19 does not state a
cognizable federal habeas claim, and I will dismiss it with leave to amend so that 20 she may
remedy this deficiency if she can.

21 The petition is before me for preliminary review under Rule 4 of the Rules Governing 22
Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine 23
the habeas petition and order a response to the petition unless it “plainly appears” that the 24
petitioner is not entitled to relief. See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir.

2019); 25 *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998). 26 1 The docket lists
petitioner’s name as “Edward H. Constable, also known as Brittany H. 27 Constable.” Petitioner
states that she is transgender, ECF No. 1 at 3, and, accordingly, I will refer to her feminine name
in the caption and use feminine pronouns in the order. If this is incorrect, 28 petitioner may state
as much in any amended petition. — IIE IS IER III) OE EIS IES 1 Petitioner alleges that her
information and name may have been stolen because of prison 2 | staff failing to practice effective
computer security.

ECF No. | at 3,9. This allegation does not 3 | attack the validity of any conviction and, thus, is
unsuited to proceed in a habeas action. 4 | Petitioner does allege that she has been “overdetained,”
which might hint at a cognizable claim, 5 | but the specifics are unclear. Petitioner indicates that
her Miranda rights were not read 6 | appropriately, but I cannot discern the basis for this claim.

Neither has petitioner stated whether 7 | the claim has been properly exhausted in state court before being presented here. The “check the 8 | box” portion of the form indicates that no review was sought from the California Supreme Court, 9 | but the Miranda claim is not mentioned on the form, only in the attachments to the petition. 10 | Thus, I cannot tell whether petitioner intended to state that this claim was also unexhausted.

11 I will dismiss the petition with leave to amend. If petitioner chooses to file an amended 12 || petition, she must do so on the form provided and indicate whether her claims are exhausted. The 13 | amended petition should be titled “First Amended Petition.” 14 Accordingly, it is ORDERED that: 15 1.

The petition, ECF No. 1, is DISMISSED with leave to amend. 16 2. Within thirty days from service of this order, petitioner shall file either (1) an 17 | amended petition or (2) notice of voluntary dismissal of this action without prejudice. 18 3. Failure to timely file either an amended petition or notice of voluntary dismissal 19 || may result in the imposition of sanctions, including a recommendation that this action be 20 || dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).

21 4. The Clerk of Court shall send petitioner a habeas petition form with this order. If 22 | he files an amended complaint, he must use this form. 23 IT IS SO ORDERED. Dated: _ December 1, 2025 q——— 26 JEREMY D., PETERSON UNITED STATES MAGISTRATE JUDGE 28