

United States District Court

Southern District Of California

Office of the Clerk

333 West Broadway, Suite 420

San Diego, California 92101

www.casd.uscourts.gov

John Morrill
Clerk of Court

Phone: (619) 557-5600

Fax: (619) 702-9900

FOR PRISONERS FILING A COMPLAINT OR PETITION ON THEIR OWN BEHALF

The attached instructions and forms have been compiled to assist any prisoner wishing to file a civil complaint or habeas petition in this Court.

Clerk's Office staff cannot and will not act as lawyers or provide legal advice. Therefore, you should consult the Court's Local Rules, the Federal Rules of Civil Procedure, the Rules Governing Section 2254 Cases in the United States District Courts, and/or the Rules Governing Section 2255 Proceedings for the United States District Court for more specific guidance.

PRO SE: Generally, there is no right to counsel in a civil case; therefore most prisoners seeking to file the types of form complaints or petitions included in this package proceed pro se, which means you are representing yourself, without the help of an attorney. While your pro se pleadings are liberally construed by the Court, you must still follow the same rules of procedure attorneys follow.

You should follow the specific instructions attached to each of the forms provided, but in general, all complaints or petitions can be typed, printed by hand, or written on 8½" x 11" paper. All filings must be legible so the Court can understand them. You must also notify the Court in writing any time your address changes as a result of a prison transfer or in the event of release.

IN FORMA PAUPERIS: If you cannot afford the \$400 filing fee required to be submitted at the time you file your civil complaint, or the \$5 filing fee required to file your habeas petition, you should complete the form Motion and Declaration in Support of Motion to Proceed In Forma Pauperis ("IFP") included in this packet. No filing fee or IFP Motion is required to file a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255.

Included in this Prisoner Pro Se Package:

1. Complaint under the Civil Rights Act pursuant to 42 U.S.C. § 1983
2. Civil Rights Complaint per 28 U.S.C. § 1331 and *Bivens*
3. Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254
4. Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241
5. Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255
6. Motion and Declaration in Support of Motion to Proceed In Forma Pauperis

**INSTRUCTIONS FOR FILING
CIVIL RIGHTS COMPLAINT UNDER 42 U.S.C. § 1983
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

(1) This complaint must be legibly handwritten or typewritten, and signed by the plaintiff. All questions must be answered concisely in the proper space on the form. Do NOT write on the back of any page. No citation of case or statutory authority is necessary.

(2) Additional pages not to exceed fifteen (15) in number may be included with the court approved form complaint, provided the form is completely filled in to the extent applicable in the particular case. This limitation does not include exhibits.

(3) Upon receipt of a **fee of \$400** (\$350 statutory fee and \$50 administrative fee) your complaint will be filed if it is in proper order. The \$400 fee must be submitted with the complaint, not separately.

(4) If you do not have the necessary funds to pay the filing fee or cannot afford to pay for transcripts, counsel, appeal, or other costs connected with this civil action, you may request permission to proceed in forma pauperis, in which event you must execute a separate form provided by the Court, entitled “Motion and Declaration Under Penalty of Perjury in Support of Motion to Proceed In Forma Pauperis” setting forth information establishing your inability to pay fees or costs.

IF YOU ARE A PRISONER, you must attach a certified copy of your prison trust account statements for the 6-month period immediately preceding the filing of the complaint per 28 U.S.C. § 1915(a)(2) or your motion to proceed in forma pauperis will be denied. Even if your motion to proceed in forma pauperis is granted, however, the Court may assess an initial partial filing fee at the time your action is filed and the \$50 administrative fee will be waived. After the initial partial fee is assessed, YOU WILL STILL OWE THE BALANCE OF THE \$350 STATUTORY FILING FEE WHICH THE COURT WILL ORDER GARNISHED FROM YOUR PRISON TRUST ACCOUNT.

(5) When the complaint is fully completed, it must be mailed to:

**Clerk of U.S. District Court
333 West Broadway, Suite 420
San Diego, CA 92101**

(Name)

(Address)

(City, State, Zip)

(CDCR / Booking / BOP No.)

