

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INSTRUCTIONS FOR FILING A PETITION FOR A WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY UNDER 28 USC § 2254

I. SCOPE OF 28 USC § 2254

You may file a petition for a writ of habeas corpus under 28 USC § 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; but 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 USC § 1983. If you want to file a civil rights complaint under 42 USC § 1983, you may do so on forms provided by the clerk of the court.

IMPORTANT NOTES:

- 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. 28 USC § 2244(b).
- A petition for a writ of habeas corpus under 28 USC § 2254 will not be granted unless it appears that you have exhausted the remedies available in state court.
- Only one sentence or conviction may be challenged in a single petition. If you challenge more than one sentence or conviction, you must do so by separate petitions.

II. FILING A PETITION

A. 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, San Francisco, San Mateo, Santa Clara, Santa Cruz 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 Corpus Local Rule 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named 15 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 Corpus Local Rule 2254-3(b).

B. Whom 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 challenge was entered.

C. How to File

To start a habeas action, you must send the court the following items:

1. Your original, completed 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 and the brief explanatory comments that appear throughout it before you answer the questions. Complete all applicable questions in the blanks provided; attach additional pages if you need more space for any of your answers, clearly noting the question number to which any such continued answer refers.
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 must complete the application, sign it and declare under penalty of perjury that the facts stated therein are correct. 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.

III. CONSENT TO MAGISTRATE JUDGE JURISDICTION

In order to encourage the just, speedy and inexpensive determination of § 2254 cases filed in this district, the parties may waive their right to proceed before a district judge and consent to proceed before a magistrate judge for all purposes. In accordance with 28 USC § 636(c), upon the consent of all the parties to proceed before a magistrate judge for all purposes, the magistrate judge assigned to this case will conduct all proceedings, decide all dispositive and non-dispositive matters, and order the entry of the final judgment. The party who does not prevail may appeal directly to the Ninth Circuit Court of Appeals in the same manner as an appeal from the final judgment of a district judge.

Magistrate judges are selected through a statutorily prescribed merit selection process and are appointed by the judges of this court. The court encourages the parties to consent to magistrate judge jurisdiction as it may result in an earlier resolution of the matter. Because of different calendar pressures, magistrate judges may be able to set hearings and trials sooner than district judges. But you are free to decline consent to magistrate judge jurisdiction. Please indicate on the last page of the petition form whether you consent or decline to consent to magistrate judge jurisdiction.

IV. AFTER PETITION IS FILED

You will be notified as soon as the court issues an order. *It is your responsibility to inform the court in writing without delay if your address changes.* Failure to do so may result in dismissal of your suit.

V. INQUIRIES AND COPYING REQUESTS

Because of the large volume of cases filed 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. It is therefore recommended that you make and keep a copy of every document you submit to the court for your records.

1 If yes, provide name and address of institution:

2 _____
3 _____

4 B. For what crime were you given this sentence?

5 **Note:** If your petition challenges a sentence for more than one crime, list each crime separately
6 using Penal Code numbers, if known. If you are challenging more than one sentence, you should
7 file a different petition for each sentence.

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10 C. Did you have any of the following proceedings?

11 Arraignment: YES NO

12 Preliminary Hearing: YES NO

13 Motion to Suppress: YES NO

14 D. How did you plead? Guilty Not Guilty Nolo Contendere

15 Any other plea (specify) _____

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

17 Jury Judge alone Judge alone on a transcript

18 F. Did you testify at your trial? YES NO

19 G. Did you have an attorney at the following proceedings:

20 1. Arraignment YES NO

21 2. Preliminary hearing YES NO

22 3. Time of plea YES NO

23 4. Trial YES NO

24 5. Sentencing YES NO

25 6. Appeal YES NO

26 7. Other post-conviction proceeding YES NO

27 H. Did you appeal your conviction? YES NO

28 1. If you appealed, to what court(s) did you appeal?

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Court of Appeal..... YES Year: _____ NO

Result: _____

Supreme Court of California..... YES Year: _____ NO

Result: _____

Any other court YES Year: _____ NO

Result: _____

2. If you appealed, were the grounds the same as those that you are raising in this petition?..... YES NO

3. Did the court issue an opinion?..... YES NO

4. 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: _____

I. 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 challenging 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 USC § 2244(b).

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.

1. Name of court: _____

Type of proceeding: _____

Grounds raised (be brief but specific):

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b. _____

c. _____

d. _____

Result: _____ Date of result: _____

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2. Name of court: _____

Type of proceeding: _____

Grounds raised (be brief but specific):

a. _____

b. _____

c. _____

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Result: _____ Date of result: _____

3. Name of court: _____

Type of proceeding: _____

Grounds raised (be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of result: _____

4. Name of court: _____

Type of proceeding: _____

Grounds raised (be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of result: _____

J. Is any petition, appeal or other post-conviction proceeding now pending in any court?

..... YES NO

Name and location of court: _____

1 **II. GROUND(S) FOR RELIEF**

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

6 **Note:** You must present ALL your claims in your first federal habeas petition. Subsequent petitions
7 may be dismissed without review on the merits. 28 USC § 2244(b); *McCleskey v. Zant*, 499 U.S.
8 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

9 Claim One: _____

10 Supporting facts: _____

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14 Claim Two: _____

15 Supporting facts: _____

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20 Claim Three: _____

21 Supporting facts: _____

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

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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

PLEASE CONTINUE TO THE NEXT PAGE →

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3 CONSENT OR DECLINATION TO
4 MAGISTRATE JUDGE JURISDICTION

5 **Instructions:** Please indicate below by checking one of the two boxes whether you choose to
6 consent or decline to consent to magistrate judge jurisdiction in this matter. Sign this form below
7 your selection.

