

**INFORMATION AND INSTRUCTIONS FOR FILING
A MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE
UNDER 28 U.S.C. § 2255 (PERSONS IN FEDERAL CUSTODY)**

Attached are the forms you will need to file a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct sentence (motion to vacate). You must complete the attached motion for leave to proceed pursuant to 28 U.S.C. § 1915 if you seek payment by the United States of the expenses associated with a motion to vacate. Further instructions for completing these forms are provided below.

A. Payment of Expenses Under 28 U.S.C. § 1915

Prisoners seeking leave to proceed under 28 U.S.C. § 1915 must comply with the following procedures. A prisoner is any person incarcerated or detained in any facility.

1. A filing fee is not required for a motion to vacate. However, if you do not have the necessary funds for transcripts, counsel, appeal or other fees associated with a motion to vacate, you may request that the Court direct payment by the United States of these expenses by filing a motion and affidavit for leave to proceed pursuant to 28 U.S.C. § 1915.

2. The motion and affidavit for leave to proceed pursuant to 28 U.S.C. § 1915 must be typewritten or legibly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. You must sign the motion and affidavit. You should exercise care to assure that all answers are true, correct and complete.

3. If the motion and affidavit for leave to proceed pursuant to 28 U.S.C. § 1915 are in proper form, the Court will review the motion to vacate pursuant to § 1915(e)(2)(B).

B. The Motion to Vacate

1. The motion to vacate must be typewritten or legibly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. You must sign the motion to vacate and the declaration under penalty of perjury. You are cautioned that any deliberately false statement of a material fact may serve as a basis for prosecution and conviction for perjury. You should exercise care to assure that all answers are true, correct and complete.

2. You must provide the Court with an original and two copies of the motion to vacate. You should keep an additional copy of the motion to vacate for your own records. All copies of the motion to vacate must be identical to the original.

3. The law governing motions to vacate pursuant to 28 U.S. C. § 2255 has changed dramatically. You should consult these statutory changes in 28 U. S. C. §§ 2244, 2253, and 2254, *as amended by*, Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, §§ 101-106, 110 Stat. 1214 (Apr. 24, 1996).

4. The following list of the most frequently raised claims for relief in proceedings pursuant to 28 U.S. C. § 2255 is furnished for your information only. This list includes: (a) conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with the understanding of the nature of the charge or the consequences of the plea; (b) conviction obtained by use of coerced confession; (c) conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure; (d) conviction obtained by use of evidence obtained pursuant to an unlawful arrest; (e) conviction obtained by a violation of the privilege against self-incrimination; (f) conviction obtained by the unconstitutional failure of the prosecution to disclose evidence favorable to the defendant; (g) conviction obtained by a violation of the protection against double jeopardy; (h) conviction obtained by the action of a grand or petit jury which was unconstitutionally selected and impaneled; (i) denial of effective assistance of counsel; and (j) denial of right of appeal. This is not a complete list and you may raise any other claims for relief you may have.

5. On a single motion to vacate, you may challenge the judgment of only one court. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions to vacate as to each judgment.

6. When your motion to vacate is completed, it should be mailed with the necessary copies and motion for leave to proceed pursuant to 28 U.S. C. § 1915 to the Clerk of the United States District Court whose address is:

Robert M. March, Clerk
333 Lomas Blvd.
Albuquerque, New Mexico 87102

7. You must furnish an original and one copy of all other motions as well as pleadings, correspondence or other documentation submitted to the Court for filing and consideration. In addition, you must furnish the opposing party or their attorney with a copy of all such documents submitted to the Court. Each original document (except the original motion to vacate) must include a certificate stating the date a copy of the document was mailed to the opposing party or their attorney and the address to which it was mailed. Any document received which fails to include a certificate of service may be disregarded by the Court or returned for refiling. An example of a certificate of service is:

I hereby certify that a copy of the foregoing pleading/document was mailed to _____ at _____
(*Opposing party or counsel*) _____ (Address)

on _____, 20__
(Date)

(Signature)

8. United States District Judges, the United States Magistrate Judges, law clerks, the Clerk of the Court, and deputy clerks are officers of the court **and prohibited from giving legal advice.** Legal questions should be directed to an attorney.