United States District Court Southern District of California

_____,
(Enter full name of plaintiff in this action.))

Plaintiff,)

v.)

_____,)
_____,)
_____,)
_____,)
(Enter full name of each defendant in this action.))

Defendant(s).)

Civil Case No. _____
(To be supplied by Court Clerk)

**Complaint under the
Civil Rights Act
42 U.S.C. § 1983**

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

_____.

B. Parties

1. **Plaintiff:** This complaint alleges that the civil rights of Plaintiff, _____
(print Plaintiff's name)

_____, who presently resides at _____
(mailing address or place of confinement)

_____, were violated by the actions of
the below named individuals. The actions were directed against Plaintiff at _____

_____ on (dates) _____, _____, and _____.
(institution/place where violation occurred) (Count 1) (Count 2) (Count 3)

2. Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

_____.

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

_____.

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

_____.

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

_____.

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? Yes No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: _____

Defendants: _____

(b) Name of the court and docket number: _____

_____.

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] _____

_____.

(d) Issues raised: _____

_____.

(e) Approximate date case was filed: _____.

(f) Approximate date of disposition: _____.

2. Have you previously sought and exhausted all forms of available relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDCR Inmate/Parolee Appeal Form 602, etc.] ? Yes No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not exhausted.

_____.

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

- 1. An injunction preventing defendant(s):

- 2. Damages in the sum of \$ _____.

- 3. Punitive damages in the sum of \$ _____.

- 4. Other: _____

F. Demand for Jury Trial

Plaintiff demands a trial by Jury Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

Date

Signature of Plaintiff

**INSTRUCTIONS FOR FILING
CIVIL RIGHTS COMPLAINT UNDER BIVENS
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

- (1) This complaint must be legibly handwritten or typewritten, and signed by the plaintiff. All questions must be answered concisely in the proper space on the form. Do NOT write on the back of any page. No citation of case or statutory authority is necessary.
- (2) Additional pages not to exceed fifteen (15) in number may be included with the court approved form complaint, provided the form is completely filled in to the extent applicable in the particular case. This limitation does not include exhibits.
- (3) Upon receipt of a **fee of \$400** (\$350 statutory fee and \$50 administrative fee) your complaint will be filed if it is in proper order. The \$400 fee must be submitted with the complaint, not separately.
- (4) If you do not have the necessary funds to pay the filing fee or cannot afford to pay for transcripts, counsel, appeal, or other costs connected with this civil action, you may request permission to proceed in forma pauperis, in which event you must execute a separate form provided by the Court, entitled “Motion and Declaration Under Penalty of Perjury in Support of Motion to Proceed In Forma Pauperis” setting forth information establishing your inability to pay fees or costs.

IF YOU ARE A PRISONER, you must attach a certified copy of your prison trust account statements for the 6-month period immediately preceding the filing of the complaint per 28 U.S.C. § 1915(a)(2) or your motion to proceed in forma pauperis will be denied. Even if your motion to proceed in forma pauperis is granted, however, the Court may assess an initial partial filing fee at the time your action is filed and the \$50 administrative fee will be waived. After the initial partial fee is assessed, YOU WILL STILL OWE THE BALANCE OF THE \$350 STATUTORY FILING FEE WHICH THE COURT WILL ORDER GARNISHED FROM YOUR PRISON TRUST ACCOUNT.

- (5) When the complaint is fully completed, it must be mailed to:

**Clerk of U.S. District Court
333 West Broadway, Suite 420
San Diego, CA 92101**

(Name)

(Address)

(City, State, Zip)

(CDCR / Booking / BOP No.)

United States District Court Southern District of California

_____,
(Enter full name of plaintiff in this action.))

Plaintiff,)

v.)

_____,)
_____,)
_____,)
_____,)
_____,)
(Enter full name of each defendant in this action.))

Defendant(s).)

