

INFORMATION PACKET

RELATING TO

A PETITION FOR A FEDERAL

WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254

REVISED January 2024

This packet broadly details how a pro se litigant can challenge his state conviction in federal court. This packet is not a substitute for more detailed information or study of this subject. Attached at the end of this packet are the forms necessary to file in either the Western or Eastern District Courts of Kentucky. There is a \$5 filing fee. If, however, you want to ask the court for indigent status, the forms for asking for waiver of the fee are attached also.

This packet does not contain instructions or forms on obtaining discovery or for requesting an evidentiary hearing. These are separate pleadings for which there are not specific forms. There is also not a specific form for requesting an attorney to help you with your 2254 action. You will need to prepare these pleadings on your own. The Western District has a blank motion form that you can request.

There are several considerations to know about federal habeas corpus 2254 actions.

Statute of Limitations

At the onset the most important thing to know is that there is a one-year statute of limitations on these actions. This means you must file any federal habeas petition in your case before the one-year date arrives. The clock starts running when your conviction becomes final on direct review. In a guilty plea case, this happens at final sentencing. In a trial case, this usually happens 90 days after the Kentucky Supreme Court either decides your appeal or denies discretionary review from an opinion from the Court of Appeals, if you had sought discretionary review. However, if you filed a timely certiorari petition with the United States Supreme Court, your clock does not start running until that court either denies your petition or renders an opinion on your case. Note: the 20-day period for rehearing after a decision by the Kentucky Supreme Court should not be counted – the 90 days runs from the date of the Kentucky Supreme Court direct appeal opinion in your case

The one-year clock stops on the days you properly and timely file a state post-conviction petition (RCr 11.42 or CR 60.02 motion). The clock remains stopped during appeal of any state post-conviction loss. But, once the state appellate court issues its opinion in your case (either the Kentucky Court of Appeals or the Kentucky Supreme Court if you sought discretionary review), the one-year clock resume. The one-year (365 days) clock does not start over

at this point. Instead, you have left only 365 days minus the number of days that went by between the conclusion of your direct appeal proceedings and the date you filed your state post-conviction action. For example, if you filed your state post-conviction action 65 days after the conclusion of direct appeal proceedings, when state post-conviction proceedings before the state court conclude, you would have only 300 days left to file a federal habeas petition.

If you file your federal habeas petition without first seeking post-conviction relief in state court, you will lose the opportunity to raise any post-conviction type of issues in federal habeas proceedings. So, seeking state post-conviction relief first is advisable.

What you can and cannot raise for claims in federal habeas

Federal habeas is limited to federal constitutional claims. That means all your claims must be based on a provision of the United States Constitution, one of the amendments to the Constitution, or a federal case applying the Constitution. State law claims are not permissible in federal habeas. Claims regarding state procedures are also not permissible in federal habeas unless the violation is so severe that it is actually a federal constitutional violation. And, Fourth Amendment violations are not permissible in federal habeas. All of this means that if you raise any of these non-permissible claims, the federal court is required to deny relief on those claims. Again, only federal constitutional violations that are not Fourth Amendment violations can be raised in federal habeas.

What documents does a federal habeas court review?

Of course, a federal judge deciding a federal habeas petition reviews the habeas petition and all other documents filed in federal court in the case. Importantly, though, we must discuss what portions of the state court record are reviewed. The record is not automatically provided to the federal habeas court. Counsel for the Warden is required to provide the federal court with a copy of the portions of the state court record that are relevant to the claims you have raised. If you believe portions of the state court record are relevant but counsel for the Warden did not provide those portions to the federal habeas court, you can file a motion asking the federal court to require those portions of the state court record be made part of the federal habeas record the federal court reviews. In most situations, the federal habeas court is prohibited from reviewing records that were not first made part of the state

court record. That means it is very important for you to make sure you include in the state court record any and all documents (such as affidavits, police reports, medical records, etc.) that you might later want the federal court to consider when deciding your federal habeas petition. If you have not done so, it would be important to attempt to return to state court with an additional post-conviction action so the documents can be submitted in state court. But doing so does not necessarily stop the clock (toll the statute of limitations) for filing your federal habeas petition.

