The Jailhouse Lawyer's Handbook

How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison

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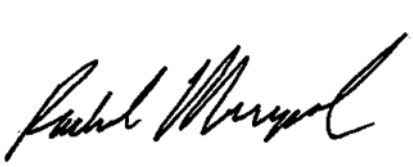
NOTE FROM THE EDITORS

This Handbook is a resource for prisoners who wish to file a federal lawsuit addressing poor conditions in prison or abuse by prison staff. It also contains limited general information about the American legal system. This Handbook is available for free to anyone: prisoners, families, friends, activists, lawyers and others.

We hope that you find this Handbook helpful, and that it provides some aid in protecting your rights behind bars. Know that those of us who do this work from outside prison are humbled by the amazing work so many of you do to protect your rights and dignity while inside. As you work your way through a legal system that is often frustrating and unfair, know that you are not alone in your struggle for justice.

Good luck!



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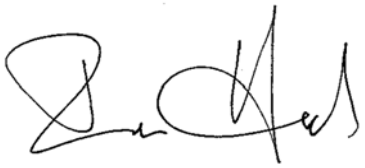

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The dozens of volunteers who have come to the NLG offices every week since 2006 to mail Handbooks to prisoners, and to **Claire Dailey**, **Merry Neisner** and all the CCR staff, interns and volunteers who put in hours and hours of research, proofreading, cite-checking, and mailing.

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LEGAL DISCLAIMER: This Handbook was written by CCR staff. The information included in the Handbook is not intended as legal advice or representation, and you should not rely upon it as such. We cannot guarantee the accuracy of this information nor can we guarantee that all the law and rules inside are current, as the law changes frequently.

Table of Contents

CHAPTER ONE: INTRODUCTION

SECTION A
What Is This Handbook?

This Handbook explains how a prisoner can start a lawsuit in federal court, to fight against mistreatment and bad conditions in prison. Because most prisoners are in state prisons, we focus on those. However, people in federal prisons and city or county jails will be able to use the Handbook too.

We, the authors of the Handbook, do not assume that a lawsuit is the only way to challenge abuse in prison or that it is always the best way. We believe that a lawsuit can sometimes be one useful weapon in the struggle to change prisons and the society that makes prisons the way they are.

The Handbook discusses only some of the legal problems which prisoners face – **conditions inside prison** and **the way you are treated by prison staff.** The Handbook does not deal with how you got to prison or how you can get out of prison. It does not explain how to conduct a legal defense against criminal charges or a defense against disciplinary measures for something you supposedly did in prison.

Chapter One: Table of Contents

The Importance of "Section 1983"
A prisoner can file several different kinds of cases about conditions and treatment in prison. This Handbook is mostly about only one kind of legal action: a lawsuit in federal court based on federal law. For prisoners in State prison, this type of lawsuit is known as a "Section 1983" suit. It takes its name from Section 1983 of Title 42 of the United States Code. The U.S. Congress passed Section 1983 to allow people to sue in federal court when a state or local official violates their federal rights. If you are in state prison, you can bring a Section 1983 suit to challenge certain types of poor treatment. Chapter Three of this Handbook explains in detail which kinds of problems you can sue for using Section 1983.

SECTION B
How To Use This Handbook

The Handbook is organized into six chapters and several appendices.

- This is **Chapter One**, which gives you an introduction to the Handbook. Sections C through E of this chapter indicate the limits of this Handbook and explain how to try to get a lawyer. Sections F and G give a short history of Section 1983 and discuss its use and limits in political struggles in and outside prison

- **Chapter Two** discusses the different types of lawsuits available to prisoners and summarizes an important federal law that limits prisoners' access to the courts, called the "Prison Litigation Reform Act."

- **Chapter Three** summarizes many of your Constitutional rights in prison.

- **Chapter Four** explains how to structure your lawsuit, including what kind of relief you can sue for, and who to sue.

- **Chapter Five** gives the basic instructions for starting a federal lawsuit and getting immediate help from the court – what legal papers to file, when, where and how. It also provides templates and examples of important legal documents.

- **Chapter Six** discusses the first things that will happen after you start your suit. It helps you respond to a "motion to dismiss" your suit or a

"motion for summary judgment" against you. It also tells you what to do if prison officials win these motions. It explains how to use "pre-trial discovery" to get information and materials from prison officials.

- **Chapter Seven** gives some basic information about the U.S. legal system. It also explains how to find laws and court decisions in a law library and how to refer to them in legal papers.

- **The Appendices** are additional parts of the Handbook that provide extra information. The appendices to the Handbook provide materials for you to use when you prepare your suit and after you file it. **Appendix A** contains a glossary of legal terms. **Appendix B** a sample complaint in a prison case. **Appendices C and D** contain forms for basic legal papers. You will also find helpful forms and sample papers within Chapters Four and Five. **Appendix E** gives the text of the first Fifteen Amendments to the U.S. Constitution. **Appendix F** has a few of the important sections of the Prison Litigation Reform Act, and **Appendix G** includes the Universal Declaration of Human Rights. **Appendices H and I** list possible sources of support and publicity – legal groups, political and civic groups that help prisoners, progressive magazines and newspapers that cover prison issues, and other outlets you can write to. **Appendix J** lists other legal materials you can read to keep up to date and learn details which are not included in this manual. **Appendix K** lists free book programs for prisoners, and **Appendix L** includes a list of addresses of Federal District Courts for your reference.

We strongly recommend that you read the whole handbook before you start trying to file your case.

SECTION C
Who Can Use This Handbook

Most of the prisoners in the Country are in State prison, but prisoners in other sorts of prisons or detention centers can use this book too.

1. Prisoners in Every State Can Use This Handbook

Section 1983 provides a way for State Prisoners to assert their rights under the United States Constitution. Every State Prisoner in the country, no matter what state he or she is in, has the same rights. However, different courts interpret these rights differently. For example, a federal court in New York may come to one conclusion about an issue, while a federal court in Tennessee may reach a totally different conclusion about the same issue.

First Steps:

1. **Know Your Rights!** Ask yourself: have my *federal* rights been violated? If you have experienced one of the following, the answer may be yes:

- Guard or prisoner brutality or harassment
- Unsafe cell or prison conditions
- Censorship, or extremely limited mail, phone, or visit privileges
- Inadequate medical care
- Interference with practicing your religion
- Inadequate food
- Racial, sexual or ethnic discrimination
- Placement in the hole without a hearing

2. **Exhaust the Prison Grievance System!** Use all the steps in the prison complaint or grievance system and write up your concerns in detail. Appeal it all the way and save your paperwork. You MUST do this before filing a suit.

3. **Try to Get Help**! Consider trying to hire a lawyer or talking to a jailhouse lawyer, and be sure to request a *pro se* Section 1983 packet from your prison law library or the district court.

States also have their own laws, and their own constitutions. State courts, rather than federal courts, have the last word on what the state constitution means. This means that in some cases, you might have more success in state court than in federal court. You can read more about this possibility in the next chapter.

Unfortunately, we don't have the time or the space to tell you about the differences in the law from state to state. So while using this Handbook, you should also try to check state law using the resources listed in Appendix J. You can also check the books available in your prison and contact the nearest office of the National Lawyers Guild or any other lawyers, law students or political groups you know of that support prisoners' struggles.

2. Prisoners in Federal Prison Can Use This Handbook

If you are in federal prison, this Handbook will also be helpful. Federal prisoners have basically the same federal rights as state prisoners. Where things are different for people in federal prison, we have tried to make a note of it for you.

The major difference is that federal prisoners cannot use Section 1983 to sue about bad conditions and mistreatment in federal prison. Instead, you have a couple options. You can use a case called *Bivens v. Six Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). In *Bivens*, the Supreme Court said that you can sue in federal court whenever a federal official violates your rights under the U.S. Constitution. This is called a "*Bivens* action."

Federal prisoners can also use a federal law called the "Federal Tort Claims Act" (FTCA) to sue the United States directly for your mistreatment. Both *Bivens* and FTCA suits are explained in more detail in Chapter Two. The bottom line is that federal and state prisoners have mostly the same rights, but they will need to use slightly different procedures when filing a case.

3. Prisoners in City or County Jails can use this Handbook

People serving sentences in jail have the same rights under Section 1983 and the U.S. Constitution as people in prison. Usually, these are city jails but can be any kind of jail run by a municipality. A "municipality" is a city, town, county or other kind of local government.

People in jail waiting for trial are called "pretrial detainees," and sometimes have more protection under the Constitution than convicted prisoners. Chapter Three, Section J discusses some of the ways in which pretrial detainees are treated differently than convicted prisoners. However, you can still use most of the cases and procedures in this Handbook to bring your Section 1983 claim. Where things are different for people in jails, we have tried to make note of it for you.

4. Prisoners in Private Prisons Can Use This Handbook

As you know, most prisons are run by the state or the federal government, which means that the guards who work there are state or federal employees. A private prison, on the other hand, is operated by a for-profit corporation, which employs private individuals as guards.

If you are one of the hundreds of thousands of prisoners currently incarcerated in a private prison, most of the information in this Handbook also applies to you. The ability of state prisoners in private prisons to sue under Section 1983 is discussed in Chapter Two, Section A. In some cases it is actually easier to sue private prison guards, because they cannot claim "qualified immunity." You will learn about "qualified immunity" in Chapter 4, Section D.

How Do I Use This Handbook?

This is the Jailhouse Lawyers Handbook. Sometimes it will be referred to as the "JLH" or the "Handbook." It is divided into seven Chapters, which are also divided into different Sections. Each Section has a letter, like "A" or "B." Some Sections are divided into Parts, which each have a number, like "1" or "2."

Sometimes we will tell you to look at a Chapter and a Section to find more information. This might sound confusing at first but when you are looking for specific things, it will make using this Handbook much easier.

We have tried to make this Handbook as easy to read as possible. But there may be words that you find confusing. At the end of the Handbook, in Appendix A, we have listed many of these words and their meanings in the Glossary**.** If you are having trouble understanding any parts of this Handbook, you may want to seek out the **Jailhouse Lawyers** in your prison. Jailhouse Lawyers are prisoners who have educated themselves on the legal system, and one of them may be able to help you with your suit.

In many places in this Handbook, we refer to a past legal suit to prove a specific point. It will appear in italics, and with numbers after it, like this:

Smith v. City of New York, 311 U.S. 288 (1994)

This is called a "citation." It means that a court decided the case of *Smith v. City of New York* in a way that is helpful or relevant to a point we are trying to make. Look at the places where we use citations as examples to help with your own legal research and writing. Chapter Seven explains how to find and use cases.

Federal prisoners serving sentences in private prisons can use the *Bivens* action described in Chapter Two, Section D, with some limitations. In *Correctional Services Corporation v. Malesko*, 534 U.S. 61 (2001), a federal prisoner who had a heart attack at a halfway house sued after a private guard made him climb up five flights of stairs. The Supreme Court held that he could not sue the halfway house itself using the *Bivens* doctrine. However, someone in this situation may be able to sue the private prison employees directly. Another choice for a prisoner in this situation is to file a claim in state court.

SECTION D
Why To Try And Get A Lawyer

Unfortunately, not that many lawyers represent prisoners, so you may have trouble finding one. You have a right to sue without a lawyer. This is called suing "*pro se*," which means "for himself or herself." Filing a lawsuit *pro se* is very difficult. Thousands of lawsuits are filed by prisoners every year, and *most* of these suits are lost before they even go to trial. We do not want to discourage you from turning to the court system, but encourage you to do everything you can to try to get a lawyer to help you, before you decide to file *pro se*.

Why So Much Latin?

"*Pro Se*" is one of several Latin phrases you will see in this Handbook. The use of Latin in the law is unfortunate, because it makes it hard for people who aren't trained as lawyers to understand a lot of important legal procedure. We have avoided Latin phrases whenever possible. When we have included them, it is because you will see these phrases in the papers filed by lawyers for the other side, and you may want to use them yourself. Whenever we use Latin phrases we have put them in italics, like *pro se*. Check the glossary at Appendix A for any words, Latin or otherwise, that you don't understand.

A lawyer is also very helpful after your suit has been filed. He or she can interview witnesses and discuss the case with the judge in court, while you are confined in prison. A lawyer also has access to a better library and more familiarity with legal forms and procedures. And despite all the legal research and time you spend on your case, many judges are more likely to take a lawyer seriously than someone filing *pro se*.

If you feel, after reading Chapter Three, that you have a basis for a lawsuit, try to find a good lawyer to represent you. You can look in the phone book to find a lawyer, or to get the address for the "bar association" in your state. A bar association is a group that many lawyers belong to. You can ask the bar association to give you the names of some lawyers who take prison cases.

You probably will not be able to pay the several thousand dollars or more which you would need to hire a lawyer. But there are other ways you might be able to get a lawyer to take your case.

- If you have a good chance of winning a substantial amount of money (explained in Chapter Four, Section C), a lawyer might take your case on a "contingency fee" basis. This means you agree to pay the lawyer a portion of your money damages if you win (usually one-third), but the lawyer gets nothing if you lose. This kind of arrangement is used in many suits involving car accidents and other personal injury cases outside of prison. In prison, it may be appropriate if you have been severely injured by guard brutality or an unsafe prison condition.

- If you don't expect to win money from your suit, a lawyer who represents you in some types of cases can get paid by the government if you win your case. These fees are authorized by the United States Code, Title 42, Section 1988. However, the recent Prison Litigation Reform Act of 1996 (called the "PLRA" and discussed in Chapter Two, Section F) added new rules that restrict the court's ability to award fees to your lawyer. These new provisions may make it harder to find a lawyer who is willing to represent you.

- If you can't find a lawyer to represent you from the start, you can file the suit yourself and ask the court to "appoint" or get a lawyer for you. Unlike in a criminal case, you have no absolute right to a free attorney in a civil case about prison abuse. This means that a judge is not required by law to appoint counsel for you in a Section 1983 case, but he or she *can* appoint counsel if he or she chooses. You will learn how to ask the judge to get you a lawyer in Chapter Five, Section C, Part 3 of this Handbook.

- A judge can appoint a lawyer as soon as you file your suit. But it is much more likely that he or she will only appoint a lawyer for you if you successfully get your case moving forward, and convince the judge that you have a chance of winning. This means that the judge may wait until after he or she rules on the prison officials' motions to dismiss your complaint or motion for summary judgment. Chapters Five and Six of this Handbook will help you prepare your basic legal papers and respond to a motion to dismiss or motion for summary judgment.

Even if you have a lawyer from the start, this Handbook is still useful to help you understand what he or she is doing.

Be sure your lawyer explains the choices you have at each stage of the case. Remember that he or she is working for you. This means that he or she should answer your letters and return your phone calls within a reasonable amount of time. Don't be afraid to ask your lawyer questions. If you don't understand what is happening in your case, ask your lawyer to explain it to you. Don't ever let your lawyer force decisions on you or do things you don't want.

SECTION E
A Short History Of Section 1983 and the Struggle For Prisoners' Rights

As you read in Sections A and C, most prisoners who decide to challenge abuse or mistreatment in prison will do so through a federal law known as "Section 1983." Section 1983 is a way for any individual (not just a prisoner) to challenge something done by a state employee. The part of the law you need to understand reads as follows:

> *Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress …*

Section A of Chapter Two will explain what this means in detail, but we will give you some background information here, because the history of prisoners' struggles in the courts starts with the history of Section 1983. Section 1983 is a law that was passed by the United States Congress over 100 years ago, but it had very little effect until the 1960s. Section 1983 was originally known as Section 1 of the Ku Klux Klan Act of 1871. Section 1983 does not mention race, and it is available for use by people of any color, but it was originally passed specifically to help African-Americans enforce the new constitutional rights they won after the Civil War -- specifically, the 13th, 14th and 15th Amendments to the U.S. Constitution. Those amendments made slavery illegal, established the right to "due process of law" and equal protection of the laws, and guaranteed every male citizen the right to vote. Although these Amendments became law, white racist judges in the state courts refused to enforce these laws, especially when people had their rights violated by other state or local government officials. The U.S. Congress passed Section 1983 to allow people to sue in federal court when a state or local official violated their federal rights.

Soon after Section 1983 became law, however, Northern big businessmen joined forces with Southern plantation owners to take back the limited freedom that African-Americans had won. Federal judges found excuses to undermine Section 1983 along with most of the other civil rights bills passed by Congress. Although the purpose of Section 1983 was to bypass the racist state courts, federal judges ruled that most lawsuits had to go back to those same state courts. Their rulings remained law until African-Americans began to regain their political strength through the civil rights movement of the 1960s.

In the 1960s, a series of very good Supreme Court cases reversed this trend and transformed Section 1983 into an extremely valuable tool for state prisoners. Prisoners soon began to file more and more federal suits challenging prison abuses. A few favorable decisions were won, dealing mainly with freedom of religion, guard brutality, and a prisoner's right to take legal action without interference from prison staff. But many judges still continued to believe that the courts should let prison officials make the rules, no matter what those officials did. This way of thinking is called the "hands-off doctrine" because judges keep their "hands off" prison administration.

The next big breakthrough for prisoners did not come until the early 1970s. African-Americans only began to win legal rights when they organized together politically, and labor unions only achieved legal recognition after they won important strikes. In the same way, prisoners did not begin to win many important court decisions until the prison movement grew strong.

Powerful, racially united strikes and rebellions shook Folsom Prison, San Quentin, Attica and other prisons throughout the country during the early 1970s. These rebellions brought the terrible conditions of prisons into the public eye and had some positive effects on the way federal courts dealt with prisoners. Prisoners won important federal court rulings on living conditions, access to the media, and procedures and methods of discipline.

Unfortunately, the federal courts did not stay receptive to prisoners' struggles for long. In 1996, Congress passed and President Clinton signed into law the Prison

Litigation Reform Act (PLRA). The PLRA is very anti-prisoner, and works to limit prisoners' access to the federal courts. Why would Congress pass such a bad law? Many people say Congress believed a story that was told to them by states tired of spending money to defend themselves against prisoner lawsuits. In this story, prisoners file mountains of unimportant lawsuits because they have time on their hands, and enjoy harassing the government. The obvious truth - that prisoners file a lot of lawsuits because they are subjected to a lot of unjust treatment - was ignored.

The PLRA makes filing a complaint much more costly, time-consuming, and risky to prisoners. Many prisoners' rights organizations have tried to get parts of the PLRA struck down as unconstitutional, but so far this effort has been unsuccessful. You will find specific information about the individual parts of the PLRA in later chapters of this Handbook. Some of the most important sections of the PLRA are included in Appendix F at the end of this book.

History has taught us that convincing the courts to issue new rulings to improve day-to-day life in prisons, and changing oppressive laws like the PLRA, requires not only litigation, but also the creation and maintenance of a prisoners' rights movement both inside and outside of the prison walls.

SECTION F
The Uses and Limits of Legal Action

Only a strong prison movement can win and enforce significant legal victories. But the prison movement can also use court action to help build its political strength. A well-publicized lawsuit can educate people outside about the conditions in prison. The struggle to enforce a court order can play an important part in political organizing inside and outside prison. Good court rulings backed up by a strong movement can convince prison staff to hold back, so that conditions inside are a little less brutal and prisoners have a little more freedom to read, write, and talk.

Still, the value of any lawsuit is limited. It may take several years from starting the suit to win a final decision that you can enforce. There may be complex trial procedures, appeals, and delays in complying with a court order. Prison officials may be allowed to follow only the technical words of a court decision, while continuing their illegal behavior another way. Judges may ignore law which obviously is in your favor, because they are afraid of appearing "soft on criminals" or because they think prisoners threaten their own position in society. Even the most liberal, well-meaning judges will only try to change the way prison officials exercise their power. No judge will seriously address the staff's basic control over your life while in prison.

To make fundamental change in prison, you can't rely on lawsuits alone. It is important to connect your suit to the larger struggle. Write press releases that explain your suit and what it shows about prison and about the reality of America. Send the releases to newspapers, radio and TV stations, and legislators. Keep in touch throughout the suit with outside groups that support prisoners' struggles. Look at Appendix I for media and groups that may be able to help you. We have also provided some pointers on writing to these groups. You may also want to discuss your suit with other prisoners and involve them in it even if they can't participate officially. Remember that a lawsuit is most valuable as one weapon in the ongoing struggle to change prisons and the society which makes prisons the way they are.

Of course, all this is easy for us to say, because we are not inside. All too often jailhouse lawyers and activists face retaliation from guards due to their organizing and law suits. Chapter Three, Section G, Part 4 explains some legal options if you face retaliation. However, while the law may be able to stop abuse from happening in the future, and it can compensate you for your injuries, the law cannot guarantee that you will not be harmed. Only you know the risks that you are willing to take.

Finally, you should know that those of us who fight this struggle from the outside are filled with awe and respect at the courage of those of you who fight it, in so many different ways, on the inside.

> **"Jailhouse lawyers aren't simply, or even mainly, jailhouse lawyers. They are sons, daughters, uncles, nieces, parents, sometimes teachers, grandparents, and occasionally writers. In short, they are part of a wider, broader, deeper social fabric."**
>
> *- Mumia Abu-Jamal, award-winning journalist, author, and jailhouse lawyer, from his 2009 book "Jailhouse Lawyers."*

CHAPTER TWO: YOUR LEGAL OPTIONS

This chapter describes the different types of lawsuits you can bring to challenge conditions or treatment in prison or detention, including Section 1983, state actions, the Federal Tort Claims Act and *Bivens actions*. We also discuss international law and explain the impact of the Prison Litigation Reform Act (PLRA).

Chapter Two: Table of Contents

SECTION A
Section 1983 Lawsuits

The main way to understand what kind of suit you can bring under Section 1983 is to look at the words of that law:

> "*Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…*"

Some of the words are perfectly clear. Others have meanings that you might not expect, based on years of interpretation by judges. In this section we will explore what the words themselves and judges' opinions from past lawsuits tell us about what kind of suit is allowed under Section 1983.

Although Section 1983 was designed especially to help African-Americans, anyone can use it, regardless of race. The law refers to "any citizen of the United States or any other person within the jurisdiction thereof." This means that you can file a Section 1983 action even if you are not a United States citizen. *Martinez v. City of Los Angeles*, 141 F.3d 1373 (9th Cir. 1998). All you need is to have been "within the jurisdiction" when your rights were violated. "Within the jurisdiction" just means you were physically present in the United States.

Not every harm you suffer or every violation of your rights is covered by Section 1983. There are two requirements. First, Section 1983 applies to the "*deprivation of any rights, privileges, or immunities secured by the Constitution and laws*." This means that the actions you are suing about must violate your federal rights. Federal rights are those given by the U.S. Constitution, Amendments to the Constitution, and laws passed by the U.S. Congress. They are explained in part 1, below. Second, Section 1983 also says "*under color of any statue, ordinance, regulation, custom or usage, of any State or Territory."* Courts have developed a short-hand for this phrase. They call it "under color of state law." This means that the violation of your rights must have been done by a state or local official. This requirement is explained in part 2 below.

1. Violations of Your Federal Rights

Section 1983 won't help you with all the ways in which prison officials mistreat prisoners. You need to show that the way a prison official treated you violates the U.S. Constitution or a law passed by the U.S. Congress.

Prisoners most commonly use Section 1983 to enforce rights guaranteed by the U.S. Constitution. These are called "constitutional rights." Your constitutional rights are explained in Chapter Three.

You can also use Section 1983 to enforce rights in federal laws, or "statutes." Only a few federal laws grant rights which apply to prisoners. One such law, for example, is the Americans with Disabilities Act, or the

"ADA." The ADA can be found at 42 U.S.C. §§ 12101 – 12213. The ADA prevents discrimination against people with disabilities, including prisoners. If you have any sort of physical or mental disability you may be able to file a Section 1983 lawsuit using the ADA. That said, you can also file an ADA lawsuit without making reference to Section 1983, and that may be a better approach.

Another federal statute that may be useful to prisoners is the Religious Land Use and Institutionalized Persons Act, or "RLUIPA," which was passed by Congress in 2000. 42 U.S.C. § 2000cc-1(a). RLUIPA protects prisoners' rights to exercise their religion and may be used by any prisoner, whether in federal or state prison or in jail. A second federal statute protecting the religious rights of prisoners is the Religious Freedom Reformation Act, or "RFRA." 42 U.S.C. § 2000bb-1(c). RFRA can only be used by prisoners in federal prison. It is not available to prisoners in state prison. Religious freedom is a constitutional right protected by the First Amendment, but RLUIPA and RFRA provide even *more* protection than the First Amendment. Chapter Three, Section B explains the protection provided by each of these laws. Like ADA claims, these claims can be brought in a Section 1983 suit, or on their own.

Prisoners can use Section 1983 to sue about conditions or treatment in prison. You cannot use Section 1983 to challenge the reason you are in prison, how long you are in prison, or to obtain immediate or speedier release from prison. If you want to challenge your trial, your conviction, or your sentence, you need to use a completely different type of action, called a *writ of habeas corpus*. This handbook will not help you with that kind of case, but some of the resources listed in Appendix J explain how to do it.

2. "Under Color of State Law"

Section 1983 only allows you to sue for actions taken "under color of state law." This means that your rights must have been violated by a state or local official. This includes people who work for the state, city, county or other local governments. If you are in a state prison, anything done to you by a prison guard, prison doctor, or prison administrator (like the warden) is an action "under color of state law."

The "under color of state law" requirement does not mean that the action has to have been *legal* under state law. This is very important, and was decided in a case called *Monroe v. Pape*, 365 U.S. 167 (1961). All you need to show is that the person you sue was working for the prison system or some other part of state or city government at the time of the acts you're suing about.

The decision in *Monroe v. Pape* that state government officials can be sued under Section 1983 was expanded in a case called *Monell v. New York City Dep't of Social Services*, 436 U.S. 658 (1978). In that case, the Supreme Court allowed for 1983 claims against municipal and city governments.

In a Section 1983 suit, you can sue over a one-time action that violated your rights. For example, you can sue if a guard beats you. You can also sue over a pattern or practice of certain acts, like if guards routinely look away and fail to act when prisoners fight with each other. Finally, you can also sue over an official prison policy. For example, you could sue if the prison has a policy that allows Catholic prisoners to pray together, but doesn't allow the same thing for Muslim prisoners.

You can't use Section 1983 to sue federal employees over their actions because they act under color of *federal* law, not *state* law. This is OK, because you can use a *Bivens* action to sue in federal court when a federal official violates your constitutional rights. *Bivens* actions are explained in Section D of this chapter.

You can't use Section 1983 to sue a private citizen who acted without any connection to the government or any governmental power. For example, if another prisoner assaults you, you cannot use Section 1983 to sue that prisoner, because he or she does not work for the government. You could, however, use Section 1983 to sue a guard for failing to protect you from the assault.

A person can exercise power from the government even if he or she doesn't actually work for the state directly. You can use Section 1983 to sue a private citizen, such as a doctor, who mistreats you while he is working with or for prison officials. In a case called *West v. Atkins*, 487 U.S. 42 (1988), the Supreme Court held that a private doctor with whom the state contracts to provide treatment to a prisoner can be sued using Section 1983.

Using Section 1983 is complicated if you are incarcerated in a private prison. The Supreme Court has not yet decided whether you can sue private prison guards the way you can sue state prison guards. Most courts will look at whether the guard is performing a traditional state function so that it looks just like the guard is acting "under color of state law. One case that discusses this in detail is *Skelton v. PriCor, Inc.*, 963

F.2d 100 (6th Cir. 1991). In *Skelton*, a private prison employee wouldn't let an inmate go to the law library or have a bible. The Sixth Circuit ruled that the private prison guard's action was "under color of state law" and allowed the prisoner to sue using Section 1983. Another helpful case is *Giron v. Corrections Corporation of America*, 14 F. Supp. 2d 1245 (D.N.M. 1998). In that case a woman was raped by a guard at a private prison. The court held that the guard was "performing a traditional state function" by working at the prison, so his actions were "under color of state law."

The Parties in a Lawsuit

"Plaintiff" is the person who starts a lawsuit. If you sue a guard over prison abuse, you are a plaintiff.

"Defendant" is the person who you sue. If you sue a prison doctor, guard, and a supervisor, they are all defendants.

SECTION B
State Court Cases

Section 1983 allows you to bring *federal* claims in *federal* court. But you can also bring federal claims in state court.

One reason you might want to sue in state court, rather than federal court, is the Prison Litigation Reform Act, or "PLRA." The PLRA is a federal law that makes it difficult for a prisoner to file a federal lawsuit by imposing all sorts of procedural hurdles and requirements. We explain the PLRA in Section F of this Chapter. Many states have laws similar to the PLRA, but others don't. If you live in a state that doesn't have a PLRA-like statute, suing in state court may make things much easier for you.

Another good thing about state court is that you may also be able to enforce rights that you don't have in federal court. For example, a state "tort" claim is an entirely different way to address poor prison conditions. A tort means an injury or wrong of some sort. The advantage of suing in state court is that some conduct by prison guards may be considered a "tort" but may not be so bad as to be a constitutional violation.

For example, you will learn in Chapter Three that the Eighth Amendment prohibits "cruel and unusual punishment" and entitles prisoners to medical care that is not so poor as to amount to such punishment. For a constitutional medical care claim (described in detail in the next chapter) a prisoner needs to prove that he or she had a serious medical need and that the guard or doctor in question acted recklessly in failing to provide medical care. On the other hand, you can sue a prison doctor for medical negligence if they mess up in your treatment, whether that mistake was reckless or not. Common torts are listed in the next section of this Chapter, under the heading "Types of Torts."

Another type of state claim is a claim based on your state's constitution. Some state constitutions provide more rights than the federal constitution.

Sometimes a prisoner's suit handled by a lawyer will include claims based on state law as well as federal law. You can do this in a Section 1983 suit if the action you are suing about violates both state and federal law. But it is tricky to try this without an experienced lawyer, and usually it won't make a very big difference. You can't use Section 1983 to sue about an action that only violates state law.

Historically, federal judges were more sympathetic to prisoners than state judges. However, the PLRA has made federal court a much less friendly place for prisoners. Sadly, that does not mean that you will necessarily get fair treatment in state court. Many state court judges are elected, rather than appointed, so they may avoid ruling for prisoners because it might hurt their chances of getting re-elected.

Appendix H lists some organizations that may have information about your state.

SECTION C
Federal Torts Claims Act (FTCA)

As we explained in Chapter One, if you are a prisoner in a state prison or jail you can use Section 1983 to sue over violations of your rights. If you are a federal prisoner, or a pretrial or immigration detainee in a federal facility you cannot use Section 1983, but you have other options: a *Bivens* action, or a claim under the Federal Tort Claims Act ("FTCA"). You can also bring these two types of claims together in one lawsuit. (This section is about FTCA claims. We discuss *Bivens* claims in the following section.)

Usually, you cannot sue the United States itself. The FTCA is an exception to this general rule. The FTCA allows federal prisoners, and immigration or pre-trial detainees in federal jails or facilities to file lawsuits

against the United States when a federal employee has injured them.

The most important FTCA provisions are in Title 28 of the United States Code, sections 1346(b), 1402(b), 2401(b) and 2671-2680. When we reference Title 28 in this chapter, it will look like this: "28 U.S.C. § 2679(d)(2)" where "28 U.S.C." means "Title 28 of the United States Code," and the numbers and letters after it refer to a specific section in the code.

FTCA Claims and Qualified Immunity

One of the good things about an FTCA claim is that the United States does not have qualified immunity. Qualified immunity is described in Chapter Four. For both *Bivens* and Section 1983 claims, the qualified immunity defense makes it hard to win money damages from government officials.

The FTCA only allows you to sue over "torts." You'll find examples of torts in the following section. The FTCA provides a way to sue the U.S. in federal court for torts committed by a federal employee. 28 U.S.C. § 1346(b).

You do not have to be a U.S. citizen to obtain relief under the FTCA. There are, however, many more FTCA cases that have been brought by citizen prisoners than noncitizen detainees.

FTCA actions must be brought in federal court, not state court. However, the federal court will use state tort law. Since torts are different from state to state, make sure that the tort you're using exists under the law of the state where you are in prison or jail.

1. Who You Can Sue

When you write your complaint, 28 U.S.C. § 2679(d)(2) requires that you name the "United States" as the defendant. You cannot name the specific federal employee who hurt you, or an agency such as the "Bureau of Prisons." Although you will name the United States as the defendant in your FTCA suit, you will discuss the actions of a specific federal employee.

The FTCA only allows you to sue over actions by federal officials or employees. This means you can't sue over the actions of a state or local law enforcement agent. You also can't sue about an independent contractor under the FTCA unless federal employees directly supervised the day-to-day activities of the contractors. Figuring out whether someone is a contractor or federal employee can be tricky, but you should look to the standard set out in the Supreme Court case, *United States v. Orleans,* 425 U.S. 807 (1976). Most courts decide the question by looking at facts like who owned the tools used by the contractor and who paid the salary, worker's compensation, and insurance of the employee.

The FTCA is most useful for people held in federal immigration detention centers, or federal jails or prisons. But if you are a federal detainee injured in a state, county, or local jail you may also be able to bring a claim against the United States under the FTCA for negligently housing you in an unsafe non-federal facility. You should argue that the United States has a duty to use reasonable care in ensuring the safety of federal detainees no matter where they are housed. The law is not settled in this area, but you should carefully read a Supreme Court decision, *Logue v. U.S.*, 412 U.S. 521 (1973) which held that the federal government was not responsible for the suicide of a federal prisoner who was negligently confined in a municipal jail because the municipal employees were federal contractors, not federal employees. Probably, you will only be able to succeed on this theory if a federal employee knew or should have known you were being put into an unsafe situation. One example is *Cline v. United States Department of Justice*, 525 F. Supp. 825 (D.S.D. 1981), a good case in which the court allowed a claim by a federal prisoner held in a county jail after U.S. Marshals placed him into a situation they knew was unsafe.

The FTCA requires that the government employee whose acts you are complaining of was acting within the "course and scope of employment." The meaning of this requirement is also a matter of state law, so you will have to figure out what it is in your state. Under the law in some states, this requirement will be very easy to meet. For example, in New York the court asks "whether the act was done while the [employee] was doing his [employer's] work, no matter how irregularly or with what disregard of instructions." *Jones v. Weigland*, 134 App. Div. 644, 645 (2d Dep't 1909). But in other states the standard can be difficult to meet. In *Shirley v. United States*, 232 Fed. Appx. 419 (5th Cir. 2007), for example, a federal prisoner filed an FTCA claim after she was sexually assaulted by a correctional officer. The Court dismissed her case because under Texas law, an employee only acts under the scope of employment when he or she acts to further the employer's business.

At least one court has gotten around this requirement altogether. In *Bolton v. United States*, 347 F. Supp. 2d 1218 (N. D. Fla. 2004), the court held that it doesn't matter if a guard is acting in the scope of their employment, as long as they are acting "under color of federal law." Under this theory, all that matters is that the person who hurt you or acted wrongfully is a federal employee.

2. Types of Torts

Under the FTCA, you can sue for negligence or for intentional torts like assault, battery, false arrest, abuse of process and intentional infliction of emotional distress. These common torts are explained below.

You can sue on almost any tort that exists under state law. There are a few exceptions. You can't bring a libel or slander case under the FTCA and you can't sue if the government mishandles, detains or loses your belongings. (You *can* file an administrative claim for damage or loss to personal property under 31 U.S.C. § 3723(a)(1)).

a. Negligence

A government employee is negligent when he or she "fails to use reasonable care." Since people have different ideas about what is reasonable, courts ask what a "reasonably prudent person" would do in a similar situation.

There are four things you need to show in a negligence claim: duty, breach, causation and damages. Damages are usually the easy part—you just have to show you have been hurt in some way. But Duty is harder. Correctional officials do not have a duty to provide a "risk-free" environment. They do, however, have a duty to keep prisoners safe and protect them from unreasonable risks. To prove negligence, the employee must have breached (failed in) this duty to keep you safe. Lastly, the harm that you suffered must have been caused by the actions of the federal employee, not some other person or event.

You can use the FTCA to challenge any kind of negligence by a detention center or federal prison employee, including the negligent denial of medical care or an officer's failure to protect a detainee from another detainee. Prisoners often bring negligence claims against prison doctors and nurses for medical malpractice. For example, in *Jones v. United States*, 91 F.3d 623 (3d Cir. 1996), the court found the prison breached a duty to a prisoner who had a stroke after prison officials withheld his medication. And in *Plummer v. United States*, 580 F.2d 72 (3d Cir. 1978) Prisoners successfully made a negligence claim based on exposure to tuberculosis

Sometimes, a court will find that the federal employee did not breach their duty of care. For example, the Seventh Circuit denied William Dunne's FTCA claim for injuries he suffered when he slipped and fell three times on ice during recreational time at a prison. The court held that the accumulation of snow or ice where Dunne fell was so small that an official using ordinary care could not reasonably be expected to know about it. *Dunne v. U.S.*, 989 F.2d 502 (7th Cir. 1993).

What if you were injured by another prisoner? An important Supreme Court case on this topic is *United States v. Muniz*, 374 U.S. 150 (1963). Muniz, one of the plaintiffs in the case, was beaten unconscious by other inmates after a guard locked him into a dormitory. The prisoner argued that the prison officials were negligent in failing to provide enough guards to prevent the assault. The court said that this type of claim is appropriate under the FTCA, but found against the prisoner because the officials followed prison regulations and could not have reasonably prevented the assault.

If a prison official has violated a federal or state statute, you can use it to strengthen your FTCA claim. You can argue that the statute defines or creates a duty, which was breached by the official. For example, one court found that the BOP breached a duty to let a prisoner make phone calls to his attorney based on the language from the Code of Federal Regulations. *Yosuf v. United States*, 642 F.Supp. 415 (M.D.Pa. 1986).

b. Intentional Torts - Assault and Battery

Assault and battery often go together, but they are two separate torts. An assault is when someone does something that makes you fear they are about to harm you. It is a threat. If that threat becomes a touch, like if a guard hits, kicks or beats you, that is a battery. A battery is any "offensive touch or contact" where some kind of force is applied.

You can use the FTCA to sue a government employee who assaults or batters you. The standard for battery is generally the same as the constitutional claim for excessive force, described in Chapter Three, Section F, Part 1.

c. False Imprisonment

You may have a claim for false imprisonment if you are imprisoned longer than your sentence, or held in SHU longer than the time of your punishment for a

disciplinary offense. For example, under New York law there are four elements to a false imprisonment claim (1) the defendant intended to confine you, (2) you were aware of the confinement, (3) you did not consent to the confinement, and (4) the confinement was not otherwise privileged. For example, in *Gittens v. New York*, 504 N.Y.S.2d 969 (Ct. Cl. 1986) a New York court held the plaintiff had a claim for false imprisonment where he was held in SHU for nine days beyond the last day of the penalty imposed, with no reason being given other than for investigation. It is important to note that the prisoner in that case got *no* process whatsoever. You will most likely not be able to succeed with a claim like this if you got any process related to your extra time in the SHU.

d. Intentional Infliction of Emotional Distress

Another tort is Intentional Infliction of Emotional Distress or IIED. This tort arises when someone purposefully does something outrageous that makes you feel very upset. Under the law of most States, an IIED claim requires a showing that: 1) the defendant acted in a way that is extreme or outrageous for the purpose of causing emotional distress; (2) the plaintiff actually suffered severe or extreme emotional distress; and (3) the defendant's conduct caused the emotional distress.

The conduct really must be outrageous and extreme. One successful example of an IIED claim is *Schmidt v. Odell*, 64 F. Supp. 2d 1014 (D. Kan. 1999), where a prisoner who had both legs amputated was not given a wheelchair or other accommodation by the jail, and thus had to crawl around on the floor.

3. Administrative Exhaustion

Before you can raise an FTCA claim, you *must f*irst present the claim to the appropriate federal agency, and you have to do that *within two years* of the action that leads to the injury. 28 U.S.C. § 2675(a). If you are in a federal prison, your claim needs to be submitted to the Bureau of Prisons, at 320 First Street, NW, Washington DC 20534.

Use Government Standard Form 95 to make the administrative claim. A copy of this form is included in Appendix C If this form is unavailable, you can write a letter specifying that you are making an administrative claim. Your administrative request must include a specific dollar request for damages and the facts supporting your claim. Make sure you sign the form, and include all the detail you can. You must include enough information to allow the agency to investigate your claim. Rarely, the agency will respond by accepting your claim, and giving you money without you having to sue.

If your administrative claim is denied, you have six months from the date the agency denies your claim to file a FTCA lawsuit in federal court under 28 U.S.C. § 2401(b) and 28 U.S.C. § 2675(a).

If the agency doesn't respond to your administrative claim within six months you may "deem" the claim denied under 28 U.S.C. § 2675(a) and file your suit. If you file a suit under the "deeming provision" of the FTCA, state that you meet the exhaustion requirement because the government did not respond to your administrative complaint within six months.

4. Damages in FTCA Suits

Damages are explained in Chapter Four. For now, just note that under the FTCA, you can sue the United States for actual (money) damages to compensate you for your injury. You cannot get punitive damages from the United States under the FTCA. Usually, you can't get more money than the amount of damages you asked for in your administrative claim. One exception is if your injuries have gotten a lot worse since the time you filed your administrative claim. State tort law ultimately determines how high your damages can be.

5. The Discretionary Function Exception

The United States often defends against FTCA claims based on the "discretionary function exception." When an employee has the freedom to act on their own they are said to have performed a "discretionary function or duty" and cannot be sued under the FTCA. This is true *even if they abused their discretion*. 28 U.S.C. § 2680[a]. This is in contrast to when an employee is just implementing a policy or prison regulation. Unfortunately, courts have interpreted the discretionary function exception very broadly.

In *Berkovitz v. United States*, 486 U.S. 531 (1988), the Supreme Court laid out a test to help figure out whether an action is discretionary or not. First, you should ask if the employee exercised "judgment" or "choice" in doing what they did. If they just implemented a policy or regulation of the prison, they didn't exercise their own judgment and the act is not discretionary. The Tenth Circuit, for example, said that a doctor's decisions about how to medically treat a patient at an Air Force base are not discretionary. *Jackson v. Kelly*, 557 F.2d 735 (10th Cir. 1977).

On the other hand, if the employee *did* make their own choice, the act probably was "discretionary" and

subject to the exception. For example, an inmate who sued a Tennessee prison for losing his property when they transferred him lost his case on the discretionary function exception. The court said the warden exercised his discretion in making the arrangements for the inmate's transfer. *Ashley v. United States*, 37 F.Supp.2d 1027 (W.D. Tenn. 1997). The widow of a murdered federal prison inmate ran into the same problem when she tried to argue the prison negligently understaffed the area of the prison where her husband was killed. The court said that the decision about how many officers to station in a given compound was discretionary. *Garza v. United States*, 413 F.Supp. 23 (W.D. Okla. 1975).

SECTION D
Bivens Actions & Federal Injunctions

FTCA claims can only be brought for torts, not constitutional violations. If a federal prisoner wants to make a constitutional claim for money damages, they must do so through a "Bivens action." The name comes from a lawsuit, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), in which the Supreme Court established the right to bring a lawsuit for money damages against individual law enforcement officials, acting under color of federal law, for violations of constitutional rights. You might notice that this sounds very similar to the language in Section 1983. The key difference is that Section 1983 applies to state actors, while *Bivens* applies to federal actors. If you are an immigration detainee in the custody of ICE, a federal agency, or a federal prisoner in the custody of the Bureau of Prisons, in most situations, you will be relying on *Bivens* and not on Section 1983.

There are two main elements to a *Bivens* action: (1) a federal actor and (2) unconstitutional acts by that person. This section discusses each of those elements in turn.

If a federal prisoner is not seeking damages, but instead wants to change a prison policy, or stop some other on-going illegal action, the prisoner can file a case in federal court 28 USC 1331. These federal injunctions are also described below.

1. Who is acting under color of federal law?

Who should you name as the defendant in your lawsuit? In other words, who should you sue? First, it is important to know that *Bivens* provides a right of action against individuals only, and not against federal agencies or private corporations. This means you must name actual people as the defendants in your lawsuit, not the prison or the BOP.

When it comes to immigration detention, it can sometimes be tricky to determine whether or not someone is acting under federal law, because some immigrants are detained in federal detention centers, some are detained in state or local detention centers, and some are detained in facilities run by private corporations. However, no matter what kind of facility you are detained in, you are in the custody of ICE, a federal agency.

- If you are in a **Bureau of Prisons prison**, all of the prison personnel you have contact with are acting under federal law.

- If you are in a **federal detention center**, all of the prison personnel you have contact with are acting under federal law for the purpose of *Bivens*.

- If you are in a **private facility or a state, county, or other local facility** that has a contract with ICE to hold immigration detainees, courts have sometimes found the law enforcement personnel to be federal actors under *Bivens*. In deciding this, the court looks closely at the relationship between the federal government and the individuals who work at the facility. Unfortunately, the Supreme Court has decided that prisoners cannot sue corporations themselves in a *Bivens* lawsuit. *Correctional Services Corp. v. Malesko*, 534 U.S. 16 (2001). In the context of a *Bivens* action, the Courts of Appeals have reached different decisions on whether prisoners or detainees can sue private prison guards. The Fourth, Tenth and Eleventh Circuits have held that prisoners cannot use *Bivens* to sue private prison guards. *Peoples v. CCA*, 422 F.3d 1090 (10th Cir. 2005); *Holly v. Scott*, 434 F.3d 287 (4th Cir. 2006); *Alba v. Montford*, 517 F.3d 1249, 1254-55 (11th Cir. 2008). But the Ninth Circuit has disagreed with the other courts and decided that employees of private prison corporations can be held liable for violating a prisoners' constitutional rights. *Pollard v. GEO*, 607 F.3d 583 (9th Cir. 2010).

If you can't figure out whether the person you want to sue is a state actor or a federal actor, you can bring your

lawsuit under both *Bivens* and Section 1983, and the Judge will decided which approach is appropriate.

2. Unconstitutional Acts by Federal Officials

In general, the same constitutional standards that apply in section 1983 actions apply in *Bivens* actions. We explain those constitutional standards Chapter Three. Where there are differences, we have tried to highlight them throughout.

3. Federal Injunctions

You may not always be interested in suing for damages. In some cases, you may just want to try to change a prison policy you believe is unconstitutional. Section 1983 allows these types of claims, called "injunctions" for prisoners in state or local custody. Injunctions are explained in Chapter Four, Section B.

Federal law also allows federal prisoners to bring these types of claims in federal court. 28 USC 1331 states that the federal district courts have the power to hear "all civil actions arising under the Constitution, laws, or treaties of the United States." The courts have taken this language to mean that federal courts can order federal prisons to stop acting in an unconstitutional way.

SECTION E
Protection of Prisoners Under International Law

Along with the United States Constitution, your state constitution, and federal and state laws, another potential source of protection for prisoners is **international law**.

Using international law in United States courts can be complicated and controversial so you may not want to attempt it without a lawyer. This section will outline some basic facts about international law, and provide you with resources in case you want to explore the area further.

It is extremely difficult to bring a successful international claim in a United States court. However, some prisoners have found it useful to discuss international standards in suits based on more established domestic law. For example, one state court referred to standards set out in the *International Covenant on Civil and Political Rights* when deciding that searches of prisoners by guards of the opposite sex violated their rights under the Eighth Amendment. *Sterling v. Cupp*, 625 P.2d 123, 131 n.21 (Or. 1981).

In *Atkins v. Virgnia*, 536 U.S. 304 (2002), the Court struck down the death penalty for the intellectually disabled, noting that the practice was "overwhelmingly disapproved" in the world community. Later, in *Roper v. Simmons*, 125 S. Ct. 1183 (2005), the court relied even more heavily on international law and practice when it struck down the death penalty for juvenile offenders. In fact, even in her dissent from the Court's ruling in *Roper*, Justice O'Connor acknowledged that international law and practice was relevant to the Court's analysis when she observed: "Over the course of nearly half a century, the Court has consistently referred to foreign and international law as relevant to its assessment of evolving standards of decency. . . . At least, the existence of an international consensus of this nature can serve to confirm the reasonableness of a consonant and genuine American consensus."

There are two main sources of international law: "customary international law" and treaties. Customary international law is unwritten law based on certain principles that are generally accepted worldwide. Treaties are written agreements between countries that set international legal standards. Under Article VI, section 2 of the United States Constitution treaties are part of the "supreme law" of the land. Customary and treaty-based international law are both supposed to be enforceable in the United States, but this is often controversial.

Customary international law prohibits several practices, such as slavery, state-sponsored murders and kidnappings, torture, arbitrary detention, systematic racial discrimination, and violation of generally accepted human rights standards. Restatement (Third) of Foreign Relations Law, Section 702 (1987). United States' courts have recognized that some of these practices violate customary international law. For example, in *Filartiga v. Pena-Irala* 630 F.2d 876 (2d Cir. 1980), the court recognized that torture violates customary international law. Some American courts have been reluctant to accept the argument that a certain practice violates international law. For example, you learned earlier that the United States Supreme Court has ruled that in certain situations the death penalty is unconstitutional based in part on its survey of international law and practice. But the Court has failed to get rid of the death penalty altogether, even though a large majority of countries have abolished the death penalty in law or practice.

The United States is a "party" to several treaties that explain how prisoners should be treated. There are two stages to becoming a "party" to a treaty: signing the treaty and ratifying the treaty. By signing a treaty, a country agrees to its general principles. But only by ratifying a treaty does a nation incorporate the treaty's provisions and standards into domestic law and become bound by them. The United States has ratified three human rights treaties that address the rights of prisoners: the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; the *International Covenant on Civil and Political Rights*; and the *International Convention on the Elimination of All Forms of Racial Discrimination*.

However, the United States has limited the ability of individuals to use the rights created by these treaties. First, when ratifying these treaties, Congress specifically stated that the United States government is not bound by certain provisions and that the United States government understands certain rights and protections to be severely restricted. Second, Congress has declared that many provisions of the treaties are not "self-executing," meaning that individuals cannot sue in U.S. courts to enforce those provisions unless Congress has also passed "implementing legislation." *Foster v. Neilson*, 27 U.S. 253 (1829).

While you will probably be unable to sue directly under these treaties, each treaty has a treaty body that monitors whether the United States is following the rules set out in the treaties. You can contact a human rights group, like Human Rights Watch, and ask for help sending a letter to one of those bodies.

Human Rights Watch is an organization that monitors the conditions in prisons and publishes reports on prisons. They answer mail from prisoners, and they also send free reports that you can use to support your legal claims.

U.S. Program Associate
Human Rights Watch
350 5th Avenue, 34th Floor
New York, New York 10118

Another important source of international law is the Universal Declaration of Human Rights, or UDHR. The UDHR was adopted by the UN General Assembly on December 10, 1948. It was the first time the fundamental freedoms and rights of all persons were set forth in detail by the international community. The UDHR is reprinted in Appendix G. It embodies the right to life, liberty and security of person, the right to be free from torture, arbitrary arrest and detention and the right to a fair and public hearing. It also enshrines the right to an adequate standard of living for health and well-being, the right to work, education, medical care and other essential social services, as well as the right to freedom of opinion, expression and peaceful assembly and association, among others. These are inherent rights belonging to all persons that cannot be granted or withdrawn by anyone or any government.

Finally, the United States is a member of the Organization of American States (OAS), and is bound to the provisions of the *American Declaration on the Rights and Duties of Man*. The Inter-American Commission on Human Rights is an independent part of the OAS that looks at possible human rights violations in the Americas. Individuals can present petitions to the Commission once available remedies have been pursued and exhausted in domestic courts..

SECTION F
Brief Summary of the Prison Litigation Reform Act (PLRA)

The PLRA, an anti-prisoner statute which became law in 1996, has made it much harder for prisoners to gain relief in the federal courts. While you will learn more about the PLRA in the following chapters, we have included a brief outline of its major parts, or "provisions," here so that you keep them in mind as you start to plan your lawsuit. The full text of several important sections of the PLRA are included in Appendix F. One important thing to keep in mind is that most of these provisions only apply to suits filed while you are in prison. If you want to sue for damages after you are released, you will not need to worry about these rules.

1. Injunctive Relief

18 U.S.C. § 3626 limits the "injunctive relief" (also called "prospective relief") that is available in prison cases. Injunctive relief is when you ask the court to make the prison do something differently, or stop doing something altogether. For example, if you file a suit asking that the prison change their policy to let you pray in a group, that is a case for injunctive relief. Injunctive relief and the changes in its availability under the PLRA are discussed in Chapter Four.

2. Exhaustion of Administrative Remedies

42 U.S.C. § 1997(e)(a) states that "[n]o action shall be brought with respect to prison conditions … by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

This is known as the "exhaustion" requirement. If you try to sue a prison official about *anything* he or she has done to you, the court will dismiss your case unless you have first filed an administrative grievance or complaint about the issue you want to sue over. You also have to appeal that grievance as far as possible. You will learn more about exhaustion in Chapter Five, Section A, Part 2.

3. Mental or Emotional Injury

The PLRA also states that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury."42 U.S.C.A. § 1997e(e).

Courts disagree about whether this allows you to sue for money damages for a constitutional violation that results in mental or emotional injury but not physical injury. The different interpretations of this provision are explained in detail in Chapter Four, Section C, Part 2. If you are suing to change a prison policy, you do not need to worry about this provision.

4. Attorneys' Fees

Usually, if you win a Section 1983 case and you have an attorney, the defendants will have to pay your attorney for the work he or she did on your case. However, the PLRA limits the court's ability to make the prison officials you sue pay for "attorneys' fees" if you win your case. While this will not affect you if you are suing without the assistance of an attorney, it is part of the reason why so few attorneys are willing to represent prisoners.

5. Screening, Dismissal & Waiver of Reply

The PLRA allows for courts to dismiss a prisoner's cases very soon after filing if the judge decides the case is "frivolous," "malicious," does not state a claim, or seeks damages from a defendant with immunity. The court can do this before requiring the defendant to reply to your complaint. This is discussed further in Chapter Six, Section B.

6. Filing Fees and the Three Strikes Provision

Courts charge everyone fees when they file a lawsuit. However, poor people are not required to pay all these fees up front. Under the PLRA, if you have had three prior lawsuits dismissed as "frivolous, malicious, or failing to state a claim for relief," you may not proceed *in forma pauperis* and will have to pay your fees up front. There is an exception for prisoners who are "in imminent danger of serious physical injury." Chapter Five, Section C, Part 2 describes how to file "*in forma pauperis* papers" and provides more information about the three strikes provision.

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CHAPTER THREE: YOUR RIGHTS IN PRISON

This chapter provides information about your rights in prison. We mostly focus on constitutional rights, but provide some information about federal and state statutory rights as well. Sections A through G explain what types of actions violate prisoners' rights, and Sections H through K provide information for specific groups of prisoners, including women, transgender prisoners, pretrial detainees and immigration detainees.

Chapter Three: Table of Contents

"The Rule" and "The Basics" Boxes
Throughout this chapter, you will see small text boxes entitled "the rule" and "the basics." The rule boxes set forth the actual legal standard that a court will apply to consider your case. We have included these only in those places where there is a clear legal rule. The basics boxes are summaries of the practical impact of the law on common prison issues. They are *not* legal standards.

Be very careful to check for changes in the law when you use this chapter (and the rest of the JLH)**.** This Handbook was completely revised and updated in 2010. However, one of the exciting but frustrating things about the law is that it is constantly changing. New court decisions and laws will change the legal landscape significantly in the future.

It is important to make sure a case is still "good law," which is known as "Shepardizing." This is explained in Chapter Seven. You can also write to prisoners' rights and legal organizations listed in Appendix H for help. Groups which can't represent you may still be able to help with some research or advice.

SECTION A
Your First Amendment Right to Freedom of Speech and Association

The Rule: A prison regulation that stops you from speaking, expressing yourself, or interacting with other people must be reasonably related to a legitimate government interest. In deciding this, the court will consider whether the regulation leaves open other ways for you to express yourself, how the regulation impacts other prisoners and prison resources, and whether there are easy alternatives to the regulation that would not restrict your rights as much.

The First Amendment protects everybody's right to freedom of speech and association. Freedom of speech and association includes the right to read books and magazines, the right to call or write to your family and friends, the right to criticize government or state officials, and much more. However, in prison those rights are restricted by the prison's need for security and administrative ease. Because of this, it is often very hard for a prisoner to win a First Amendment case.

Almost all of the rights protected by the First Amendment are governed by the same legal standard, developed in a case called *Turner v. Safley*, 482 U.S. 78

(1987). In *Turner*, prisoners in Missouri brought a class action lawsuit challenging a regulation that limited the ability of prisoners to write letters to each other. The Supreme Court used the case to establish a four-part test for First Amendment claims. Under this test, the court will decide whether the prison policy or practice you are challenging is constitutional by asking four questions:

THE TURNER TEST

QUESTION ONE: Is the regulation reasonably related to a legitimate, neutral government interest? "Reasonably related" means that the rule is a least somewhat likely to do whatever it is intended to do. A rule banning a book on bomb-making is reasonably related to the prison's goal of security. However, a rule banning *all* novels is not.

"Neutral government interest" means that the prison's goal must not be related to its dislike of a particular idea or group. Increasing prison security is a neutral and legitimate goal. Encouraging prisoners to practice a certain religion, to stop criticizing the prison administration, or to vote Republican are not neutral or legitimate goals. The prison can't pick and chose certain books or ideas or people unless it has a "neutral" reason, like security, for doing so.

QUESTION TWO: Does the regulation leave open another way for you to exercise your constitutional rights? This means the prison can't have a rule that keeps you from expressing yourself altogether. For example, prison officials can keep the media from conducting face-to-face interviews with prisoners, as long as prisoners have other ways (like by mail) to communicate with the media. *Pell v. Procunier* 417 U.S. 817 (1974).

QUESTION THREE: How does the issue impact other prisoners, prison guards or officials and prison resources? This question allows the court to consider how much it would cost in terms of money and staff time to change the regulation or practice in question. For example, one court held that it is constitutional to prevent prisoners from calling anyone whose number is not on their list of ten permitted numbers, because it would take prison staff a long time to do the necessary background checks on additional numbers. *Pope v. Hightower*, 101 F.3d 1382 (11th Cir. 1996).

This question is not always just about money. It also requires the court to take into consideration whether changing the regulation would pose a risk to other prisoners or staff or create a "ripple effect" in the prison. *Fraise v. Terhune*, 283 F.3d 506, 520 (3d Cir. 2002).

QUESTION FOUR: Are there obvious, easy alternatives to the regulation that would not restrict your right to free expression? This part of the test offers a chance for the prisoner to put forward a suggestion of an easy way for a prison to achieve their goal without restricting your rights. Not every suggestion will work. For example, one court held that it is constitutional to ban letters between a pair of prisoners in two different facilities after one prisoner sent a threatening letter to the other's Superintendent. The court ruled that monitoring this type of correspondence is not an obvious or easy alternative to banning it. *U.S. v. Felipe*, 148 F.3d 101 (2d Cir. 1998).

You will want to keep these four questions in mind as you read the following sections on the First Amendment.

1. Access to Reading Materials

THE BASICS: Prison Officials can keep you from getting or reading books that they think are dangerous or pornographic. They can also make you get all books straight from the publisher.

The First Amendment protects your right to get reading material like books and magazines. This doesn't mean that you can have any book you want. Your right is limited by the prison's interest in maintaining order and security and promoting prisoner rehabilitation. Until 1989, the Supreme Court required prisons to prove that banning material was necessary to meet government interests in prison order, security, and rehabilitation. This standard was from a case called *Procunier v. Martinez*, 416 U.S. 396 (1974), and it gave prisoners fairly strong protection of their right to get books. However, over the last few decades, the Supreme Court has become much more conservative, and has given prisons greater power to restrict your First Amendment rights. Now a prison can keep you from having magazines and books as long as it fulfills the *Turner* test, explained above. This was decided in an important Supreme Court case called *Thornburgh v. Abbott*, 490 U.S. 401, 404 (1989). If you feel that your right to have reading materials is being violated, you should probably start your research by reading *Thornburgh v. Abbott.*

Why Read Cases?

Sometimes in this Handbook we suggest that you read Supreme Court and other court cases. While we have tried to summarize the law for you, the cases we suggest will give you much more detailed information, and will help you figure out whether you have a good legal claim. Chapter Seven explains how to find cases in the law library based on their "citation." You can also ask the library clerk for help finding a case. Chapter Seven also gives helpful tips on how to get the most out of reading a case.

Finally, Chapter Seven contains an explanation of the court systems and how cases are used as grounds for court decisions. Be sure to read it if you are going to do any legal research. Remember that federal courts in one state do not always follow decisions by federal courts in other parts of the country.

While the *Turner* standard is less favorable to prisoners, it still guarantees you a number of important rights. Prison officials need to justify their policies in some convincing way. If they can't, the regulation may be struck down. For example, one court overturned a ban on all subscription newspapers and magazines for prisoners in administrative segregation because it meant that prisoners were kept from reading all magazines, a problem under *Turner* Question 2. The Court also decided the rule wasn't reasonably related to the prison's interest in punishment and cleanliness, a problem under *Turner* Question 1. *Spellman v. Hopper*, 95 F. Supp. 2d 1267 (M.D. Al. 1999).

Prisons can't just ban books and magazines randomly. Courts require prisons to follow a certain procedure to ban a publication. A prison cannot maintain a list of excluded publications, or decide that no materials from a particular organization will be allowed in. It must decide about each book or magazine on a case-by-case basis. This is true even if a prison official already knows that the book or magazine comes from an organization they don't approve of. *Williams v. Brimeyer*, 116 F.3d 351 (8th Cir. 1997). Some prisons require the warden to tell you when he or she rejects a book or magazine sent to you, and to give the publisher or sender a copy of the rejection letter. Courts may require that the prison have a procedure so that you, or the publisher or sender, can appeal the decision.

Prison officials cannot censor material just because it contains religious, philosophical, political, social, sexual, or unpopular content. They can only censor material if they believe it may cause disorder or violence, or will hurt a prisoner's rehabilitation. Unfortunately, the *Turner* standard gives prison wardens broad discretion in applying these rules. This means most courts will believe a prison official who says that the book or magazine in question creates a threat to prison security. It is important to remember that sometimes decisions are inconsistent among different courts.

