

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

OPINION

McCombre

PER CURIAM.

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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.

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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

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