

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

**Instructions for Filing a Petition for a Writ of Habeas Corpus
By a Person in State Custody Under 28 U.S.C. § 2254**

I. Scope of 28 U.S.C. § 2254

You may file a petition for a writ of habeas corpus under 28 U.S.C. § 2254 if you are in custody pursuant to the judgment of a state court in violation of the federal Constitution or federal laws. You may challenge either the fact or duration of your state sentence; however, any challenge to violations of the federal Constitution or federal law that affects the conditions, as opposed to the fact or duration, of your confinement should be brought in a civil rights complaint under 42 U.S.C. § 1983. If you want to file a civil rights complaint under 42 U.S.C. § 1983, you may do so on forms provided by the clerk of the court.

Note that a petition for a writ of habeas corpus under 28 U.S.C. § 2254 will not be granted unless it appears that you have exhausted the remedies available in state court.

II. Filing a Petition

To start a habeas action, you must send the court the following items: (1) an original petition and (2) a check or money order for \$5.00 or an original Prisoner's Application to Proceed In Forma Pauperis. In addition to these instructions, this packet includes a petition for a writ of habeas corpus form and an Application to Proceed In Forma Pauperis. You must use the forms provided with this packet and not any other version. You should keep a copy of the petition and in forma pauperis application for your own records.

When you have completed the forms, mail the originals to Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

NOTE: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

III. Filing Fees

In order for the petition to be filed, it must be accompanied by the filing fee of \$5.00. If you are unable to pay the filing fee, you may petition the court to proceed in forma pauperis. A Prisoner's Application to Proceed In Forma Pauperis form for this purpose is included in this packet. You must complete the application, sign it and declare under penalty of perjury that the facts stated therein are correct. File the application with your petition and keep a copy for your records.

IV. Petition Form

Your petition must be legibly handwritten or typewritten, and you must sign it and declare under penalty of perjury that the facts stated in it are correct. Read the entire petition form before answering any questions. You will note that brief explanatory comments appear throughout the form. Read these carefully before you answer the questions because they are intended to help you fill out the petition as well as ensure that you file your petition in the proper court.

Complete all applicable questions in the proper blank spaces. If you need additional space to answer a question, you may attach additional blank pages. Make clear the question to which any such continued answer refers.

Only one sentence or conviction may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.

V. After Petition Is Filed

You will be notified as soon as the court issues an order. It is your responsibility to keep the court informed of any changes of address to ensure that you receive court orders. Failure to do so may result in dismissal of your suit.

VI. Inquiries And Copying Requests

Because of the large volume of cases filed by inmates in this court and limited court resources, the court will not answer inquiries concerning the status of your case or provide copies of documents, except at a charge of fifty cents (\$0.50) per page. You must therefore keep copies of all documents submitted to the court for your own records.

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name _____
(Last) (First) (Initial)

Prisoner Number _____

Institutional Address _____

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Full Name of Petitioner

Case No.(To be provided by the
clerk of court)

vs.

Name of Respondent
(Warden or jailor)

PETITION FOR A WRIT OF HABEAS CORPUS

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Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Court	Location
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(b) Case number, if known _____

(c) Date and terms of sentence _____

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ___ No ___

Where? _____
(Name of Institution) (Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

3. Did you have any of the following?

Arraignment: Yes ___ No ___ Preliminary Hearing: Yes ___ No ___ Motion to Suppress: Yes ___ No ___

4. How did you plead?

Guilty _____ Not Guilty _____ Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury _____ Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes ___ No ___

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes ___ No ___
- (b) Preliminary hearing Yes ___ No ___
- (c) Time of plea Yes ___ No ___
- (d) Trial Yes ___ No ___
- (e) Sentencing Yes ___ No ___
- (f) Appeal Yes ___ No ___
- (g) Other post-conviction proceeding Yes ___ No ___

8. Did you appeal your conviction? Yes ___ No ___

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes ___	No ___	_____
			(Year) (Result)

Supreme Court of California	Yes ___	No ___	_____
			(Year) (Result)

Any other court	Yes ___	No ___	_____
			(Year) (Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes ___ No ___

(c) Was there an opinion? Yes ___ No ___

(d) Did you seek permission to file a late appeal under Rule 31(a)? Yes ___ No ___

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ___ No ___

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court _____

Type of Proceeding _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result _____ Date of Result _____

II. Name of Court _____

Type of Proceeding _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result _____ Date of Result _____

III. Name of Court _____

Type of Proceeding _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result _____ Date of Result _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes ___ No ___

(Name and location of court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: _____

Supporting Facts: _____

Claim Two: _____

Supporting Facts: _____

Claim Three: _____

Supporting Facts: _____

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

Do you have an attorney for this petition? Yes ___ No ___

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date Signature of Petitioner

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

**INSTRUCTIONS FOR PRISONER'S
IN FORMA PAUPERIS APPLICATION**

You must submit to the court a completed Prisoner's In Forma Pauperis Application if you are unable to pay the entire filing fee at the time you file your complaint or petition. Your application must include copies of the prisoner trust account statement showing transactions for the last six months and a certificate of funds in prisoner's account, signed by an authorized officer of the institution.

