

No. [insert 9th Circuit case number]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

[INSERT NAME(S) OF PLAINTIFF(S)],

Plaintiff-Appellant [or Plaintiff-Appellee],

v.

[INSERT NAME(S) OF DEFENDANT(S)]

Defendant-Appellee [or Defendant-Appellant].

On Appeal from the United States District Court
for the [____] District of [____]
No. [insert district court case number]
Hon. [insert District Judge Name]

**APPELLANT’S OPENING BRIEF
[OR APPELLEE’S ANSWERING BRIEF]
[OR APPELLANT’S REPLY BRIEF]**

[Name of Counsel]
[Firm/Organization of Counsel]
[Office Address of Counsel]
[Telephone # of Counsel]
[e-mail address of Counsel – optional]

Attorneys for Appellant [or Appellee]
[insert client’s name(s)]

[Practice Tip: Be sure to check that the caption in your case is correct and that it matches your brief. If there are any discrepancies, contact the Clerk’s Office.]

[Note: If you do not have a lawyer representing you in this case, you may file an “informal brief” in the template provided by the Clerk in lieu of a brief like this and need not comply with the technical requirements of the Federal Rules of Appellate Procedure. *See* <https://www.ca9.uscourts.gov/forms/#briefs>.]

DISCLOSURE STATEMENT

[Insert a Disclosure Statement if you are required to submit one pursuant to FRAP 26.1.]

[Practice Tip: Individual persons do not have to file a Disclosure Statement. If your client is nongovernmental corporate entity, you must include a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. FRAP 26.1(a)

In a bankruptcy case, the debtor, the trustee, or if neither is a party, the appellant must file a statement that (1) identifies each debtor not named in the caption and (2) discloses the information required by FRAP 26.1(a) for each debtor that is a corporation. FRAP 26.1(c)]

Date: [Insert date]

[Insert Counsel's name or firm name]

/s/ [insert name of counsel filing brief]
[insert name(s) of Counsel]

Attorneys for Appellant [or Appellee] [insert name of client]

TABLE OF CONTENTS

	Page
DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
JURISDICTIONAL STATEMENT	2
STATUTORY [AND REGULATORY] AUTHORITIES.....	3
ISSUE(S) PRESENTED	3
STATEMENT OF THE CASE.....	4
SUMMARY OF THE ARGUMENT	5
STANDARD OF REVIEW	5
ARGUMENT	6
I. [Insert appropriate heading for the argument on issue #1]	6
B. [Insert appropriate subheading for the subargument on the first issue]	7
1. [Insert appropriate subheading for the sub-subargument on issue #1.B.1, if this level of headings is necessary]	7
2. [Insert appropriate subheading for the sub-subargument on issue #1.B.2]	7
II. [Insert appropriate heading for the argument on issue #2]	7
CONCLUSION	7
STATEMENT OF RELATED CASES	
CERTIFICATE OF COMPLIANCE	

CERTIFICATE OF SERVICE

ADDENDUM

TABLE OF AUTHORITIES

Page(s)

Cases

[Insert all cases cited in brief in alphabetical order by case name, regardless of the jurisdiction where the case comes from. Use proper bluebook form. Identify all pages in brief where the case appears. Avoid use of passim unless the authority appears on nearly every page.]

example:

<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 558 (2007)	6, 8, 10
<i>Berke v. Bloch</i> , 242 F.3d 131 (3d Cir. 2001)	1, 7

Statutes

[Insert all statutes cited in brief in numerical order by U.S. Code title and section. Use proper bluebook form. Identify all pages in brief where the statute appears.]

example:

42 U.S.C. § 1983.....	1
-----------------------	---

Regulations

[Insert all regulations cited in brief in numerical order by U.S. Code title and section. Use proper bluebook form. Identify all pages in brief where the regulation appears.]

example:

8 C.F.R. § 1001(a)	1
--------------------------	---

Rules

[Insert all Court Rules cited in brief. Use proper bluebook form. Identify all pages in brief where the Rule appears.]

example:

FRAP 4(a)(1)(A).....	2
FRCP 12(b)(6)	3, 6, 10

Other Authorities

[Insert all other authorities cited in brief (treatises, law review articles, etc. Use proper bluebook form. Identify all pages in brief where the other authority appears.)]

example:

Restatement (Second) of Torts § 1216	6
Sidney R. Thomas, <i>Judge James R. Browning: His Legacy for Montana and the Future of the Federal Judiciary</i> , 76 Mont. L. Rev. 207 (2015).....	9

INTRODUCTION

[Formatting: Text should be double-spaced, left-justified, and with an indent at the beginning of each paragraph. Quotations more than two lines long may be indented and single-spaced, and headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there].

