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# 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. 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 or division (either in the same district or in a different district), you must file a separate motion.

4. Make sure the form is typed or neatly written.

5. You must tell the truth and sign the form under penalty of perjury. If you make a false statement, you may be prosecuted for perjury.

6. 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 correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.

# 7. <u>CAUTION:</u> You must include in this motion <u>all</u> 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.

8. Complete the attached form, keep a copy for yourself and send the original plus two copies (you need not copy these instructions) to:

The Pro Se Office United States District Court Eastern District of New York 225 Cadman Plaza East Brooklyn, NY 11201

# 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:			Docket or Case No.:
Place of Confinement:		Priso	ner 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 (if you know):		
(a) Date of the judgment of conviction (if you know):		
(b) Date of sentencing:		
Length of sentence:		
Nature of crime (all counts):		
(a) What was your plea? (Check one)		
(1) Not guilty G (2) Guilty G (3)	Nolo contendere	e (no contest) G
(b) If you entered a guilty plea to one count or indictment, and a not gui	lty plea to anothe	r count or indictment,
what did you plead guilty to and what did you plead not guilty to?		
If you went to trial, what kind of trial did you have? (Check one)	Jury G	Judge only G
Did you testify at either a pretrial hearing, trial or post-trial hearing?	Yes G	No G
	<ul> <li>(a) Date of the judgment of conviction (if you know):</li></ul>	(1) Not guilty G       (2) Guilty G       (3) Nolo contendered         (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to anothe what did you plead guilty to and what did you plead not guilty to?

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8.	Did you appeal from the judgment of conviction?	Yes G	No G
9.	If you did appeal, answer the following:		
	(a) Name of court:		
	(b) Docket or case number (if you know):		
	(c) Result:(d) Data of result (if you know):		
	(d) Date of result (if you know):		
	(e) Citation to the case (if you know):(f) Crownda raised:		
	(f) Grounds raised:		
	(g) Did you file a petition for certiorari in the United States Supreme	Court? Yes	G No G
	If "Yes," answer the following:		
	(1) Docket or case number (if you know):		
	(2) Result:		
	(3) Date of result (if you know):		
	(4) Citation to the case (if you know):		
	(5) Grounds raised:		
10.	Other than the direct appeals listed above, have you previously filed	any other motions, r	petitions. or
	lications concerning this judgment of conviction in any court?	, , , , , , , , , , , , , , , , , , ,	
"PP	Yes G No G		
11	If your answer to Question 10 was "Yes," give the following information of	ation:	
	(a) (1) Name of court:		
	<ul> <li>(2) Docket or case number (if you know):</li> <li>(2) Data of filing (if you know);</li> </ul>		
	(3) Date of filing (if you know):		
	(4) Nature of the proceeding:		

-	hearing where evidence was given on your motion, petition, application?
Yes G No	
-	rou know):
	motion, petition, or application, give the same information:
	mber (if you know):
	ou know):
(4) Nature of the proc	eeding:
(5) Grounds raised:	
(6) Did vou receive a	hearing where evidence was given on your motion, petition, or application?
-	hearing where evidence was given on your motion, petition, or application?
Yes G No	G
Yes G No (7) Result:	G
Yes G No (7) Result: (8) Date of result (if y	G rou know):
Yes G No (7) Result: (8) Date of result (if y c) Did you appeal to a fed	G
Yes G No (7) Result: (8) Date of result (if y c) Did you appeal to a fed pplication?	G rou know):
Yes G No (7) Result:(8) Date of result (if y c) Did you appeal to a fee pplication? (1) First petition:	G rou know): leral appellate court having jurisdiction the action taken on your motion, petition, o Yes G No G
Yes G No (7) Result: (8) Date of result (if y c) Did you appeal to a fed pplication? (1) First petition: (2) Second petition:	G rou know):
Yes G No (7) Result: (8) Date of result (if y c) Did you appeal to a fed pplication? (1) First petition: (2) Second petition: d) If you did not appeal fr	G rou know): leral appellate court having jurisdiction the action taken on your motion, petition, o Yes G No G

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 <u>facts</u> 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 G No G

(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?
  - $Yes\;G\quad No\;G$
- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

(3) Did you receive a hearing on your motion, petition, or application?

Yes G No G

- (4) Did you appeal from the denial of your motion, petition, or application?
  - Yes G No G
- (5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?
  - Yes G No G
- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

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

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

#### 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 G No G

(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 G No G
- (2) If your answer to Question (c)(1) is "Yes," state:
- Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

(3) Did you receive a hearing on your motion, petition, or application?

Yes G No G

(4) Did you appeal from the denial of your motion, petition, or application?

Yes G No G

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

 $Yes\;G\quad No\;G$ 

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

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

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

#### 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 G No G
- (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 G No G
- (2) If your answer to Question (c)(1) is "Yes," state:
- Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

(3) Did you receive a hearing on your motion, petition, or application?

Yes G No G

(4) Did you appeal from the denial of your motion, petition, or application?

Yes G No G

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes G No G

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

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

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

#### 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 Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes G No G

(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 G No G
- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

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

Docket or case number (if you know):

Date of the court's decision:

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

(3) Did you receive a hearing on your motion, petition, or application?

Yes G No G

(4) Did you appeal from the denial of your motion, petition, or application?

Yes G No G

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes G No G

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

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

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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

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

If "Yes," state 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:

(ł	b) At arraignment and plea:
(0	) At trial:
(0	I) At sentencing:
(6	) On appeal:
(f	) In any post-conviction proceeding:
(g	y) On appeal from any ruling against you in a post-conviction proceeding:
	Vere you sentenced on more than one count of an indictment, or on more than one indictment, in the same and at the same time? Yes G No G
D	o you have any future sentence to serve after you complete the sentence for the judgment that you are
lle	nging? Yes G No G
(8	) 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:

(c) Give the length of the other sentence:

(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 G No G

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 1-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;

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

<sup>(2)</sup> 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;

<sup>(3)</sup> 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

Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_\_

(month, date, year).

Executed (signed) on \_\_\_\_\_ (date).

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.