

# **Workshop: Prisoner access to Federal Courts, Reinstating Habeas Corpus and Reconstruction Era Civil Rights Laws as Tools for Racial, Economic Justice, Ending Mass Incarceration**

The following is the plan for a future community workshop on the benefits of reinstating Habeas Corpus.

## **Abstract:**

Habeas corpus was once a powerful tool for fighting wrongful convictions. This legal recourse enabled a convicted person to have the facts and law surrounding their convictions reexamined by a federal judge if they felt their rights had been violated. They could also introduce newly enacted laws and court decisions adopted since the time of their conviction to be considered in re-litigating their case. This was all changed by the passage of the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §2254 – 2255, (AEDPA). This law made it much more difficult for prisoners to apply to have their convictions reviewed under habeas corpus by imposing a variety of roadblocks. This act changed habeas corpus from a fundamental right to a rare privilege as the permanence and efficiency of convictions took precedence over the civil rights of individuals. The impact of AEDPA is felt mostly by Black, Brown, and poor individuals who bear the brunt of a biased legal system. The goal of this workshop is to develop legislation that will make habeas corpus an effective tool against wrongful convictions and a weapon in the fight against racialized and poverty-based mass incarceration and reinstate fair and open access to federal courts to redress civil rights violations by state actors.

## **Intended Participants:**

Justice impacted people, their families, advocates, constitutional law academics, law and public policy students, public defense lawyers, prisoner's rights advocates, appellate and post-conviction legal practitioners, members of the academic and wider community.

## **Workshop Description:**

Workshop participants will explore potential reforms to 28 USC 2254, 2254 (habeas corpus) with the goal of introducing legislation that will strengthen habeas corpus. Reforms to be researched by participants will include:

- Mandatory hearing on presentation of a “colorable claim” of violation of federal constitutional right with particular emphasis on deprivation of Sixth Amendment right to effective assistance of conflict-free counsel.

- Relaxation of exhaustion of state remedies “on merits” requirements where it is asserted that a state court appellate and post-conviction apparatus is so procedurally constrained that to pursue it further would be an exercise in futility and cause irreparable delays in asserting and obtaining federal constitutional remedies.
- Codification of elimination of statutory time bars in capital cases as well as cases where colorable claims of actual innocence are made or allegations of violations of a federal constitutional right are documented directly on the trial record or on the record of prior state or federal collateral proceedings which included such documentation.
- Establishing a right to representation by the Federal Defenders Office on all initial habeas corpus filings and related appeals, where colorable claims of violation of a federal constitutional right can be demonstrated with special emphasis placed upon allegations of deprivation of Sixth Amendment right to conflict-free counsel at the pre-trial level and post-conviction and appellate proceedings.
- Provisions which require mandatory federal habeas intervention, hearing, and relief where the pleadings evidence probable racial animus in the investigation, prosecution, trial proceedings, sentencing, commitment to prison, or conditions of incarceration. This should include but not be limited to a “Batson” type hearing where validated statistical proof of racial animus in the proceeding or ensuing conviction and incarceration serves as prima facie proof that the criminal defendant’s race was more likely than not the cause of arrest, prosecution, trial, and sentencing to prison and that the causes are systemic. In *Batson v. Kentucky*, 476 US 79 (1986), systemic exclusion of Black jurors established by statistical proof required automatic hearing on the merits and subsequent vacatur of conviction.
- Eliminating ambiguity in cases at the intersection of 22 USC 2254, 2255 (habeas corpus) and 42 USC 1983 (federal civil rights actions) and where in the interest of justice, allow civil rights actions to address unconstitutional convictions and conditions of confinement as a component of a civil rights violation, notwithstanding a yet outstanding underlying criminal conviction, providing that either remedy would afford proper adjudication of the alleged federal constitutional violations. In this connection, further recommend an amendment to The Prison Litigation Reform Act (PLRA), 42 U.S.C. 1997, enacted in 1996 as a Clinton Era measure restricting access to Article III Courts by indigent state prisoners who commence 42 USC 1983 civil rights actions alleging violations of federal civil rights by officials “acting under color of state law.” See also *Heck v. Humphrey*, 512 U.S. 477 (1994). Further review of existing absolute and qualified immunity defenses currently available to state actors.

**Objective:**

The objective will be to conduct the workshop, maintain it as a standing committee after the conference and develop a public education campaign around the issues and present actual proposed legislation to allies in Congress.