

**MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN *FEDERAL* CUSTODY**

(MOTION UNDER 28 U.S.C. § 2255)

Instructions--Read Carefully

- (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 and one copy to the Court at this address:

**Clerk of the U.S. District Court
Southern District of California
333 West Broadway, Suite 420
San Diego, CA 92101**

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

- (9) Upon receipt, your motion will be filed if it is in proper order. **No fee is required with this motion.**
- (10) **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.**

NAME OF MOVANT

PRISON NUMBER

PLACE OF CONFINEMENT

ADDRESS

**United States District Court
Southern District Of California**

UNITED STATES OF AMERICA

v.

(NAME UNDER WHICH MOVANT WAS CONVICTED)

Movant

Civil No. _____
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

**MOTION TO VACATE, SET ASIDE, OR
CORRECT SENTENCE**

UNDER 28 U.S.C. § 2255
BY A PERSON IN FEDERAL CUSTODY

1. Information regarding judgment of conviction under attack:

(a) Name and location of court which entered the judgment of conviction you are challenging:

(b) Name of Judge who entered the judgment of conviction (if you know):

(c) Criminal case number of conviction (if you know): _____

2. Date of judgment of conviction: _____

3. Length of sentence: _____

4. Nature of offense involved (all counts) _____

5. What was your plea? (CHECK ONE)

- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere (no contest)

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____

6. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

- Jury
- 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) Name of court _____
- (b) Case Number (if known) _____
- (c) Result _____
- (d) Date of result (if known) _____
- (e) Grounds raised: _____

(f) Did you file a petition for certiorari in the United States Supreme Court?

- Yes
- No

If "Yes," answer the following:

- (1) Case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Grounds raised: _____
- _____
- _____
- _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "Yes," give the following information:

- (a)(1) Name of court _____
- (2) Case number (if you know): _____
- (3) Nature of the proceeding: _____
- (4) Grounds raised: _____

(5) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(6) Result: _____

(7) Date of result (if you know): _____

(b) As to any second petition, application or motion give the same information:

- (1) Name of court _____
- (2) Case number (if you know): _____
- (3) Nature of the proceeding: _____
- (4) Grounds raised: _____

(5) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(6) Result: _____

(7) Date of result (if you know): _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

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

12. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** If necessary, you may attach pages stating additional grounds and facts supporting same. **CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.**

GROUND ONE: _____

(a) **Supporting FACTS** (state *briefly* without citing cases or law) _____

(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 (c)(1) is "Yes," state:

Type of motion or petition: _____

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

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 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:

Case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion, 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 (state *briefly* without citing cases or law): _____

(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 (c)(1) is "Yes," state:

Type of motion or petition: _____

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

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 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:

Case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion, 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 (state *briefly* without citing cases or law): _____

(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 (c)(1) is "Yes," state:

Type of motion or petition: _____

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

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 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:

Case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion, 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: _____

Yes No

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

Case number (if you know): _____

Date of court's decision: _____

Result (attach a copy of the court's opinion, 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 not previously presented in some federal court? If so, which ground or grounds were not presented, and what are your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes No

If "Yes," state the name and location of the court, the 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 attacked herein:

(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 adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

17. 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 which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the 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 limitation as contained in 28 U.S.C. § 2255 does not bar your motion.

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(DATE)

SIGNATURE OF PETITIONER