Civil Case No. _____
(To be supplied by Court Clerk)

Civil Rights Complaint
per 28 U.S.C. § 1331
and *Bivens v. Six Unknown*
Named Agents of Federal Bureau
of Narcotics, 403 U.S. 388 (1971)

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1331 and *Bivens*. If you wish to assert jurisdiction under different or additional authority, list them below.

_____.

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Plaintiff, _____
(print Plaintiff's name)

_____, who presently resides at _____
(mailing address or place of confinement)

_____, were violated by the actions of the
below named individuals. The actions were directed against Plaintiff at _____

_____ on (dates) _____, _____, and _____.
(institution/place where violation occurred) (Count 1) (Count 2) (Count 3)

2. **Defendants:** (Attach same information on additional pages if you are naming more than 4 defendants.)

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

Defendant _____ resides in _____,
(name) (County of residence)
and is employed as a _____. This defendant is sued in
(defendant's position/title (if any))
his/her individual official capacity. (Check one or both.) Explain how this defendant was acting under
color of law: _____

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? Yes No.

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: _____

Defendants: _____

(b) Name of the court and docket number: _____

_____.

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] _____

_____.

(d) Issues raised: _____

_____.

(e) Approximate date case was filed: _____.

(f) Approximate date of disposition: _____.

2. Have you previously sought and exhausted all forms of available relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDCR Inmate/Parolee Appeal Form 602, BP-8, BP-9, etc.] ? Yes No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not exhausted.

_____.

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

1. An injunction preventing defendant(s): _____

_____.

2. Damages in the sum of \$ _____.

3. Punitive damages in the sum of \$ _____.

4. Other: _____

_____.

F. Demand for Jury Trial

Plaintiff demands a trial by Jury Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

Date

Signature of Plaintiff

INSTRUCTIONS FOR FILING
PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY A PERSON IN *STATE* CUSTODY

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the *state* where the judgment was entered. If petitioner has a sentence to be served in the future under a *federal* judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court that entered the judgment.)

- (1) This petition must be legibly handwritten or typewritten. You must tell the truth in the petition and you must sign the petition under penalty of perjury. If you do not tell the truth in this petition, you may be prosecuted for and convicted of perjury.
- (2) Answer all the questions on the form as concisely as you can. You do not need to cite cases. Include the facts supporting your grounds for relief. If briefs or arguments are submitted, they should be submitted as a separate memorandum.
- (3) You must pay a **\$5.00 filing fee** to have your petition filed. The \$5.00 fee must be submitted with the petition, not separately. If you do not have the \$5.00 for the filing fee and any other costs, you may request permission to proceed in forma pauperis. To do so, fill out and submit the “Motion to Proceed in Forma Pauperis” form provided by the Court with your petition. You also **MUST** have an authorized officer at the penal institution complete the “Prison Certificate” statements stating the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You may only challenge a judgment entered by one court in a single petition. If you want to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (5) You must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (6) When the petition is fully completed, the original and at least one copy must be mailed to: Clerk of **U.S. District Court, 333 West Broadway Suite 420, San Diego CA 92101.**
- (7) Petitions that do not conform to these instructions will be returned with a notation as to the deficiency.

NAME

PRISON NUMBER

CURRENT ADDRESS OR PLACE OF CONFINEMENT

CITY, STATE, ZIP CODE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

(FULL NAME OF PETITIONER)

PETITIONER

v.

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

The Attorney General of the State of
California, Additional Respondent.

Civil No _____

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: _____

2. Date of judgment of conviction: _____
3. Trial court case number of the judgment of conviction being challenged: _____

4. Length of sentence: _____

5. Sentence start date and projected release date: _____

6. Offense(s) for which you were convicted or pleaded guilty (all counts): _____

7. What was your plea? (CHECK ONE)

(a) Not guilty

(b) Guilty

(c) Nolo contendere

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

(a) Jury

(b) Judge only

9. Did you testify at the trial?

Yes No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?

