

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

APR 01 1988

IN THE MATTER OF STATE PRISONERS §
FILING PETITIONS FOR WRITS OF
HABEAS CORPUS UNDER 28 U.S.C. §
2241

MURRAY L. HARRIS, CLERK
By
Deputy *Rita Robbins*

GENERAL ORDER

Acting by consent of the judges of this court, it is ORDERED, effective immediately, that this court adopt a prescribed form for state prisoners filing petitions for writs of habeas corpus under 28 U.S.C. §2241. To facilitate this, the following rules are also adopted:

1. The prescribed form for a Petition for Writ of Habeas Corpus for State Prisoners filing under 28 U.S.C. §2241 is attached hereto as Exhibit A. Complaints may be accepted and filed on other forms at the discretion of the court; however, completion of the prescribed form may be required as a pleading auxiliary, either before or after filing.
2. The court also adopts, as a mandatory form, the Application to Proceed in Forma Pauperis (AO-240) which is attached hereto as Exhibit B. No complaint will be accepted for filing in forma pauperis, except at the discretion of the court, until the application on the prescribed form is received. All such applications, to be valid, must be certified by an authorized official of the institution wherein the petitioner is detained and must contain a statement of either the petitioner's average prisoner account balance over the preceding six-month period or the petitioner's total income received over the preceding six-month period.

UNITED STATES DISTRICT COURT

28:2241 STATE

OFFICE OF THE CLERK
EASTERN DISTRICT OF TEXAS

MURRAY L. HARRIS
CLERK

211 W. FERGUSON
TYLER, TEXAS 75702

Re: Your Request for Forms for Filing a Petition for Writ of Habeas Corpus

In response to your inquiry, the forms you have requested for prisoners in filing a petition for writ of habeas corpus are enclosed.

Please read the forms and follow the instructions **VERY** carefully. Make certain that you have answered **ALL** the questions and that you have signed in all the required places.

The filing fee for this type of civil action is \$5.00. At the time you submit the petition, you may submit your check or money order made payable to:

Clerk, U.S. District Court.

In addition, certain petitions are served to the respondents by the United States Marshal with a usual charge of \$3.00 for each person served. **DO NOT** submit payment for the service at this time. After the case is filed and a judicial order is entered for service to the respondent, the U. S. Marshal Service will notify you by letter how you may prepay the fee for this service if such is required.

If you are unable to pay the filing fee and service costs for this petition, you may ask the Court to allow you to proceed in forma pauperis. An application for this purpose is included with your forms. If you use this form, make certain that **each and every** question is properly answered, that you sign the form, and that the certificate portion is completed and signed by an authorized official of your institution. If you are an inmate of the Texas Department of Corrections, it is our understanding that the type of information required in the certificate is only available in Huntsville. The form must be submitted with a properly notarized release form through appropriate channels to E&R Accounting in Huntsville so that the certificate may be certified by an authorized person.

Submit only the **original** petition to this court. If we need copies, we will make them. The papers you submit need to be reproducible. If possible use typewriter or black ink. If this is not available, submit only originals which are clearly legible.

The use of legal-size paper has been eliminated. Standard size is now 8- $\frac{1}{2}$ x 11 inches. If you must submit additional pages, use only this size. **DO NOT** write on the reverse side of any pages.

Petitions which do not conform to these instructions will be returned with a notation as to the deficiency. You should hear about acceptance of your case in about six weeks. Please wait that long before inquiring. Be assured that we make every effort to handle each case in the order in which it is received.

Any forms returned should be sent to: Clerk, U. S. District Court
211 West Ferguson Street, Room 309
Tyler, TX 75702

FORM TO BE USED BY STATE PRISONERS IN FILING A PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 USC §2241

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

(Petitioner)

(Full name under which you were convicted,
prison number, and full mailing address.)

vs.

CIVIL ACTION NO. _____
(To be completed by Court ONLY)

(Respondent)

(Name of Warden or other authorized person
having custody of petitioner, and full address.)

Federal courts have jurisdiction to entertain applications for writs of habeas corpus under 28 USC §2241 only if the petitioner is "in custody" in violation of laws, treaties or the Constitution of the United States and release from prison is the ONLY relief sought.

PLEASE COMPLETE THE FOLLOWING:

1. This petition concerns: (check appropriate blank)

_____ A conviction or sentence (If you are attacking the constitutionality of a state court trial, conviction, or sentence that you are presently serving or will serve, you should file your petition under 28 USC §2254, and specific forms for this type must be used.)

_____ Jail or prison conditions (You must have exhausted state remedies prior to bringing this type of complaint as a habeas petition. If you are attacking jail or prison conditions as a civil rights complaint, you must bring your action under 42 USC §1983, and specific forms for §1983 complaints must be used.)