[Font: Either a proportionally spaced or a monospaced face may be used (acceptable examples include Times New Roman, Georgia, and Century Schoolbook). A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger, while a monospaced face may not contain more than 10 1/2 characters per inch. Do not use a smaller font for footnotes.]

[Type Styles: A brief must be set in a plain, roman style, although italics or boldface may be used (sparingly) for emphasis. Case names must be italicized or underlined.]

[Practice Tip: Although neither the Federal Rules of Appellate Procedure nor the Ninth Circuit Rules require an introduction, both allow one, and effective briefs often include one. Writing an introduction allows you to succinctly (no more than 2 pages) introduce the basic facts and law the Court needs to understand to rule your way. Consider asking yourself, “If I had one minute to tell another lawyer who is not an expert in this subject area what this appeal is all about and why my client should win, what would I say?”]

JURISDICTIONAL STATEMENT¹

[Insert a sentence or short paragraph describing: (1) the basis for jurisdiction for the lower court, agency or board, with reference to the specific statute conferring jurisdiction (*e.g.*, 28 U.S.C. § 1331); (2) the basis for jurisdiction for the Court of Appeals, with reference to the specific statute conferring jurisdiction (*e.g.*, 28 U.S.C. § 1291); (3) the date of entry of the judgment or order appealed from; the date of filing of the notice of appeal or petition for review; and the statute or rule under which it is claimed the appeal is timely; and (4) whether the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis.]

[In a criminal case, include the defendant's bail status. If the defendant is in custody, the projected release date should be included.]

[In a petition for review of a decision of the Board of Immigration Appeals, state whether petitioner (1) is detained in the custody of the Department of

¹ If you are filing an answering brief, you do not need to include a jurisdictional statement, the statement of issues, the statement of the case, or the standards of review, if you agree entirely with the opening brief's discussion of those sections. If you are filing a reply brief, you do not need to (and in fact should not) repeat the jurisdictional statement, the statement of issues, the statement of the case, or the standards of review section(s). Moreover, you should not simply repeat arguments made in your opening brief, but instead respond to your opponent's responses.

Homeland Security or at liberty and/or (2) has moved the Board of Immigration Appeals to reopen or applied to the district director for an adjustment of status.]

[Practice Tip: Include citations to the excerpts of record to establish the timeliness of the appeal.]

STATUTORY [AND REGULATORY] AUTHORITIES

[Although not required under the rules, you may reproduce the text of the governing constitutional, statutory, or regulatory authority here. Doing so, however, will count against the total number of words in the brief. Alternatively, you may include a sentence like, “All relevant statutory [and/or constitutional and/or regulatory] authorities appear in the Addendum to this brief”; text of the relevant provisions in an Addendum is not counted against the word count.]

ISSUE(S) PRESENTED

[Identify the issue or issues that you are presenting to the Court of Appeals.]

[Practice Tip: In listing the issue(s) presented, tell the Court what the issues are in a brief and succinct way – preferably one that suggests the answer you want without being too argumentative, such as “Whether the district court erred in holding that Plaintiff lacked standing where he sufficiently alleged that Defendant’s conduct directly caused him to lose his job.” Each issue presented should be one sentence long. If there is more than one issue, number each one. Ideally, to guide the Court, each issue presented would map on to each major argument heading (i.e., the Roman numeral headings below), so if the Argument section contains parts I, II, and III, there would be three issues presented listed here.]

STATEMENT OF THE CASE

[Insert a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see FRAP 28(e)).]

[Practice Tip: “Every assertion in the briefs regarding matters in the record, except for undisputed facts offered only for general background, shall be supported by a citation to the Excerpts of Records, unless the filer is exempt from the excerpts requirement.” *See* Ninth Cir. R. 28-2.8. In Social Security Appeals, the parties should cite to the certified administrative record as well as the excerpts of record. *See* Ninth Cir. R. 30-1.6 and 30-1.4(e). In immigration cases, the parties should cite to the certified administrative record and addendum containing the relevant orders. *See* Ninth Cir. R. 28-2.7. Citations should be in the form [volume number (if more than one)]-[ER (or SER or FER for supplemental and further excerpts of record)]-[page number(s)]—for example, 2-ER-345, or ER-67 (for a single-volume ER), or 1-SER-234 (for the first volume of a multivolume SER). *See* Ninth Cir. R. 30-1.6. These should be *specific* citations to particular pages of the excerpts of record to which the Court can refer (e.g., “1-ER-234–36”), not large page ranges. Best practice is to include a specific record citation after every sentence in the Statement. Failure to adequately cite to the record may result the Court striking your brief.