Where to file your federal habeas petition

You need to file your federal habeas petition in the federal district court that covers the district where you were convicted, not the district court where you are confined. For example, if you are confined at the Kentucky State Penitentiary, you reside within the United States District Court for the Western District of Kentucky. You might think that is where you file. But, if you were convicted by a court east of Louisville or in the northern part of Kentucky, your conviction occurred within the Eastern District of Kentucky. Thus, you need to file your federal habeas petition within the Eastern District of Kentucky.

Exhaustion

The next thing to know about federal habeas is that you must have exhausted your claims in state court. There are some exceptions to this, but what you should always strive to give the state court an opportunity to rule on your claims first.

Exhaustion means you must present your claims to the state court before you can raise the claims in a federal habeas petition. Merely telling the court of the claims is not enough. You must present the state court with the factual basis of your claim (lay out all the relevant facts, including names of any unrepresented witnesses and what those witnesses would have said), and the legal basis of your claim. The legal basis must be in terms of federal law. That means you must specify an applicable federal case or an applicable federal constitutional provision, preferably doing both, and you must explain how that constitutional provision/case applies to the situation in your case and how your federal constitutional right was violated. For example, saying your federal due process rights were violated is not enough. You must also specify what aspect of federal due process was violated and what federal law applies

to the situation. It is only by taking these steps that you exhausted a claim in state court to enable you to then present the federal constitutional claim in federal habeas (a few exceptions not discussed here can excuse the failure to exhaust, but you should make all possible effort to exhaust your claims in state court before presenting them in a federal habeas petition).

There is also a second required part of exhaustion. What we just discussed is how to plead the claim. We now need to talk briefly about where to present your claim. To exhaust your claim, you must present the claim to the highest state court for which you have an automatic right to appeal. That means if an appeal in your case would go to the Kentucky Court of Appeals, you must plead the claim in the way discussed above, and you must also raise that claim on appeal to the Kentucky Court of Appeals. If you have done both, then you have exhausted your claim for purposes of federal habeas corpus regardless of how the state court decides your claim. If your appeal automatically goes to the Kentucky Supreme Court, then you must raise the claim to the Kentucky Supreme Court in order to fully exhaust the claim. Seeking discretionary review is not required to exhaust a claim for purposes of federal habeas corpus, but it can impact when you must file your federal habeas petition in order to comply with the statute of limitations, as discussed above.

Compliance with State Procedure (procedural default)

You can lose a claim in federal court if you did not first raise the federal constitutional claim in state court, and you can also lose the claim if you failed to follow the state court filing rules for the type of pleading you file or requirements on how you must plead the claim. This is called procedural default. In this regard, state court rules include not just compliance with the local court rules, it also includes making sure your state court pleading contains all the information and types of allegations required for the type of pleading. It also includes either paying the filing fee or seeking in forma pauperis status at the same time you file the pleading. For an RCr 11.42 motion, it also includes a verification you sign, stating the information contained within the motion is accurate to the best of your knowledge and recollection. And, compliance with state procedures also means filing the pleading before the expiration of the applicable state statute of limitations or other deadline for doing so.