_____ A parole problem (If you are attacking the outcome of a parole decision and the remedy you want is your release on parole, you may bring your complaint as a habeas corpus petition under §2254; specific forms for §2254 must be used. If you are attacking the method or factors considered by the parole board, or the composition of the board, you may bring your complaint as a civil rights complaint under 42 USC §1983, and specific forms for §1983 must be used.)

____ Good-time credits

(A state prisoner must have exhausted his state remedies before the federal court can hear a petition for restoring good time under habeas relief.)

____ Other. State briefly:

2. Place of detention: _____

3. Name and location of court where you were convicted and sentenced for the offense(s) for which you are presently confined or before which you are awaiting trial.

4. Indictment or case number, if known: _____

5. Year of conviction: _____

6. Are you presently represented by an attorney for the claim you are making in this application? _____ Yes _____ No

a. If your answer is "Yes," please state the name, address and telephone number if known.

b. If your answer is "No," please state whether you have ever in the past been represented by an attorney for the claim you are presently making. _____ Yes _____ No

If you have answered "Yes," please state the name, address and telephone number if known:

7. Offense(s) for which sentence was imposed: _____

8. Date upon which sentence was imposed and the terms of the sentence: _____

9. When was a finding of "guilty" made? (Check one)

_____ After a plea of "guilty"

_____ After a plea of "not guilty"

_____ After a plea of "nolo contendere"

10. If you were found "guilty" after pleading "not guilty," was the finding of guilt made by: _____ a jury _____ a judge without a jury
11. Did you appeal from the judgment of conviction and/or the imposition of sentence?
_____ Yes _____ No
12. Did you make any motions in the trial court or appeals to other courts to reduce or modify the sentence? _____ Yes _____ No

If your answer is "Yes," please complete the following for each such motion or appeal. Add a sheet of paper the same size as this if you need more space. Answer "a" through "e" for each such motion or appeal.

- a. Name of Court: _____
- b. Result: _____
- c. Date of Result: _____
- d. Citation or number of opinion: _____
- e. Grounds raised: (List each one.)

13. State **CONCISELY** every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, attach a single page behind this page.

CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

- a. Ground one: _____

Supporting **FACTS:** (Tell your story **BRIEFLY** without citing cases or law. You are **CAUTIONED** that you must state facts--not conclusions--in support of your grounds. A rule of thumb to follow is--"who did exactly what to violate your rights at what time or place.")

b. Ground two: _____

Supporting FACTS: _____

c. Ground three: _____

Supporting FACTS: _____

14. Have you filed previous petitions for habeas corpus, or any other applications, petitions or motions with respect to this conviction? _____ Yes _____ No

If your answer above is "Yes," give the following information:

a. Name of Court: _____

b. Nature of proceeding: _____

c. Grounds raised: _____

d. Result: _____

e. Date of Result: _____

f. Case number assigned by the Court to your petition or motion: _____

g. Citation or number of any written opinion or order entered pursuant to each such disposition: _____

15. Have you filed previous petitions for habeas corpus, or any other applications, petitions or motions with respect to the facts and claims you allege in this application?

_____ Yes _____ No

If your answer above is "Yes," give the following information:

a. Name of Court: _____

b. Nature of proceeding: _____

c. Grounds raised: _____

d. Result: _____

e. Date of Result: _____

f. Case number assigned by the Court to your petition or motion: _____

g. Citation or number of any written opinion or order entered pursuant to each such disposition: _____

16. If you filed a petition under 28 USC §2254 or other habeas corpus petitions and they were denied, state why your claim now is different from the issue(s) you raised in the earlier petition(s).

17. Did you present the facts relating to your present complaint in the internal prison grievance procedure? _____ Yes _____ No

a. If your answer to this question is "Yes," what was the result? _____

b. If your answer to this question is "No," explain why: _____

Signed this _____ day of _____, 19____.

(date) (month) (year)

Signature of Petitioner

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on: _____

(date)

Signature of Petitioner

FORM TO BE USED BY STATE PRISONERS IN FILING A PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 USC §2241

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

(Petitioner)

(Full name under which you were convicted,
prison number, and full mailing address.)

vs.

CIVIL ACTION NO. _____
(To be completed by Court ONLY)

(Respondent)

(Name of Warden or other authorized person
having custody of petitioner, and full address.)

Federal courts have jurisdiction to entertain applications for writs of habeas corpus under 28 USC §2241 only if the petitioner is "in custody" in violation of laws, treaties or the Constitution of the United States and release from prison is the ONLY relief sought.

PLEASE COMPLETE THE FOLLOWING:

1. This petition concerns: (check appropriate blank)

____ A conviction or sentence (If you are attacking the constitutionality of a state court trial, conviction, or sentence that you are presently serving or will serve, you should file your petition under 28 USC §2254, and specific forms for this type must be used.)

