



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

**INSTRUCTIONS FOR FILING A PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO
28 U.S.C. SECTION 2241**

This packet is for federal prisoners' claims when 28 USC § 2255 does not provide adequate relief or from state pretrial detainees attacking the legality of their custody. This packet may also be used for claims attacking execution of sentence, computation of sentence or credits, or determinations regarding parole. Please note the following **before** using this packet of forms:

- ★ **Do NOT use this packet to file a 28 U.S.C. Section 2254 petition.** If your claims regarding the legality or duration of confinement due to a sentence imposed by the **State** court system, a separate packet is available for that purpose. The Clerk of Court can send you a copy upon request (see address listed on page two), or one should be available in the law library of your institution.
- ★ **Do NOT use this packet to file a 42 U.S.C. Section 1983 civil action.** A 42 U.S.C. Section 1983 civil action is defined as an action against a person who has acted under color of state law (as a state official or employee) to deprive a person of rights secured by the Constitution or laws of the United States. Civil rights suits filed by incarcerated individuals generally involve conditions of confinement. A separate packet is available for that purpose. The Clerk of Court can send you a copy upon request (see address listed on page two), or one should be available in the law library of your institution.

RELEVANT GUIDELINES FOR FILING CASES IN FEDERAL COURT

- ★ **Current Address:** Keep the Court and opposing counsel, if any, advised of your most current address **at all times**. Failure to do so may result in your action being dismissed without prejudice.
- ★ **Contacting the Court:** Do not send letters or documents directly to the judge(s) assigned to your case. All contact with the Court must be in writing and sent to appropriate point of holding court:

Clerk, U.S. District Court
PO Box 2857
Clarksburg, WV 26302

Clerk, U.S. District Court
217 W. King St., Room 102
Martinsburg, WV 25401

Clerk, U.S. District Court
PO Box 1518
Elkins, WV 26241

Clerk, U.S. District Court
PO Box 471
Wheeling, WV 26003

- ★ **Sending Documents to the Court:** When filing documents with the Court, file the original plus two copies of each one with the Clerk's Office (use the appropriate address noted above). The copies must be identical to the original.
- ★ **Sending Documents to the Respondent:** If the respondent has responded in the case, you are **required** to send a copy of any documents you send to the Court to the respondent's counsel. You let the Court know that you have done this by completing a certificate of service and attaching it to the original of the document and all copies before you send them to the Court and to the respondent (sample certificate attached).
- ★ **Legal Advice:** The District Judges, Magistrate Judges, Pro Se Law Clerk and the Clerk's Office cannot provide you with legal advice. They can provide you with the proper forms to file civil actions and advise you as to the status of your case. For example, if you write in and ask "What is happening in my case?" The Clerk can advise you that it is still before the Magistrate Judge, or it is now before the District Judge. The Clerk cannot answer questions such as "Should I file a motion for appointment of counsel?" or similar questions. You have to decide those questions on your own. If you have any questions, please contact the Clerk's Office (use the appropriate address noted above).
- ★ **Rules:** Your case is subject to the Federal Rules of Civil Procedure and the Local Rules of the Northern District of West Virginia. A copy of each of these should be located at your institution for your use. If not, please contact us at the appropriate address noted above and we will contact the institution to ensure that it has a copy of those rules to provide for your use.

FILING FEE REQUIREMENT

A five dollar (\$5.00) fee is required for the filing of the 28 U.S.C. § 2241 petition. Send a money order or institution check payable to Clerk, U.S. District Court with your petition (cash and personal checks are not accepted). If you are unable to pay this fee, complete the attached Application to Proceed In Forma Pauperis and Prisoner Trust Account Report forms included in this packet and file them with your petition.

AT THE DIRECTION OF THE COURT

Cheryl Dean Riley, Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

_____)
 _____)
 _____)
 _____),
 (Full name under which you were convicted,
 prison number, place of confinement, and
 full mailing address))
 Petitioner,)
 vs.)
 _____),
 (Name of Warden or other authorized person
 having custody of petitioner))
 Respondent.)
 _____)

**Application for Habeas Corpus
Pursuant to 28 U.S.C. § 2241**

Civil Action No. _____
(to be assigned by Clerk)

Important notes to read before completing this form:

★ Please read the entire petition **before** filling it out. Answer **only** those questions which pertain to your claim(s).