Courts have allowed censorship of materials that advocate racial superiority and violence against people of another race or religion. *Stefanow v. McFadden*, 103 F.3d 1466 (9th Cir. 1996); *Chriceol v. Phillips*, 169 F.3d 313 (5th Cir. 1999). One court allowed special inspection of a prisoner's mail after he received a book with a suspicious title, even though the book was just an economics textbook. *Duamutef v. Holllins*, 297 F.3d 108 (2d Cir. 2002). Prison officials are normally allowed to ban an entire offending publication, as opposed to just removing the sections in question. *Shabazz v. Parsons*, 127 F. 3d 1246 (10th Cir. 1997). However, prisons must abide by the Fourteenth Amendment, which guarantees equal protection of the laws to all citizens. This means that, for example, a prison cannot ban access to materials targeted to an African-American audience, if they do not ban similar materials popular among white people. See Section C of this Chapter for more information on equal protection claims.

You do not always have a right to sexually explicit materials. Some courts have said that prisoners have a right to non-obscene, sexually explicit material that is commercially produced (as opposed to, for example, nude pictures of spouses or lovers). Other courts have allowed total bans on any publication portraying sexual activity, or featuring frontal nudity. *Mauro v. Arpaio*, 188 F.3d 1054 (9th Cir. 1999). Courts do not allow prisoners access to child pornography because it is against federal law, and usually will not allow access to sexually explicit sadomasochistic materials on the grounds that they may incite violence. Courts have also upheld bans on explicit gay books and magazines based on the idea that the material poses a potential danger to prison security because it might lead to the prisoner being identified as gay and attacked by others as a result. *Espinoza v. Wilson*, 814 F.2d 1093 (6th Cir. 1987). Non-sexually explicit materials that encourage or support a gay lifestyle have also been deemed to be enough of a potential danger to the security of the prison to be withheld from prisoners.

A prison can usually require that publications come directly from a publisher or bookstore. *Bell v. Wolfish*, 441 U.S. 520, 550 (1979). Courts have justified this by arguing that materials from sources other than the

publisher or bookstore may contain contraband, and that it would cost too much to search all of these materials.

Censorship of this Handbook

In 2010, the Virginia Department of Corrections banned the JLH from all Virginia prisons as potentially harmful to prison security. CCR and NLG took the Virginia DOC to court and won a settlement requiring a number of things, such as making sure the Handbook was in the law library of every prison in Virginia.

If the JLH is banned from your prison, please write CCR or the NLG! Please include any documentation from prison officials notifying you or others at the prison that it has been banned. And THANK YOU to the Virginia prisoners who brought this to our attention!

2. Free Expression of Political Beliefs

THE BASICS: You can believe whatever you want, but the prison *may* be able to stop you from writing, talking or organizing around your beliefs.

You have the right to your political beliefs. This means that prison officials may not punish you simply because they disagree with your political beliefs. *Sostre v. McGinnis*, 442 F.2d 178 (2d Cir. 1971); *Sczerbaty v. Oswald*, 341 F. Supp. 571 (S.D.N.Y. 1972). However, the prison can limit your ability to express your beliefs. To justify any restriction on your right to express your beliefs, prison officials need to satisfy the *Turner* test.

Prison officials may be able to limit what you write and publish in prison, but not all of these limitations will pass the *Turner* standard. For example, the state of Pennsylvania had a prison rule that kept prisoners from carrying on businesses or professions in prison. The court found that the rule was not reasonably related to legitimate governmental interests when it kept Mumia Abu-Jamal from continuing his journalism career. *Abu-Jamal v Price*, 154 F.3d 128 (3d Cir. 1998). The court relied on evidence that (1) the rule was enforced against Mumia, at least in part, because of the content of his writing, and not because of security concerns; (2) his writing did not create a greater burden within the prison than any other prisoner's writing; and (3) there were obvious, easy alternatives to the rule that would address security concerns. Another successful case is *Jordan v. Pugh*, 504 F.Supp.2d 1109 (D. Co. 2007). In that case, a prisoner at the highest security federal prison in the country (ADX Florence) successfully challenged a Bureau of Prisons rule that said prisoners can't publish under a byline or act as reporters. The prison said the rule was important to keep a prisoner who published material from becoming a "big shot" at the prison and getting too much influence over other prisoners. However, the prisoner had a former warden testify as an expert for him. The expert convinced the court that this "big shot" theory had no actual support, and had been abandoned by prison administrators. It was important under *Turner* that the rule was absolute – prisoners had no other way to publish articles.

However, regulations limiting prisoners from publishing their work may be constitutional in other situations. In a case called *Hendrix v. Evans*, 715 F. Supp. 897 (N.D. Ind. 1989), the court held that a prison could stop a prisoner from publishing leaflets to be distributed to the general public about a new law, because prisoners still had other ways to inform the public about the issue, such as by individual letters.

Often the prison will rely on "security concerns" to justify censorship. In *Pittman v. Hutto*, 594 F.2d 407 (4th Cir. 1979), the court held that prison officials did not violate the constitution when they refused to allow publication of an issue of a prisoners' magazine because they had a reasonable belief that the issue might disrupt prison order and security.

Some courts will examine the "security" reason more closely then others to see if it is real or just an excuse. For example, in *Castle v. Clymer*, 15 F. Supp. 2d 640 (E.D. Pa. 1998), the court held that prison officials violated the constitution when they transferred a prisoner in response to letters he had written to a journalist. The letters mentioned the prisoner's view that proposed prison regulations would lead to prison riots. The court found that because there was no security risk, the transfer was unreasonable.

Prison officials can ban petitions, like those asking for improvements in prison conditions, as long as prisoners have other ways to voice their complaints, like through the prison grievance system. *Duamutef v. O'Keefe*, 98 F.3d 22 (2d Cir. 1996). Officials can stop a prisoner from forming an association or union of inmates, because the courts have decided that it is reasonable to conclude that such organizing activity would threaten prison security. *Brooks v. Wainwright*, 439 F. Supp. 1335 (M.D. Fl. 1977). In one very important case, the Supreme Court upheld a prison's ban on union meetings, solicitation of other prisoners to join the union, and bulk mailings from the union to prisoners, as long as there were other ways for prisoners to complain to prison officials and for the union to communicate

with prisoners. *Jones v. North Carolina Prisoners' Labor Union, Inc*., 433 U.S. 119 (1977).

3. Limits on Censorship of Mail

THE BASICS: The prison usually can't stop you from writing whatever you want to people outside the prison. The prison can keep other people from writing you things it considers dangerous. Prison guards can read your letters, and look in them to make sure there is no contraband.

The First Amendment protects your right to send and receive letters. Until 1989, prison officials were required to meet a strict test to justify their needs and interests before courts would allow them to interfere with mail. Today, the court still uses this test for mail prisoners send out of the prison, but allows prison officials more control over mail that goes into the prison.

a. Outgoing Mail

THE RULE: The regulation must protect an important or substantial interest of the prison and be necessary and essential to achieving that interest.

In order to censor the letters you send to people outside prison, prison officials must be able to prove that the censorship is necessary to protect an "important or substantial" interest of the prison. Examples of important interests are: maintaining prison order, preventing criminal activity, and preventing escapes. The prison officials must be able to show that their regulations are actually "necessary and essential" to achieving this important goal, not just that the regulation is intended to achieve that goal. The regulations cannot restrict your rights any more than is required to meet the goal. *Procunier v. Martinez*, 416 U.S. 396 (1974). This test is better for you than *Turner*, but unfortunately, it only applies to outgoing mail.

Under the *Martinez* rule a prison official cannot censor your mail just because it makes rude comments about the prison or prison staff. *Bressman v. Farrier*, 825 F.Supp. 231 (N.D. Iowa 1993). In one case, *Harrison v. Institutional Gang of Investigations*, No. C 07-3824, 2010 U.S. Dist. LEXIS 14944 (N.D. Ca Feb. 22, 2010), Marcus Harrison sued Pelican Bay prison officials after they took his outgoing mail because it included information about the Black August memorial, the New Afrikan Collective Think Tank, and the George Jackson University. The prison argued that the material was related to a prison gang called the Black Guerilla Family. The Court decided for Mr. Harrison, and held that the prison had failed to make a substantial showing that the material was likely to incite violence, or related to a prison gang.

However, some restrictions on outgoing mail are allowed. Courts have allowed bans on "letter kiting," which means including a letter from someone else with your letter, or sending a letter to someone in an envelope with another prisoner's name. *Malsh v. Garcia*, 971 F. Supp 133 (S.D.N.Y. 1997). Some courts have allowed prisons to stop a prisoner from writing to a person who is not on an approved mailing list. Other courts reject this rule. Recently, some prisons and jails have imposed rules limiting prisoners to writing only postcards, as opposed to closed letters. In 2010 the ACLU brought a First Amendment challenge to this type of policy at the El Paso County Jail in Arizona and the jail quickly agreed to change the rule.

If a prisoner has used the mail in the past to attempt to commit a crime or harass someone, that may be an important factor. So for example, in *Hammer v. Saffle*, No. 91-70381991 U.S. App. LEXIS 28730 (10th Cir. 1991), the court upheld a prison rule limiting a prisoner to sending mail to people on an approved list after he was found to have used the mail to make death threats and extort money.

Courts usually allow guards to read or look in your outgoing mail, especially for contraband. Courts explain that looking in a letter does not violate the First Amendment because it is different from censorship. *Altizer v. Deeds*, 191 F.3d 540 (4th Cir. 1999). Courts have said that a visual inspection is closely related to the legitimate penological interest of preventing prisoners from disseminating offensive or harmful materials. *Witherow v. Paff*, 52 F.3d 264 (9th Cir. 1995). Courts have generally upheld limitations on the amount of postage you can have at one time and the amount of postage they will provide to prisoners who cannot afford it for non-legal mail. *Johnson v. Goord*, 445 F.3d 532 (2d Cir. 2006).

b. Incoming Mail

THE RULE: The *Turner* test applies.

Censorship of incoming mail is governed by the *Turner* test. As you learned earlier, the *Turner* test requires that the regulation in question be "reasonably related" to a "legitimate" government interest. This means that

while your rights are still protected to some extent, prisons can put a lot of restrictions on incoming mail. Courts have allowed restrictions on incoming packages on the grounds that they can easily hide contraband and looking through them would use up too many prison resources. *Weiler v. Purkett*, 137 F.3d 1047 (8th Cir. 1998). Items that are not a threat to prison security can also be taken by prison officials if they include contraband. *Steffey v. Orman*, 461 F.3d 1218 (10th Cir. 2006). Courts have also allowed restrictions on mail between prisoners. *Farrell v. Peters*, 951 F.2d 862 (7th Cir. 1992).

A prison must follow special procedures to censor your mail. You should be notified if a letter addressed to you is returned to the sender or if your letter is not sent. Your right to be notified is a "due process" right, recognized by *Procunier v. Martinez*. Due process rights are discussed later in this Chapter, in Sections D and G. The author of the letter should have a chance to challenge the censorship. The official who responds to a challenge cannot be the person who originally censored the mail in question. *Martinez*, 416 U.S. at 419-20. In most places, the same rule applies to packages, not just letters. *Bonner v. Outlaw*, 552 F.3d 673 (8th Cir. 2009).

One delay or some other relatively short-term disruption in mail delivery that is not related to the content of your letters does not violate the First Amendment. *Sizemore v. Williford*, 829 F.2d 608, 610 (7th Cir. 1987).

c. Legal Mail

Special rules apply to mail between you and your attorney, and to mail you send to non-judicial government bodies or officials. This mail is called "privileged mail," "legal mail" or "special mail" and is protected by your constitutional right of access to the courts, as well as by the "attorney-client privilege." The attorney-client privilege means that the things you write or say to your attorney, or he or she writes or says to you, are secret.

Prisons officials cannot read your legal mail. But they can open it in your presence to inspect it for contraband. *Castillo v. Cook County Mail Room*, 990 F.2d 304 (7th Cir. 1993); *Bieregu v. Reno*, 59 F.3d 1445 (3rd Cir. 1995). If you wish to protest reading or censorship of your legal mail in court, however, you may have to show that what happened hurt your case or injured you in some other way. *John v. N.Y.C. Dept. of Corrections*, 183 F. Supp. 2d 619 (S.D.N.Y. 2002). This issue is discussed in Section G of this Chapter.

Even if a prison restricts most of your correspondence with other prisoners, you may be allowed to send and get mail from a prisoner who is a jailhouse lawyer. For more information about this, read Section G about your right to access the court.

Different prisons have different procedures for marking incoming and outgoing legal and special mail. Often, incoming mail from an attorney must bear the address of a licensed attorney and be marked as "legal mail." If not, it will not be treated as privileged. Some prisons place even more requirements on you, and require you to request ahead of time that legal mail be opened only in your presence, and your attorney must have identified herself to the prison in advance. *U.S. v. Stotts*, 925 F.2d 83 (4th Cir. 1991); *Boswell v. Mayor*, 169 F.3d 384 (6th Cir. 1999); *Gardner v. Howard*; 109 F.3d 427 (8th Cir. 1997).

4. Access to the Telephone

THE BASICS: Most of the time, you have a right to make some phone calls, but the prison can limit the amount of calls you can make and can monitor those calls.

Your right to talk with friends and family on the telephone gets some protection under the First Amendment. However, courts do not all agree on how much telephone access prisoners must be allowed. Prisons may limit the number of calls you make. The prison can also limit how long you talk. Courts disagree on how strict these limits can be. Most courts agree that prison officials can restrict your telephone privileges in "a reasonable manner." *McMaster v. Pung*, 984 F.2d 948, 953 (8th Cir. 1993).

Courts also disagree on how much privacy you can have when you make phone calls. Some courts have held that prisoners have no right to make private phone calls. This is because the court says prisoners do not have a reasonable expectation of privacy under the Fourth Amendment. *U.S. v. Balon*, 384 F.3d 38 (2d Cir. 2004). See Section E of this Chapter for more information about your privacy rights under the Fourth Amendment.

Other courts have held that prisoners who are told that they are being monitored consent to giving up their privacy. *U.S. v. Morin*, 437 F.3d 777 (8th Cir. 2006); *U.S. v. Footman*, 215 F.3d 145, 155 (1st Cir. 2000). In other words, if there is a sign under the phone saying that "all calls are monitored" or it's in the prison's manual or its policies, you can't complain about it.

One exception is that prison officials cannot listen in on calls with your attorney. If there is a process in your prison for requesting an unmonitored legal call and the prison still monitors them, courts may find that your expectation of privacy has been violated. *Robinson v. Gunja*, 92 Fed.Appx 624 (10th Cir. 2004). However, if you don't follow your prison's procedure for making a legal call, and simply use the regular phone, some courts will conclude that you waived your attorney-client privilege by having the conversation after you were "told" of the monitoring by the sign or prison policies.

Prisons are generally allowed to place more severe restrictions on telephone access for prisoners who are confined to Special Housing Units for disciplinary reasons, as long as they can show that these restrictions are reasonably related to legitimate security concerns about these prisoners. You can also lose telephone access as punishment for breaking prison rules.

In general, prisons are allowed to limit the number of different people whom you can call, and to require you to register the names of those people on a list to be approved by the prison. *Pope v. Hightower*, 101 F.3d 1382 (11th Cir. 1996); *Washington v. Reno*, 35 F.3d 1093 (6th Cir. 1994).

The prison can make you pay for your telephone calls. This can be a serious burden on prisoners and their family members, especially when states enter into private contracts with phone companies which force prisoners or their families to pay much more for their phone calls than what people pay outside of prison. Challenges to these types of contracts or to excessive telephone charges in general have not been successful. *See* Arsberry v. Illinois, 244 F.3d 558, 566 (7th Cir. 2001); *Walton v. New York State Dept. of Correctional Services*, 869 N.Y.S.2d 661, 57 A.D.3d 1180 (2008). But at least one court has held that this type of arrangement might violate prisoners' (and their loves ones') First Amendment rights. *Byrd v Goord*, No. 00 Civ 2135, 2005 US Dist LEXIS 18544 (S.D.N.Y. Aug. 29, 2005).

5. Your Right to Receive Visits from Family and Friends and to Maintain Relationships in Prison.

THE BASICS: The prison can limit your visits in lots of ways, but probably can't permanently ban you from getting visits.

If you are being denied visitation in prison, there are several different claims you can make. You can argue that denying you visits or restricting your visits violates your right to freedom of association under the First Amendment, your right to be free from cruel and unusual punishment under the Eighth Amendment, and your right to substantive due process under the Fifth and Fourteenth Amendments. Under each of these claims, the prison will probably respond by claiming that the restriction you challenge is related to maintaining order and security. If you bring your claim under the First Amendment or the due process clause, the court will look to the *Turner* test to see if the prison rule is valid. If you bring your claim under the Eighth Amendment, the court will look at the standard described in Section F of this Chapter. You can make all of these arguments in one case.

a. Access to Visits

Several decades ago, the courts were more receptive to claims about denial or restrictions regarding visitation. In *Boudin v. Thomas*, 533 F. Supp. 786 (S.D.N.Y. 1982), for example, a New York court ordered a prison to allow a prisoner contact visits with her infant son, finding there was no rational reason to ban such visits. Another case, *Valentine v. Englehardt*, 474 F. Supp. 294, 300 (D.N.J. 1979) also found the prohibition of contact visits by inmates' children to be arbitrary and unjustifiable by the prison officials' simple assertion that it promoted security.

In 2003, however, the Supreme Court considered how much prisons can restrict visitation in a case called *Overton v. Bazzetta*, 539 U.S. 126, 137 (2003). The case involved a Michigan Department of Corrections' rule that prohibited visits by kids other than a prisoner's sibling or child. The rule also said that former prisoners couldn't visit current prisoners. Lastly, the rule said that any prisoner who had two drug violations in prison would have all of his or her visitation privileges suspended for two years.

A group of prisoners and their friends and family challenged the rule based on all the First, Eighth and Fourteenth Amendment theories mentioned earlier. The Court stated that the right to "intimate association" is not completely terminated by imprisonment and considered the regulations under the *Turner* standard. The Court decided that all of these prison rules were rationally related to valid penological interests, so they passed the *Turner* test. The Court accepted the prison's explanation that allowing only children and siblings under the age of 18 protects minors from misconduct, reduces the number of visitors, and minimizes disruption by children. The prison rationalized

preventing former prisoners from visiting as a way to maintain prison security and prevent future crime. It explained restricting visitation for prisoners with two drug violations as a way to discourage drug use. Such prisoners, the Court explained, are still able to write or call people, so they were not completely cut off from their friends and family. In considering the Eighth Amendment claim, the Court said that the two year ban was "not a dramatic departure from accepted standards for conditions of confinement [and it did not] create inhumane prison conditions, deprive inmates of basic necessities, or fail to protect their health or safety. Nor does it involve the infliction of pain or injury, or deliberate indifference to the risk that it might occur."

Under this precedent, it is hard to successfully challenge restrictions on visitation. In general, limitations on a prisoner's visitation rights are acceptable if the prison has valid "penological objectives such as rehabilitation and the maintenance of security and order." *Bellamy v. Bradley*, 729 F.2d 416, 420 (6th Cir. 1984). See also *Lynott v. Henderson*, 610 F.2d 340 (11th Cir. 1980); *King v. Caruso*, 542 F.Supp.2d 703, 711 (E.D.Mich. 2008). *Overton* didn't overrule the old cases about visit restrictions, because most of the old cases also used the *Turner* standard, or something like it. But most courts these days don't look very critically at restrictions on visitation.

There are a few exceptions. Prisoners who are subject to complete bans on visits probably have the best chance of a successful challenge. In *Hallal v. Hopkins*, 947 F. Supp. 978 (S.D. Miss. 1995) for example**,** a prisoner and his wife filed a *pro se* lawsuit challenging conditions and policies at the Madison County Detention Center, including a complete ban on visits by children under twelve. The court ordered an evidentiary hearing to decide the factual basis for the ban, and whether it was justified by security needs. And in once recent case, *Ryerse v. Caruso*, No. 1:08-cv-516, 2009 U.S. Dist. LEXIS 82839 (W.D. Mich. July 20, 2009), a prisoner, his mother and his children sued over a prison policy that permanently denied him all visits after he was convicted of smuggling contraband into the prison. The Court allowed the case to move forward, citing the Supreme Court's statement in *Overton v. Bazetta* that a permanent ban on all visitation might be unconstitutional**.**

Courts probably will allow a ban on visitation by minors if the prisoner's crime involved minors, *Morton v. Hall*, 455 F.Supp.2d 1066 (C.D.Cal. 2006), and courts also allow transferring a person to a prison far from home or family, even though this makes visitation very difficult. *Berdine v. Sullivan*, 161 F.Supp.2d 972 (E.D.Wis. 2001). Also, prisons can require visitors to be pre-approved and can restrict the type of contact you have during a contact visit, like how close you can sit and when you can hug or kiss.

Many courts agree that a blanket policy of strip searching inmates after contact visits is constitutional. *Wood v. Hancock County Sheriff's Dept*., 354 F.3d 57 (1st Cir. 2003). See Section E of this Chapter for more details about strip searches.

b. Visitation for Lesbian, Gay, Bisexual and Transgender Prisoners

The law that governs visitation in federal prisons, 28 C.F.R. § 540.44, does not recognize partners other than "spouses" as "members of the immediate family" or "other relatives." Instead, these visitors must come in under the "friends and associates" category which makes it easier for the prison to deny them entry. The prison can deny any "friends and associates" visitor it thinks could "reasonably create a threat to security."

Under The Defense of Marriage Act (28 U.S.C.§ 1738C and 1 U.S.C.§ 7), all federal agencies are required to define "spouse" as "someone of the opposite sex who is a husband or a wife." So, even if you are legally married, it is possible that a federal prison will not consider your spouse to be your spouse if you are seen as the same gender. Your gender will probably be seen as whatever gender the prison system considers you to be. This means that if you are in a women's prison and you are married to a man, your spouse should be able to visit you as a "member of your immediate family" unless the prison has "strong circumstances" to justify the denial. "Strong circumstances" is a higher burden for the prison to meet than the "reasonably create a threat to security" standard for friends and associates. If you want to challenge an application of the Defense of Marriage Act, you might want to get in touch with one of the organizations listed in Appendix H of this Handbook.

Often the prison will argue it has many reasons for denying a visitor, but if the main reason is to "rehabilitate your homosexuality," you have strong grounds to challenge the decision. You should cite to *Lawrence v. Texas*, 539 U.S. 558 (2003), the Supreme Court case that said that the state cannot outlaw consensual gay sex in the privacy of the home. Restrictions on visitors must have a "legitimate penological purpose," like keeping you and other prisoners safe. After *Lawrence*, preventing you from violating a state law that criminalizes homosexuality is no longer a "legitimate penological purpose" because those laws are now unconstitutional.

There has not been much litigation by transgender prisoners about visitation rights, but there are some useful cases brought by gay, lesbian, and bisexual prisoners. A complete ban on certain types of visitors can be easier to challenge than an isolated decision denying entrance to one visitor. In 1990, one court said that a prison could not have a flat-out ban on visits by boyfriends or girlfriends of gay and lesbian people. In this case, *Doe v. Sparks*, 733 F. Supp. 227 (W.D. Pa. 1990), the prison argued the ban was necessary to maintain discipline and health in the prison. It also argued that visits by partners of gay and lesbian prisoners would spread knowledge of the prisoner's sexual orientation inside the prison and could pose a security risk. The court disagreed, finding for the prisoner on Equal Protection grounds because the ban bore no rational relationship to any legitimate government objective. Even though the prison said the ban was to maintain security, prison visits were actually conducted in private and there was no way other prisoners could find out who had visited whom.

There was also a good decision in the Ninth Circuit brought in a case by a gay couple who were not allowed to hug or kiss during jail visits even though straight couples could. In this case, *Whitmire v. Arizona*, 298 F.3d 1134 (9th Cir. 2002), the court reversed a lower court's decision to dismiss the couple's Equal Protection claim.

Conjugal visits are extended, often overnight visits, with a prisoner's spouse and/or other immediate family members and are currently allowed in five states: CA, MS, NM, NY and WA. Although there are no conjugal visits in federal prison, some states where such visits are allowed have extended visitation rights to partners seen as same-sex. California has now interpreted its domestic partner law to require it to permit conjugal visits between domestic partners that were registered with the state before the prisoner was incarcerated.

Since conjugal visits are the one kind of visitation that is limited to spouses and immediate family members, it might be useful to mention these positive trends in conjugal visit policies in your challenge to a prison's visitation policy. You can argue there is a trend toward recognizing that partners of lesbian, gay, bisexual, and transgender people have the same rights as partners of heterosexual, non-transgender people.

c. Relationships with Other Prisoners

There are many challenges to maintaining relationships with other prisoners. Prisons generally have the power to transfer you away from your partner, friend or lover; to keep you from writing to one another; and to keep you from having sex or being affectionate with one another. Virtually every prison system has rules saying that sex between prisoners is not allowed, even when it is consensual. Courts have said it is okay for prisons to keep prisoners from having sex with one another. *Thomasson v. Perry*, 80 F.3d 915, 929 (4th Cir.1996). They have said that sex could lead to transmission of disease and risks to prison security. *Veney v. Wyche*, 293 F.3d 726, 733 (4th Cir. 2002). Unfortunately, some prison systems, such as Massachusetts, even have policies stating that consensual sex between prisoners should be treated as a form of sexual abuse. Some prison systems even have rules against kissing, holding hands, or hugging.

In *Lawrence v. Texas*, 539 U.S. 558 (2003), the U.S. Supreme Court said that it is not okay for states to make it illegal for two people of the same sex to have consensual sex in the privacy of their home. Sex should no longer be considered a crime just because the people having sex are gay, lesbian, bisexual or transgender. As of the publication of this handbook, we could not find a court that has clearly decided whether *Lawrence* would apply to sex between prisoners. *Lawrence* would be an important case to cite in any challenge to a rule against sex in prison. However, *Lawrence* was decided on the basis of privacy rights, and privacy rights are much more limited in prison. Some of the courts that have said that it is okay for prisons to keep prisoners from having sex with one another have said that even if there was a fundamental right to engage in "homosexual sex," that right would not survive incarceration.

d. Caring For Your Child in Prison

If you have children, being incarcerated almost always means being separated from them, and this is likely to impose a substantial burden on your relationship. There have not been many court cases about your right to care for your child while you are in prison. In general, states do not allow incarcerated mothers or fathers to care for their children, even infants. However, some states have tried to make parenting in prison easier.

No matter what state you are in, you can take steps to maintain your relationship with your child. If possible, you should privately arrange to have someone you know care for your children and plan visiting times. If a family member is willing but cannot afford to care for your child, they may be able to get assistance from the state. If your child is in foster care, state statutes often require the foster care agency to actively support your parental relationship by updating you on your child's development, allowing you to participate in planning

for your child's future and health, and bringing your child to visit (unless the child lives in another state).

As a prisoner, however, you face the possibility that your parental rights could be "terminated." The federal Adoption and Safe Families Act requires the state to move to "terminate," or end, your parental rights if your child has been in foster care for 15 of the last 22 months. There are exceptions if the child is being cared for by a relative or there is a good reason why termination is not in the best interests of the child. 42 U.S.C. § 675(5)(E).

The Supreme Court held in *Santosky v. Kramer*, 455 U.S. 745 (1982), that in order to terminate your parental rights, the state must show that you are an unfit parent by "clear and convincing evidence." What it means to be an unfit parent varies from state to state, so you should check your state's statutes. Many states have held that the fact that you are in prison does not necessarily make you unfit. An example of some of these cases are: *In re B.W.*, 498 So. 2d 946 (Fla. 1986); *In re Staat*, 178 N.W.2d 709 (Minn. 1970); *In re J.D.*, 512 So. 2d 684 (Miss. 1987); *In re Sego*, 513 P.2d 831 (Wash. 1973); *In re Adoption of McCray*, 331 A.2d 652, 655 (Pa. 1975). However, states don't like long term foster care, so if your sentence is long (more than 5 years) you may be in danger of having your parental rights terminated unless you can find a private placement for your child.

You may want to write to the judge to request to be present at any court hearings regarding your child's care, including foster care status hearings and parental termination proceedings. Although in *Lassiter v. Department of Social Services of Durham County North Carolina*, 453 U.S. 927 (1981), the Supreme Court said there is no constitutional right to a lawyer at parental termination proceedings, most states do guarantee a lawyer, so you should request one. For some examples, you can read Texas Family Code Annotated § 107.013(a)(1); Arkansas Code Annotated § 9-27- 316(h)(1) (Supp. 2003); and *In re B.*, 285 N.E.2d 288 (N.Y. 1972).

To protect your parental rights, you should participate in planning for your child as much as possible, contact your child's caseworker frequently if your child is in foster care, make efforts to arrange visiting times, and keep a detailed record of all visits, phone calls, and letters between you and your child or related to your child's care.

You should also participate in any parenting classes or treatment programs at your facility that will help show that you will be able to be a good parent when you get out, especially if they are suggested by your child's caseworker. When you go to court, you can emphasize this participation to try to get the court to look beyond your crime.

SECTION B
Your Right to Practice Your Religion

THE BASICS: You have the right to practice your religion if it doesn't interfere with prison security.

Your freedom of religion is protected by the First and Fourteenth Amendments of the U.S. Constitution and several federal statutes. There are five ways you can challenge a restriction on your religious freedom: the Free Exercise Clause, the Establishment Clause, the Fourteenth Amendment, the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA). They are each discussed below.

1. Free Exercise Clause

THE RULE: Your Freedom to practice your religion under the free exercise clause can be limited based on the *Turner* Standard (described in Section A).

The first way to challenge violations of your right to religious activity is through the Free Exercise Clause of the First Amendment.

The First Amendment to the United States Constitution states: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…*"

The second half of that sentence is known as the Free Exercise Clause, and it protects your right to practice your religion.

To make a free exercise claim you must be able to show the court that your belief is both religious and sincere. Different courts have different definitions of "religion," but they generally agree that your beliefs do not have to be associated with a traditional or even an established religion to be "religious." *Africa v. Commonwealth of Pennsylvania*, 662 F.2d 1025 (3d Cir. 1981); *Love v. Reed*, 216 F.3d 682 (8th Cir. 2000). It is important to understand how "religion" is defined in your District or Circuit before bringing your case.

Courts judge your religious "sincerity" by looking at how well you know the teachings of your religion and how closely you follow your religion's rules. However, you don't have to follow every single rule of your religion. And your belief doesn't have to be the same as everyone else's in your religion. *LaFevers v. Saffle*, 936 F.2d 1117 (10th Cir. 1991). Courts will usually listen to what a prison chaplain or clergyperson says about your religious sincerity. *Montano v. Hedgepeth*, 120 F.3d 844 (8th Cir. 1997).

If a court determines that your belief is both religious and sincere, it will next apply the *Turner* test. This means that the court will balance your constitutional right to practice your religion against the prison's interests in order, security, and efficiency. Prison officials cannot prohibit you from practicing your religion without a reason. To win, you will have to show that a restriction is not "reasonably related to a penological interest," under the *Turner* test described in Section A. Courts often follow the decisions of prison officials, but any restriction on the free exercise of religion is still required to meet the four-part *Turner* test before it will be upheld. In *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987), the Court applied the *Turner* test, and allowed a prison to limit worship services to specific days, because prisoners were still offered other means of practicing their religion.

2. Establishment Clause

The first half of the First Amendment sentence quoted above is called the Establishment Clause, and it means that the government can't encourage people to be religious, or choose one religion over another. Different Circuit Courts currently rely on two different standards in deciding whether a prison action or rule that endorses or supports a particular religion violates the constitution.

RULE #1: The prison rule or practice is OK if it is designed for a purpose that is not religious, does not have the main effect of advancing or setting back any religion and does not encourage excessive government entanglement with religion.

OR

RULE #2: The prison rule or practice is OK if it is does not force you to support or participate in a religion.

Under both standards, you must first show that the prison or its officials acted in a way that endorsed, supported, or affiliated themselves in some way with a religion.

The first test was developed in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). This test says that, to be valid under the Constitution, a regulation or action 1) must be designed for a purpose that is not religious; 2) cannot have a main effect of advancing or setting back any religion; and 3) cannot encourage excessive government entanglement with religion.

The second test, developed in *Lee v. Weisman*, 505 U.S. 577 (1992), can be stated more simply: it prohibits the government from forcing you to support or participate in any religion.

If you think you may have an establishment clause claim, the first thing you should do is research in your law library which test your Circuit follows, and read a few cases applying that test.

- **Note:** It is very rare to win an Establishment Clause case in prison, so you should probably try one or more of the other four options in this section along with it.

Ways to Protect Your Religious Freedom

1) The **Free Exercise Clause** of the First Amendment protects your right to follow the practices of your religion, like eating kosher food, covering your hair, or praying at a certain time;

2) The **Establishment Clause** of the First Amendment keeps the government from encouraging you to follow a certain religion, or be religious;

3) The **Fourteenth Amendment** means that the government can't discriminate against you or treat you poorly because of your religion;

4) The **Religious Freedom Restoration Act** provides added protection for prisoners in federal custody; and

5) The **Religious Land Use and Institutionalized Persons Act** provides additional protection for all prisoners.

For each type of challenge, a court will balance your constitutional rights against the prisons' interest in security and administration.

3. Fourteenth Amendment Protection of Religion

Another source of protection for religious practice is the Fourteenth Amendment. It provides all individuals, including prisoners, with "equal protection under the law." This means that a prison cannot make special rules or give special benefits to members of only one

religion or group of religions without a reason. We talk about the legal standard to show discrimination in detail in Section C. You should read that section carefully if you think you might have a religious discrimination claim.

The prison can treat members of one religion differently if it has a reason that isn't about the religion. *Benjamin v. Coughlin*, 905 F.2d 571 (2d Cir. 1990). For example, it is OK for a prison to provide better facilities and services to a religion with more followers. *Cruz v. Beto*, 405 U.S. 319 (1972).

4. Religious Freedom Restoration Act (RFRA) and Religious Land Use and Institutionalized Persons Act (RLUIPA)

In addition to the protections provided by the Constitution, there are two federal statutes that protect the religious rights of prisoners: The Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA).

THE RULE: A prison or prison official can only substantially burden a prisoner's exercise of religion if the regulation is in furtherance of a compelling government interest and the restriction is the least restrictive means of furthering that compelling interest.

Both RFRA and RLUIPA provide prisoners with more protection of religious freedom than the First Amendment. Specifically, the RFRA states that the government can only "substantially burden a person's exercise of religion" if two conditions are met. First, the government restriction must be "in furtherance of a compelling governmental interest." Second, the government must prove that its restriction is the "least restrictive means of furthering that compelling interest."

This is a much stricter test than the *Turner* standard. However, the Supreme Court struck down the RFRA as it applies to state prisoners in a 1997 case, *City of Boerne v. Flores*, 521 U.S. 507 (1997). This means that you cannot use the RFRA if you are a **state** prisoner.

The Supreme Court did not overrule the RFRA as it applies to the federal government, and most courts have held it is still valid as to federal agencies like the Federal Bureau of Prisons. If you are a federal prisoner and you think your right to practice your religion has been violated, you can write a separate claim in your complaint under the Religious Freedom Restoration Act.

In 2000, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA), to deal with the fact that State prisoners could no longer use the RFRA. The standard is the same. If a prison cannot show that their rule passes both parts of this test, a court will find that they have violated the RLUIPA.

The RLUIPA is different than the RFRA only in that it applies only to programs or activities that receive money from the federal government. This financial assistance gives Congress the right to pass laws that it might not otherwise be able to pass. In 2005, the U.S. Supreme Court found RLUIPA constitutional in *Cutter v. Wilkinson*, 544 U.S. 709 (2005). The Court held that facilities that accept federal funds cannot deny prisoners the necessary accommodations to engage in activities for the practice of their own religious beliefs.

All state correctional systems accept federal funding, so it is a good idea to bring a claim under RLUIPA if you believe that your right to exercise your religion has been unfairly restricted.

5. Cases and Issues

The following are brief descriptions of the types of problems that often come up in cases about prisoners' right to religious freedom.

- Religious services and meetings with clergy: You have the right to meet with a religious leader and to attend religious services of your faith. You may meet with a clergy person of a particular faith even if you weren't a member of that faith before entering prison. However, courts have allowed prisons to restrict your rights based on the prison's interests in order, security, and efficiency. The bottom line is that while you are not entitled to unlimited meetings, you have a right to a "reasonable opportunity" to attend services or meet with a religious leader. The prison gets to decide what a "reasonable opportunity" means. For example, courts have allowed work requirements that prevent prisoners from attending some weekly services of their faith if it does not deprive a prisoner of all means of expressing their faith, *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987). Most courts have upheld denial of access to sweat lodges for religious practice, *Thomas v. Gunter*, 103 F.3d 700 (8th Cir. 1997). The prison can also require that all religious services be led by a non-prisoner religious leader, *Anderson v. Angelone*, 123 F.3d 1197 (9th Cir. 1997).

- Personal grooming, hygiene, and headgear: Courts have taken different approaches to prisoners who

maintain certain hairstyles or facial hair or wear headgear. Prisons can only keep you from doing this if they have a good reason based on security or hygiene, *Swift v. Lewis*, 901 F.2d 730 (9th Cir. 1990). That said, courts often agree with whatever the prison says is a "good reason." *Young v. Lane*, 922 F.2d 370 (7th Cir. 1991). However, if there is an alternative way to maintain those security concerns, some courts have found that the regulation might infringe on the inmate's religious practice. *Benjamin v. Coughlin*, 905 F.2d 571 (2d Cir. 1990); *Smith v. Ozmint*, 578 F.3d 246 (4th Cir. 2009).

- Special diets: Special religious diets often raise issues of cost, and sometimes also raise questions related to the Establishment Clause, which prohibits endorsement of one religion above others. Courts have often required prisons to accommodate prisoners' religious diets, but usually allow them to do so in a way that is least costly or difficult for them. *Ashelman v. Wawrzaszek*, 111 F.3d 674 (9th Cir. 1997); *Beerheide v. Suthers*, 286 F.3d 1179 (10th Cir. 2002); *Makin v. Colorado Dept. of Corrections*, 183 F.3d 1205 (10th Cir. 1999). If there is an alternative way for a prisoner to exercise his dietary beliefs, like by choosing vegetarian options, courts will usually not find a violation. *Williams v. Morton*, 343 F.3d 212 (3d Cir. 2003).

- Name Changes: Prisoners who convert in prison may want to change their name. Prisoners have a First Amendment right to change their names for religious reasons, but prisons may require them to use both their old and new names. In *Hakim v. Hicks*, 223 F.3d 1244 (11th Cir. 2000), for example, a court decided that a prisoner's rights had not been violated when his religious name was placed on the back of his identification card. Other cases like this are *Ali v. Dixon*, 912 F.2d 86 (4th Cir. 1990) and *Imam Ali Abdullah v. Cannery*, 634 F.2d 339 (6th Cir. 1980). The procedure for getting a name change is usually controlled by state law, rather than the Constitution. More information about name changes is available at page 59 of this Chapter, in Section I, on the rights of Transgender prisoners.

Courts have addressed many other issues related to religion. In *Chriceol v. Phillips*, 169 F.3d 313 (5th Cir. 1999), a court held that the prison could ban a piece of religious mail because it had the potential to produce violence by advocating racial or religious hatred. In *Shaffer v. Saffle*, 148 F.3d 1180 (10th Cir. 1998), the court decided that a law requiring DNA sampling did not violate a prisoner's religious rights because it applied to all prisoners. The right to possess religious objects is discussed in *Morrison v. Garraghty*, 239 F.3d 648 (4th Cir. 2001).

SECTION C
Your Right to be Free From Discrimination

THE BASICS: Prison officials cannot treat you differently *because of* your race, religion, or gender and the prison can't segregate prisoners by race or religion except in very limited circumstances. However, proving discrimination is hard.

THE RULE: Any claim for discrimination must show that the regulation has both a discriminatory effect and intent. If there is discriminatory effect and intent, the court will use strict, intermediate, or rational-basis scrutiny to decide if the practice is constitutional. Which test it uses depends on whether you are complaining about race, religion, gender or some other form of discrimination.

The Fourteenth Amendment to the Constitution guarantees everyone "equal protection of the law." Equal Protection means that a prison cannot treat some prisoners differently than it treats others without a reason. How good a reason the prison needs varies depending on what kind of discrimination is at issue. The courts are much more critical of laws that discriminate against people based on "suspect classifications." The most important suspect classification is race. For that reason, courts are very strict in reviewing laws that treat people of one race differently than another. Such laws are subjected to a type of review called "strict scrutiny" and are frequently struck down.

Other suspect classifications include ethnicity and religion. Suspect classifications target groups that are (1) a "discrete or insular minority," (2) have a trait they cannot change, also called an "immutable trait," (3) have been historically discriminated against, and (4) cannot protect themselves through the political process. The Supreme Court discussed each of these factors in a case called *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). In that case, the Supreme Court decided that people with developmental disabilities are not entitled to suspect classification status.

The Court has also created a category called "quasi-suspect classification" for groups who they felt need more protection than usual, but not quite as much as the most suspect classifications. Gender is a "quasi-suspect" classification.

Level of Scrutiny	Government Interest or Objective	Relation to Government Interest
Strict (racial discrimination)	Compelling	Narrowly tailored
Intermediate (gender-based)	Important	Substantially related
Rational (other)	Legitimate	Rationally related

In a case called *Romer v. Evans*, 517 U.S. 620 (1996), the Supreme Court struck down as unconstitutional a Colorado state law that prohibited regulations protecting gay people from discrimination, but the court did so without deciding that sexual orientation is a suspect classification.

1. Freedom from Racial Discrimination

Racial discrimination and segregation by prison authorities are unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. *Washington v. Lee*, 263 F. Supp. 327 (M.D. Ala. 1966). For example, prisons cannot prevent black prisoners from subscribing to magazines and newspapers aimed at a black audience. *Jackson v. Godwin*, 400 F.2d 529 (5th Cir. 1968). Nor can they segregate prisoners by race in their cells. *Sockwell v. Phelps*, 20 F.3d 187 (5th Cir. 1994). The Supreme Court stated that racial segregation in prison cannot be used as a proxy (a stand-in) for gang membership or violence without passing "strict scrutiny" – which is defined several paragraphs below and in the chart on the previous page.

The easiest type of equal protection claim to bring is a challenge to a policy that is explicitly race-based, for example, if a prison has a written policy of segregating prisoners by race. It is rare to come across written policies of that nature these days. More likely, you will be challenging a policy or practice that doesn't actually say anything about race, but has the effect of treating black prisoners different than white prisoners, for example. For this type of claim there are two essential points to prove: (1) the prison rule had the **effect** of discriminating against you and (2) discriminatory **purpose** or **intent** was at least part of the reason for the rule. *David K. v. Lane*, 839 F.2d 1265 (7th Cir. 1988).

The first part is usually easier to prove: in a challenge to an unwritten segregation policy, for example, you could show that all the prisoners on your unit are African-American.

Proving intent to discriminate is harder, because prison officials will often come up with various excuses to explain away what looks like discrimination. You will need to show that you are being treated differently *because of* your race. If you have direct proof of discriminatory intent – like the warden who decides which unit prisoners go to has made racist comments – you will include that in your complaint. However, if you don't have any direct proof of discriminatory intent, you can argue that discrimination is the only plausible reason for the treatment you are experiencing. For example, a federal court in Alabama decided that the Constitution had been violated because it could not find any non-discriminatory reason for the fact that African-Americans consistently made up a greater proportion of those detained in Alabama's segregation unit than those detained in Alabama's prisons generally. *McCray v. Bennett*, 467 F. Supp. 187 (M.D. Ala. 1978).

However, proving a case like this is not easy, and will probably require expert witnesses and statistical analysis. One great example is *Santiago v. Miles*, 774 F. Supp. 775 (W.D.N.Y. 1991). In that case, the prisoners showed through statistical data that the prison was made up of mostly African-American and Latino men, but white prisoners received better housing and job assignments and had better disciplinary hearing outcomes for similar infractions. The Court decided that discriminatory intent was the only possible explanation for what was going on in the prison. On the other hand, in *Betts v. McCaughtry*, 827 F. Supp. 1400 (W.D. Wisc. 1993) a different court held that prison officials did not violate the Constitution when they censored certain cassettes, most of which were African-American rap music, because there was not enough evidence that they intended to discriminate against African-Americans.

Even if you successfully prove discriminatory effect and intent, courts may allow racial segregation or discrimination if prison officials can show that it passes "strict scrutiny." Strict scrutiny is another two-step process where the prison officials will have to show that the segregation or discrimination is being done to advance a "compelling government interest" and the way the prison is achieving that interest is "narrowly

tailored." *Johnson v. California*, 543 U.S. 499 (2005). This means that the prison must have a very good reason for the rule *and* the rule directly fixes the problem at issue.

Johnson is an important case to read if you are considering a segregation claim. In *Johnson*, the Supreme Court considered a California policy that segregated inmates by race for the first 60 days of any transfer.

The Court decided in *Johnson* that the prison's concern about gang violence was a compelling government interest. (Courts often find "gang violence" to be a very good reason for rules.) However, the Court said that California's rule did not address the problem of gangs and violence in a way that was narrowly tailored because segregating prisoners without looking at their disciplinary history or gang connections affected all the prisoners, not just those who were in gangs or who were violent. The Court stated the prison should have made a case-by-case decision about who to segregate. The Court also said that not all gangs or violence happen because people of different races are housed together, so it was not narrowly tailored to have a rule based on race.

- **Note:** The California policy in *Johnson* is one of the rare policies described earlier that is explicitly based on race.

A vague fear of racial violence is not a sufficient justification for a broad policy of racial segregation. For example, in *Sockwell v. Phelps*, 20 F.3d 187 (5th Cir. 1994), the court did not accept the argument that there might be an increase in violence if people of different races shared two-person cells, since the rest of the prison was integrated. However, some courts have held that a brief period of racial segregation, like during a lockdown or another emergency where the safety of members of one racial group is an issue, is OK. *Fischer v. Ellegood*, 238 Fed.Appx. 428 (11th Cir. 2007) (unpublished).

Most courts have held that racial discrimination in the form of occasional verbal abuse does not violate the Constitution.

2. Freedom from Gender Discrimination

THE BASICS: Women have a right to programs that are as good as the programs in prisons for men, but this right is very hard to enforce.

THE RULE:
A gender-based prison rule must be substantially related to important governmental interests,

AND

A gender-neutral rule that treats women who are similarly situated to men differently must be rationally related to legitimate government interests.

The Equal Protection clause of the Fourteenth Amendment also prohibits discrimination based on gender. While it protects both men and women from discrimination, gender discrimination is a bigger problem for women.

In addition to the sexism toward women that exists outside prison, women prisoners often experience discrimination because they are a minority population in prison. While the population of women prisoners has grown much larger over the past few years, women still are at risk for being lumped together in one prison with other prisoners from all levels of security classification because there are fewer women's prisons. They will sometimes be sent much farther away from their homes than men because there are no women's prisons nearby. States that provide treatment and educational programs for male prisoners usually provide fewer programs for women, because it is very expensive to provide so many programs for so few women.

Faced with these inequalities, women prisoners in some states have brought successful suits against state prison officials using an Equal Protection argument. For example, in a landmark class action case in Michigan, *Glover v. Johnson*, 478 F. Supp. 1075 (E.D. Mich. 1979), female prisoners challenged the educational opportunities, vocational training, prison industry and work pass programs, wage rates, and library facilities they were provided as compared to those male prisoners were provided. Although prison officials tried to argue that it was impractical and too expensive to provide the smaller population of women the same level of services that they provided to men, the court ruled in favor of the women. The judge ordered the prison to undertake a series of reforms, and the court oversaw these reform efforts for close to twenty years, often stepping in to enforce its decision when it became

clear that the prison was not following the *Glover* court's orders.

While women in some states have effectively challenged gender discrimination under the Equal Protection clause, relatively few cases have succeeded. Like other cases involving constitutional rights of prisoners, the courts like to leave the decisions to prison officials. There are a number of things a court takes into account when deciding a gender discrimination case, and each raises its own obstacles for female prisoners trying to bring an Equal Protection action. The following section addresses these considerations and the challenges they create.

a. The "similarly situated" argument

To make an Equal Protection claim, you must first show that the male and female prisoners you wish to compare are "similarly situated" for the purposes of the claim you are bringing. "Similarly situated" means that there are no differences between male and female prisoners that could explain the different treatment they receive. While it is unconstitutional to treat prisoners who are in the same situation differently, it is acceptable to treat prisoners in different situations differently. Courts will look at several factors to decide whether male and female prisoners are "similarly situated," including number of prisoners, average sentence, security classification, and special characteristics such as violent tendencies or experiences of abuse. Unfortunately, courts very often decide on the basis of these factors that male and female prisoners are *not* similarly situated. *Keevan v. Smith*, 100 F.3d 644 (8th Cir. 1996); *Klinger v. Dept. of Corrections*, 31 F.3d 727 (8th Cir. 1994).

b. The Equal Protection test for gender discrimination

If you successfully show that male and female prisoners are "similarly situated" for the purposes of the challenge you are making, you must then show that prison officials discriminated between the groups on the basis of gender, and not for a different, legitimate reason. Courts will use a different test for this depending on whether the action you are challenging is "gender-based" or "gender-neutral." These two terms are explained below.

- **Gender-based classifications:** A rule or practice is "gender-based" if it states one thing for men, and another for women. For example, a policy that says all women will be sent to child care training and all men will be sent to vocational training is "gender-based." Judges look very carefully at gender-based rules. The government must show that the distinction between men and women is "substantially related to important governmental objectives." *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982); *Jackson v. Thornburgh*, 907 F.2d 194 (D.C. Cir. 1990). This is known as "intermediate scrutiny." Note that this is a less strict standard than "strict scrutiny" which is used for racial discrimination, described in Part 1 of this Section.

- **Gender-neutral classifications**: A "gender-neutral" classification may still have the effect of discriminating against women in practice, but it does not actually say anything about gender. One example is a prison system that has a rule that only prisons with 2000 prisoners or more get college programs, and all the women's prisons are too small to qualify. If the action challenged is "gender-neutral" then the courts use a less strict standard of review. The court asks whether the rule is "rationally related to legitimate government interests" (the *Turner* test) or whether, instead, it shows an intent to discriminate on the basis of gender. *Jackson v. Thornburgh*, 907 F.2d 194 (D.C. Cir. 1990).

There are two important considerations to keep in mind about these tests.

First, any type of government interest – whether it's "important" or "legitimate" – cannot be based on stereotypes or outdated ideas about gender. *Pitts v. Thornburgh*, 866 F.2d 1450 (D.C. Cir. 1989). For example, the court will not accept a government interest of protecting one gender because it is "inherently weaker" than the other gender. *Glover v. Johnson*, 478 F. Supp 1075 (E.D. Mich. 1979).

Second, it is not always obvious whether a prison's action is gender-based or gender-neutral, and courts disagree on how to read regulations or policies. Often, there will be two regulations at play. The first regulation assigns men and women to specific prisons on the basis of their gender. Courts have rarely held that this kind of segregation is discrimination. The second regulation assigns certain programs or facilities to prisons on the basis of such factors as size, security level, or average length of prisoner sentence. These second types of regulations do not appear to be gender-based; they seem to be based on characteristics of the prisons alone. However, they often result in different treatment of male and female prisoners.

Some courts rarely decide that any rule is gender-based. These courts state that when a statute or policy does not

explicitly distinguish between men and women in how the prison facility is run, it is gender-neutral. *Klinger v. Dept. of Corrections*, 31 F.3d 727 (8th Cir. 1994); *Jackson v. Thornburgh*, 907 F.2d 194 (D.C. Cir. 1990). Other courts, however, have read the requirement more favorably to prisoners. They see that in reality, gender-neutral regulations about programming interact with gender-based assignment of prisoners to specific prisons, which makes the regulations gender-based. ("Programming" means how a prison is run by officials.) One example of this is *Pitts v. Thornburgh*, 866 F.2d 1450 (D.C. Cir. 1989).

3. Freedom from Other Forms of Discrimination

If you believe you are being unfairly singled out for mistreatment, but it is not based on your race, ethnicity, gender, or some other suspect or quasi-suspect factor, you can still make an equal protection claim. However, that claim will be very hard to win.

To win your case, you will need to show that you are being treated differently than other prisoners and that your treatment is not rationally related to a legitimate governmental purpose. One good example of a successful case is *Doe v. Sparks*, 73 F. Supp. 227 (W.D. Pa. 1990). In that case, the court held that it was irrational for a prison to ban same-sex boyfriends and girlfriends from non-contact prison visits.

SECTION D

Your Procedural Due Process Rights Regarding Punishment, Administrative Transfers, and Segregation

THE BASICS: You can only challenge a transfer or punishment in prison if it is extremely and unusually harsh, or if it is done to get back at you for something you have the right to do.

THE RULE: If the prison subjects you to treatment or conditions that are an atypical and significant hardship in relation to the ordinary incidents of prison life, they must provide you with some level of process.

The Due Process Clause of the Fourteenth Amendment prohibits a state from depriving "any person of life, liberty or property without due process of law." There are two parts to this clause: "substantive due process" and "procedural due process." This section deals only with procedural due process.

Your right to procedural due process means that the prison must provide you with some amount of protection (like a hearing or notice) before the prison does something that harms your life, liberty, or property. Discipline, placement in segregation, transfers to different prisons, and loss of good time credit are all things that the prison can do to you that might violate procedural due process if they are done without process.

Procedural due process has two parts: first you have to show a **liberty interest** and second, you have to show that you should have gotten **more procedure** than you received.

You have a liberty interest when the prison's actions interfere with or violate your constitutionally protected rights or result in conditions of confinement that are much worse than is normal for prisoners. If you don't have a liberty interest then the prison doesn't have to provide you with any process at all.

1. Two important Supreme Court cases govern due process rights for prisoners:

- In the first case, *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court found that, when prisoners lose good time credits because of a disciplinary offense, they are entitled to: (1) written notice of the disciplinary violation; (2) the right to call witnesses at their hearing; (3) assistance in preparing for the hearing; (4) a written statement of the reasons for being found guilty; and (5) a fair and impartial decision-maker in the hearing.

- The second important Supreme Court case, *Sandin v. Conner*, 515 U.S. 472 (1995), however, sharply limits the decision of *Wolff* and sets a higher standard that you have to meet in order to show that you have a liberty interest.

  Any prisoner alleging a violation of due process should first read *Sandin*. In *Sandin*, a prisoner was placed in disciplinary segregation for 30 days and was not allowed to have witnesses at his disciplinary hearing. But the Court in *Sandin* found that, unless the punishment an inmate receives is an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life," then there is no right to the five procedures laid out in *Wolff*. "Atypical" means that you are being treated very differently than the way most prisoners are treated. "Significant hardship" means that treatment must be really awful, not just uncomfortable or annoying.

BEWARE!

You cannot bring a procedural due process challenge to a disciplinary proceeding if winning would result in the court reversing the judgment of the disciplinary proceeding. The only way to challenge the result of a disciplinary proceeding is through the appeal process.

This important but confusing concept comes from a Supreme Court case called *Edwards v. Balisok*, 520 U.S. 641 (1997). In *Edwards,* a prisoner challenged the conduct of the hearing examiner, stating that the examiner hid evidence that would have helped him and didn't question witnesses adequately. At the hearing, the prisoner was sentenced to time in solitary and loss of good time credits. The Court held that, if what the prisoner said was true, it would mean that the result of his disciplinary hearing would have to be reversed and his good time credits would have to be given back to him. This would affect the length of his confinement, and a challenge like that can only be brought if the prisoner can show that his/her disciplinary conviction has already been overturned in a state proceeding.

If you are just challenging the prison's failure to follow fair procedures, or a disciplinary decision that does not affect the length of your confinement, you are probably O.K. Read *Brown v. Plaut*, 131 F.3d 163 (D.C. Cir. 1997), for more on this issue.

If you want to argue that your rights were violated because you did not receive the procedures laid out in *Wolff*, you must first show that the punishment you received either prolonged your sentence (like by taking away good time) or was extremely harsh. Frequently, short periods of solitary confinement, "keeplock," or loss of privileges will not be considered harsh enough to create a liberty interest. For example, in *Key v. McKinney*, 176 F.3d 1083 (8th Cr. 1999), the court found that 24 hours in shackles was not severe enough to violate due process. The circuit courts have taken very different approaches to the question of whether prolonged placement in SHU is atypical and significant. The Second Circuit has found that 305 days in solitary confinement in one case, and 762 days in another, were severe enough to create a liberty interest, but 101 days was not. You can read *Giano v. Selsky*, 238 F.3d 223 (2d Cir. 2001), and *Colon v. Howard*, 215 F.3d 227 (2d Cir. 2000), to get a sense of how to make this type of claim.

The severity of the conditions matters a lot. For example, in *Palmer v. Richards*, 364 F.3d 60 (2d Cir. 2004), the same court held that 77 days under aggravated conditions could be atypical and significant. *Gillis v. Litscher*, 468 F.3d 495 (7th Cir. 2006) and *Mitchell v. Horn*, 318 F.3d 523 (3d Cir. 2003) are other good cases examining short placement in very bad conditions.

Although *Sandin* changed the law in important ways, the Supreme Court did not say they were overruling *Wolff*. This means that when you can show that there is a liberty interest at stake, even though it is much harder to prove under *Sandin*, the rights guaranteed by *Wolff* still apply. In other words, if a decision by prison officials results in conditions that are severe enough to meet the "significant and atypical" standard, or prolongs your time in prison, the prison must give you procedures like a hearing and a chance to present evidence.

Courts have found due process violations when prisoners are disciplined without the chance to get witness testimony, have a hearing, or present evidence. Courts have also found due process violations when punishment is based on vague claims of gang affiliation. Some cases in which these types of claims were successfully made are: *Ayers v. Ryan*, 152 F.3d 77 (2d Cir. 1998); *Taylor v. Rodriguez*, 238 F.3d 188 (2d Cir. 2001); and *Hatch v. District of Columbia*, 184 F.3d 846 (D.C. Cir. 1999).

2. Transfers and Segregation

If you are transferred to a different facility or to a different location within a prison, the same standard in *Sandin v. Connor* applies: you must show that the transfer resulted in conditions that were a significant or atypical departure from the ordinary incidents of prison life. Given the fact that the new prison will likely be similar to prisons everywhere, it is very hard to win on such a claim. In *Freitas v. Ault*, 109 F.3d 1335 (8th Cir. 1997), for example, the court said that transfer from a minimum-security facility to a maximum-security facility did not create a liberty interest. However, you may have a case if you are transferred to a supermaximum security facility where conditions are way harsher than most prisons. The Supreme Court considered transfer to a Supermax in *Wilkinson v. Austin*, 545 U.S. 209 (2005). The conditions were so harsh at the Supermax (almost no human contact, 24-hour lighting, no outside recreation, etc), that the Court found a liberty interest. However, even in this situation, the Court held that not all the *Wolff* protections were required: it was enough for prisoners to get notice, and opportunity to challenge their transfer, and some periodic review.

You may also have a right to procedural protections if you are transferred out of the prison system entirely. In *Vitek v. Jones*, 445 U.S. 480 (1980), the Supreme Court

found a liberty interest when a prisoner was involuntary removed from the prison to a medical hospital for mandatory mental health treatment.

If you are placed in administrative segregation, rather than disciplinary segregation, you still have some due process rights, but these rights are more limited. The Supreme Court has found that, in general, a formal or "adversarial" hearing is not necessary for putting prisoners in administrative segregation. All you get is notice and a chance to present your views informally. This was decided in *Hewitt v. Helms*, 459 U.S. 460 (1983), the most important case on administrative segregation. Some courts believe that, after *Sandin*, there is no longer an obligation on the part of prisons to follow any procedures at all before placing an inmate in administrative segregation. An example of this can be found in *Wagner v. Hanks*, 128 F.3d 1173, 1175 (7th Cir. 1997). One case that provides a useful argument against this is *Sealey v. Giltner*, 197 F.3d 578 (2d Cir. 1999). When the conditions in administrative segregation are exceptionally harsh, you are entitled to some procedural protections. *Wilkinson v. Austin*, 545 U.S. 209 (2005).

One good state case you might want to read is *Schuyler v. Roberts*, 285 Kan. 677 (2008). In *Schuyler*, the Supreme Court of Kansas considered a prisoner's due process challenge to his classification as a sex offender even though he had not been convicted on that charge, nor had he been disciplined while incarcerated for inappropriate sexual behavior. Because of the sex offender status, the prisoner lost work privileges, had to transfer to another facility, and had to register as a sex offender upon release. Additionally, he would lose other privileges if he refused to participate in the program. The court found a liberty interest.

There may be other ways of challenging transfers and administrative segregation as well. For example, a prison can't transfer you to punish you for complaining or to keep you from filing a lawsuit. Prison officials must not use transfers or segregation to restrict your access to the courts. For an example of this type of claim, read *Allah v. Seiverling*, 229 F.3d 220 (3d Cir. 2000) and Section G of this Chapter.

SECTION E
Your Right to be Free from Unreasonable Searches and Seizures

THE BASICS: Prison officials can search your cell whenever they want but there are some limits on when and how they can strip search you.

THE RULE: Strip searches must be reasonably related to a legitimate penological interest and not done in a humiliating manner.

The Fourth Amendment forbids the government from conducting "unreasonable searches and seizures." Outside of prison, this means that a police officer or F.B.I. agent cannot come into your home or search your body without your consent or a search warrant, unless it is an emergency. However, the Fourth Amendment only protects places or things in which you have a "reasonable expectation of privacy." In the outside world, this means that if you have your window shades wide open, you can't expect somebody not to look in, so a cop can too.

In *Hudson v. Palmer*, 468 U.S. 517, 530 (1984), the Supreme Court held that prisoners don't have a reasonable expectation of privacy in their cells, so prison officials can search them as a routine matter without any particular justification, and without having to produce anything like a search warrant.

This doesn't mean that *all* cell searches are OK. If a prison official searches your cell just to harass you or for some other reason that is not justified by a penological need, this may be a Fourth Amendment violation. However, to get a court to believe that the "purpose" was harassment, you will need some truly shocking facts. For example, in *Scher v. Engelke*, 943 F.2d 921, 923-24 (8th Cir. 1991) a prison guard searched a prisoner's cell 10 times in 19 days and left the cell in disarray after three of these searches.

There is more protection against strip searches. While prisoners have no expectation of privacy in their cells, they retain a "limited expectation of privacy" in their bodies. In analyzing body cavity searches, strip searches, or any invasions of bodily privacy, a court will balance the need for the search against the invasion of privacy the search involves. Strip searches are generally allowed but many courts state that the searches must be related to legitimate penological

interests and cannot be excessive or used to harass, intimidate, or punish. In *Jean-Laurent v. Wilkenson*, 540 F. Supp. 2d 501 (S.D.N.Y 2008), for example, one court stated that a second-strip search might be unconstitutional, because the inmate was under the constant supervision of guards since the first search. Another good case to read is *Lopez v. Youngblood*, 609 F. Supp. 2d 1125 (E.D. Cal. 2009), in which a court held it was unconstitutional to strip search detainees in a group. The jail tried to justify the group strip search as necessary for administrative ease. The court disagreed, stating that administrative burdens and inconvenience do not justify constitutional violations.

