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 correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
- 6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this 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 or division (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 to the Clerk of the United States District Court at this address:

Clerk, United States District Court for Northern District of New York
100 South Clinton Street, P.O. Box 7367
Syracuse, New York 13261-7367

- 9. <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.
- 10. <u>CAPITAL CASES:</u> If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

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

Unit	ed States District Court	Distric	et			
Name	(under which you were convicted):				Docket or Case No.:	
Place	of Confinement:		P	Prisoner No.:	No.:	
UNIT	ED STATES OF AMERICA	V.	Mov	vant (<u>include</u> nam	e under which convicted)	
		МОТІС				
1.	(a) Name and location of court which	entered the judgn	nent of conv	iction you are	challenging:	
	(b) Criminal docket or case number (i	f you know):				
2.	(a) Date of the judgment of conviction(b) Date of sentencing:					
3.	Length of sentence:					
4.	Nature of crime (all counts):					
5.	(a) What was your plea? (Check one)(1) Not guilty □	(2) Guilty		(3) Nolo	contendere (no contest)	
	(b) If you entered a guilty plea to one what did you plead guilty to and what				o another count or	
6.	If you went to trial, what kind of trial	did you have? (C	Check one)	Jury	☐ Judge only ☐	

7.	Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐
8.	Did you appeal from the judgment of conviction? Yes ☐ No ☐
9.	If you did appeal, answer the following: (a) Name of court: (b) Docket or case number (if you know): (c) Result: (d) Date of result (if you know): (e) Citation to the case (if you know):
	(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) 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, petitions, or applications, concerning this judgment of conviction in any court? Yes No
11.	If your answer to Question 10 was "Yes," give the following information: (a) (1) Name of court: (2) Docket or case number (if you know):
	(3) Date of filing (if you know):

	(4)	Nature of the proceeding:	
	(5)	Grounds raised:	
	(6)	Did you receive a hearing where evidence was given on your motion, petition, or application?	
		Yes □ No □	
	(7)	Result:	
	(8)		
(b)	-	ou filed any second motion, petition, or application, give the same information:	
	(1)		
	(2)	Docket of case number (if you know):	
	(3)	Date of filing (if you know):	
	(4)	Nature of the proceeding:	
	(5)	Grounds raised:	
	(6)		
	(6)		
	(7)	Yes No No	
	(7)	Result:	
(a)	(8)	Date of result (if you know): I you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition	_
(c)			1,
01 7		ication? First petition: Yes No No	
	(1)	•	
(4)	(2)	•	٠.
(u)	пу	you did not appeal from the action on any motion, petition, or application, explain briefly why you did no	ι.

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 \square 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? № П Yes \square (2) If you 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 □ № П

	(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 the issue in the appeal?
	Yes □ No □
	(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:
GROUN	TD 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:	
Pos	t-Conviction Proceedings:	
(1)	Did you raise this issue in any post-conviction motion, petition, or application?	
	Yes □ No □	
(2)	If you answer to Question (c)(1) is "Yes," state:	
Тур	e of motion or petition:	
Nan	ne and location of the court where the motion or petition was filed:	
Doc	ket or case number (if you know):	
Date	e of the court's decision:	
Res	ult (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 □ 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 the issue in the appeal?	
	Yes □ No □	
(6)	If your answer to Question (c)(4) is "Yes," state:	
Nan	ne and location of the court where the appeal was filed:	
Doc	ket or case number (if you know):	
	e of the court's decision:	
	ult (attach a copy of the court's opinion or order, if available):	
1105		
(7)	If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise	e thi
issu	e:	

IND T	THREE:
(a) S	upporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
(b) D	Direct Appeal of Ground Three:
(]	1) If you appealed from the judgment of conviction, did you raise this issue?
	Yes □ No □
(2	2) If you did not raise this issue in your direct appeal, explain why:
(c) P	Post-Conviction Proceedings:
(1	1) Did you raise this issue in any post-conviction motion, petition, or application?
	Yes □ No □
(2	2) If you answer to Question (c)(1) is "Yes," state:
T	Type of motion or petition:
N	Name and location of the court where the motion or petition was filed:
D	Pocket or case number (if you know):
D	Date of the court's decision:
R	Result (attach a copy of the court's opinion or order, if available):
_	
_	
(3	3) Did you receive a hearing on your motion, petition, or application?
	Yes □ No □
(4	4) Did you appeal from the denial of your motion, petition, or application?
	Yes □ No □
(5	5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?
	Yes □ No □

D D R - (7) is	FOUR:
D R - (7) is UND F	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 assue: FOUR:
D R - (7) is UND F	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 issue: FOUR:
R (7) is	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 issue: FOUR:
is — — — UND F	FOUR:
is — — — UND F	FOUR:
is — — — UND F	FOUR:
(a) S	
(a) S	
	Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
(b) D	Direct Appeal of Ground Four:
(1	(1) If you appealed from the judgment of conviction, did you raise this issue?
	Yes □ No □
(2	(2) If you did not raise this issue in your direct appeal, explain why:
_	
(c) P	Post-Conviction Proceedings:

	ne and location of the court where the motion or petition was filed:
Doc	ket or case number (if you know):
	e of the court's decision:
Res	ult (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 □ 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 the issue in the appeal?
	Yes □ No □
(6)	If your answer to Question (c)(4) is "Yes," state:
Nan	ne and location of the court where the appeal was filed:
	ket or case number (if you know):
	e of the court's decision:
Resi	ult (attach a copy of the court's opinion or order, if available):
(7)	If your angular to Overtion (a)(4) or Overtion (a)(5) is "No" avaloin why you did not appeal or raise th
(7)	If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise the
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` /	•
` '	•
(7)	•
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issu	e:
issu	any ground in this motion that you have <u>not</u> previously presented in some federal court? If so, which
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issu	any ground in this motion that you have <u>not</u> previously presented in some federal court? If so, which
issu	any ground in this motion that you have <u>not</u> previously presented in some federal court? If so, which

13.

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, an issues raised. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging: (a) At the preliminary hearing: (b) At the arraignment and plea: (c) At the 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: Were you sentenced on more than one court of an indictment, or on more than one indictment, in the sar and at the same time? Yes \(\sqrt{No} \) No \(\sqrt{No} \) Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes \(\sqrt{No} \) No \(\sqrt{No} \)	any court for the	e any motion, petition, or appe llenging? Yes □	Do you have any r you are challengin
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challenging? Yes □ No □	ctment, in the same co		
	nent that you are	•	•
	e in the future:		
			<u> </u>
(b) Give the date the other sentence was imposed:		e date the other sentence was in	(b) Give the date t
(c) Give the length of the other sentence:		e length of the other sentence:	(c) Give the length

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.

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

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	
under 28 U.S.C. § 2255 was placed in the prison mailing system of	(month, date, year)
	(month, date, year)
Executed (signed) on	(date)
Executed (signed) on	_ (date)
	Signature of Movant
If the person signing is not movant, state relationship to movant an	nd explain why movant is not signing this motion.

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