Yes No

11. If you appealed in the **California Court of Appeal**, answer the following:

(a) Result: _____

(b) Date of result (if known): _____

(c) Case number and citation (if known): _____

(d) Grounds raised on direct appeal: _____

12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:

(a) Result: _____

(b) Date of result (if known): _____

(c) Case number and citation (if known): _____

(d) Grounds raised: _____

13. If you filed a petition for certiorari in the **United States Supreme Court**, please answer the following with respect to that petition:

(a) Result: _____

(b) Date of result (if known): _____

(c) Case number and citation (if known): _____

(d) Grounds raised: _____

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Superior Court**?

Yes No

15. If your answer to #14 was “Yes,” give the following information:

(a) **California Superior Court** Case Number (if known): _____

(b) Nature of proceeding: _____

(c) Grounds raised: _____

(d) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(e) Result: _____

(f) Date of result (if known): _____

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Court of Appeal**?

Yes No

17. If your answer to #16 was “Yes,” give the following information:

- (a) **California Court of Appeal** Case Number (if known): _____
- (b) Nature of proceeding: _____

- (c) Grounds raised: _____

- (d) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No
- (e) Result: _____
- (f) Date of result (if known): _____

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?
 Yes No

19. If your answer to #18 was “Yes,” give the following information:

- (a) **California Supreme Court** Case Number (if known): _____
- (b) Nature of proceeding: _____

- (c) Grounds raised: _____

- (d) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No
- (e) Result: _____
- (f) Date of result (if known): _____

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

Yes No (IF "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? _____

(i) What was the prior case number? _____

(ii) Was the prior action (CHECK ONE):

Denied on the merits?

Dismissed for procedural reasons?

(iii) Date of decision: _____

(b) Were any of the issues in this current petition also raised in the prior federal petition?

Yes No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

Yes No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies by presenting your claims to the California Supreme Court. Even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* grounds to the California Supreme Court before raising them in your federal Petition.
 - **Single Petition:** If you do not present all your grounds for challenging a specific judgment in this Petition, you may not be able to present additional grounds challenging the same judgment at a later date.
 - **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must say what your attorney did wrong or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.
-

GROUNDS FOR RELIEF

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** _____

Supporting FACTS: _____

Did you raise GROUND ONE in the California Supreme Court?

Yes No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): _____
- (2) Case number or citation: _____
- (3) Result (attach a copy of the court’s opinion or order if available): _____

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

Yes No

24. If your answer to #23 is “Yes,” give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

(e) Grounds raised: _____

(f) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of judgment, by indicating your consent below.

Choose only one of the following:

Plaintiff consents to magistrate judge jurisdiction as set forth above

Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case

29. Date you are mailing (or handing to a correctional officer) this Petition to this court: _____

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(DATE)

SIGNATURE OF PETITIONER

INSTRUCTIONS FOR FILING
PETITION UNDER 28 U.S.C. § 2241 FOR WRIT OF HABEAS CORPUS
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

- (1) This petition must be legibly handwritten or typewritten. You must tell the truth in the petition and you must sign the petition under penalty of perjury. If you do not tell the truth in this petition, you may be prosecuted for and convicted of perjury.
- (2) Answer all the questions on the form as concisely as you can. You do not need to cite cases. Include the facts supporting your ground for relief. If briefs or arguments are submitted, they should be submitted as a separate memorandum.
- (3) You must pay a **\$5.00 filing fee** to have your petition filed. The \$5.00 fee must be submitted with the petition, not separately. If you do not have the \$5.00 for the filing fee and any other costs, you may request permission to proceed in forma pauperis. To do so, fill out and submit the “Motion to Proceed in Forma Pauperis” form provided by the Court with your petition. You also **MUST** have an authorized officer at the penal institution complete the “Prison Certificate” statements stating the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You may only challenge a judgment entered by one court in a single petition. If you want to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (5) You must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (6) When the petition is fully completed, the original and at least one copy must be mailed to:

Clerk of U.S. District Court
Southern District of California
333 W. Broadway, Suite 420
San Diego CA 92101

- (7) Petitions that do not conform to these instructions will be returned with a notation as to the deficiency.