Prisoners seem to have had the most success when the searches were conducted by, or in front of, guards of the opposite gender. For example, in *Hayes v. Marriott*, 70 F.3d 1144, 1147-48 (10th Cir. 1995), the court held that a body cavity search of a male prisoner in front of female guards stated a claim for a Fourth Amendment violation because there was no security need. In *Cornwell v. Dahlberg*, 963 F.2d 912, 916 (6th Cir. 1992), the court recognized a male prisoner's Fourth Amendment claim based on a strip search done outdoors, in front of several female guards.

This rule is not limited to strip searches. Where a female prisoner had a documented history of sexual abuse but was forced by male guards to endure pat-down searches that sometimes included inappropriate touching and unwarranted sexual advances, a court found that the circumstances could violate the Fourth Amendment's prohibition against unreasonable searches and its more general guarantee of a right to some measure of bodily privacy. *Colman v. Vasquez*, 142 F. Supp. 2d 226 (D. Conn. 2001). In *Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993), the court recognized a claim by male inmates who were observed by female guards while they showered and went to the bathroom. In *Kent v. Johnson*, 821 F.2d 1220, 1226-27 (6th Cir. 1987), the court refused to dismiss an inmate's complaint that stated female prison guards routinely saw male prisoners naked, showering, and using the toilet.

Even when the search is not done by or in front of a person of the opposite gender, however, you may be able to show a Fourth Amendment violation if there was no reasonable justification for the invasive search.

Unfortunately, many courts have held that strip searches after contact visits are constitutional. Additionally, courts have held strip searches that are accompanied by officer misconduct (name calling or some inappropriate touching) usually do not violate the prisoner's *constitutional* rights if there is no physical injury. This may, however, be actionable under state tort law and should always be reported and investigated. We discuss this more in Section F, Part 2 of this chapter.

The law is slightly better for pretrial detainees, so if you haven't yet been convicted, read Section J of this Chapter, on the rights of pretrial detainees.

SECTION F
Your Right to be Free from Cruel and Unusual Punishment

The Eighth Amendment forbids "cruel and unusual punishment" and is probably the most important amendment for prisoners. It has been interpreted to prohibit excessive force and guard brutality, as well as unsanitary, dangerous or overly restrictive conditions. It is also the source for your right to medical care in prison.

1. Protection from Physical Brutality

THE BASICS: Guards do NOT have the right to beat you or harm you unless their action is considered "reasonable" given the situation.

THE RULE: A use of force is excessive and violates the Eighth Amendment when it is not applied in an effort to maintain or restore discipline but is used to maliciously and sadistically cause harm. Where a prison official is responsible for unnecessary and wanton infliction of pain, the Eighth Amendment has been violated.

"Excessive force" by prison guards constitutes cruel and unusual punishment. In a very important Supreme Court case called *Hudson v. McMillian*, 503 U.S. 1 (1992), the Court found a violation of the Eighth Amendment when prison officials punched and kicked a prisoner, leaving him with minor bruises, swelling of his face and mouth, and loose teeth. The Court held that a guard's use of force violates the Eighth Amendment when it is not applied "in a good faith effort to maintain or restore discipline" but instead is used to "maliciously and sadistically cause harm."

"Excessive force" is any physical contact by a guard that is meant to cause harm, rather than keep order**.**

To decide what force is excessive, judges consider:

1. The need for force,
2. Whether the amount of force used was reasonable given the need,
3. How serious the need for force appeared to the guards,
4. Whether the guard made efforts to use as little force as necessary, and
5. How badly you were hurt.

To win on an excessive force claim, you will have to show that force was used against you, but you do not have to show a serious injury or harm. It is usually enough to show some actual injury, even if it is relatively minor. However, if the injury is too minor, the court may not think the force was excessive. For example, one court found that there was no violation of the Eighth Amendment when a prisoner's ear was bruised during a search. *Siglar v. Hightower*, 112 F.3d 191 (5th Cir. 1997).

It is also very important that you show the "state of mind" of prison officials in excessive force cases. Courts have found a violation of the Eighth Amendment where prison officials were responsible for "the unnecessary and wanton infliction of pain." "Wanton" means hateful, cruel, or uncalled-for. You can meet this requirement by showing that the force used was not a necessary part of prison discipline. For example, one court found an Eighth Amendment violation when an officer repeatedly hit a prisoner even though the prisoner had immediately obeyed an order to lie face down on the floor, and was already being restrained by four other officers. *Estate of Davis by Ostenfeld v. Delo*, 115 F.3d 1388 (8th Cir. 1997). In another successful case, the prisoner was handcuffed and hit several times in the head and shoulders while in a kneeling position. *Brown v. Lippard*, 472 F.2d 384 (5th Cir. 2006). On the other hand, the Ninth Circuit held that there was no Eighth Amendment violation when a prisoner was shot in the neck during a major prison disturbance, because the court found that the officer was trying to restore order. *Jeffers v. Gomez*, 267 F.3d 895 (9th Cir. 2001).

NOTE: As with many of the other types of claims described in this Handbook, please remember that a constitutional claim in federal court is not your only option. In a guard brutality case, it may be simpler to bring a "tort" case in State court.

It is important to know that you can also sue prison officials under the Eighth Amendment if they fail to protect you from being attacked by another prisoner. This was established in an important Supreme Court case called *Farmer v. Brennan*, 511 U.S. 825 (1994). To bring a failure-to-protect claim, you need to show "deliberate indifference." This requires proof that:

1. Guards knew that there was a substantial risk you would be seriously harmed; and
2. They failed to respond reasonably to protect you.

You can bring this kind of claim before you are injured, to ask to be moved or placed in protective custody.

To argue a guard unreasonably disregarded an excessive risk to your safety, it can be helpful to mention if the guard's action violated prison policy. Some courts, though, have said that merely deviating from prison policy is not enough to prove the officer disregarded a substantial risk of harm. In *Longoria v. Texas*, 473 F. 3d 586 (5th Cir. 2006), the court rejected a claim against an officer who violated a policy against removing more than one prisoner at a time.

2. Rape, Sexual Assault, and Sexual Harassment

Everyone has the right to be free from rape and sexual assault in prison. The Prison Rape Elimination Act (PREA), passed by Congress in 2003, applies to all detention facilities, including federal and state prisons, jails, police lock-ups, private facilities, and immigration detention centers, and specifically recognizes that sexual assault in detention can constitute a violation of the Eighth Amendment. 42 U.S.C. § 15601(13). PREA requires that facilities adopt a zero-tolerance approach to this form of abuse. 42 U.S.C. § 15602(1). Even before PREA was passed, courts agreed that rape or sexual assault of prisoners by correctional officers violates the Eighth Amendment. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000). *Schwenk* involved the rape of a male prisoner, but the court held that the gender of the guard and victim in the incident did not make a legal difference.

While you usually need to meet a two-part test to prove an Eighth Amendment violation, the test is less difficult in cases of rape and serious sexual assault. These cases definitely meet the first prong of the test—there is objectively serious harm or risk of harm. And because sexual assault is unjustifiable conduct without any legitimate penological purpose, you will have no problem meeting the intent standard. To sue prison supervisors for allowing you to be raped or assaulted by a guard (or another prisoner) you will have to meet the deliberate indifference standard explained above.

You can bring a claim for sexual assault even if it does not result in physical injury. One good case to read on this issue is *Schwenk v. Hartford*, 204 F.3d 1187, 1196-97 (9th Cir. 2000).

Also, rape and sexual assault need not be committed by a prison guard in order to violate the Eighth Amendment. Courts have held that people who are similar to prison guards, such as supervisors in prison work programs, also violate the Constitution by assaulting prisoners. *Smith v. Cochran*, 339 F.3d 1205 (10th Cir. 2003).

States also may be liable for sexual abuse if facilities have a policy and practice of permitting male staff to view and supervise incarcerated women, especially in isolated or remote settings, without female staff present. *Cash v. Erie County*, 2007 U.S. Dist. LEXIS 50129 (W.D.N.Y. 2007).

Almost all state legislatures have now passed laws criminalizing rape or sexual assault of an inmate by a correctional officer. For an overview of these laws, state-by-state, see Amnesty International, *Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women, available at* http://www.amnestyusa.org/violence-against-women/abuse-of-women-in-custody/table-1-overview-of-state-laws-on-custodial-sexual-misconduct/page.do?id=1108309. The Washington College of Law's Project on Addressing Prison Rape has put together a survey of all state criminal laws prohibiting sexual abuse of individuals in custody available at http://www.wcl.american.edu/nic/documents/OregonSSMLaw.pdf?rd=1.

a. Outrageous Conduct vs. Unconstitutional Conduct

Unfortunately, just as courts do not always recognize the seriousness of sexual harassment outside of prison, they do not acknowledge the harm that verbal sexual abuse or less invasive sexual touching can cause in prison. Courts often call the behavior of prison guards "outrageous" or "reprehensible" but do not find it unconstitutional. For, example, one court found that it was not cruel and unusual punishment when a corrections official repeatedly made sexual comments about a women prisoner's body to her, including one instance when he entered her cell while she was sleeping and commented on her breasts. *Adkins v. Rodriguez*, 59 F.3d 1034 (10th Cir. 1995). Other cases that failed to find Eighth Amendment violations, despite noting the seriously inappropriate behavior of prison officials, include *Morales v. Mackalm*, 278 F.3d 126 (2d Cir. 2002), and *Boddie v. Schneider*, 105 F.3d 857 (2d Cir. 1997).

It is worth noting that in many cases rejecting claims of sexual harassment in prison, the alleged harassment has been of male inmates presenting no history of sexual abuse, often by female officers. For example, one court refused to find an Eighth Amendment violation where four maintenance workers approached a male prisoner and grabbed his buttocks briefly. *Berryhill v. Schriro*, 137 F.3d 1073 (8th Cir. 1998). The court noted that although the victim claimed to be humiliated and paranoid after the incident, he had not sought medical care for any psychological or emotional trouble.

Not all courts have been so insensitive to the effects of sexual harassment. In *Women Prisoners of District of Columbia Department of Corrections v. District of Columbia*, 93 F.3d 910 (D.C. Cir. 1996), the court upheld a decision ordering a prison to adopt a new sexual harassment policy that prohibited conduct including "(1) all unwelcome sexual activity directed by any DCDC employee at a prisoner including acts of sexual intercourse, oral sex, or sexual touching and any attempt to commit these acts; and (2) all unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature directed by any DCDC employee at a prisoner." *Id.* at 933.

More recently, in *Daskalea v. District of Columbia*, 227 F.3d 433 (D.C. Cir. 2000), a Court of Appeals upheld a prisoner's claims of sexual harassment and assault based on a series of incidents including a forced striptease in front of all the prisoners and officers at her facility. The court found deliberate indifference based on the plaintiff's repeated filing of grievance claims and letters to officials seeking help, as well as the widespread and ongoing pattern of harassment and sexual assault at the facility. The court similarly rejected the District's attempt to argue that it was not deliberately indifferent because it had a policy in place prohibiting such behavior (the policy required by *Women Prisoners*, discussed in the previous paragraph), based on its finding that no prisoner had ever received a copy of the policy, only a few employees remembered receiving it, and it had never been posted anywhere in the facility.

b. Psychological Harm

As discussed in Chapter Four, Section C, the Prison Litigation Reform Act makes it harder to get compensatory damages for emotional, rather than physical, injury.

Few courts have addressed whether rape or sexual assault is a physical injury for the purposes of the PLRA, probably because they assume that it is, and at least one court has said so explicitly. *Kemner v. Hemphill*, 199 F. Supp. 2d 1264 (N.D. Fl. 2002). Courts disagree as to whether verbal harassment or sexual touching short of intercourse causes "injury" to the extent that you could bring a money damages claim for mental or emotional injury in conjunction with allegations of this behavior. To understand the impact of this issue, make sure you read Chapter Four, Section C carefully, and research the law in your district.

c. Consensual Sex between Prisoners and Guards

Courts disagree about whether a correctional officer can be held liable for having sex with a prisoner when the prisoner consents to the act. In *Carrigan v. Davis*, 70 F. Supp. 2d 448 (D.Del. 1999), a federal court in Delaware held that a guard had violated the Eighth Amendment by engaging in vaginal intercourse with a prisoner under his supervision, whether or not she had consented. The court relied on Delaware state law that made it a crime for a correctional officer to have sex with a prisoner, whether or not it was consensual. In *Freitas v. Ault*, 109 F.3d 1335 (8th Cir. 1997), however, the Eighth Circuit found that consensual sex does not constitute cruel and unusual punishment because it does not cause any pain, according to that court's definition.

Today, the federal government and most states have statutes making it a crime for a correctional employee to have intercourse with an inmate, regardless of whether or not he or she consents. A federal law, 18 U.S.C. § 2243, criminalizes sexual intercourse or other physical conduct between an officer and prisoner in any federal prison. You can check out the resources listed earlier in this section for State laws on sexual contact between guards and prisoners.

d. Challenging Prison Supervisors and Prison Policies

If you are a victim of sexual abuse in prison, you may wish to sue not only the person who abused you but also that person's supervisors. Or, you may want to challenge some of your prison's policies. Special issues about suing supervisors are discussed in Chapter Four, Section D. Women prisoners in one major case successfully challenged the policies regarding sexual harassment in Washington, D.C., prisons. The court in that case, *Women Prisoners of District of Columbia Department of Corrections v. District of Columbia*, 93 F.3d 910 (D.C. Cir. 1996), ordered the prison to implement a new inmate grievance procedure so that prisoners could report sexual harassment confidentially and get a prompt response, and to start a confidential hotline for women to report instances of abuse, and to create a mandatory training program on sexual harassment for all corrections officers in D.C. prisons.

In another case, however, women prisoners attempted but failed to challenge a County's policies regarding sexual harassment after they were sexually abused by a prison employee. The court held that a municipality can only be accountable for an Eighth Amendment violation when it shows deliberate indifference, and explained that deliberate indifference only exists under these circumstances where a municipality has actual notice that its actions or failures to act will result in a constitutional violation, or when it is highly predictable that a constitutional violation will occur. Since the County in this case did provide training programs addressing sexual harassment and inmate-officer relations to the officer convicted of abuse, the court did not find deliberate indifference. *Barney v. Pulsipher*, 143 F.3d 1299 (10th Cir. 1998).

Finally, if you have been sexually assaulted in detention, you may want to obtain a copy of Just Detention International's booklet, *Hope for Healing: Information for Survivors of Sexual Assault in Detention* (2009), available at http://www.justdetention.org/pdf/HopeforHealingweb.pdf, or by writing to Just Detention International, 3325 Wilshire Boulevard, Suite 340, Los Angeles, CA 90010.

3. Your Right to Decent Conditions in Prison

The Basics: You have a right to humane conditions in prison. Conditions that are harsh but not harmful do not violate the Constitution.

The Rule: Prison officials violate the Eighth Amendment when they act with deliberate indifference to a prison condition that exposes a prisoner to an unreasonable risk of serious harm or deprives a prisoner of a basic human need.

The Eighth Amendment's prohibition of cruel and unusual punishment also protects your right to safe and humane conditions in prison. You can challenge prison conditions that are unsafe or that deprive you of a "basic human need," such as shelter, food, exercise, clothing, sanitation, and hygiene. However, the

standard for unconstitutional conditions is high—courts allow conditions that are "restrictive and even harsh." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981). You must have evidence of conditions that are serious and extreme.

To challenge prison conditions using the Eighth Amendment, you must meet *both* "objective" and "subjective" requirements. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Wilson v. Seiter*, 501 U.S. 294 (1991). To meet the objective Eighth Amendment standard, you need to show that you were deprived of a basic human need or exposed to serious harm. Under the subjective part of the test, you must show that the prison official you are suing knew you were being deprived or harmed and did not respond reasonably. You must also show how you were injured and prove that the denial of a basic need caused your injury.

Under the objective part of the test, the court will look at whether the condition or conditions you are challenging could seriously affect your health or safety. In considering a condition, a court will think about how bad it is and how long it has lasted. *Barney v. Pulsipher*, 143 F.3d 1299, 1311 (10th Cir. 1998). You must show that you were injured either physically or psychologically, though courts do not agree on how severe the injury must be. You may challenge conditions even without an injury if you can show that the condition puts you at serious risk for an injury in the future, like second-hand smoke. *Helling v. McKinney*, 509 U.S. 25 (1993).

Under the subjective part of the test, you must show that the official you are suing acted with "deliberate indifference." *Wilson v. Seiter*, 501 U.S. 294 (1991). This is an important legal term. It means that the official knew of the condition and did not respond to it in a reasonable manner. *Farmer v. Brennan*, 511 U.S. 825 (1994). One way to show this is by proving that the condition was so obvious that the official must either know about it or be purposefully ignoring it. Courts will also consider any complaints or grievance reports that you or other prisoners have filed, *Vance v. Peters*, 97 F.3d 987 (7th Cir. 1996), as well as prison records that refer to the problem. Prison officials cannot ignore a problem once it is brought to their attention.

Prison officials may try to argue that the prison does not have enough money to fix problems, but courts have generally *not* accepted this defense (although the Supreme Court has not clearly addressed this defense yet). *Carty v. Turnbull*, 144 F. Supp. 2d 395 (V. I. 2001). It is important to note that while there is a subjective component to Eighth Amendment claims, you do not need to show why prison officials acted as they did.

Remember that courts disagree on whether the PLRA bars claims for damages that rely on a showing of emotional or mental injury without a showing of physical injury. This provision should not affect a lawsuit that tries to change conditions (injunctive relief). However it may be difficult to get money damages for exposure to unsafe or overly restrictive conditions unless they have caused you a physical injury. The courts are not in agreement on this issue, so you may want to just include these claims anyway, and hope for the best.

Below are some of the most common Eighth Amendment challenges to prison conditions. Remember, to prevail on a claim for any of these, you must show both subjective and objective evidence.

- **Food:** Prisons are required to serve food that is nutritious and prepared under clean conditions. *Robles v. Coughlin*, 725 F.2d 12 (2d Cir. 1983). Meals cannot be denied as retaliation, since denying meals (usually several meals; one denial will most likely not succeed) can be a deprivation of a life necessity, violating the Eight Amendment. *Foster v. Runnels*, 554 F.3d 807 (9th Cir 2009). However, as long as the prison diet meets nutritional standards, prisons can serve pretty much whatever they want. Prisons must provide a special diet for prisoners whose health requires it.

- **Exercise:** Prisons must provide prisoners with opportunities for exercise outside of their cells. *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir. 1996); *Delaney v. DeTella*, 256 F.3d 679 (7th Cir. 2001). Courts have not agreed upon the minimum amount of time for exercise required, and it may be different depending on whether you are in the general population or segregation. One court considered three hours per week adequate, *Hosna v. Groose*, 80 F.3d 298, 306 (8th Cir. 1996), while another approved of just one hour per week for a maximum security prisoner, *Bailey v. Shillinger*, 828 F.2d 651 (10th Cir. 1987). Some circuits have determined that prisoners cannot be deprived of *outdoor* exercise for long periods of time. *Hearns v. Terhune*, 413 F.3d 1036 (9th Cir. 2005). Prisons must provide adequate space and equipment for exercise, but again, there is no clear standard for this. It is generally acceptable to limit exercise opportunities for a short time or during emergencies.

- **Air Quality and Temperature:** Prisoners have successfully challenged air quality when it posed a serious danger to their health, particularly in cases of secondhand smoke, *Talal v. White*, 403 F.3d 423 (6th Cir. 2005); *Alvarado v. Litscher*, 267 F.3d 648 (7th Cir. 2001); and asbestos, *LaBounty v. Coughlin*, 137 F.3d 68 (2d Cir. 1998). While you are not entitled to a specific air temperature, you should not be subjected to extreme heat or cold, and should be given bedding and clothing appropriate for the temperature. *Bibbs v. Early*, 541 F.3d 267 (5th Cir. 2008); *Gaston v. Coughlin*, 249 F.3d 156 (2d Cir. 2001).

- **Sanitation and Personal Hygiene:** Prisoners are entitled to sanitary toilet facilities, *DeSpain v. Uphoff*, 264 F.3d 965 (10th Cir. 2001), proper trash procedures, no roach or rat infestations, and basic supplies such as toothbrushes, toothpaste, soap, sanitary napkins, razors, and cleaning products. *See DeSpain* (above) and *Gillis v. Litscher*, 468 F.3d 488 (7th Cir. 2006).

- **Overcrowding:** Although overcrowding is one of the most common problems in U.S. prisons, it is not considered unconstitutional on its own. *Rhodes v. Chapman*, 452 U.S. 337 (1981); *C.H. v. Sullivan*, 920 F.2d 483 (8th Cir. 1990). If you wish to challenge overcrowding, you must show that it has caused a serious deprivation of basic human needs such as food, safety, or sanitation. *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985); *Toussaint v. Yockey*, 722 F.2d 1490 (9th Cir. 1984).

- **Rehabilitative Programs:** In general, prisons are not required to provide counseling services like drug or alcohol rehabilitation to prisoners unless they are juveniles, mentally ill, or received rehabilitative services as part of their sentence. *Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia*, 93 F.3d 910, 927 (D.C. Cir. 1996).

- **"Supermax" Isolation:** Some courts have recognized that constant isolation, illumination, and other sensory deprivation for prisoners with serious mental health issues violates the Eighth Amendment. *Jones El v. Burge*, 164 F. Supp. 2d 1096 (W.D. Wisc. 2001). In cases where this argument failed, the prisoners were not able to prove the subjective element -- that the prison knew the conditions were making their mental illness worse. *Scarver v. Litscher*, 434 F.3d 972 (7th Cir. 2006).

- **Other Conditions:** Prisoners have also successfully challenged problems with lighting, *Hoptowit v. Spellman*, 753 F.2d 779, 783 (9th Cir. 1985), fire safety, *Id.* at 784; furnishings, *Brown v. Bargery*, 207 F.3d 863 (6th Cir. 2000); accommodation of physical disabilities, *Bradley v. Puckett*, 157 F.3d 1022 (5th Cir. 1998); unsafe work requirements, *Fruit v. Norris*, 905 F.2d 1147 (8th Cir. 1990), as well as other inadequate or inhumane conditions.

Instead of challenging a particular condition, you may also bring an Eighth Amendment suit on a "totality of the conditions" theory. You can do this on your own or as part of a class action lawsuit. Using this theory, you can argue that even though certain conditions might not be unconstitutional on their own, they add up to create an overall effect that is unconstitutional. *Palmer v. Johnson*, 193 F.3d 346 (5th Cir. 1999). The Supreme Court has limited this argument to cases where multiple conditions add up to create a single, identifiable harm, *Wilson v. Seiter*, 501 U.S. 294, 305 (1991), but the courts disagree on exactly what that means.

4. Your Right to Medical Care

The Basics: The prison must provide you with medical care if you need it, but the Eighth Amendment does not protect you from medical malpractice

THE RULE: Prison officials may not act with deliberate indifference to a serious medical need.

The Eighth Amendment protects your right to medical care. The Constitution guarantees prisoners this right, even though it does not guarantee medical care to people outside of prison. The Supreme Court explained that this is because "[a]n inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). Unfortunately, the Eighth Amendment does not guarantee you the same level of medical care you might choose if you were not in prison.

If you feel that your right to adequate medical care has been violated, the Constitution is not the only source of your legal rights. You can bring claims under your state constitution or state statutes relating to medical care or the treatment of prisoners. You can also bring a medical malpractice suit in state court. If you are a federal prisoner, you might also bring a claim in federal

court under the Federal Tort Claims Act. However, this section will focus exclusively on your right to medical care under the U.S. Constitution.

To succeed in an Eighth Amendment challenge to the medical care in your prison, you must show three things. These are:

(a) You had a serious medical need;

(b) Prison officials showed "deliberate indifference" to your serious medical need; and

(c) This deliberate indifference caused your injury.

Estelle v. Gamble, 429 U.S. 97 (1976). These requirements are described in more detail below.

a. Serious Medical Need

Under the Eighth Amendment, you are entitled to medical care for "serious medical needs." Courts do not agree on what is or isn't a serious medical need; you should research the standard for a serious medical need in your circuit before filing a suit.

One court described a serious medical need as "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Hill v. Dekalb Reg'l Youth Det. Ctr.*, 40 F.3d 1176, 1187 (11th Cir. 1994). Courts usually agree that a prisoner can show a serious medical need if the "failure to treat a prisoner's condition could result in further significant injury or the 'unnecessary and wanton infliction of pain.'" *Estelle*, 429 U.S. at 104; *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). In other words, if a doctor says you need treatment, or your need is obvious, than it is probably a "serious medical need."

Courts generally agree that the existence of a serious medical need depends on the facts surrounding each individual. *Smith v. Carpenter*, 316 F.3d 178 (2d Cir. 2003). A condition may not be a serious medical need in one situation but could be a serious medical need in another. Chronic conditions like diabetes, HIV, AIDS, hepatitis, epilepsy and hypertension are serious medical needs, for which you deserve medical attention and care.

In considering whether you have a serious medical need, the court will look at several factors, including:

(1) Whether a reasonable doctor or patient would consider the need worthy of comment or treatment;
(2) Whether the condition significantly affects daily activities; and
(3) Whether you have chronic and serious pain.

For more on these factors, a good case to read is *Brock v. Wright*, 315 F.3d 158 (2d Cir. 2003).

Mental health concerns can qualify as serious medical needs. For example, several courts have held that a risk of suicide is a serious medical need for the purposes of the Eighth Amendment. *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254 (7th Cir. 1996); *Gregoire v. Class*, 236 F.3d 413 (8th Cir. 2000).

It is important that you keep detailed records of your condition and inform prison medical staff of exactly how you are suffering.

b. Deliberate Indifference

The standard for "deliberate indifference" in medical care cases is the same two-part standard (objective and subjective) used in cases challenging conditions of confinement in prison, explained in Part 2 of this section. To prove deliberate indifference, you must show that (1) prison officials knew about your serious medical need and (2) the prison officials failed to respond reasonably to it. *Estelle*, 429 U.S. at 104; *Gutierrez v. Peters*, 111 F.3d 1364, 1369 (7th Cir. 1997). This means that you cannot bring an Eighth Amendment challenge to medical care just because it was negligent (like if a doctor tries to help you but accidentally makes you worse) or because you disagree with the type of treatment a doctor gave you. You can bring those sorts of claims through other means, such as state medical malpractice laws.

To increase your chances of receiving proper care and succeeding in a constitutional challenge to your medical care, you should keep careful records of your condition and your efforts to notify prison officials. You should take advantage of sick call procedures at your prison and report your condition even if you do not think officials will help you. Although courts will not find deliberate indifference just because a prison "should have known" that you had a serious medical need, courts will assume that prison officials knew about your condition if it was very obvious. *Farmer v. Brennan*, 511 U.S. 825, 842 (1995).

Courts most often find deliberate indifference when:

- A prison doctor fails to respond appropriately or does not respond at all to your serious medical needs. *Scott v. Ambani*, 577 F.3d 642 (6th Cir 2009); *Spruill v. Gillis*, 372 F.3d 218 (3d Cir. 2004); *Meloy v. Bachmeier*, 302 F.3d 845, 849 (8th Cir. 2002).
- Prison guards or other non-medical officials intentionally deny or delay your access to treatment. *Brown v. District of Columbia*, 514 F.3d 1279 (D.C. Cir. 2008)
- When these same non-medical officials interfere with the treatment that your doctor has ordered. *Estelle*, 429 U.S. at 104-05; *Lopez v. Smith*, 203 F.3d 1122 (9th Cir 2000).

Prison officials can be held liable even for following the advice of prison medical officials if it is obvious, even to a layperson, that the person is in need of hospitalization or other critical medical care. *McRaven v. Sanders*, 577 F.3d 974 (8th Cir. 2009). Otherwise, prison officials may rely on what a prison doctor tells them. *Johnson v. Doughty*, 433 F.3d 1001 (7th Cir. 2006).

Unfortunately, courts do not usually require prison medical staff to give you the best possible care. For example, one court did not find a violation when prison medical staff followed the doctor's orders about what to do with a prisoner who had been beaten. Even though the prisoner complained several times and the prisoner's condition was more serious than the doctor had recognized, there was no violation of the Eighth Amendment. *Perkins v. Lawson*, 312 F.3d 872 (7th Cir. 2002). Another court found that there was not deliberate indifference in a case where a patient received thirteen medical examinations in one year, even though he claimed that a muscular condition in his back did not improve. *Jones v. Norris*, 310 F.3d 610 (8th Cir. 2002).

c. Causation

Finally, you must show that you suffered some harm or injury as a result of the prison official's deliberate indifference. If officials failed to respond to your complaints about serious pain but the pain went away on its own, you will not succeed in a constitutional challenge. For example, one court did not find a constitutional violation when a prison did not give a prisoner with HIV his medication on two occasions, because even though HIV is a very serious condition, the missed medication did not cause him any harm. *Smith v. Carpenter*, 316 F.3d 178 (2d Cir. 2003).

In some situations, you may wish to challenge your prison's medical care system as a whole, and not just the care or lack of care that you received in response to a particular medical need. These systemic challenges to prison medical care systems are also governed by the deliberate indifference standard. Successful cases have challenged the medical screening procedures for new prisoners, the screening policies or staffing for prisoners seeking care, and the disease control policies of prisons. *Hutto v. Finney*, 437 U.S. 678 (1978).

Finally, the Constitution protects your right to have your sensitive medical information kept private. Prison officials are only allowed to share this information about you if it is reasonably related to a legitimate penological objective. Gossip is not a legitimate penological objective. *Powell v. Schriver*, 175 F.3d 107, 113 (2d Cir. 1999). Under this standard, courts have said prison staff may not disclose a prisoner's HIV status or psychiatric history without need.

SECTION G
Your Right to Use the Courts

The Basics: Prisoners have a fundamental right to access and use the court system.

Just like people on the outside, prisoners have a fundamental constitutional right to use the court system. This right is based on the First, Fifth and Fourteenth Amendments to the Constitution. Under the First Amendment, you have the right to "petition the government for a redress of grievances," and under the Fifth and Fourteenth Amendments, you have a right to "due process of law." Put together, these provisions mean that you must have the opportunity to go to court if you think your rights have been violated. This right is referred to as the "right of access to the courts." Unfortunately, doing legal work in prison can be dangerous, as well as difficult, so it is important to **KNOW YOUR RIGHTS**!

A terrible but common consequence of prisoner activism is harassment by prison officials. Officials have been known to block the preparation and filing of lawsuits, refuse to mail legal papers, take away legal research materials, and deny access to law books, all in an attempt to stop the public and the courts from learning about prisoner issues and complaints. Officials in these situations are worried about any actions that threaten to change conditions within the prison walls or limit their power. In particular, officials may seek to punish those who have gained legal skills and try to

help their fellow prisoners with legal matters. Prisoners with legal skills can be particularly threatening to prison management who would like to limit the education and political training of prisoners. Some jailhouse lawyers report that officials have taken away their possessions, put them in solitary confinement on false charges, denied them parole, or transferred them to other facilities where they were no longer able to communicate with the prisoners they had been helping.

With this in mind, it is very important for those of you who are interested in both legal and political activism to keep in contact with people in the outside world. One way to do this is by making contact with people and organizations in the outside community who do prisoners' rights or other civil rights work. You can also try to find and contact reporters who may be sensitive to, and interested in, prison issues. These can include print newspapers and newsletters, broadcast television and radio shows, and online sites. It is always possible that organizing from the outside aimed at the correct pressure points within prison management can have a dramatic effect on conditions for you on the inside.

Certain court decisions that have established standards for prisoner legal rights can be powerful weapons in your activism efforts. These decisions can act as strong evidence to persuade others that your complaints are legitimate and reasonable, and most of all, can win in a court of law. It is sometimes possible to use favorable court rulings to support your position in non-legal challenges, such as negotiations with prison officials or in administrative requests for protective orders, as well as providing a basis for a lawsuit when other methods may not achieve your desired goals.

The Supreme Court established that prisoners have a fundamental right to access the courts in a series of important cases, including *Ex parte Hull*, 312 U.S. 546 (1941), *Johnson v. Avery*, 383 U.S. 483 (1969), and *Bounds v. Smith*, 430 U.S. 817 (1977). This right allows you to file a Section 1983 or Bivens claim, habeas petitions, or to work on your criminal case. The right is so fundamental that it requires a prison to fund a way for you to have meaningful access to the court. Prisons can do this in different ways. They can give you access to a decent law library **OR** they can hire people to help you with your cases.

However, the right of access to the courts has one very serious limitation, that comes from a Supreme Court case called *Lewis v. Casey*, 518 U.S. 343 (1996). This case states that a prisoner cannot claim he was denied his right of access to the courts unless he shows an "actual injury." To show actual injury, you have to prove that prison officials or prison policy stopped you from being able to assert a "nonfrivolous claim." In other words, even if your prison isn't allowing you to use the law library and isn't giving you legal help, you still can't necessarily win a lawsuit about it. To win, courts usually require you to show that you had a legitimate claim or case that you lost, or were unable to bring, due to some action by prison officials, or due to the inadequacy of your access to legal assistance.

You can show actual injury in a lot of different ways. In *Myers v. Hundley*, 101 F.3d 542 (8th Cir. 1996), for example, the court held that a prison policy requiring prisoners to chose between purchasing hygiene supplies and stamps to file legal documents might violate the right to access the courts if it caused a prisoner to miss a filing deadline. And in *Benjamin v. Kerik*, 102 F. Supp. 2d 157 (S.D.N.Y. 2000), the court found actual injury when a prisoner could not locate cases cited by defendants in the prison law library, and thus could not fully respond to his adversary's motion.

The unfortunate problem of *Lewis v. Casey* is that some courts will only recognize "actual injury" if you have lost your suit or missed a filing deadline because of inadequate access. Other courts, however, allow access to the court claims based on "impairment" of a legal claim, even if the case is not lost. For example, in *Cody v. Weber*, 256 F.3d 764 (8th Cir. 2001), the court found "actual injury" based on the advantage defendants gained by reading a plaintiff's confidential legal material.

The most common areas of litigation around court access include your right to:

1. File legal papers, and to seek and meet with lawyers and legal workers;
2. Get reasonable access to law books;
3. Obtain legal help from other prisoners or help other prisoners; and
4. Be free from retaliation based on legal activity.

1. The Right to File Papers and Meet with Lawyers and Legal Workers

Your right of access to the courts includes the right to try to get an attorney and then to meet with him or her.

For pretrial detainees, the Sixth Amendment right to counsel protects your right to see your attorney, and the *Lewis v. Casey* actual injury requirement does not apply.

Prisoners without pending criminal cases have a due

process right to meet with a lawyer, but that right is limited. In *Procunier v. Martinez*, 416 U.S. 396 (1974), the Supreme Court explained that you have a right to meet with your attorney and with law students or legal workers, such as paralegals, who work for your attorney. However, this right is subject to the actual injury requirement.

> ***Lewis v. Casey***
> It is important to keep the *Lewis v. Casey* "actual injury" requirement in mind as you read the rest of this chapter. It applies to almost all of the following rights related to access to the courts, and it means that many cases on access to courts from before 1996 are of somewhat limited usefulness. Those cases can still help you understand the content of the right of access to the court, but unless denial of the right has led to injury under *Lewis v. Casey*, you will not be able to win.

You should be aware that prisons can impose reasonable restrictions on timing, length, and conditions of attorney visits. For example, the right to meet with legal workers and lawyers does not necessarily mean that you have a right to meet them in a contact visit. In *Shepherd v. Malan*, 13 Fed.Appx. 584 (9th Cir. 2001), the court denied an access to courts claim arising from the exclusion of an attorney from a contact visit, because the prisoner did not show actual injury.

Other important ways to communicate with a lawyer is through legal calls and legal mail. Your right to confidential conversation and communication with your lawyer is explained in Section A of this chapter.

2. Access to a Law Library

If your prison decides to have a law library to fulfill the requirements under *Bounds*, you can then ask the question: Is the law library adequate? A law library should have the books that prisoners are likely to need. The lower courts have established some guidelines as to what books should be in the library. Remember, under *Lewis v. Casey*, you can't sue over an inadequate law library unless it has hurt your non-frivolous lawsuit or habeas petition.

Books that Should be Available in Law Libraries:

- Relevant state and federal statutes
- State and federal law reporters from the past few decades
- Shepards citations
- Basic treatises on habeas corpus, prisoners' civil rights, and criminal law

Federal courts have also required that prison libraries provide tables and chairs, be of adequate size, and be open for inmates to use for a reasonable amount of time. This does not mean that inmates get immediate access or unlimited research time. Limitations that are too restrictive may constitute a denial of your right of access to the courts, but only if show that these problems caused actual injury.

If the denial of access to the law library is somehow connected to another violation of your constitutional rights, you might not have to show that the denial harmed your non-frivolous lawsuit. For example, in *Salahuddin v. Goord*, 467 F.3d 263 (2d Cir 2006), a prisoner was not allowed to go to religious services on the days he went to the law library. The case was primarily about free exercise of religion, so the plaintiff did not have to met the actual injury requirement. However, the court still considered the case to be, in part, about access to the library. Similarly, in *Kaufman v. Schneiter*, 474 F. Supp. 2d 1014 (W.D. Wisc. 2007), the court found an Eighth Amendment violation when a prisoner was forced to chose between using limited out-of-cell time for exercise or for access to the law library.

Inmates who cannot visit the law library because they are in disciplinary segregation or other extra-restrictive conditions must have meaningful access to the courts some other way. Some prisons use a system where prisoners request a specific book and that book is delivered to the prisoner's cell. This system makes research very hard and time-consuming, and some courts have held that, without additional measures, such systems violate a prisoner's right to access the courts. *Trujillo v. Williams*, 465 F.3d 1210 (10th Cir. 2006); *Marange v. Fontenot*, 879 F. Supp. 679 (E.D. Tex. 1995).

3. Getting Help from a Jailhouse Lawyer and Providing Help to Other Prisoners

You have a right to get legal help from other prisoners unless the prison "provides some reasonable alternative to assist inmates in the preparation of petitions." *Johnson v. Avery*, 393 U.S. 483, 490 (1969). This means that if you have no other way to work on your lawsuit, you can insist on getting help from another prisoner. In *Johnson*, the Supreme Court held that the prison could not stop prisoners from helping each other write legal documents because no other legal resources were available.

If you have other ways to access the court, like a law library or a paralegal program, the state can restrict communications between prisoners under the *Turner* test if "the regulation… is reasonably related to

legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987) (See Section A for more discussion). The Supreme Court has held that jailhouse lawyers do not receive any additional First Amendment protection, and the *Turner* test applies even for legal communications. Therefore, if prison officials have a "legitimate penological interest," they can regulate communications between jailhouse lawyers and other prisoners. *Shaw v. Murphy*, 532 U.S. 223, 228 (2001).

Courts vary in what they consider a "reasonable" regulation. *Johnson* itself states that "limitations on the time and location" of jailhouse lawyers' activities are permissible. The Sixth Circuit Court of Appeals said that it was OK to ban meetings in a prisoner's cell and require a jailhouse lawyer to only meet with prisoner-clients in the library. *Bellamy v. Bradley*, 729 F.2d 417 (6th Cir. 1984). The Eighth Circuit Court of Appeals upheld a ban on communication when, due to a transfer, a jailhouse lawyer was separated from his prisoner-client. *Goff v. Nix*, 113 F.3d 887 (8th Cir. 1997). However, the *Goff* court did require state officials to allow jailhouse lawyers to return a prisoner's legal documents after the transfer. *Id.* at 892.

While a state can regulate jailhouse lawyers, it can't ban them altogether if prisoners have no other means of access to the court. In *Bear v. Kautzky*, 305 F.3d 802 (8th Cir. 2002), for example, the court found an access to courts violation when a prison banned prisoners who had no other way to get legal help from speaking to jailhouse lawyers.

The right of access to the court is a right that belongs to the person in need of legal services. It does not mean that you have a right to be a jailhouse lawyer or provide legal services. *Gibbs v. Hopkins*, 10 F.3d 373 (6th Cir. 1993); *Tighe v. Wall*, 100 F.3d 41, 43 (5th Cir. 1996). Since jailhouse lawyers are usually not licensed lawyers they *generally* do not have the right to represent prisoners in court or file legal documents with the court, and the conversations between jailhouse lawyers and the prisoner-clients are not usually privileged. *Bonacci v. Kindt*, 868 F.2d 1442 (5th Cir. 1989); *Storseth v. Spellman* 654 F.2d 1349, 1355-56 (9th Cir. 1981). Furthermore, the right to counsel does not give a prisoner the right to choose who he wants as a lawyer. *Gometz v. Henman*, 807 F.2d 113, 116 (7th Cir. 1986). And jailhouse lawyers don't get any special protection from rules that may impact communication with clients. Rather, courts will apply the *Turner* test described in Section A.

Some courts require a jailhouse lawyer to get permission from prison officials before helping another prisoner. For example, a New York state court held that the prison could punish a prisoner for helping another prisoner by writing to the FBI without first getting permission. *Rivera v. Coughlin*, 620 N.Y.S.2d 505, 210 A.D.2d 543 (App. Div. 1994).

Nor will being a jailhouse lawyer protect you from transfer, although the transfer may be unconstitutional if it hurts the case of the prisoner you are helping. For more on this, compare *Buise v. Hudkins*, 584 F.2d 223 (7th Cir. 1978) with *Adams v. James*, 784 F.2d 1077, 1086 (11th Cir. 1986). The prison may reasonably limit the number of law books you are allowed to have in your cell. Finally, jailhouse lawyers have no right to receive payment for their assistance. *Johnson v. Avery*, 393 U.S. 483, 490 (1969).

4. Dealing With Retaliation

If you file a civil rights claim against the warden, a particular guard, or some other prison official, there is a chance that they will try to threaten you or scare you away from continuing with your suit. Retaliation can take many forms. In the past, prisoners have been placed in administrative segregation without cause, denied proper food or hygiene materials, transferred to another prison, and had their legal papers intercepted. Some have been physically assaulted. Most forms of retaliation are illegal, and you may be able to sue to get relief.

In many states, you may be transferred to another correctional facility, or briefly put in administrative segregation for many, many reasons. *Olim v. Wakinekona*, 460 U.S. 238 (1983). However, you cannot be put into administrative segregation solely to punish you for filing a lawsuit. *Cleggett v. Pate*, 229 F. Supp. 818 (N.D. Ill. 1964). Nor can you be transferred to punish you for filing a lawsuit, whether for yourself, or for someone else. *Thaddeus-X v. Blatter*, 175 F.3d 378 (6th Cir. 1999). Of course, there are other, more subtle things that officers can do to harass you. Perhaps your mail will be lost, your food served cold, or your turn in the exercise yard forgotten. One of these small events may not be enough to make a claim of retaliation, but if it keeps happening, it may be enough to make a claim of a "campaign of harassment." *Calhoun v. Hargone*, 312 F.3d 730 (5th Cir. 2002); *Witte v. Wisconsin Dept. of Corrections*, 434 F.3d 1031 (7th Cir. 2006) (prison doctor subjected to a campaign of harassment for testifying for prisoners).
To prove that the warden or a correctional officer has illegally retaliated against you for filing a lawsuit, you must show three things:

(1) You were doing something you had a constitutional right to do, which is called "protected conduct." Filing a Section 1983 claim or a grievance is an example of "protected conduct" as part of your First Amendment rights;

(2) What the prison official(s) did to you, which is called an "adverse action," was so bad that it would stop an "average person" from continuing with their suit; and

(3) There is a "causal connection." That means the officer did what he did because of what you were doing. Or, in legal terms: the prison official's adverse action was directly related to your protected conduct.

If you show these three things, the officer will have to show that he would have taken the same action against you regardless of your lawsuit.

Example:
An officer learns that you have filed suit against the warden and throws you into administrative segregation to keep you away from law books or other prisoners who might help you in your suit. The "protected action" is you filing a lawsuit against the warden; the "adverse action" is you being placed in the hole. You would have a valid claim of retaliation unless the officer had some other reason for putting you in the hole, like you had just gotten into a fight with another prisoner.

In one case, a prisoner was able to prove that there was a policy or custom of retaliating against prisoners who helped other prisoners exercise their right of access to the courts. The retaliation violated their First Amendment rights. *Gomez v. Vernon*, 255 F.3d 1118 (9th Cir. 2001).

It is possible -- but not easy -- to get a preliminary injunction to keep correctional officers from threatening or harming you or any of your witnesses in an upcoming trial. *Valvano v. McGrath*, 325 F. Supp. 408 (E.D.N.Y. 1970). Preliminary injunctions are discussed in Chapter Four, Section B. It is also a federal crime for state actors (the prison officials) to threaten or assault witnesses in federal litigation. 18 U.S.C. § 1512 (a)(2). Also remember that groups of prisoners are allowed to bring class action suits if many of them are regularly deprived of their constitutional rights. You have strength in numbers – it cannot hurt to enlist the help of friends inside and outside prison. If you can get somebody on the outside to contact the media or the prison administration on your behalf, it may remind the powers that be that others are out there watching out for you, and it may scare them away from engaging in particularly repressive tactics.

Finally, remember that even when you think it would be pointless or go through the prison's formal complaint system, the PLRA still requires you to do so. If you complain and a guard or someone else threatens you, you still have to go through all available prison grievance and appeal procedures before the court will consider your Section 1983 claim. *Booth v. Churner*, 532 U.S. 731, 740 (2001).

SECTION H
Issues of Importance to Women Prisoners

This section discusses some issues of special concern to women prisoners, including gynecological care, prenatal care (medical care during pregnancy), abortion, and privacy from observation and searches.

As you learned in Section C, female prisoners have the same rights as male prisoners under the U.S. Constitution. The number of women in prison is growing fast, but women have been and still are a minority in prison. That means that most cases involving prisoners have been about male prisoners and have been based on men's needs. One example is your constitutional right to medical care. Courts agree that prisons must respond to your "serious medical needs," but relatively few courts have considered whether pregnancy or abortion should be considered serious medical needs.

1. Medical Care

As you learned in Section F, Part 4 of this chapter, your right to medical care is guaranteed by the Eighth Amendment, which prohibits cruel and unusual punishment. To make a claim for an Eighth Amendment medical care violation, you must show a "serious medical need" and a prison official must have shown "deliberate indifference" to that need.

Despite these rights, women prisoners often do not get the medical care they need. In *Todaro v. Ward*, 565 F.2d 48 (2d Cir. 1977), for example, a class of women prisoners argued that their prison's medical system violated constitutional standards. The court applied the "deliberate indifference" test and determined that by not properly screening women's health problems and poorly administering prison health services, the prison had denied or unreasonably delayed prisoners' access to proper medical care in violation of the Eighth

Amendment. The court ordered the prison to take specific steps to improve its medical services.

a. Proper Care for Women Prisoners

Most courts have not yet considered how to judge the level of medical care women in prison need, including pregnant women. However, State and local regulations sometimes require certain medical services, such as a physical exam, for every new prisoner. Under federal law, all federal prisoners are entitled to a medical screening, with appropriate record-keeping, that meets guidelines issued by the Bureau of Prisons. 28 CFR §§ 522.20 - 522.21.

If you are unsure about your own medical needs, or want to challenge the medical care you have received, you may want to take a look at some guidelines for women's health published by national medical associations. The American College of Obstetricians and Gynecologists (ACOG) publishes a pamphlet called "You and Your Baby: Prenatal Care, Labor and Delivery, and Postpartum Care" that describes pregnancy and explains guidelines for prenatal care. They also publish a pamphlet called "Staying Healthy at all Ages" which includes guidelines about when to get pap smears and mammograms. They have many more pamphlets on other women's health issues. You can request a free copy of these pamphlets by contacting the ACOG Distribution Center, PO Box 933104, Atlanta, Georgia 31193, by calling 1-800-410-2264, or by sending an email to resources@acog.com.

The *Jailhouse Lawyer's Manual* from Columbia University also provides a good summary of the medical services and tests that national guidelines recommend for women. Information on how to order the Columbia Jailhouse Lawyer's Manual is available in Appendix J.

While a court cannot enforce these guidelines, a judge may be willing to take them into account, especially since there is not that much case law in this area.

b. Medical Needs of Pregnant Women

Women who are pregnant require special medical care, called "prenatal care," to ensure that they deliver healthy babies. Many pregnant women experience complications during their pregnancy. With immediate and appropriate medical care, these complications can be resolved and women can go on to have healthy pregnancies and babies. When these complications are ignored, however, they can lead to miscarriages, premature or risky labor, and future reproductive health problems for the pregnant woman involved.

Challenging inadequate prenatal care in court

The two-part test for inadequate medical care under the Eighth Amendment raises some special questions in the area of prenatal care.

- **Is pregnancy a serious medical need?** Courts disagree whether a *healthy* pregnancy is a "serious medical need." One court said that pregnancy is not a serious medical need if a doctor has not identified any special need for care and when it would not be obvious to an average person that there is a problem. *Coleman v. Rahija*, 114 F.3d 778 (8th Cir. 1997). In a case about a prisoner's right to an abortion, however, another court stated that pregnancy is different from other medical issues and is a "serious medical need" even when there are no complications or abnormalities. *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).

- **What counts as deliberate indifference?** If you experienced major complications during your pregnancy, a court is likely to find that you had a serious medical need, but the court must still decide whether a prison official who denied you appropriate care showed deliberate indifference to your needs. In *Coleman v. Rahija*, 114 F.3d 778 (8th Cir. 1997), the court found that a prison nurse showed deliberate indifference when she ignored requests to transfer a pregnant prisoner in early labor to a hospital, leaving the prisoner to give birth in severe pain on the floor of her prison cell. The court held that the nurse must have known of the prisoner's serious medical need because the signs of her pre-term labor were obvious and because the nurse had access to the prisoner's medical records, which documented a history of multiple pregnancies, all with serious complications.

In some cases, a prison official's *supervisor* can be found guilty of deliberate indifference when the official violates a prisoner's rights, even if the supervisor was not aware of the particular incident in question. In *Boswell v. Sherburne County*, 849 F.2d 1117 (8th Cir. 1988), the court found a possibility of deliberate indifference among both the jailers who repeatedly ignored a pregnant pre-trial detainee's complaints of severe vaginal bleeding *and* their supervisors, even though the supervisors were not directly involved. The court relied on the fact that the supervisors encouraged jailers to use their own untrained medical judgment and to reduce the jail's medical costs even when it put pre-trial detainees' health at risk.

You should be aware, however, that it is very difficult in general to succeed on a claim that a supervisor is liable to you for a violation of your rights. For a detailed explanation of when you may be able to bring a "supervisory liability" claim, see page 73 of this Handbook.

Is it acceptable to shackle a pregnant prisoner?
It is a sad fact that prisons sometimes shackle pregnant prisoners. At least one court has held that a prison cannot use any restraints on a woman during labor, delivery, or recovery from delivery, and cannot use any restraints while transporting a woman in her third trimester of pregnancy unless that woman has a history of escape or assault, in which case only handcuffs are allowed. *Women Prisoners of the District of Columbia Dept. of Corrections v. District of Columbia*, 93 F.3d 910 (D.C. Cir. 1996). Another good case on this issue is *Nelson v. Correction Medical Services*, 583 F.3d 522 (8th Cir. 2009), in which a woman prisoner who was forced to endure the final stages of labor and delivery while shackled was allowed to continue her case against the guard who shackled her.

For a state-by-state overview of the laws regarding shackling or restraining pregnant inmates, see *Amnesty International, Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women*, available at http://www.amnestyusa.org/violence-against-women/abuse-of-women-in-custody/page.do?id=1108288.

2. Your Right to an Abortion in Prison

THE BASICS: You cannot be forced to have an abortion you don't want, and you must be allowed an abortion if you want one. If you are being denied an abortion you want, or forced to have one you don't want, you may want to contact the ACLU Reproductive Freedom Project. Their address is listed in Appendix H.

In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court upheld a woman's right to choose to have an abortion under the Fourteenth Amendment, which protects certain fundamental rights to privacy. Almost twenty years later, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the Court once again upheld the right to an abortion, but also held that the state can limit this right in certain ways, to promote childbirth. The state can require women to do certain things, as long as those limitations did not place an "undue burden" on a woman's right to choose abortion. For example, the state can make a woman wait a certain period of time before having an abortion, or it may be able to require a parent's permission if the woman is a minor. The court defined an "undue burden" as "a state regulation that has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion." *Casey*, 505 U.S. at 877.

A woman in prison may challenge an official's failure to provide her access to an abortion in one of two ways. First, she can claim a violation of her fundamental right to privacy under the Fourteenth Amendment. Second, she can claim a violation of her Eighth Amendment right to medical care, using the two-part test described above. Each of these approaches has been successful, but they can also be challenging for a number of reasons.

a. Fourteenth Amendment Claim

If the prison has a policy that limits your ability to get an abortion in any way, you can challenge that policy under the Fourteenth Amendment. In deciding if the policy is constitutional, the court will use the *Turner* standard, described in Section A of this Chapter.

One important case is *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987). In that case, a prison policy required pregnant women to get a doctor to state that an abortion was medically necessary or get a court order before it would allow the prisoner to obtain an abortion. The Court held that this violated both the Fourteenth Amendment and Eighth Amendment. The *Monmouth* court applied the four-part *Turner* reasonableness test to the prison policy in question and determined that the women prisoners' Fourteenth Amendment rights outweighed any claim of legitimate penological interest that might explain the policy.

The court addressed each part of the test as follows:

- Is there a valid, reasonable connection between the prison regulation and a legitimate, neutral state interest used to justify the regulation? The court found that the regulation had no valid relationship to a legitimate security interest. It pointed out that maximum- and minimum-security prisoners could receive "medically necessary" services without a court order, but that even minimum-security prisoners had to receive a court order to seek an abortion.
- Is there another way for prisoners to exercise the constitutional right being limited under the regulation? The court found no other way for prisoners to exercise their right to an abortion under the regulation. It argued that maximum-security

prisoners would be unlikely to be released for an abortion by court order and could not get an abortion in the prison. While minimum-security prisoners might receive the release order for an abortion, the court argued that the likelihood of delay in the process was too big a risk, since women are unable to have abortions legally past a certain point in their pregnancy.

- How would eliminating the court-ordered release requirement for prisoner abortions impact prison resources, administrators, and other prisoners? The court noted that although allowing prisoners access to abortions imposed some costs on the prison, giving prisoners proper prenatal care and access to hospitals for delivery imposes equal costs, so eliminating the regulation would not be too costly for the prison. The court also noted that while a prison must help fund abortions for prisoners who cannot pay for them, it is not obligated to pay for all abortion services.

- Are there less restrictive ways for the government to promote its interests? In other words, is the regulation an exaggerated response to the government's interests? Finally, the court ruled that the regulation was an exaggerated response to questionable financial and administrative burdens because it had nothing to do with prison security and because plaintiffs were simply asking the prison to accommodate the medical needs of *all* pregnant prisoners, not just those who wished to give birth.

Roe v. Crawford, 514 F.3d 789 (8th Cir. 2008) is another very positive case. There, a class of women seeking elective abortions sued over a Missouri Department of Corrections policy that denied pregnant prisoners transport to receive elective abortions. The department defended the policy by citing a security concern: that protests and conditions at abortion clinics posed a risk to guards and inmates. The Court decided this concern was legitimate, and that, under the first *Turner* question, the ban on transport did rationally advance the concern. However, under *Turner* question two, the Court found that the transport ban entirely eliminated access to abortion, which weighed very heavily against the constitutionality of the rule. After considering the final two *Turner* factors, the court determined that the rule violated the Fourteenth Amendment, and must be struck down.

Not all Fourteenth Amendment claims have been successful. One bad case is *Victoria W. v. Larpenter*, 369 F.3d 475 (5th Cir. 2004). That case involved an unwritten prison policy requiring pregnant women to obtain a court order allowing transport for an elective abortion. The court found that the prison's policy of requiring inmates to seek and receive a court order before allowing them to be released for non-emergency medical services met the *Turner v. Safley* test for reasonableness.

b. Eighth Amendment Claim

While a Fourteenth Amendment due process claim is a more likely way to win an abortion case, prisoners have also had success with Eighth Amendment claims. However, proving both a serious medical need and deliberate indifference can be difficult.

Is abortion a serious medical need?

When an abortion is necessary to preserve your life or health, it is without question a serious medical need. The debate among courts centers on abortions that are "elective"—that is, abortions that are not medically necessary to preserve a woman's health or save her life.

In *Monmouth,* the Court of Appeals determined that abortions are a serious medical need whether or not they are medically necessary to protect the health of the woman. The court rejected the argument that only a painful or serious injury counts as a serious medical need, and noted the unique nature of pregnancy. Even when an abortion is elective, the court decided, it is always a serious medical need because delaying an abortion for too long or denying one altogether is an irreversible action. Without fast medical attention, a woman who wants to exercise her right to have an abortion cannot do so.

Not all courts have agreed with the *Monmouth* decision, and the case law on whether an elective abortion is a serious medical need is different in different states. For example, in *Roe v. Crawford,* 514 F.3d 789 (8th Cir. 2008), described above, the appellate court reversed the district court's decision that the Missouri policy violated the Eighth Amendment. The court decided that because an elective abortion is not *medically* necessary, it is not a serious medical need.

When is the failure to provide access to abortion deliberate indifference?

Proving deliberate indifference can also be hard. Courts seem to disagree about the standard for deliberate indifference when it comes to abortion. Some courts find only negligence (which is *not* a violation of a constitutional right) even when it seems like a prison official knew of a prisoner's request for and right to an abortion. For example, in *Bryant v. Maffuci*, 923 F.2d 979 (2d. Cir. 1991), the court held

that prison officials had only been negligent in failing to schedule an abortion for a pregnant prisoner until it was too late for her to have one under New York law, even though, as the dissent noted, the prisoner requested an abortion upon her arrival to prison and every day thereafter, and the medical staff had measured the duration of her pregnancy so far and marked her file as an "EMERGENCY."

It can be especially difficult to prove deliberate indifference when the actions of many officials are involved. In *Gibson v. Matthews*, 926 F.2d 532 (6th Cir. 1991), a federal judge sentenced a pregnant woman to prison and, based on the prisoner's repeated requests for an abortion, requested that she be provided with an abortion as soon as possible. After several days of travel, Ms. Gibson reached her assigned facility and learned that no abortions were performed there. When she finally arrived at a facility that did perform abortions, she was told that it was too late in her pregnancy to arrange an abortion. The court held that the denial of Ms. Gibson's abortion could not be attributed to any particular official, and was only negligence, not deliberate indifference.

3. Observations and Searches by Male Guards

Many women in prison feel uncomfortable or anxious when they are observed or searched by male guards. The Constitution provides you with some protection from these searches: the Fourth Amendment protects your right to privacy from unreasonable searches, while the Eighth Amendment protects your right to be free from cruel and unusual punishment. However, as with other constitutional rights, your Fourth and Eighth Amendment rights must be weighed against the prison's interests in security and efficiency. It is also important to understand that since the federal government prohibits employment discrimination based on gender, courts are reluctant to prevent men from doing a certain type of work in prisons simply because they are men.

Title VII of the United States Code, a federal law, forbids employment discrimination against someone because of his or her gender. This means that in general, an employer cannot refuse to hire someone for a certain job or give someone a promotion because of his or her gender. The only exception to this rule is when there is a strong reason, not based on stereotypes about gender, to believe that a person of one gender could not perform the job or would undermine the goal of the work. In the language of the statute, it must be "reasonably necessary" to have an employee of a specific gender; if this is the case, gender is considered a "bona fide occupational qualification" or a "BFOQ."

Many courts have weighed prisoners' privacy interests against the need to prevent discrimination in our society and decided that preventing discrimination is a more serious concern. For example, in *Johnson v. Phelan*, 69 F.3d 144 (7th Cir. 1995), a case about women guards in men's prisons, the court expressed concern that women would get stuck with office jobs and decided that gender is not a BFOQ. In *Torres v. Wisconsin Department of Health and Human Services*, 859 F.2d 1523 (7th Cir. 1988), however, the same court found it acceptable that a women's maximum security prison did not allow men to work as security guards because the administrators of the women's prison had determined that male guards might harm the women prisoners' rehabilitation. According to the court, *Johnson* and *Torres* are not inconsistent, even though they reached different conclusions about a similar question, because in each case the court deferred to the expertise of prison administrators.

There was a similar result in *Everson v. Michigan Department of Corrections*, 391 F.3d 737 (6th Cir. 2004). There, the court considered a decision by the Michigan Department of Corrections to ban men from certain positions at female prisons in reaction to wide-spread sexual abuse of female prisoners. Male guards sued the prison unsuccessfully. The Court deferred to prison officials, and found that gender was a BFOQ.

Although many courts have recognized that strip searches and pat-downs by guards of the opposite sex can be uncomfortable and even humiliating, courts do not usually consider these searches cruel and unusual punishment. In one important case, however, a court found that pat-down searches of female prisoners by male guards *did* violate the Eighth Amendment because the searches led the women to experience severe emotional harm and suffering. The court based its argument on statistics showing that 85% of women in that particular prison had been abused by men during their lives. Since the superintendent knew these statistics and had been warned that pat-downs could lead to psychological trauma in women who had been abused, and since the superintendent could not show that the searches were necessary for security reasons, the court called the search policy "wanton and unnecessary" and held it unconstitutional. *Jordan v. Gardner*, 986 F.2d 1521 (9th Cir. 1993).

Courts are more likely to uphold invasions of your privacy by male prison guards when there is an emergency situation. For example, the *Jordan* court did

not prohibit *all* cross-gender searches of prisoners, despite the women's histories of abuse; it only found "random" and "suspicionless" searches by male guards unconstitutional. In contrast, another court approved of a visual body cavity search performed on a male prisoner in front of female correctional officers because the officer performing the search believed the situation to be an emergency, even though it was not. *Cookish v. Powell*. 945 F.2d 441 (1st Cir. 1991).

SECTION I
Issues of Importance to Transgender Prisoners

Transgender people face specific and unique difficulty in prisons and jails due to ignorance, discrimination, and violence from guards and other prisoners. Unfortunately, many transgender prisoner cases are unsuccessful. However, there have been some victories, and we are hopeful that more will follow as courts and prisons are forced to recognize this growing and vocal community. There are several organizations involved in this movement, so you may want to contact one of them before beginning any case. They are listed in Appendix H.

