

INSTRUCTIONS

You should use this packet if:

1. You are a prisoner; and
2. You believe your federal constitutional rights have been violated; and
3. You wish to file a complaint under 42 U.S.C. § 1983 in the United States District Court for the Northern District of Iowa; and
4. You do not have a licensed attorney to help you with your complaint.

This packet contains:

1. 1983 Pro Se Complaint form;
2. Application to Proceed In Forma Pauperis; and
3. Certificate of Inmate Account and Assets

§ 1983 or Habeas Corpus?

Sometimes prisoners do not know whether they should file a §1983 action or a habeas corpus action. Both §1983 and the writ of habeas corpus can help persons who have been deprived of federal constitutional rights. However, if you will be asking the court for any kind of release from custody, or if you will be asking the court to restore good and honor time that was taken from you, you should file a habeas corpus action. (The court cannot do those things for you in a § 1983 action.) In a habeas corpus action, you must ask the state courts to help you before you ask for the federal court's help. This is not required for a § 1983 action.

DO NOT USE THE FORMS IN THIS PACKET TO APPLY FOR A WRIT OF HABEAS CORPUS. A separate form is available for that purpose. The Clerk of Court can send you a copy upon request.

The Correct Court and the Correct Defendant(s)

Your complaint can be filed in the United States District Court for the Northern District of Iowa only if one or more of the defendants is located in this district, or if the facts of your complaint took place in this district.

A defendant in a §1983 action must be a person who acted "under color of" state law. This generally means that the person is either a state official, a state employee, or someone else who acted for the state or under some power given to him or her by the state. (This is not a complete statement of the law on this subject, but is intended only as guidance.)

In order for the warden or some other supervisory official to be a proper defendant, you must have some proof that such person either: 1) personally did some act that harmed you, or 2) harmed you by personally failing to do something he or she should have done, or 3) authorized (in words or otherwise) someone else's conduct which harmed you, or 4) was aware of someone else's conduct which harmed you, and acquiesced in (went along with) that conduct in some way.

It is important that you give the correct name and work address, if known, of each person you name as a defendant, so that each of those persons can be notified of your complaint.

Filling Out the Forms

Your forms may be filled out by hand or by typewriter. If handwriting is used, it must be clear and readable. If printing would be easier for the court to read, please print. Every question on the forms should be answered, even if your answer is Anone, "Don't know," or "N/A" (not applicable).

Your complaint will be most effective if you 1) state your claim briefly and plainly, and 2) tell the court only about the claim or claims you truly believe to be important. Stick to the FACTS (who, what, where, when and how). **THE COMPLAINT SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CASE CITATIONS.**

If you need more space to answer a question, you may use the back side of the form or an extra blank page. However, if you keep your answers brief and to the point, as recommended above, extra space should not be needed in most cases.

You, the plaintiff, must personally sign the complaint. If there is more than one plaintiff, each of you must sign.

Additional Claims

If, in addition to your § 1983 claim, you have other claims against one or more of the defendants, you may state those claims on a separate sheet of paper which you attach to the complaint form. Write the heading ADDITIONAL CLAIMS at the top of the sheet. If you happen to know the name or number of a statute that you think applies to your additional claim, you may state it. It is not necessary, however, that you do so. If you just state the facts, the court will determine what federal or state laws, if any, apply. The court will also determine whether any state law claims can be decided in federal court. Do **NOT** include any habeas corpus claims with this complaint. Those claims should be filed separately on a special habeas corpus form, which the Clerk of Court can send to you.

Other Instructions

There is a fee of \$402.00 for filing your complaint. You will also be required to pay the cost of notifying each defendant on your complaint. In prisoner cases, this is usually done by certified mail, which costs relatively little. If you feel you cannot pay the full filing fee and service costs for this action, you should fill out the APPLICATION TO PROCEED IN FORMA PAUPERIS and DECLARATION IN SUPPORT THEREOF. If there is more than one plaintiff, **each plaintiff must separately complete the Application to Proceed In Forma Pauperis and Declaration in Support.** The completed form(s) must be signed and returned to the Clerk of Court with your Complaint. If the Application to Proceed in Forma Pauperis is granted, the filing fee is reduced to \$350. Instructions for payment of the \$350.00 will be in the order granting the application.

Mail your complaint to the address below. With your complaint you must either send a check/money order for \$402.00 or a completed and signed Application to Proceed in Forma Pauperis. When all forms have been received, the Clerk of Court will open a case and assign it to a judge.

Mailing Address: United States District Court
 Northern District of Iowa
 111 7th Avenue SE, Box 12
 Cedar Rapids IA 52401

Note: Your complaint will not be considered by the court unless you have followed these instructions and those on the forms themselves.

**IMPORTANT NOTICE TO PRISONERS
FILING AN ACTION UNDER 42 U.S.C. § 1983**

On April 26, 1996, the Prisoner Litigation Reform Act of 1995 was signed into law. This Act substantially affects the filing of civil rights actions by prisoners. Aspect of the new Prisoner Litigation Reform Act of which any prisoner filing a § 1983 action must be aware include the following:

- A. You must exhaust available administrative remedies, including any grievance system, before filing an action challenging prison conditions under 42 U.S.C. § 1983 or any other federal law.

- B. Regardless of your financial status, you are required to pay the full filing fee. If you cannot submit the fee in full when you file your action, you may request to proceed in forma pauperis. **In no event will a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.**
 - 1. A prisoner seeking to proceed in forma pauperis must submit an affidavit that includes a statement of all assets the prisoner possesses, and he/she must submit a certified copy of his/her “inmate account” statement (or institutional equivalent) for the six-month period immediately preceding the filing of the action.

