

INSTRUCTIONS FOR FILING A COMPLAINT BY A PRISONER UNDER BIVENS V. SIX UNKNOWN NAMED AGENTS OF FEDERAL BUREAU OF NARCOTICS, 403 U.S. 388 (1971)

I. Scope of Bivens Action

A Bivens action is available to challenge violations of the federal constitution or federal statutes which affect the conditions of your confinement or your treatment by government employees while in custody. Although you may ask for and obtain money damages or an injunction, the court cannot issue an order which could affect the length of your sentence in any way. Those types of claims may be raised only through a petition for a writ of habeas corpus. If you want to file a petition for a writ of habeas corpus, you must do so on the correct forms, which are provided by the Clerk of the Court on request.

A. Exhaustion of Administrative Remedies

If there is an inmate appeal or administrative remedy process available at your institution, you may not file a Bivens action, or an action under any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.C. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002). Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit. Booth, 532 U.S. at 734.

II. Packet

A copy of a complaint form is attached to this instruction sheet. In addition, included in the packet is an information sheet for prisoners seeking leave to proceed in forma pauperis (without prepayment of filing fees) and a copy of an application to proceed in forma pauperis. To file an action, you must send all the following items to the court:

1. An original and one copy of the complaint. You must keep an additional copy of the complaint for your own records. All copies of the complaint must be identical to the original. If you wish to have a conformed copy of your complaint returned to you, you must send, in addition to the original, two extra copies and provide the court with a self-addressed postage paid envelope
2. Either a completed in forma pauperis application or the \$400.00 filing fee.

NOTICE: Leave to proceed in forma pauperis allows a case to proceed without ***pre-payment*** of the filing fee. However, a prisoner who brings a civil action in forma pauperis shall nevertheless be required to pay the full amount of the filing fee. The court shall collect the filing fee through deductions from the prisoner's trust account. Dismissal of the case does not excuse payment of the full filing fee. See 28 U.S.C. § 1915.

III. Complaint Form

Your complaint must be legibly handwritten or typewritten. You must sign the complaint and declare under penalty of perjury that the facts stated in the complaint are correct. If you need additional space to answer a question, you should attach an additional blank page. You are required to state facts in support of each claim. The complaint should refer to the provision of the federal constitution or federal law on which you are relying, but should not contain legal arguments or citations.

IV. Venue

Your complaint should be filed in the Fresno Division of this court only if one or more of the named defendants is located in the Fresno Division of the Eastern District of California, or if your claim arose in the Fresno Division of this district. The Fresno Division of the Eastern District of California is comprised of the following counties: Fresno, Calaveras, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne.

Your complaint should be filed in the Sacramento Division of this court only if one or more of the named defendants is located in the Sacramento Division of the Eastern District of California, or if your claim arose in the Sacramento Division of this district. The Sacramento Division of the Eastern District of California is comprised of the following counties: Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo, and Yuba..

V. Mailing the Forms

When all of the forms described in part II are completed, if you are filing your case in the Fresno Division, mail the original and copies to:

Clerk of the U.S. District Court
for the Eastern District of California
2500 Tulare Street, Room 1501
Fresno, California 93721

If you are filing your case in the Sacramento Division, mail the original and copies to:

Clerk of the U.S. District Court
for the Eastern District of California
501 "I" Street, Suite 4-200
Sacramento, California 95814

VI. After the Complaint is Filed

Once the complaint is filed, the court will review it and decide whether to order service of the complaint on the defendants. You will be sent a copy of any order the court issues. Because of the large volume of cases filed by inmates pending in this court, the court WILL NOT ANSWER INQUIRIES concerning the status of your complaint.

You must keep the Clerk of the Court informed of any change of address. If you fail to do so, the Clerk cannot be responsible for your failure to receive Court orders. This could result in the dismissal of your suit.

The Clerk of the Court cannot provide copies of documents to litigants, except at a charge of fifty cents (\$0.50) per page. This charge also applies to litigants proceeding in forma pauperis. Therefore you must keep copies of all documents submitted to the court for your own records.

VII. Submission of Original Paper Exhibits

The Eastern District of California converted to an electronic filing, service, and storage system, effective January 3, 2005. Pro se litigants are exempt from the electronic filing requirement and must submit all documents to the court in paper. Local Rule 5-133(b)(2). Paper documents submitted by pro se litigants for filing will be scanned into the electronic court file by the Clerk's Office. After being scanned into the electronic court file, the paper documents will be retained in the Clerk's Office for a limited period of time and then discarded. Local Rule 39-138(d). For this reason, pro se litigants are cautioned not to send original exhibits to the court. If pro se litigants choose to submit exhibits to the court, the litigants shall retain their original exhibits and send photocopies to the court.

(revised 8/30/06)

Plaintiff's Name _____
Inmate No. _____
Address _____

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

(Name of Plaintiff)

(Case Number)

vs.

COMPLAINT

Bivens Action [403 U.S. 388 (1971)]

(Names of all Defendants)

I. Previous Lawsuits (list all other previous or pending lawsuits on back of this form):

A. Have you brought any other lawsuits while a prisoner? Yes ___ No ___

B. If your answer to A is yes, how many? _____
Describe previous or pending lawsuits in the space below.
(If more than one, use back of paper to continue outlining all lawsuits.)

1. Parties to this previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if Federal Court, give name of District; if State Court, give name of County)

3. Docket Number _____ 4. Assigned Judge _____

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

6. Filing date (approx.) _____ 7. Disposition date (approx.) _____

II. Exhaustion of Administrative Remedies

- A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes___ No___

- B. Have you filed an appeal or grievance concerning **ALL** of the facts contained in this complaint?

Yes___ No___

If your answer is no, explain why not_____

- C. Is the process completed?

Yes___

If your answer is yes, briefly explain what happened at each level.

No___

If your answer is no, explain why not.

NOTICE:

Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], 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.” 42 U.S.C. § 1997e(a). If there is an inmate appeal or administrative remedy process available at your institution, you may not file an action under Section 1983, or any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002). **Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit.** Booth, 532 U.S. at 734.

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

A. Defendant _____ is employed as _____

B. Additional defendants _____

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

V. Relief.

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

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

Date_____

Signature of Plaintiff _____