

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA**

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

1. This form is for a person in federal custody wishing to vacate, set aside, or correct a **federal sentence**. If you wish to challenge the validity of a **state court judgment**, you should **not** use this form and instead file a habeas corpus petition under 28 U.S.C. § 2254.
2. You may also use this form to challenge a federal court judgment that imposed a sentence to be served in the future, but you must file the motion in the federal court which entered the judgment.
3. This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. All questions must be answered concisely in the proper space on the form. Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation or authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum. Do NOT write on the back of any page.
5. Upon receipt, your motion will be filed if it is in proper order. **No fee is required with this motion.**
6. Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or division either in the same district or in different districts, you must file separate motions as to each judgment.
7. You must include in this motion all grounds for relief and all facts supporting such grounds for relief. 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. Motions which do not conform to these instructions will be returned with a notation as to the deficiency.
9. You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.
10. Mail the original motion to the following address: Clerk's Office, United States District Court, Northern District of Alabama, Room 140, Hugo L. Black U.S. Courthouse, 1729 5th Avenue North, Birmingham, AL 35203-2195 or Clerk's Office, United States District Court, Northern District of Alabama, 101 Holmes Avenue, Huntsville, AL 35801.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA**

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

UNITED STATES OF AMERICA

-v-

Civil Action No.: _____
*(to be filled in by the
Clerk's Office)*

Movant
(Full name under which you were convicted)
Prisoner No.: _____
Place of Confinement: _____
Address: _____

City State Zip Code

MOTION

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

- (b) Criminal docket or case number (if you know): _____
2. (a) Date of the judgment of conviction (if you know): _____
- (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 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 went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a 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 state 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) Date of result (if you know): _____

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

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

(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.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

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: _____

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 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

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

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 and order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not 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 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: _____

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 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

(6) If your answer to Question (c)(4) is “Yes,” state:
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 and order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not 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 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: _____
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 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

(6) If your answer to Question (c)(4) is “Yes,” state:
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 and order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not 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 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: _____

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 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

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

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 and order, if available): _____

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

13. Is there any ground in this petition that you have not 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 now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

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 you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the 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. Were you sentenced on more than one count of 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 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 No

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one (1) year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your petition.¹

¹ 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 the 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 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 on _____ (month, date, year).

Executed (signed) on _____
(date)

Signature of Movant