 - 2. The court will assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of two percent (20%) of the greater or:
 - a. the average monthly deposits to your prison account; or

 - b. the average monthly balance in your prison account for the six-month period immediately preceding the filing of the action.

 - 3. After payment of the initial partial filing fee, you must make monthly payments of twenty percent (20%) of the preceding month’s income credited to your prison account. (The correctional facility charged with your custody will forward payments from your prison account to the Clerk of Court each time the amount in the account exceeds \$10.00 until the filing fee is paid in full.)

4. Irrespective of any filing fee, or any portion thereof, that may have been paid, the court must dismiss the case at any time of the court determines that:
 - a. the allegation of poverty is untrue; or
 - b. the action or appeal:
 - i. Is frivolous or malicious;
 - ii. Fails to state a claim upon which relief may be granted; or
 - iii. Seeks monetary relief against a defendant who is immune from such relief.

However, you are still responsible for paying any remaining portion of the filing fee that is unpaid. (A further note: the filing fee debt is not chargeable in a bankruptcy proceeding.)

- C. If you have, on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief can be granted, **YOU ARE PROHIBITED FROM FILING A CIVIL RIGHTS ACTION IN FORMA PAUPERIS** unless you are under imminent danger of serious physical injury. If you do not proceed in forma pauperis, (if you prepay the full filing fee), you may file a new civil action or appeal, even if you have three or more of these dismissals.
- D. When proceeding in forma pauperis, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity is subject to judicial review. On review, the court shall identify arguable claims or dismiss the complaint, or any portion of the complaint, if the complaint:
 1. Is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
 2. Seeks monetary relief from a defendant who is immune from such relief.

- E. In the event a monetary (money) judgment is awarded to a prisoner as a result of a civil action against a jail, prison or correctional facility or against any official or agent thereof, the monetary award shall be paid directly to satisfy any outstanding restitution orders pending against the prisoner. Further, where the court has granted appointment of counsel in the prisoner's action, a portion of the judgment (not to exceed twenty-five percent (25%)) will be applied to satisfy the award of attorney's fees against the defendant. In addition, prior to any monetary award, notice of the monetary award will be given to your crime victim(s), if any, in the event they wish to file a claim against the award.

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____ Division

Case No. _____

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS (Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name _____
All other names by which
you have been known: _____
ID Number _____
Current Institution _____
Address _____
_____ *City* _____ *State* _____ *Zip Code*

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name _____
Job or Title (*if known*) _____
Shield Number _____
Employer _____
Address _____
_____ *City* _____ *State* _____ *Zip Code*
 Individual capacity Official capacity

Defendant No. 2

Name _____
Job or Title (*if known*) _____
Shield Number _____
Employer _____
Address _____
_____ *City* _____ *State* _____ *Zip Code*
 Individual capacity Official capacity

Defendant No. 3

Name _____
Job or Title (if known) _____
Shield Number _____
Employer _____
Address _____
_____ City _____ State _____ Zip Code _____
 Individual capacity Official capacity

Defendant No. 4

Name _____
Job or Title (if known) _____
Shield Number _____
Employer _____
Address _____
_____ City _____ State _____ Zip Code _____
 Individual capacity Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

- Federal officials (a *Bivens* claim)
- State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

-
- D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.
-

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- Pretrial detainee
 - Civilly committed detainee
 - Immigration detainee
 - Convicted and sentenced state prisoner
 - Convicted and sentenced federal prisoner
 - Other (*explain*) _____
-

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.
-

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.
-

C. What date and approximate time did the events giving rise to your claim(s) occur?

D. What are the facts underlying your claim(s)? *(For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)*

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a), requires that “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes

No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

Yes

No

Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

Yes

No

Do not know

If yes, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

Yes

No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes

No

E. If you did file a grievance:

1. Where did you file the grievance?

2. What did you claim in your grievance?

3. What was the result, if any?

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. *(Describe all efforts to appeal to the highest level of the grievance process.)*

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

Yes

No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes

No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

- Yes
- No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk’s Office with any changes to my address where case–related papers may be served. I understand that my failure to keep a current address on file with the Clerk’s Office may result in the dismissal of my case.

Date of signing: _____

Signature of Plaintiff _____
Printed Name of Plaintiff _____
Prison Identification # _____
Prison Address _____

City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney _____
Printed Name of Attorney _____
Bar Number _____
Name of Law Firm _____
Address _____

City State Zip Code

Telephone Number _____
E-mail Address _____

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff/Petitioner</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant/Respondent</i>)	

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

CERTIFICATION OF INMATE ACCOUNT AND ASSETS

I certify that the applicant, _____,
ID # _____ has the sum of \$ _____ on account to his/her credit at the
_____ institution where he/she is confined.

I further certify that the applicant likewise has the following securities to his/her credit according to the records of said institution:

I further certify that, during the last six months, the applicant's average inmate account balance was \$ _____ and the past six-month average monthly deposit amount to the inmate account is \$ _____ .

Based on the above inmate account balance: (check the appropriate response)

_____ The applicant has sufficient funds in his/her account to pay the \$402.00 filing fee; or

_____ The applicant has insufficient funds in his/her account to pay the \$402.00 filing fee at this time. I calculate that twenty percent (20%) of the greater of:

a. The average monthly deposits to his/her prison account is \$ _____ ; or

b. The average monthly balance in his/her prison account for the six-month period immediately preceding the filing of this action is \$ _____, for the purpose of an initial partial filing fee.

After payment of the initial partial filing fee, this office will forward twenty percent (20%) of the applicant's previous month's income as monthly payments from his/her prison account to the Clerk of Court each time the amount in the account exceeds \$10.00, until the filing fee is paid in full.

Signed this _____ day of _____, 20_____.

Authorized Officer of Institution