

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

## INSTRUCTIONS---READ CAREFULLY

1. **Use This Form** – If you are currently serving or will serve a sentence under the judgment against you of a federal court and you are asking for relief from the conviction or the sentence, unless 28 U.S.C. § 2255 is inadequate or ineffective to test the legality of your detention. This form is your motion for relief.

You must file the motion in the United States district court which entered the judgment that you are challenging. 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 (either in the same district or in a different district), you must file a separate motion.

### **Do Not Use This Form** –

\*IF YOU ARE CHALLENGING THE CONSTITUTIONALITY OF YOUR STATE COURT CONVICTION OR SENTENCE. INSTEAD, USE THE FORM ENTITLED “PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY.”

\*IF YOU ARE A PRETRIAL DETAINEE CHALLENGING YOUR PRE-CONVICTION CUSTODY, A FEDERAL PRISONER CHALLENGING THE EXECUTION OF YOUR SENTENCE OR AN ACTION TAKEN BY THE BUREAU OF PRISONS, OR A PERSON IN CUSTODY CHALLENGING AN IMMIGRATION-RELATED ORDER (OTHER THAN A REMOVAL ORDER), OR IN OTHER SITUATIONS WHERE RELIEF IS NOT AVAILABLE UNDER 28 U.S.C. § 2254 OR 28 U.S.C. § 2255, OR IF 28 U.S.C. § 2255 IS INADEQUATE OR INEFFECTIVE TO TEST THE LEGALITY OF YOUR DETENTION, USE THE FORM ENTITLED “APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 BY A PERSON IN CUSTODY.”

2. **Readable** – You may either type or neatly handwrite the information on the following form. It must be readable.
3. **Signed Under Penalty of Perjury** – To submit your motion, it must be signed. Your signature indicates that the motion is signed "under penalty of perjury." This means that any false statement of a material fact presented in your motion may serve as a basis for prosecution and conviction for perjury. Your signature does **not** have to be witnessed by a notary public. The motion may also be signed by a person authorized to sign it for you, such as an attorney.
4. **Copies and Proper Court** – When the motion is fully completed, you must mail the **original copy** to: Clerk of Court, United States District Court for the Eastern District of Wisconsin, 517 East Wisconsin Avenue, Milwaukee, WI 53202.
5. **All Grounds** – You must include all grounds for relief in this motion and the facts supporting each ground for relief. If you fail to do so, you may be prevented from presenting additional grounds at a later date.
6. **Legal Citations and Arguments** – You must answer all applicable questions. However, you should not cite to legal authorities (i.e., case law or statutes) **on this form**. If you submit a supporting memorandum in addition to this form, it must not exceed fifteen (15) pages. Excess pages will not be considered.
7. **Fee** – No fee is required by this motion. 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 so, you must complete and sign the petition and affidavit attached to this motion and have an authorized officer at the penal institution complete and sign the attached certificate. You must also have an authorized officer attach a printout of your prison trust account activity statement for the six months prior to the filing of your motion.
8. **CAPITAL CASES** – If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

9. **Prisoner E-Filing Program** – Inmates confined at Dodge Correctional Institution, Green Bay Correctional Institution, Waupun Correctional Institution, Wisconsin Secure Program Facility, Columbia Correctional Institution, and Oshkosh Correctional Institution must submit all correspondence and case filings, including the habeas petition and any *in forma pauperis* petition, to institution staff for filing.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Docket No. \_\_\_\_\_  
(to be supplied by Clerk)

\_\_\_\_\_  
Full Name (under which you were convicted)

\_\_\_\_\_  
Prisoner Number

\_\_\_\_\_  
Place of Confinement,

Movant.

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

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I. SUBJECT OF THIS PETITION

A. Name and location of the court that entered the judgment of conviction that you are challenging

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B. Criminal docket or case number \_\_\_\_\_

C. Date of the judgment of conviction \_\_\_\_\_

D. Date of sentencing \_\_\_\_\_

E. Length of sentence \_\_\_\_\_

F. Nature of crime (all counts) \_\_\_\_\_

G. What was your plea? (Check one)

G Not guilty      G Guilty      G Insanity plea      G Nolo contendere (no contest)

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

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H. If you went to trial, what kind of trial did you have? (Check one)

G Jury      G Judge only

I. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

G Yes      G No

If yes, state the type(s) of hearing or proceeding

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J. 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?

G Yes      G No.

SUBJECT OF THIS PETITION - continued

K. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?