NAME

PRISON NUMBER

PLACE OF CONFINEMENT

ADDRESS

**United States District Court
Southern District Of California**

(FULL NAME OF PETITIONER)

Petitioner

v.

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER, E.G. PAROLE OFFICER)

Respondent

and

The Attorney General of the State of
California, Additional Respondent.

Civil No. _____
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2241

1. Are you currently:

- A pretrial detainee (waiting for trial on criminal charges)
- Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

(a) Name and location of court that sentenced you: _____

(b) Docket or case number (if you know): _____

(c) Date of sentencing: _____

- Being held on immigration charge
- Other (explain): _____

2. Are you currently being held on orders by:
 Federal authorities State authorities Other - explain:

3. What are you challenging in this petition:
 How your sentence is being carried out, calculated, or credited by prison or parole authorities
 Pretrial detention
 Immigration detention
 Detainer
 The validity of your conviction or sentence as imposed
 Disciplinary proceedings
 Other (specify): _____

4. Provide more information about the decision or action you are challenging:

(a) Name and location of the court or agency: _____

(b) Case number, docket number or opinion number (if you know): _____

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed): _____

(d) Date of the decision or action: _____

5. Did you **appeal** the decision, file a grievance or seek an administrative remedy?
 Yes No

(a) If your answer to 5 was "Yes," give the following information:

(1) Name of court, agency or authority: _____

(2) Date of filing: _____

(3) Case number, docket number or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If your answer to 5 was "No," explain why you did not appeal: _____

6. After the first appeal, did you file a **second appeal** to a higher authority, court or agency?

Yes No

(a) If your answer to 6 was "Yes," give the following information:

(1) Name of court, agency or authority: _____

(2) Date of filing: _____

(3) Case number, docket number or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If your answer to 5 was "No," explain why you did not appeal: _____

7. After the second appeal, did you file a **third appeal** to a higher authority, agency or court?

Yes No

(a) If your answer to 7 was "Yes," give the following information:

(1) Name of court, agency or authority: _____

(2) Date of filing: _____

(3) Case number, docket number or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If your answer to 7 was “No,” explain why you did not appeal: _____

8. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available court remedies as to each ground on which you request action by the federal court. Moreover, if you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

You should *raise in this petition all available grounds* on which you base your allegations that you are being held in custody unlawfully.

GROUND ONE: _____

(a) **Supporting FACTS** (state *briefly* without citing cases or law) _____

10. _____
Do you have any petition or appeal now pending in any court, either state or federal, as to the execution of sentence under attack?

Yes No

11. Give the name and address, if known, of each attorney who represented you in the following stages of the execution of sentence attacked herein:

(a) In any post-conviction proceeding _____

(b) On appeal from any adverse ruling in a post-conviction proceeding _____

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(DATE)

SIGNATURE OF PETITIONER

**MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN *FEDERAL* CUSTODY**

(MOTION UNDER 28 U.S.C. § 2255)

Instructions--Read Carefully

- (1) To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
- (2) You must file the form in the United States District Court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
- (3) Make sure the form is typed or neatly written.
- (4) You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
- (5) Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
- (6) If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
- (7) In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.

- (8) When you have completed the form, send the original and one copy to the Court at this address:

**Clerk of the U.S. District Court
Southern District of California
333 West Broadway, Suite 420
San Diego, CA 92101**

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

- (9) Upon receipt, your motion will be filed if it is in proper order. **No fee is required with this motion.**
- (10) **CAUTION: You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.**

NAME OF MOVANT

PRISON NUMBER

PLACE OF CONFINEMENT

ADDRESS

**United States District Court
Southern District Of California**

UNITED STATES OF AMERICA

v.

