

**FAIRLY PRESENTING FEDERAL CLAIMS TO THE STATE
COURTS: RECENT DEVELOPMENTS IN PRESERVING
FEDERAL CLAIMS FOR SUBSEQUENT FEDERAL COURT
REVIEW**

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I. INTRODUCTION

A criminal defendant, under 28 U.S.C. § 2254, may challenge his or her state-court convictions in a federal habeas corpus proceeding on the grounds that the conviction was obtained in a manner that violates federal law.¹ Typically, this involves a claim that the defendant was denied a federal constitutional right during the course of the criminal proceedings (e.g., the right to effective assistance of counsel as guaranteed by the Sixth Amendment² or the right to due process and equal protection as guaranteed by the Fourteenth Amendment³). But to take advantage of the opportunity to challenge a state-court conviction in federal court, a defendant ordinarily must first “fairly

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1. 28 U.S.C. § 2254 (2000).
2. U.S. CONST. amend. VI.
3. U.S. CONST. amend. XIV.

present” his or her claims to the appropriate state court as “federal” questions.⁴ A defendant who fails to do so will be barred from obtaining federal court review of these claims.

This Article examines what a criminal defendant should do while litigating claims in state court in order to ensure that the claims are properly preserved as federal questions to allow subsequent federal court review. The Article also discusses the potential hazards of attempting to frame all of a defendant’s claims as federal questions while litigating in state court in order to ensure the availability of subsequent federal court review, rather than narrowing the claims to state-law questions. Narrowing the claims to state-law questions may cause the loss of subsequent federal court review but enhance the defendant’s chances of success in state court.

4. § 2254.