1. This petition concerns (check the appropriate box):

- a conviction
- a sentence
- jail or prison conditions
- prison disciplinary proceedings
- a parole problem
- other, state briefly: _____

2. Are you represented by counsel?

- Yes No

If you answered yes, list your counsel's name and address:

3. List the name and location of the court which imposed your sentence:

4. List the indictment or case number, if known: _____

5. List the nature of the offense for which the sentence was imposed: _____

6. List the date which sentence was imposed and the terms of the sentence:

7. What was your plea to each count? (Check one)

- Guilty
- Not Guilty
- Nolo Contendere

8. If you were found guilty after a plea of not guilty, how was that finding made?

- A jury
- A Judge without a jury
- A Magistrate Judge without a jury

9. Did you appeal from the judgment of conviction or imposition of the sentence?

- Yes No

10. If you did appeal, give the following information for each appeal:

- A. Name of Court: _____
- B. Result: _____
- C. Date of Result: _____
- D. Citation number of opinion: _____
- E. Grounds raised (List each one): _____

Note: if you filed an appeal in more than one court, attach an additional sheet of paper of the same size and give all of the information requested in Question 13, A through E.

11. 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 court, state or federal (a post-conviction proceeding)?

Yes No

If your answer was yes, complete the following sections:

A. First post-conviction proceeding:

1. Name of Court: _____
2. Nature of Proceeding: _____
3. Grounds Raised: _____
4. Did you receive an evidentiary hearing? Yes No
5. Result: _____
6. Date of Result: _____

B. Second post-conviction proceeding:

1. Name of Court: _____
2. Nature of Proceeding: _____
3. Grounds Raised: _____
4. Did you receive an evidentiary hearing? Yes No
5. Result: _____
6. Date of Result: _____

C. Did you appeal to the result of the post conviction proceeding(s) to the highest court having jurisdiction?

1. First proceeding: Yes No Result: _____
2. Second proceeding: Yes No Result: _____

D. If you did not appeal the adverse result of the post-conviction proceeding(s), explain briefly why not:

12. For your information, the following is a list of the most frequently raised grounds for relief in applications for habeas corpus pursuant to 28 U.S.C. §2241. You may raise any grounds which you may have other than those listed. However, in this application, you should raise all available grounds on which you base your petition. **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 one or more of the grounds:

- A. U.S. Parole Commission unlawfully revoked my parole.
- B. Federal Bureau of Prisons unlawfully computed my sentence.
- C. Federal Bureau of Prisons unlawfully denied me credit for time served in state or federal prison.
- D. Federal Bureau of Prisons or State prison system unlawfully revoked my good time credits.
- E. There is an unlawful detainer lodged against me.
- F. I am a citizen and domiciliary of a foreign country and I am in custody for an act which I had a right to commit under the laws of my country.
- G. The act for which I was convicted is no longer considered to be a crime, and I cannot raise this issue in a §2254 petition or a §2255 motion.

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

State clearly every ground on which you are seeking relief. Summarize briefly the facts supporting each ground. If necessary, attach an additional page or pages behind this one.

A. Ground one:

Supporting facts: tell your story briefly without citing cases or law. You are cautioned that you must state facts, not conclusion, in support of your grounds. A “rule of thumb” to follow is this: who did exactly what to violate your rights at what time and place).

B. Ground two:

Supporting facts:

C. Ground three:

Supporting facts:

D. Ground four:

Supporting facts:

13. Were all of the above grounds presented to another court, state or federal? If not, state which grounds were not presented. If yes, state the name of the court, date of decision, and the nature of the outcome:

14. If this petition concerns jail or prison conditions, prison disciplinary proceedings, a parole problem, computation of sentence, or other case under 28 U.S.C. § 2241, answer the following questions:

- A. Did you present the facts in relation to your present petition in the prison's internal grievance procedure?

Yes No

1. If your answer to "A" above was yes, what was the result:

2. If your answer to "A" above was no, explain:

- B. If you are a federal prisoner, did you present your claim to the Bureau of Prisons or other federal agency for administrative action?

Yes No

1. If your answer to "B" above was yes, what was the result:

2. If your answer to “B” above was no, explain:

15. Relief: State here, as briefly as possible, exactly what you want the court to do for you:
1. Make **no** legal arguments.
2. Cite **no** cases or statutes.

Signed this _____ day of _____, _____.
(day) (month) (year)

Signature of Petitioner

Signature of Attorney (if any)

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

Date of Signature: _____

Signature of Petitioner

UNITED STATES DISTRICT COURT
Northern District of West Virginia

Plaintiff,

V.

APPLICATION TO PROCEED WITHOUT
PREPAYMENT OF FEES AND
AFFIDAVIT

CASE NUMBER:

Defendant.