Section I: Table of Contents

This Section describes legal issues that may be important to transgender prisoners, and uses examples of cases brought by such prisoners. Where there is very little law specifically addressing transgender prisoners, we have included cases about gay, lesbian, and bisexual prisoners; our hope is that these cases may be useful by comparison.

Intersex conditions or disorders of sexual differentiation (DSDs), are the terms used for people born with physical conditions that make their bodies not seem "typically" male or female. People with intersex conditions may have some challenges in prison that are similar and some that are different from the challenges transgender people face. Where we could, we have also talked about some cases brought by people with intersex conditions in prison.

1. Classification

a. Placement in male or female facilities

Many transgender people are placed in male facilities against their will even if a female facility would be more consistent with their gender identity, expose them to less danger of violence, or make more sense to them for other reasons. Some transgender people are placed in female facilities against their will even if a male facility would be better. In general, courts have said that prison officials have the power to decide where transgender people and people with intersex conditions should be placed. However, just like all other prisoners, prison officials have to keep transgender prisoners safe from substantial risk of serious harm, whether they are in male or female facilities. In practice, people are usually placed in male or female facilities based on their genitals, regardless of what would be the best placement for them.

Some transgender women have brought lawsuits against prison officials for categorizing them as men and placing them in male facilities, rather than treating them as women and placing them in female facilities. So far, we have found no court decisions that rule in favor of the transgender woman on this issue. There have been several unsuccessful cases. In *Meriweather v. Faulkner*, 821 F.2d 408 (7th Cir. 1987), a court dismissed a transgender woman's argument that placing her in a male facility violated her Equal Protection rights. The court relied in part on a Supreme Court decision, *Meachum v. Fano*, 427 U.S. 215 (1976), that stated that prisoners do not have the right to be placed in any particular facility. Other unsuccessful cases are *Lamb v. Maschner*, 633 F. Supp. 351 (D. Kan. 1986); *Lucrecia v. Samples*, NO. C-93-3651, 1995 WL 630016 (N.D. Cal. Oct. 16, 1995); and *Long v. Nix*, 877 F. Supp. 1358, 1366-67 (S.D. Iowa 1995).

However, we know of at least one successful challenge by a transgender woman to placement in a male facility in New York. In that case, the prison officials she sued agreed to place her in a female facility in exchange for her ending the law suit against them. The case was settled in 1990.

A non-transgender woman with an intersex condition brought a law suit because she was placed with men and strip searched by male guards. The court ruled against her, saying that she could not prove that the sheriff was "deliberately indifferent" because he seemed to have mistakenly thought that she was a man. The court also said that she could not prove a "sufficiently serious deprivation" because she did not

say that she had physical injuries. *Tucker v. Evans*, No. 07-CV-14429, 2009 WL 799175 (E.D. Mich. March 24, 2009).

On one occasion, a non-transgender woman brought a lawsuit because a transgender woman was housed with her in a female facility. The plaintiff, a non-transgender woman, argued that a transgender woman should not be housed with her and that prison officials were violating her privacy rights. The court ruled against the plaintiff, and said that the prison officials were not liable for placing a transgender woman in a female facility with her. *Crosby v. Reynolds*, 763 F. Supp. 666 (D. Me. 1991).

Strategies other than lawsuits may have a chance. For example, working with others to convince a prison system to make new policies for classifying transgender prisoners may lead to change. Or, trying to find a friendly doctor or psychologist who will explain to prison officials why you should be placed in a particular facility could help.

Using "Suspect Classification"

Transgender prisoners might have more luck with equal protection challenges if they can convince the courts that transgender people are part of a "suspect" or "quasi-suspect classification." As explained in Section C, the courts are much more critical of laws that discriminate against people based these types of classifications. We have not seen any courts apply the "quasi-suspect classification" for gender to a case brought by a transgender litigant, but a strong argument could be made for application of that standard.

These arguments will be hard for a *pro se* prisoner to make, because they will probably require expert testimony, so you may want to reach out to one of the organizations listed Appendix H for help if you want to attempt this type of claim.

b. Involuntary segregation

Transgender and intersex prisoners often end up in segregation against their will, sometimes as punishment, sometimes for "protection," and sometimes because prison officials cannot decide what gender they should consider the person. If you are in some form of segregation or restrictive housing and don't want to be, there are a few different ways to challenge your placement. Remember, in a lawsuit, you don't have to pick just one theory. You can and should include all of the theories that you think might have some real chance of working.

Due Process

As we explained in Section D of this chapter, in certain situations prisoners are entitled to "procedural due process" before being placed in segregation. You may want to review that section to help you understand the following cases.

In *Estate of DiMarco v. Wyoming Dept. of Corrections*, 473 F.3d 1334 (10th Cir. 2007), the court found that the due process rights of a woman with an intersex condition were not violated even though she was kept in the most restrictive setting in a women's prison for fourteen months, the whole time she was in prison. She had the lowest possible security classification and was isolated only because she had an intersex condition. Some of the reasons the court gave for ruling that way were that DiMarco had access to medical care and prison staff throughout her incarceration and that prison officials talked with doctors when they made the placement decision. The court said that DiMarco had access to the "ordinary essentials" of prison life, and that she had a chance to be heard at a review of her placement every 90 days. The court thought it was important that DiMarco did not say that segregation in itself was unreasonable, just that the conditions and extreme isolation were too severe.

In *Farmer v. Kavanaugh*, 494 F.Supp.2d 345 (D. Md. 2007), a transgender woman named Dee Farmer challenged her transfer to a Supermax facility after another prisoner said she was trying to steal the identity of a warden. The court said that her due process rights were violated. Because the Supermax was so harsh and isolating, the prison should have given her some chance to find out why she was being transferred and for her to explain why she didn't deserve the transfer. She did not get that chance. But, the court also said that at the time she was transferred, the law was not clear, so the rule of "qualified immunity" meant that she could not get damages as a result of the constitutional violation. Qualified immunity is explained in Section D of Chapter Four.

Deliberate Indifference to a Serious Medical Need

Isolation can hurt anyone's mental health, but it can be especially dangerous for people with certain psychiatric disabilities. If prison officials know that you have a serious medical need that isolation makes worse and ignore that need, you might have a claim. The general requirements for these types of claims are described in Part 4 of Section F, above.

In *Farmer v. Kavanaugh*, 494 F.Supp.2d 345 (D. Md. 2007), described earlier, Ms. Farmer also argued that the officials acted with deliberate indifference to her

serious medical needs when they transferred her to a Supermax. She had HIV, depression and other physical and mental health conditions. There was also a memo in her file stating that segregation hurt her health. Once she was transferred, her viral load and her depression got worse. Unfortunately, the court said that Ms. Farmer could not show that the officials actually knew how bad the Supermax would be for her health, even if they should have known. So, the court ruled against Ms. Farmer on that argument.

Basic Needs and Cruel and Unusual Punishment
Section F, Part 3 of this chapter explains your right to have your basic needs met in prison. If you have been placed in segregation and are not allowed to have basic things, like food, showers, or exercise, you might be able to bring a case based on your right to be free from cruel and unusual punishment.

In *Meriweather v. Faulkner*, 821 F.2d 408 (7th Cir. 1987), a transgender woman serving a thirty-five year sentence challenged her placement in administrative segregation. The court allowed her to continue with her claim when defendants moved to dismiss her case. The court said that she did not have a due process claim because no liberty interest was at stake. The court also said that her Equal Protection claim failed because she could not prove "purposeful and intentional discrimination." But, the court said that placing her in administrative segregation might be cruel and unusual punishment because it was for such a long period of time.

Equal Protection
Sometimes, transgender people are treated differently than other prisoners by being put in segregation when other prisoners would not. You can challenge this treatment under the Equal Protection clause if you can show the different treatment is not "rationally related to a legitimate government interest." The requirements for an equal protection claim are laid out in Section C of this chapter. You will have to be able to show that the officials intentionally discriminated against you. There have been two very important victories in California in this area. *Tates v. Blanas*, No. S-00-2539, 2003 WL 23864868 (E.D. Cal. Mar. 11, 2003) and *Medina-Tejada v. Sacramento County*, No. Civ.S-04-138, 2006 WL 463158 (E.D. Cal. Feb. 27, 2006), are two unpublished decisions about transgender women kept in "T-Sep" or "Total Separation" in a men's county jail. T-Sep was usually reserved for the most dangerous and violent prisoners and had much worse conditions than other parts of the jail. The jail put all transgender women in T-Sep for the entire time they were in jail. The court found the practice unconstitutional. The court ordered that the jail make a classification plan that did not automatically treat transgender prisoners worse just because they were transgender. The court said that transgender prisoners should not be shackled when other prisoners were not, should have access to recreation during the day, group religious services, and contact with other prisoners, unless there were specific reasons based on individual facts that kept a particular transgender person from being able to do those things.

Other challenges have not gone as well. In *Farmer v. Hawk*, No. 94-CV-2274, 1996 U.S. Dist. LEXIS 13630 (D.D.C. Sep. 5, 1996), Ms. Farmer was placed in controlled housing because she was HIV positive and performed oral sex on another prisoner. The court said her equal protection rights were not violated, because as someone with a "deadly disease" who was "putting other inmates at risk," she was not in the same position as other prisoners. The court did not take into consideration the relatively lower risk of HIV transmission for oral sex as compared to anal or vaginal sex.

In *Murray v. U.S. Bureau of Prisoners*, 106 F.3d 401 (Table), Nos. 93-00259, 94-00147, 1997 WL 34677 (6th Cir. Jan 28, 1997), a court said a transgender woman's rights were not violated when she was placed in segregation on several occasions. Some of the times she was placed in segregation were to protect her and other times were to discipline her for refusing to wear the bra they ordered her to wear. The court said that it was proper for the prison to put her in segregation for these reasons and ruled against her.

c. Access to Protective Custody

Most prisons have a process available to ask for placement in segregation if you fear for your safety. As explained in Section F, Part 1, It can be a violation of the Eighth Amendment for prison officials to refuse to place you in protective custody if they know that you are likely to be seriously harmed in general population and they do not take action to stop that harm.

The same transgender woman, Dee Farmer, brought the famous case that the U.S. Supreme Court used to establish the basic standard for deliberate indifference. The prison acknowledged that Ms. Farmer "project(ed) feminine characteristics" yet placed her in the general population of a men's prison, where she was beaten and sexually assaulted by another prisoner. Ms. Farmer brought suit against the prison officials, claiming that the officials had shown "deliberate indifference" by placing her in the general population, thus failing to keep her safe from harm inflicted by other prisoners.

The Supreme Court held that prison officials may be held liable under the Eighth Amendment when they know a prisoner faces substantial risk of serious harm and disregard that risk by failing to take reasonable measures to address it. *Farmer v Brennan*, 511 U.S. 825 (1994).

Because of this case, if officials know that you are in danger and refuse to put you in protective custody or take other action to protect you, you can bring a claim against them for violation of your right to be free from cruel and unusual punishment.

For example, in *Maggert v. Hanks*, 131 F.3d 670 (7th Cir. 1998), a court acknowledged that a transgender woman had the right to be protected. The court stated, "Of course, as the cases have already established, [s]he is entitled to be protected, by assignment to protective custody or otherwise, from harassment by prisoners who wish to use …[her] as a sexual plaything, provided that the danger is both acute and known to the authorities."

If you are denied protective custody because of your gender, sexual orientation, or race, you might also have an Equal Protection claim against prison officials. In *Johnson v. Johnson*, 385 F.3d 503 (5th Cir. 2004), an effeminate gay male prisoner was repeatedly raped by other prisoners. He asked for help from guards over and over again and asked to be held in "safekeeping" or put in protective custody. The prison kept him in general population and told him to learn to "f*** or fight." He brought a case against the officials for violation of his Eighth Amendment and Equal Protection rights. When discussing the Equal Protection claim, the court stated that if the officials denied him protection because he was gay, that would violate Equal Protection. *Johnson v. Johnson*, 385 F.3d 503, 532 (5th Cir. 2004).

2. Health

a. Access to Gender-Affirming Health Care

Transgender prisoners often have a very difficult time getting gender-affirming health care in prison. For this reason, it is not surprising that there are a lot of cases about whether you have the right to hormone therapy and other gender-related medical care in prison.

To understand transgender prisoners' right to medical care, it is important to first review the basics of prisoners' rights to medical care, explained in Chapter 3, Section F, Part 4. A successful suit can be brought under the Eighth Amendment if you show that prison officials were "deliberately indifferent" to your "serious medical need" and you were hurt because of it.

To make an Eighth Amendment claim regarding access to gender-affirming care, you will probably need to prove that you have what is called "Gender Identity Disorder" (GID), which is a condition recognized by the American Psychiatric Association (APA). Courts sometimes refer to GID as "transsexualism." As of 2010 the APA is considering making changes to the way GID is diagnosed. Among other changes, they may rename the condition "Gender Incongruence" or "GI."

Currently, though, the APA describes GID as "persistent cross-gender identification" with "clinically significant distress or impairment of functioning." "Identification" is about how you see yourself in terms of gender. "Distress" can mean that you have feelings of sadness, depression, anxiety, disconnect, or self-hatred about your body and gender. "Impairment" can mean that you have a hard time doing everyday activities, relating to other people, getting a job, or taking care of your body because of your feelings about your gender and body. A number of courts have said that GID is a "serious medical need."

Some transgender people find this medical framework helpful for understanding and explaining their experience. Others find it frustrating or offensive to have to fit their experience and identity in a medical model. To succeed in cases about health care, you will need to include at least enough medical information to convince a court you have a "serious medical need." It can be tricky to find ways to talk about your gender that feel right and empowering to you that also help you achieve your legal and health goals. You can look at other cases and sources, then make your own decision about how to explain your healthcare needs to the court.

Some transgender people have had a hard time proving that they have GID if they have not gotten a formal diagnosis. One case like this is *Cuoco v. Moritsugu*, 222 F.3d 99 (2d Cir. 2000). Of course, it can be hard to get a formal diagnosis if your prison will not let you get evaluated by anyone qualified to diagnose you. You might be able to get a court to order that you should be evaluated for GID in the course of a lawsuit. You can argue that prisons are not allowed to just ignore signs that prisoners have serious medical needs and fail to diagnose those conditions to avoid their duty to provide medical care. To show that you need evaluation and treatment for GID, you should include in your complaint facts about how you feel about your gender and how long you have felt that way, the ways that not being able to get treatment have affected you, any

attempts you may have made to live and appear as the gender you identify with, and any past treatment you may have had, such as hormones or surgery.

Many courts have held that prisons must provide some gender-affirming medical treatment for transgender prisoners *in general,* but have not required the prison to provide any particular treatment. In other words, if you complain to the prison about problems with your gender identity, and they refuse to examine you, or provide you with any treatment, you may have a strong Eighth Amendment case. However, if you want to challenge their decision to only provide therapy, as opposed to hormones, or only provide hormones instead of surgery, or provide hormones at a lower dose than you think you need, you will probably have a harder time. What this means on a practical level is that, if you can, you should state in your complaint that you have not received *any treatment at all* for GID.

Still, there have been some cases where courts have ordered specific treatment. One good case is that of Marty Philips, a transgender woman who received estrogen for years before going to prison, and sued the Michigan Department of Corrections over their refusal to allow her to continue taking estrogen at her own expense. *Phillips v. Michigan Department of Corrections*, 731 F. Supp. 792 (W.D. Mich. 1990). She experienced pain, bruising, vomiting, and depression as a result. The District Court Judge was clearly moved by Ms. Phillips' story, and took the prison doctor to task for intentionally denying necessary medical care. The Judge ordered the prison to provide Ms. Phillips with estrogen in a preliminary injunction. (Preliminary injunctions are explained in Chapter Four, Section B.)

Prisoners have been most successful in seeking specific treatment when they can show that they were prescribed that treatment before going to prison, as in *Phillips* above. In at least one case, though, a court ordered estrogen treatment for someone who did not have a diagnosis of GID before incarceration, again through a preliminary injunction. *Gammett v. Idaho State Bd. of Corrections*, No. CV05-257-S-MHW, 2007 WL 2186896 (D. Idaho July 27, 2007). In that case, a transgender woman named Jennifer Ann Spenser had not been diagnosed with GID before she was incarcerated. She made many requests for treatment. After getting no help, she performed surgery on herself by cutting off her testicles. Then, the prison offered her testosterone treatment, and still refused her estrogen. The court found that she was likely to succeed on the merits of her case and should get a preliminary injunction to maintain her health while the case was pending.

A number of prison systems have policies that will not allow transgender people to get certain types of treatment (like sex reassignment surgery) or to get any treatment under certain circumstances (like if you weren't getting it before you were locked up). *Allard v. Gomez*, 9 Fed. Appx. 793 (9th Cir. 2001), is a helpful case if your prison has this type of policy. In *Allard* a transgender woman sued because she was not getting hormone therapy. The court said that denying treatment based on a blanket administrative policy, rather than an individualized medical evaluation, was unconstitutional. Similarly, in *Fields v. Smith*, 712 F. Supp. 2d 830 (E.D. Wisc. 2010), the court found a state law unconstitutional because it barred funding of hormone therapy without considering the prisoner's individual medical condition.

If your prison has a policy like this, another tool that might be helpful is a position statement released by the National Commission on Correctional Health Care (NCCHC). While it is not binding on courts, it can provide support for your position. Among other things, the position statement says: "Because inmate-patients may be under different stages of care prior to incarceration, there should be no blanket administrative or other policies that restrict specific medical treatments for transgender people. Policies that make treatments available only to those who received them prior to incarceration or that limit GID treatment to psychotherapy should be avoided."

In some cases, prison policies are actually helpful, but prison staff do not follow their own policy. For this reason you should find out whether your prison or prison system has an official policy about treatment for transgender prisoners, and what that policy says.

In *South v. Gomez*, No. 99 -15976, 2000 U.S. App. LEXIS 3200 (9th Cir. 2000) Torey Tuesday South sued prison officials after they stopped her female hormone therapy. The guards asked the court to dismiss South's claim on the basis of qualified immunity. (Qualified immunity is discussed in detail in Chapter Four, Section D, Part 2.) The prison officials argued that even if there is a right to hormone therapy that right is not "clearly established" because the court had never ruled on it before. The Ninth Circuit refused to dismiss South's case, and explained that the defendants were being too specific. The right at issue is the general standard under the Eighth Amendment: the right not to have prison officials act with deliberate indifference to a serious medical need. This is a very good case that you may want to rely on if the officials you sue ask the court to dismiss based on qualified immunity.

At the time of publication we know of no cases in which a court has ordered sexual reassignment surgery, but that may change soon. In *Kosilek v. Maloney*, 221 F. Supp. 2d 156 (D. Mass. 2002), Michelle Kosilek sued prison officials for money damages and sex reassignment surgery after over a decade in which she was incarcerated without any form of gender-affirming medical or psychological care. While in prison she tried to kill herself and to castrate herself. The prison system at issue had a policy that "froze" medical care based on what the person got before being sent to prison. Someone who received female hormones from a doctor before entering the system, for example, could keep getting them in prison. However, someone who didn't receive hormones before incarceration, or got them from the streets, could not get them. No one in the prison could get surgery. The Court decided that Kosilek had been denied necessary medical care because her care was based on a rigid prison policy, not a doctor's individual examination. Although the court found that Kosilek had not satisfied the deliberate indifference requirement, the court's opinion put the prison on notice that they had to start providing Kosilek with medically appropriate care. Kosilek sued again in 2005 saying that the treatment she was receiving, including psychotherapy, hormone treatment, and laser hair removal were not enough to relieve her anxiety or depression. As of publication, we do not yet know whether the Judge will order that the prison provide her with sex reassignment surgery.

b. Confidentiality

As we explained in Chapter Three, Section F, prisons must generally keep prisoner's health information confidential. In *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999) a court ruled that the fact that a prisoner is transgender must be also be kept confidential. In that case, a transgender woman in a women's prison sued because prison staff said that she was HIV positive and had sex reassignment surgery in front of other staff and prisoners. As a result, rumors spread through the prison and both guards and prisoners harassed her. The court said that "like HIV status … transsexualism is the unusual condition that is likely to provoke both an intense desire to preserve one's medical confidentiality, as well as hostility and intolerance from others." Under this reasoning, the court decided that the prison employee in question violated the constitutional right to privacy. More routine medical information can probably be shared without violating the constitution, though.

The PLRA can cause problems in cases about confidentiality as it makes it difficult to bring a claim for compensatory damages unless you can show that you were physically hurt. This problem is described in Chapter Four, Section C, Part 2.

3. Free Gender Expression

a. Clothing and Grooming

Generally, prison officials can control clothing and grooming as they see fit. However, there are some small limits on what they can require, mostly in terms of the way people practice their religion.

Prison officials often defend their clothing and grooming policies by bringing up interests such as: prisoner safety, prison security, sanitation, cost effective options at the prison commissary, or ease of prisoner identification. Courts usually accept these interests and do not find that prisoners' constitutional rights have been violated.

Transgender people challenging clothing and grooming policies have had very little success so far. One exception where there has been some success is in getting the right to have access to bras. In *Tates v. Blanas*, 2003 WL 23864868 (E.D. Cal. 2003), the court decided that access to a bra cannot be denied simply because a person is housed in a male facility. The facility, and its medical staff, must weigh (1) the possibility that a bra could be misused as a weapon against (2) any medical or psychological harm denying access to a bra may cause.

Below we explain some arguments that can be made for clothing and grooming needs of transgender people who are incarcerated. Be sure to think carefully before you try to file a lawsuit on these issues. The law is not on your side when you bring a claim for your right to express your gender through clothing, hair length, shaving, make up, or similar means. And as explained in Chapter 5, Section C, Part 2, if your lawsuit is dismissed as frivolous, it counts as a strike under the PLRA.

While we focus on Constitutional claims, you should also consider if there might be state law claims that you can bring. One young transgender woman in foster care won a case against her group home when they wouldn't let her wear feminine clothes. The court said that not allowing her to wear clothes that matched her identity violated the state law against discrimination on the basis of disability. *Doe v. Bell*, 194 Misc.2d 774 (N.Y. Sup. Ct. 2003).

<u>Equal Protection</u>

Clothing and grooming policies that force prisoners to meet different standards depending on whether they are

seen as men or women may seem like obvious gender-based discrimination. Unfortunately though, courts have found that a different grooming policy for male and female prisoners is not discrimination on the basis of gender. *Hill v. Estelle*, 537 F.2d 214 (5th Cir. 1976).

Arguments that transgender women are not being treated the same as other women when they are not allowed to have long hair or wear female undergarments, or that transgender men are not being treated the same as other men when they are not allowed to have facial hair or wear male undergarments, have not yet been accepted by the courts. *Star v. Gramley*, 815 F.Supp. 276 (C.D. Ill. 1993). Instead courts have compared the treatment of transgender people to the treatment of other people in their facility—so if no one in a male facility is allowed to have long hair, some courts have said there is no discrimination against a transgender woman in that facility who is also not allowed to have long hair. One court has even found that prison policies banning earrings, long hair, or use of make-up can be based on the governmental interest of "promot[ing] institutional security by discouraging transsexual dressing by inmates." *Ahkeen v. Parker*, No. W1998-00640-COA-R3CV, 2000 WL 52771 (Tenn. Ct. App. Jan. 10, 2000).

There could be a greater chance of success in a claim about transgender people who are treated differently from other people in their facility. For example, if non-transgender men in a facility are not punished for having long hair but transgender women in the facility are, the transgender women may be able to state an Equal Protection claim. The general requirements for an Equal Protection claim are explained in Section C of this Chapter.

Cruel and Unusual Punishment

Eighth Amendment claims of cruel and unusual punishment are also very unlikely to succeed for clothing and grooming. As summarized in Section F of this Chapter, to establish cruel and unusual punishment, you must show that you are being denied a basic need of "civilized life" or that prison officials were deliberately indifferent to a serious medical need.

As explained above, courts have consistently considered "transsexualism" to be a serious medical need. Healthcare professionals recommend that transgender people dress and present in a way that matches their gender identity as a form of treatment. If prison officials know that you need this form of treatment, refuse to let you have it, and don't give you any other sort of treatment instead, then an argument could be made that the prison is being deliberately indifferent to your serious medical need. One excellent recent case is *Konitzer v. Frank*, 03-c-717, 2010 U.S. Dist. LEXIS 45648 (E.D. Wis. May 10, 2010). In that case, a transgender woman sued to gain access to hormone therapy *and* clothing and grooming items that would aid her in expressing her gender, including a bra and make-up. The Judge denied the prisons' motion for summary judgment, and ordered the case to go to trial.

However, at this point courts are still unlikely to see restrictions on the clothing and grooming of a prisoner as rising to the level of cruel and unusual punishment. In *Murray v. U.S. Bureau of Prisons*, 106 F.3d 401 (Table), 1997 WL 34677 (6th Cir. 1997), a transgender woman claimed that the denial of hair and skin care products that she had received in a previous facility and that were necessary to maintain her feminine appearance violated her Eighth Amendment rights. The court rejected her argument, stating, "cosmetic products are not among the minimal civilized measure of life's necessities."

Freedom of Speech and Religion

Section A of this Chapter talks about Freedom of speech and association. The "speech" protected by the First Amendment does not apply only to words you say, but can also apply to other ways you try to express your identity and your views. The way you do your hair, whether or not you shave certain parts of your body, and the clothes you wear might be seen as "speech" in this way. Unfortunately, though, under the *Turner* test courts will generally find that there are many ways to express yourself, and that restrictions on clothing and grooming are reasonably related to prison interests in safety and security. Some of the way prison officials have explained those interests to courts is to say that a person in a men's prison who presents as a woman might be more likely to be attacked. Prison officials have also said that someone in prison could hide contraband in long hair or a beard.

If you also have religious reasons for needing to do something different than what the prison requires, you may have a much stronger chance of success under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). This is explained in Section B of this Chapter.

b. Name and ID Gender changes

Name changes and gender changes are not the same thing. A name change order alone will not let you change your gender on your ID.

ID Gender Changes

In some states, but not others, you can get a court order that says your gender has been changed. These court orders are often used to change your gender on a birth certificate if you were born in that state. If you want to change your gender through a court, you will usually need to provide some sort of proof from a doctor about your gender transition.

In those states where there is no way to get a court order, you can usually still change your gender on different forms of ID. You need to follow the rules of each agency to change your gender. It is possible to change your gender without changing your name or *visa versa*. But, it is often convenient to do both at the same time. Most agencies will require some sort of a letter from a doctor. For example, Social Security asks for a letter from a doctor saying that sex reassignment surgery has been completed. Currently every state except Ohio, Tennessee, and Idaho allow gender changes on birth certificates. Puerto Rico also does not permit gender changes on birth certificates.

Not all agencies require proof of surgery. For example, in New York, Massachusetts, and California, it is possible to get your gender changed on a driver's license or state ID without having had surgery. Washington State allows gender changes on birth certificates without proof of surgery. To change your gender on ID, you may need to wait until you are out of prison or close to leaving.

Name Changes

You can change your name without changing your gender. The law about name changes is very different from state to state so you will need to look up your state law. In New York, for example, the law for name changes can be found starting at N.Y. Civ. Rts. § 60.

Non-prisoners who are at least 18 years old are generally allowed to change their name for any reason at all, so long as they are not trying to escape law enforcement, avoid debts or commit any sort of fraud.

However, some states have put limits on when people who are in prison or who have convictions can change their names. For example, in Louisiana, people who are convicted of felonies cannot change their names while in prison. LSA-R.S. 13:4751. In Illinois, people convicted of sex offenses or identity theft can never change their name. People in Illinois convicted of other felonies can change their name, but only ten years after they have finished their sentence. 735 I.L.C.S. 5/21-101. Some courts have also denied prisoners' name change petitions, usually because they found that the name change would cause administrative burdens for the prison system, barriers to law enforcement identifying the person, or confusion in penal records. Some examples of these types of cases are *In re Verrill*, 660 N.E.2d 697 (Mass. App. Ct. 1996); *Williams v. Racine County Circuit Court*, 197 Wis.2d 841, 541 N.W.2d 514 (Wis. App.1995); and *Brown v. Wyrick*, 626 S.W.2d 674 (Mo. App. W.D. 1981).

However, in many states, name changes for prisoners are possible. For example, in Tennessee, a court ruled in a case called *In re Ely*, No. M2000-01937-COA-R3-CV, 2004 WL 383304 (Tenn. Ct. App 2004) that a criminal conviction alone is not enough to deny a name change. And in a case called *In re Crushelow*, 926 P.2d 833 (Utah 1996) the Utah Supreme Court found that judges cannot deny prisoners' name changes based only on general concerns about confusion in the records. A court in California also recently found that federal prisoners may seek name changes. That case is called *In re Arnett*, 148 Cal.App.4th 654 (Cal. App. 2007).

You should never have to provide any sort of medical evidence or letters from doctors for your name change. Judges in some states have asked transgender people for that sort of evidence and denied them name changes if they did not provide that evidence. Some transgender people have appealed those denials. So far, in every case the transgender person has won the appeal and was granted the name change without medical evidence. Some examples of these cases are *In re Golden*, 56 A.D.3d 1109 (N.Y. App. Div. 3rd Dep't 2008); *In re McIntyre*, 552 Pa. 324, 715 A.2d 400 (Pa. 1998); *In Re Eck*, 245 N.J. Super. 220, 223, 584 A.2d 859, 860-861 (1991); and *In Re Maloney*, 96 Ohio St. 3d 307, 774 N.E.2d 239 (2002). It is not reasonable to require transgender people to give notes from their doctors to get a name change when no one else needs a doctor's note to get a name change.

If you get asked for medical evidence for your name change, you can decide what to do next. If you have a doctor who will write a letter or affidavit for you, one option is just to give the court what it wants. If you do not want to share your medical information with the judge or if you do not have a doctor who will help you, you can try to explain to the judge why you shouldn't have to provide that evidence. You can file an appeal if

you get denied. It is a good idea to try to find a lawyer if you want to challenge a name change denial.

In a recent case in Idaho, a transgender woman prisoner appealed when a trial court denied her name change petition. The appellate court said that there was no improper purpose for the name change and that a criminal record alone was not a legitimate reason to deny a name change. The court granted her name change. *In re Gammett*, Case No. CV NC 06 03094 (Oct. 3, 2006).

Unfortunately, even after you get a legal name change, it is possible that you will still be referred to by the name that you were first incarcerated under. In a recent case in California, a transgender woman sued prison officials for continuing to use her former, masculine name instead of her current legal feminine name. The court ruled against her. The court found that the prison officials' need to prevent confusion in records, quickly and easily identify prisoners, and communicate efficiently with other agencies that use the commitment name outweighed the prisoner's interest in using her legal name. *Babcock v. Clark*, No. CV-07-5073-FVS, 2009 WL 911214 (E.D. Wash. March 31, 2009).

While the name change process varies from state to state, it is generally not too complicated. It usually involves submitting a petition with information about yourself and why you want to change your name, sometimes also with a birth certificate and information about your criminal record. In many states, you need to publish notice of your name change in a paper one or more times, unless you can get a waiver because you would be at risk of violence if you had to publish your name change. One court in New York recently allowed a transgender person not to publish notice of a name change because transgender people are at high risk for hate violence. *In re E.P.L.* 26 Misc.3d 336 (Sup. Ct. Westchester Co. 2009).

Some states have special requirements for people with convictions. For example, in New York, people who are incarcerated or on parole for listed violent felony offenses have to send copies of a notice of the name change to the district attorney and criminal court where they were convicted.

If there is a court hearing about the name change, most times it is short and simple with only a few questions. Once your name change is granted, you can use a certified copy of the order from the court to change your name with different agencies.

c. Access to Reading Material

The Supreme Court has not specifically addressed a prisoner's right to reading material with transgender content. General rules covering your right to receive any books or magazines in prison will apply. Cases relating to prisoners' right to receive books and magazines with gay or lesbian content can also help you figure out when you have a right to receive reading materials with transgender content. For information about general rules and some information about material with gay or lesbian content, review Section A, Part 1 under the heading "Access to Reading Materials."

Prison officials will usually argue that they are banning a publication because it is a threat to safety and order in prison. When prison officials want to stop prisoners from receiving transgender material, they may argue that other prisoners will see this material, think the person who has it is transgender, and target that person for violence. This particular argument may not work in situations where a person is already known to be transgender by the prison population. Still, prison officials may make a number of general arguments about safety, and will often win in the case of sexually explicit material.

If a publication is not sexually explicit, and instead deals with transgender rights or literature with transgender themes, it is less likely to be banned. In the case of gay and lesbian publications however, prison officials have argued successfully that even non-sexual materials are a threat to prison security. Depending on where you are incarcerated, courts may or may not agree with prison officials if they ban transgender material that is not sexually explicit.

d. Job/Program Discrimination

If you think you were denied or removed from a prison job or program because of your gender identity, you may be able to fight the prison's decision by bringing a Section 1983 suit.

Some people have tried to challenge denials of a job or program with procedural due process claims. Unfortunately, these claims have generally not worked. Courts have said that prisoners do not have a constitutionally protected interest in their prison jobs. See *Holmes v. Artuz*, 1995 WL 634995 (S.D.N.Y. 1995); *Gilbreath v. Clark*, 193 Fed. Appx. 741 (10th Cir. 2006), *Gill v. Mooney*, 824 F.2d 192, 194 (2d Cir 1987).

Equal Protection claims, on the other hand, might be possible. District courts in New York and California

have suggested that Equal Protection claims for gay and transgender prisoners denied prison programs may succeed. In *Holmes v. Artuz*, 1995 WL 634995 (S.D.N.Y. 1995), a prisoner brought an action saying that he was not allowed to have a job in the mess hall because of being an "overt homosexual." The court refused to dismiss his complaint, saying that the prisoner may have stated a claim for violation of his Equal Protection Rights. The judge wrote that, "A person's sexual orientation, standing alone, does not reasonably, rationally or self-evidently implicate mess hall security concerns. It is not sufficient to assert, as defendants do in their motion papers, that the prison's exclusionary policy is designed to prevent 'potential disciplinary and security problems which could arise from heterosexual inmates' reaction to and interaction with homosexual and/or transsexual inmates who serve and prepare food."

In *Bass v. Santa Cruz Dept. of Corrections Sup'rs*, No. C 94-20679 JW, 1994 WL 618554 (N.D. Cal. Oct. 27, 1994) a group of nine gay and transgender prisoners filed a law suit for violation of their Equal Protection Rights. One of their claims was that they were denied access to the prison's programs because they were gay and transgender. The court acknowledged that the prison could not discriminate against them simply for being gay, unless the discriminatory policy or practice was reasonably related to legitimate penological interests. But, the court found that the prisoners couldn't move forward with their case because none of them claimed that they tried to participate in any particular program. The court dismissed the case but allowed them to submit a new complaint within 30 days. While these cases focus primarily on sexual orientation, a similar argument could be used for discrimination on the basis of gender identity.

Finally, there could be a basis for a First Amendment claim if you were not allowed into or were kicked out of a program because you expressed your gender identity, held a political belief about transgender rights, or objected to mistreatment of gay, transgender, or intersex prisoners. In *Holmes v. Artuz*, for example, the judge allowed a First Amendment claim on the theory that the prisoner was retaliated against after complaining about unfair treatment for gay prisoners.

4. Dealing with Violence and Abuse

Transgender prisoners are often more vulnerable than other prisoners to physical assault, harassment and sexual violence. Having a body or gender that does not match dominant norms can be challenging outside of prison. On the inside, the close quarters, reduced privacy and power dynamics can present more problems. The system often increases the risks faced by transgender prisoners by assigning transgender women to male prisons. Prison employees may be unaware of the needs of incarcerated transgender individuals. All too often, they are part of the problem, 'looking the other way' when violence happens or directly abusing transgender people.

People who speak out may face retaliation by guards or other prisoners.

a. Verbal Harassment

Humiliation and verbal harassment of transgender prisoners takes many forms. At one prison, female transgender prisoners reported being forced to walk topless through a sea of male prisoners to get their clothes each week. Other prisoners have spoken out against frequent transphobic slurs and solicitations for sex. Unfortunately, the sexual harassment and psychological abuse that occurs in prison can be difficult to litigate. To learn about these types of claims, start by reading the section about Sexual Harassment and Abuse in Section F of this Chapter.

In *Murray v. U.S. Bureau of Prisons*, 106 F.3d 401 (6th Cir. 1997), Michelle Murray, a transgender woman, tried to sue over a series of harassing comments about her bodily appearance and her presumed sexual preference. The court dismissed the claim, saying that verbal abuse alone does not rise to the level of "unnecessary and wanton infliction of pain" necessary for an Eighth Amendment violation.

b. Rape and Sexual Assault

Section F of this chapter also explains the law about sexual assault and rape in prison. As explained in that section, to hold the prison liable if you are attacked by another prisoner, you will need to show that the prison officials knew you were at a risk for harm. If the prison has documented a history of attacks and harassment against you, those reports will probably be enough to show knowledge of the risk. Some courts have inferred that prison officials knew of the risk based on a plaintiff's feminine appearance, small size, youthfulness or reputation as a drag queen or "known homosexual." *Taylor v. Mich. Dept. of Corrections*, 69 F.3d 76 (6th Cir. 1995), *Jones v. Banks*, 878 F. Supp. 107 (N.D. Ill. 1995). In arguing to the court that the prison did not adequately protect you, it might be helpful to mention the Prison Rape Elimination Act (PREA) of 2003, which lists transgender prisoners within the category of "potentially vulnerable prisoners" that deserve special attention and monitoring.

A female transgender prisoner survived summary judgment in the Sixth Circuit for her claim against a prison warden for failing to protect her from a maximum-security prisoner who beat her with a fifty-pound fire extinguisher. *Greene v. Bowles*, 361 F.3d 290 (6th Cir. 2004). The Court found that she raised sufficient facts to show the warden knew about the risk to her safety because of her "vulnerability as a transsexual" and her attacker's reputation as a "predator."

If the guard took any action, like writing up the matter or processing a complaint you submitted, the court might say the guard didn't *disregard* the risk to your safety. In *Johnson v. Johnson*, 385 F. 3d 503 (5th Cir. 2004), the Fifth Circuit held that an officer who "referred the matter for further investigation" might have done enough to not be liable to a gay prisoner who claimed to have been forced into sexual servitude by a prison gang.

As with all the other types of claims discussed in this handbook, you can always consider bringing a case in State court as well. For a good example of a state claim about violence endured by a prisoner, see *Giraldo v. California Dept. of Corrections and Rehabilitation*, 168 Cal.App.4th 231 (1st Dist., 2008). Ms. Giraldo, a transgender woman, successfully sued prison guards under California state law after she was repeatedly raped and abused by other prisoners.

Of course, some assault and rape claims involve abuse by guards, rather than other prisoners. In *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000), a court ruled in favor of a transgender woman in prison who claimed a guard grinded his exposed penis into her buttocks after she refused his demand for oral sex, allowing her to make an Eighth Amendment argument. Whether an incident of objectionable sexual touching meets the objective component of an Eighth Amendment claim will depend on what Circuit you are in, how serious the touching was, and whether it was a single incident or happened repeatedly.

c. Strip Searches

Section E of this Chapter summarizes the law about searches in prison, and Section H, Part 3 includes information about cross-gender strip searches.

Some people, like Victoria Schneider, have successfully challenged strip searches. Ms. Schneider was placed with male prisoners after her arrest even though she had been arrested before and booked as a female. In *Schneider v. San Francisco*, 97-2203 (N.D. Ca. 1999) she challenged a strip search used to determine her gender and a jury awarded her $750,000 in damages at trial. There does not appear to be a reported opinion from this case. In another good case, *Meriwether v. Faulkner*, 821 F.2d 408 (7th Cir. 1987), the Seventh Circuit allowed a transgender woman to proceed with an Eighth Amendment claim after she was strip searched before a group of guards who sought to humiliate and harass her.

On the other hand, in *Doe v. Balaam*, 524 F.Supp.2d 1238 (D. Nev. 2007), a transgender man lost his case challenging a strip search. After he was arrested for a misdemeanor, he told the police that he was transsexual. He was forced to strip in front of several officers before he was released on his own recognizance. The court found that the search was permissible because the officers had reasonable suspicion that he was concealing "contraband" (a rolled-up sock) in his crotch area.

SECTION J
Issues of Importance to Pretrial Detainees

THE BASICS: Pretrial detainees have most of the same rights as convicted prisoners.

THE RULE: Jail conditions must not be punitive or an exaggerated response to a security need.

Not everybody who is incarcerated in a prison or jail has been convicted. Many people are held in jail before their trial, and are referred to in the Handbook as "pretrial detainees." As a pretrial detainee, most of the legal standards explained in the above sections apply to you.

However, there are some differences in law for pretrial detainees. As you know from the above sections, the Eighth Amendment prohibits *cruel and unusual punishment*. This protection only applies to people who have already been convicted. Since detainees have not been convicted, they may not be punished *at all* until proven guilty. One legal result of this is that jail conditions for pretrial detainees are reviewed by courts under the Fifth or Fourteenth Amendment Due Process Clause, not the Eighth Amendment prohibition of cruel and unusual punishment.

The most important case for pretrial detainees is *Bell v. Wolfish*, 441 U.S. 520 (1979), which was a challenge to

the conditions of confinement in a federal jail in New York. In *Bell*, the Court held that jail conditions that amount to punishment of the detainee violate due process. The Court explained that there is a difference between punishment, which is unconstitutional, and regulations that, while unpleasant, have a valid administrative or security purpose. It held that regulations that are "reasonably related" to the institution's interest in maintaining jail security are not unconstitutional punishment, even if they cause discomfort. This is why detainees can be put into punitive segregation or SHU.

You can prove that poor conditions or restrictive regulations are unconstitutional punishment in two different ways:

(1) by showing that the prison administration or individual guard intended to punish you, or

(2) by showing that the regulation is not reasonably related to a legitimate goal. This can be because the regulation doesn't have any purpose or because it is overly restrictive or an exaggerated response to a real concern. On example of a case like this is *Pierce v. County of Orange*, 526 F.3d 1190 (9th Cir. 2008). In that case, a court held there was no legitimate reason for pretrial detainees in SHU to only get 90 minutes of exercise per week.

As with the *Turner* standard (see Section A) for convicted prisoners, courts defer to jail officials in analyzing what is a "legitimate concern." Security is a legitimate concern of jail officials, so they can put you in the hole for breaking a jail rule, just like a prison can.

Although the standard in *Bell* for analyzing the claims of pretrial detainees is well-established, the courts are not in agreement as to whether the content of that standard is actually any different from the content of the Eighth Amendment standard explained in Section F. In *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 244 (1983), the Supreme Court held that pretrial detainees have due process rights that are "at least as great" as the Eighth Amendment protections available to prisoners.

Other courts have held that pretrial detainees should have more protection than convicted prisoners. Two examples are *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 n. 9 (9th Cir. 2002) *and Alberti v. Klevenhagen*, 790 F.2d 1220, 1224 (5th Cir. 1986). However, when faced with claims by pretrial detainees, many courts simply compare the cases to Eighth Amendment cases. If you are a pretrial detainee, you should start by reading *Bell v. Wolfish*, and then research how courts in your circuit have applied that standard.

One area where the law may be different for pretrial detainees is when and how you can be searched. The Second Circuit, for example, has held that strip searches of pretrial detainees who are in custody for misdemeanor or other minor offenses are unconstitutional unless the guard or officer has a "reasonable suspicion" that the detainee has a concealed weapon or contraband of some sort. Reasonable suspicion means that the official searching you must have specific facts for suspecting you of having contraband. One case that explains this issue is *Shain v. Ellison*, 273 F.3d 56, 66 (2d Cir. 2001). However, other circuits have held that the practice of conducting full body visual strip searches on all jail detainees being booked into the general population for the first time does not violate the Fourth Amendment. *Powell v. Barrett*, 541 F.3d 1298 (11th Cir. 2008).

The Second Circuit has also stated that pretrial detainees retain a limited expectation of privacy under the Fourth Amendment that protects them from searches that are not done for legitimate security reasons. This means that the jail cannot search your cell looking for evidence to use against you in trial, only for contraband or other risks to jail security. *United States v. Cohen*, 796 F.2d 20 (2d Cir. 1986). Other courts do not agree with the Second Circuit on this.

In a few states, under state law, pretrial detainees retain a similar "limited but legitimate expectation of privacy … [if] the search of the pre-trial detainee's cell is … solely for the purpose of uncovering incriminating evidence which could be used against the detainee at trial, rather than out of concern for any legitimate prison objectives." *State v. Henderson*, 271 Ga. 264, 267 (1999). *See also Rogers v. State*, 783 So.2d 980 (Fla. 2001).

One other area in which pretrial detainees may get more protection is around procedural due process challenges to placement in segregation. In *Mitchell v. Dupnik*, 75 F.3d 517, 524 (9th Cir.1996), one appellate court held that a pretrial detainees may be subject to disciplinary segregation only after a due process hearing to determine whether they have violated any rule, regardless of the difficult question, described in Section D, of whether the conditions in segregation are so serious and unusual as to create a liberty interest.

SECTION K
Issues of Importance to Non-Citizens and Immigration Detainees

Since Congress changed the immigration laws in 1996, more and more non-citizens are being held in detention centers or jails during their immigration cases, or while they are waiting for deportation, even though they are not convicted criminals or even pretrial detainees. When a person is held in custody by the Immigration and Customs Enforcement agency (ICE) they are called "immigration detainees," rather than prisoners.

Note for Non-Citizens Serving Prison Sentences:

One important thing to be aware of as a non-citizen is that if you have been convicted of certain qualifying crimes (as defined by federal immigration law), you may be deportable after you have served your sentence. Regardless of your immigration status, non-citizens can be removed for criminal convictions. This is complicated, and something you should discuss with an attorney who specializes in immigration law.

If you are ordered removed while serving your criminal sentence or if you are fighting your immigration case while in prison, you could be detained after you have finished serving your sentence and held for an uncertain period of time before you are deported from the country or your immigration case is decided.

As an immigration detainee, you have most of the same constitutional rights to decent treatment as citizens do. Like pretrial detainees, immigration detainees can challenge the conditions of their confinement under the Due Process Clause of the Fifth Amendment, which protects any person in custody from conditions that amount to punishment. *See Wong Wing v. United States*, 163 U.S. 228, 237-38 (1896).

However, the Supreme Court has not yet determined what due process standard should be used to analyze conditions and abuse challenges by people in immigration detention. Some courts have acknowledged that it is not yet clear how immigration detainees' claims should be treated. In *Preval v. Reno*, 203 F.3d 821, 2000 WL 20591 (4th Cir. 2000), the Fourth Circuit reversed a lower court ruling on a case brought by immigration detainees because the district court had dismissed their claims using the standard for pretrial detainees without giving the detainees the opportunity to argue about the correct standard.

That said, most courts have held that such challenges should be analyzed under the *Bell* standard for pretrial detainees, discussed above. For an example of this point of view, read *Edwards v. Johnson*, 209 F.3d 800 (5th Cir. 2000) *Turkmen v. Ashcroft*, No. 02 CV 2307, 2006 U.S. Dist. LEXIS 39170, *98 (E.D.N.Y. June 14, 2006) or *Foreman v. Lowe*, No. 07-1995, 2008 U.S. App. LEXIS 1011 (3d Cir. Jan. 16, 2008). In considering due process claims by immigration detainees, the courts have stated that the Eighth Amendment sets a floor for those rights. This means that immigration detainees have at least as much protection as that under the Eighth Amendment. It is not clear if they have more.

If you are an immigration detainee, you may want to argue that you deserve a standard that is more protective of your rights than the standard for pretrial detainees or convicted prisoners because you have not gotten the usual protections that courts give defendants in the criminal justice system. Some courts have explicitly stated that the Eighth Amendment "does not set a ceiling" on due process rights. In other words, immigration detainees may get more protection under the Due Process Clause than convicted prisoners get from the Eighth Amendment. This means that some conditions courts find lawful for prisoners, might not be lawful for detainees. *Crosby v. Georgeakopoulos*, No. 03-5232, 2005 U.S. Dist. LEXIS 32238, *8-10 (D.N.J. June 24, 2005).

Though not a case involving immigration detainees, in *Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), a court decided that conditions for other "civil detainees," those who have a mental illness or face civil commitment for a sex offense, must be better than conditions for pre-trial criminal detainees. If people facing civil commitment are held in the same conditions as criminal detainees, the Ninth Circuit will *presume* the conditions are punitive, and thus unlawful. If you are an immigration detainee held in a jail or prison, or if your conditions are identical or more restrictive than conditions for pretrial detainees or prisoners, you may want to argue that the court should presume your conditions are punitive and unconstitutional.

You should look at cases from your jurisdiction to see which approach, if any, courts in your area have taken.

You can also argue that, because the correct standard is unclear, the court should appoint an attorney to represent you. You may have a good chance of getting appointed a lawyerl if you are an immigration detainee held in a private facility, as that raises multiple

complex questions of law. In *Agyeman v. CCA*, 390 F.3d 1101 (9th Cir. 2004) for example, the Ninth Circuit said the lower court abused its discretion when it did not appoint counsel to an immigration detainee who sued a private corporation because the case was very complex. *See also Sanusi v. Immigration and Naturalization Service*, 100 Fed. Appx. 49, 2004 WL 1303644 (2d Cir. 2004).

Examples of the types of cases detainees can bring under the ***Due Process Clause:***
- Restrictive or inhumane conditions of confinement
- Use of excessive force by guards.
- Problems with food, exercise, or sanitation.
- Failure to provide adequate medical care.

The law is even less clear for non-citizens who are arrested while entering the United States without a valid visa, or who are arrested after entering without inspection. These people are called "inadmissible" and the government sometimes argues they should get even less legal protection than other non-citizens. One of the first cases to address this issue was *Lynch v. Cannatella*, 810 F.2d 1363 (5th Cir. 1987). In *Lynch*, sixteen Jamaican stowaways claimed that they were abused while in the custody of the New Orleans harbor police. For ten days they were locked in a short-term detention cell without beds, mattresses, pillows, or heaters. Defendants kept them handcuffed and forced them to work while shackled. The police hosed them down with fire hoses, beat them, shot them with a stun gas, and locked them in shipping containers.

When the non-citizens sued, the defendants in *Lynch* argued that "inadmissible" aliens have "virtually no constitutional rights." The Fifth Circuit disagreed, and held that due process protects "persons" whether or not they are citizens or legal residents. The court held that immigration detainees are "entitled under the due process clauses of the Fifth and Fourteenth Amendments to be free of gross physical abuse at the hands of state or federal officials."

Unfortunately, some courts have taken this language to be the outer limit of due process protection for inadmissible aliens. For an example of this type of reasoning, read *Adras v. Nelson*, 917 F.2d 1552 (11th Cir. 1990). We think that all detainees should be protected from far more than "gross physical abuse," whether they are inadmissible or deportable, and urge you not to use this standard in your papers. If the defendants in your case use this standard, you could point out that it doesn't make sense to offer civil immigration detainees less protection than convicted criminals get under the Eighth Amendment.

There are almost no cases addressing the application of the Fourth Amendment's prohibition on "unreasonable searches and seizures" to immigration detainees. Because searches can be based on similar security concerns in all types of detention, most court treat prisoners, pretrial detainees, and immigration detainees the same, although those who have not been convicted of a crime may have somewhat more success in challenging the worst searches, like strip or body cavity searches. One unlawful search case by an immigration detainee is *Al-Shahin v. DHS*, No. 06-5261, 2007 U.S. Dist. LEXIS 75018 (D.N.J. 2007).

As explained in Section J on pretrial detainees, some courts have held that pretrial detainees charged with misdemeanors or other minor offenses cannot be strip searched in the absence of individualized reasonable suspicion that the detainee possesses a weapon or contraband. Thus, at a minimum, the same standard should apply to immigration detainees, who have not been charged with any crime. Some cases that discuss strip searches of pretrial detainees are *Bell v. Wolfish*, 441 U.S. 520 (1979); *Shain v. Ellison*, 273 F.3d 76 (2d Cir. 2001); *Kelly v. Fonti*, 77 F.3d 819 (5th Cir. 1996).

Also similar to pretrial detainees, the law about placement in segregation without due process may be better for immigration detainees than for convicted prisoners. One good case to read on this issue is *Bromfield v. McBurney*, C07-5226RBL-KLS, 2008 U.S. Dist. LEXIS 11844 (W.D. Wash. Jan 14, 2008).

Prison Litigation Reform Act (PLRA) and Exhaustion Requirements

Every circuit court to address the issue has held that the PLRA does not apply to immigration detainees because they are not "prisoners" within the meaning of the act. This means that the restrictive provisions of the PLRA discussed in Chapter 2, Section F and throughout this handbook do not apply to you, including the exhaustion requirement, filing fees, and three strikes provisions. Some examples of these cases include *Ojo v. INS*, 106 F.3d 680 (5th Cir. 1997); *LaFontant v. INS*, 135 F.3d 158 (D.C. Cir. 1998); *Preval v. Reno*, 203 F.3d 821 (4th Cir. 2000); *Agyeman v. INS*, 296 F.3d 871 (9th Cir. 2002). *See also Page v. Torrey*, 201 F.3d 1136 (9th Cir. 1999); *Troville v. Venz*, 303 F.3d 1256 (11th Cir. 2002); *Perkins v. Hedricks*, 340 F.3d 582 (8th Cir. 2003) (holding that the PLRA does not apply to people who have been civilly committed).

However, that doesn't mean you can ignore the detention center grievance system or the Immigration and Customs Enforcement (ICE) administrative complaint process. Before Congress passed the PLRA, courts created their own exhaustion requirements, and those may apply to you. The Supreme Court held in *McCarthy v. Madigan*, 503 U.S. 140 (1992), that courts need to balance a person's right to go to court to sue over injustice against an institution's interest in having you use whatever grievance system they have set up. Under this balancing test, there are three arguments you can make to allow you into court before exhausting: (1) if exhaustion would somehow hurt your ability to sue, for example because it might take too long; (2) if the institution's grievance system can't give you what you want, for example money damages; or (3) if the institution is biased or has already decided the issue against you. Still, it is safer to use or try to use any grievance system that ICE or the jail or detention center has, before you sue.

Cartoon by Jim McCloskey, The News Leader, Staunton, VA

CHAPTER FOUR:
STRUCTURING YOUR LAWSUIT

Now that you know your rights under the Constitution, the next step is figuring out how to put together your lawsuit. You will need to decide what you want the court to do, who to include as plaintiffs, and who to sue.

SECTION A
What To Ask for in Your Lawsuit

If you bring a lawsuit under Section 1983, you can ask for three things: **money damages**, a **declaratory judgment,** or an **injunction**. You don't have to ask for just one – you can ask for two or all three. In the legal world, all three of these options are called "**relief."**

- **Money damages** is when the court orders the defendants to pay you money to make up for harm you suffered in the past.
- An **injunction** is a court order that directs prison officials to make changes in your prison conditions and/or stop on-going conduct that the court finds to be illegal.
- A **declaratory judgment** is when a court makes a decision that explains your legal rights and the legal duties and obligations of the prison officials. However, the court doesn't order the prison to do or stop doing anything. If you get a declaratory judgment and the prison doesn't follow it, you can then ask the court for an injunction to make them do so.

Courts usually issue a declaratory judgment and an injunction together. However, it is also possible for a court to issue only the declaratory judgment and let the prison officials decide what actions will comply with the declaratory judgment.

A court will only issue an injunction if it feels that money damages will not fix whatever has harmed you. For instance, if you have to continue living in the unsafe conditions you sued over, money damages will not make those conditions any safer.

Section B of this chapter talks about injunctions in more detail, including when you can get an injunction, what it can cover, and how to enforce it. Section C of this Chapter explains money damages, Section D explains who you can sue (the "defendants") and Section E explains settlements.

If you are part of a group of prisoners who want a declaratory judgment and injunctive relief (and sometimes money damages) from a court, you can ask the court to make the lawsuit a **class action.** This kind of lawsuit joins together all people who have been harmed in the same way as you at the same prison or jail. There are very specific requirements for bringing a class action lawsuit. These requirements will be discussed in Section F of this chapter.

Chapter Four: Table of Contents

When you think about what kind of relief you want, it is important to keep in mind that in a Section 1983 or *Bivens* suit, a federal court cannot release you from prison or reduce your sentence. Additionally, you cannot use these kinds of lawsuits to request the reinstatement of good-conduct-time credits that have been unconstitutionally taken from you. *Preiser v. Rodriguez*, 411 U.S. 475 (1973). You can only challenge the fact or the length of your prison sentence through a *writ of habeas corpus*, which requires that you go through your state court system before seeking relief from a federal court.

A detailed discussion of the *writ of habeas corpus* is beyond the scope of this Handbook. But see Appendix J for some books and resources on *habeas corpus*.

SECTION B
Injunctions

An injunction is an order issued by a court that tells the defendant to do or not do some act or acts. The court can order the defendants to stop doing harmful and unconstitutional things to you. It can require the defendants to act in a way that will prevent them from violating your rights in the future. If the defendants don't follow the court's order, as set out in the injunction, they can be held in "contempt" by the court that issued the injunction. Contempt means that the Judge can order the defendants fined or jailed.

In considering whether to ask for an injunction in your lawsuit, you should think about the harm you have suffered and identify whether it happened just once, is still happening, or is likely to happen again soon. You may be able to get an injunction if the harm is continuing or is very likely to happen again soon.

The Supreme Court in *Lewis v. Casey*, 518 U.S. 343 (1996), stated that in order to get an injunction, a prisoner must show "actual or imminent injury." In this context, "injury" does not have to mean physical damage to your body. It just means that you are, or will be, worse off because of the illegal acts of the prison staff, such as: your mail isn't sent out, your books are taken away, or you have to live in a strip cell.

What is an Injunction?

An injunction is an order issued by a court that tells the defendant to do or not do something. You can get an injunction to stop the defendants from harming you. Or, you can get an injunction to make the defendants do something to improve conditions or care in the prison. Sometimes an injunction is referred to as "**prospective relief**." You can ask for an injunction if you are experiencing any of the following:

1. Overcrowded, unsafe, or extremely harsh conditions;

2. A pattern of guard brutality or harassment;

3. Inadequate medical care; or

4. Continuing violation of any of your rights.

"Actual or imminent injury" means that you have to show the court that you are being harmed in some way, or that it is likely that you will be harmed very soon. It is not enough to show that there is something wrong in your prison. To get an injunction, you must show that you are being harmed or are likely to be harmed by whatever it is that is wrong.

An injunction is only appropriate if the injury you face is ongoing. For example, if you are currently imprisoned in a severely overcrowded prison, that is a current and ongoing harm, and you can request an injunction.

On the other hand, if the overcrowding just happened for a week or two, and you do not have a good reason to believe that it is likely to happen again in the near future, you should not request an injunction. An example of harm that is *not ongoing* is being beaten once by a guard. Unless the guard threatens to beat you again, or engages in a pattern of violence, there is nothing that the court can order the prison officials to do that will fix the abuses that you suffered in the past. That situation is better dealt with by asking for money damages.

1. Preliminary Injunctions and Permanent Injunctions

Most injunctions are called **permanent injunctions**. The court can only give you a permanent injunction at the end of your lawsuit. However, lawsuits take a very long time, and many prisoners can't wait years for the court to decide whether to grant them a permanent injunction. Perhaps you are facing serious injury or even death. In a case like that, you can ask the court for a **preliminary injunction**. You can get a preliminary injunction much faster than a permanent injunction and it protects you while the court is considering your case, and deciding whether or not you will get a permanent injunction.

There are four things that you have to show to win a preliminary injunction:

(1) You are likely to show at trial that the defendants violated your rights;

(2) You are likely to suffer irreparable harm if you do not receive a preliminary injunction. "Irreparable harm" means an injury that can never be fixed;

(3) The threat of harm that you face is greater than the harm the prison officials will face if you get a preliminary injunction; and

(4) A preliminary injunction will serve the public interest.

Chapter Five includes sample documents to show how to seek a preliminary injunction.

If you are successful in winning your preliminary injunction, the battle is unfortunately not over. Under the PLRA, the preliminary injunction lasts only 90 days from the date that the court issues it. This usually means that you have to hope that you are able to win your permanent injunction within those 90 days. As stated before, lawsuits take a long time and it is unlikely that this will happen. You can get the preliminary injunction extended for additional 90-day periods if you can show the same conditions still exist. *Mayweathers v. Newland*, 258 F.3d 930 (9th Cir. 2001).

Even a permanent injunction is not actually permanent under the PLRA. After the first two years of a permanent injunction, defendants can challenge it every year. To keep the injunction, you will have to show that without it, your rights would still be violated. Under the PLRA you will have to convince the court that continuing the injunction is "necessary to correct a current or ongoing violation" of your rights and that you still meet the requirements for an injunction listed above.

But don't let this stop you from filing for an injunction. It is very likely that if you win an injunction, but are faced with it ending under the PLRA, you will be able to find a lawyer to help you.

2. Exhaustion and Injunctions

You must also consider the "exhaustion" requirements of the PLRA. "Exhaustion" means that you must complete your prison's grievance system before filing a lawsuit. You will learn more about this in Chapter Five, Section A. It is smart to use the prison grievance system while are working on your lawsuit.

If you have an emergency situation and you do not have time to use the prison grievance system, you can request a preliminary injunction anyway. Usually, you will have to exhaust your prison's administrative remedies while you are getting relief through the injunction. One case to read on this issue is *Jackson v. District of Columbia*, 254 F.3d 262 (D.C. Cir. 2001). That case states that the court can only protect prisoners with a preliminary injunction while the court waits for them to exhaust grievance procedures.

To get a preliminary injunction without having exhausted, you will have to show the court that if you are forced to wait until after using the prison grievance system to sue, you will be irreparably harmed. Irreparable harm is an injury that would cause permanent injury or damage that cannot be fixed by money or some other form of relief. In your complaint, explain what that harm. On-going pain is an example of irreparable harm, as are many ongoing violations of your constitutional rights.

3. Temporary Restraining Orders

There is another means of relief that you can get even faster than a preliminary injunction, called a "temporary restraining order" or "TRO." Sometimes you can get a TRO before the prison officials are even aware of the lawsuit. These are issued in emergency situations and only last for a short period of time.

A TRO is very difficult to get, especially without a lawyer. Rule 65 of the Federal Rules of Civil Procedure sets out the standard for a TRO. To get one you must show that you will suffer "immediate and irreparable injury, loss or damage" if the court doesn't help you before the other side has a chance to respond.