A procedural default can be excused by the federal court and thus your defaulted federal constitutional claim reviewed on the merits if for cause or prejudice or a miscarriage of justice. A miscarriage of justice is simply actual innocence of either the actual crime or eligibility for the sentence that was imposed. Cause and prejudice means an external impediment that is connected to the a constitutional right or a government entity prevented filing or developing the claim in state court and you suffered prejudice (usually meaning the claim is one on which you might have otherwise prevailed). External impediments include something that prevented timely filing, such as lack of access to prison library, prison failure to mail the habeas petition, or being held in solitary confinement without access to your legal materials or other resources needed to write your habeas petition. It also includes prosecution failure to disclose evidence that you could not have uncovered earlier, a juror failure to give truthful information that you could not have uncovered earlier through the exercise of due diligence, and any other external impediment that relates to a constitutional right. A default can also be excused if counsel at the RCr 11.42 proceeding stage failed to raise a claim or failed to plead/develop/litigate properly a substantial trial counsel ineffectiveness claim. Finally, a default can be excused if you were not appointed counsel at the RCr 11.42 stage with regard to a substantial trial counsel ineffectiveness claim. *Martinez v. Ryan*, 563 U.S. 1 (2012). In this context, substantial means the claim has some merit. But with limited exceptions, the facts and documents you want the federal court to consider in this context must still be presented first to the state court.

What pleadings can be filed?

Once you file your habeas petition, the federal court will conduct an initial review and determine whether to summarily deny it (called dismissal) or require counsel for the Warden file a response (called an Answer). If a response is required, you then have a right to file a reply to the response. You can also file many additional types of motions, including but not limited to, seeking to add documents to the record (expansion of the record), discovery, expert assistance, and an evidentiary hearing. Expansion of the record would be how you get before the federal court documents that were not presented in state court, but the law has become quite restrictive on when a federal court can allow such documents to be added to the record and when the court can consider those documents in deciding your habeas claim(s). To obtain discovery, you must file a motion seeking it that explains the specific type of information you seek, what you expect to learn from that information, and

how that information would either support your claim or could lead to information that would support your claim. By that, we mean, showing how the information could help you prove the elements of the legal standard and thus entitle you to relief. The type of discovery you can seek is the same as in a regular civil lawsuit. So, you can seek to depose people, obtain documents, and anything else the Federal Rules of Civil Procedure allow for discovery. To obtain an evidentiary hearing, you need to file a motion specifying each claim on which you seek a hearing, what you expect to prove through testimony at the evidentiary hearing, how that testimony would support one or more elements of the legal standard applicable to the claim and thus how the testimony helps prove you should win, and, if the state court decided your claim on its federal constitutional merits, how, based on the state court record, you have overcome 28 U.S.C. §2254(d)'s limitations on relief. To be clear, you cannot simply file a motion or another pleading saying you request an evidentiary hearing and/or discovery. That would be summarily denied. You need to lay out the specifics of what you seek and how it will aid you in proving one or more claims, as explained above. And, you can seek an evidentiary hearing and/or discovery not just on your claims but also if you need to address whether you complied with the statute of limitations and if it would aid you in responding to any procedural defenses the government raises in opposition to your habeas petition or habeas claims.

What to do after the habeas petition is ruled upon?

You can file a Federal Rule of Civil Procedure, Rule 59(e) motion to alter or amendment the habeas judgment (essentially asking the court to reconsider its ruling), but the law is restrictive on what qualifies under Rule 59(e). A Rule 59(e) motion must be filed no later than 28 days after the ruling denying federal habeas relief. Filing a Rule 59(e) motion tolls the clock for filing a notice of appeal from the denial of federal habeas relief. If the Rule 59(e) motion is denied, you then have 30 days from the denial of the Rule 59(e) motion to file before the federal district court both a motion to proceed in forma pauperis on appeal and a notice of appeal that specifies the parties, the ruling from which you are appealing, the date of the ruling, and that the appeal will be taken to the United States Court of Appeals for the Sixth Circuit. If you do not file a Rule 59(e) motion, you have 30 days from the date of the ruling denying federal habeas relief to file in the federal district court your notice of appeal and motion to proceed on appeal in forma pauperis.