Full Name/Prisoner Number

Complete Mailing Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Criminal Case No. _____

Civil Action No. _____
(To be supplied by the Court)

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

(Full Name)

Defendant/Movant.

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

CONVICTION UNDER ATTACK

(If movant is attacking a sentence based on a federal conviction to be served in the future, the motion should be filed in the federal court which entered the judgment.)

1. Name and location of the court which entered the judgment of conviction under attack:

2. Date judgment of conviction was entered _____

3. Case number _____

4. Length and term of sentence _____

5. Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes No

6. Name of judge who imposed sentence under attack in this motion _____

7. Nature of the offense involved (all counts) _____

8. What was your plea? (check one)

Not guilty Guilty Nolo Contendere

9. If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

10. If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement: _____

11. Kind of trial: (check one) Jury Judge only

12. Did you testify at trial (if any)? Yes No

DIRECT APPEAL

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

14. If you did appeal, answer the following:

a) State the name and location of the court where the appeal was filed, the result, the case number and the date of the court's decision (or attach a copy of the court's oppugn or order): _____

b) State the issues raised: _____

15. If you did not appeal, explain briefly why you did not: _____

POST-CONVICTION PROCEEDINGS

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to the judgment under attack in this motion in any federal court? Yes No

17. If your answer to question 16 was "Yes," give the following information:

a) FIRST petition, application or motion.

1) Name of court _____

2) Nature of proceeding _____

3) Claims raised _____

4) Did you receive any evidentiary hearing on your petition, application or motion? Yes No

i) Result _____

6) Date of result _____

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes No If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order):

8) If you did not appeal, explain briefly why not: _____

b) As to any SECOND petition, application or motion, give the following information:

1) Name of court _____

2) Nature of proceeding _____

3) Claims raised _____

4) Did you receive any evidentiary hearing on your petition, application or motion? Yes No

5) Result _____

6) Date of result _____

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes No If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order): _____

8) If you did not appeal, explain briefly why not: _____

c) As to any **THIRD** petition, application or motion give the following information:

1) Name of court _____

2) Nature of proceeding _____

3) Claims raised _____

4) Did you receive any evidentiary hearing on your petition, application or motion? Yes No

5) Result _____

6) Date of result _____

7) Did you appeal the result to the federal appellate court having jurisdiction? Yes No If you did appeal, give the name of the court where

the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order): _____

8) If you did not appeal, explain briefly why not: _____

CLAIMS

18. State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims or supporting facts. You should raise in this motion all available claims for relief which relate to the conviction under attack.

CLAIM ONE: _____

Supporting facts (tell your story briefly without citing legal authority or argument):

CLAIM TWO: _____

Supporting facts (tell your story briefly without citing legal authority or argument):

CLAIM THREE: _____

Supporting facts (tell your story briefly without citing legal authority or argument):

CLAIM FOUR: _____

Supporting facts (tell your story briefly without citing legal authority or argument):

19. If any of the claims listed in 18 were not previously presented, state briefly what claims were not so presented, and give your reasons for not presenting them:

20. Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack?
Yes No If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding:

SUCCESSIVE MOTIONS

21. If you are raising a claim which you have not presented in a prior motion. have you obtained an orde, from the United States Court of Appeals for the Tenth Circuit authorizing this district court to consider the motion. Yes No Please attach a copy of the order.

LEGAL REPRESENTATION

22. 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 _____

OTHER CONVICTIONS

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

Yes No

24. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future _____

(c) Have you filed, or do you contemplate filing, any application attacking the judgment which imposed the sentence to be served in the future? Yes No

Wherefore, movant prays that the court grant him such relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Movant's Original Signature

(Attorney's full address and telephone number)

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the movant in the above action, that he/she has read the above pleading and that the information contained therein is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at _____ On _____
(Location) (Date)

Movant's Original Signature