(NAME UNDER WHICH MOVANT WAS CONVICTED)

Movant

Civil No. _____
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

**MOTION TO VACATE, SET ASIDE, OR
CORRECT SENTENCE**

UNDER 28 U.S.C. § 2255
BY A PERSON IN FEDERAL CUSTODY

1. Information regarding judgment of conviction under attack:

(a) Name and location of court which entered the judgment of conviction you are challenging:

(b) Name of Judge who entered the judgment of conviction (if you know):

(c) Criminal case number of conviction (if you know): _____

2. Date of judgment of conviction: _____

3. Length of sentence: _____

4. Nature of offense involved (all counts) _____

5. What was your plea? (CHECK ONE)

- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere (no contest)

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____

6. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

- Jury
- Judge only

7. Did you testify at the trial?

- Yes
- No

8. Did you appeal from the judgment of conviction?

- Yes
- No

9. If you did appeal, answer the following:

- (a) Name of court _____
- (b) Case Number (if known) _____
- (c) Result _____
- (d) Date of result (if known) _____
- (e) Grounds raised: _____

(f) Did you file a petition for certiorari in the United States Supreme Court?

- Yes
- No

If "Yes," answer the following:

- (1) Case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Grounds raised: _____
- _____
- _____
- _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "Yes," give the following information:

- (a)(1) Name of court _____
- (2) Case number (if you know): _____
- (3) Nature of the proceeding: _____
- (4) Grounds raised: _____

(5) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(6) Result: _____

(7) Date of result (if you know): _____

(b) As to any second petition, application or motion give the same information:

- (1) Name of court _____
- (2) Case number (if you know): _____
- (3) Nature of the proceeding: _____
- (4) Grounds raised: _____

(5) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(6) Result: _____

(7) Date of result (if you know): _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

12. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** If necessary, you may attach pages stating additional grounds and facts supporting same. **CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.**

GROUND ONE: _____

(a) **Supporting FACTS** (state *briefly* without citing cases or law) _____

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application?

Yes No

(2) If your answer to (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of court where motion or petition was filed: _____

Case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal

or raise this issue: _____

GROUND TWO: _____

(a) Supporting FACTS (state *briefly* without citing cases or law): _____

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application?

Yes No

(2) If your answer to (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of court where motion or petition was filed: _____

Case number (if you know): _____

Date of the court's decision: _____
Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting FACTS (state *briefly* without citing cases or law): _____

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application?

Yes No

(2) If your answer to (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of court where motion or petition was filed: _____

Case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: _____

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds were not presented, and what are your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes No

If "Yes," state the name and location of the court, the case number, the type of proceeding and the issues raised: _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitation as contained in 28 U.S.C. § 2255 does not bar your motion.

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(DATE)

SIGNATURE OF PETITIONER

PLAINTIFF/PETITIONER/MOVANT'S NAME

PRISON NUMBER

PLACE OF CONFINEMENT

ADDRESS

**United States District Court
Southern District Of California**

Plaintiff/Petitioner/Movant
v.

Defendant/Respondent

Civil No. _____
(TO BE FILLED IN BY U.S. DISTRICT COURT CLERK)

**MOTION AND DECLARATION UNDER
PENALTY OF PERJURY IN SUPPORT
OF MOTION TO PROCEED IN FORMA
PAUPERIS**

I, _____,
declare that I am the Plaintiff/Petitioner/Movant in this case. In support of my request to proceed without
prepayment of fees or security under 28 U.S.C. § 1915, I further declare I am unable to pay the fees of this
proceeding or give security because of my poverty, and that I believe I am entitled to redress.

In further support of this application, I answer the following question under penalty of perjury:

1. Are you currently incarcerated? Yes No (If "No" go to question 2)
If "Yes," state the place of your incarceration _____
Are you employed at the institution? Yes No
Do you receive any payment from the institution? Yes No

[Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of the trust
account statement from the institution of your incarceration showing at least the last six months transactions.]