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____ A parole problem (If you are attacking the outcome of a parole decision and the remedy you want is your release on parole, you may bring your complaint as a habeas corpus petition under §2254; specific forms for §2254 must be used. If you are attacking the method or factors considered by the parole board, or the composition of the board, you may bring your complaint as a civil rights complaint under 42 USC §1983, and specific forms for §1983 must be used.)

____ Good-time credits

(A state prisoner must have exhausted his state remedies before the federal court can hear a petition for restoring good time under habeas relief.)

____ Other. State briefly:

2. Place of detention: _____

3. Name and location of court where you were convicted and sentenced for the offense(s) for which you are presently confined or before which you are awaiting trial.

4. Indictment or case number, if known: _____

5. Year of conviction: _____

6. Are you presently represented by an attorney for the claim you are making in this application? _____ Yes _____ No

a. If your answer is "Yes," please state the name, address and telephone number if known.

b. If your answer is "No," please state whether you have ever in the past been represented by an attorney for the claim you are presently making. _____ Yes _____ No

If you have answered "Yes," please state the name, address and telephone number if known: _____

7. Offense(s) for which sentence was imposed: _____

8. Date upon which sentence was imposed and the terms of the sentence: _____

9. When was a finding of "guilty" made? (Check one)

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10. If you were found "guilty" after pleading "not guilty," was the finding of guilt made by: _____ a jury _____ a judge without a jury
11. Did you appeal from the judgment of conviction and/or the imposition of sentence?
_____ Yes _____ No
12. Did you make any motions in the trial court or appeals to other courts to reduce or modify the sentence? _____ Yes _____ No

If your answer is "Yes," please complete the following for each such motion or appeal. Add a sheet of paper the same size as this if you need more space. Answer "a" through "e" for each such motion or appeal.

- a. Name of Court: _____
- b. Result: _____
- c. Date of Result: _____
- d. Citation or number of opinion: _____
- e. Grounds raised: (List each one.)

13. State **CONCISELY** every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, attach a single page behind this page.

CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

- a. Ground one: _____

Supporting **FACTS:** (Tell your story **BRIEFLY** without citing cases or law. You are **CAUTIONED** that you must state facts--not conclusions--in support of your grounds. A rule of thumb to follow is--"who did exactly what to violate your rights at what time or place.")

b. Ground two: _____

Supporting FACTS: _____

c. Ground three: _____

Supporting FACTS: _____

14. Have you filed previous petitions for habeas corpus, or any other applications, petitions or motions with respect to this conviction? _____ Yes _____ No

If your answer above is "Yes," give the following information:

a. Name of Court: _____

b. Nature of proceeding: _____

c. Grounds raised: _____

d. Result: _____

e. Date of Result: _____

f. Case number assigned by the Court to your petition or motion: _____

g. Citation or number of any written opinion or order entered pursuant to each such disposition: _____

15. Have you filed previous petitions for habeas corpus, or any other applications, petitions or motions with respect to the facts and claims you allege in this application?

_____ Yes _____ No

If your answer above is "Yes," give the following information:

a. Name of Court: _____

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c. Grounds raised: _____

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16. If you filed a petition under 28 USC §2254 or other habeas corpus petitions and they were denied, state why your claim now is different from the issue(s) you raised in the earlier petition(s).

17. Did you present the facts relating to your present complaint in the internal prison grievance procedure? _____ Yes _____ No

a. If your answer to this question is "Yes," what was the result? _____

b. If your answer to this question is "No," explain why: _____

Signed this _____ day of _____, 19____.

(date) (month) (year)

Signature of Petitioner

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on: _____

(date)

Signature of Petitioner

United States District Court

EASTERN

DISTRICT OF

TEXAS

APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER

v.

CASE NUMBER:

I, _____, declare that I am the (check appropriate box)

petitioner/plaintiff

movant (filing 28 U.S.C. 2255 motion)

respondent/defendant

other

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

In further support of this application, I answer the following questions.

1. Are you presently employed? Yes No

a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. (list both gross and net salary)

b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or other form of self-employment Yes No

b. Rent payments, interest or dividends? Yes No

c. Pensions, annuities or life insurance payments? Yes No

d. Gifts or inheritances? Yes No

e. Any other sources? Yes No

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

3. Do you own any cash, or do you have money in checking or savings accounts?

Yes No (Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own or have any interest in any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes No

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

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

Executed on _____
(Date)

Signature of Applicant

CERTIFICATE
(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of \$ _____
on account to his credit at the _____
institution where he is confined. I further certify that the applicant likewise has the following securities to
his credit according to the records of said institution: _____

I further certify that during the last six months the applicant's average balance was \$ _____

Authorized Officer of Institution

ORDER OF COURT

The application is hereby denied

United States Judge Date

The application is hereby granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.

United States Judge or Magistrate Date