Chapter Five has a sample TRO request.

SECTION C
Money Damages

In a Section 1983 or *Bivens* lawsuit, the court can order prison officials to give you money to make up for the harm you suffered when your rights were violated. You can get money damages instead of, or in addition to, an injunction. You may want an injunction against some of the people you sue and money damages from others, or both. This section explains when and how to get money damages.

1. The Three Types of Money Damages

There are three types of money damages. The first type is an award of **nominal damages.** Nominal damages are frequently just $1, or some other very small sum of money. Nominal damages are awarded when you have proven a violation of your rights, but you have not shown any actual harm that can be compensated.

You are most likely to win a significant amount of money if you suffered an actual physical injury. The officials who are responsible should pay you for medical and other expenses, for any wages you lost, for the value of any part of your body or physical functioning which cannot be replaced or restored, and for your "pain and suffering." These are called **compensatory damages**. The idea behind

compensatory damages is to try and get you back to the condition you were in before you were injured.

The third type of damages you may be able to get is **punitive damages.** To get punitive damages, you need to show that the defendants' actions were "motivated by evil motive or intent" or involved "reckless or callous indifference to your rights." In other words, the officials had to either hurt you on purpose, or do something so clearly dangerous, they must have known it was likely to hurt you. An example of a prisoner getting punitive damages can be found in *Smith v. Wade*, 461 U.S. 30 (1983). In that case, Mr. Wade had been moved into protective custody in his prison after having been assaulted by other prisoners. A prison guard moved two other prisoners into Mr. Wade's cell, one of whom had recently beaten and killed another prisoner. Mr. Wade's cellmates harassed, beat, and sexually assaulted him. The court found that the guard's conduct in placing Mr. Wade in a situation the guard knew was likely to expose him to serious physical harm satisfied the standard for punitive damages. Mr. Wade won $25,000 in compensatory damages, and $5,000 in punitive damages.

Not all punitive damage awards require physical assault. Some courts and juries have awarded punitive damages for violations of other Constitutional rights based on a showing of "evil intent" by prison officials. One example is *Siggers-El v. Barlow*, 433 F.Supp.2d 811 (E.D. Mich. 2006). In that case a prisoner received $200,000 in punitive damages after he was transferred in retaliation for complaining to the warden about a prison official who harassed the prisoner and refused to put in the routine paperwork the prisoner needed to pay his appellate lawyer. The transfer ended up causing the prisoner to lose a very good prison job and contact with his family. That prisoner also received $19,000 in compensatory damages.

The point of punitive damages is to punish members of the prison staff who violate your rights and to set an example to discourage other prison staff from acting illegally in the future. Therefore, the court usually won't impose punitive damages for one incident. You will have to show there has been a pattern of abuse or that there is a threat of more abuse in the near future.

Just because you are able to prove your case and win compensatory damages, does not automatically mean you will win punitive damages. For instance, in *Coleman v. Rahija*, 114 F.3d 778 (8th Cir. 1997), Ms. Coleman was able to win $1000 in compensatory damages by proving that she was illegally denied medical treatment, but she did not win punitive damages. In that case, Ms. Coleman had a history of premature and complicated pregnancies and was experiencing severe pain and bleeding in connection with her premature labor. Nurse Rahija, the nurse on duty at Ms. Coleman's prison, was aware of Ms. Coleman's medical history. Nurse Rahija examined Ms. Coleman and determined that Ms. Coleman could be in early labor. However, she delayed Ms. Coleman's transfer to a hospital for several hours. The court ruled that Nurse Rahija's actions reached the standard of "deliberate indifference" and therefore violated the Eighth Amendment of the Constitution, but were not bad enough to show that she acted with "callous indifference" as required for punitive damages.

Even though you may not always get punitive damages, if you are suing for a violation of your rights and you have to prove **deliberate indifference** or **excessive force** to win your claim, it probably makes sense to ask for punitive damages, too. The standards for deliberate indifference and excessive force are discussed in Chapter Three.

2. Damages Under the PLRA

If you have not been physically hurt, the PLRA makes it harder to get damages. The PLRA states

No federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

This means that you cannot get money for the way something makes you feel unless you are also seeking money for a physical injury. Most courts have interpreted this statement to only affect claims for compensatory damages. This interpretation is explained in *Thompson v. Carter*, 284 F.3d 411 (2d Cir. 2002). So in most jurisdictions, you can still bring a claim for nominal or punitive damages for any kind of harm. And you can still try to get an injunction. Other cases to read on this issue are *Harris v. Garner*, 190 F.3d 1279 (11th Cir. 1999) (injunctive relief) and *Royal v. Kautzky*, 375 F.3d 720 (8th Cir. 2004) and *Calhoun v. DeTella*, 319 F.3d 936 (7th Cir. 2003) (nominal and punitive damages). Some of these courts have explained their interpretation by saying that otherwise, this section of the PLRA would be unconstitutional.

However, a few courts have held that this provision of the PLRA also bars punitive damages for emotional injuries. One case like that is *Davis v. District of Columbia*, 158 F.3d 1342 (D.C. Cir. 1998).
Another area in which courts disagree is whether a claim of a constitutional violation is a claim for "mental

or emotional injury." Most courts have decided that constitutional violations, like those described in Chapter Three, are in a different category. For that reason, you can get compensatory damages even if you have no physical injury.

One example is *Canell v. Lightner*, 143 F.3d 1210, 1213 (9th Cir. 1998). In that case, the Ninth Circuit stated that the plaintiff was, "not asserting a claim for 'mental or emotional injury.' He is asserting a claim for a violation of his First Amendment rights. The deprivation of First Amendment rights entitles a plaintiff to judicial relief wholly aside from any physical injury he can show, or any mental or emotional injury he may have incurred. Therefore, § 1997e(e)[of the PLRA] does not apply to First Amendment claims regardless of the form of relief sought."

Other good cases on this issue are *Robinson v. Page*, 170 F.3d 747, 748 (7th Cir. 1999); *Thompson v. Carter*, 284 F.3d 411 (2d Cir. 2002); *Cockroft v. Kirkland*, 548 F.Supp.2d 767 (N.D. Cal. 2008); and *Siggers-El v. Barlow*, 433 F.Supp.2d 811 (E.D. Mich. 2006). As another court explained, because "First Amendment violations rarely, if ever, result in physical injuries, construction of the PLRA against recovery of damages would defeat congressional intent and render constitutional protections meaningless. If § 1997e(e) is applied to foreclose recovery in First Amendment actions, it would place the First Amendment itself "on shaky constitutional ground." *Siggers-El* 433 F.Supp.2d at 816 (E.D. Mich. 2006).

Money Damages

- You can get **nominal damages** if your rights have been violated.
- You can get **compensatory damages** to make up for physical or other harm you were caused.
- You can get **punitive damages** to punish guards who hurt you on purpose.

Other courts have disagreed with this approach and state that the PLRA even bars damages for constitutional claims. One example is *Holloway v. Bizzaro*, 571 F.Supp.2d 1270 (S.D.Fla. 2008), in which a prisoner filed a lawsuit seeking damages for being denied a pork-free diet in violation of the First Amendment Free Exercise clause. The Court dismissed his case, because he did not state he had any physical injury, and he was only seeking damages.

Different courts have different standards as to what qualifies as physical injury. The physical injury has to be greater than "*de minimis*" which means "very minor," but it does not have to be severe. For example, in a case called *Siglar v. Hightower*, 112 F.3d 191 (5th Cir. 1997), a guard twisted a prisoner's ear, and it was bruised and sore for three days. The court held that this was not enough of a physical injury. However, the court noted that a prisoner does not need to show a "significant" injury. Many courts do not have clear precedent on what kind of injury is enough.

3. Deciding How Much Money to Ask For

It is difficult to decide how much in compensatory and/or punitive damages you should request from the court. You should think carefully about asking for huge amounts of money, like millions of dollars, because the judge will be less likely to take your claim seriously if you do not ask for an appropriate amount. You can estimate a number for your compensatory damages by thinking about what your injury cost you. For example, try and come up with the amount of medical expenses you are likely to face in the future, or wages you have lost or will lose because you cannot work. Also, think about the effect your injury has had on your life. How long have you suffered? Are you permanently injured? In what specific ways were you harmed? You can look up cases in your Circuit involving injuries that are similar to your own and see what the court awarded those prisoners.

SECTION D
Who You Can Sue

In your complaint you have to name at least one defendant. But if you want, you can name more than one. You should include all of the people or entities that were responsible for the harm that you suffered. However, you do not want to go too far and name uninvolved people in the hopes of increasing your chances of winning. You must have a good reason to sue someone.

Every defendant you sue must have acted "under color of state law" as you learned in Chapter Two, Section A, Part 2. What this means is that each prison official who was responsible for your injury must have acted while working at your prison or otherwise "on duty." This can include anyone who is involved in running your prison. You can sue the people who work in your prison, such as guards, as well as the people that provide services to prisoners, such as nurses or doctors.

You have to prove that each defendant in your case acted in a way or failed to act in a way that led to the violation of your rights. This is called "causation." For example, if a guard illegally beats you and violates your rights, he or she causes your injury. The guard's supervisor could also be liable for violating your rights if you can show that the supervisor made or carried out a "policy" or "practice" that led to the violation of your rights. So, let's say that the prison warden, who is the supervisor of the guard who beat you, instructed his guards to beat prisoners anytime that they did not follow orders. In this instance, the warden didn't actually beat you himself, but he is responsible for creating a policy that led to the beatings.

Sometimes, a supervisor may also be sued for ignoring or failing to react to a widespread health or safety problem. For example, if the warden was aware that guards refused to let prisoners eat on a regular basis and did not do anything to stop it, you might be able to sue the warden as well as the guards.

In 2009 the Supreme Court decided a case called *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), that may limit the ways in which supervisors can be sued for ignoring illegal action. Some courts are interpreting *Iqbal* to limit a plaintiff's right to sue a supervisor who ignored illegal action by a guard s/he supervised. Other courts have found that ignoring illegal action is still a ground for suit after *Iqbal.* This issue is discussed in more detail in Part 2 of this section.

You also have to decide whether to sue a prison official in his or her "individual capacity" or "official capacity." If you sue John Doe, supervising guard at your prison, in his individual capacity, it means you are suing John Doe personally. When you sue a guard for money damages, you need to sue him in his individual capacity.

In contrast, if you sue John Doe, supervising guard at your prison, in his official capacity, that means that you are suing whoever is the supervising guard at the time of your lawsuit, whether or not that person is actually John Doe. If you are seeking injunctive relief, you will need to sue the guard in his official capacity. If you are seeking both damages and injunctive relief, you sue the guard in *both* their individual and official capacity.

There are legal differences between who you can sue in an action for an injunction and who you can sue for money damages. A discussion of these differences follows below. **It is important to keep in mind that you can sue for an injunction and money damages together in one lawsuit.**

1. Who to Sue for an Injunction

The purpose of an injunction is to change conditions in your prison by making prison officials take some action or stop doing something that violates your rights. In this kind of lawsuit you need to sue the officials in charge.

You cannot sue a state or a state agency directly. This means you can't sue "The New York State Department of Correctional Services" or New York State itself for either an injunction or for money damages. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984).

Naming Your Defendants:

- Sue prison guards or administrators in their "individual capacity" if you want **money damages.**
- Sue prison guards or administrators in their "official capacity" if you want an **injunction**.

If you want both, sue everybody in their "individual and official capacities."

*You will learn where to state that you are suing someone in his or her individual or official capacity in **Chapter Five**.*

But, when you sue state-employed prison officials in their official capacity, this can force the state and its state agencies to respect your rights. For that reason, you need to sue the person at the prison who has the ability to make whatever change you want. This might be the warden, or a counselor, or a unit manager. If you are asking for an injunction, make sure you sue high-ranking officials at your prison, and mention the titles of the prison officials who you are suing as well as their names.

Although you can't sue a state, you can sue a municipality directly for an injunction. A "municipality" is a city, town, county or other kind of local government. This is called a "*Monell* claim" because it first succeeded in an important case called *Monell v. Dept. of Social Services of the City of New York*, 436 U.S. 659 (1978). You can sue a city, or any other municipality, for an injunction or damages where the violation of your rights was the product of a city's official **policy** or unofficial **custom**. *Pembaur v. Cincinnati*, 475 U.S. 469 (1986). Be warned that proving a policy or custom is hard unless the policy is actually written down.

You are unlikely to win against a municipality if your injury was the result of one specific event, or was caused by only one prison or jail official. You will be in a better position to win against a municipality if you can show that the municipality was guilty of a pattern of abuse that resulted in the violation of your rights

Remember that you can still get an injunction against the prison or jail officials even if you can't get one directly against the municipality. Name everyone who you want to hold liable.

2. Who to Sue for Money Damages: the Problem of "Qualified Immunity."

If you want to sue for money damages, you have to sue the prison officials who violated your rights in their individual capacity (personally). As with injunctions, you cannot sue your state or the prison itself.

The biggest hurdle in suing prison officials for money damages is the doctrine of **qualified immunity**. Qualified immunity is a form of legal protection given to government officials. If a court rules that the prison officials you are suing are protected by qualified immunity, that will be the end of your lawsuit for damages. However, qualified immunity does not protect defendants from an injunction!

To overcome qualified immunity and get money damages, your complaint (explained in detail in Chapter Five) must include facts that show that:

- Your constitutional rights were violated;
- The right that was violated was "clearly established" and
- The defendant was *personally responsible* for the violation of your rights. This is called the "personal involvement" requirement.

For a right to be **clearly established**, a prison official must have fair warning that his or her actions in a situation were illegal. Prison officials are allowed to make reasonable mistakes. A prison official may act illegally and still be free from liability if he or she couldn't be expected to know better because the law in that area is unclear. However, an official can be held responsible if he or she knew (or should have known) that he or she was acting illegally. The main Supreme Court cases on this topic are *Saucier v. Katz*, 533 U.S. 194 (2001) and *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Most states will require you to show that a reasonable prison official would know that his or her actions were unconstitutional. *Prison Legal News v. Lehman*, 397 F.3d 692, 701 (9th Cir. 2005). You should cite to cases that are similar to yours to show that the prison and guards should have known (or did know) that they were violating your rights. The prison or guards are going to argue that the law is not clearly established and you want to show laws, prison regulations, or cases to prove that it is.

The **personal involvement** requirement means that you can only get damages from officials or guards who actually personally violated your rights. Prison supervisors or other high level officials (like the state prison commissioner) cannot be held liable for a violation of your rights *just because* they are responsible for supervising or employing the guards who actually violated your rights. Holding a supervisor responsible just because they are a supervisor is called "*respondeat superior*" and it is not allowed in Section 1983 claims.

Before 2009, the law was clear that you can hold supervisors responsible on the following theories:

(1) The supervisor directly participated in the violation;
(2) The supervisor learned of the violation of your rights and failed to do anything to fix the situation;
(3) The supervisor created a policy or custom allowing or encouraging the illegal acts; or
(4) The supervisor failed to adequately train or supervise his or her subordinates.

One case discussing this kind of liability is *Colon v. Coughlin*, 58 F.3d 865 (2d Cir. 1995). In *Colon*, the court held that a letter from a prisoner to the prison superintendent was not enough to establish the superintendent's personal involvement. In another case, *Valdes v. Crosby*, 450 F.3d 1231 (11th Cir. 2006), the court allowed suit against a warden who had been warned by the previous warden about a correctional officer's violent behavior. *Hardy v. District of Columbia*, 601 F.Supp. 2d 182 (D.C. Dist. 2009) is a case that talks about supervisory liability for failure to supervise or a lack of training.

Since the Supreme Court's decision in *Ashcroft v. Iqbal*,129 S. C.t 1937 (2009), courts are divided on whether there are new limits to a prisoner's ability to sue a supervisor who ignored information about a constitutional wrongdoing, as opposed to participating in the action himself or herself. As the law is changing quickly in this area, you should research the impact of *Iqbal* on supervisory liability in your district when deciding what supervisors to name.

Some public officials have what is called **absolute immunity**. Unlike qualified immunity, absolute immunity is a complete bar to lawsuit. Because of this doctrine, you cannot sue a judge, a legislator, or anyone else acting "as an integral part of the judicial or legislative process" no matter what he or she has done.

You may also be worried that the prison officials you want to sue do not seem to have enough money to pay you. But in most cases any money damages that the court orders the prison officials to pay will actually be paid by their employers: the prison, the state, or the state agency that runs the prison. This is called "indemnification."

Finally, although there are different rules as to which remedies you can ask for from specific defendants, you can still ask for an injunction and money damages in the same complaint. For example, you can sue a guard in his or her individual capacity (for money damages) and his or her official capacity (for an injunction) in the same lawsuit.

3. What Happens to Your Money Damages

If you win money damages, the PLRA contains rules that may affect your award before you get it. The PLRA states: *"any compensatory damages…shall be paid directly to satisfy any outstanding restitution orders pending against the prisoner. The remainder…shall be forwarded to the prisoner."*

This means that if you are awarded compensatory damages after a successful suit, any debts you have towards the victim of your crime will be automatically paid out of your award before you get your money. This rule does not apply to punitive damages.

The PLRA also states that if you are awarded damages, "reasonable efforts" will be made to notify the "victims of the crime" for which you were convicted. There have been very few rulings regarding these provisions so far, so it is hard to say whether and how they will be implemented.

SECTION E
Settlements

Before a judge rules on your case, you may consider "settlement" which means both parties involved give in to some of each others' demands and your suit ends without a trial. In a settlement, you can get the same type of relief, like money or a policy change, as you could get if your case went to trial. As a plaintiff, it is always your decision whether to settle your lawsuit or not. No one, not even the judge or your attorney, can force you to settle.

The PLRA creates some rules on settlements. Settlements which order the prison to do something or stop doing something are often called "consent decrees." Consent decrees must meet strict requirements: the settlement must be "narrowly drawn," necessary to correct federal law violations, and do so in the least intrusive way. The court will need to approve of the settlement and make sure PLRA restrictions are enforced. This means that a court can only approve a consent decree if there is evidence or admissions by the defendants that your rights were violated by the prison officials. This can be a difficult task.

Some prisoners have been successful in having their consent decrees approved by a court when both the prisoner and the officials being sued agree that the decree meets all of the PLRA requirements. There is no guarantee that this will work in all cases.

Parties can enter into "private settlement agreements" that may not meet PLRA standards, but these agreements cannot be enforced by federal law. Private settlement agreements are very risky if your rights are being violated.

The PLRA does not restrict settlements that *only* deal with money. If you are not asking for an injunction, then the restrictions discussed above do not apply.

SECTION F
Class Actions

One person, or a small group of people, can sue on behalf of all other people who are in the same situation. This is called a "class action." The requirements for a class action are found in Rule 23 of the Federal Rules of Civil Procedure. Rule 23 is part of Title 28 of the United States Code (U.S.C.), which you can request from your law library. (Chapter Seven explains more about how to use statutes and law books.) We have summarized important parts of the rule below, but if you are thinking about bringing a class action you may want to read the exact words of Rule 23 yourself.

Rule 23(a) requires:

(1) The class must be so large that it would not be practical for everyone in it to bring the suit and appear in court;
(2) There must be "questions of law or fact common to the class;"
(3) The claims made by the people who bring the suit must be similar to the claims of everyone in the class; and
(4) The people who bring the suit must be able to "fairly and adequately protect the interests of the class."

Additionally, Rule 23(b) requires that any one of (1), (2) or (3), below, is true:

(1) Bringing separate actions would create a risk of:
(A) different rulings for different individual class members that would lead to contradicting standards of conduct for the other side; or
(B) rulings for individuals that, as a practical matter, would dictate the rights of other class members not in the case or harm their ability to protect their interests;

(2) The party who doesn't want it to be a class action has acted the same toward everyone in the class, so that final injunctive relief or declaratory relief is appropriate for the class as a whole; or

(3) The court finds that there are more questions of law or fact common to class members than questions affecting only individuals, and that a class action is better than an individual case for fairly and quickly deciding the case. The Court will consider:
(A) the class members' interests in individually controlling the their own case;
(B) whether any other case about the same issue has already started by class members;
(C) whether it would be a good thing to keep all cases about the issue in one court; and
(D) whether the case will be hard to manage as a class action.

A class action has two big advantages. First, any court order will apply to the entire class. Anyone in the class can ask the court to hold the officials in contempt of court and fine or jail them if they disobey the court order. If the suit were not a class action, prisoners who were not a part of the suit would have to start a new suit if prison officials continued to violate their rights.

Second, a class action for injunctive relief cannot be dismissed as "moot" just because the prisoners who start the suit are released from prison or transferred to a prison outside the court's jurisdiction, or because the prison stops abusing those particular prisoners. The case will still be alive for the other prisoners in the class. *Sosna v. Iowa*, 419 U.S. 393 (1975). "Moot" means that the problem you are complaining about has stopped happening, and is not likely to happen to you again. You can lose a case by it becoming "moot." The problem of "mootness" is discussed more in Chapter Six, Section D.

A class action has one very big disadvantage. <u>If you lose a class action, the court's decision binds all the class members, so other prisoners who are part of the class cannot bring their own challenges.</u>

In contrast, if you lose a suit that is not a class action, you merely establish a bad "precedent." Other prisoners can still raise the same legal issues in another suit, and they may be able to convince a different judge to ignore or overrule your bad precedent. Chapter Seven explains how precedent works.

This is why the Federal Rules require that the people who bring a class action must be able to "fairly and adequately protect the interests of the class." Protecting the interests of a class requires resources that are not available to prisoners, such as a staff of investigators, access to a complete law library, and the opportunity to interview potential witnesses scattered throughout the state. As a result, if a court decides that your case meets all the requirements for a class action, the court will appoint a lawyer to represent you and the class.

You can also start a suit under Section 1983 for yourself and a few other prisoners and send copies to some lawyers to see if they'll help. If a lawyer agrees to represent you or the court appoints a lawyer, your lawyer can "amend" your legal papers to change your suit into a class action.

- **Chapter One, Section D**, explains how to try and find a lawyer.

- **Chapter Five, Section C, Part 3** explains how to ask the court to appoint a lawyer to represent you.

CHAPTER FIVE: HOW TO START YOUR LAWSUIT

This chapter explains how to start a lawsuit under Section 1983 or *Bivens*. It explains what legal papers to file, when, where, and how to file them, and it provides forms and examples to guide your writing. It also explains what to do in an emergency, when you need immediate help from the court.

Chapter Five: Table of Contents

The next chapter, Chapter Six, discusses what happens after a suit is started. Neither chapter gives all the rules or procedures for this kind of suit. These details are in the **Federal Rules of Civil Procedure**. The Federal Rules are supposed to be in your prison library, included in Title 28 of the United States Code (U.S.C.). There is an annotated version of the U.S.C., called the United States Code Annotated (U.S.C.A.), which gives short summaries of important court decisions which interpret each rule. The U.S.C. will only have the text of the Federal Rules, but the U.S.C.A. will give some explanation and cases and is probably more helpful to you. Chapter Seven explains how to use the U.S.C.A. and other law books.

The Federal Rules are not too long and they are very important. When we refer to a specific rule in this Handbook, you should read the rule if you possibly can. The rules are revised every few years, so be sure to check the "pocket parts" in the back of the books in the U.S.C.A. or read a current copy of the paperback.

You may find reading the rules frustrating, since they are written in very technical language, and even lawyers and judges can't always agree on what they mean. For this reason, you may want to refer to a book that explains the Federal Rules and explains the court decisions that interpret the Rules. If your library has it, a good book to look up questions in is *Wright and Miller's Federal Practice and Procedure*. You may also want to read the Advisory Committee notes which are printed in some editions of the rules. These notes explain the purpose of the rules and how they are supposed to work.

In addition to the Federal Rules, each U.S. District Court issues "Local Rules of Practice," which are based on the Federal Rules. The Local Rules cover details of procedure that may be different in each particular district. You can get a copy from the Clerk of the U.S. District Court for each district, but you may have to pay a small fee. You may want to request these rules when you write the court to get forms (explained below). Look in Appendix L to find the address of your District Court. Or, if you have a friend or relative with internet access, he or she can download the rules for free from the specific District Court's website.

SECTION A
When To File Your Lawsuit

If you are trying to stop an official policy or practice within the prison, you will, of course, want to act as quickly as possible. If a rule has been issued or an official decision has been made, you do not need to wait until the new procedure is put into effect. You can sue right away to block it as long as you have first completed all internal grievance processes.

If you are suing mainly to recover damages for an abuse that has already ended, you may not be in such a hurry. But it is usually best to get your suit going before you lose track of important witnesses or evidence.

TIP: Before you start writing your complaint, request the following documents from your District Court:

1. The District Court's Local Rules;
2. Forms for a Section 1983 *pro se* action;
3. *In Forma Pauperis* forms;
4. Forms for Appointment of Counsel.

1. Statute of Limitations

For suits where you will be asking for money damages, there is a "statute of limitations" which sets a deadline for how long you can wait after the events occurred before you start your suit. If your time runs out, your case is "time-barred," which means your case will be dismissed.

To meet a statute of limitations, you need to file your suit before the deadline. As long as you file on time, it is OK if your case lasts past the deadline. The deadline for a Section 1983 suit is determined by your state's general personal injury statute. *Owens v. Okure*, 488 U.S. 235, 236 (1989). This same rule applies to *Bivens* actions brought by federal prisoners. In some states, the statute of limitations is as short as one year, but most states give two or more years. Statutes of limitations can change, so always check current state statutes to make sure. To discover the statute of limitations in your state, look in the "civil code" or "civil procedure" section of the state code (your state's collection of laws).

If you expect to get out of prison fairly soon – for example, you already have a parole date – then you might be better off waiting until you are out before you start a suit that is only for damages. You will obviously have more freedom to get your suit together when you're out, and you'll have access to a more complete law library. You may be able to raise the money to hire a lawyer, and prison officials will have a harder time getting back at you for filing a suit. Also, some sections of the PLRA, like exhaustion, and the limitation on damages for emotional injury, do not apply to prisoners who have been released.

You do not have to worry about the statute of limitations if you are asking for an injunction. However, if you want an injunction you need to start and finish your suit while you are inside prison. If you do not, then your case may be dismissed as "moot," which is explained in Chapter Six, Section D.

If you file your complaint within the statute of limitations, you can usually file an "amended complaint" to add new claims that are related to the ones you initially included even if the statute of limitations has run out. However, you may have trouble if you try to add new defendants after the statute of limitations. Read Federal Rule of Civil Procedure Rule 15(c) to learn whether your new complaint will "relate back" to your first filing.

2. Exhaustion of Administrative Remedies

The PLRA states that *"[n]o action shall be brought with respect to prison conditions … 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.A. § 1997e(a).

This provision is known as the "exhaustion" requirement, and it means that you have to use the prison grievance system before you file your lawsuit. If you have not used your prison's grievance system and you try to sue a prison official about anything he or she has done to you, the court will almost always dismiss your case. Not only do you have to file a grievance, but you also need to wait for a response, and appeal that response as far up as possible. If prison officials fail to respond in the amount of time stated on the form, you can treat that as a denial, and appeal immediately.

It doesn't matter if you believe your prison's grievance system is inadequate, unfair or futile. You may know that nothing is going to change by filing a grievance, but you still need to do it. Your case will be dismissed if you do not.

Very rarely, exhaustion may not be required if you can show that you were *unable* to file a grievance through *no fault of your own*. For instance, if you are in SHU without access to grievance forms, or if a prison official told you not to file a grievance, the court may decide to excuse the exhaustion requirement in your case. However, courts are very skeptical of these claims and show very little mercy, so you must go through the grievance process unless you are truly unable.

The language of the PLRA says that the exhaustion requirement applies to cases regarding "prison conditions." Although "prison conditions" sounds like it might only include claims about things like inadequate food or dirty cells, in a case called *Porter v. Nussle*, 534 U.S. 516 (2002), the Supreme Court held that **"**prison conditions" refers to everything that happens in prison, including single incidents of guard brutality or inadequate medical care. Under another important Supreme Court case, *Booth v. Churner*, 532 U.S. 731 (2001), you have to use the prison's grievance system even if it does not offer the type of relief you would like to sue for. The prisoner in that case, Timothy Booth, wanted money damages and the

administrative grievance system at his prison did not allow money damages. The Court decided that even though Mr. Booth's prison administrative grievance system could not award him money damages, Mr. Booth was still forced to go through the entire administrative grievance process before coming to court to seek money damages.

In the U.S. Supreme Court Case, *Jones v. Bock*, 549 U.S. 199 (2007), the Court stated that prisoners do not need to *show* in their complaint that they have exhausted all grievance procedures. However, defendants can rely on a prisoner's failure to exhaust as a defense. The Court also said that when a prisoner brings a case with both exhausted and unexhausted claims, the court must let the exhausted claims move forward without dismissing the entire suit. The court can only dismiss the unexhausted claims.

You should always try to be as detailed as possible in your grievances. You should mention all the issues and facts you want to sue about, and try to comply with all the prison's grievance rules and deadlines, even if they don't make any sense.

To be safe, you should also name everyone who you think is responsible and who you may want to sue. If your prison grievance system requires you to name everyone, and you don't, a court may not let you sue that person. If your prison grievance system does not require that you name the responsible people, you will be able to sue them even if you didn't name them in the grievance.

If the court does dismiss your case or one of your claims for "failure to exhaust," it will probably be a "dismissal without prejudice" which means that you can exhaust your remedies, and then re-file. The dismissal will probably not be considered a "strike" against you. (For more about "strikes" see Section C, Part 2 of this Chapter)

Unfortunately, statutes of limitation can run out while you are exhausting the grievance process. If the statute of limitations has run by the time you are done exhausting, you will be out of luck. So you want to make sure you start exhausting the grievance system immediately after the incident occurs. This is also important because many prison grievance systems have short time deadlines.

SECTION B
Where To File Your Lawsuit

You will file your lawsuit at the federal trial court, called a "district court." This is where all Section 1983 and *Bivens* cases start. Some states, such as Alaska, only have one district. Others have several. New York, for example, is composed of four districts: the Northern, Western, Eastern, and Southern Districts. In total, there are 94 district courts. What district you should file in is determined by the law of "venue." The main venue rule for a Section 1983 or *Bivens* lawsuit is Section 139(b) of Title 28 of the United States Code.

It is usually easiest to file in the district "in which the claim arose." That is, you should file in the district that includes the prison where your rights were violated. To determine what district this is and to get the address of the district court, locate your state in Appendix L, and then check to see which district covers the county your prison is in.

You do not *have* to say in your complaint why you decided to file in a particular district. It is up to the defendants to challenge your choice of venue if they think you filed in the wrong place. However, the district court often will return your papers if the judge decides you sued in the wrong court. For this reason, we have included a sentence on "venue" in our sample complaint in Section C, Part 1 of this chapter.

TIP: Always be sure to send the Court Clerk a letter stating that your address has been changed if you are transferred to a different prison while your case is pending.

SECTION C
How To Start Your Lawsuit

As you will see, a lawsuit requires a lot of paperwork. There are two basic papers for starting any federal lawsuit: a **summons** and a **complaint**. They are described in Part 1, below.

If you have little or no money, you will also want to request that the court allow you to sue "*in forma pauperis*," which is Latin for "as a poor person." Filing that way gives you more time to pay the court filing fee. *In forma pauperis* papers are described in Part 2.

You will also probably want to ask the court to appoint a lawyer for you, and this is described in Part 3.

Eventually, you may want to submit **declarations** to present additional facts in support of your complaint. Declarations are described in Part 4 of this Section.

Lawyers write legal papers a certain way, which is different from how people ordinarily write. But don't be intimidated! This does not mean that you need to use legal jargon, or try to sound like a lawyer. Judges do not expect or want prisoners who are not lawyers to write like lawyers. It is best to just write simply and clearly. Do not worry about using special phrases or fancy legal words.

This chapter will include forms for some of the basic documents that you will need. There are additional forms in Appendix D, and a sample complaint in Appendix B. The forms and examples in this chapter show only one of the many proper ways to write each type of paper. Feel free to change the forms to fit your case. If you have access to copies of legal papers from someone else's successful Section 1983 lawsuit, you may want to follow those forms instead.

If you need a legal paper that is not covered by this chapter, Chapter Six, or Appendix B or D, you may want to see if your prison library has a book of forms for legal papers. Two good books of forms for federal suits are: *Moore's Manual-Federal Practice Forms* and *Bender's Federal Practice Forms*. Some U.S. District Courts have special rules about the form your legal papers should follow – like what kind of paper to use, what line to start typing on and what size type to use. You will find these rules in the Local Rules you request from your district court. Some courts have more rules than others and unfortunately, the rules vary a lot from court to court.

Most district courts also have a packet of forms that it will send for free to prisoners who want to file actions *pro se* (without a lawyer). You can write a letter to the court clerk explaining that you are a prisoner and are requesting forms for a 42 U.S.C. § 1983 action. The court may or may not require you to use their forms. If you can get these forms, use them. They are the easiest way to file a complaint! With or without the forms, you will need to be sure to include all of the information described below. It is a good idea to request both the Local Rules and the Section 1983 forms before you start trying to write your complaint.

Generally, you should type if you can. Large type is best. Check with the local court rules to see if you need to use a particular type or length of paper. Type or write on only one side of each sheet, and staple the papers together.

Try to follow the forms in this chapter and the local rules for your district. But don't let these rules stop you from filing your suit. Just do the best you can. If you can't follow all the rules, write the court a letter that explains why. For example, you can tell the court that you were not allowed to use a typewriter, or you could not get the right paper. The courts should consider your case even if you do not use the correct form. When a prisoner files a lawsuit without help from a lawyer, the federal courts will even accept handwritten legal papers.

Be sure to put your name and address at the top left hand corner of the first page of your complaint and any motion you submit. All the prisoners who bring the suit should sign the complaint. At least one should sign each motion.

1. Summons and Complaint

You start a Section 1983 suit by mailing two legal documents called a "complaint" and a "summons" to the appropriate U.S. District Court. Both documents will also have to be "served" or given to, the defendants. Service is very important, and is explained in Section D below.

THE COMPLAINT

The complaint is the most important document in your lawsuit. In it, you describe your lawsuit. You explain who you are (plaintiff), who you are suing (defendants), what happened (factual allegations), what laws give the court the power to rule in your favor (legal claims), and what you want the court to do (relief). If your complaint does not meet all the requirements for a Section 1983 or *Bivens* lawsuit, your suit could be dismissed at the very start.

Getting all the right facts down in your complaint can be difficult, but is very important. Chapter Seven has some legal research and writing tips that may help you write your complaint.

Below, we explain each part of a complaint. In Appendix B, you will find an example of a complaint in a made-up case. We recommend that read the form complaint, explanation and sample complaint before you try to write your own. Yours should be on a full sheet of paper (like the sample in Appendix B), not in two columns like the complaint form explained here.

You can copy the parts of this form that are appropriate for your suit, and add your own facts to the *italicized* sections. If part of a paragraph here doesn't apply to

your suit, don't include it. Each paragraph in your complaint should be numbered, starting with the number "1." The letters (A) through (J) in grey by each section should not be included in your complaint. They are just there for your reference, so that you will be able to tell which part of the complaint we are talking about in the explanation below.

THE COMPLAINT FORM:

UNITED STATES DISTRICT COURT (A)
_____.
----------x
Names of all the people :
bringing the suit, :
Plaintiff[s], :
: COMPLAINT
v. : Civil Action No. __
:
Names of all the people :
the suit is against, :
individually and in their :
official capacities, :
Defendant[s] :
:
----------x

I. JURISDICTION & VENUE (B)

1. This is a civil action authorized by 42 U.S.C. Section 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. Section 1331 and 1343 (a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202. Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. Section 2283 & 2284 and Rule 65 of the Federal Rules of Civil Procedure.

2. The [*name of district you are filing your suit in*] is an appropriate venue under 28 U.S.C. Section 1391 (b)(2) because it is where the events giving rise to this claim occurred.

II. PLAINTIFFS (C)

3. Plaintiff, [*your full name*], is and was at all times mentioned herein a prisoner of the State of [*state*] in the custody of the [*state*] Department of Corrections. He/she is currently confined in [*name of prison*], in [*name of City and State*].

III. DEFENDANTS (D)

4. Defendant, [*full name of head of corrections department*] is the [*Director / Commissioner*] of the state of [*state*] Department of Corrections. He is legally responsible for the overall operation of the Department and each institution under its jurisdiction, including [*name of prison where plaintiffs are confined*].

5. Defendant, [*warden's full name*] is the [*Superintendent / Warden*] of [*name of prison*]. He is legally responsible for the operation of [*name of prison*] and for the welfare of all the inmates in that prison.

6. Defendant, [*guard's full name*] is a Correctional Officer of the [*state*] Department of Corrections who, at all times mentioned in this complaint, held the rank of [*position of guard*] and was assigned to [*name of prison*].

7. Each defendant is sued individually and in his [*or her*] official capacity. At all times mentioned in this complaint each defendant acted under the color of state law.

III. FACTS (E)

8. *State IN DETAIL all the facts that are the basis for your suit. You will want to include what happened, where, when, how and who was there. Remember that the judge may know very little about prison, so be sure to explain the terms you use. Divide your description of the facts into separate short paragraphs in a way that makes sense – by time, date, or event.*

9. *You may want to include some facts that you do not know personally. It may be general prison knowledge, or it may be information given to you by people who are not plaintiffs in your lawsuit. It is OK to include this kind of information, but you need to be sure that each time you give these kinds of facts, you start the paragraph with the phrase* "Upon information and belief." *If you include such facts, you must have a good faith basis for believing them to be true.*

10. *You can refer to documents, affidavits, and other materials that you have attached at the back of your complaint as "exhibits" in support of your complaint. Each document or group of documents should have its own letter: "Exhibit A," "Exhibit B" etc.*

IV. EXHAUSTION OF LEGAL REMEDIES (F)

11. Plaintiff [*name*] used the prisoner grievance procedure available at [*name of institution*] to try and

solve the problem. On [*date filed grievance*] plaintiff [*name*] presented the facts relating to this complaint. On [*date got response*] plaintiff [*name*] was sent a response saying that the grievance had been denied. On [*date filed appeal*] he/she appealed the denial of the grievance.

V. LEGAL CLAIMS (G)

12. Plaintiffs reallege and incorporate by reference paragraphs 1 – 11 [*or however many paragraphs the first four sections took*].

13. The [*state the violation, for example, beating, deliberate indifference to medical needs, unsafe conditions, sexual discrimination*] violated plaintiff [*name of plaintiff*]'s rights and constituted [*state the constitutional right at issue, for example, cruel and unusual punishment, a due process violation*] under the [*state the number of the Constitutional Amendment at issue, like Eighth or Fourteenth*] Amendment to the United States Constitution.

14. The plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the declaratory and injunctive relief which plaintiff seeks.

VI. PRAYER FOR RELIEF (H)

WHEREFORE, plaintiff respectfully prays that this court enter judgment granting plaintiff:

15. A declaration that the acts and omissions described herein violated plaintiff's rights under the Constitution and laws of the United States.

16. A preliminary and permanent injunction ordering defendants [*name defendants*] to [*state what it is you want the defendants to do or stop doing*].

17. Compensatory damages in the amount of $____ against each defendant, jointly and severally.

18. Punitive damages in the amount of $____ against each defendant.

19. A jury trial on all issues triable by jury

20. Plaintiff's costs in this suit

21. Any additional relief this court deems just, proper, and equitable.

Dated: _____ (I)

Respectfully submitted,

Prisoners' names and addresses

VERIFICATION (J)

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at [*city and state*] on [*date*]

Signature
Type name of plaintiff

Explanation of Form:

Part (A) is called the "caption." It looks strange, but it is how courts want the front page of every legal document to look. There is no one right way to do a caption, so you should check your court's local rules to see what they want. The top line is the name of the court. You will have already figured out where you are filing your lawsuit by reading Section B of this chapter, and referring to Appendix L. If you are suing in the Western District of New York, where many New York prisons are, you would insert those exact words "Western District of New York" where the blank is. In the example in Appendix B, the prisoners are suing in the Northern District of Illinois.

Inside the caption box, you need to put the full names of all the plaintiffs, and the full names and titles of all the defendants. Think carefully about the discussion in Chapter Four about who you can sue. Remember to write that you are suing them in their "official capacity," if you want injunctive relief, and their "individual capacity" if you want money damages. The plaintiffs and defendants are separated by the letter "v" which stands for "versus" or "against." Across from the box is the title of your document. Each document you file in your case will have a different title. This is a "Complaint," so title it that. Under the title is a place for your civil action number. Leave that line blank until you are assigned a number by the court. You will get a number after you file your complaint.

Part (B) is a statement of the court's jurisdiction (paragraph 1) and venue (paragraph 2). Jurisdiction really means "power." Federal courts are courts of

"limited jurisdiction." This means they can only hear cases that Congress has said they should hear. For the purposes of a complaint, all you have to understand about jurisdiction is what statutes to cite. If you are filing a *Bivens* action instead of a Section 1983 action, say so in the first sentence. All prisoners bringing Section 1983 or *Bivens* suits should cite 28 U.S.C. Section 1331 and 1343 (a)(3) in this paragraph. The other statutes you cite depend on what kind of case you are bringing:

- If you are seeking declaratory relief (see Chapter Four, Section A), you should include a sentence stating "Plaintiffs seek declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202."

- If you are seeking injunctive relief (see Chapter Four, Section B) you should include a sentence stating "Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. Section 2283 & 2284 and Rule 65 of the Federal Rules of Civil Procedure."

- If you have included state law claims in your complaint you should include a sentence stating, "The court has supplemental jurisdiction over plaintiff's state law claims under 28 U.S.C. Section 1367."

- If you are including Federal Tort Claims Act claims (explained in Chapter 2, Section C) you should include a sentence stating: Plaintiffs' Federal Tort Claims Act claims are authorized by 28 U.S.C. Section 1346.

Part (C) is a list of the plaintiffs in the lawsuit. This may just be you. Or, you may have decided to file suit with other prisoners who are having or had similar problems. In this paragraph, you should tell the court who you are, and where you are incarcerated. If you are bringing an equal protection claim (described in Chapter Three), you may also want to include your race, ethnicity, or gender. Each plaintiff should get their own paragraph. If there are differences in each plaintiff's situation then you need to note that. For example, one plaintiff could have been released since the event occurred. If you or any of the other plaintiffs were transferred from one facility to another since the events occurred, indicate where you were at the time of the event, and where you are now.

Part (D) is a list of potential defendants and their titles. Those listed are just examples. You may sue more people or less people, so delete or add additional paragraphs in your complaint. The defendants may be all guards, or all supervisors. As explained above, you will need to put careful thought into who you are suing, and whether to sue them in their official or individual capacity. Only sue people who were actually involved in violating your rights! You will also want to include a statement for each defendant of their role at the prison. Generally, this just means stating a defendant's job duties. You must be sure to include the statement in the final paragraph of this section: that "at all times, each defendant acted under color of state law." (See Paragraph 7 in the form complaint). As you may remember from Chapter Two, Section A, this is one of the requirements for Section 1983 actions.

Part (E) is the factual section of your complaint. It is very important, and can be very rewarding if done well. It is your chance to explain what happened to you. In this section, you must be sure to state (or "allege") enough facts to meet all the elements of your particular claim. This can be a very big task. We would suggest that you start by making a list of all the claims you want to make, and all the elements of each claim.

For example, in Chapter Three, Section F, Part 1, you learned that an Eighth Amendment claim based on guard brutality requires a showing that:

> (1) you were harmed by a prison official;
> (2) the harm caused physical injury (necessary for money damages under PLRA); and
> (3) the guard's actions were not necessary or reasonable to maintain prison discipline.

This means that in your complaint, you will need to state facts that tend to show that each of these three factors is true. It is fine to state a fact that you believe is true but don't know to be true through personal knowledge, as long as you write "upon information and belief" when stating it as a fact.

This is the section where you can refer to "exhibits," if you have any. Read through this chapter to get an idea of the types of documents you can submit as exhibits and how to number them. Then, when you write this section (factual section) of your complaint, you can use phrases like "Refer to Exhibit A" to help illustrate and support your facts.

In the factual section, you must include facts that show how each defendant was involved in the violation of your rights. If you do not include facts about a certain defendant, the court will probably dismiss your claim against that person. (Refer to Chapter Seven for more legal research and writing tips.)

Part (F) is a statement that you have exhausted your

administrative remedies by using the prison grievance system. In the first part of this chapter, we discussed "exhaustion" and the case *Jones v. Bock*, where the Supreme Court decided that you don't have to show in your complaint that you exhausted all remedies. However, it's still a good idea to include all the steps you have taken to exhaust your complaint, and if you can, attach copies of your grievance and appeal forms as exhibits.

Part (G) is where you state your legal claims, and explain which of your rights were violated by each defendant. In all complaints, you need to be sure to include the sentence in Paragraph 12 so you do not have to restate all the facts you have just laid out. You should have one paragraph for each individual legal claim. For example, if you feel that prison officials violated your rights by **beating you** and then **denying you medical care**, you would want to list these two claims in two separate paragraphs. If all the defendants violated your rights in all the claims, you can just refer to them as "defendants." If some defendants violated your rights in one way, and others in another way, then refer to the defendants individually, by name, in each paragraph. Here is an example:

1. Defendant Greg Guard's use of excessive force violated plaintiff's rights, and constituted cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

2. Defendants Ned Nurse, Darla Doctor and Wilma Warden's deliberate indifference to plaintiff's serious medical needs violated plaintiff's rights, and constituted cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

Paragraph 14 is only necessary if you are applying for declaratory or injunctive relief. You should include that sentence in any complaint that requests an injunction or a declaratory judgment.

Part (H) is where you tell the court what you want it to do. You can ask for a declaration that your rights were violated, an injunction, money damages, costs, and anything else the court thinks is fair. What is written there is just an example.

Include Paragraph 15, requesting a declaratory judgment, if that is at least part of the relief you want.

Include Paragraph 16, requesting injunctive relief, only if you are eligible for injunctive relief. You should review Chapter Four, Section B on injunctive relief before writing this section. If you request an injunction, spend some time thinking about what it is you actually want the prison to do or stop doing. Be creative but also specific. Make sure that the injunction you request is related to a continuing violation of your rights. In the example in Appendix B Plaintiff Abdul does not ask for an injunction, because his rights were only violated once. Plaintiff Hey, however, is experiencing continuing violence, so it is appropriate for him to seek an injunction.

You need paragraphs 17 and 18 if you are requesting money damages. Review Chapter Four, Section C on damages before writing this section. You should think carefully about how much money you want in compensatory and punitive damages. If you cannot figure out how much to ask for, just request compensatory and punitive damages without including a dollar amount.

Part (I) is where you sign and date the complaint. You must always sign a legal document.

Part (J) is a "verification." This part is optional. You do not have to verify a complaint, but it is best if you do. If you verify your complaint, you can use your complaint as evidence if the defendants file a motion for summary judgment against you (see Chapter Six, Section F) or to support your request for a temporary restraining order (see Section E of this Chapter). When you verify a complaint, you are making a sworn statement that everything in the complaint is true to the best of your knowledge. Making a sworn statement is like testifying in court. If you lie, you can be prosecuted for perjury.

Remember, you need to tell the truth in an "unverified" complaint as well.

Amended Complaints

If you want to change your complaint after you have submitted it, you can submit an "amended complaint" which follows the same form as your original complaint, but with "Amended Complaint" as the title. An amended complaint must be about the same basic events. You might want to amend a complaint if you want to change who some of the defendants are, ask the court to do slightly different things, add or drop a plaintiff, or change your legal claims. You also might discover that you need to make some changes in order to avoid having your complaint dismissed. See Chapter Six, Section C.

When and how you can amend your complaint is governed by Rule 15 of the Federal Rules of Civil

Procedure. You have a right to amend one time before the defendants submit an **Answer** (explained later in this Chapter) in response to your complaint. You need the court's permission, or the consent of the defendants, to submit a second amended complaint or to submit any amendment after the prison officials have filed an Answer. According to the Federal Rules of Civil Procedure Rule 15(a), the court should grant permission "freely… when justice so requires."

You might also want to change your complaint to tell the court about events that happened after you filed it. The guards might have beaten you again, confiscated your books, or placed you in an isolation cell. This is called a "supplemental complaint." Your right to file a supplemental complaint is governed by Federal Rules of Civil Procedure Rule 15(d). The court can let you submit a supplemental complaint even if your original complaint was defective. The supplemental complaint also follows the same form as your original complaint but you will use "Supplemental Complaint" as the title.

THE SUMMONS

Along with your complaint, you must submit a "summons" for the court clerk to issue. The summons notifies the defendants that a suit has been started against them and tells them by when they must answer to avoid having a judgment entered against them. A summons is much easier than a complaint.

You will notice that the caption (Part A) is the same as the one you did for your complaint. All you need to do is follow this form:

IN THE UNITED STATES
DISTRICT COURT FOR THE (A)
_____.
----------x
Names of all the people :
bringing the suit, :
Plaintiff, :
: SUMMONS
v. : Civil Action No.__
:
Names of all the people :
the suit is against, :
individually and in their :
official capacities, :
Defendants :
:
----------x

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon plaintiffs, whose address is [*your address here*] an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service, or 60 days if the U.S. Government or officer / agent thereof is a defendant. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of the Court

Date: _____

Leave the date line under "Clerk of the Court" blank, the clerk will fill it out for you. We explain how this works in section D, on service, below.

2. *In Forma Pauperis* Papers

As of this printing, the federal courts charge $350 for filing a lawsuit. It costs more if you want to appeal the court's decision. If you can't afford these fees, you will usually be allowed to pay them in installments by proceeding *"in forma pauperis,"* which is Latin for "as a poor person." If you are granted this status, court fees will be taken a little at a time from your prison account. Before the PLRA, the court could let you proceed without paying for filing or service. However, this is no longer possible. Now you must eventually pay the entire filing fee. If you win your suit the court will order the defendants to pay you back for these expenses.

The legal basis for suing *in forma pauperis* is Section 1915 of Title 28 of the United States Code. To request this status, you will need to file an **Application to Proceed *in Forma Pauperis***. You must request this form from the district court clerk before filing your complaint because each court has a different application.

You will also need to file a **Declaration** in support of your application. The form for this Declaration will probably be sent to you in the *pro se* packet, but in case it is not, use the following example.

The court clerk should send you paperwork to fill out regarding your prison account. You will also need to file a certified copy of your prison account statement for the past six months. Some prisoners have experienced difficulty getting their institution to issue this statement. If you are unable to get a copy of your

prison account statement, include in your Declaration an explanation of why you could not get the account statement.

Again, only use the example Declaration below if you cannot get the Declaration form required by your district court clerk's office. If you have to use this Declaration, copy it exactly, and fill in your answers, taking as much space as you need.

Note that this is only the Declaration that you send along with your Application to Proceed *in Forma Pauperis*, it is not the actual Application, which you need to request from your district court.

***In Forma Pauperis* Declaration:**

IN THE UNITED STATES
DISTRICT COURT FOR THE (A)
_____.
----------x
Name of the first plaintiff, et al., : DECLARATION
Plaintiff, : IN SUPPORT OF
: MOTION TO
v. : PROCEED IN
: FORMA
Name of the first Defendant, et al. : PAUPERIS
Defendants :
: Civil Action No.
:
----------x

I, _____, am the petitioner / plaintiff in the above entitled case. In support of my motion to proceed without being required to prepay fees or costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore, and that I believe I am entitled to redress.

I declare that the responses which I have made below are true.

1. If you are presently employed, state the amount of your salary wage per month, and give the name and address of your employer _____. (B)

2. If you are not presently employed state the date of last employment and amount of salary per month that you received and how long the employment lasted.

3. Have you received, within the past twelve months, any money from any of the following sources:
a. Business, profession or 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 form of public assistance?
YES___ NO ___
f. Any other sources?
YES___ NO ___

If the answer to any of questions (a) through (f) is yes, describe each source of money and state the amount received from each during the past months _____.

4. Do you have any cash or money in a checking or savings account? _____. If the answer is yes, state the total value owned. (C)

5. Do you own any real estate, stock, bonds, notes, automobiles, or other valuable property (including ordinary household furnishings and clothing)? ____. If the answer is yes, state the total value owned. _____.

6. List the person(s) who are dependent on you for support, state your relationship to those person(s), and indicate how much you contribute toward their support at the present time. _____.

7. If you live in a rented apartment or other rented building, state how much you pay each month for rent. Do not include rent contributed by other people. _____. (D)

8. State any special financial circumstances which the court should consider in this application.
_____
_____.

I understand that a false statement or answer to any questions in this declaration will subject me to the penalties of perjury.

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

Signed this _____ day of _____, 20 ___.

_____
(your signature)

_____
Date of Birth

_____
Social Security Number

Explanation of Form:

In Part (A), you can use a slightly shortened version of the caption you used for your complaint. You only need to list the first plaintiff and defendant by name. The rest are included by the phrase "*et al.*" which is Latin for

"and others." You only need to add "*et al*." if there is more than one plaintiff or defendant. However, be aware that if there is more than one plaintiff in your lawsuit, each plaintiff needs to file his or her own Application to Proceed *in Forma Pauperis* and Declaration.

In Part (B), if you have never been employed, just say that. If you have a job in prison, state that.

In Part (C), you should include any money you have in a prison account.

Some of these questions may sound weird, or not apply to you -- Part (D) for example. However, answer them anyway. Like for question 7, just state that you do not live in an apartment.

Costs of Filing Your Lawsuit

Although the judge does not have to let you sue *in forma pauperis*, he or she almost always will if you show you are poor and your suit has a legal basis. You do not need to be absolutely broke. Even if you are given *in forma pauperis* status, you will still have to pay some money to the court.

Section 1915(b)(1) of Title 28 of the U.S. Code directs the judge to compare your monthly deposits and the average balance for your prison account. The judge will see which amount is larger -- your monthly deposits or your prison account's average balance. Then, the judge will decide that you must pay twenty percent (20%) of the larger amount right away. If twenty percent is less than $350, then Section 1915(b)(2) states that you must pay twenty percent of the monthly deposits to your account until the $350 is paid. If the court decides you are not poor or your suit is "frivolous," it will return your legal papers and you will have to find a way to pay the full amount.

There are lots of benefits to gaining *in forma pauperis* status. You may avoid having to pay witness fees for depositions and at trial. If you appeal, you may not have to pay the costs of preparing transcripts. In addition, some courts have used Section 1915 to appoint a lawyer to represent a prisoner in a Section 1983 suit and even to pay the lawyer's expenses. This is discussed in Part 3 of this section.

Unfortunately, *in forma pauperis* status affects only a very small part of the expense of your lawsuit. It will not pay for postage or for making photocopies, and it will not cover the costs of "pretrial discovery," which is discussed in Chapter Six, Part E. However, you may be able to recover these expenses from the defendants if you win.

The Problem of Three Strikes:

The "three strikes provision" of the PLRA states:

> *In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section [*in forma pauperis*] if the prisoner has, on 3 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.A. § 1915(g). This provision means that if you have had three complaints or appeals dismissed as "frivolous," "malicious," or "failing to state a claim," you cannot proceed *in forma pauperis.* This means you will have to pay the entire filing fee up front, or your case will be dismissed. The only way to get around "three strikes" is to show you are in imminent danger of serious injury.

The PLRA is very specific about what dismissals count as strikes: these are dismissals for "frivolousness," "maliciousness," or "failure to state a claim." **Frivolous** means that the court believes your suit is not serious or has no chance of winning. In legal terms, the court believes that your case has "no legal merit." **Malicious** means that the court believes you are filing your suit only to get revenge or do harm to others, rather than uphold your rights. **Failure to state a claim** means that the court could not find any cause of action in your suit, which means that the facts you included in your complaint, even if true, do not amount to a violation of your rights.

A case dismissed on some other ground is not a strike. A summary judgment is not a strike. A "partial dismissal" – an order that throws out some claims, but lets the rest of the case go forward – is not a strike. A case that you voluntarily withdraw will usually not be considered a strike. A dismissal is not a strike if it is impossible to tell what the basis for the dismissal was. Dismissal in a *habeas corpus* action is not a strike.

Dismissals may be strikes even if you didn't have *in forma pauperis* status for the case. Cases filed or dismissed before the PLRA was enacted have also been

counted as strikes. Dismissals will not count against you until you have exhausted or waived all your appeals. At that point, if the court dismisses your case as "frivolous, malicious, or failing to state a claim upon which relief may be granted," you will receive a strike.

The "three strikes provision" does not apply when a prisoner is in "imminent danger of serious physical injury." "Imminent" means something is about to happen. To meet this requirement, the threatened injury does not need to be so serious as to be an Eighth Amendment violation. A risk of future injury is enough to invoke the imminent danger exception.

In conclusion, the "three strikes provision" means you will need to think more carefully about whether any litigation you may bring is well-founded and worth it. Once you are given a third strike, you will have to pay the entire filing fee of $350 up front before you can file a new lawsuit.

3. Request for Appointment Of Counsel

The *in forma pauperis* law, 28 U.S.C. § 1915(e)(1), allows a U.S. District Judge to "request an attorney to represent any person unable to afford counsel." On the basis of this law, district judges have appointed lawyers for prisoners who filed Section 1983 suits on their own. Generally, when deciding whether or not to appoint a lawyer for you, the court will consider:

- How well can you present your own case?
- How complicated are the legal issues?
- Does the case require investigation that you will not be able to do because of your imprisonment?
- Will credibility (whether or not a witness is telling the truth) be important, so that a lawyer will need to conduct cross-examination?
- Will expert testimony be needed?
- Can you afford to hire a lawyer on your own?

These factors are listed in *Montgomery v. Pinchak*, 294 F.3d 492, 499 (3d Cir. 2002). Some courts apply a test that asks whether the plaintiff is competent to try the case and if not, whether an attorney would make a difference in the outcome. *Farmer v. Haas*, 990 F.2d 319, 322 (7th Cir. 1993).

Unfortunately, appointment is usually at the "discretion" of the judge, which means that if a judge doesn't want to appoint you an attorney, he or she doesn't have to, and you are unlikely to be able to challenge that by an appeal. On the other hand, there have been a few rare cases in which a court held that a judge abused this discretion. In *Greeno v. Daley*, 414 F.3d 645 (7th Cir. 2005), the Court of Appeals decided that the judge abused his discretion because the plaintiff's case would likely require expert testimony and the plaintiff would have to serve process on seven defendants. In *Parham v. Johnson*, 126 F.3d 454, 461 (3d Cir. 1997), another Court of Appeals said that "where a plaintiff's case appears to have merit and most of the aforementioned factors have been met, courts should make every attempt to obtain counsel." In general, whether you will be appointed counsel has a lot to do with how strong your case looks to a judge. If the judge thinks your case has no merit, he or she will not want to appoint counsel.

The best procedure is to request appointment of counsel at the same time you request *in forma pauperis* status. If you can get an appointment of counsel form from the district court, use that form. If there is no form for this request in the *pro se* packet, use the following form:

IN THE UNITED STATES
DISTRICT COURT FOR THE
_____

Name of the first plaintiff, et al.,	
Plaintiffs,	
	MOTION FOR
v.	APPOINTMENT OF
	COUNSEL
Name of the first defendant, et al.,	
Defendants	

Pursuant to 28 U.S.C. § 1915(e)(1) plaintiff (or plaintiffs) moves for an order appointing counsel to represent him in this case. In support of this motion, plaintiff states:

1. Plaintiff is unable to afford counsel. He has requested leave to proceed in forma pauperis.

2. Plaintiff's imprisonment will greatly limit his ability to litigate. The issues involved in this case are complex, and will require significant research and investigation. Plaintiff has limited access to the law library and limited knowledge of the law. (A)

3. A trial in this case will likely involve conflicting testimony, and counsel would better enable plaintiff to present evidence and cross examine witnesses.

4. Plaintiff has made repeated efforts to obtain a lawyer. Attached to this motion are _____. (B)

WHEREFORE, plaintiffs request that the court appoint_____, a member of the _____ Bar, as counsel in this case. (C)

_____
Date

_____
Signature, print name below

_____
Address

Explanation of Form:

The caption at the top is the shortened form explained above, but here the title will be "Motion for Appointment of Counsel."

In Part (A), you can include any facts in this motion that you think will help convince the court that you need a lawyer. For example, you could add that you are in administrative segregation, that your prison doesn't have a law library, or that it takes weeks to get a book. If you have limited formal education, you could state that too.

In Part (B) you need to describe the evidence that you will attach to show that you have tried to get a lawyer. Copies of letters lawyers have sent you, or you have sent them (if not confidential), should be enough.

Only ask for a specific lawyer in part (C) if there is a lawyer who you know and trust. If you do have a relationship like this, list the lawyer's name, and the state where he or she is admitted to practice law. If the judge decides to appoint a lawyer for you, he or she does not have to appoint the one you suggest, but this may well be the easiest and most convenient thing for the judge to do. And it is obviously very important that the lawyer appointed for you be someone you can trust, who is clearly on your side.

If the court denies your request at that time, or simply ignores it, be sure to try again after the court has denied the prison's Motion to Dismiss your complaint and again after their Motion for Summary Judgment. These motions are explained in Chapter Six, Sections C and F. The court may be more willing to appoint counsel after it has ruled that you have a legitimate case. To renew your motion, use the same form as above.

4. Declarations

At the beginning of or during your case, you may also want to submit declarations. A "declaration" is a sworn statement of facts written by someone with personal knowledge of those facts, which is submitted to the court in a certain form. The following is an example of what a declaration might look like in the case of *Hey v. Smith*, which we used as an example in the sample complaint found in Appendix B.

In the United States District Court
For the Northern District of Illinois

Hey, et al.,	:
Plaintiffs,	:
	:
v.	: DECLARATION
	: OF SAM JONES
	:
Smith, et al.,	: Civil Action
Defendants	: No. 09-cv-86

Sam Jones hereby declares:

I have been incarcerated at Illinois State Prison since 2005. Since March of 2006 I have been housed in Block D. I am currently in cell 203, which is directly next to cell 204. Walter Hey and Mohammed Abdul are currently in cell 204, and have been for several months.

On June 30, 2009, I saw Officer Thomas approach cell 204, and enter the cell. A few minutes later, I heard loud voices, a thud, and heard Walter Hey cry out. It sounded like he was in pain.

A few days later, I noticed Warden Smith standing in front of Hey and Abdul's cell, looking in. He remained there for approximately 5 minutes, and then left.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Colby, IL on July 15, 2009.

