

**Motion to Vacate, Set Aside, or Correct a Sentence
By a Person in Federal Custody**

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States District Court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or corrected information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. No fee is required with this motion. If you cannot pay for transcripts, appeal or other costs connected with this motion, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the enclosed AO 240 form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at one of the following addresses:

Ronald C. Weston, Sr.
Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., NW
Grand Rapids, MI 49503

Ronald C. Weston, Sr.
Clerk, U.S. District Court
B-35 Federal Bldg.
410 W. Michigan Ave.
Kalamazoo, MI 49007

Ronald C. Weston, Sr.
Clerk, U.S. District Court
229 Federal Bldg.
P.O. Box 698
Marquette, MI 49855

Ronald C. Weston, Sr.
Clerk, U.S. District Court
113 Federal Bldg.
315 W. Allegan
Lansing, MI 48933

9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District
Name (under which you were convicted):	Docket or Case No.:
Place of Confinement:	Prisoner No.:
UNITED STATES OF AMERICA	Movant (<u>include</u> name under which convicted)
v.	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____

- (b) Criminal docket or case number: _____
2. (a) Date of the judgment of conviction: _____
- (b) Date of sentencing: _____
3. Identify all counts and crimes for which you were convicted and sentenced in this case: _____

4. Length of sentence for each count or crime for which you were convicted in this case: _____

5. (a) What was your plea?
Not guilty
Guilty
Nolo contendere (no contest)
- (b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:

6. If you went to trial, what kind of trial did you have? (Check one)

- (a) Jury
- (b) Judge only

7. Did you testify at the trial? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Date you filed: _____

(b) Name of court: _____

(c) Docket or case number: _____

(d) Result: _____

(e) Date of result: _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Date you filed: _____

(2) Docket or case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

11. If your answer to Question 10 was "Yes," give the following information: Yes No

- (a) (1) Date you filed: _____
- (2) Name of court: _____
- (3) Docket or case number (if you know): _____
- (4) Date of filing (if you know): _____
- (5) Nature of the proceeding: _____
- (6) Grounds raised: _____
- _____
- _____
- _____
- _____
- (7) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No
- (8) Result: _____
- (9) Date of result: _____

(b) If you filed any second motion, petition, or application, give the same information:

- (1) Date you filed: _____
- (2) Name of court: _____
- (3) Docket or case number (if you know): _____
- (4) Date of filing (if you know): _____
- (5) Nature of the proceeding: _____
- (6) Grounds raised: _____
- _____
- _____
- (7) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No
- (8) Result: _____
- (9) Date of result : _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion, petition or application? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed : _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available) : _____

Date of result: _____

GROUND TWO: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion, petition or application? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed : _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available) : _____

Date of result: _____

GROUND THREE: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion, petition or application? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed : _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available) : _____

Date of result: _____

GROUND FOUR: _____

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion, petition or application? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed : _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available) : _____

Date of result: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, state which ground or grounds have not been presented and your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?
Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 (" AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

- A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--
- (1) the date on which the judgment of conviction became final;
 - (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
 - (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant him or her the relief to which he or she may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct and that this Motion Under § 2255 was placed in the prison mailing system on _____(month, date, year).

Signature of Movant

Date

Signature of Attorney (if any)

If the person signing is not movant or an attorney, state relationship to movant and explain why movant is not signing this petition.