2. Are you currently employed? Yes No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer. _____

b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer. _____

3. In the past twelve months have you received any money from any of the following sources?:

- a. Business, profession or other self-employment Yes No
- b. Rent payments, royalties interest or dividends Yes No
- c. Pensions, annuities or life insurance Yes No
- d. Disability or workers compensation Yes No
- e. Social Security, disability or other welfare Yes No
- e. Gifts or inheritances Yes No
- f. Spousal or child support Yes No
- g. Any other sources Yes No

If the answer to any of the above is "Yes" describe each source and state the amount received and what you expect you will continue to receive each month. _____

4. Do you have any checking account(s)? Yes No

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

b. Present balance in account(s): _____

5. Do you have any savings/IRA/money market/CDS' separate from checking accounts? Yes No

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

b. Present balance in account(s): _____

6. Do you own an automobile or other motor vehicle? Yes No

a. Make: _____ Year: _____ Model: _____

b. Is it financed? Yes No

c. If so, what is the amount owed? _____

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or other valuable property?
 Yes No
If "Yes" describe the property and state its value. _____

8. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support. _____

9. List any other debts (current obligations, indicating amounts owed and to whom they are payable): _____

10. List any other assets or items of value (specify real estate, gifts, trusts inheritances, government bonds, stocks, savings certificates, notes, jewelry, artwork, or any other assets [include any items of value held in someone else's name]): _____

12. If you answered all of the items in #3 "No," and have not indicated any other assets or sources of income anywhere on this form, you must explain the sources of funds for your day-to-day expenses. _____

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

DATE

SIGNATURE OF APPLICANT

If you are a **prisoner** you must have an officer from your institution provide this official certificate as to the amount of money in your prison account. There are no exceptions to this requirement.

PRISON CERTIFICATE
(Incarcerated applicants only)
(To be completed by the institution of incarceration)

I certify that the applicant _____,
(NAME OF INMATE)

(INMATE'S CDC NUMBER)

has the sum of \$ _____ on account to his/her credit at _____

(NAME OF INSTITUTION)

I further certify that the applicant has the following securities _____

to his/her credit according to the records of the aforementioned institution. I further certify that **during the past six months** the applicant's *average monthly balance* was \$ _____,

and the *average monthly deposits* to the applicant's account was \$ _____.

ALL PRISONERS **MUST** ATTACH A CERTIFIED COPY OF THEIR TRUST ACCOUNT STATEMENT SHOWING TRANSACTIONS FOR THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT PER 28 U.S.C. § 1915(a)(2).

DATE

SIGNATURE OF AUTHORIZED OFFICER OF INSTITUTION

OFFICER'S FULL NAME (PRINTED)

OFFICER'S TITLE/RANK

TRUST ACCOUNT WITHDRAWAL AUTHORIZATION
(Incarcerated applicants only)

(This form **MUST** be completed by the prisoner requesting to proceed in forma pauperis. An incomplete "Trust Account Withdrawal Authorization Form," or "Prison Certificate" will result in automatic denial of the prisoner's request to proceed in forma pauperis.)

I, _____, request and authorize the agency holding me in
(Name of Prisoner/ CDC No.)
custody to prepare for the Clerk of the United States District Court for the Southern District of California, a certified copy of the statement for the past six months of my trust fund account (or institutional equivalent) activity at the institution where I am incarcerated.

I further request and authorize the agency holding me in custody to calculate and disburse funds from my trust fund account (or institutional equivalent) pursuant to any future orders issued by the Court relating to this civil action pursuant to the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Title VIII, §§ 801-10, 110 Stat. 1321 (1996).

This authorization is furnished in connection with a civil action filed in the Southern District of California, and I understand that, pursuant to 28 U.S.C. §§ 1914 and 1915(b)(1), the total amount of filing fees for which I am obligated is either \$350 (civil complaint) or \$5 (habeas corpus petition) (check one). I also understand that this fee will be debited from my account regardless of the outcome of this action. This authorization shall apply to any other agency into whose custody I may be transferred.

DATE

SIGNATURE OF PRISONER