The notice of appeal is a required first step to be able to appeal but it is not the only required step. You must also obtain a certificate of appealability on each claim you would like to pursue on appeal. The district court may decide within its ruling on the habeas petition whether to grant a certificate of appealability, addressing that for each of your habeas claims. If the district court did not do so, you need to file a motion before the district court seeking a certificate of appealability. In that motion, you need to explain, for each claim you seek to appeal, how/why reasonable jurists could debate or disagree with the correctness of the district court's resolution and reasoning for denying relief on the claim, or that the claim deserves encouragement to proceed further. If the district court denies a certificate of appealability on all your claims, you will need to file an application (like a motion) before the Sixth Circuit seeking a certificate of appealability on each you seek to have reviewed on appeal, under the same legal standard regarding a certificate of appealability. If the federal district court grants a certificate of appealability on some claims but denies it on other claims, you can file an application (motion) before the Sixth Circuit seeking to expand the certificate of appealability to include any claims on which the district court denied a certificate of appealability. Your appeal can only proceed if you have been granted a certificate of appealability, and your appeal can only include individual claims on which a certificate of appealability has been granted. Once a certificate of appealability has been granted, the appeal proceeds the same as it would in any other court, with the parties filing their briefs, oral argument potentially being held (always appointed counsel if argument held), and the court then deciding the appeal. You can also ask the Sixth Circuit to appoint you counsel even if the federal district court denied you counsel.

What about litigation in the district court after losing habeas proceedings?

There are limited circumstances in which you can file a Federal Rule of Civil Procedure, Rule 60(b) motion in district court to ask the district court to reopen federal habeas proceedings. It is limited to essentially when the state court denied a claim on procedural grounds that are later no longer a procedural bar (such as when state court reaches the merits later or clarifies it decided claim on merits instead of for a procedural reason) or something has occurred that calls into question the integrity of the federal district court's ruling on the habeas petition, not because of anything the federal judge did but instead because of later discovered information or law.

There are also very limited circumstances in which you can file a second-in-time or successive habeas petition. A new habeas petition can be filed to raise a claim that either did not factually exist at the time of the first habeas petition or was not ripe for adjudication at the time of the first habeas petition. You can file a successive habeas petition if you have a claim that (a) relies on a new federal constitutional rule or law that would apply retroactively, or (b) relies on facts that could not have been discovered earlier through the exercise of due diligence and that would prove by clear and convincing evidence that no reasonable fact-finder would have found you guilty of the underlying offense.

What does the United States District Courts' guide for pro se habeas petitions say?

The following section is what the United States District Court for the Western District of Kentucky states in its 2254 filing guide. This also applies to an action in the Eastern District Court.

HABEAS ACTIONS UNDER 28 U.S.C. § 2254

If you are in jail or otherwise “in custody” as a result of a conviction in a state court, you may ask the federal district court to set aside your state court conviction if it violated the Constitution or laws of the United States. This challenge is brought as a petition for writ of habeas corpus under 28 U.S.C. § 2254. You should exhaust your claims in state court before filing a § 2254 petition. You should state all your claims in your petition. If you previously filed a motion under 28 U.S.C. § 2254 challenging the same judgment, which was dismissed or denied with prejudice, you will need to seek permission from the Sixth Circuit Court of Appeals before filing another § 2254 action in this Court. See 28 U.S.C. § 2244(b)(3) and (4).

This Court has a form for filing a habeas corpus petition under § 2254. Your institution may have a copy of this form or you may request one from the Clerk's Office. The Court's form has a detailed set of instructions explaining how to fill it out. Those instructions will not be repeated here. Local Rule 5.2(a) requires pro se litigants to use the Court's form. Failure to use the proper form after having been requested to do so by the Court, could result in the dismissal of your petition.

The fee for filing a habeas petition under § 2254 is \$5.00. Your petition should be accompanied by either the fee or a fully completed prisoner application to proceed without prepayment of the fee.

Actions under § 2254 are governed by the Rules Governing Section 2254 Cases in the United States District Courts and the Federal Rules of Civil Procedure, to the extent that they are not inconsistent with the Rules Governing Section 2254 Cases or any statutory provisions.

What happens after my 28 U.S.C. § 2254 petition has been filed?