A. Non-habeas Civil Actions

The filing fee for any civil action other than a habeas is \$150.00. Even if you are granted leave to proceed in forma pauperis, you must still pay the full amount of the court's filing fee, but the fee will be paid in several installments. 28 U.S.C. § 1915.

You must pay an initial partial filing fee of 20 percent of the greater of (a) the average monthly deposits to your account for the 6-month period immediately before the complaint was filed or (b) the average monthly balance in your account for the 6-month period immediately before the complaint was filed. The court will use the information provided on the certificate of funds and the trust account statement to determine the filing fee immediately due and will send instructions to you and the prison trust account office for payment if in forma pauperis status is granted.

After the initial partial filing fee is paid, your prison's trust account office will forward to the court each month 20 percent of the most recent month's income to your prison trust account, to the extent the account balance exceeds ten dollars (\$10.00). Monthly payments will be required until the full filing fee is paid. If you have no funds over ten dollars (\$10.00) in your account, you will not be required to pay part of the filing fee that month.

If your application to proceed in forma pauperis is granted, you will be liable for the full \$150.00 filing fee even if your civil action is dismissed. That means the court will continue to collect payments until the entire filing fee is paid. However, if you do not submit this completed application the action will be dismissed without prejudice and the filing fee will not be collected.

B. Habeas Actions

The filing fee for a habeas action is \$5.00. If you are granted leave to proceed in forma pauperis you will not be required to pay any portion of this fee. If you are not granted leave to proceed in forma pauperis you must pay the fee in one payment and not in installments. **If you use a habeas form to file a non-habeas civil action, you will be required to pay the \$150.00 filing fee applicable to all non-habeas civil actions.**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Plaintiff,

CASE NO.

v.

Defendant.

PRISONER'S
IN FORMA PAUPERIS
APPLICATION

I, _____, declare under penalty of perjury that I am the plaintiff in the above entitled case and that the information I offer throughout this application is true and correct. I offer this application in support of my request to proceed without being required to prepay the full amount of fees, costs or give security. I state that because of my poverty I am unable to pay the costs of this action or give security, and that I believe that I am entitled to relief.

In support of this application, I provide the following information:

1. Are you presently employed? Yes ___ No ___

If your answer is "yes," state both your gross and net salary or wages per month, and give the name and address of your employer:

Gross: _____ Net: _____

Employer: _____

If the answer is "no," state the date of last employment and the amount of the gross and net salary and wages per month which you received. (If you are imprisoned, specify the last place of employment prior to imprisonment.)

2. Have you received, within the past twelve (12) months, any money from any of the following sources:

- a. Business, Profession or self employment Yes ___ No ___
- b. Income from stocks, bonds, or royalties? Yes ___ No ___

- c. Rent payments? Yes ___ No ___
- d. Pensions, annuities, or life insurance payments? Yes ___ No ___
- e. Federal or State welfare payments, Social Security or other government source? Yes ___ No ___

If the answer is "yes" to any of the above, describe each source of money and state the amount received from each.

3. Are you married? Yes ___ No ___

Spouse's Full Name: _____

Spouse's Place of Employment: _____

Spouse's Monthly Salary, Wages or Income:

Gross \$ _____ Net \$ _____

4. a. List amount you contribute to your spouse's support:

\$ _____

b. List the persons other than your spouse who are dependent upon you for support and indicate how much you contribute toward their support:

5. Do you own or are you buying a home? Yes ___ No ___

Estimated Market Value: \$ _____ Amount of Mortgage: \$ _____

6. Do you own an automobile? Yes ___ No ___

Make _____ Year _____ Model _____

Is it financed? Yes ___ No ___ If so, Total due: \$ _____

Monthly Payment: \$ _____

7. Do you have a bank account? (If you are a prisoner, include funds in your prison account, and provide the certificate attached, signed by an officer of the prison.)

Yes ___ No ___

Name(s) and address(es) of bank: _____

Present balance(s): \$ _____

Do you own any cash? Yes ___ No ___ Amount: \$ _____

Do you have any other assets? (If "yes," provide a description of each asset and its estimated market value.)

Yes ___ No ___

8. What are your monthly expenses?

Rent: \$ _____ Utilities: _____

Food: \$ _____ Clothing: _____

Charge Accounts:

<u>Name of Account</u>	<u>Total Owed On</u>	
	<u>Monthly Payment</u>	<u>This Account</u>
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

9. Do you have any other debts? (List current obligations, indicating amounts and to whom they are payable.)

I consent to prison officials withdrawing from my trust account and paying to the court the initial partial filing fee and all installment payments required by the court.

I declare under the penalty of perjury that the foregoing is true and correct and understand that a false statement herein may result in the dismissal of my claims.

DATE

SIGNATURE OF APPLICANT

Case Number: _____

CERTIFICATE OF FUNDS

IN

PRISONER'S ACCOUNT

I certify that attached hereto is a true and correct copy of the prisoner's trust account statement showing transactions of _____ for the last six months at [prisoner name] _____ where (s)he is confined. [name of institution]

I further certify that the average deposits each month to this prisoner's account for the most recent 6-month period were \$_____ and the average balance in the prisoner's account each month for the most recent 6-month period was \$_____.

Dated: _____

Authorized officer of the institution