GENERAL ORDER NO. 86-16-IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

U. S. DISTRICT COURT
EASTERN PISTRICT OF TEXAS

IN THE MATTER OF STATE PRISONERS SFILING PETITIONS FOR WRITS OF HABEAS CORPUS UNDER 28 U.S.C. SP. 2254

APR 0 1 1988

MURNAL 4. DAKRIS, CLERK

Ву

Deputy Keta Koul

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. §2254. 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. §2254 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.

- 3. Verification of the petition and the application to proceed in forma pauperis is required before the pleading will be accepted. Pleadings may be verified, pursuant to 28 U.S.C. \$1746, by signature under penalty of perjury or under oath before a notary public or other person authorized by law to administer an oath.
- 4. In the event that a petition for writ of habeas corpus under 28 U.S.C. \$2254 is received but is determined by the Clerk to be technically deficient so as to fail to meet the requirements for filing in this court, the Clerk is hereby authorized to return the original and all copies received of said petition to the petitioner for correction of all such technical deficiencies without obligation on the part of the Clerk to retain a copy of said petition pending its return.

SIGNED this <u>/st</u> day of <u>Apri</u>, 1988, on behalf of the court.

Chief Judge

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
EASTERN DISTRICT OF TEXAS

MURRAY L. HARRIS

211 W. FERGUSON TYLER, TEXAS 78702

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 ll inches. If you must submit additional pages, use <u>only</u> this size. **DO NOT** write on the <u>reverse</u> side of any pages.

Petitions which do not <u>conform</u> to these instructions will be <u>returned</u> 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

PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS 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 which entered the judgment.)

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

Instructions-Read Carefully

(1)	This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false
	statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered
	concisely in the proper space on the form.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed in forma pauperis, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your personal account exceeds \$________, you must pay the filing fee as required by the rules of the district court.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek 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.
- (6) Your attention is directed to the fact that 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.
- (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

AO 241 (Rev. 5/85)

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

United States District Court	District		
ne	Prisoner No.	Case No.	
ce of Confinement			
ne of Petitioner (include name under which convicted)	Name of Respondent	(authorized person having custody of petitioner	
	V.		
Attorney General of the State of:			
PE	TITION		
1. Name and location of court which entered the judgmen	nt of conviction under atta	nck	
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 □	,		
It you entered a guilty plea to one count or indictment,	and a not guilty plea to an	other count or indictment, give details:	
			
6. If you pleaded not guilty, what kind of trial did you h	lave? (Check one)		
(a) Jury (b) Judge only	iare. (elicer olic)	•	
7. Did you testify at the trial?			
Yes □ No □			

	Name of court
(b)	Result
(c)	Date of result and citation, if known
(d)	Grounds raised
(e)	It you sought turther review of the decision on appear by a higher state court, please answer the following:
	(1) Name of court
	(2) Result
	(3) Date of result and citation, if known
	(4) Grounds raised
	each direct appeal:
	(1) Name of court
	(2) Result
app Yes	(2) Result
app Yes	(2) Result

	(4)	Did you receive an evidentiary hearing on your petition, application or motion? Yes No
	(5)	Result
	(6)	Date of result
(b)	As	to any second petition, application or motion give the same information:
	(1)	Name of court
	(2)	Nature of proceeding
	(3)	Grounds raised
	(2)	Giodinus faised
		
	(4)	Did you receive an evidentiary hearing on your petition, application or motion? Yes No
	(5)	Result
	(6)	Date of result
(c)		I you appeal to the highest state court having jurisdiction the result of action taken on any petition, application tion?
	(1)	First petition, etc. Yes \square No \square
	(2)	Second petition, etc. Yes \(\text{No} \) \(\text{No} \)
(d)	If y	ou did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:
		ncisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting
Sto		
. Sta	h gro	bund. If necessary, you may attach pages stating additional grounds and facts supporting same. JTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedie

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

Α.	Ground one:
*	Supporting FACTS (state briefly without citing cases or law)
В.	Ground two:
	Supporting FACTS (state briefly without citing cases or law):

(0)	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
sam	re you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and an etime?
Yes	you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? \[\subseteq \ \text{No} \subseteq \] If so, give name and location of court which imposed sentence to be served in the future:
Yes (a)	□ No □
Yes (a) (b)	If so, give name and location of court which imposed sentence to be served in the future:
Yes (a) (b) (c)	If so, give name and location of court which imposed sentence to be served in the future: Give date and length of the above sentence: Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence served in the future?
Yes (a) (b) (c)	If so, give name and location of court which imposed sentence to be served in the future: Give date and length of the above sentence: Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence served in the future? Yes □ No □
Yes (a) (b) (c)	If so, give name and location of court which imposed sentence to be served in the future: Give date and length of the above sentence: Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence served in the future? Yes No No refore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.
Yes (a) (b) (c)	If so, give name and location of court which imposed sentence to be served in the future: Give date and length of the above sentence: Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence is served in the future? Yes \(\subseteq \text{ No } \subseteq \) refore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding. Signature of Attorney (if any)

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United States District Court

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APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER

CASE NUMBER:

	, declare that	I am the (check appropria
petitioner/plaintiff	movant (filing 28 U.S.C	C. 2255 motion)
respondent/defendant		
		other
in the above-entitled proceeding required to prepay fees, cost or g am unable to pay the costs of sai entitled to relief. The nature of my to present on appeal are briefly s	tive security therefor, I state that be d proceeding or give security ther action, defense, or other proceed	recause of my poverty, I refor; that I believe I am
Are you presently employe a. If the answer is "yes,"	ation, I answer the following quested? state the amount of your salary of ress of your employer. (list both t	Yes ☐ No ☐ or wages per month, and
	state the date of last employmen nonth which you received.	t and the amount of the
2. Have you received within ing sources?	the past twelve months any mone	y from any of the follow-
a. Business, profession or	other form of self-employment	Yes ☐ No ☐
b. Rent payments, interest	t or dividends?	Yes ☐ No ☐
c. Pensions, annuities or	life insurance payments?	Yes ☐ No ☐
d. Gifts or inheritances?	·	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 \(\subseteq \text{No} \subseteq \text{(Include any funds in prison accounts.)} \) 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 \(\subseteq \text{ No } \subseteq \) If the answer is "yes," describe the property and state its approximate value.
in the unswer is yes, aeserioe the property and state its approximate value.
 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
 CERTIFICATE
(Prisoner Accounts Only)
I certify that the applicant named herein has the sum of \$
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 granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.
United States Judge Date United States Judge Date or Magistrate