Sam Jones

If your suit has several plaintiffs, each of you should make out a separate statement of the details of all the facts you each know. This statement does not need to be "notarized." Just put at the bottom: "I declare under penalty of perjury that the foregoing is true and correct.

Executed on (date) at (city and state).” Then sign. This can also be called a “declaration under penalty of perjury.” It is acceptable in any federal court and most state courts.

The declaration is made and signed by the person who knows the relevant facts. This could be anyone: it does not have to be from you or another plaintiff. It is helpful to submit declarations from other people who were witnesses to events that you describe in your complaint or who know facts that you need to prove. These declarations may be important when prison officials move for summary judgment against you. Summary judgment is explained in Chapter Six, Section F.

You can submit declarations from plaintiffs or other people along with your complaint. Each declaration is an “exhibit” in support of the complaint and each exhibit has its own letter – “Exhibit A,” “Exhibit B,” etc. You can also submit letters from prison officials, copies of rules, and any other relevant document as lettered exhibits. You can refer to these exhibits when you state the facts of your case in your complaint. <u>You do not have to submit declarations or other evidence when you file a complaint.</u> But considering how frequently judges dismiss or discredit prisoner complaints, if you have strong support for your facts, it may be in your best interests to show the court right away.

Importance of Declarations

It is always helpful to submit declarations. You can submit them anytime you get them. If there are people who were witnesses to events that you describe in your complaint, or who know facts that you need to prove, ask them to fill out and sign a declaration. It will help strengthen your suit and can stop prison officials from getting “summary judgment” against you.

You can also submit declarations later in your suit. You can submit declarations any time you get them. In some situations, which will be explained later in this Handbook, you are required to submit declarations from yourself and other plaintiffs.

Remember to include your Civil Action Number, if you have received one, on any papers filed after your initial complaint.

SECTION D
How To Serve Your Legal Papers

Besides sending your summons and complaint to the district court, you also have to “serve” both papers on each defendant in the case. The way to serve papers is explained in Rule 4 of the Federal Rules of Civil Procedure.

You can have a friend or family member serve papers for you, or you can pay the U.S. Marshal’s office or a professional process server to do it. One of the advantages to gaining *in forma pauperis* status is that Rule 4(c) of the Federal Rules of Civil Procedure directs that your complaint will be served quickly and without cost by the U.S. Marshal’s Service.

You should know that if you ask for *in forma pauperis* status at the start of your suit, your legal papers will not be served on the defendants – and so <u>your suit will not begin</u> – until the court decides whether you can sue *in forma pauperis.*

While most courts grant *in forma pauperis* status quickly and routinely, some courts have a reputation for taking a long time. This is a serious problem. If you discover that the court in your district has long delays, or your motion to proceed *in forma pauperis* is denied, you could try one of the following methods to serve your complaint.

(1) If you can raise the money, pay the $350 filing fee yourself, and have someone outside the prison serve your papers for free. Rule 4 of the Federal Rules of Civil Procedure describes how to do this and allows any person older than 18 who is not a party to the lawsuit to serve papers.

(2) Another way to deal with the service of process fee is that you can ask the defendants to waive service under Federal Rule of Civil Procedure 4(d). You do this by mailing them a Request for Waiver of Service. You can find the forms for this request in the Federal Rules of Civil Procedure Appendix of Forms, Form 1A and 1B (You can find the Appendix of forms at the end of the Federal Rules). Make sure you save copies of both the Notice of Lawsuit and Request for Waiver of Service of Summons (one document) and the Waiver of Service of Summons. When you send these documents, make sure to include a copy of your complaint, a stamped envelope or other pre-paid means to return the waiver, and an extra copy of the request. If the defendant does not agree with your request to waive service, then you may later be able to recover the costs

of personal service by a professional process service or a marshal.

The summons and complaint are the only documents you have to serve on defendants in this special way. However, it is very important to request the Local Rules from the district you plan to file in because different courts have different rules about filing and serving documents after the case has started. Different courts require different numbers of copies. You should follow the local rules whenever possible. In general, you will need to send the original of each document and one copy for each defendant to the Clerk of the Court for the U.S. District Court for your district. Also include two extra copies – one for the judge and one for the clerk to endorse (showing when and where it was filed) and return to you as your official copy. The court will have a marshal deliver a copy to each defendant, unless you ask that someone else be appointed to deliver them.

Be sure to keep your own copy of everything you send the court, in case your papers are lost in the mail or misplaced in the clerk's office. If you cannot make photocopies, make copies by hand. If you are concerned about the safety of your documents, you might want to consider sending a copy of them to someone you trust on the outside. Try to always have a copy you can get access to easily.

SECTION E
Getting Immediate Help From the Court

Ordinarily a federal lawsuit goes on for months or years before the court reaches any decision. But you may need help from the court long before that. A U.S. District Court Judge has the power to order prison officials to stop doing certain things while the judge is considering your suit. The judge can do this by issuing a Temporary Restraining Order (TRO) or a Preliminary Injunction, or both.

Chapter Four, Section B explains when you are eligible for an injunction. If you decide to go ahead and try to get a preliminary injunction or a TRO, you will need to follow the instructions below.

If you think you meet all the tests for immediate help from the court, submit a "Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction." You can do this in one motion and you can use this example:

In the United States District Court
For the _____
----------x
Name of first plaintiff :
in the case, et al., : ORDER TO SHOW
Plaintiffs, : CAUSE FOR AN
: PRELIMINARY
v. : INJUNCTION &
: A TEMPORARY
Names of first defendant : RESTRAINING
in the case, et al., : ORDER
Defendants : Civil Action No. __
----------x

Upon the complaint, the supporting affidavits of plaintiffs, and the memorandum of law submitted herewith, it is:

ORDERED that defendants [*names of defendants against who you are seeking a preliminary injunction*] show cause in room ____ of the United States Courthouse, [*address*] on the ___ day of ____, 20__, at ___ o'clock, why a preliminary injunction should not issue pursuant to Rule 65(a) of the Federal Rules of Civil Procedure enjoining the defendants, their successors in office, agents and employees and all other persons acting in concert and participation with them, from [*state the actions you want the permanent injunction to cover*].

IT IS FURTHER ORDERED that effective immediately, and pending the hearing and determination of this order to show cause, the defendants [*names of defendants against whom you want temporary relief*] and each of their officers, agents, employers, and all persons acting in concert or participation with them, are restrained from [*state the actions you want the TRO to cover*].

IT IS FURTHER ORDERED that the order to show cause, and all other papers attached to this application, be served on the aforesaid Plaintiffs by [*date*].

[*Leave blank for the Judge's signature*]

Dated: [*leave blank*]
United States District Judge

Explanation of Form:
If you want a TRO, include the parts of this form that are more darkly shaded. If you do not want a TRO and are only asking for a preliminary injunction leave the darker parts out.

You will notice that you are supposed to leave some blanks in this document. That is because it is an order that the Judge will sign, and you are just writing a draft for the Judge to make it easier. He or she will fill in the information about times and places.

The most difficult part of the document is where you have to fill in why you want a preliminary injunction and / or a TRO. You should limit what you ask for in the TRO to the things that the prison officials have to stop doing immediately. Include in your request for a preliminary injunction everything you want the court to order the prison staff to stop doing while the court is considering your case.

There are other documents you must send to the court. You will also need to give or send copies of all these documents to all of the defendants. The supporting documents you need to attach to both the court's and defendant's copies are:

- A declaration which states how you tried to notify the defendant that you're applying for a TRO, like by giving a copy of the documents to the warden. Or, your declaration can explain why you shouldn't have to notify the defendant. The declaration should also state in detail exactly what "immediate and irreparable injury, loss or damage will result" if the court does not sign your TRO. The quote is from Rule 65 of the Federal Rules of Civil Procedure, which governs TROs and preliminary injunctions. A court will often consider an ongoing violation of your constitutional rights to be an "irreparable injury." Submit your declaration and your "TRO and Order to Show Cause" together with your summons, complaint and *in forma pauperis* papers.

- You also need to submit a short "memorandum of law." A memorandum of law is a document in which you cite legal cases, and argue that your situation should be compared to or distinguished from these cases. For this, you will need to do legal research and writing, explained in Chapter Seven. You will want to find cases similar to yours in which prisoners got TROs or preliminary injunctions. Cite a few cases that show that the officials' actions (or failures to act) are unconstitutional. Also explain how you meet the test for temporary relief.

If the judge signs your TRO and Order to Show Cause, the prison staff will be restrained for at least 10 days. They will have to submit legal papers to show why the court should not issue a preliminary injunction that will be in force through the suit. You will be sent a copy of their legal papers and get a chance to respond to them.

The judge should consider the legal papers submitted by both sides. He or she is not supposed to meet with lawyers representing prison officials unless he or she appoints a lawyer for you or orders prison officials to bring you to court to argue your own case.

Remember:
Political pressure and media publicity may be as important as your suit itself, and they may help you win your suit. Send copies of your legal papers to prison groups, legislators, other public officials, newspapers, radio, TV, etc. Enclose a brief note explaining what your suit is about and why it is important.

Under Rule 65(c) of the Federal Rules of Civil Procedure, a plaintiff who requests a TRO or a preliminary injunction is supposed to put up money as "security" to repay the defendants for any damages they suffer if it later turns out that they were "wrongfully enjoined or restrained." This is up to the judge's discretion, which means he or she will look at your situation and decide whether or not you should have to pay. Some judges will not make people who file *in forma pauperis* pay. In *Miller v. Carlson*, 768 F. Supp. 1331, 1340 (N.D. Cal 1991), for example, the plaintiffs were poor people who received AFDC (Aid for Families with Dependant Children) so the judge did not make them pay security. Look for more decisions in your circuit, and cite those cases in your memorandum of law and ask the court not to require security from you.

SECTION F
Signing Your Papers

All documents that you submit to the court must be signed by you personally if you are not represented by a lawyer. Rule 11 of the Federal Rules of Civil Procedure requires that you sign your name, your address, your email address, and telephone number. Obviously, you might not have all of these, and it is fine to just include your name, prison ID number, and the address of your prison.

CHAPTER SIX: WHAT HAPPENS AFTER YOU FILE YOUR SUIT

SECTION A
Short Summary of a Lawsuit

Filing your suit is only the beginning. You must be prepared to do a lot of work after you file the complaint to achieve your goal. Throughout the suit, it will be your responsibility to keep your case moving forward, or nothing will happen. This chapter will explain what may happen after you file the complaint and how to keep your case moving.

Once you file (by sending the Court your complaint and summons), the court clerk will give you a civil action number. You need to write this number in the case caption of all documents you file related to your case.

Next you will have to deal with a series of pretrial procedures. The PLRA creates several roadblocks for prisoners. You will have to deal with the possibility of a **waiver of reply** and **screening** by the district court. Both of these issues are described in Section B of this chapter.

Once you make it through these two hurdles, a defendant has a certain period of time after he or she is served with your complaint, to submit a **motion to dismiss**, a **motion for a more definite statement** (asking that you clarify some part of your complaint), a **motion for an extension of deadline**, or an **answer**. The amount of time depends on what process you used to serve your complaint, and is explained in Rule 12 of the Federal Rules of Civil Procedure. Each defendant must eventually submit an answer, unless the judge dismisses your complaint as to that defendant. The answer admits or denies each fact you state. It can also include affirmative defenses.

When your case progresses to **discovery,** each side can get more information from the other through **interrogatories**, **depositions**, and other forms of **pre-trial discovery**. Each side can submit additional declarations from people who have relevant information. Finally, each side can file motions for **summary judgment** which ask the judge to decide the case, or some part of the case, in its favor without a trial.

If the case goes to trial, you and your witnesses and defendants and their witnesses will testify in court, and will be cross-examined. Both sides may submit exhibits. If you request money damages, you can have that issue decided by a jury.

Whichever side loses in the district court after trial or summary judgment has a legal right to **appeal** to a U.S. Circuit Court of Appeals. The appeals court may **affirm** (agree with) or **reverse** (disagree with) the district court's decision. It may also **remand**, which orders the district court to hold a new trial or to take another look at a certain issue. The side which loses on appeal can ask the U.S. Supreme Court to review the case, by filing a "petition for *writ of certiorari*." The Supreme Court does not have to consider the case, however, and it will not unless it thinks that the case raises a very important legal issue.

Chapter Six: Table of Contents

This chapter of the Handbook will help you handle the key parts of pretrial procedure: the motion to dismiss; the motion for summary judgment; and pretrial discovery. It will also explain what to do if the court

dismisses your complaint or grants the defendants summary judgment against you.

Unfortunately, a discussion of trial is beyond the scope of this handbook, and we cannot describe all pretrial procedures in detail or provide much in the way of strategy and tactics. But you can get a basic understanding of some of the procedures by reading some of the Federal Rules of Civil Procedure and this Handbook. Also, if your case goes to trial, the judge might appoint a lawyer to assist you.

Remember that much of the success of your suit depends on your initiative. If you don't keep pushing, your suit can stall at any number of points. For example, if the defendants haven't submitted an answer, a motion, or some other legal paper after the time limits set by the Federal Rules of Civil Procedure, submit a **Declaration for Entry of Default**. If the court accepts your Declaration, you will receive a **Notice of Entry of Default** from the court. You then submit a **Motion for Judgment by Default**. Forms and more information about these procedures are in Appendix D. You probably can't win a judgment this way, but you can keep the case moving.

Cases Before Magistrate Judges

Many prisoner complaints are given to "Magistrate Judges." A Magistrate Judge is a judicial officer who is like a Federal Judge. Their powers are limited in comparison to a District Court Judge, but they do much of the work in many prison cases.

Your District Court Judge can tell the Magistrate to decide certain things in your case, like a discovery issue, scheduling, or requests for extensions. If you don't like what the Magistrate says, you can write "objections" to the action within ten days and file them at the District Court. However, for decisions like these, it is very hard to get a Magistrate's decision changed.

A District Court Judge can also ask the Magistrate to do important things in your case, like hold a hearing or "propose findings." You can also file objections to these types of actions. You are more likely to get meaningful review by a District Court Judge on an issue of importance. Whether or not you file objections, the District Court Judge will read what the Magistrate has written, and then adopt, reject, or modify the Magistrate's findings.

The prison officials may just submit an answer and then do nothing. If this happens, you should move ahead with discovery (Part E of this chapter). This will make them realize you are serious about pushing forward your case, and may get things moving. If your case stalls after discovery, you can move for summary judgment (Part F of this Chapter) or ask the court to set a date for a trial.

Keep trying at every point to get the court to appoint a lawyer for you. If you don't have a lawyer, don't be afraid to keep moving forward *pro se*, which means "on your own behalf." You can also try writing the court clerk and prisoners' rights groups when you don't know what to do next. The worst thing is to let your suit die.

SECTION B
Dismissal by the Court and Waiver of Reply

Once you have filed your complaint, the court is required to "screen" it. This means the court looks at your complaint and decides, without giving you the chance to argue or explain anything, whether or not you have any chance of winning your case. The PLRA requires the court to dismiss your complaint right then and there if it:

(1) is "frivolous or malicious;"
(2) fails to state a claim upon which relief may be granted; or
(3) seeks money damages from a defendant who is immune from money damages.

If the court decides that your complaint has any one of these problems, the court will dismiss it "*sua sponte*," without the defendant even getting involved. "*Sua sponte*" is Latin for "on its own."

Hopefully, if the court does dismiss your case, it will do so "without prejudice" or "with leave to amend." This is ok. It means you can change your complaint and fix whatever problems the court brings to your attention. If the court dismisses your lawsuit without saying anything about amending, you can ask the court for permission to fix your complaint by filing a **Motion to Amend**. (See Appendix D). A court should not deny you at least one chance to amend, and maybe more, if it is possible for you to fix whatever the court thinks is wrong with your complaint. *Shomo v. City of New York*, 579 F.3d 176 (2d Cir. 2009) is one case in which a court talks about how important it is to give *pro se* prisoners a chance to amend their complaint.

Instead of amending, you may want to quickly respond (within ten days if possible) with a **Motion for**

Reconsideration. In this short motion, all you need to do is tell the court why they got it wrong, and cite a case or two that support your position. The next section of this Handbook will give you some advice on what kind of arguments you can make.

If your complaint was dismissed by a Magistrate Judge, you can file "objections" to the Magistrate's recommendation.

If neither of these approaches work, you can appeal. Procedures for appealing are laid out in Section G of this chapter.

The other new hurdle created by the PLRA is something called a **waiver of reply**. A defendant can file a waiver of reply to get out of having to file an answer or other motions. When a defendant does this, the court reviews your complaint to see if you have a "reasonable opportunity to prevail on the merits." If the court thinks you have a chance at winning your lawsuit, it will order the defendants to either file a Motion to Dismiss or an Answer. If the court does nothing for a few weeks, you can file a motion asking the court to order the defendants to reply.

SECTION C
How to Respond to a Motion to Dismiss Your Complaint

If you get through the first hurdles, the next legal paper you receive from the prison officials may be a **Motion to Dismiss** your suit. Rule 12(b) of the Federal Rules of Civil Procedure explains some of the grounds for a motion to dismiss. Defendants may give a number of reasons. One reason is sure to be that you did not "state a claim upon which relief can be granted," which means defendants think that what you are complaining about does not violate the law.

The motion to dismiss is a written request that the judge end your suit, without you getting the chance to get discovery, or go to trial. Attached to the motion will be a memorandum of law which gives the defendant's legal arguments for dismissing your suit. Each court has different rules about how long you have to respond to this motion, but usually you will have at least two or three weeks to file an **opposition** to the defendant's motion to dismiss. The **opposition** is a memorandum of law that responds to the defendant's arguments. If you need more time, send the judge a letter explaining why and asking for a specific number of extra weeks. If you can, check the local rules to see if the court has any specific requirements for time extensions. If you cannot find any information, just send the letter and send a copy to the prison officials' lawyer.

Chapter Seven explains in more detail how to research and write your opposition, so be sure to read it before you start working. After you read the suggestions in Chapter Seven, you may want to try to read all of the cases that the defendants use in their memo. If you read these cases carefully, you may come to see that they are different in important ways from your case. You should point out these differences. You can also try to find cases the defendants have not used that support your position.

To support their motion to dismiss, the prison officials can make all kinds of arguments which have been dealt with in other parts of this Handbook. They may say you failed to exhaust administrative remedies (see Chapter Five, Section A), or that you cannot sue top prison officials who did not personally abuse you (see Chapter Four, Section D). They may claim you sued in the wrong court ("improper venue" – see Chapter Five, Section B) or that your papers weren't properly served on some of the defendants (see Chapter Five, Section D).

The prison officials may also argue against your constitutional claims. They might say that you failed to state a proper claim because the actions you describe do not deny due process or equal protection, or are not cruel and unusual punishment.Your memorandum of law should respond to whatever arguments the government makes.

Unfortunately, writing a memorandum of law requires quite a bit of legal research and writing. Because time to do this research might be an issue for you, you can prepare for this memorandum before you even receive the motion to dismiss. Research cases that are both helpful and harmful to your case. There is a chance defendants will use some of them and you will have already done a lot of your research.

Defendants might point out something that is wrong with your case that you want to fix, instead of defending against the motion to dismiss. Under rule 15(a) of the Federal Rules of Civil Procedure, you have the right to amend your complaint once, as long as you do so within 21 days of defendants answering or filing a motion to dismiss. If the defendants have already answered, or you have already amended once, Rule 15 allows you to ask the defendants to consent to you filing an amended complaint, or ask the court for permission to amend. Courts are supposed to give you permission "freely" when "justice so requires." Ask for

consent first, and if you don't get it, file a **Motion for Leave to Amend** in which you describe your proposed changes or attach the proposed amended complaint.

One thing you will have going for you is that in considering the defendant's motion to dismiss, the judge must assume that every fact you stated in your complaint is true. The judge must then ask: **if all those facts are true, is it plausible that the defendants violated your rights?** If any combination of the facts stated in your complaint might qualify you for any form of court action under Section 1983, then the judge is legally required to deny the prison officials' motion to dismiss your complaint. In making this decision, Courts are supposed to treat unrepresented parties, including prisoners, more leniently that people who are filing a suit with a lawyer. In considering a motion to dismiss, a *pro se* complaint should be held to less strict standards than a complaint drafted by a lawyer.

It is important to remember in writing your opposition that defendants have to deal with the facts as you put them in your complaint. For example, if you stated in your complaint that you were "severely beaten" by two guards, yet the defendant says in his motion to dismiss that an "inadvertent push" doesn't amount to cruel and unusual punishment, you should tell the court in your memo that you did not allege an "inadvertent push," you alleged a severe beating, and that is what the court has to assume is true.

Send three copies of your memo to the court clerk (one will be returned to you to let you know they accepted your papers) and one copy to each defendant's lawyer. Usually all the prison officials are represented by one lawyer from the office of the Attorney General of your state. The name and office address of that lawyer will be on the motion to dismiss.

In some cases, after the parties exchange memoranda of law, attorneys for both sides appear before the judge to argue for their interpretation of the law. However, when dealing with a case filed by a prisoner *pro se*, most judges decide motions based only on the papers you send in, not on arguments in person. In the rare case that a judge does want to hear argument, many federal courts now use telephone and video hook-ups, or hold the hearing at the prison. It is quite hard to get a court to order prison administrators to bring you to court, because the PLRA requires that courts use these new techniques "to the extent practicable."

- **Note**: If you defeat the prison officials' motion to dismiss your complaint, ask again for appointed counsel. Follow the procedure in Chapter Five, Section C, Part 3. The judge is more likely to appoint a lawyer for you at this stage of your case.

If the judge does decide to dismiss your complaint, he or she must send you a decision stating the grounds for his or her action. The judge may or may not dismiss your case with leave to amend. Either way, you can appeal from that decision. Part G of this chapter explains what else you can do if the court dismisses your complaint.

Instead (or before) a Motion to Dismiss, you may receive a **Motion for Extension of Time** or a **Motion to Relate** from the prison. A motion for extension of time (or "enlargement") gives the other side more time to file an answer or motion. One extension is usually automatic. If your situation is urgent, write the court to explain the urgency and ask that the prison officials not get another extension.

A motion to relate tries to combine your suit with others which the court is already considering. Check out what the other suit is about, who is bringing it, and what judge is considering it. This could be a good or bad thing for you, depending on the situation. If you think you'd be better off having your suit separate, submit an affidavit or memorandum of law in opposition to the motion to relate. Say clearly how your suit is different and why it would be unfair to join your suit with the other one. For example, the facts might get confused.

SECTION D
The Problem of Mootness

One argument that prison officials often raise, either in their motion to dismiss or later on, is that you have no legal basis for continuing your suit because your case has become "moot." This is only a problem if you are asking for injunctive or declaratory relief. If you are asking for money damages, your case cannot become moot.

A case may be moot if, after you have filed your suit, the prison stops doing what you complained about, releases you on parole, or transfers you to a different prison. The prison officials can ask the court to dismiss your case as moot, saying there is no longer anything the court can order the prison to do that would affect you.

For example, imagine you sue the prison for injunctive relief because they are not providing medical care for your diabetes. In your suit, you ask the court to order

the prison to provide you with adequate medical care in the future. Then, after you file your complaint, the prison starts to provide you with medical care. The prison can argue that your case is moot because the only remedy you asked for has already been given to you by the prison.

The good news is that the defendants will have the burden of proving that the case is really moot. This is a heavy burden, since they must show that there is no reasonable expectation that the violations of your rights will happen again. There are five arguments you may be able to make to defeat the prison's efforts to get your case dismissed because of mootness:

(1) If you have asked for money damages your suit can never be moot. You have a right to get money for injuries you suffered in the past, as long as you sue within the period allowed by the statute of limitations. This does not just apply to physical harm: if you have been denied your constitutional rights, it is an "injury" for which you might be able to get money damages. For more on damages, read Chapter Four, Section C.

(2) A violation of your rights may not be moot if it is "capable of repetition, but evading review." In other words, the court will allow you to continue your case in a situation where the illegal action will almost always end before the case could get to court. Imagine that a prisoner wants to sue to force the prison to improve conditions in administrative segregation. By the time the prisoner actually gets into court, however, he has been moved back to general population. This case should not be dismissed as moot because it is "capable of repetition," meaning he could get put in administrative segregation again, and it "evades review" because he might never stay in segregation long enough to get to trial.

To meet this test, the condition must be reasonably likely to recur. Most courts have not applied this exception when a prisoner is transferred to another prison, since it is only "possible" and not "likely" that he will be transferred back. *Oliver v. Scott*, 276 F.3d 736, 741 (5th Cir. 2002). Transfer may not moot your case however, if the department or officials whom you sued are also in charge of the new prison. *Scott v. District of Columbia*, 139 F.3d 940, 942 (D.C. Cir. 1998).

Sometimes, being transferred away from where the violation happened does not make your suit moot. Courts have found that a state-wide policy that violated your constitutional rights in one facility may still violate your rights in the new facility. *See Pugh v. Goord*, 571 F.Supp.2d 477 (S.D.N.Y. 2009) and *Oliver v. Scott*, 276 F.3d 736 (5th Cir. 2002).

(3) If you get a lawyer and file a "class action" suit on behalf of all the prisoners who are in your situation and the class is certified, your suit will not be moot as long as the prison continues to violate the rights of anyone in your class. If you are paroled or transferred, the court can still help the other members of your class. Section F of Chapter Four discusses class action lawsuits. Remember that it is very hard to bring a class action without an attorney.

(4) If any negative entries have been put in your prison records because of your suit or the actions you are suing about, you may be able to avoid mootness by asking the court to order the prison officials to remove (or "expunge") these entries from your records. The federal courts have held that a case is not moot if it could still cause you some related injury. An entry which could reduce your chances for parole could count as a related injury. *Sibron v. New York*, 392 U.S. 40, 55 (1968).

(5) You can argue that just because the prison has stopped doing something illegal or has reversed a policy does not mean that the court can't review the case. You may have a strong argument if you can convince the judge that the prison has just changed course to avoid litigation. You can quote the U.S. Supreme Court that, "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case." *Los Angeles County v. Davis*, 440 U.S. 625, 631 (1979). This argument against mootness has been successful in several Section 1983 claims brought by prisoners. One example is *Burns v. PA Dep't of Corrections*, 544 F.3d 279 (3d Cir. 2008). The prison officials must show that there is no reasonable expectation that the violations will recur. They must also show that the relief or changes in policy that they put in place have completely fixed the constitutional violation, and the effects it may have had.

SECTION E
Discovery

If you have made it past the defendant's motions for dismissal, there is a better chance that the court will appoint an attorney to assist you. If so, you can use this section of the Handbook to understand what your lawyer is doing, to help him or her do it better and to figure out what you want him or her to do. If you do not have a lawyer, this section will help you get

through the next stage on your own – but what you will be able to do will be more limited.

The next major activity in your suit will be **discovery**. Rules 26-37 of the Federal Rules of Civil Procedure explain "discovery" tools that both parties in a lawsuit can use. You should begin by reading through those rules. Some of the rules, like Rule 26, set out different requirements for *pro se* prisoners than for others. It is also very important to read the corresponding local rules from the district your case is in, as many courts have made important changes to the federal rules.

The Importance of "Discovery"

1. Uncover factual information about the events that gave rise to your case.

2. Collect evidence to use at "summary judgment" or your trial.

3. Force the defendants to explain their version of the facts, and provide you with evidence they may rely on.

Discovery helps you to get important information and materials from the other party before the case goes to trial. If you don't have a lawyer at this stage, you will need to spend a lot of time thinking about what facts you will need to prove at trial, and coming up with a plan about how to find out that information. The Southern Poverty Law Center's litigation manual for prisoners, *Protecting Your Health & Safety*, has a very helpful chapter on developing discovery strategies. You will find information on ordering that book in Appendix J.

1. Discovery Tools

There are four main discovery tools: **depositions**, **interrogatories**, **production,** and **inspection**. You can also request an examination by an outside doctor, under Federal Rules of Civil Procedure Rule 35. This Handbook gives you only a brief introduction to these techniques. The details of how they work are in the Federal Rules of Civil Procedure.

A **deposition** is a very valuable discovery tool. You meet with a defendant or a potential witness, that person's lawyer, and maybe a stenographer. You or your lawyer ask questions which the "deponent" (the defendant or witness you are deposing) answers under oath. Because the witness is under oath, he or she can be prosecuted for perjury if he or she lies. The questions and answers are tape-recorded or taken down by the stenographer.

A deposition is very much like testimony at a trial. In fact, you can use what was said at a deposition in a trial if the deponent either (1) is a party (plaintiff or defendant), (2) says something at the trial which contradicts the deposition, or (3) can't testify at the trial. Despite these benefits, you should BEWARE: a deposition is very hard to arrange from in prison because it can be expensive and involves a lot of people.

Interrogatories are written questions which must be answered in writing under oath. Under Federal Rules of Civil Procedure Rule 33, you can send up to 25 questions to each of the other parties to the suit. You can use the following example to write interrogatories of your own.

In the United States District Court
For the _____

Name of first plaintiff	:
in the case, et al.,	: PLAINITFF'S
Plaintiffs,	: FIRST SET OF
	: INTERROGA-
v.	: TORIES TO
	: DEFENDANTS
Names of first defendant	:
in the case, et al.,	: Civil Action No. __
Defendants	:

In accordance with Rule 33 of the Federal Rules of Civil Procedure, Plaintiff requests that Defendant [*Defendant's name*] answer the following interrogatories under oath, and that the answers be signed by the person making them and be served on plaintiffs within 30 days of service of these interrogatories.

If you cannot answer the following interrogatories in full, after exercising due diligence to secure the information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

These interrogatories shall be deemed continuing, so as to require supplemental answers as new and different information materializes.

[*List your questions here…and be creative and as detailed as possible.*]

- If you have a guard brutality case, you may want to ask questions about how long the specific guard has worked at the prison, where he is assigned, what

his duties are, what he remembers of the incident, what he wrote about the incident in any reports, whether he has ever been disciplined, and more.

It is also a good idea to take the opportunity to try to find out who else might be a helpful witness. You could ask the defendant to:

- State the name and address or otherwise identify and locate any person who, to you or your attorney's knowledge, claims to know of facts relevant to the conduct described in these interrogatories.

BEWARE: Although interrogatories are fairly cheap, other forms of discovery require money. If you request production of documents, you have to pay to get copies of the documents the prison produces. If the court lets you tape record depositions instead of hiring a certified court reporter (Fed.R.Civ.P. Rule 30(b)(2)), you still need a typed transcript of the entire tape if you want to use any of it at the trial of your suit. Discovery expenses are included in the costs you will be awarded if you win, but federal courts generally refuse to advance money for discovery. You will have to find some other way to pay for copying and transcription.

You can also ask for documents. For example, you could include the following as a question:

- Identify and attach a copy of any and all documents relating to prison medical center staff training and education.

or

- Identify and attach a copy of any and all documents showing who was on duty in cell block B at 9 p.m. the night of August 18, 2009.

At the end of your questions, you should date and sign the page and type your full name and address below your signature.

A person who is just a witness, but not a party, cannot be made to answer interrogatories. However, he or she can voluntarily answer questions in an affidavit. To get an affidavit from someone in another prison, you may need a court order.

The third discovery tool is "**Document Production."** If you want to read and copy documents such as letters, photos, or written rules that the prison officials have, ask for production of those items under Federal Rules of Civil Procedure Rule 34. You can look at Form 24 in the Federal Rules of Civil Procedure Appendix of Forms, or you can use the following form:

In the United States District Court
For the _____
----------x
Name of first plaintiff :
in the case, et al., : PLAINITFF'S
Plaintiffs, : FIRST REQUEST
: FOR PRODUCTION
v. : OF DOCUMENTS
:
Names of first defendant :
in the case, et al., : Civil Action No. __
Defendants :
----------x

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff requests that Defendants [*put defendants' full names here*] produce for inspection and copying the following documents:

[List the documents you want here, some examples follow]
1. The complete prison records of all Plaintiffs
2. All written statements, originals or copies, identifiable as reports about the incident on August 18, 2009, made by DOCS employees, and / or witnesses.
3. Any and all medical records of Plaintiff from the time of his incarceration in Fishkill Correctional Institution through and including the date of your response to this request.
4. Any and all rules, regulations, and policies of the New York Department of Corrections about treatment of prisoners with diabetes.

Dated: _____

Signed:_____

You can also get **inspection** of tangible things, like clothing or weapons, and a chance to "copy, test or sample" them. And you have a right to enter property under the defendants' control – such as a prison cell, exercise yard or cafeteria, to examine, measure, and photograph it.

You can use any combination of these techniques at the same time or one after the other. If you have new questions or requests, you can go back to a defendant for additional discovery. You can also use informal investigation to find out important information. You can talk to other prisoners and guards about what is going on. Or, you can use state and federal Freedom of Information Laws to request prison policies and information. Each state has different rules about what information is available to the public. Of course, prison officials may use various tactics to interfere with your investigation. Try to be creative in dealing with these problems, and, if necessary, you may want to write a letter to the judge explaining the problem.

2. What You Can See and Ask About

The Federal Rules put very few limits on the kind of information and materials you can get through discovery and the number of requests you can make. Under Federal Rules of Civil Procedure Rule 26(b)(1), you have a legal right to anything which is in any way "relevant" to any party's claim or defense. This includes anything relevant to any defense offered by the prison officials. "Relevant" means somehow related to what you are suing about.

You can demand information that the rules of evidence would not allow you to use at a trial, so long as the information "appears reasonably calculated to lead to the discovery of admissible evidence." This just means that the information could possibly help you to find other information that you could use at trial.

The people you are suing must give you all the "non-privileged" information that is available to them. (The issue of "privilege" is explained below.) If you sue a top official, discovery includes what his subordinates know and the information in records available to him. This could possibly even include information that is only held by a party's attorney, if you can't get that information any other way. *Hickman v. Taylor*, 329 U.S. 495 (1947).

Defendants may try to get out of having to comply with your requests by arguing that they are "unduly burdensome or expensive." This means that your request would cost the prison a lot of money, and wouldn't be very helpful to you. However, as one judge explained, "the federal courts reject out of hand claims of burdensomeness which are not supported by a specific, detailed showing, usually by affidavit, of why weighing the need for discovery against the burden it will impose permits the conclusion that the court should not permit it." *Natural Resources Defense Council v. Curtis*, 189 F.R.D. 4, 13 (D.D.C. 1999). In other words, the defendants can't avoid discovery by just stating it will be too difficult. They have to really prove it.

Even when defendants can show that producing the requested information would be very expensive and difficult, the court may not let them off the hook if the information is truly essential for your lawsuit. For example, in *Alexander v. Rizzo*, 50 F.R.D. 374 (E.D. Pa. 1970), the court ordered a police department to compile information requested by plaintiffs in a Section 1983 suit even though the police claimed it would require "hundreds of employees to spend many years of man hours." The burden and expense involved was not "undue" because the information was essential to the suit and could not be obtained any other way.

3. Privilege

You may not be able to discover material that is protected by a special legal "privilege," such as the attorney-client privilege. A "privilege" is a rule that protects a certain type of information from discovery. There are several types of privileges, including the attorney-client privilege, attorney work product privilege, and the husband-wife privilege. Explaining all these privileges is too complicated for us to attempt here. However, it is important for you to know that prison officials cannot avoid discovery of relevant information merely by claiming it is "confidential." *Beach v. City of Olathe, Kansas*, 203 F.R.D. 489 (D. Kan. 2001). If the prison officials claim information is privileged, they have the burden of identifying the specific privilege at issue, and proving that the particular information is in fact privileged. A judge may order the privileged information to be "redacted" from the documents provided to you. This means that information covered by any privilege mentioned above will be blacked out.

Information which would be considered "confidential" under state law may still have to be disclosed if, after examining it privately ("*in camera*"), the judge decides it is very important for your suit. *King v. Conde*, 121 F.R.D. 180, 190 (E.D.N.Y. Jun. 15, 1988). If the material is confidential, the judge may keep you from showing the information to anyone else or using it for any reason besides your suit.

4. Some Basic Steps

Usually, in a prison suit, you start with document production and interrogatories and then move to depositions. The documents you get in response to a motion for production can lead you to other useful documents, potential witnesses, and people you might want to depose. Some of the kinds of documents that have been obtained from prison officials include: policy statements, prison rules and manuals, minutes of staff meetings, files about an individual prisoner (provided he or she signs a written release), and incident reports filed by prison staff.

You can use interrogatories to discover what kinds of records and documents the prison has, where they are kept, and who has them. This information will help you prepare a request for production. Only people you have named as defendants can be required to produce their documents and records. Wardens, associate wardens, and corrections department officials have control over all prison records. If your suit is only against guards or

other lower-level staff, however, you may have to set up a deposition of the official in charge of the records you need and ask the court clerk to issue a "subpoena" which orders the official to bring those records with him to the deposition. *See* Federal Rules of Civil Procedure Rule 45(d).

Interrogatories are also good for statistics which are not in routine documents but which prison officials can compile in response to your questions. Examples are the size of cells, the number and titles of books in the library, and data on prisoner classification, work release, and punishments. If your suit is based on brutality or misbehavior by particular prison employees, you can also use interrogatories to check out their background and work history, including suits or reprimands for misbehavior. If you are suing top officials for acts by their subordinates, you should find out how responsibilities relevant to your case are assigned within the prison and the Corrections Department and how, if at all, these responsibilities were fulfilled in your case.

5. Some Practical Considerations

Interrogatories have two big drawbacks: (1) you can use them only against people you have named as defendants; and (2) those people have lots of time to think out their answers and go over them with their lawyers. As a result, interrogatories are not good for pressing officials into letting slip important information they're trying to hide. You won't catch them giving an embarrassing off-the-cuff explanation of prison practices or making some other blunder that you can use against them.

Depositions are much better for this purpose. You can use depositions against anyone. The deponent can't know the questions in advance and must answer them right away. Regular depositions, however, are much less practical than interrogatories for a prisoner suing *pro se*. Judges are unlikely to order the authorities to set up a deposition within the prison or allow you to conduct one outside. If you have no lawyer, you might try a "Deposition Upon Written Questions" (Federal Rules of Civil Procedure Rule 31). You submit your questions in advance, as with interrogatories, but the witness does not send back written answers. The witness has to answer in his or her own words, under oath, before a stenographer who writes down the answers. Although the witness will still have time to prepare in advance, at least he or she won't be able to submit answers written by a Deputy Attorney General.

6. Procedure

The procedure for getting interrogatories and production is fairly simple. Just send your questions and your requests for production to the lawyer for the prison officials, usually the Deputy Attorney General. Send separate requests and questions for each defendant.

The prison officials must respond within 30 days unless the court or the parties agree otherwise. The officials may ask the judge for a "protective order" which blocks some of your questions or requests because they are irrelevant, privileged, or impose "undue burden or expense." They have to submit a motion to avoid responding to your requests. There is then an opportunity for memoranda of law and a court hearing.

The prison officials may also refuse to answer questions or requests which are not covered by a protective order. They may simply ignore your request. Then you need to submit a **Motion for an Order Compelling Discovery**. In this motion, you indicate what they refused and why you need it. Use the following example:

In the United States District Court
For the _____

Name of first plaintiff	:
in the case, et al.,	: MOTION FOR
Plaintiffs,	: AN ORDER
	: COMPELLING
v.	: DISCOVERY
	:
Names of first defendant	: Civil Action No. __
in the case, et al.,	:
Defendants	:

Plaintiffs move this court for an order pursuant to Rule 37(a) of the Federal Rules of Civil Procedure compelling Defendants [*list defendants who failed to fully answer interrogatories*] to answer fully interrogatories number [*list unanswered questions*], copies of which are attached hereto. Plaintiffs submitted these interrogatories, pursuant to Rule 33 of the Federal Rules of Civil Procedure on [*date*] but have not yet received the answers.

[*OR*]

Plaintiffs move this court for an order pursuant to Rule 37(a) of the Federal Rules of Civil Procedure compelling Defendants [*list defendant who did not produce documents*] to produce for inspection and copying the following documents: [*list requested documents that were not produced*]. Plaintiffs submitted a written request for these documents, pursuant to Rule 34 of the Federal Rules of Civil Procedure on [*date*] but have not yet received the documents.

Plaintiffs also move for an order pursuant to Rule 37(a)(4) requiring the aforesaid Defendants to pay Plaintiffs the sum of $___ as reasonable expenses in obtaining this order, on the ground that the Defendants' refusal to answer the interrogatories [*or produce the documents*] had no substantial justification.

Dated:_____

Signed:_____
Type name and address

7. Their Discovery of Your Information and Material

Prison officials can use discovery against you. This may be an intimidating process, and prison officials may try to scare you and get you to say things they can use against you. You must respond to discovery requests unless the defendants are asking for information that is totally irrelevant, or privileged. If you don't have an attorney, then the privilege that is most important for you to know about is the 5th Amendment **right against self-incrimination**. You can refuse to answer a question in a deposition or an interrogatory if it might amount to admitting that you have committed a crime for which you could face charges.

Under Rule 30(a) of the Federal Rules of Civil Procedure, a prisoner can only be deposed with leave of the court. If defendants ask to depose you, you may want to ask the judge to put off the deposition until after he or she reconsiders your request for appointed counsel. Put in another request for appointment of counsel and see if the judge will at least appoint a lawyer to represent you at the deposition. You may want to tell the judge that you're afraid you might be asked to say things which could be used against you in a criminal prosecution.

If you are deposed, it is important to keep cool and answer questions directly and honestly. You do not need to volunteer any information. You should also warn any witnesses you may have that the Attorney General's office probably will depose them once you've revealed their identities. You must be notified in advance of any deposition scheduled in your case. You or your lawyer are entitled to be present, to advise and consult with your witness, and ask him or her questions that become part of the official record of the deposition. The witness has a right to talk with you or your lawyer beforehand. The witness can also refuse to talk about your suit outside the deposition with anyone from the prison or the Attorney General's office.

SECTION F
Summary Judgment

At some point, the prison officials will probably submit a Motion for Summary Judgment. Be sure to read about the rules and procedure for summary judgment in Rule 56 of the Federal Rules of Civil Procedure. Defendants can ask for summary judgment along with their motion to dismiss your complaint or at some later time. You can also move for summary judgment. Your motion will be discussed separately at the end of this section.

1. The Legal Standard

"Summary Judgment" means the judge decides some or all of your case without a trial. Through summary judgment, a court can throw out part or all of your case. Under Rule 56(c)(2), to win on summary judgment, the prison officials have to prove to the judge **there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law**. In other words, the judge finds that there is no point in holding a trial because both you and the defendant(s) agree about all the important facts and the Judge can use those facts to decide that the defendant(s) should win.

This test is very different from the test which is applied in a Motion to Dismiss your complaint. When the judge receives a Motion to Dismiss, he or she is supposed to look only at your complaint. In a Motion to Dismiss, the judge asks: could you win a judgment in your favor if you could prove in court everything you say in your complaint? When the judge receives a Motion for Summary Judgment, however, he or she looks at evidence presented by both sides, including affidavits, and asks: is there is any real disagreement about the important facts in the case?

The first part of the test for a Motion for Summary Judgment that is important to understand is what is meant by "a genuine issue." Just saying that something happened one way, when the prison says it happened another way, is not enough: You need to have some proof that it happened the way you describe. Sworn statements (affidavits or declarations), photographs, deposition transcripts, interrogatory responses, and copies of letters or documents count as proof because you or the prison officials could introduce them as evidence if there were a trial in your case.

An "unverified" Complaint or Answer is not proof of any facts. It only says what facts you or the prison officials are going to prove. If you "verify" your complaint, however, then it counts the same as a

declaration. See Chapter Five, Section C, Part 1 for more on verification.

If prison officials give the judge evidence that important statements in your complaint are not true, and you do not give the judge any evidence that your statements are true, then there is no real dispute about the facts. The judge will see that the prison officials have submitted evidence about their version of the facts and that you have not. The judge can then end your case by awarding summary judgment to the prison officials.

On the other hand, if you give the judge some evidence that supports your version of the important facts, then there is a real dispute. The prison officials are not entitled to summary judgment and your case should go to trial.

For example, if you sue guards who you say locked you up illegally, the guards could submit affidavits swearing they didn't do it and then move for summary judgment. If you do not present evidence supporting your version of what happened, the guards' motion might be granted. But if you present a sworn affidavit from yourself or a witness who saw it happen, the guards' motion for summary judgment should be denied.

A good way to think about a "genuine issue" is whether the judge can tell, by the evidence presented by you and the prison, that you disagree with specific facts the prison officials are relying on.

The second important part of the test is that the "genuine issue" explained above must be about a "material fact." A material fact is a fact that is so important to your lawsuit that it could determine whether you win or lose. If the prison officials can show that there is no genuine issue (or disagreement, as discussed above) over any material fact, then the court may grant them summary judgment. To know whether a fact is material, you have to know what courts consider when they rule on your type of case.

Imagine a prisoner sues a guard for excessive force. As you know from Chapter Three, one of the most important facts in an excessive force claim is whether there was a legitimate need for the guard to use force against you. In your complaint, you write that you were quietly sitting in your cell when the guard entered and began to beat you for no reason. The guard submits an affidavit swearing that he only entered your cell after he saw you attack your cellmate, and that he used only the force necessary to pull you of your cellmate. Imagine he submits a declaration from your cellmate supporting his story. The question of why the guard entered your cell is a material fact. If you don't provide any evidence to support your version of what happened, like an affidavit of your own, a declaration by another witness, or a doctor's report showing your injuries were inconsistent with a guard merely pulling you off another inmate, the court may decide there is no "genuine issue of material fact" and dismiss your complaint.

Strope v. Collins, 492 F. Supp. 2d 1289 (D. Kan. 2007), provides another helpful example. In that case, two *pro se* prisoners sued various officials at Lansing Correctional Facility for violating their First Amendment right to receive information in prison, and their Fourteenth Amendment right to procedural due process after defendants censored magazines containing nudity. Defendants moved for summary judgment before any discovery had occurred. You'll remember from Chapter Three that a prison regulation which denies a prisoner books or magazines is valid if it is reasonably related to a "legitimate penological interest," decided by the *Turner* Test. The judge denied summary judgment on the First Amendment claim because there wasn't yet a factual record allowing for *Turner* analysis.

However, the court granted summary judgment on the procedural due process claim, because both parties agreed that the prisoners were provided notice of the censorship, and under the law, notice is all the process that is required. Had the prisoners filed a verified complaint or an affidavit stating they did not receive notice of the censorship, this might have presented a genuine issue of material fact.

In deciding summary judgment, a court isn't supposed to decide which party is telling the truth, or compare the strength of evidence. If there is a real dispute, the court should just deny summary judgment. In reality however, if the prison officials moving for summary judgment have a *lot* of evidence, like witness statements and medical records, and all you have is a verified complaint, you may lose summary judgment. So you should try to present as much evidence as you can to the court, and not just rely on a verified complaint.

When the judge considers a motion for summary judgment, he or she is supposed to view the evidence submitted by both sides "in the light most favorable to the party opposing the motion." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 160 (1970); *see also Curry v. Scott*, 249 F.3d 493, 505 (6th Cir. 2001). If

defendants move for summary judgment against you, you are the "opposing party." This means that as the opposing party you get the benefit of the doubt if the meaning of a fact could be interpreted in two different ways.

2. Summary Judgment Procedure

If prison officials move for summary judgment, you will then have a chance to submit declarations, deposition transcripts, interrogatory responses, and other evidence. You need to submit all your evidence, and a memorandum explaining what you are submitting within 21 days, or ask for an extension. The memorandum of law should summarize your evidence and explain how it supports each point that you need to prove. Check Chapter Three for the requirements of your claim. Be sure to repeat the major cases which support your argument that the prison officials violated your federal constitutional rights. Your memorandum should also point out to the judge all the specific facts that show there are material issues in dispute.

Defendants may try to move for summary judgment before you have had a chance to get discovery against them. It also may be difficult for you to get declarations, especially from prisoners who have been transferred to other prisons or placed in isolation. If this is a problem, write an declaration to the judge explaining what facts you think you can get, how you want to get them, how those facts will create a genuine issue of material fact, any effort you have already made to get them and why that effort was unsuccessful.

Examples of Evidence or Proof of What You Say in Your Complaint:

1. Affidavits and Declarations
2. Photographs
3. Interrogatory Responses
4. Deposition Transcripts
5. Copies of Letters
6. Copies of Documents
7. Your Verified Complaint

Under Rule 56(f) of the Federal Rules of Civil Procedure, the judge can deny the prison officials' motion for summary judgment because you cannot get the declarations you need or because you haven't yet had access to discovery. If the judge doesn't deny the motion for summary judgment under Rule 56(f), you should ask him or her to grant you a "continuance" (more time) until you have a chance to get the declarations you need. This means the judge puts off ruling on the motion. Some courts have been very supportive of the fact that prisoners may need extra time to get declarations. *Jones v. Blanas,* 393 F.3d 918 (9th Cir. 2004), is a good case explaining this rule.

The judge also has the power under Rule 56(f) to "issue any other just order." This could include ordering prison officials to let you interview witnesses or write to prisoners in other prisons.

3. Summary Judgment in Your Favor

You also have a right to move for summary judgment in your favor. You may want to do this in a case where everyone agrees that the prison is following a particular policy and the only question for the court is whether that policy is legal.

For example, suppose your complaint says that you were forced to let prison officials draw your blood to get your DNA and put it in a DNA database. The prison officials admit they are doing this, but deny that it is illegal. You may move for summary judgment on your behalf. Since the material facts are agreed on, the judge should grant you summary judgment if he or she agrees with your interpretation of the law. On the other hand, if your suit is about brutality or prison conditions or denial of medical care, you usually will have to go to trial since what actually happened is bound to be the major issue.

NOTE: If you defeat the prison officials' Motion for Summary Judgment, be sure to renew your request for appointment of counsel. Follow the procedure outlined in Chapter Four, Section C, Part 3. The judge is much more likely to appoint a lawyer for you at this stage of your case. You may also want to consider approaching attorneys with your case at this point. Since Summary Judgment is a big hurdle to clear, some attorneys might see it as a sign that your case has the potential to win.

SECTION G

What to do if your Complaint is Dismissed or the Court Grants Defendants Summary Judgment

The sad truth of the matter is that prisoners file thousands of Section 1983 cases every year, and the vast majority of these are dismissed at one of the three stages described in sections B, C, & F of this chapter. This may happen to you even if you have a valid claim and a good argument. It may happen even if you work very hard on your papers, and follow every suggestion

in this Handbook perfectly. The important thing to remember is that you don't have to give up right away. You can choose to keep fighting. You have already learned how to file an amended complaint in Section C and the next few pages tell what else you can do if your case is dismissed or the court grants summary judgment in favor of the defendants.

1. Motion to Alter or Amend the Judgment

Your first option is to file a **Motion to Alter** or **Amend the Judgment** under Federal Rules of Civil Procedure Rule 59(e). This motion must be filed within ten days after entry of judgment, so you will have to move quickly. Include a Memorandum of Law that cites the cases from your circuit.

You can make this kind of motion if the court dismisses your complaint, denies you leave to amend, or grants summary judgment to the defendants.

2. How to Appeal the Decision of the District Court

If you lose your motion to alter the judgment, or if you decide not to make one, you can appeal to the U.S. Court of Appeals for your district. You begin your appeal by filing a Notice of Appeal with the clerk of the U.S. District Court whose decision you want to appeal. Follow the form in Appendix D If you filed a Motion to Alter under Rule 59(e), file your Notice of Appeal within 30 days after the court denies your Motion to Alter. Otherwise file your notice within 30 days after the order or judgment was entered by the district court judge.

The appeals process is governed by the Federal Rules of Appellate Procedure. These rules are supposed to be in your prison library, included as part of Title 28 of the United States Code (U.S.C.). There is an annotated version of the U.S.C. called the United States Code Annotated (U.S.C.A.) which gives summaries of important court decisions which interpret the Federal Rules of Appellate Procedure. The U.S.C. will only have the text of the Federal Rules while the U.S.C.A. will give some explanation and cases and is probably more helpful to you. Chapter Seven explains how to use the U.S.C.A. and other law books. Some of the books listed in Appendix J give more information on the appeals process.

If you sued *in forma pauperis*, you can appeal *in forma pauperis*, unless the district court finds that your appeal is not taken "in good faith." If the district court decides this, you have to send to the Appeals Court *in forma pauperis* papers like those you sent to the district court, except that you should explain the basis of your appeal. Submit these papers within 30 days after you are notified that the district court ruled that your appeal was not in good faith.

Soon after you receive a notice that your appeal has been transferred to the Court of Appeals, submit another Motion for Appointment of Counsel. Use the form in Chapter Four, Section C, Part 3, for requesting counsel but change the name of the court and state the basis of your appeal. If you have to submit new *in forma pauperis* papers, send them together with the motion for counsel.

Along with your Motion for Appointment of Counsel, submit a Memorandum of Law which presents all your arguments for why the appeals court should reverse the decision of the district court, for example, because the district court got the law wrong. If the appeals court thinks your appeal has merit, it usually will appoint a lawyer for you. Otherwise you may get a summary dismissal of your appeal.

CHAPTER SEVEN: THE LEGAL SYSTEM AND LEGAL RESEARCH

If you've had to do legal research before, you know how confusing it can be. Sometimes the whole legal system seems designed to frustrate people who are not familiar with the law and to make them totally dependent on lawyers. The law could be written and organized in a way that allows ordinary people to understand it and use it. The National Lawyers Guild, the Center for Constitutional Rights, and other groups are engaged in a political struggle to make the law accessible to the people.

Chapter Seven: Table of Contents

This chapter is only a general introduction to legal research for a federal prison lawsuit. It does not explain how to research other legal problems you face, and it does not go into every detail that could be useful for a Section 1983 or *Bivens* suit.

If you plan to do a lot of research, you will probably want to read some more books. A good detailed explanation of all types of legal research is a book called "*Cohen and Olson's Legal Research in a Nutshell*," which might be in your prison library. If not, you can order a copy (see Appendix J).

Technical legal terms are defined in *Ballantine's Law Dictionary* and *Black's Law Dictionary*, one of which is supposed to be in your prison library. The detailed rules for every kind of legal citation are in a paperback called *The Bluebook: A Uniform System of Citation* (see Appendix J).

SECTION A
The Importance of Precedent

To understand how to make legal arguments, it is important to have an understanding of our court system. This section focuses on the Federal Court system. Every state has its own state court system, which is separate from the federal system.

1. The Federal Court System

The federal court system is not separated by state, but rather by "districts" and "circuits." A federal suit begins in a United States District Court. The District Court is the trial court of the federal system. In total there are 94 U.S. District Courts. Some states, such as Alaska, only have one district. Others have several. New York, for example, is composed of four districts: the Northern, Western, Eastern, and Southern Districts. District Courts all have the name of a state in them, like the "Eastern District of New York."

Someone who loses in the District Court has a legal right to appeal to the United States Circuit Court of Appeals. The Court of Appeals is divided into regions called "circuits." There are 11 circuits in the United States that have number names. Washington, D.C. is just known as the "D.C. Circuit" and does not have a number. Each Circuit Court contains a number of district courts. For instance, the "First Circuit" includes all the districts in Maine, New Hampshire, Massachusetts, Rhode Island, and Puerto Rico.

Someone who loses in the Court of Appeals can ask for review by the United States Supreme Court. This is called "petitioning for certiorari." Generally, the Supreme Court can decide which decisions it wishes to review, called "granting cert." and can refuse to review the others, called "denying cert."

2. How Judges Interpret Laws on the Basis of Precedent

Most of the claims we have talked about in this book are based on one of the Constitutional Amendments, which are reprinted in Appendix E at the back of this book. Amendments are very short and they are written in very broad and general terms. Courts decide what

these general terms mean when they hear specific lawsuits or "cases." For instance, you probably already know that the Eighth Amendment prohibits "cruel and unusual punishment." However, there is no way to know from those four words exactly which kinds of punishments are allowed and which aren't. For instance, you may think to yourself that that execution is very "cruel and unusual." But, execution is legal in the United States. To understand how judges interpret "cruel and unusual punishment" you need to read cases in which other people, in the past, argued that one type of punishment or another was "cruel and unusual" and see how they turned out.

Each court decision is supposed to be based on an earlier decision, which is called "**precedent**." To show that your constitutional rights have been violated, you point to good court decisions in earlier cases and describe how the facts in those cases are similar to the facts in your case. You should also show how the general principles of constitutional law presented in the earlier decisions apply to your situation.

Besides arguing from favorable precedent, you need to explain why bad court decisions which might appear to apply to your situation should not determine the decision in your case. Show how the facts in your case are different from the facts in the bad case. This is called "distinguishing" a case.

The most important precedent is a decision by the U.S. Supreme Court. Every court is supposed to follow this precedent. The next best precedent is a decision of the appeals court for the circuit in which your district court is located. This is called "**binding precedent**" because it *must* be followed.

The third-best precedent is an earlier decision by the district court which is considering your suit. This may be by the judge who is in charge of your suit or by a different judge from the same court.

Some questions in your case may never have been decided by the Supreme Court, the Circuit Court, or your District Court. If this is the case, then you can point to decisions by U.S. Appeals Courts from other circuits or by other U.S. District Courts. Although a district court is not required to follow these kinds of precedents, it should consider them seriously. This is called "**persuasive authority**."

One complication is that you should only cite cases which remain "good law." Good law means that a case has *not* been reversed on appeal, or overruled by a later case. For example, in Chapter Three we wrote at length about *Overton v. Bazzeta*, 539 U.S. 126 (2003), a Supreme Court case about prisoners' rights to visits. Before the Supreme Court heard the case, the Sixth Circuit Court of Appeals heard the prison officials' appeal from a district court decision finding that Michigan's prison visit policy violated prisoners' constitutional rights. The Sixth Circuit decision is reported at *Overton v. Bazzeta*, 286 F.3d 311 (6th Cir. 2002). The Sixth Circuit agreed with the district court that the plaintiffs' constitutional rights were being violated, and wrote a wonderful decision. However, because the Supreme Court later granted cert and came to a different conclusion, you cannot rely on any of the parts of the (good) Sixth Circuit opinion that the Supreme Court reversed.

Order of Precedents:

Supreme Court (Strongest)
↓
Appeals Court for your Circuit
↓
District Court for your District
↓
Another Appeals Court
↓
Another District Court in your Circuit
↓
Another District Court outside your Circuit.
(Weakest, but still important)

Sometimes it is hard to tell, from reading a decision, whether the whole thing has been reversed or not. Some part of a lower court decision can remain good law after an appeal. If only one part of the case is appealed, while other claims are not, the portion of the lower court decision that was not appealed is still good law. You can cite it. And of course, if a case is affirmed on appeal, meaning that the Appellate court agrees with what the district court said, the district court decision is still good law, and you can cite to it. In that example, however, you may want to cite to the appellate decision instead, as an appellate decision is higher up in the order of precedent.

Let's go back to the *Overton v. Bazetta* example. In that case, plaintiffs argued before the district court that Michigan rules restricting visits violated their First and Eighth Amendment rights, as well as procedural due process. They had a trial at the district court and won. The appellate court "affirmed" or agreed with that decision. When the Supreme Court decided to hear the case it decided to review the First and Eighth Amendment claims. It went on to reverse on those claims, holding that Michigan's policies did not violate

the First and Eighth Amendment. So, the Supreme Court decision does not affect the lower courts' procedural due process decision. That part of the Sixth Circuit opinion is still "good law."

How do you find out if a case is still good law? Most lawyers today do it using an internet legal research system. In prison, you can do it using books called "Shepards." These books tell you whether any court has made a decision that affects a case that you want to rely on. They also list, to the exact page, every other court decision which mentions the decision you are checking. To research federal cases, you need Shepards Federal Citations. A booklet that comes with each set of citations explains in detail how to use them. It is very important for you to read that booklet and follow all of the directions.

When you use Shepard's Citations, it is often called "shepardizing." Shepardizing a decision is the only way you can make sure that decision has not been reversed of overruled. It also can help you find cases on your topic. Be sure to check the smaller paperback "advance sheets" which come out before each hardbound volume.

REMEMBER: **It will not help your case to cite a decision that has been reversed on appeal! Make sure to shepardize all cases you want to rely on.**

3. Statutes

Federal courts use the same method to interpret laws passed by the U.S. Congress. These laws are called "statutes." Judges interpret the words in these laws in court cases. This method also governs how judges apply the Federal Rules of Civil Procedure, which are made by the U.S. Supreme Court. Since statutes and rules are more specific than provisions in the Constitution, they leave less room for judicial interpretation.

4. Other Grounds for Court Decisions

Sometimes no precedent will be very close to your case, or you will find conflicting precedent from equally important courts. Other times there may be weak precedent which you will want to argue against. In these situations it helps to explain why a decision in your favor would be good precedent for future cases and would benefit society in general. This is called an argument based on "policy."

You can refer to books and articles by legal scholars to back up your arguments. Sometimes when a judge writes an opinion to explain his decision, he will set forth his views about a whole area of law relevant to that decision. Although the judge's general views do not count as precedent, you can quote his view in support of your arguments just as you would quote a "legal treatise" or an article in a "law review." A "legal treatise" is a book about one area of the law and a "law review" is a magazine or journal that has essays about different parts of the law written by legal scholars.

SECTION B

Legal Citations – How to Find Court Decisions and Other Legal Material

When you make a legal argument, you should always back it up by citing the names of the cases you are referring to. Every decision in a case has an official "citation," which is the case name, followed by a bunch of letters and numbers that tell you where you can find a copy of the decision. Case citation is a very picky and frustrating activity, but it is very important to making a legal argument. Before you worry about how to cite to a case, the first thing you need to deal with is *finding* a case.

1. Court Decisions

Reported Decisions

Court decisions are published in books called "Reporters" or "Reports." All U.S. Supreme Court decisions are in the *United States Reports*, which is abbreviated "U.S." They also are in the *Supreme Court Reporter*, abbreviated "S.Ct" and the *United States Supreme Court Reports Lawyers Edition*, abbreviated "L.Ed." or "L.Ed. 2d." These different reporters all have the same cases, so you can just use whichever version your prison law library has.

Decisions of the U.S. Circuit Courts of Appeal are in the *Federal Reporter*. As of 2010, there are three series of the Federal Reporter: the first series is abbreviated "F." the second series is abbreviated F.2d, and the third series is abbreviated F.3d. All new cases are in the third series.

U.S. District Court decisions are in the *Federal Supplement*, abbreviated "F. Supp." the Federal Supplement Second series, abbreviated "F. Supp. 2d," or F. Supp. 3d. Others are in the Federal Rules of Decisions, cited as "F.R.D."