The statement of the case is your first real opportunity to draw the reader in, explain what the case is about, and convince the reader to care about it. It should read like a story of what happened, not a minute order summarizing the proceedings below. Tell a story that is interesting, compelling, and makes the reader want to side with your client.

Generally, the statement of the case should include the facts relied upon in your argument section. However, you need not include every detail in the

statement of facts. You can elaborate further in the argument section when doing so will make it easier for the reader to digest the additional detail.

Don't avoid inconvenient facts. If you leave out an important fact that seems to benefit your opponent, the judges will notice the omission, and they will start to wonder if you are omitting other relevant information as well. If the judges start doubting your credibility as they read your statement of the case, you will be in trouble by the time they get to your legal argument.]

SUMMARY OF THE ARGUMENT

[Insert a summary of the argument(s), which must (1) contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and (2) not merely repeat the argument headings.]

[Practice Tip: To guide the reader, the summary of argument should generally follow the same organization as the Argument section. It can be effective to begin each paragraph in the Summary with the Roman numeral (e.g., "II.") of the Argument section summarized by the paragraph.]

STANDARD OF REVIEW

[Concisely state the applicable standard of review for each issue presented, including a citation of the relevant statute or Ninth Circuit decision setting forth the standard. In addition, if you are the party disputing a ruling on appeal, and the ruling is one to which a party must have objected at trial to preserve a right of review, *e.g.*, a failure to admit or to exclude evidence, or the giving of or refusal to give a jury instruction, state where in the record on appeal the objection and ruling are set forth.]

ARGUMENT

I. [Insert appropriate heading for the argument on issue #1]

[There are several acceptable ways to use capitalization in your argument headings. Some attorneys prefer to use sentence case (capitalizing only the first letter of the first word, as above) for all headings because it tends to be easiest to read. Other attorneys prefer to use all uppercase for major headings, title case (capitalizing the first letter of every word) for subheadings, and sentence case for the remaining headings. The choice is yours.]

[Insert your first argument: this must include an identification of your contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies]

[Practice Tip: Begin the argument section of your brief with your strongest argument. Omit implausible or weak arguments. Be straightforward about the case's strengths and weaknesses and address weaknesses head on. If you are the appellant, don't just argue why you are right, explain why the district court got it wrong. Address case or statutory authority relied on by the lower court. Don't waste time arguing obvious or undisputed points. Don't use boilerplate, especially regarding well-established standards, but if there is a controlling standard, include it.]

[Practice Tip: There are two acceptable ways to address the standard of review. *See* FRAP 28(a)(8)(B). You can include a standalone "Standard of Review" section before your "Argument" section, as illustrated above. *See* FRAP 28(a)(8)(B). Or you can begin each major section of your argument with a subsection that addresses the standard of review for that particular issue. This option may be particularly appropriate when your brief presents numerous issues with different applicable standards or if the standard of review is disputed, complex, or dispositive.]

[Practice Tip: The Ninth Circuit’s website includes an outline of standards of review, which can be a useful starting point for your research.

http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000368]

B. [Insert appropriate subheading for the subargument on the first issue]

[Using subheadings within major arguments can help guide the reader through the progression of your argument. For clarity, try to avoid including more than three levels of subheadings (e.g., I/A/1). Two levels should generally suffice. Make your arguments here. Do not incorporate by reference briefs or pleadings filed before the district court, or before this Court in a prior appeal.]

[Text]

1. [Insert appropriate subheading for the sub-subargument on issue #1.B.1, if this level of headings is necessary]

[Text]

2. [Insert appropriate subheading for the sub-subargument on issue #1.B.2]

[Text]

II. [Insert appropriate heading for the argument on issue #2]

[Insert your second argument (if applicable). Repeat for each additional argument.]

CONCLUSION

[Insert a short conclusion stating the precise relief sought from the Court, such as “For the foregoing reasons, the judgment of the district court should be

reversed, and the case remanded for trial [or for an evidentiary hearing, for consideration of Plaintiff’s claims on the merits, etc.]”]

[Practice Tip: Generally, the conclusion should contain *one sentence* that tells the Court *specifically* what you want it to do and what directions it should give the district court.]

