

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 **INSTRUCTIONS FOR FILING A PETITION FOR A WRIT OF HABEAS CORPUS**
4 **BY A PERSON IN STATE CUSTODY UNDER 28 U.S.C. §§ 2254**

5 **I. Scope of 28 U.S.C. §§ 2254**

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

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

15 **II. Filing a Petition**

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

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

25 **NOTE:** If you previously filed a petition for a writ of habeas corpus in federal court that
26 challenged the same conviction you are challenging now and if that petition was denied or dismissed
27 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
28 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).

29 **III. Filing Fees**

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

35 **IV. Petition Form**

36 Your petition must be legibly handwritten or typewritten, and you must sign it and declare under
37 penalty of perjury that the facts stated in it are correct. Read the entire petition form before answering
38 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.

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

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

5 **V. After Petition Is Filed**

6 You will be notified as soon as the court issues an order. It is your responsibility to keep the
7 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.

8 **VI. Inquiries And Copying Requests**

9 Because of the large volume of cases filed by inmates in this court and limited court resources,
10 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.

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

Name _____
(Last) (First) (Initial)

Prisoner Number _____

Institutional Address _____

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

(Enter the full name of plaintiff in this action.)

vs.

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

**PETITION FOR A WRIT
OF HABEAS CORPUS**

(Enter the full name of respondent(s) or jailor in this action.)

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).

1 Who to Name as Respondent

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

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

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

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

14 _____
15 Court Location

16 (b) Case number, if known _____

17 (c) Date and terms of sentence _____

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

20 Where?

21 Name of Institution: _____

22 Address: _____

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

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3. Did you have any of the following?

Arrestment: 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) Arrestment 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

1 petition? Yes ____ No ____

2 (c) Was there an opinion? Yes ____ No ____

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes ____ No ____

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

6 _____
7 _____

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

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

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

18 I. Name of Court: _____

19 Type of Proceeding: _____

20 Grounds raised (Be brief but specific):

21 a. _____

22 b. _____

23 c. _____

24 d. _____

25 Result: _____ Date of Result: _____

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

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a. _____
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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: _____

IV. 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

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: _____

6 _____

7 Supporting Facts: _____

8 _____

9 _____

10 _____

11 Claim Two: _____

12 _____

13 Supporting Facts: _____

14 _____

15 _____

16 _____

17 Claim Three: _____

18 _____

19 Supporting Facts: _____

20 _____

21 _____

22 _____

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

25 _____

26 _____

27 _____

28 _____

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

4 _____
5 _____
6 _____

7 Do you have an attorney for this petition? Yes_____ No_____

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

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

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13 Executed on _____
14 Date Signature of Petitioner

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1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

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

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

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

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

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

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

20 **B. Habeas Actions**

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

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

Plaintiff,

vs.

Defendant.

CASE NO. _____

**PRISONER'S
APPLICATION TO PROCEED
IN FORMA PAUPERIS**

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

PRIS. APPLIC. TO PROC. IN FORMA

PAUPERIS, Case No. _____

1 and wages per month which you received. (If you are imprisoned, specify the last place of
2 employment prior to imprisonment.)

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

8 a. Business, Profession or Yes ___ No ___
9 self employment

10 b. Income from stocks, bonds, Yes ___ No ___
11 or royalties?

12 c. Rent payments? Yes ___ No ___

13 d. Pensions, annuities, or Yes ___ No ___
14 life insurance payments?

15 e. Federal or State welfare payments, Yes ___ No ___
16 Social Security or other govern-
17 ment source?

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

20 _____
21 _____

22 3. Are you married? Yes ___ No ___

23 Spouse's Full Name: _____

24 Spouse's Place of Employment: _____

25 Spouse's Monthly Salary, Wages or Income:

26 Gross \$ _____ Net \$ _____

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

28 b. List the persons other than your spouse who are dependent upon you for support

PRIS. APPLIC. TO PROC. IN FORMA

1 and indicate how much you contribute toward their support. (NOTE: For minor
2 children, list only their initials and ages. DO NOT INCLUDE THEIR NAMES.)

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

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

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

8 Make _____ Year _____ Model _____

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

10 Monthly Payment: \$ _____

11 7. Do you have a bank account? Yes ___ No ___ (Do not include account numbers.)

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

13 _____

14 Present balance(s): \$ _____

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

16 Do you have any other assets? (If "yes," provide a description of each asset and its estimated
17 market value.) Yes ___ No ___

18 _____

19 8. What are your monthly expenses?

20 Rent: \$ _____ Utilities: _____

21 Food: \$ _____ Clothing: _____

22 Charge Accounts:

<u>Name of Account</u>	<u>Monthly Payment</u>	<u>Total Owed on This Acct.</u>
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

27 9. Do you have any other debts? (List current obligations, indicating amounts and to whom
28 they are payable. Do not include account numbers.)

PRIS. APPLIC. TO PROC. IN FORMA

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10. Does the complaint which you are seeking to file raise claims that have been presented in other lawsuits? Yes ___ No ___

Please list the case name(s) and number(s) of the prior lawsuit(s), and the name of the court in which they were filed.

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 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]