How to Read a Case

When a judge decides a case, he or she writes a description of the facts of that case, the law the judge used to get to his or her decision, and the reason they decided one way or the other. When you first start reading cases, you may have trouble understanding them, but be patient, and follow these suggestions to get as much as possible from the case.

The Summary – Many times when you look up a case in a book, the first thing you will see under the name of the case is a short paragraph stating who won the case.

Key Number Links - Directly under the summary, you may see numbered paragraphs with headings and little pictures of keys. These paragraphs are there to help you with your research. They set out general rules of law that you will encounter in the case.

The Syllabus – The syllabus is a summary of the "holding" or decision in the case. It may help you get a sense of what the case is about, but be careful – it was not actually written by the Judge, and you cannot cite it on your brief.

The Facts – After the syllabus, you will see the name of the judge or judges who decided the case in capital letters, and the names of the attorney as well. After that comes the actual official opinion. Most judges start out an opinion by stating the facts – who sued who, over what. Read the facts carefully, you will need to use them if you want to show how the case is like or unlike your situation.

Legal Reasoning – Most of what you read in a case is legal reasoning. The judge will state general legal rules, or holdings from past cases, and explain them. This part of a case can be very complicated and difficult, but the more you read, the more you will understand.

The Holding – The holding is the actual decision in a case. After the judge goes through the facts and the legal reasoning, he or she will apply the law to the facts, and state the outcome of the case. It is important to figure out what the holding is, so you know whether the case hurts you, or helps you.

As we wrote earlier, every decision has an official "citation," which is the case name, followed by a bunch of letters and numbers that tell you where you can find a copy of the decision. The citation also explains what court made the decision and in what year. For example, this is a typical Supreme Court citation:

***Johnson v. Avery,* 393 U.S. 483 (1969)**

- **"Johnson v. Avery"** is the name of the case. Usually, the case name comes from the last name of the person who brings the suit, and the last name of the person being sued. The name of the plaintiff always comes first at the trial level, but the names can switch order after that, depending on which party is appealing. You should always *italicize* or underline the case name.

- **"393"** is the number of the volume of United States Reports in which you can find the case.

- The **"U.S."** indicates that the decision can be found in United States Reports.

- **"483"** is the page number in volume 393 on which the decision begins.

- **"1969"** is the year the decision was announced.

If you want to quote from a decision, or refer to reasoning used in the decision, you will also need to include the page number where your point appears in the decision. This is called a "pin cite" or "jump cite" and you put it between the page number the decision begins on and before the date of the decision. In the following example, "485" is the pin cite:

***Johnson v. Avery,* 393 U.S. 483, 485 (1969)**

Sometimes a U.S. Supreme Court decision will be cited to all three sets of reports, like:

***Johnson v. Avery,* 393 U.S. 483, 89 S.Ct. 797, 21 L.Ed. 2d 718 (1969).**

You can cite all three if you want, but it is usually not required. The "U.S." citation is the important one. Do not give only a "S.Ct." or L.Ed." citation without also giving the U.S. citation, unless the decision has not yet been reported in U.S. or you cannot find it. If this happens, cite the case as: *Johnson v. Avery*, ___U.S.___, 89 S.Ct. 747, 21 L.Ed. 2d 718 (1969). If you have only S.Ct. or only L.Ed., put what you have after "___U.S.___."

The "S.Ct." stands for "Supreme Court Reporter" and the "L.Ed." stands for "Lawyer's Edition." These books are supposed to be in your prison library and usually give the "U.S." cite for each decision.

A typical **Circuit Court** citation is:

***United States v. Footman,* 215 F.3d 145 (1st Cir. 2000)**

This decision is in volume 215 of the Federal Reporter, third series, starting on page 145. The information in parentheses tells you that this decision is from the First Circuit, and that it was decided in the year 2000.

A typical **District Court** citation is:

> ***Bracewell v. Lobmiller,* 938 F. Supp. 1571 (M.D. Ala. 1996)**

This decision is in volume 938 of the Federal Supplement and starts on page 1571. It was issued in 1996 by the U.S. District Court for the Middle District of Alabama.

Unpublished Decisions

Not every district court or circuit court decision is reported. Some decisions are "unpublished," which means they do not appear in the official reporters. Unfortunately, a lot of cases about prisoners are unpublished. Not all courts allow you to cite to unpublished cases, and they are very hard for prisoners to get. To find out whether or not you can use unpublished cases, look in your district court's local rules.

A publication called ***U.S. Law Week***, which may be in the prison law library, prints a few important decisions by various courts before those decisions appear in regular reports. You can use a *Law Week* citation until the decision appears in a reporter. Use the same general form as for reported case, but indicate the court, the case number on the court docket and the exact date of the decision (not just the year). For example:

> ***Oswald v. Rodriguez,* 40 U.S.L.W. 3597 (U.S. June 19, 1972) (No. 71-1369)**.

Outside of prison, most lawyers no longer use books to find opinions or do legal research. Today, lawyers use one of two online services that simplify legal research, and make many unpublished opinions easily accessible. These services are called LEXIS and Westlaw. They cost a lot of money, and your prison probably does not give you access to them. Hopefully, internet access to decisions will increase in the future. LEXIS and Westlaw cites look like this.

> ***Lucrecia v. Samples,* No. C-93-3651-VRW, 1995 WL 630016 (N.D.Cal. Oct. 16, 1995)**

> ***Farmer v. Hawk,* No. 94-CV-2274, 1996 U.S. Dist. LEXIS 13630 (D.D.C. Sep. 5, 1996)**

The number that appears after the case name, and starts with "No." is the official docket number of the case**.** As you learned in Chapter Three, every case gets a docket number as soon as the complaint is filed. When you are citing an unpublished case, you need to include the docket number. The next part is the LEXIS or Westlaw citation. It includes the year the case was decided, and a special identification number created by Westlaw or LEXIS. In the parenthesis you will find the abbreviation for the court that decided the case, and the date of the decision. When you are citing a published opinion, you only need to include the year the decision issued. For an unpublished decision, you should include the exact day.

When you want to use a case in a memorandum of law or a brief or any other legal document, you should put the case cite, as it appears in the examples above, at the end of every sentence that refers to a fact or a legal rule or a quote that comes from that case. Throughout this handbook, there are many examples that can help you see how this works. For instance, on page 19 in Chapter Three, we wrote:

> "Courts have allowed censorship of materials that advocate racial superiority and violence against people of another race or religion. *Stefanow v. McFadden*, 103 F.3d 1466 (9th Cir. 1996); *Chriceol v. Phillips*, 169 F.3d 313 (5th Cir. 1999)."

We "cited" the two cases above because they support our statement about courts allowing censorship. Citing a case allows the reader to go look up the case for proof that what the writer has written is true.

Sometimes you also need to include more information about the case. When you refer to a decision which has been appealed, list all the decisions in the case and indicate what each court ruled. For example:

> ***Gilmore v. Lynch,* 319 F. Supp. 105 (N.D. Cal. 1970), *aff'd sub nom Younger v. Gilmore,* 404 U.S. 15 (1971).**

The abbreviation "*aff'd*" stands for "affirmed." This citation indicates that the U.S. Supreme Court "affirmed" or agreed with the decision of the District Court in the Gilmore case. This happened one year later, under a slightly different name, which is abbreviated "*sub nom*". The name is different because Younger had replaced Lynch as Attorney General of California, and Gilmore – one of the prisoners who filed the suit – had his name second because he was now defending against Younger's appeal of the district court decision in favor of the prisoners.

As explained above, you might want to cite a decision which has been reversed on appeal, if the part of the decision which helps you was not reversed. The citation would look like:

> ***Toussaint v. McCarthy*, 597 F. Supp. 1388 (N.D. Cal. 1984), *aff'd in part, rev'd in part on other grounds*, 801 F.2d 1080 (9th Cir. 1986).**

The abbreviation "*rev'd*" stands for "reversed." Here the case name was not changed on appeal, so you don't have to include it a second time.

When you cite a circuit court decision, you should indicate if the Supreme Court has agreed to review the decision or has refused to review it, if that decision was made in the last three years. For example:

> ***Roe v. Crawford*, 514 F.3d 789 (8th Cir. 2008), *cert. denied*, __U.S. __, 129 S. Ct. 109 (2008).**

"Cert" stands for the "writ of certiorari" that the Supreme Court issues when it decides to review lower court decisions. If the Supreme Court had decided to grant a writ of certiorari in *Roe v. Crawford*, the citation would read "*cert. granted*."

Once you have cited the full name of a case once, you don't have to cite it fully again. Instead, you can use a short form of the official cite. So, instead of writing *Hershberger v. Scaletta*, 33 F.3d 955 (8th Cir. 1994) over and over again, you can just write:

> ***Hershberger*, 33 F.3d at 960.**

Just remember to cite the case in full the first time you use it. Notice that the last number, "960," is the actual page of the case that you want to refer to, rather than the page on which the case starts. If you cite a case for a second time and you haven't cited any other cases in between, you can use another, shorter, short form: "*Id.* at 960." *Id.* is an abbreviation for the Latin word "*idem*" which means "same."

You may see in a memo or an opinion "*Hershberger v. Scaletta*, supra at 960" or just "*Hershberger v. Scaletta*, supra." "*Supra*" is Latin for "above." It means that the full citation was given earlier.

You do not have to use words like "*supra*" and "*id.*" It is your choice how you want to write your citations. You will probably find it simpler to put the full case name and the full citation each time you refer to a case. This is perfectly fine. But you will need to know the fancy words because lawyers like to use them. Remember, whenever you don't know what a term means, try to get a hold of *Black's Law Dictionary*, *Ballantine's Law Dictionary*, or any other law dictionary. We also have included a limited glossary at the end of the Handbook.

2. Legislation and Court Rules

Besides court decisions, you will also want to find and refer to laws passed by the U.S. Congress, like Section 1983. The main places to find federal statutes are in the **United States Code** (abbreviated U.S.C.) or the **United States Code Annotated** (abbreviated U.S.C.A.), which are supposed to be in every prison library. Both sets of books are organized in the same way, except that the "Code Annotated" version summarizes the main court decisions that interpret each statute. It also lists related law review articles and states the history of the statute. In using the Code or the Code Annotated, be sure to check for paperbound additions in the back of books. These additions update the material in that book.

Citations for statutes follow roughly the same form as citations to court cases. For example:

> **42 U.S.C. § 1983**

refers to title 42 of the U.S. Code and section 1983 of that title. A "title" is a group of somewhat related laws which are collected together. One book of the Code or Code Annotated may contain several titles or only part of a title, depending on how big that title is.

The U.S. Code also includes the Federal Rules of Civil Procedure (Fed. R. Civ. P.) and the Federal Rules of Appellate Procedure (Fed. R. App. P.). These rules are published as an appendix to Title 42. The Code Annotated (U.S.C.A.) annotates each rule the same way it does each statute. It summarizes important court decisions which interpret the rule, etc. The correct way to cite a rule is: "Fed. R. Civ. P. [rule number]" or "Fed. R. App. P. [rule number]."

3. Books and Articles

Citations to legal treatises and law review articles follow the same general pattern as statutes and court decisions. For instance:

> **Betsy Ginsberg, *Out With the New, In With the Old: The Importance Of Section 504 Of The Rehabilitation Act To Prisoners With Disabilities*, 36 Fordham Urb. L.J. 713 (2009).**

You can tell from this citation that Betsy Ginsberg wrote an article that appeared in volume 36 of the Fordham Urban Law Journal on page 713, and that it came out in 2009. You should always give the author's full name and italicize the name of the article.

Citing a book is relatively easy. You write the author's full name, the name of the book, the page you are citing too, and the year it was published:

> **Deborah L. Rhode, *Justice and Gender* 56 (1989)**

4. Research Aids

Prison law libraries should include books which help you do legal research. The most important books for legal research are **Shepard's Citations**, which we described above. Some other important books are described below.

Digests

A "digest" has quotations from court decisions, arranged by subject matter. Every topic has a "key-number." You look in the subject index to find the key number of your topic. Under that number you will find excerpts from important decisions. The last volume of each digest has a plaintiff-defendant table, so you can get the citation for a case if you only know the names of the parties.

The prison library is also supposed to have the **Modern Federal Practice Digest** (covering all federal court decisions since 1939) and **West's State Digest** for the state your prison is in. The same key-number system is used in all the books put out by the West Publishing Company, including **Corpus Juris Secundum** (explained below), **Supreme Court Reporter**, **Federal Supplement**, and **Federal Rules Decisions**. Every decision in a **West Company Reporter** starts with excerpts or paraphrases of the important points in the decision and gives the key number for each point.

Encyclopedias

Your law library may include **Corpus Juris Secundum**, abbreviated "CJS." CJS is a legal encyclopedia. It explains the law on each of the key-number topics and gives a list of citations for each explanation. Be sure to check pocket parts at the back of each book to keep up to date.

The explanations in CJS are not very detailed or precise. But they can give you a rough idea of what is happening and lead you to the important cases.

Encyclopedias and digests are good ways to get started on your research, but it usually is not very helpful to cite them to support arguments in your legal papers. Judges do not consider the opinion of a legal encyclopedia as a solid base for a decision.

SECTION C
Legal Writing

Although the rules explained in this chapter are very complicated, it is important to keep in mind that most judges will understand that you are not a lawyer, and they won't disregard your arguments just because you cite a case wrong. Lawyers spend years perfecting their legal research and writing skills, and usually have the benefit of well-stocked libraries, expensive computers, and paid paralegals to help them. Most prisoners don't have any of these things, so just do your best. This is especially true with writing. You should not worry about trying to use fancy legal terms or make your writing sound professional. Don't try to write like you think a lawyer would write. **Just write clearly and simply.**

There is a simple formula for writing clearly about legal issues that you can remember by thinking of the abbreviation: **IRAC.** IRAC stands for:

Idea
Rule
Application
Conclusion

Some people find that creating an outline, making a diagram, or drawing a picture is helpful in writing **IRAC** formulas. These methods can help organize your thoughts, facts, and cases.

Say you have an Eighth Amendment claim based on exposure to secondhand smoke. Below is a sample of how to do a very simple outline. Your outline may be more complex or simple, depending on what works for you.

First you would go to the section in Chapter Three that applies to you, write the rule out for proving that claim, and put in citations to start keeping track of where you are getting the quotes from:

1. *To prove an Eighth Amendment violation, the prison officials must act with deliberate indifference to a prison condition that exposes a prisoner to an unreasonable risk of serious harm. Helling v. McKinney, 509 U.S. 25, 33 (1993).*

Now, break the above sentence into the different parts you will have to prove:

1. *To prove an Eighth Amendment violation, the prison officials must:*
   (a) *act with deliberate indifference to a prison condition that*
   (b) *exposes a prisoner to an unreasonable risk of serious harm.*

Then, you look for cases in this Handbook or through your own research that defines more how you prove (a) and (b) above:

1. To *prove an Eighth Amendment violation, the prison officials must:*
   (a) *act with deliberate indifference to a prison condition*
      i. *Deliberate indifference is when prison officials ignore an obvious and serious danger. Farmer v. Brennan, 511 U.S. 825, 835 (1994).*
   (b) *exposes a prisoner to an unreasonable risk of harm*
      i. *Exposure to second-hand cigarette smoke is an unreasonable risk of serious harm. Talal v. White, 403 F.3d 423 (6th Cir. 2005)*

Hopefully you can see how each of the (i) sections explain each part of the rule. Now, you want to think about what has happened -- the facts -- that fit each of those sections. Those facts will become your **application** section.

Now, lets follow IRAC to actually draft your section. First, start with the **Idea** that you plan to support through your argument. For example:

Warden Wally violated the Eighth Amendment by putting me in a cell with a prisoner who smokes cigarettes.

Next, state the **Rule** of law that sets out the standard for your idea. If you can, you should also explain the rule in this section, by citing cases that are similar to yours. For example, first state the full rule:

Prison Officials violate the Eighth Amendment when they act with deliberate indifference to a prison condition that exposes a prisoner to an unreasonable risk of serious harm. Helling v. McKinney, 509 U.S. 25, 33 (1993).

Then we explain, in two separate sentences, the two clauses from the above rule:

Prison officials act with deliberate indifference when they ignore an obvious and serious danger. Farmer v. Brennan, 511 U.S. 825, 835 (1994). Exposure to second-hand cigarette smoke presents an unreasonable risk of serious harm. Talal v. White, 403 F.3d 423 (6th Cir. 2005)

Third is the **Application**. For this step, you want to state the facts that show how your rights were violated. You should show the court how and why the rule applies to the facts of your specific case. Be detailed and specific, brief and to the point. For example:

As I wrote in my complaint, upon admission to Attica Correctional Facility, I was placed in a cell with Joe Shmoe. Joe Shmoe smokes two packs of cigarettes a day in our cell. The window in our cell doesn't open, so I am forced to breathe smoky air. I spend about twelve hours a day in this smoky environment. I sent a letter to Warden Wally on May 6, 2010 explaining this problem, and he did not respond. I sent him another letter two weeks later, and he still hasn't dealt with the problem. Then, in June, I used the prison grievance system to request a transfer to another cell due to the smoke, and when that grievance was denied, I appealed it. Guards pass by my cell everyday and hear me coughing, and smell and see the smoke. I yell to the guards to tell the warden about this problem. I have been coughing a lot.

Finally, you should finish your section with a **Conclusion**. The conclusion should state how your rights were violated in one or two sentences. For example:

Warden Wally's refusal to move me to a different cell or otherwise end my exposure to secondhand smoke amounts to deliberate indifference to an unreasonable risk of serious harm, in violation of the Eighth Amendment. For this reason, his motion to dismiss my case should be denied.

If you use this formula for each and every point you need to address in your complaint, you have a much better chance of getting the Judge to treat your case with the attention it deserves.

APPENDICES

APPENDIX A
Glossary of Terms

Below is a list of legal terms, phrases and other words that you may come across in this Handbook or in further research.

Admissible: Evidence that can be used at a trial is known as "admissible" evidence. "**In**admissible" evidence can't be used at a trial.

Affidavit: A written or printed statement of facts that is made voluntarily by a person who swears to the truth of the statement before a public officer, such as a "notary public."

Affirm: When the appellate court agrees with the decision of the trial court, the appellate court "affirms" the decision of the trial court. In this case, the party who lost in the trial court and appealed to the appellate court is still the loser in the case.

Allege: To claim or to charge that someone did something, or that something happened, which has not been proven. The thing that you claim happened is called an "allegation."

Amendment (as in the First Amendment): Any change that is made to a law after it is first passed. In the United States Constitution, an "Amendment" is a law added to the original document that further defines the rights and duties of individuals and the government.

Annotation: A remark, note, or comment on a section of writing which is included to help you understand the passage.

Answer: A formal, written statement by the defendant in a lawsuit which responds to each allegation in the complaint

Appeal: When one party asks a higher court to reverse the judgement of a lower court because the decision was wrong or the lower court made an error. For example, if you lose in the trial court, you may "appeal" to the appellate court.

Brief: A document written by a party in a case that contains a summary of the facts of the case, relevant laws, and an argument of how the law applies to the factual situation. Also called a "memorandum of law."

Table of Contents

Burden of proof: The duty of a party in a trial to convince the judge or jury of a fact or facts at issue. If the party does not fulfill this duty, all or part of his/her case must be dismissed.

Causation: The link between a defendant's conduct and the plaintiff's injury or harm. In a civil rights case, the plaintiff must always prove "causation."

Cause of Action: Authority based on law that allows a plaintiff to file a lawsuit. In this handbook, we explain the "cause of action" called Section 1983.

"Cert" or "Writ of Certiorari": An order by the Supreme Court stating that it will review a case already

decided by the trial court and the appeals court. When the Supreme Court makes this order, it is called "granting cert." If they decide not to review a case, it is called "denying cert."

Cf.: An abbreviation used in legal writing to mean "compare." The word directs the reader to another case or article in order to compare, contrast or explain views or statements.

Circuit Court of Appeals: The United States is divided into federal judicial circuits. Each "circuit" covers a geographical area, often called by its circuit number (like "5th Circuit"), and has a court of appeals. The appellate court is called the U.S. Court of Appeals for that particular circuit (for example, the U.S. Court of Appeals for the 5th Circuit).

Citation: A written reference to a book, a case, a section of the constitution, or any other source of authority.

Civil (as in "civil case" or "civil action"): In general, all cases or actions which are not criminal. "Civil actions" are brought by a private party to protect a private right.

Claim: A legal demand made about a violation of one's rights.

Class Action: A lawsuit in which a few plaintiffs sue on behalf of a larger group of people whose rights are being violated in the same way.

Color of State Law: When a state or local government official is carrying out his/her job, or acting like he/she is carrying out his/her job. Acting "under color of state law" is one of the requirements of a Section 1983 action.

Complaint: The legal document filed in court by the plaintiff that begins a civil lawsuit. A "complaint" sets out the facts and the legal claims in the case, and requests some action by the court.

Consent: Agreement; voluntary acceptance of the wish of another.

Consent Order / Consent Decree: An order for an injunction (to change something the defendant is doing) that is agreed on by the parties in a settlement and given to the court for approval and enforcement.

Constitution: The supreme law of the land. The U.S. Constitution applies to everyone in this country, and each state also has a constitution.

Constitutional law: Law set forth in the Constitution of the United States or a state constitution.

Counsel: A lawyer.

Criminal (as in "criminal case" or "criminal trial"): When the state or federal government charges a person with committing a crime. The **burden of proof** and the procedural rules in a criminal trial may be different from those in a civil trial.

Cross-examination: At a trial or hearing, the questioning of a witness by the lawyer for the other side. Cross-examination takes place after the party that called the witness has questioned him or her. Each party has a right to "cross-examine" the other party's witnesses.

Damages: Money awarded by a court to a person who has suffered some sort of loss, injury, or harm.

Declaration: A statement made by a witness under penalty of perjury.

Declaratory Judgment: A court order that sets out the rights of the parties or expresses the opinion of the court about a certain part of the law, without ordering any money damages or other form of relief for either side.

Default judgment: A judgment entered against a party who fails to appear in court or respond to the charges.

Defendant: The person against whom a lawsuit is brought.

Defense: A reason, stated by the defendant, why the plaintiff should lose a claim.

Deliberate Indifference: The level of intent required for a defendant in an Eighth Amendment claim. It requires a plaintiff to show that a defendant (1) actually knew of a substantial risk of serious harm, and (2) failed to respond reasonably.

***De Minimis**:* Very small or not big enough. For example, in an Eighth Amendment excessive force claim, you need to prove an injury that is more than *de minimis.*

Denial: When the court rejects an application or petition. Or, when someone claims that a statement offered is untrue.

Deposition: One of the tools of discovery. It involves a witness giving sworn testimony in response to oral or written questions.

Dictum: An observation or remark made by a judge in his or her **opinion**, about a question of the law that is not necessary to the court's actual decision. Future courts do not have to follow the legal analysis found in "dictum." It is not "binding" because it is not the legal basis for the judge's decision. Plural: "Dicta"

Direct Examination: At a trial or hearing, the questioning of a witness by the lawyer or party that called the witness. The lawyer conducts "direct examination" and then the lawyer for the other side gets the chance to "cross examine" that same witness.

Discovery: The process of getting information which is relevant to your case in preparation for a trial.

Discretion: The power or authority of a legal body, such as a court, to act or decide a situation one way or the other, where the law does not dictate the decision.

Disposition: The result of a case; how it was decided.

District Court: The trial courts within the federal court system. There are District Courts in each federal circuit and its decisions can be appealed to the Circuit Courts of Appeal.

Document Request: One of the tools of discovery, allows one party to a lawsuit to get papers or other evidence from the other party.

Due process: A constitutional right that guarantees everyone in the United States a certain amount of protection for their life, liberty and property.

Element: A fact that one *must* prove to win a claim.

Enjoining: When a court orders a person to perform a certain act or to stop performing a specific act. The order itself is called an "injunction."

Evidence: Anything that proves, or helps to prove, the claim of a party. "Evidence" can be testimony by witnesses and experts, documents, physical objects and anything else admissible in court that will help prove a point.

Exclude from evidence: The use of legal means to keep certain evidence from being considered in deciding a case.

Excessive Force: more force than is justified in the situation.

Exhaustion of Administrative Remedies: the requirement that a prisoner use the prison grievance system to make (and appeal) a complaint before filing a lawsuit. One of the requirements of the Prison Litigation Reform Act.

Exhibit: Any paper or thing used as evidence in a lawsuit.

Federal law: A system of courts and rules organized under the United States Constitution and statutes passed by Congress; different than state law.

File: When you officially send or give papers to the court in a certain way, it is called "filing" the papers.

Finding: Formal conclusion by a judge or jury on a issue of fact or law.

Footnote: More information about a subject indicated by a number in the body of a piece of legal writing which corresponds to the same number at the bottom of the page. The information at the bottom of the page is the "footnote."

Frivolous: Something that is groundless, an obviously losing argument or unbelievable claim.

Grant: To allow or permit. For example, when the court "grants a motion," it allows what the **motion** was asking for.

***Habeas Corpus* (*Habeas*)**: An order issued by a court to release a prisoner from prison or jail. For example, a prisoner can petition (or ask) for "*habeas*" because a conviction was obtained in violation of the law. The "*habeas* writ" can be sought in both state and federal courts.

Hear: To listen to both sides on a particular issue. For example, when a judge "hears a case," he or she considers the validity of the case by listening to the evidence and the arguments of the lawyers from both sides in the litigation.

Hearing: A legal proceeding before a judge or judicial officer, in some ways similar to a trial, in which the judge or officer decides an issue of the case, but does not decide the whole case.

Hearsay: Testimony that includes a written or verbal statement that was made out of court that is being offered in court to prove the truth of what was said. Hearsay is often "inadmissible."

Holding: The decision of a court in a case and the accompanying explanation.

Immunity: When a person or governmental body cannot be sued, they are "immune" from suit.

Impartial: Even-handed or objective; favoring neither side.

Impeach: When one party presents evidence to show that a witness may be lying or unreliable.

Inadmissible evidence: Evidence that cannot legally be introduced at a trial. Opposite of "admissible" evidence.

Injunction: An order by a court that a person or persons should stop doing something, or should begin to do something.

Injury: A harm or wrong done by one person to another person.

Interrogatories: A set of questions in writing. One of the tools of **discovery**.

Judge: A court officer who is elected or appointed to hear cases and make decisions about them.

Judgment: The final decision or holding of a court that resolves a case and determines the parties' rights and obligations.

Jurisdiction: The authority of a court to hear a particular case.

Jury: A group of people called to hear a case and decide issues of fact.

Law: Rules and principles of conduct set out by the constitution, the legislature, and past judicial decisions.

Lawsuit: A legal action that involves at least one plaintiff, making one or more claims, against at least one defendant.

Liable: To be held responsible for something. In civil cases, plaintiffs must prove that the defendants were "liable" for unlawful conduct.

Litigate: To participate in a lawsuit. All the parts of a lawsuit are called "litigation" and some time lawyers are called "litigators."

Majority: More than half. For example, an opinion signed by more than half the judges of a court is the "majority opinion" and it establishes the decision of the court.

Material evidence: Evidence that is relevant and important to the legal issues being decided in a lawsuit.

Memorandum of law: A written document that includes a legal argument, also called a "brief."

Mistrial: If a fundamental error occurs during trial that cannot be corrected, a judge may decide that the trial should not continue and declare a "mistrial."

Moot: A legal claim that is no longer relevant is "moot" and must be dismissed.

Motion: A request made by a party to a judge for an order or some other action.

Municipality: A city or town.

Negligent or Negligence: To be "negligent" is to do something that a reasonable person would not do, or to not do something that a reasonable person would do. Sometimes a party needs to prove that the opposing party in the suit was "negligent." For example, if you do not shovel your sidewalks all winter when it snows, you may be negligent.

Notary or Notary Public: A person who is authorized to stamp his or her seal on certain papers in order to verify that a particular person signed the papers. This is known as "notarizing the papers."

Notice or Notification: "Notice" has several meanings in the law. First, the law often requires that "notice" be given to an individual about a certain fact. For example, if you sue someone, you must give them "notice" through "service of process." Second, "notice" is used in cases to refer to whether an individual was aware of something.

Objection: During a trial, an attorney or a party who is representing him/herself pro se may disagree with the introduction of a piece of evidence. He or she can voice this disagreement by saying "I object" or "objection." The judge decides after each objection whether to "**sustain**" or "**overrule**" the objection. If the judge sustains an objection it means the judge, based on his or her interpretation of the law, agrees with the attorney raising the objection that the evidence cannot be presented. If an objection is "**overruled**" it means the judge disagrees with the attorney raising the objection and the evidence can be presented.

Opinion: When a court decides a case, a judge writes an explanation of how the court reached its decision. This is an "opinion."

Order: The decision by a court to prohibit or require a particular thing.

Oral arguments: Live, verbal arguments made by the parties of a case that a judge may hear before reaching a decision and issuing an **opinion**.

Overrule: To reverse or reject.

Party: A plaintiff or defendant or some other person who is directly involved in the lawsuit.

Per se: A Latin phrase meaning "by itself" or "in itself."

Perjury: The criminal offense of making a false statement under oath.

Petition: A written request to the court to take action on a particular matter. The person filing an action in a court or the person who appeals the judgment of a lower court is sometimes called a "petitioner."

Plaintiff: The person who brings a lawsuit.

Precedent: A case decided by a court that serves as the rule to be followed in similar cases later on. For example, a case decided in the United States Supreme Court is "precedent" for all other courts.

Preponderance of evidence: This is the standard of proof in a civil suit. It means that more than half of the evidence in the case supports your explanation of the facts.

Presumption: Something that the court takes to be true without proof according to the rules of the court or the laws of the jurisdiction. Some presumptions are "rebuttable." You can overcome a "rebuttable presumption" by offering evidence that it is not true.

Privilege: People may not have to testify about information they know from a specific source if they have a "privilege." For example, "attorney-client privilege" means that the information exchanged between an attorney and his or her client is confidential, so an attorney may not reveal it without the client's consent.

Proceeding: A hearing or other occurrence in court that takes place during the course of a dispute or lawsuit.

Pro se: A Latin phrase meaning "for oneself." Someone who appears in court "pro se" is representing him or herself without a lawyer.

Question of fact: A dispute as to what actually happened. It can be contrasted to a "question of law."

Qualified Immunity: a doctrine that protects government officials from liability for acts they couldn't have reasonably known were illegal.

Reckless: To act despite the fact that one is aware of a substantial and unjustifiable risk.

Record (as in the record of the trial): A written account of all the proceedings of a trial, as transcribed by the court reporter.

Regulation: A rule or order that manages or governs a situation. One example is a "prison regulation."

Relevant / irrelevant: A piece of evidence which tends to make some fact more or less likely or is helpful in the process of determining the truth of a matter is "relevant." Something that is not at all helpful to determining the truth is "irrelevant."

Relief: The remedy or award that a plaintiff or petitioner seeks from a court, or a remedy or award given by a court to a plaintiff or petitioner.

Remand: When a case is sent back from the appellate court to the trial court for further action or proceedings.

Remedy: Same as "relief".

Removal: When a defendant transfers a case from state court to federal court.

Respondent: The person against whom a lawsuit or appeal is brought.

Retain: To hire, usually used when hiring a lawyer.

Reverse: When an appellate court changes the decision of a lower court. The party who lost in the trial court and then appealed to the appellate court is now the winner of the case. When this happens, the case is "reversed."

Right: A legal entitlement that one possesses. For example, as a prisoner, you have the "right" to be free from cruel and unusual punishment.

Sanction: A penalty the court can impose when a party disobeys a rule or order.

Service, "service of process" or "to serve": the physical act of handing something over, or delivering something to a person, as in "serving legal papers" on a person.

Settlement: when both parties agree to end the case without a trial.

Shepardizing: Method for determining if a case is still "good law" that can be relied upon.

Standing: A requirement that the plaintiff in a lawsuit has an actual injury that is caused by the defendant's alleged action and that can be fixed by the court.

Statute: A law passed by the U.S. Congress or a state legislature.

Statute of limitations: A law that sets out time limitations within which different types of lawsuits must be brought. After the "statute of limitations" has run on a particular type of lawsuit, the plaintiff can not bring that lawsuit.

Stipulation: An agreement between the plaintiff and the defendant as to a particular fact.

Subpoena: An official court document that requires a person to appear in court at a specific time and place. A particular type of "subpoena" requires an individual to produce books, papers and other things.

Summary judgment: A judgment given on the basis of pleadings, affidavits or declarations, and exhibits presented for the record without any need for a trial. It is used when there is no dispute as to the facts of the case and one party is entitled to a judgment as a matter of law.

Suppress: To prevent evidence from being introduced at trial.

Testimony: The written or oral evidence given by a witness under oath. It does not include evidence from documents or objects. When you give testimony, you "testify."

Tort: A "wrong" or injury done to someone. Someone who destroys your property or injures you may have committed a "tort."

Trial: A proceeding that takes place before a judge or a judge and a jury. In a trial, both sides present arguments and evidence.

v. or vs. or versus: Means "against," and is used to indicate opponents in a case, as in "*Joe Prisoner v. Charles Corrections Officer*."

Vacate: To set aside, as in "vacating the judgment of a court." An appellate court, if it concludes that the decision of the trial court is wrong, may "vacate" the judgment of the trial court.

Vague: Indefinite, or not easy to understand.

Venue: the specific court where a case can be filed.

Verdict: A conclusion, as to fact or law, that forms the basis for the court's judgment.

Verify: To confirm the authenticity of a legal paper by affidavit or oath.

Waive or waiver: To give up a certain right. For example, when you "waive" the right to a jury trial or the right to be present at a hearing you give up that right.

Witness: a person who knows something which is relevant to your lawsuit and testifies at trial or in a deposition about it.

Writ: An order written by a judge that requires a specific act to be performed, or gives someone the power to have the act performed. For example, when a court issues a writ of **habeas corpus**, it demands that the person who is detaining you release you from custody.

APPENDIX B: SAMPLE COMPLAINT

UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF ILLINOIS

Walter Hey, Mohammed Abdul,	:	
	:	
Plaintiffs,	:	
	:	
- v -	:	
	:	Civil Action No._____
John Smith, warden Illinois State Prison;	:	
Dave Thomas, corrections officer at Illinois State Prison,	:	**COMPLAINT**
individually and in their official capacities,	:	
	:	
Defendants.	:	

I. JURISDICTION & VENUE

1. This is a civil action authorized by 42 U.S.C. Section 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States. The court has jurisdiction under 28 U.S.C. Section 1331 and 1343 (a)(3). Plaintiff Hey seeks declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202. Plaintiff Hey's claims for injunctive relief are authorized by 28 U.S.C. Section 2283 & 2284 and Rule 65 of the Federal Rules of Civil Procedure.

2. The Northern District of Illinois is an appropriate venue under 28 U.S.C. section 1391 (b)(2) because it is where the events giving rise to this claim occurred.

II. PLAINTIFFS

3. Plaintiff Walter Hey, is and was at all times mentioned herein a prisoner of the State of Illinois in the custody of the Illinois Department of Corrections. He is currently confined in Illinois State Prison, in Colby, Illinois.

4. Plaintiff Mohammed Abdul is and was at all times mentioned herein a prisoner of the State of Illinois in the custody of the Illinois Department of Corrections. He is currently confined in Illinois State Prison, in Colby, Illinois.

III. DEFENDANTS

5. Defendant John Smith is the Warden of Illinois State Prison. He is legally responsible for the operation of Illinois State Prison and for the welfare of all the inmates of that prison.

6. Defendant Dave Thomas is a Correctional Officer of the Illinois Department of Corrections who, at all times mentioned in this complaint, held the rank of prison guard and was assigned to Illinois State Prison.

7. Each defendant is sued individually and in his official capacity. At all times mentioned in this complaint each defendant acted under the color of state law.

III. FACTS

8. At all times relevant to this case, Plaintiffs Walter Hey and Mohammed Abdul shared a cell on block D.

9. On June 29, 2009, Defendant Dave Thomas entered Hey and Abdul's cell to conduct a routine and scheduled cell search. Upon information and belief, Illinois State prison policy dictated that each cell be searched once a week for contraband.

10. Thomas searched Hey and Abdul's cell in their presence, and did not uncover any contraband. Indeed, there was no contraband in their cell. After completing the search, Thomas told Hey to walk onto the range so that he could talk to Abdul alone. Hey asked why. Thomas told him to shut up, and follow the order.

11. Hey excited the cell and stood to the right of the cell, on the range. He could see into the cell.

12. After Hey left, Thomas told Abdul that Hey was a problem prisoner, was in "deep trouble" with the prison administration, and that if Abdul knew what was good for him, he would tell Thomas what Hey was up to.

13. When Abdul refused to say anything to Thomas about Hey, Thomas punched Abdul in the face. The punch caused Abdul pain. Abdul's left eye was bruised and swollen for approximately 4 days.

14. Thomas then got Hey from outside the cell, and told him that if he didn't abandon the prison grievance Hey had filed about racist comments Thomas made one week early at Hey's disciplinary hearing, he would "do the same" to Hey every single day. That grievance is attached as Exhibit A.

15. The following day, June 30, 2009, Thomas returned to Hey and Abdul's cell, and asked Hey if he had withdrawn the grievance. Hey replied that he had not. Thomas punched him in the right eye, causing pain and swelling that lasted several days.

16. That same day, Hey and Abdul both requested sick call, and saw the prison medical tech regarding the pain they were both experiencing. The tech prescribed aspirin, and noted bruising on their medical files. Relevant pages of Hey and Abdul's medical files are attached as Exhibit B.

17. Later that week, on July 2, 2009, Thomas again returned to Hey and Abdul's cell and again asked Hey if he had withdrawn the grievance. Hey said no. Thomas punched him again, this time in the stomach, again causing pain and bruising. Thomas again stated that he would punch Hey every day until he withdrew the grievance.

18. When Thomas opened the cell door to leave Hey and Abdul's cell, Hey and Abdul saw that Warden Thomas was outside the cell, looking in. Abdul asked the warden if he had seen what happened, and what he was going to do about it. Warden Smith responded that "that is how we deal with snitches" in Illinois State Prison.

19. The following week, July 4 – 11, Defendant Thomas returned to Plaintiffs' cell each day, and each day punched Hey.

IV. EXHAUSTION OF LEGAL REMEDIES

20. Plaintiff Hey used the prisoner grievance procedure available at Illinois State prison to try and solve the problem. On June 29, 2009 plaintiff Hey presented the facts relating to this complaint. On June 30, 2009 plaintiff Hey was sent a response saying that the grievance had been denied. On July 1, 2009 he

appealed the denial of the grievance to the warden. He received no response. Hey's grievance and appeal are attached as Exhibit C.

21. Plaintiff Abdul also used the prisoner grievance procedure available at Illinois State prison to try and solve the problem. On June 30, 2009 plaintiff Abdul presented the facts relating to this complaint. On June 30, 2009 plaintiff Abdul was sent a response saying that the grievance had been denied. On July 1, 2009 he appealed the denial of the grievance to the warden. He received no response. Abdul's grievance and appeal are attached at Exhibit D.

V. LEGAL CLAIMS

21. Plaintiffs reallege and incorporate by reference paragraphs 1-22.

23. Defendant Thomas used excessive force against Plaintiff Abdul by punching him in the face when Abdul was not violating any prison rule, and was not acting disruptively. Defendant Thomas's action violated Plaintiff Abdul's rights under the Eighth Amendment to the United States Constitution, and caused Plaintiff Abdul pain, suffering, physical injury and emotional distress.

24. Defendant Thomas used and continues to use excessive force against Plaintiff Hey by punching him in the face repeatedly when Hey is not violating any prison rule, nor acting disruptively in any way. Defendant Thomas's action violated and continues to violate Plaintiff Hey's rights under the Eighth Amendment to the United States Constitution, and is causing Plaintiff Hey, pain, suffering, physical injury and emotional distress.

24. By witnessing Defendant Thomas's illegal action, failing to correct that misconduct, and encouraging the continuation of the misconduct, Defendant Smith is also violating Plaintiff Hey's rights under the Eighth Amendment to the United States Constitution and causing Plaintiff Hey pain, suffering, physical injury and emotional distress.

25. By threatening Plaintiff Hey with physical violence for exercise of his right to seek redress from the prison through use of the prison grievance system, Defendant Thomas is retaliating against Plaintiff Hey unlawfully, in violation of Plaintiff Hey's rights under the First Amendment to the United States Constitution. These illegal actions are causing Plaintiff Hey injury to his First Amendment rights.

26. Plaintiff Hey has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the declaratory and injunctive relief which plaintiff seeks.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this court enter judgment:

15. Granting Plaintiff Hey a declaration that the acts and omissions described herein violate his rights under the Constitution and laws of the United States, and

16. A preliminary and permanent injunction ordering defendants Thomas and Smith to cease their physical violence and threats toward Plaintiff Hey, and

17. Granting Plaintiff Hey compensatory damages in the amount of $50,000 against each defendant, jointly and severally.

18. Plaintiff Abdul seeks compensatory damages of $5,000 against defendant Thomas only.

18. Both plaintiffs seek punitive damages in the amount of $50,000. Plaintiff Hey seeks these damages against each defendant, jointly and severally. Plaintiff Abdul seeks damages only against defendant Thomas.

25. Plaintiffs also seek a jury trial on all issues triable by jury,

26. Plaintiffs also seek recovery of their costs in this suit, and

27. Any additional relief this court deems just, proper, and equitable.

Dated: July 13, 2009

Respectfully submitted,
Mohammed Abdul
#56743
Illinois State Prison,
PO Box 50000
Colby, IL

Walter Hey
#58210
Illinois State Prison,
PO Box 50000
Colby, IL

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at Colby, Illinois on July 13, 2009

Mohammed Abdul,
Mohammed Abdul

Walter Hey
Walter Hey

APPENDIX C (Next Two Pages) ➔
FTCA Form

Find a blank copy of the FTCA form on the following two pages.

CLAIM FOR DAMAGE, INJURY, OR DEATH	**INSTRUCTIONS:** Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.	FORM APPROVED OMB NO. 1105-0008

1. Submit To Appropriate Federal Agency:	2. Name, Address of claimant and claimant's personal representative, if any. *(See instructions on reverse.) (Number, street, city, State and Zip Code)*

3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME *(A.M. or P.M.)*

8. Basis of Claim *(State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.)*

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT *(Number, street, city, State, and Zip Code)*

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. *(See instructions on reverse side.)*

10. PERSONAL INJURY/WRONGFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

11. WITNESSES

NAME	ADDRESS *(Number, street, city, State, and Zip Code)*

12. *(See instructions on reverse)* **AMOUNT OF CLAIM** *(In dollars)*

12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL *(Failure to specify may cause forfeiture of your rights.)*
			0.00

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.

13a. SIGNATURE OF CLAIMANT *(See instructions on reverse side.)*	13b. Phone number of signatory	14. DATE OF CLAIM

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM	**CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS**
The claimant shall forfeit and pay to the United States the sum of $2,000 plus double the amount of damages sustained by the United States. *(See 31 U.S.C. 3729.)*	Fine of not more than $10,000 or imprisonment for not more than 5 years or both. *(See 18 U.S.C. 287, 1001.)*

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 38 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim

INSTRUCTIONS

Complete all items - insert the word NONE where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in Item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in Item 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to Director, Torts Branch
Civil Division
U.S. Department of Justice
Washington, DC 20530

and to the
Office of Management and Budget
Paperwork Reduction Project (1105-0008)
Washington, DC 20503

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☐ Yes, If yes, give name and address of insurance company *(Number, street, city, State, and Zip Code)* and policy number. ☐ No

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

17. If deductible, state amount

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? *(It is necessary that you ascertain these facts)*

19. Do you carry public liability and property damage insurance? ☐ Yes, If yes, give name and address of insurance company *(Number, street, city, State, and Zip Code)* ☐ No

Reset

APPENDIX D
More Legal Forms and Information

Most of the legal forms that we discuss in this handbook can be found within the chapters. However, we have also placed some additional forms in this appendix. Remember that these forms are examples, and may not apply to your circumstances.

1. Motion for Leave to File an Amended Complaint

Below is one example of a Motion for Leave to File an Amended Complaint. It is an example where the plaintiff wants to add a new defendant. You could also file this type of motion if you want to amend your complaint to include more or different facts, or add a new legal claim.

In the United States District Court
For the _____

Name of first plaintiff in the case, et al., Plaintiffs,	:	
v.	:	Civil Action No.__
Name of first defendant in the case, et al., Defendants	:	

MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

Plaintiff [*your name*], pursuant to Rules 15(a) and 19(a), Fed. R. Civ. P., requests leave to file an amended complaint adding a party.

1. The plaintiff in his original complaint named a John Doe Defendant.

2. Since the filing of the complaint the plaintiff has determined that the name of the John Doe defendant is [*defendant's name*]. Paragraphs [*paragraphs in which you refer to John Doe*] are amended to reflect the identity and the actions of Officer {*defendant's name*].

3. This Court should grant leave freely to amend a complaint. *Foman v. Davis,* 371 U.S. 178, 182 (1962).

[Date]

Respectfully submitted,
[Plaintiff's name]
[Plaintiff's Address]

2. Declaration for Entry of Default

In the United States District Court
For the _____

Name of first plaintiff in the case, et al., Plaintiffs,	:	
v.	:	Civil Action No.__
Name of first defendant in the case, et al., Defendants	:	

DECLARATION FOR ENTRY OF DEFAULT

[*Your name*], hereby declares:

I am the plaintiff herein. The complaint herein was filled on the [*day you filed the complaint*] of [*month, year you filed the complaint*].

The court files and record herein show that the Defendants were served by the United States Marshal with a copy of summons, and a copy of the Plaintiffs' complaint on the [*day of service*] of [*month, year of service*].

More than 20 days have elapsed since the date on which the Defendants herein were served with summons and a copy of Plaintiffs' complaint, excluding the date thereof.

The Defendants have failed to answer or otherwise defend as to Plaintiffs' complaint, or serve a copy of any answer or any defense which it might have had, upon affiant or any other plaintiff herein.

Defendants are not in the military service and are not infants or incompetents.

I declare under penalty of perjury that the foregoing is true and correct. Executed at (*city and state)* on (*date*).

_____
Signature.

3. Motion for Judgment by Default

You only need to submit this Motion if the court clerk enters a default against the defendant.

In the United States District Court
For the _____

Name of first plaintiff in the case, et al., Plaintiffs,	:	
v.	:	Civil Action No.__

Name of first defendant :
in the case, et al., :
Defendants :
----------x

MOTION FOR DEFAULT JUDGMENT

Plaintiffs move this court for a judgment by default in this action, and show that the complaint in the above case was filed in this court on the [*date filed*] day of [*month, year filed*]; the summons and complaint were duly served on the Defendant, [*Defendants' names*] on the [*date served*] day of [*month, year served*]; no answer or other defense has been filed by the Defendant; default was entered in the civil docket in the office of this clerk on the [*day default entered*] day of [*month, year default entered*]; no proceedings have been taken by the Defendant since the default was entered; Defendant was not in military service and is not an infant or incompetent as appears in the declaration of [*your name*] submitted herewith.

Wherefore, plaintiff moves that this court make and enter a judgment that [*same as prayer for relief in complaint*]

Dated: _____
[*your signature*]
Plaintiffs' Names and Addresses

4. Notice of Appeal

In the United States District Court
For the _____
----------x
Name of first plaintiff :
in the case, et al., :
Plaintiffs, :
:
v. : Notice of Appeal
:
Name of first defendant :
in the case, et al., :
Defendants :
----------x

Notice is hereby given that [____(here name all parties taking the appeal)____, plaintiffs in the above named case,] hereby appeal to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the _____ day of _____, 20___

Dated: _____
[*your signature*]
Plaintiffs' Names and Addresses

APPENDIX E
Constitutional Amendments

In this section you will find the text of the Constitutional Amendments which we refer to throughout this handbook. We have not included the Articles of the Constitution, which are descriptions of the duties of the Executive (the President), Judicial, and Legislative Branches of government, because they are not relevant to filing a Section 1983 claim.

The Bill of Rights and Amendments to the U.S. Constitution

Note: The first ten amendments to the Constitution are what is known as the "Bill of Rights."

The Preamble to the Bill of Rights
ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Amendment I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II
A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III
No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process

of law; nor shall private property be taken for public use, without just compensation.

Amendment VI
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII
In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI
Passed by Congress March 4, 1794. Ratified February 7, 1795.
Note: Article III, section 2, of the Constitution was modified by amendment 11.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII
Passed by Congress December 9, 1803. Ratified June 15, 1804. Note: A portion of Article II, section 1 of the Constitution was superseded by the 12th amendment.

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; -- the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; -- The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. --]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.
*Superseded by section 3 of the 20th amendment.

Amendment XIII
Passed by Congress January 31, 1865. Ratified December 6, 1865.
Note: A portion of Article IV, section 2, of the Constitution was superseded by the 13th amendment.

Section 1.
Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.
Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV
Passed by Congress June 13, 1866. Ratified July 9, 1868.
Note: Article I, section 2, of the Constitution was modified by section 2 of the 14th amendment.

Section 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.
Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.
No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.
The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.
The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
*Changed by section 1 of the 26th amendment.

Amendment XV
Passed by Congress February 26, 1869. Ratified February 3, 1870.

Section 1.
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude

Section 2.
The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XVI
Passed by Congress July 2, 1909. Ratified February 3, 1913. *Note: Article I, section 9, of the Constitution was modified by amendment 16.*
The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

APPENDIX F
Excerpts from the PLRA

See also Chapter Two, Section F for some descriptions of these provisions.

DEFINITIONS

18 U.S.C. § 3626(h). Definitions. […]
(2) the term "civil action with respect to prison conditions" means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison;
(3) the term "prisoner" means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program; […]
(5) the term "prison" means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

PROSPECTIVE RELIEF

18 U.S.C. § 3626. Appropriate remedies with respect to prison conditions
(a) Requirements for relief.
(1) Prospective relief.— (A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice

system caused by the relief. (B) The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless--
(i) Federal law requires such relief to be ordered in violation of State or local law; (ii) the relief is necessary to correct the violation of a Federal right; and (iii) no other relief will correct the violation of the Federal right.
(C) Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.
(2) Preliminary injunctive relief.--In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.
(3) Prisoner release order.--(A) In any civil action with respect to prison conditions, no court shall enter a prisoner release order unless—
(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and
(ii) the defendant has had a reasonable amount of time to comply with the previous court orders.
(B) In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met. (C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met. (D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered. (E) The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that--
(i) crowding is the primary cause of the violation of a Federal right; and (ii) no other relief will remedy the violation of the Federal right.
(F) Any State or local official including a legislator or unit of government whose jurisdiction or function includes the appropriation of funds for the construction, operation, or maintenance of prison facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order shall have standing to oppose the imposition or continuation in effect of such relief and to seek termination of such relief, and shall have the right to intervene in any proceeding relating to such relief.
(b) Termination of relief.--
(1) Termination of prospective relief.--(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener--
(i) 2 years after the date the court granted or approved the prospective relief; (ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or (iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.
(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).
(2) Immediate termination of prospective relief.--In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.
(3) Limitation.--Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.
(4) Termination or modification of relief.--Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.
(c) Settlements.--
(1) Consent decrees.--In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).
(2) Private settlement agreements.--(A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement

other than the reinstatement of the civil proceeding that the agreement settled. (B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

(d) State law remedies.--The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

(e) Procedure for motions affecting prospective relief.--

(1) Generally.--The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.

(2) Automatic stay.--Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period-- (A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or (ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and (B) ending on the date the court enters a final order ruling on the motion.

(3) Postponement of automatic stay.--The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good cause. No postponement shall be permissible because of general congestion of the court's calendar.

(4) Order blocking the automatic stay.--Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.

(f) Special masters.--

(1) In general.--(A) In any civil action in a Federal court with respect to prison conditions, the court may appoint a special master who shall be disinterested and objective and who will give due regard to the public safety, to conduct hearings on the record and prepare proposed findings of fact. (B) The court shall appoint a special master under this subsection during the remedial phase of the action only upon a finding that the remedial phase will be sufficiently complex to warrant the appointment.

(2) Appointment.--(A) If the court determines that the appointment of a special master is necessary, the court shall request that the defendant institution and the plaintiff each submit a list of not more than 5 persons to serve as a special master. (B) Each party shall have the opportunity to remove up to 3 persons from the opposing party's list. (C) The court shall select the master from the persons remaining on the list after the operation of subparagraph (B).

(3) Interlocutory appeal.--Any party shall have the right to an interlocutory appeal of the judge's selection of the special master under this subsection, on the ground of partiality.

(4) Compensation.--The compensation to be allowed to a special master under this section shall be based on an hourly rate not greater than the hourly rate established under section 3006A for payment of court-appointed counsel, plus costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriated to the Judiciary.

(5) Regular review of appointment.--In any civil action with respect to prison conditions in which a special master is appointed under this subsection, the court shall review the appointment of the special master every 6 months to determine whether the services of the special master continue to be required under paragraph (1). In no event shall the appointment of a special master extend beyond the termination of the relief.

(6) Limitations on powers and duties.--A special master appointed under this subsection-- (A) may be authorized by a court to conduct hearings and prepare proposed findings of fact, which shall be made on the record; (B) shall not make any findings or communications ex parte; (C) may be authorized by a court to assist in the development of remedial plans; and (D) may be removed at any time, but shall be relieved of the appointment upon the termination of relief.

(g) Definitions.--As used in this section-- (1) the term "consent decree" means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements; (2) the term "civil action with respect to prison conditions" means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison; (3) the term "prisoner" means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program; (4) the term "prisoner release order" includes any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison; (5) the term "prison" means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law; (6) the term "private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled; (7) the term "prospective relief" means all relief other than compensatory monetary damages; (8) the term "special master" means any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the

title or description given by the court; and (9) the term "relief" means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements.

EXHAUSTION OF ADMINISTRATIVE REMEDIES, WAIVER OF REPLY, MENTAL & EMOTIONAL INJURY, ATTORNEYS FEES

42 U.S.C. § 1997e
(a). Applicability of administrative remedies.
No 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.
(b) Failure of State to adopt or adhere to administrative grievance procedure
The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 1997a or 1997c of this title.
(c) Dismissal.
(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.
(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.
(d) Attorney's fees.
(1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 2 of the Revised Statutes of the United States (42 U.S.C. 1988), such fees shall not be awarded, except to the extent that--
(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 2 [722] of the Revised Statutes; and
(B)
(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or
(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.
(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.
(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18, United States Code, for payment of court-appointed counsel.
(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 2 [722] of the Revised Statutes of the United States (42 U.S.C. 1988).
(**e) Limitation on recovery.** No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

APPENDIX G
Universal Declaration of Human Rights

PREAMBLE
Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.
All human beings are born free and equal in dignity and rights.They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.
Everyone has the right to life, liberty and security of person.

Article 4.
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.
Everyone has the right to recognition everywhere as a person before the law.

Article 7.
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.
No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.
(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.
(1) Everyone has the right to freedom of movement and residence within the borders of each state.
(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.
(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.
(1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.
(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
(2) Marriage shall be entered into only with the free and full consent of the intending spouses.
(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.
(1) Everyone has the right to own property alone as well as in association with others.
(2) No one shall be arbitrarily deprived of his property.

Article 18.
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.
(1) Everyone has the right to freedom of peaceful assembly and association.
(2) No one may be compelled to belong to an association.

Article 21.
(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
(2) Everyone has the right of equal access to public service in his country.
(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.
Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.
(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.
(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.
(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.
(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX H
Sources of Legal Support

Below is a short list of other organizations working on prison issues, mainly with a legal focus. When writing to these groups, please remember a few things:

- Write simply and specifically, but don't try and write like you think a lawyer would. Be direct in explaining yourself and what you are looking for.
- It is best not to send any legal documents unless they are requested. If or when you do send legal documents, **only send copies**. Hold on to your original paperwork.
- Because of rulings like the PLRA and limited funding, many organizations are small, have limited resources and volunteer staff. It may take some time for them to answer your letters. But always keep writing.

Please note: The contact information for these resources is current as of the printing of this Handbook in 2011.

Do not send money for publications unless you have verified the address of the organization first.

Aid to Children of Imprisoned Mothers, Inc.
906 Ralph David Abernathy Blvd. SW
Atlanta, GA 30310
Information for incarcerated mothers.

American Civil Liberties Union National Office
125 Broad Street, 18th Floor, New York, NY 10004
The biggest civil liberties organization in the country. They have a National Prison Project and a Reproductive Freedom Project, which might be helpful to women prisoners. Write them for information about individual chapters. See Appendix J for some of their publications for people in prison.

American Friends Service Committee Criminal Justice Program – National
1501 Cherry Street, Philadelphia PA, 19102
Human and civil rights issues, research/analysis, women prisoners, prisoner support.

California Prison Focus
1904 Franklin St., Suite 507, Oakland, CA 94612
Publish a quarterly magazine, *Prison Focus*, and other publications. Focuses organizing efforts on CA and on SHU conditions.

Center for Constitutional Rights
666 Broadway, 7th floor, New York, NY 10012
Legal organization that brings impact cases around prison conditions, co-publisher of this handbook.

Criminal Justice Policy Coalition
15 Barbara St., Jamaica Plain, MA 02130
Involved in policy work around numerous prison issues.

Critical Resistance, National Office
1904 Franklin St., Suite 504, Oakland, CA 94612
Uniting people in prison, former prisoners, and family members to lead a movement to abolish prisons, policing, surveillance, and other forms of control.

Family and Corrections Network
32 Oak Grove Road, Palmyra, VA 22963

Federal Resource Center for Children of Prisoners
Child Welfare League of America
1726 M St. NW, Suite 500, Washington, DC, 20036

Friends and Families of Incarcerated Persons
PO Box 93601, Las Vegas, NV, 89193
Legal resources for friends and families of prisoners.

Human Rights Watch Prison Project
350 5th Ave. 34th Floor New York NY 10118-3299
National organization dedicated to research, analysis, and publicizing human rights violations, and working towards stopping them.

Immigration Equality, Inc. *(only for lesbian, gay, bisexual, transgender, and HIV + immigrants)*
40 Exchange Place, 17th Floor, New York, NY 10005

Lambda Legal (only for gay, lesbian, bisexual, transgender, & HIV+ people)
120 Wall Street, Suite 1500, New York, NY 10005-3904
English, Spanish

Legal Publications in Spanish, Inc.
Publicaciones Legales en Espanol, Inc.
PO Box 623, Palisades Park, NJ 07650
Legal resources in Spanish, focusing mostly on criminal defense and federal courts.

Legal Services for Prisoners with Children
1540 Market St., Suite 490, San Francisco, CA 94102
Legal resources and issues around women in prison, including guides and manuals for people in prison with children.

National Center for Lesbian Rights *(only for gay, lesbian, bisexual, and transgender people)*
870 Market St. Ste. 370, San Francisco, CA 94102
English, Spanish

National Clearinghouse for the Defense of Battered Women
125 South 9th Street #302, Philadelphia PA 19107
Legal and other assistance for battered women.

National Lawyers Guild, National Office
132 Nassau Street, 9th Floor, New York, NY 10038
Membership organization of progressive lawyers. Co-publisher of this Handbook.

Partnership for Safety and Justice – Prison Program
825 N.E. 20th Ave., #250, Portland, OR 97232
Produces a *Prisoner Support Directory*, advocates for programs for prisoners, visitors' rights, and against legislation that erodes the human rights of people in prison.

Peter Cicchino Youth Project of the Urban Justice Center *(only for lesbian, gay, bisexual and transgender youth age 24 or under)*
123 William Street 16th Floor, New York, NY, 10038
English, Spanish

Prison Activist Resource Center
PO Box 70447, Oakland, CA 94612
Clearinghouse for information and resources on organizing for prisoners rights, prison issues, anti-racism. Produce a free directory / resource packet for people in prison.

Prison Law Office - San Quentin
General Delivery, San Quentin CA 94964
Legal services and resources in California for individual prisoners and class actions. Publishers of *The California State Prisoners Handbook: A Comprehensive Guide to Prison and Parole Law*

Prisoner Self Help Legal Clinic
Very good self-help legal kits on a variety of issues, available only electronically at www.pshlc.org.

Southern Center for Human Rights
83 Poplar St. NW Atlanta, GA, 30303-2122
Provides legal representation to people facing the death penalty, challenges human rights violations in prisons and jails. Legal resources are available.

Southern Poverty Law Center
P.O. Box 548 Montgomery AL 36101
Legal resources and publications, including *Prisoner Diabetes Handbook* and *Protecting Your Health and Safety: Prisoners Rights*. Also files class-action suits around prison conditions.

Sylvia Rivera Law Project *(only for low income people and people of color who are trans, intersex, or gender nonconforming)*
322 8th Ave., 3rd Floor, New York, NY 10001
English, Spanish, Hindi

TGI Justice Project *(only for transgender, gender variant, and intersex people)*
c/o Alexander Lee, Attorney at Law
342 9th St., 202B, San Francisco, CA 94103

Transformative Justice Law Project of Illinois *(only for trans and gender variant people)*
2040 N. Milwaukee Ave., Chicago, IL 60647

APPENDIX I
Sources of Publicity

The best way to publicize your case is to have a contact, like a family member or a friend, who is on the outside do the work for you. They will have much more access to the media, the internet, and communications in general.

Make sure it is someone you trust, who also has time to dedicate to the work, and who will be honest about what they can and cannot do. Provide them with detailed and specific information regarding your case, but remember to keep any original paperwork you may have.

If you decide to go about publicizing your case yourself, we have provided a short list of places you can write to, besides the support organizations already mentioned. Again, when writing, be specific and focus on what you believe are the main points of your case. You will also want to always include a **cover letter**, briefly introducing yourself and telling the publication why you are writing them.

Z Magazine
18 Millfield Street, Woods Hole, MA 02543
A progressive, national magazine that is always looking for writing submissions.

Pacifica Radio, National Office
1925 Martin Luther King Jr. Way, Berkeley, CA 94704
Progressive radio, often covering stories on prisoners and prison issues.

CounterPunch
PO Box 228, Petrolia, CA 95558
Alternative media magazine, covering issues not addressed by mainstream media.

The Progressive
409 East Main Street, Madison, WI 53703
Excellent leftist magazine.

BlackCommentator.com
157-B Bridgetown Pike #254, Mullica Hill, NJ 08062
Weekly internet publication focusing on African-American issues and radical politics. Best contacted by internet at www.blackcommentator.com if you have a friend on the outside.

The Nation
33 Irving Place, New York, NY 10003
Highly acclaimed national progressive publication. Best if contacted through www.thenation.com if you have a friend on the outside. Send poetry submissions to the address above.

