

FILED  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

IN THE MATTER OF FEDERAL  
PRISONERS FILING MOTIONS  
TO VACATE, SET ASIDE, OR  
CORRECT SENTENCE UNDER 28  
U.S.C. §2255

§  
§  
§

APR 01 1988

MURRAY J. HARRIS, CLERK  
By  
Deputy Rita Robbins

GENERAL ORDER

Acting by consent of the judges of this court, it is ORDERED, effective immediately, that this court adopt a prescribed form for federal prisoners filing motions to vacate, set aside, or correct their sentence under 28 U.S.C. §2255. To facilitate this, the following rules are also adopted:

1. The prescribed form for a Motion to Vacate, Set Aside, or Correct a Sentence, filed by federal prisoners under 28 U.S.C. §2255, is attached hereto as Exhibit A. Complaints may be accepted and filed on other forms at the discretion of the court; however, completion of the prescribed form may be required as a pleading auxiliary, either before or after filing.
2. There is no filing fee for a motion under 28 U.S.C. §2255. However, if the movant lacks necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, and wishes approval to proceed in forma pauperis, the movant must seek such approval by completing this court's mandatory Application to Proceed In Forma Pauperis (AO-240), a copy of which is attached hereto as Exhibit B. All such applications, to be valid, must be certified by an authorized official of the institution wherein the movant is detained and must contain a statement of either the movant's average prisoner account balance over the preceding six-month period or the movant's total income received over the preceding six-month period.

3. Verification of the motion is required before it may be accepted. If an in forma pauperis application is submitted, it must be verified as well. Verification may be done, pursuant to 28 U.S.C. §1746, by signature under penalty of perjury or under oath before a notary public or other person authorized by law to administer an oath.
4. If a motion under 28 U.S.C. §2255 is received in a division other than the one in which the original criminal action was adjudicated, the motion will be forwarded, without filing, to the appropriate district or division.
5. In the event that a motion under 28 U.S.C. §2255 is received but is determined by the Clerk to be technically deficient so as to fail to meet the requirements for filing in this court, the Clerk is hereby authorized to return the original and all copies received of said motion to the movant to correction of all such technical deficiencies without obligation on the part of the Clerk to retain a copy of said motion pending its return.

SIGNED this 1st day of April, 1988, on behalf  
of the court.

  
Chief Judge

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

(If movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

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

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form DC 12, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single motion. 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 as to each such judgment.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
- (7) When the motion is fully completed, the original and at least two copies must be mailed to the clerk of the United States District Court whose address is
- (8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District
Name of Movant	Prisoner No.	Docket No.
Place of Confinement		
UNITED STATES OF AMERICA		(include name upon which convicted)
V.		(full name of movant)
<b>MOTION</b>		
1. Name and location of court which entered the judgment of conviction under attack _____ _____		
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 <input type="checkbox"/>		
(b) Guilty <input type="checkbox"/>		
(c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____ _____ _____		
6. Kind of trial: (Check one)		
(a) Jury <input type="checkbox"/>		
(b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input type="checkbox"/>		

9. If you did appeal, answer the following:

- (a) Name of court \_\_\_\_\_
- (b) Result \_\_\_\_\_
- (c) Date of result \_\_\_\_\_

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) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

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

Yes  No

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

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

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

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

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) As to any third petition, application or motion, give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

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

(5) Result \_\_\_\_\_

(6) Date of Result \_\_\_\_\_

(d) 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

(3) Third petition, etc. Yes  No

(e) 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 unlawfully. 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 motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and 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 to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: \_\_\_\_\_

Supporting FACTS (tell your story *briefly* without citing cases or law): \_\_\_\_\_

B. Ground two: \_\_\_\_\_

Supporting FACTS (tell your story *briefly* without citing cases or law): \_\_\_\_\_

C. Ground three: \_\_\_\_\_

Supporting FACTS (tell your story *briefly* without citing cases or law): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

D. Ground four: \_\_\_\_\_

\_\_\_\_\_

Supporting FACTS (tell your story *briefly* without citing cases or law): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give 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

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 approximately the same time?

Yes  No

17. 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) 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

Wherefore, movant prays that the Court grant him all 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 Movant

# United States District Court

EASTERN

DISTRICT OF

TEXAS

## APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER

v.

CASE NUMBER:

I, \_\_\_\_\_, declare that I am the (check appropriate box)

petitioner/plaintiff

movant (filing 28 U.S.C. 2255 motion)

respondent/defendant

\_\_\_\_\_  
other

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

In further support of this application, I answer the following questions.

1. Are you presently employed? Yes  No

a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. (list both gross and net salary)

b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession or other form of self-employment Yes  No

b. Rent payments, interest or dividends? Yes  No

c. Pensions, annuities or life insurance payments? Yes  No

d. Gifts or inheritances? Yes  No

e. Any other sources? Yes  No

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in checking or savings accounts?

Yes  No  (Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own or have any interest in any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes  No

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

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

Executed on \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature of Applicant

**CERTIFICATE**  
(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of \$ \_\_\_\_\_  
on account to his credit at the \_\_\_\_\_  
institution where he is confined. I further certify that the applicant likewise has the following securities to  
his credit according to the records of said institution: \_\_\_\_\_  
\_\_\_\_\_

I further certify that during the last six months the applicant's average balance was \$ \_\_\_\_\_ \*\*

\*\* MAY SUBSTITUTE "TOTAL INCOME"  
DURING LAST SIX MONTHS. IF  
SO, PLEASE INDICATE THIS CHANGE.

\_\_\_\_\_  
Authorized Officer of Institution

**ORDER OF COURT**

The application is hereby denied

\_\_\_\_\_  
United States Judge

\_\_\_\_\_  
Date

The application is hereby granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.

\_\_\_\_\_  
United States Judge  
or Magistrate

\_\_\_\_\_  
Date