**YOU MUST COMPLETE THIS FORM FOR YOU, YOUR SPOUSE AND ALL
PERSONS OVER 18 LIVING IN THE RESIDENCE WHERE YOU LIVE**

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my action or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: _____

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: _____

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amount, that is amounts before any deductions for taxes or otherwise.

Income Source	Average Monthly Amount during the past 12 months			Amount expected next month		
	You	Spouse	Other Adult*	You	Spouse	Other Adult*
Employment	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Self-Employment	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Gifts	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

* Other adult living where you reside

Alimony	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Child Support	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Retirement (social security, pensions, annuities, insurance, etc.)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Disability (social security, insurance payments, etc.)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Public-Assistance (such as welfare)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Other (specify):	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Total monthly income:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

2. List your employment history with most recent employer first (Gross monthly pay is before taxes or other deductions).

Employer	Address	Dates of Employment	Gross Monthly Pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. List your spouse's employment history with most recent employer first (Gross monthly pay is before taxes or other deductions).

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. How much cash do you and your spouses have? \$ _____

Below, state any money you or your spouse have in bank accounts or in any other financial institution

Financial Institution	Type of Account	Amount you have	Amount your spouse has has*	Amount other adult
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____	\$ _____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

* Other adult living where you reside

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor vehicle #1 (Value)
_____	_____	Make & year: _____
_____	_____	Model: _____
_____	_____	Registration #: _____
Motor vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year: _____	_____	_____
Model: _____	_____	_____
Registration #: _____	_____	_____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. State the persons who rely on you or your spouse for support.

Initials	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semi-annually or annually to show the monthly rate.

	You	Your Spouse	Other adult*
Rent or home mortgage payment (include lot rented for mobile home)	\$ _____	\$ _____	\$ _____
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ _____	\$ _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____	\$ _____
Food	\$ _____	\$ _____	\$ _____
Clothing	\$ _____	\$ _____	\$ _____
Laundry and dry cleaning	\$ _____	\$ _____	\$ _____

* Other adult living where you reside

Medical and dental expenses	\$ _____	\$ _____	\$ _____
Transportation (not including motor vehicle payment)	\$ _____	\$ _____	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____	\$ _____
Insurance (not deducted from wages or included in mortgage payments)	\$ _____	\$ _____	\$ _____
Homeowner's or renter's	\$ _____	\$ _____	\$ _____
Life	\$ _____	\$ _____	\$ _____
Health	\$ _____	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments) (specify): _____	\$ _____	\$ _____	\$ _____
Installment payments			
Motor Vehicle	\$ _____	\$ _____	\$ _____
Credit Card (name): _____	\$ _____	\$ _____	\$ _____
Department Store (name): _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to other	\$ _____	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____
Total monthly expenses:	\$ _____	\$ _____	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No *If yes, describe on an attached sheet*

10. Have you paid-or will you be paying- an attorney any money for services in connection with this case including the completion of this form? Yes No

If yes, how much? \$ _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid-or will you be paying-anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? \$ _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

PRISONER TRUST ACCOUNT REPORT

Name: _____ Inmate #: _____

TO: Trust Officer
FROM: Cheryl Dean Riley, Clerk, U. S. District Court, Northern District of West
Virginia

RE: Civil Action No. _____

Under the Prison Litigation Reform Act, a prisoner initiating a civil action must obtain from the Trust Officer of each institution in which the prisoner was confined during the preceding six months a certified copy of the prisoner's trust account statement for the six months prior to the filing of his or her complaint.

Please complete this form, attach the supporting ledger sheets, and return these documents to the prisoner for mailing to the Clerk of Court. **The ledger sheets MUST be attached for the Court to process this form.**

Date complaint to be filed: _____

Account Balance at time of filing complaint: _____

AVERAGE MONTHLY DEPOSITS during the six months prior to the filing of the civil action:

AVERAGE MONTHLY BALANCE during the six months prior to the filing of the civil action:

I certify that the above information accurately states the deposits and balances in the applicant's trust account for the period shown and that the attached ledger sheets are true copies of the account records maintained in the ordinary course of business.

Date

Authorized Signature

Title

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

)
)
)
)
)

v.

Civil Action No.: _____

)
)
)
)
)

Certificate of Service

I, (your name here), appearing pro se, hereby certify that I have served the foregoing (title of document being sent) upon the defendant/respondent by depositing true copies of the same in the United States mail, postage prepaid, upon the following counsel of record for the defendant/respondent on (insert date here):

(List name and address of counsel for respondent)

(sign your name)