APPENDIX J
Prisoners' Rights Books and Newsletters

A list of printed publications and books that you can order for further assistance. Please note that prices may change on many of the publications. **Before you send money, please verify the address and price with the organization.**

A. FEDERAL RESOURCES

Federal Rules of Civil Procedure with forms - $21.00
Federal Rules of Appellate Procedure with forms - $8.00

If convicted of a federal crime, you can request the ***Federal Rules of Criminal Procedure*** for $11.00 and the ***Federal Rules of Evidence*** for $8.00. **These books will not assist state prisoners**.

All prices include postage. Write to:
U.S. Government Printing Office
P.O. Box 979050, St. Louis, MO 63197-9000
(Check or money order payable to "Superintendent of Documents")

B. NATIONAL RESOURCES

- ***The Bluebook: A Uniform System of Citation.*** Write to: Attn Business Office, Bluebook Orders, Harvard Law Review Association, Gannett House, 1511 Massachusetts Ave., Cambridge, MA 02138. Cost is $32.00 plus shipping.

- ***Brief Writing and Oral Argument, 9th edition***. Guidance on preparing effective oral and written arguments, especially relating to the Courts of Appeals. Send $50.50 and order to: Oxford University Press, 2001 Evans Road, Cary, NC 27513

- **Columbia University *Jailhouse Lawyers Manual*** is an excellent resource, updated every two years. Highly recommended, especially if you are incarcerated in New York state. Please refer to the full page order form at the end of this handbook.

- ***Constitutional Rights of Prisoners, 9th edition***. Unfortunately, this is no longer available directly from the publisher, but family members can order through bookstores like Powells.com.

- ***Cohen and Olson's Legal Research in a Nutshell, 8th Edition***. West Publishing, 610 Opperman Drive, Eagan, MN 55123. Cost is $33.00.

- **Fortune News**. Newsletter from the Fortune Society, specifically for prisoners. The majority of the writers are prisoners / ex-prisoners. Free. Write to: The Fortune Societies, Attn: Fortune News Subscriptions, 29-76 Northern Blvd, Long Island City, NY 11101.

- ***Introduction to the Legal System of the United States***. This publication will help you understand the principles of the U.S. legal system. Send $33.00 and order to: Oxford University Press, 2001 Evans Road, Cary, NC 27513

- **Law Offices of Alan Ellis, PC**. Attorney Alan Ellis has a number of publications available., including the ***Federal Prison Guidebook*** for $85.98 (CA residents add $6.52 sales tax). To order the Guidebook, write to: James Publishing, Inc., P.O. Box 25202, Santa Ana, CA 92799-5202. Many free resources available online at www.alanellis.com, if you have a friend on the outside to help.

- **Osborne Association** – publishes Parenting from Inside/Out: The Voices of Mothers in Prison, $12.00. 809 Westchester Ave., Bronx, NY 10455

- ***The Prisoners' Guide to Survival***. A comprehensive legal assitance manual for post-conviction relief and prisoners' civil rights. For prisoners, send $54.95 to: PSI Publishing, Inc., 413-B 19th Street, #168, Lynden, WA 98264

- **Prison Legal News**. A monthly newsletter. **Highly recommended.** The best source of the latest prison-related legal news. A 12 month subscription is $24. Send check and order to: P.O. Box 2420, West Battleboro, VT 05303.

- ***The Prisoners' Assistance Directory*** is published by the American Civil Liberties Union Prison Project. It includes contact information and services descriptions for over 300 national, state, local and international organizations that provide assistance to prisoners, ex-offenders and families of prisoners. It also includes a bibliography of informative books, reports, manuals and newsletters of interest to prisoners and their advocates. Latest edition was updated in 2007. It can be downloaded for free at www.aclu.org . They also publish a newsletter twice a year that is $2 for prisoners. Send a check or money order to National Prison Project Publications, 915 15th St., NW, 7th Floor Washington, DC 20005.

- ***Prisoners Self-Help Litigation Manual, 4th Edition***. **Highly recommended.** The Fourth Edition of this well-respected resource was published in 2010. It is a very detailed book on prisoners' constitutional and federal rights, as well as information on how to file and proceed with a lawsuit. It includes lots of citations to relevant cases. Send $39.95 and order to: Oxford University Press, 2001 Evans Road, Cary, NC 27513

- ***Protecting Your Health & Safety*** is a publication of the Southern Poverty Law Center, and explains the legal rights inmates have regarding health and safety – including the right to medical care and to be free from inhumane treatment. Send $16 and your request to: Protecting Your Health and Safety, Prison Legal News, P. O. Box 2420, West Battleboro, VT 05303.

- **Women in Prison Health Packet.** A health manual free for women prisoners. Send requests to: Oberlin Action Against Prisons, P.O. Box 285 Oberlin, OH 44074.

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APPENDIX K
Free Book Programs

Books Through Bars & Free Book Programs
There are many unaffiliated chapters that send books to prisoners for free or low cost. Most places request that you let them know which category of books you are interested in, so if they don't have a specific book you are asking for, they can send you something similar. Be aware that it may take several months to receive books, due to the volume of requests. Unless otherwise noted, the programs ship books to prisoners anywhere in the U.S. The addresses and information were current as of this printing.

Books Through Bars
4722 Baltimore Ave., Philadelphia, PA, 19143
Will only send books to prisoners in: PA, NJ, NY, DE, MD, VA, and WV.

Books Through Bars, c/o Bluestockings Bookstore
172 Allen Street, New York, NY 10002

Providence Books Through Bars c/o Myopic Books
5 S. Angell Street, Providence, RI 02906

Chicago Books to Women in Prison c/o BeyondMedia
4001 N. Ravenswood Ave., #204C, Chicago, IL 60613
Ship books to women in prison only.

Midwest Books to Prisoners c/o Quimby's Bookstore
1321 N. Milwaukee Ave., PMB #460, Chicago, IL 60622
Ships books to IL, WI, MN, MO, IA, KS, IN, and NE

Portland Books to Prisoners
P.O. Box 11222, Portland, OR 97211

Prison Books Collective c/o Internationalist Books
405 W. Franklin St., Chapel Hill, NC 27514
Ships books mostly to prisoners in MS, AL, and NC, maintains an extensive radical 'zine catalog, and publishes prisoners' art and writing.

Books to Prisoners c/o Left Bank Books
92 Pike St., Box A, Seattle, WA 98101

Prison Book Program c/o Lucy Parsons Bookstore
1306 Hancock St., Suite 100, Hancock, MA 02169

Midwest Pages to Prisoners c/o Boxcar Books
408 E. 6th St., Bloomington, IN 47408
Ships books to AZ, AR, FL, IA, IN, KS, KY, MN, MO, ND, NE, OH, OK, SD, TN, WI.

UC Books to Prisoners
Box 515, Urbana, IL 61803
Ships books only in IL.

Books 2 Prisoners c/o Iron Rail
1631 Elysian Fields #117, New Orleans, LA 70117
Ships books only in LA.

Olympia Books to Prisoners
P.O. Box 912, Olympia, WA 98507

Books to Prisoners c/o Quixote Center
P.O. Box 5206, Hyattsville, MD 20782

Appalachian Prison Book Project
P.O. Box 601, Morgantown, WV 26507
Ships books to WV, VA, MD, OH, KY, and TN.

Inside Books Project c/o 12th Street Books
827 W. 12th St., Austin, TX 78701
Ships books only in TX.

Prison Book Project
P.O. Box 396, Amherst, MA 01004
Ships books only in New England and TX.

Prisoners Literature Project c/o Bound Together Bookstore
1369 Haight St., San Francisco, CA 94117

Prison Library Project
P.M.B. 128, 915-C W. Foothill Blvd., Claremont, CA 91711

Asheville Prison Books Program
67 N. Lexington Ave., Asheville, NC 28801
Ships books only in NC, SC, GA, and TN.

Cleveland Books 2 Prisoners
4241 Lorain Ave., Cleveland, OH 44113
Ships books only in OH.

Women's Prison Book Project c/o Arise Bookstore
2441 Lyndale Ave. S., Minneapolis, MN 55405
Ships to women and transgender people in prison only.

APPENDIX L
District Court Addresses

You have already learned that the Federal judiciary is broken into districts. Some states have more than one district, and, confusingly, some districts also have more than one division, or more than one courthouse. We have compiled the following list of United States District Courts to help you figure out where to send your complaint. Find your state in the following list, and then look for the county your prison is in. Under the name of your county, you will find the address of the U.S. District Court where you should send your complaint. All special instructions are in *italics*.

ALABAMA (11th Circuit)
Northern District of Alabama: Bibb, Blount, Calhoun, Cherokee, Clay, Cleburne, Colbert, Cullman, DeKalb, Etowah, Fayette, Franklin, Greene, Jackson, Lamar, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, Pickens, Randolph, Saint Clair, Shelby, Sumter, Talladega, Tuscaloosa, Walker, Winston

United States District Court
Hugo L. Black U. S. Courthouse
1729 Fifth Avenue North, Birmingham, AL 35203

Middle District of Alabama
The Middle District of Alabama has three divisions:
The Northern Division: Autauga, Barbour, Bullock, Butler, Chilton, Coosa, Covington, Crenshaw, Elmore, Lowndes, Montgomery, and Pike.
The Southern Division: Coffee, Dale, Geneva, Henry, and Houston.
The Eastern Division: Chambers, Lee, Macon, Randolph, Russell, and Tallapoosa.

All official papers for all the divisions should be sent to:
Ms. Debra Hackett
Clerk of the Court, U.S.D.C.
P.O. Box 711, Montgomery, AL 36101-0711

Southern District of Alabama: Baldwin, Choctaw, Clarke, Conceuh, Dallas, Escambia, Hale, Marengo, Mobile, Monroe, Perry, Washington, Wilcox.

U.S.D.C. Southern District of Alabama
113 St. Joseph Street, Mobile, AL 36602

ALASKA (9th Circuit)
District of Alaska
Documents for cases in any county in Alaska may be filed in Anchorage, or in the divisional office where the case is located (addresses below).
U.S. District Court Clerk's Office
222 W. 7th Avenue, #4
Anchorage, AK 99513

U.S. District Court
101 12th Ave, Rm332
Fairbanks, AK 99701

U.S. District Court
PO Box 020349
Juneau, AK 99802

U.S. District Court
648 Mission Street
Room 507
Ketchikan, AK 99901

U.S. District Court
PO Box 130
Nome, AK 99762

ARIZONA (9th Circuit)
District of Arizona – *The District of Arizona covers the entire state, but it is divided into three divisions with the following counties:*
Phoenix Division: Maricopa, Pinal, Yuma, La Paz, Gila
Prescott Division: Apache, Navajo, Coconino, Mohave, Yavapai
You should send all documents for cases in the Phoenix OR the Prescott division to the Phoenix Courthouse, at:

Sandra Day O'Connor U.S. Courthouse
401 West Washington Street, Suite 130, SPC 1
Phoenix, AZ 85003-2118

Tucson Division: Pima, Cochise, Santa Cruz, Graham, Greenlee
Send all documents for cases in the Tucson Division to:

Evo A. DeConcim U.S. Courthouse
405 West Congress Street, Suite 1500
Tucson AZ 85701

ARKANSAS (8th Circuit)
Eastern District of Arkansas – *has five divisions.*
Northern Division 1: Cleburne, Fulton, Independence Izard, Jackson, Sharp, Stone
Eastern Division 2: Cross, Lee, Monroe, Phillips, St. Francis and Woodruff
Western Division 4: Conway, Faulkner, Lonoke, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, White, Yell

Send documents for cases that arise in any of these three divisions to:

U.S. District Court Clerk's Office
U.S. Post Office & Courthouse
600 West Capitol, #A149, Little Rock, AR 72201-3325

Jonesboro Division 3: Clay, Craighead, Crittenden, Greene, Lawrence, Mississippi, Poinsett, Randolph
Send documents for cases in this division to:

U.S. District Court Clerk's Office
615 S. Main Street, Rm. 312, Jonesboro, AR 72401

Pine Bluff Division 5: Arkansas, Chicot, Cleveland, Dallas Desha, Drew, Grant, Jefferson and Lincoln
Send documents for cases in this division to:

U.S. District Court Clerk's Office
100 E. 8th Ave., Rm. 3103, Pine Bluff, AR 71601
Western District of Arkansas – *Has six divisions. You should send documents to the division where the case arose.*

El Dorado Division 1: Ashley, Bradley, Calhoun, Columbia, Ouachita and Union

205 United States Courthouse & Post Office
101 S. Jackson Ave.,El Dorado, AR 71730-6133

Fort Smith Division 2: Crawford, Franklin, Johnson, Logan, Polk, Scott and Sebastian

U.S. District Court Clerk's Office
Judge Isaac C. Parker Federal Building
P.O. Box 1547, Fort Smith, AR 72902-1547

Harrison Division 3: Baxter, Boone, Carroll, Marion, Newton and Searcy
Fayetteville Division 5: Benton, Madison and Washington
Send documents for cases in these two divisions to:

U.S. District Court Clerk's Office
John Paul Hammerschmidt Federal Building
35 E. Mountain Street, Room 510,
Fayetteville, AR 72701-5354

Texarkana Division 4: Hempstead, Howard, Lafayette, Little River, Miller, Nevada and Sevier

U.S. District Court Clerk's Office
U.S. Post Office and Courthouse
500 N. State Line Ave., Room 302,
Texarkana, AR 71854-5961

Hot Springs Division 6: Clark, Garland, Hot Spring, Montgomery and Pike

U.S. District Court Clerk's Office
U.S. Courthouse
100 Reserve St., Room 347, Hot Springs, AR 71901-4141

CALIFORNIA (9th Circuit)
Northern District of California:
San Jose Branch: Monterey, San Benito,
Santa Clara, Santa Cruz
Send documents for cases in this branch to:

U.S. District Courthouse
280 South 1st Street, San Jose, CA 95113

Oakland Branch: Alameda, Contra Costa
San Francisco Office: Del Norte, Humbolt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Sonoma
Send documents for cases in these two branches to:

U.S. District Courthouse,
Clerk's Office
450 Golden Gate Ave., 16th Fl., San Francisco, CA 94102

Eastern District of California – *has two divisions. Send your documents to the division where your case arose.*
Fresno Division: Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare and Tuolumne.

U.S. District Court
1130 O Street, Fresno, CA 93721

Sacramento Division**:** 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.

U.S. District Court
501 I Street, Suite. 4-401, Sacramento, CA 95814

Central District of California: Los Angeles, Orange County, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, Ventura

U.S. Courthouse
312 N. Spring Street, Los Angeles, CA 90012

Southern District of California: Imperial, San Diego

U.S. District Court, Office of the Clerk
Southern District of California
880 Front Street, Suite 4290, San Diego, CA 92101-8900

COLORADO (10th Circuit)
District of Colorado – *Send all documents to:*

Clerk's Office
Alfred A. Arraj United States Courthouse Room A-105
901 19th Street. Denver, Colorado 80294-3589

CONNECTICUT (2d Circuit)
District of Connecticut – *there are four U.S. District Courthouses in the District of Connecticut. You can file your complaint in any of the following locations.*

U.S. Courthouse
141 Church Street
New Haven, CT 06510

U.S. Courthouse
450 Main Street
Hartford, CT 06103

U.S. Courthouse
915 Lafayette Boulevard
Bridgeport, CT 06604

U.S. Courthouse
14 Cottage Place
Waterbury, CT 06702

DELAWARE (3d Circuit)
District of Delaware

U.S. District Court
844 N. King Street, Lockbox 18, Wilmington, DE 19801

DISTRICT OF COLUMBIA (D.C. Circuit)
District for the District of Columbia
United States District Court for the District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

FLORIDA

Northern District of Florida

There are four divisions in the Northern District of Florida, and you must file your complaint in the division in which your case arose:

Pensacola Division: Escambia, Santa Rosa, Okaloosa and Walton.

U.S. Federal Courthouse
1 North Palafox St., Pensacola, FL 32502

Panama City Division: Jackson, Holmes, Washington, Bay, Calhoun, and Gulf.

U.S. Federal Courthouse
30 W. Government St., Panama City, FL 32401

Tallahassee Division: Leon, Gadsden, Liberty, Franklin, Wakulla, Jefferson, Taylor and Madison.

U.S. Federal Courthouse
111 N. Adams Street, Tallahassee, FL 32301

Gainesville Division: Alachua, Lafayette, Dixie, Gilchrist, and Levy.

U.S. Federal Courthouse
401 S.E. First Ave. Rm. 243, Gainesville, FL 32601

Middle District of Florida - *There are five divisions in the Middle District of Florida; you should file your case in the division in which your case arose.*

Tampa Division**:** Hardee, Hemando, Hillsborough, Manatee, Pasco, Pinellas, Polk, Sarasota

Clerk's Office, United States District Court
Sam M. Gibbons US Courthouse
801 N. Florida Avenue
Tampa, Florida 33602-3800

Ft. Myers Division**:** Charlotte, Collier, DeSoto, Glades, Hendry, Lee

Clerk's Office, United States District Court
US Courthouse & Federal Building
2110 First Street Fort Myers, FL 33901-3083

Orlando Division**:** Brevard, Orange, Osceola, Seminole, Volusia

U.S. Courthouse
401 West Central Boulevard, Suite 1200
Orlando, Florida 32801-0120

Jacksonville Division: Baker, Bradford, Clay, Columbia, Duval, Flagler, Hamilton, Nassau, Putnam, St. Johns, Suwanne, Union

United States Courthouse
300 North Hogan Street
Jacksonville, FL 32202

Ocala Division: Citrus, Lake, Marion, Sumter
Clerk's Office

United States District Court
Golden-Collum Memorial Federal Building
207 N.W. Second Street, Ocala, FL 34475-6666

Southern District of Florida - *the Southern District of Florida covers the following counties*: Broward, Collier, Dade, Glades, Hendry, Highlands, Indian River, Martin, Monroe, Okeechobee, Palm Beach, St. Lucie. *There are five divisions in the Southern District of Florida. You can file your case in any one of them.*

United States District Court Clerks Office
299 East Broward Boulevard, Room 108
Fort Lauderdale, FL 33301

United States District Court Clerks Office
300 South Sixth Street, Fort Pierce, FL 34950

United States District Court Clerks Office
301 Simonton Street, Key West, FL 33040

United States District Court Clerks Office
301 North Miami Avenue, Room 150, Miami, FL 33128

United States District Court Clerks Office
701 Clematis St., Room 402, West Palm Beach, FL 33401

GEORGIA (11th Circuit)

Northern District of Georgia - *covers the following counties*: Banks, Barrow, Bartow, Carroll, Catoosa, Chattooga, Cherokee, Clayton, Cobb, Coweta, Dade, Dawson, DeKalb, Douglas, Fannin, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Heard, Henry, Jackson, Lumpkin, Meriwether, Murray, Newton, Paulding, Pickens, Pike, Polk, Rabun, Rockdale, Spalding, Stephens, Towns, Troup, Union, Walker, White, Whitfield

There are four Divisions in the Northern District of Georgia, but all prisoners should file their 1983 cases at the following main location:

U.S. District Court
Northern District of Georgia
2211 U.S. Courthouse
75 Spring Street S.W.
Atlanta, GA 30303-3361

Middle District of Georgia - *The Middle District of Georgia is divided into six divisions. You can file your case in any division where you are, where the defendant is, or where the claim arose.*

Albany Division: Baker, Ben Hill, Calhoun, Crisp, Dougherty, Early, Lee, Miller, Mitchell, Schley, Sumter, Terrell, Turner, Worth, Webster

C. B. King U.S. Courthouse
201 West Broad Avenue
Albany, Georgia 31701

Athens Division**:** Clarke, Elbert, Franklin, Greene, Hart, Madison, Morgan, Oconee, Oglethorpe, Walton

U.S. Post Office and Courthouse
P.O. Box 1106
Athens, GA 30601

Columbus Division**:** Chattahoochee, Clay, Harris, Marion, Muscogee, Quitman, Randolph, Stewart, Talbot, Taylor

U.S. Post Office and Court House
P.O. Box 124
Columbus, GA 31902

Macon Division: Baldwin, Bibb, Bleckley, Butts, Crawford, Dooly, Hancock, Houston, Jasper, Jones, Lamar, Macon, Monroe, Peach, Putnam, Twiggs, Upson, Washington, Wilcox, Wilkinson

William A. Bootle Federal Building
and U.S. Courthouse
P.O. Box 128
Macon, GA 31202

Thomasville Division**:** Brooks, Colquitt, Decatur, Grady, Seminole, Thomas.
Thomasville is not staffed, so file all complaints for the Thomasville Division in the Valdosta Courthouse, address below.

Valdosta Division: Berrien, Clinch, Cook, Echols, Irwin, Lanier, Lowndes, Tift

U.S. Courthouse and Post Office
401 N. Patterson Street, Suite 212
P.O. Box 68
Valdosta, GA 31601

Southern District of Georgia - *The Southern District of Georgia consists of six divisions. You can bring your case in the division where the defendant lives or the actions occurred.*

Augusta Division: Burke, Columbia, Glascock, Jefferson, Lincoln, McDuffie, Richmond, Tauaferro, Warren, Wilkes
Dublin Division: Dodge, Johnson, Laurens, Montgomery, Telfair, Treutlen, Wheeler
All cases in the Augusta and Dublin divisions should be filed at:

Clerk's Office, U.S. Courthouse
600 James Brown Blvd.
Augusta, GA 30901

Savannah Division: Bryan, Chatham, Effingham, Liberty
Waycross Division: Atkinson, Bacon, Brantley, Charlton, Coffee, Pierce, Ware
Statesboro Division: Bulloch, Candler, Emanuel, Evans, Jenkins, Screven, Toombs, Tatnall
All cases in Savannah, Waycross and Statesboro divisions should be filed in:

Clerk's Office, U.S. Courthouse
125 Bull Street, Room 304, Savannah, GA 31401

Brunswick Division: Appling, Glynn, Jeff Davis, Long, McIntosh, Wayne
All cases in the Brunswick Division should be filed in:

Clerk's Office, U.S. Courthouse
801 Gloucester Street, Suite 220, Brunswick, GA 31520

GUAM (9th Circuit)
District of Guam

U.S. Courthouse, 4th floor
520 West Soledad Avenue, Hagåtña, Guam 96910

HAWAII (9th Circuit)
District of Hawaii

U.S. Courthouse
300 Ala Moana Blvd., Room C338, Honolulu, HI 96813

IDAHO (9th Circuit)
District of Idaho - *There are four divisions in the District of Idaho, but you can file your case in any of the following divisions:*

Southern Division: Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington

James A. McClure Federal Building & U.S. Courthouse
550 W. Fort St., Boise, ID 83724

Northern Division: Benewah, Bonner, Boundary, Kootenai, Shoshone

U.S. Courthouse

6450 N. Mineral Dr. Coeur d'Alene, ID 83815

Central Division: Clearwater, Idaho, Latah, Lewis, Nez Perce

U.S. Courthouse
220 E 5th Street, Room 304, Moscow, ID 83843

Eastern Division: Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas,Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding, Jefferson, Jerome, Lincoln, Lemhi, Madison, Minidoka, Oneida, Power, Teton, Twin Falls

U.S. Courthouse
801 E Sherman St., Pocatello, ID 83201

ILLINOIS (7th Circuit)
Northern District of Illinois - *There are two divisions in the Northern District of Illinois. You can send your complaint to either division, but you should write on the complaint the name of the division in which your case arose.*

Western Division: Boone, Carroll, DeKalb, Jo Davies, Lee, McHenry, Ogle, Stephenson, Whiteside, Winnebago

United States Courthouse
211 South Court Street, Rockford, IL 61101

Eastern Division: Cook, Dupage, Grundy, Kane, Kendall, Lake, Lasalle, Will

Everett McKinley Dirksen Building
219 South Dearborn Street, Chicago, IL 60604

Central District of Illinois – *There are four divisions in the Central District of Illinois. You must file your case in the division in which the claim arose.*

Peoria Division: Bureau, Fulton, Hancock, Knox, Livingston, Marshall, McDonough, McLean, Pedria, Putnam, Stark, Tazewell, Woodford

309 U.S. Courthouse
100 N.E. Monroe Street, Peoria, IL 61602

Rock Island Division: Henderson, Henry, Mercer, Rock Island, Warren

40 U.S. Courthouse
211 19th Street, Rock Island IL 61201

Springfield Division: Adams, Brown, Cass, Christian, DeWitt, Greene, Logan, Macoupin, Mason, Menard, Montgomery, Pike Calhoun, Sangamon, Schuyler, Scott, Shelby

151 U.S. Courthouse
600 E. Monroe Street, Springfield IL 62701

Urbana Division: Champaign, Coles, Douglas, Edgar, Ford, Iroquois, Kankakee, Macon, Moultrie, Piatt

218 U.S. Courthouse
201 S. Vine Street, Urbana IL 61802

Southern District of Illinois: Alexander, Bond, Calhoun, Clark, Clay, Clinton, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Madison, Marion, Marshall, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White, Williamson

There are two courthouse locations in the Southern District of Illinois, but prisoners can file cases in either one.

U.S. Courthouse
301 West Main Street
Benton, IL 62812

U.S. Courthouse
750 Missouri Avenue
East St. Louis, IL 62201

INDIANA (7th Circuit)
Northern District of Indiana – *There are four divisions in the Northern District of Indiana. You should file in the division where your claim arose.*

Fort Wayne Division**:** Adams, Allen, Blackford, DeKalb, Grant, Huntington, Jay, LaGrange, Noble, Steuben, Wells and Whitley counties.

U.S. Courthouse
1300 S. Harrison St., Fort Wayne, IN 46802

Hammond Division**:** Lake and Porter counties

U.S. Courthouse
5400 Federal Plaza, Hammond, IN 46320

Lafayette Division**:** Benton, Carroll, Jasper, Newton, Tippecanoe, Warren and White counties

U.S. Courthouse
230 N. Fourth St., Lafayette, IN 47901

South Bend Division: Cass, Elkhart, Fulton, Kosciusko, LaPorte, Marshall, Miami, Pulaski, St. Joseph, Starke and Wabash Counties

U.S. Courthouse
204 S Main St., South Bend, IN 46601

Southern District of Indiana – *There are four divisions in the Southern District of Indiana. File where your claim arose.*

Indianapolis Division: Bartholomew, Boone, Brown, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Hamilton, Hancock, Hendricks, Henry, Howard, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Randolph, Rush, Shelby, Tipton, Union, Wayne

Birch Bay Federal Building and United States Courthouse
46 East Ohio Street, Room 105, Indianapolis, IN 46204

Terre Haute Division: Clay, Greene, Knox, Owen, Parke, Putnam, Sullivan, Vermillion, Vigo

U.S. District Court
921 Ohio Street Terre Haute, IN 47807

Evansville Division: Daviess, Dubois, Gibson, Martin, Perry, Pike, Posey, Spencer, Vanderburgh, Warrick

304 Federal Building
101 Northwest MLK Boulevard, Evansville, IN 47708

New Albany Division: Clark, Crawford, Dearborn, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Ripley, Scott, Switzerland, Washington

210 Federal Building
121 West Spring Street, New Albany, IN 47150

IOWA (8th Circuit)
Northern District of Iowa – *There are four divisions in the Northern District of Iowa, and two different locations to file papers.*

Cedar Rapids Division: Benton, Cedar, Grundy, Hardin, Iowa, Jones, Linn, Tama,
Eastern Division: Allamakee, Blackhawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Floyd, Howard, Jackson, Mitchell, Winneshiek
Cases arising in either the Cedar Rapids or the Eastern Division should be filed with the clerk of the court at the Cedar Rapids location:

U.S. District Court for the Northern District of Iowa
4200 C Street SW Cedar Rapids, IA 52404

Western Division: Buena Vista, Cherokee, Clay, Crawford, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux, Woodbury
Central Division: Butler, Calhoun, Carroll, Cerro Gordo, Emmet, Franklin, Hamilton, Hancock, Humboldt, Kossuth, Palo Alto, Pocahontas, Webster, Winnebago, Worth, Wright, *Cases arising in the Western or Central Division should be filed in Sioux City:*

US District Court for the Northern District of Iowa
320 Sixth Street, Sioux City, IA 51101

Southern District of Iowa – *There are three divisions in the Southern District of Iowa, and you should file your case at the division in which your claims arose.*

Central Division: Adaire, Adams, Appanoose, Boone, Clarke, Dallas, Davis, Decatur, Greene, Guthri, Jasper, Jefferson, Keokuk, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Polk, Poweshiek, Ringgold, Story, Taylor, Union, Wapello, Warren, Wayne

U.S. Courthouse
P. O. Box 9344, Des Moines, IA 50306-9344

Western Division: Audubon, Cass, Freemont, Harrison, Mills, Montgomery, Page, Pottawattamie, Shelby

Clerk, U. S. District Court
8 South 6th Street, Room 313
Council Bluffs, IA 51502

Eastern Division: Clinton, Des Moines, Henry, Johnson, Lee, Louisa, Muscatine, Scott, Van Buren, Washington

Clerk, U. S. District Court
131 East 4th Street, Suite 150
Davenport, IA 52801

KANSAS (10th Circuit)
District of Kansas – *You can file your case at any of the following courthouses.*

500 State Ave
259 U.S. Courthouse
Kansas City, Kansas 66101

444 S.E. Quincy
490 U.S. Courthouse
Topeka, Kansas 66683

401 N. Market
204 U.S. Courthouse, Wichita, Kansas 67202

KENTUCKY (6th Circuit)
Eastern District of Kentucky – *The Eastern District of Kentucky has several divisions, but you can file all pleadings in the main office. The District includes the following counties:* Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Campbell, Carroll, Carter, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Harlan, Harrison, Henry, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Trimble, Wayne, Whitley, Wolfe, Woodford.

Leslie G. Whitmer, Clerk
101 Barr St. Suite 206
P.O. Drawer 3074, Lexington, KY 40507

Western District of Kentucky – *The Western District of Kentucky has several divisions, but you can file at any of the following locations.*

Bowling Green Division: Adair, Allen, Barren, Butler, Casey, Clinton, Cumberland, Edmonson, Green, Hart, Logan, Metcalf, Monroe, Russell, Simpson, Taylor, Todd, Warren

Clerks Office
241 East Main Street, Suite 120
Bowling Green, KY 42101-2175

Louisville Division: Breckinridge, Bullitt, Hardin, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Spencer, Washington

Gene Snyder Courthouse, Clerks Office
601 W. Broadway, Rm. 106, Louisville, KY 40202

Owensboro Division: Daviess, Grayson, Hancock, Henderson, Hopkins, McLean, Muhlenberg, Ohio, Union, Webster

Clerks Office
423 Frederica St., Suite 126, Owensboro, KY 42301-3013

Paducah Division: Ballard, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Lyon, McCracken, Marshall, Trigg

Clerks Office
501 Broadway, Suite 127, Paducah, KY 42001-6801

LOUISIANA (5th Circuit)
Eastern District of Louisiana – *This district has several divisions, but all documents may be filed in New Orleans. The Eastern District of Louisiana includes the following counties:* Assumption, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Tammany, Tangipahoa, Terrebonne, Washington.

U.S. District Court
500 Poydras Street
New Orleans, LA 70130

Middle District of Louisiana – *There is only one courthouse in the Middle District of Louisiana, and it covers the following counties*: Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, West Feliciana.

U.S. District Court
777 Florida Street, Suite 139, Baton Rouge, LA 70801

Western District of Louisiana – *There are several divisions in the Western District, but all pleadings should be filed at the below address. The district includes the following counties*: Acadia, Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, Jefferson Davis, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Jackson, Lafayette, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Saint Landry, Saint Martin, Saint Mary, Tensas, Union, Vermilion, Vernon, Webster, West Carroll, Winn.

Robert H. Shemwell, Clerk
300 Fannin Street, Suite 1167, Shreveport, LA 71101-3083

MAINE (1st Circuit)
District of Maine – *There are two divisions in Maine, you should file in the appropriate division, as explained below.*

Bangor Division: Arronstrook, Franklin, Hancock, Kennebec, Penobscot, Piscataquis, Somerset, Waldo, Washington. *Cases from one of these counties, file at:*

Clerk, U.S. District Court
202 Harlow Street, Room 357
P.O. Box 1007, Bangor, Maine 04330

Portland Division: Androscoggin, Cumberland, Knox, Lincoln, Oxford, Sagadahoc, York. *Cases that arise in these counties should be filed at the Portland Courthouse, except if you are in prison at Thomaston or Warren, in which case you should file at the above Bangor location,*

Clerk, U.S. District Court
156 Federal Street, Portland, Maine 04101

MARYLAND (4th Circuit)
District of Maryland – *There are two divisions in the District of Maryland, and you can file in either location.*

U.S. Courthouse
101 W. Lombard Street
Baltimore, MD 21201

U.S. Courthouse
6500 Cherrywood Lane
Greenbelt, MD 20770

MASSACHUSETTS (1st Circuit)
District of Massachusetts – *There are three divisions in the District of Massachusetts.*

Eastern Division: Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk

John Joseph Moakley, U.S. Courthouse
1 Courthouse Way – Suite 2300, Boston, MA 02210

Central Division: Worcester County

Harold D. Donohue Federal Building & Courthouse
595 Main Street, Room 502, Worcester, MA 01608

Western Division: Berkshire, Franklin, Hampden, Hampshire

Federal Building & Courthouse
1550 Main Street, Springfield, MA 01105

MICHIGAN (6th Circuit)
Eastern District of Michigan – *There are several divisions in this district, but you can file in whichever courthouse you want. The Eastern District of Michigan includes the following counties:* Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Montmorency, Oakland, Ogemaw, Oscodo, Otsego, Presque Isle, Roscommon, Saginaw, Saint Clair, Sanilac, Shiawassee, Tuscola, Washtenaw, Wayne.

U.S. District Courthouse
P.O. Box 8199
Ann Arbor, MI 48107

Theodore Levin
U.S. Courthouse
231 W. Lafayette Blvd.
Detroit, Michigan 48226

U.S. District Courthouse
P.O. Box 913
Bay City, Michigan 48707

U.S. District Courthouse
600 Church Street, Room 140
Flint, Michigan 48502

Western District of Michigan – *there is a Northern and a Southern Division in the Western District of Michigan, but you can file your complaint at the headquarters in Grand Rapids. The Western District includes the following counties*: Alger, Allegan, Antrim, Baraga, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Charlevioux, Chippewa, Clinton, Delta, Dickinson, Eaton, Emmet, Gogebic, Grand Traverse, Hillsdale, Houghton, Ingham, Ionia, Iron, Kalamazoo, Kalkaska, Kent, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Ontonagon, Osceola, Ottawa, Saint Joseph, Schoolcraft, Van Buren, Wexford.

United States District Court, Western District of Michigan
399 Federal Building
110 Michigan St NW, Grand Rapids, MI 49503

MINNESOTA (8th Circuit)
District of Minnesota – *There are several courthouses in the District of Minnesota, and you can file in whichever one you want.*

202 U.S. Courthouse
300 S. 4th Street
Minneapolis, MN 55415

700 Federal Building
316 North Robert St.
St. Paul, MN 55101

417 Federal Building
515 W. 1st Street
Duluth, MN 55802-1397

205 USPO Building
118 S. Mill Street
Fergus Falls, MN 56537

MISSISSIPPI (5th Circuit)
Northern District of Mississippi – *There are four divisions in the Northern District of Mississippi, and three courthouses where you can file papers.*

Aberdeen Division: Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Prentiss, Tismomingo, Winston.

US District Court
P.O. Box 704, Aberdeen, Mississippi 39730

Greenville Division: Carroll, Humphreys, Leflore, Sunflower, Washington.

U.S. District Court
305 Main Street, Room 329
Greenville, Mississippi 38701-4006

Delta Division: Bolivar, Coahoma, DeSoto, Panola, Quitman, Tallahatchie, Tate, Tunica
Western Division: Benton, Calhoun, Grenada, Lafayette, Marshall, Montgomery, Pontotoc, Tippah, Union, Webster, Yalobusha. *Prisoners in the Delta OR Western Division, file at:* Room 369 Federal Building, 911 Jackson Avenue, Oxford, MS 38655

Southern District of Mississippi – *There are three court locations in the Southern District of Mississippi, but you can file your case in the Jackson Courthouse. The District covers the following counties:* Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Holmes, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Nashoba, Newton, Noxubee, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Yazoo.

U. S. District Court
245 East Capitol Street**,** Suite 316**,** Jackson, MS 39201

MISSOURI (8th Circuit)
Eastern District of Missouri – *There are three divisions in the Eastern District of Missouri, and you should file based on what county your prison is in.*
Eastern Division: Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Phelps, Saint Charles, Saint Francois, Sanit Genevieve, Saint Louis, Warren, Washington, City of St. Louis
Northern Division: Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland, Shelby
Eastern or Northern Division, file at:

Thomas F. Eagleton Courthouse
111 South 10th Street, Suite 3300, St. Louis, MO 63102

Southeastern Division: Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, Wayne

U.S. Courthouse
555 Independence Street, Cape Girardeau, MO 63701

Western District of Missouri – *There are several divisions in the Western District of Missouri, but prisoners from all counties in the district can file their complaint in Kansas City. The District covers the following counties:* Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Livingston, McDonald, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Oregon, Osage, Ozark, Pettis, Platte, Polk, Pulaski, Putnam, Ray, Saint Clair, Saline, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, Wright.

Charles Evans Whittaker Courthouse
400 E. 9th Street, Kansas City, MO 64106

MONTANA (9th Circuit)
District of Montana – *There are several divisions in the District of Montana, but all prisoners can send their complaint to the Billings Courthouse.*

Federal Building, Room 5405
316 North 26th Street, Billings, MT 59101

NEBRASKA (8th Circuit)
District of Nebraska

Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo Burt, Butler, Cass, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dakota, Dawes, Dawson, Deuel, Dixon, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lancaster, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York counties *should file at the following address:*

Clerk of the Court, U.S. District Court – Nebraska
593 Federal Building -100 Centennial Mall North,
Lincoln, NE 68508-3803

Dodge, Douglas, Sarpy, and Washington counties *should file at the following address:*

Clerk of the Court, U.S. District Court – Nebraska
111 South 18th Plaza, Suite 1152, Omaha, NE 68102

NEVADA (9th Circuit)
District of Nevada

Carson City, Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, Washoe and White Pine counties:

Clerk of the Court
U.S. District Court of Nevada, Northern Division
400 S. Virginia St., Reno, NV 89501

Clark, Esmeralda, Lincoln and Nye Counties:

Clerk of the Court
U.S. District Court of Nevada, Southern Division
333 S. Las Vegas Blvd., Las Vegas, NV 89101

NEW HAMPSHIRE (1st Circuit)
District of New Hampshire

Clerk of the Court, U.S. District Court
Warren B. Rudman U.S. Courthouse
55 Pleasant Street, Room 110, Concord, NH 03301-3941

NEW JERSEY (3d Circuit)
District of New Jersey

Martin Luther King U.S. Courthouse
50 Walnut Street, Rm. 4015, Newark, NJ 07101

NEW MEXICO (10th Circuit)
District of New Mexico

U.S. District Courthouse
333 Lomas N.W., Ste 270 Albuquerque, NM 87102

NEW YORK (2d Circuit)
Northern District of New York: Albany, Broome, Cayuga, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otesgo, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Tioga, Tompkins, Ulster, Warren, and Washington counties:

U.S. District Court, Northern District of New York
U.S. Courthouse & Federal Building
P.O. Box 7367, 100 South Clinton Street
Syracuse, NY 13261-7367

Southern District of New York: Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester counties:

U.S. District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, New York, NY 10007-1312

Eastern District of New York: Kings, Nassau, Queens, Richmond, and Suffolk counties:

U. S. District Court, Eastern District of New York
225 Cadman Plaza East, Brooklyn, New York 11201

Western District of New York:

Buffalo Division: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming counties:

U.S. District Court, Western Division of New York
Office of the Clerk
304 United States Courthouse
68 Court Street, Buffalo, New York 14202

Rochester Division: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates counties:

U.S. District Court, Western Division of New York
Office of the Clerk
2120 United States Courthouse
100 State Street, Rochester, New York 14614-1387

NORTH CAROLINA (4th Circuit)
Eastern District of North Carolina: Beaufort, Betrie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties:

Clerk of the Court
U.S. District Court Eastern District of North Carolina
Terry Sanford Federal Building and Courthouse
310 New Bern Avenue, Raleigh, North Carolina 27601

Middle District of North Carolina: Alamance, Alleghany, Ashe, Cabarrus, Caswell, Chatham, Davidson, Davie, Durham, Forsyth, Guilford, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Surry, Watauga, and Yadkin counties:

Office of the Clerk
U.S. District Court, Middle District of North Carolina,
P.O. Box 2708, Greensboro, NC 27402-2708

Western District of North Carolina

Asheville Division: Haywood Madison, Yancey, Watuaga, Avery, Buncombe, McDowell, Burke, Transylvania, Henderson, Polk, Rutherford, Cleveland, Cherokee, Clay, Graham, Jackson, Macon and Swain counties:

U.S. District Court
100 Otis St., Asheville, NC 28801

Charlotte Division:Gaston, Mecklenburg, Union, and Anson counties:

U.S. District Court
401 W. Trade St., Room 212, Charlotte, NC 28202

Statesville Division: Watauga, Ashe, Alleghany, Caldwell, Wilkes, Alexander, Iredell, Catawba, and Lincoln counties:

U.S. District Court
200 W. Broad St., Statesville, NC 28677

NORTH DAKOTA (8th Circuit)
District of North Dakota

U.S. District Court
220 East Rosse Avenue, PO Box 1193
Bismarck, ND 58502

NORTHERN MARIANA ISLANDS (9th Circuit)
District for the Northern Marina Islands

U.S. District Court for the Northern Mariana Islands
2nd Floor, Horiguchi Building, Garapan
P.O. Box 500687, Saipan, MP 96950 USA

OHIO (6th Circuit)
Northern District of Ohio

Eastern Division: Ashland, Ashtabula, Carroll, Clumbiana, Crawford, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne countie:

U.S. District Court
Northern District of Ohio
2 South Main Street
Akron, OH 44308

U.S. District Court
Northern District of Ohio
801 West Superior Avenue
Cleveland, OH 44113

U.S. District Court
Northern District of Ohio
125 Market Street, Youngstown, OH 44503

Western Division: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood, and Wyandot:

U.S. District Court
Northern District of Ohio
1716 Spielbusch Avenue, Toledo, OH 43604

Southern District of Ohio

Athens, Belmont, Coschocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington counties:

U.S. District Court, Southern District of Ohio
Joseph P. Kinneary U.S. Courthouse, Room 260
85 Marconi Boulevard, Columbus, OH 43215

Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Lawrence, Scioto, and Warren counties:

U.S. District Court, Southern District of Ohio
Potter Stewart U.S. Courthouse, Room 324
100 East Fifth Street, Cincinnati, OH 45202

Champaign, Clark, Darke, Greene, Miami, Montgomery, Preble, and Shelby counties:

U.S. District Court, Southern District of Ohio
Federal Building, Room 712
200 West Second Street, Dayton, OH 45402

OKLAHOMA (10th Circuit)
Northern District of Oklahoma: Craig, Creek, Delaware, Mayes, Nowata, Osage, Ottawa, Pawnee, Rogers, Tulsa and Washington counties:

U.S. District Court, Northern District of Oklahoma
333 W. 4th St., Room 411, Tulsa, OK 74103

Eastern District of Oklahoma: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Coal, Haskell, Hughes, Johnston, Latimer, Le Flore, Love, Marshall, McCurtain, McIntosh, Murray, Muskogee, Okfuskee, Okmulgee, Pittsburg, Ponotoc, Pushmataha, Seminole, Sequoyah, Wagoner counties:

U.S. District Court, Eastern District of Ohio
101 N. 5th Street, P.O. Box 607
Muskogee, OK 74402-0607

Western District of Oklahoma: Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, McClain, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Stephens, Texas, Tillman, Washita, Woods, Woodward counties:

U.S. District Court, Western District of Oklahoma
200 NW 4th St., Room 1210, Oklahoma City, OK 73102

OREGON (9th Circuit)
District of Oregon

Portland Division: Baker, Clackamas, Clatsop, Columbia, Crook, Gilliam, Grant, Harney, Hood River, Jefferson, Malheur, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Washington, Wheeler, and Yamhill counties:

U.S. District Court for the District of Oregon
Mark O. Hatfield U.S. Courthouse, Room 740
1000 S.W. Third Avenue, Portland, OR 97204

Eugene Division: Benton, Coos, Deschutes, Douglas, Lane, Lincoln, Linn, and Marion counties:

U.S. District Court for the District of Oregon,
405 East Eighth Avenue, Suite 2100
Eugene, Oregon 97401-2712

Medford Division: Curry, Jackson, Josephine, Klamath, Lake counties:

U.S. District Court for the District of Oregon,
James A. Redden U.S. Courthouse, Room 213
310 W. Sixth Avenue, Medford, OR 97501

PENNSYLVANIA (3d Circuit)
Eastern District of Pennsylvania: Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, and Philadelphia counties:

U.S. District Court, Eastern District of Pennsylvania
U.S. Courthouse
601 Market St., Room 2609, Philadelphia, PA 19106-1797

Middle District of Pennsylvania: Adams, Bradford, Cameron, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, York counties:

U.S. District Court, Middle District of Pennsylvania
William J. Nealon Federal Building & U.S. Courthouse
235 N. Washington Ave., P.O. Box 1148
Scranton, PA 18501

Western District of Pennsylvania

Allegheny, Armstrong, Beaver, Butler, Clarion, Fayette, Greene, Indiana, Jefferson Lawrence, Mercer, Washington, and Westmoreland counties:

U.S. District Court, Western District of Pennsylvania
P. O. Box 1805, Pittsburgh, PA 15230

Crawford, Elk, Erie, Forest, McKean, Venango, and Warren counties:

U.S. District Court, Western District of Pennsylvania
P.O. Box 1820, Erie, PA 16507

Bedford, Blair, Cambria, Clearfield, and Somerset counties:

U.S. District Court, Western District of Pennsylvania
Penn Traffic Building
3l9 Washington Street**,** Johnstown, PA l590l

PUERTO RICO (1st Circuit)
District of Puerto Rico

Clemente Ruiz-Nazario U.S. Courthouse
& Federico Degetau Federal Building
150 Carlos Chardon Street, Hato Rey, PR 00918

RHODE ISLAND (1st Circuit)
District of Rhode Island

U.S. District Court, District of Rhode Island
Federal Building and Courthouse
One Exchange Terrace, Providence, RI 02903

SOUTH CAROLINA (4th Circuit)
District of South Carolina

Aiken, Barnwell, Allendale, Kershaw, Lee, Sumter, Richland, Lexington, Aiken, Barnwell, Allendale, York, Chester, Lancaster, and Fairfield counties:

U.S. District Court, District of South Carolina
Matthew J. Perry, Jr. Courthouse
901 Richland Street, Columbia, South Carolina 29201

Oconee, Pickens, Anderson, Greenville, Laurens, Abbeville, Greenwood, Newberry, McCormick, Edgefield, Saluda, Spartanburg, Union, and Cherokee counties:

U.S. District Court, District of South Carolina
Clement F. Haynsworth Federal Building
300 E. Washington St., Greenville, South Carolina 29601

Chesterfield, Marlboro, Darlington, Dillon, Florence, Marion, Horry, and Williamsburg counties:

U.S. District Court, District of South Carolina
McMillan Federal Building
401 West Evans Street, Florence, South Carolina 29501

Jasper, Hampton, Beaufort Clarendon, Georgetown, Charleston, Berkeley, Dorchester, and Colleton counties:

U.S. District Court, District of South Carolina
Hollings Judicial Center
83 Broad Street, Charleston, South Carolina 29401

SOUTH DAKOTA (8th Circuit)
District of South Dakota

U.S. District Court, District of South Dakota
U.S. Courthouse , Room 128
400 S. Phillips Avenue, Sioux Falls, SD 57104

TENNESSEE (6th Circuit)
Eastern District of Tennessee

Greeneville Division: Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi and Washington counties:

U.S. District Court, Eastern District of Tennessee
220 West Depot Street, Suite 200, Greeneville, TN 37743

Knoxville Division: Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier and Union counties:

U.S. District Court, Eastern District of Tennessee
800 Market Street, Suite 130, Knoxville, TN 37902

Chattanooga Division: Bledsoe, Bradley, Hamilton, McMinn, Marion, Meigs, Polk, Rhea and Sequatchie counties:

U.S. District Court, Eastern District of Tennessee
900 Georgia Avenue, Chattanooga, TN 37402

Winchester Division: Bedford, Coffee, Franklin, Grundy, Lincoln, Moore, Warren and Van Buren counties:

U.S. District Court, Eastern District of Tennessee
200 South Jefferson Street, Winchester, TN 37398

Middle District of Tennessee: Cannon, Cheatham, Clay, Cumberland, Davidson, De Kalb, Dickson, Fentress, Giles, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Macon, Marshall, Maury, Montgomery, Overton, Pickett, Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Wayne, White, Williamson, Wilson counties:

U.S. District Court, Middle District of Tennessee
Nashville Clerk's Office
801 Broadway, Room 800, Nashville, TN 37203

Western District of Tennessee

Dyer, Fayette, Lauderdale, Shelby, and Tipton counties:

U.S. District Court, Western District of Tennessee
Federal Building, Room 242
167 North Main Street, Memphis, TN 38103

Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry and Weakley counties:

U.S. District Court, Western District of Tennessee
U. S. Courthouse, Room 262
111 South Highland Avenue, Jackson, TN 38301

TEXAS (5th Circuit)
Northern District of Texas

Abilene Division: Jones, Nolan, Stephens, Throckmorton, Fisher, Haskell, Howard, Shackelford, Stonewall, Taylor, Callahan, Eastland, and Mitchell counties:

U.S. District Court, Northern District of Texas
341 Pine Street, Rm. 2008, Abilene, TX 79601

Amarillo Division: Carson, Deaf Smith, Gray, Hutchinson, Swisher, Armstrong, Brisco, Castro, Dallam, Hartley, Moore, Ochiltree, Parmer, Roberts, Childress, Donley, Hall, Lipscomb, Oldham, Potter, Wheeler, Collingsworth, Hansford, Hemphill, Randall, and Sherman counties:

U.S. District Court, Northern District of Texas
205 E. Fifth Street, Rm. 133, Amarillo, TX 79101-1559

Dallas Division: Ellis, Kaufman, Dallas, Rockwall, Hunt, Johnson, and Navarro counties:

U.S. District Court, Northern District of Texas
1100 Commerce St., Rm. 1452, Dallas, TX 75242

Fort Worth Division: Commanche, Perker, Erath, Hood, Tarrant, Wise, Jack, and Palo Pinto counties:

U.S. District Court, Northern District of Texas
501 West 10th Street, 310, Fort Worth, TX 76102-3673

Lubbock Division: Borden, Cochran, Crosby, Hockley, Lynn, Dickens, Gaines, Hale, Lamb, Scurry, Bailey, Garza, Kent, Motley, Yoakum, Dawson, Floyd, Lubbock, and Terry counties:

U.S. District Court, Northern District of Texas
1205 Texas Avenue, C-221, Lubbock, TX 79401-4091

San Angelo Division: Reagan, Schleicher, Coke, Concho, Irion, Menard, Sterling, Tom Green, Brown, Coleman, Mills, Crockett, Glasscock, Runnels, and Sutton counties:

U.S. District Court, Northern District of Texas
33 E. Twohig Street, 202, San Angelo, TX 76903-6451

Wichita Falls Division: Archer, Hardeman, Knox, Montague, Wilbarger, Cottle, Baylor, Clay, King, Wichita, and Young counties:

U.S. District Court, Northern District of Texas
1000 Lamar Street, 203, Wichita Falls, TX 76301

Eastern District of Texas

Beaumont Division: Hardin, Jasper, Jefferson, Liberty, Newton and Orange counties:

U.S. District Court, Eastern District of Texas
300 Willow Street, Beaumont, TX 77701

Marshall Division: Camp, Cass, Harrison, Marion, Morris and Upshur counties:

U.S. District Court, Eastern District of Texas
U.S. District Clerk
100 E. Houston, Room 125, Marshall, TX 75670

Sherman Division: Collin, Cooke, Denton, Grayson, Delta, Fannin, Hopkins and Lamar counties:

U.S. District Court, Eastern District of Texas
U.S. District Clerk
101 E. Pecan St. Room 216, Sherman, TX 75090

Texarkana Division: Bowie, Franklin, Titus and Red River counties:

U.S. District Court, Eastern District of Texas
U.S. District Clerk
500 Stateline Avenue, Texarkana, TX 75501

Tyler Division: Anderson, Cherokee, Gregg, Henderson, Panola, Rains, Rusk, Smith, Van Zandt and Wood counties:

U.S. District Court, Eastern District of Texas
211 W. Ferguson Room 106, Tyler, TX 75702

Lufkin Division: Angelina, Houston, Nacogdoches, Polk, Sabine, San Augustine, Shelby, Trinity and Tyler counties:

U.S. District Court, Eastern District of Texas
104 N. Third Street, Lufkin, TX 75901

Southern District of Texas

Brownsville Division: Cameron and Willacy counties:

U.S. District Court, Southern District of Texas
600 East Harrison St., Room 101, Brownsville, TX 78520

Corpus Christi Division: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces, and San Patricio counties:

U.S. District Court, Southern District of Texas
1133 North Shoreline Blvd., Corpus Christi, TX 78401

Galveston Division: Brazoria, Chambers, Galveston, and Matagorda counties:

U.S. District Court, Southern District of Texas
P.O. Box 2300, Galveston, TX 77553

Houston Division: Austin, Brazos, Colorado, Fayette, Fort Bend, Grimes, Harris Madison, Montgomery, San Jacinto, Walker, Waller, and Wharton counties:

U.S. District Court, Southern District of Texas
P.O. Box 61010, Houston, TX 77208

Laredo Division: Jim Hogg, LaSalle, McMullen, Webb, and Zapata counties:

U.S. District Court, Southern District of Texas
1300 Victoria Street, Ste. 1131
Laredo, TX 78040

McAllen Division: Hidalgo and Starr counties:

U.S. District Court, Southern District of Texas
P.O. Box 5059 McAllen, TX 78501

Victoria Division: Calhoun, De Witt, Goliad, Jackson, Lavaca, Refugio, and Victoria counties:

U.S. District Court, Southern District of Texas
P.O. Pox 1638, Victoria, TX 77902

Western District of Texas

Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington and Williamson counties:

U.S. District Court, Western District of Texas
U.S. District Clerk's Office
200 West 8th St., Room 130, Austin, Texas 78701

Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde and Zavala counties:

U.S. District Court, Western District of Texas
U.S. District Clerk's Office
111 East Broadway, Room L100, Del Rio, Texas 78840

El Paso County:

U.S. District Court, Western District of Texas
U.S. District Clerk's Office
525 Magoffin Avenue, Suite 105, El Paso, Texas 79901

Andrews, Crane, Ector, Martin, Midland and Upton counties:

U.S. District Court, Western District of Texas
U.S. District Clerk's Office
200 East Wall, Room 107, Midland, Texas 79701

Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward and Winkler counties:

U.S. District Court, Western District of Texas
U.S. District Clerk's Office
410 South Cedar, Pecos, Texas 79772

Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real and Wilson counties:

U.S. District Court, Western District of Texas
U.S. District Clerk's Office
655 East Durango Blvd., Room G65
San Antonio, Texas 78206

Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson and Somervell counties:

U.S. District Court, Western District of Texas
U.S. District Clerk's Office
800 Franklin Ave., Waco, Texas 76701

UTAH (10th Circuit)
District of Utah

U.S. District Court, District of Utah
350 South Main Street, Salt Lake City, UT 84101

VERMONT (2d Circuit)
District of Vermont

U.S. District Court, District of Vermont
P.O. Box 945, Burlington, VT 05402-0945

VIRGIN ISLANDS (3d Circuit)
District of the Virgin Islands

U.S. District Court, District of the Virgin Islands
5500 Veterans Drive, Rm 310, St. Thomas, VI 00802

VIRGINIA (4th Circuit)
Eastern District of Virginia

Persons in the city of Alexandria and the counties of Loudoun, Fairfax, Fauquier, Arlington, Prince William, and Stafford:

U.S. District Court, Eastern District of Virginia
Albert V. Bryan U.S. Courthouse
401 Courthouse Square, Alexandria, VA 22314

Persons in the Cities of Newport News, Hampton and Williamsburg, and the Counties of York, James City, Gloucester, Mathews:

U.S. District Court, Eastern District of Virginia
U.S. Postal Office & Courthouse Building
2400 West Avenue, Newport News, VA 23607

Persons in the Cities of Norfolk, Portsmouth, Suffolk, Franklin, Virginia Beach, Chesapeake, and Cape Charles, and the counties of Accomack, Northampton, Isle of Wight, and Southampton:

U.S. District Court, Eastern District of Virginia
Walter E. Hoffman, U.S. Courthouse
600 Granby Street, Norfolk, VA 23510

Persons in the Cities of Richmond, Petersburg, Hopewell, Colonial Heights and Fredericksburg, and the Counties of Amelia, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Essex, Goochland, Greensville, Hanover, Henrico, King and Queen, King George, King William, Lancaster,

Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Spotsylvania, Surry, Sussex, Westmoreland:

U.S. District Court, Eastern District of Virginia
Lewis F. Powell Jr., U.S. Courthouse
701 East Broad Street, Richmond, VA 23219

Western District of Virginia

Persons in the city of Bristol or the counties of Buchanan, Russel, Smyth, Tazewell, and Washington:

U.S. District Court, Western District of Virginia
180 W. Main Street, Room 104, Abingdon, VA 24210

Persons in the city of Norton or the counties of Dickenson, Lee, Scott, and Wise:

U.S. District Court, Western District of Virginia
P.O. Box 490, Big Stone Gap, VA 24219

Persons in the city of Charlottesville or the counties or Albemarle, Culpeper, Fluvanna, Greene, Louisa, Madison, Nelson, Orange, Rappahonnock:

U.S. District Court, Western District of Virginia
255 W. Main Street, Room 304, Charlottesville, VA 22902

Persons in the cities of Danville, Martinsville, South Boston or the counties of Charlotte, Halifax, Henry, Patrick, and Pittsylvania:

U.S. District Court. Western District of Virginia
P.O. Box 1400, Danville, VA 24543

Persons in the cities of Harrisonburg, Staunton, Waynesboro, and Winchester or the counties of Augusta, Bath, Clarke, Frederick, Highland, Page, Rockingham, Shenandoah, and Warren:

U.S. District Court, Western District of Virginia
116 N. Main Street, Room 314, Harrisonburg, VA 22802

Persons in the cities of Bedford, Buena Vista, Lexington, and Lynchburg or the counties of Amherst, Appomattox, Bedford, Buckingham, Campbell, Cumberland and Rockbridge:

U.S. District Court, Western District of Virginia
1101 Court Street, Suite A66, Lynchburg, VA 24504

Persons in the cities of Clifton Forge, Covington, Galax, Radford, Roanoke, and Salem or the counties of Alleghany, Bland, Botetourt, Carroll, Craig, Floyd, Franklin, Giles, Grayson, Montgomery, Pulaski, Roanoke, and Wythe:

U.S. District Court, Western District of Virginia
P.O. Box 1234, Roanoke, VA 24006

WASHINGTON (9th Circuit)
Eastern District of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties:

U.S. District Court, Eastern District of Washington
Clerk of the Court
P.O. Box 1493, Spokane, WA 99210

Western District of Washington

Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston and Wahkiakum counties:

U.S. District Court, Western District of Washington
1717 Pacific Avenue, Tacoma, WA 98402

Island, King, San Juan, Skagit, Snohomish, and Whatcom counties:

U.S. District Court, Western District of Washington
William Kenzo Nakamura U.S. Courthouse
700 Stewart Street Suite 2310, Seattle, WA 98101

WEST VIRGINIA (4th Circuit)
Northern District of West Virginia

Brooke, Hancock, Marshall, Ohio, and Wetzel counties:

U.S. District Court, Northern District of West Virginia
1125 Chapline Street
Wheeling, WV 26003

Braxton, Calhoun, Doddridge, Gilmer, Harrison, Lewis, Marion, Monongalia, Pleasants, Ritchie, Taylor, Tyler counties:

U.S. District Court, Northern District of West Virginia
500 West Pike Street, Room 301
P.O. Box 2857, Clarksburg, WV 26301

Barbour, Grant, Hardy, Mineral, Pendleton, Pocahontas, Preston, Randolph, Tucker, Webster counties:

U.S. District Court, Northern District of West Virginia
P.O. Box 1518, 300 Third Street, Elkins, WV 26241

Berkeley, Hampshire, Jefferson, and Morgan counties:

U.S. District Court, Northern District of West Virginia
217 W. King Street, Room 207, Martinsburg, WV 25401

Southern District of West Virginia

Beckley Division: Fayette, Greenbrier, Summers, Raleigh, and Wyoming counties:

U.S. District Court, Southern District of West Virginia
Federal Building and Courthouse
P. O. Drawer 5009, Beckley, WV 25801

Bluefield Division: Mercer, Monroe, McDowell counties:

U.S. District Court, Southern District of West Virginia
P.O. Box 4128, Bluefield, WV 24701

Charleston Division: Boone, Clay, Jackson, Kanawha, Lincoln, Logan, Mingo, Nicholas, Putnam and Roane counties:

U.S. District Court, Southern District of West Virginia
U.S. Courthouse
P. O. Box 2546, Charleston, WV 25329

Huntington Division: Cabell, Mason and Wayne counties:

U.S. District Court, Southern District of West Virginia
Sidney L. Christie Federal Building
P. O. Box 1570, Huntington, WV 25716

Parkersburg Division: Persons in Wirt and Wood counties:

U.S. District Court, Southern District of West Virginia
Federal Building and Courthouse
425 Juliana Street, Room 5102, Parkersburg, WV 26102

WISCONSIN (7th Circuit)
Eastern District of Wisconsin: Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties:

U.S. District Court, Eastern District of Wisconsin
362 U.S. Courthouse
517 East Wisconsin Avenue, Milwaukee, WI 53202

Western District of Wisconsin: Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, Sauk, St. Croix, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood counties:

U.S. District Court,Western District of Wisconsin
120 North Henry Street, Room 320
P. O. Box 432, Madison, WI 53701-0432

WYOMING (10th Circuit)
District of Wyoming

U.S. District Court, District of Wyoming
2120 Capitol Ave., 2nd Floor, Cheyenne, WY 82001-3658