1. You will receive a case number.

Your case will be assigned a civil action number. After you receive your case number, you should put it on all documents you send to the Court that relate to your action. Do not presume that the Clerk of Court will know what action you want your papers filed in. It is your responsibility to put your case number on your filings.

2. The Clerk of Court will review your petition for any deficiencies.

The Clerk of Court will review your petition to make sure you have properly submitted it to the Court. For example, the Clerk of Court will make sure you filed an original, signed petition, that you paid the filing fee or filed a prisoner application to proceed without prepayment of fees, and that your petition has been filed on a court-approved form. If your petition was not properly submitted, you may receive a “deficiency notice” from the Clerk’s Office. The notice will tell you if there was something wrong with your filing and provide you with a period of time to correct the deficiency. Failure to respond to a deficiency notice from the Clerk’s Office could lead to dismissal of your petition.

3. If you are seeking permission to proceed without prepayment of fees, the Court will rule on your application.

If the Court grants your application, you do not owe anything for the filing fee. If the Court denies your application, you will be provided with a period of time to pay the filing fee. Failure to pay the \$5.00 filing fee in the time provided by the Court could result in dismissal of your action.

4. The Court must conduct a preliminary review of your petition.

Under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, after a habeas petition has been filed, “the Judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the Judge must dismiss the petition and direct the Clerk to notify the petitioner.”

5. If the Court does not dismiss your petition on preliminary review, it will direct that it be served.

If the petition is not dismissed, the Judge will enter an order directing that the petition be served on the respondent and the Attorney General for the Commonwealth of Kentucky. The order will set out a time period for the respondent to answer and will provide another period for you to file a reply. Under Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, “[t]he answer must address the allegations in the petition. In addition, it must state whether any claim in the petition is barred by failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations.”

6. Discovery is not automatic.

Leave of court is required for a party to take discovery in a § 2254 action. A party requesting discovery must provide the reasons for the request and identify the discovery sought. If necessary for effective discovery, the Judge must appoint an attorney for a petitioner who qualifies to have counsel appointed under 18 U.S.C. § 3006A. See Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts.

7. The Court may expand the record.

If the petition is not dismissed, the Judge may direct the parties to expand the record by submitting additional materials relating to the petition. The materials that may be required include letters predating the filing of the petition, documents, exhibits, and answers under oath to written interrogatories propounded by the Judge. Affidavits may also be submitted and considered as part of the record. The Judge must give the party against whom the additional materials are offered an opportunity to admit or deny

their correctness. See Rule 7 of the Rules Governing Section 2254 Cases in the United States District Courts.

8. The Court will decide whether to hold an evidentiary hearing.

If the petition is not dismissed, the Judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted. See Rule 8 of the Rules Governing Section 2254 Cases in the United States District Courts.

9. If an evidentiary hearing is granted, the Court must appoint an attorney to represent a qualified petitioner.

If an evidentiary hearing is warranted, the Judge must appoint an attorney to represent a petitioner who qualifies under 18 U.C.S. § 3006A. See Rule 8 of the Rules Governing Section 2254 Cases in the United States District Courts.

10. The hearing must take place as soon as practicable.

The Judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. Rule 8 of the Rules Governing Section 2254 Cases in the United States District Courts.

11. The matter may be referred to a Magistrate Judge.

A Judge may, under 28 U.S.C. § 636(b), refer the petition to a Magistrate Judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the Clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 14 days after being served, a party may file objections. The Judge must determine de novo any proposed finding or recommendation to which objection is made. The Judge may accept, reject, or modify any proposed finding or recommendation.

12. The Judge will issue a final decision granting or denying relief.

If the district court enters a decision adverse to the petitioner, it must issue or deny a certificate of appealability. If the Court issues a certificate, the Court must state the specific issue or issues that meet the showing required by 28 U.S.C. § 2253(c)(2).