Date: [insert date]

[Insert Counsel’s name or firm name]

/s/ [insert name of counsel filing brief]
[insert name(s) of Counsel]

Attorneys for Appellant [insert name of client]

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form17instructions.pdf>

9th Cir. Case Number(s) _____

The undersigned attorney or self-represented party states the following:

- I am unaware of any related cases currently pending in this court.
- I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.
- I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Signature _____ **Date** _____
(use "s/[typed name]" to sign electronically filed documents)

[Practice Tip: Under Ninth Circuit Rule 28-2.6, each party must identify in a statement on the last page of its initial brief any known related case pending in the Ninth Circuit. Cases are deemed “related” if they: (a) arise out of the same or consolidated cases in the district court or agency; (b) raise the same or closely related issues; or (c) involve the same transaction or event. The statement should include the name and appellate docket number of the related case and describe its relationship to the case being briefed. The purpose of this rule is to alert the parties and the Court to other known cases pending in this Court that might affect how the instant case is managed or decided. This rule does not require counsel to list all known cases raising the same or closely related issues if the list would be lengthy and counsel in good faith believes that listing the cases would not assist the Court or other parties. If you don’t know of any other related cases in this Court, no statement is required. If you are the appellee, you don’t need to include any related cases identified by the appellant.]

[Note: The Court updates its forms from time to time. Check the Court’s website (<https://www.ca9.uscourts.gov/forms/#briefs>) to be sure you’re using the most recent version of this form.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s) _____

I am the attorney or self-represented party.

This brief contains _____ **words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

complies with the word limit of Cir. R. 32-1.

is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

it is a joint brief submitted by separately represented parties;

a party or parties are filing a single brief in response to multiple briefs; or

a party or parties are filing a single brief in response to a longer joint brief.

complies with the length limit designated by court order dated _____.

is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature _____ **Date** _____

(use "s/[typed name]" to sign electronically filed documents)

[Practice Tip: Certain types of briefs, such as cross-appeal, death penalty, or amicus briefs may have different word limits. Be sure to check the applicable rules (Ninth Cir. R. 32-1 to 32-4 (standard briefs and death penalty appeals); FRAP 29(a)(4) (amicus briefs); Ninth Cir. R. 28.1-1 (cross appeals)).]

[Note: The Court updates its forms from time to time. Check the Court's website (<https://www.ca9.uscourts.gov/forms/#briefs>) to be sure you're using the most recent version of this form.]

CERTIFICATE OF SERVICE

[**Note:** Refer to Ninth Circuit Rule 25-5 for information about electronic filing and whether a certificate of service is required.]

Most filings submitted through the Appellate Electronic Filing System that are served electronically do not require a certificate of service. *See* Ninth Circuit Rule 25-5(f)(1).

For a brief being filed electronically but served on some parties *not* through the electronic filing system, a certificate of service is required. Use Form 15 or an equivalent statement: *See* <https://www.ca9.uscourts.gov/forms/form15.docx> (Word version) and <https://www.ca9.uscourts.gov/forms/form15.pdf> (PDF version).

Filings that are not submitted through the Appellate Electronic System must be accompanied by Form 25 or an equivalent statement. *See* <https://www.ca9.uscourts.gov/forms/form25.docx> (Word version) and <https://cdn.ca9.uscourts.gov/datastore/uploads/forms/form25.pdf> (PDF version).

Original proceedings, petitions for review, sealed filings, and any electronically submitted filing in a case involving a pro se litigant or attorney not registered for CM/ECF must be accompanied by Form 15 or an equivalent statement. *See* <https://www.ca9.uscourts.gov/forms/form15.docx> (Word version) and <https://www.ca9.uscourts.gov/forms/form15.pdf> (PDF version).]

ADDENDUM

[Note / Practice Tip: Under Ninth Circuit Rule 28-2.7, pertinent constitutional provisions, treaties, statutes, ordinances, regulations or rules must be set forth verbatim and with appropriate citation either (1) following the statement of issues presented for review or (2) in an addendum introduced by a table of contents and bound with the brief or separately; in the latter case, a statement must appear referencing the addendum after the statement of issues. If this material is included in an addendum bound with the brief, the addendum must be separated from the body of the brief (and from any other addendum) by a distinctively colored page. A party need not resubmit material included with a previous brief or addendum; if it is not repeated, a statement must appear under this heading as follows: [e]xcept for the following, all applicable statutes, etc., are contained in the brief or addendum of _____.

All opening briefs filed in counseled petitions for review of immigration cases must include an addendum comprised of the orders being challenged, including any orders of the immigration court and Board of Immigration Appeals. The addendum shall be bound with the brief but separated from the brief by a distinctively colored page.]