8 **Consent to Magistrate Judge Jurisdiction**

9 In accordance with the provisions of 28 USC § 636(c), I voluntarily **consent** to have a United
10 States magistrate judge conduct all further proceedings in this case, including trial and entry of
11 final judgment.

12
13 **OR**

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15 **Decline Magistrate Judge Jurisdiction**

16 In accordance with the provisions of 28 USC § 636(c), I **decline** to have a United States
17 magistrate judge conduct all further proceedings in this case, including trial and entry of final
18 judgment.

19 Executed on:

20 _____
21 *Date*

_____ *Signature of Petitioner*

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

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

5 You must submit to the court a completed Prisoner's In Forma Pauperis Application if
6 you are unable to pay the entire filing fee at the time you file your complaint or petition. Your
7 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.

8 **A. Non-habeas Civil Actions**

9 The fee for filing any civil action other than a petition for a writ of habeas corpus is
10 \$400.00 (\$350 filing fee plus \$50 administrative fee). Even if you are granted leave to proceed in
11 forma pauperis, you must still pay the \$350 filing fee (not the \$50 administrative fee), but the
filing fee will be paid in several installments. 28 U.S.C. § 1915.

12 You must pay an initial partial filing fee of 20 percent of the greater of (a) the average
13 monthly deposits to your account for the 6-month period immediately before the complaint was
14 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.

15 After the initial partial filing fee is paid, your prison's trust account office will forward to
16 the court each month 20 percent of the most recent month's income to your prison trust account,
17 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.

18 **If your application to proceed in forma pauperis is granted, you will be liable for the**
19 **full \$350.00 filing fee even if your civil action is dismissed. That means the court will**
20 **continue to collect payments until the entire filing fee is paid.**

21 **B. Habeas Actions**

22 The fee for filing a petition for a writ of habeas corpus is \$5.00 (\$5 filing fee plus \$0
23 administrative fee). 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.

24 **If you use a habeas form to file a non-habeas civil action, you will be required to pay**
25 **the fee applicable to all non-habeas civil actions.**

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

- 3 a. Business, profession or self employment? **YES** **NO**
- 4 b. Income from stocks, bonds or royalties? **YES** **NO**
- 5 c. Rent payments? **YES** **NO**
- 6 d. Pensions, annuities or life insurance payments? **YES** **NO**
- 7 e. Federal or state welfare payments, Social Security or other government source? **YES** **NO**
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- 9

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

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12 _____

13 _____

14 **3.** Are you married? **YES** **NO**

15 Spouse's Full Name: _____

16 Spouse's Place of Employment: _____

17 Spouse's Monthly Salary, Wages or Income:

18 Gross \$ _____ Net \$ _____

19 **4.** a. List amount you contribute to your spouse's support: \$ _____

20 b. List the persons other than your spouse who are dependent upon you for support and indicate how much you contribute toward their support. (NOTE: For minor children, list only their initials and ages. Do not include their names.)

21 _____

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23 **5.** Do you own or are you buying a home? **YES** **NO**

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

25 **6.** Do you own an automobile? **YES** **NO**

26 Make _____ Year _____ Model _____

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

28 Monthly Payment: \$ _____

1 **7.** Do you have a bank account? **YES** **NO**

2 Name(s) and address(es) of bank (do not include account numbers): _____

3 _____

4 _____

5 Present balance(s): \$ _____

6 Do you own any cash? **YES** **NO** Amount: \$ _____

7 Do you have any other assets? **YES** **NO**

8 If "yes," provide a description of each asset and its estimated market value.

9 _____

10 _____

11 **8.** What are your monthly expenses?

12 Rent: \$ _____ Utilities: _____

13 Food: \$ _____ Clothing: _____

14 **9.** Do you have any charge accounts/credit cards? **YES** **NO**

15 If yes, list them below. (Do not include account numbers.)

16 Name of Account Monthly Payment Total Owed on This Acct.

17 _____ \$ _____ \$ _____

18 _____ \$ _____ \$ _____

19 _____ \$ _____ \$ _____

20 **10.** Do you have any other debts? (List current obligations, indicating amounts and to whom
21 they are payable. Do not include account numbers.)

22 _____

23 _____

24 **11.** Does the complaint you are seeking to file raise claims that have been presented in other
25 lawsuits? **YES** **NO**

26 If so, please list the case name(s) and number(s) of the prior lawsuit(s), and the name of the court
27 in which they were filed.

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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

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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
(Prisoner's 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: _____, 20__ Print Name: _____

Signature: _____
Authorized Officer of the Institution