13. Appeal

If the Court denies you a certificate of appealability, you may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. Federal Rule of Appellate Procedure (4)(a) governs appeal. You have thirty days (or sixty days if the case involves a party who is the United States, a federal agency or federal employee) from the date that the final order or judgment was entered on the docket to file a Notice of Appeal. A timely notice of appeal must be filed even if the district court issues a certificate of appealability. The fee to file an appeal is \$455.00. You must either pay the fee or submit a prisoner application to proceed without prepayment of the fee.

Addresses

WESTERN DISTRICT

Clerk's Office
601 W. Broadway, Rm 106
Gene Snyder United States Courthouse
Louisville, KY 40202
Phone: (502) 625-3500

EASTERN DISTRICT

Robert R. Carr, Clerk
101 Barr Street
Lexington, KY 40507
Phone: (859) 233-2503

**Petition for Relief From a Conviction or Sentence
By a Person in State Custody**

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

Instructions

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the 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. You must pay a fee of \$5. If the fee is paid, your petition will be filed. If you cannot pay the fee, 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. If your account exceeds \$ _____, you must pay the filing fee.
7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:

Clerk, United States District Court for
Address
City, State Zip Code
9. **CAUTION:** You must include in this petition 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 petition, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ 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) Docket or case number (if you know):

(c) Result:

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you seek further review by a higher state court? ☐ Yes ☐ No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know):

(6) Grounds raised:

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

☐ Yes ☐ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☐ Yes ☐ No

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

(a) (1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):
- (4) Nature of the proceeding:
- (5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☐ No

(2) Second petition: ☐ Yes ☐ No

(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **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:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

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

Type of motion or petition:

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

Docket or 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 or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

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

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

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

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

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **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:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

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

Type of motion or petition:

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

Docket or 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 or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

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

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

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

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

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you :
have used to exhaust your state remedies on Ground Two

GROUND THREE:

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why?

(c) **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:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

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

Type of motion or petition:

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

Docket or 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 or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

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

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

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

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

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(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:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

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

Type of motion or petition:

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

Docket or 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 or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

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

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

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

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

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:
- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☐ No
- If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:
- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them:
14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☐ No
- If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.
15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☐ No
- If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:
- (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 ruling against you in a post-conviction proceeding:
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 that imposed the other sentence you will serve in the future:
 - (b) Give the date the other sentence was imposed:
 - (c) Give the length of the other sentence:
 - (d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No
18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

UNITED STATES DISTRICT COURT
for the

Plaintiff/Petitioner)	
v.)	
Defendant/Respondent)	Civil Action No.

**APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Short Form)**

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

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

1. *If incarcerated.* I am being held at: _____.
If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ _____, and my take-home pay or wages are: \$ _____ per
(specify pay period) _____.

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|------------------------------|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

4. Amount of money that I have in cash or in a checking or savings account: \$ _____ .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name *(describe the property and its approximate value)*:

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses *(describe and provide the amount of the monthly expense)*:

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations *(describe the amounts owed and to whom they are payable)*:

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

Date: _____

Applicant's signature

Printed name

UNITED STATES DISTRICT COURT
for the

Plaintiff
v.

Defendant

)
)
) Civil Action No.
)
)

ORDER TO PROCEED WITHOUT PREPAYING FEES OR COSTS

IT IS ORDERED: The plaintiff's application under 28 U.S.C. § 1915 to proceed without prepaying fees or costs is:

☐ **Granted:**

The clerk is ordered to file the complaint and issue a summons. The United States marshal is ordered to serve the summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☐ **Granted Conditionally:**

The clerk is ordered to file the complaint. Upon receipt of the completed summons and [USM-285](#) form for each defendant, the clerk will issue a summons. If the completed summons and USM-285 forms are not submitted as directed, the complaint may be dismissed. The United States marshal is ordered to serve the completed summons with a copy of the complaint and this order on the defendant(s). The United States will advance the costs of service. Prisoner plaintiffs are responsible for full payment of the filing fee.

☐ **Denied:**

This application is denied for these reasons:

Date: _____

Judge's signature

Printed name and title