G Yes      G No

II. DIRECT APPEAL OF CONVICTION

A. Did you appeal the judgment of conviction?

G Yes      G No

If yes, attach the decision(s) that resolved your appeal and answer the following questions:

1. Name of court of appeals \_\_\_\_\_

2. Date of filing appeal \_\_\_\_\_

3. Grounds raised \_\_\_\_\_

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

4. Result \_\_\_\_\_

5. Date \_\_\_\_\_

B. Did you file a petition for certiorari in the United States Supreme Court?

G Yes      G No

If yes, attach the decision(s) that resolved your petition for certiorari and answer the following questions:

1. Date of filing petition for certiorari \_\_\_\_\_

2. Grounds raised \_\_\_\_\_

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

3. Result \_\_\_\_\_

4. Date \_\_\_\_\_

III. POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL

A. Other than the appeals listed above in Section II, have you previously filed any other federal petitions, applications, or motions concerning the federal judgment that you are now challenging?

G Yes      G No

If yes, attach the decision(s) that resolved your application for federal post-conviction relief and answer the following questions:

1. Name of court \_\_\_\_\_

2. Docket or case number \_\_\_\_\_

3. Date of filing \_\_\_\_\_

4. Type of petition, application, or motion filed \_\_\_\_\_

5. Grounds raised \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

G Yes      G No

7. Result \_\_\_\_\_

8. Date \_\_\_\_\_

9. Did you appeal your first federal petition, application, or motion to a federal appellate court?

G Yes      G No

10. If you did not appeal, explain why not:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

B. If you filed a second federal petition, application, or motion, attach the decision and answer the following questions:

POST-CONVICTION RELIEF OTHER THAN APPEAL - continued

1. Name of court \_\_\_\_\_

2. Docket or case number \_\_\_\_\_

3. Date of filing \_\_\_\_\_

4. Type of petition, application, or motion filed \_\_\_\_\_

5. Grounds raised \_\_\_\_\_

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

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

G Yes            G No

7. Result \_\_\_\_\_

8. Date \_\_\_\_\_

9. Did you appeal your second petition, application, or motion to a federal appellate court?

G Yes            G No

10. If you did not appeal, explain why not:

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

C. If you filed a third federal petition, application, or motion, attach the decision and answer the following questions:

1. Name of court \_\_\_\_\_

2. Docket or case number \_\_\_\_\_

3. Date of filing \_\_\_\_\_

4. Type of petition, application or motion filed \_\_\_\_\_

POST-CONVICTION RELIEF OTHER THAN APPEAL - continued

5. Grounds raised \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

G Yes      G No

7. Result \_\_\_\_\_

8. Date \_\_\_\_\_

9. Did you appeal your third petition, application, or motion to a federal appellate court?

G Yes      G No

10. If you did not appeal, explain why not:

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

IV. GROUND FOR RELIEF

For this motion, state every ground supporting your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. If you fail to do so, you may be prevented from presenting additional grounds at a later date.

Attach additional pages if you have more than four grounds. State the facts supporting each ground.

Ground One \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Supporting FACTS (Briefly summarize the facts without citing cases or law.)

\_\_\_\_\_  
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GROUNDS FOR RELIEF - continued

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V.  REPRESENTATION

Give the name and address of each attorney who represented you in the following:

1. At preliminary hearing \_\_\_\_\_  
\_\_\_\_\_
2. At arraignment and plea hearing \_\_\_\_\_  
\_\_\_\_\_
3. At trial \_\_\_\_\_  
\_\_\_\_\_
4. At sentencing \_\_\_\_\_  
\_\_\_\_\_
5. On direct appeal \_\_\_\_\_  
\_\_\_\_\_
6. In any federal post-conviction proceeding \_\_\_\_\_  
\_\_\_\_\_
7. On appeal from any ruling against you in a federal post-conviction proceeding  
\_\_\_\_\_  
\_\_\_\_\_

VI. REQUEST FOR RELIEF

State exactly what you want the court to do for you.

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VII. DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, hereby declare under penalty of perjury that the foregoing information is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ .

\_\_\_\_\_  
Signature of Movant

\_\_\_\_\_  
(Signature of lawyer, if any)

If you are signing the motion and are not the movant, state your relationship to the movant and explain why the movant is not signing this motion.

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VIII. CERTIFICATE OF INMATE MAILING - Optional

If you deposit your motion under 28 U.S.C. § 2255 to vacate, set aside, or correct your sentence in your prison/institutional/jail mailing system and attach first-class postage pre-paid, and complete and sign this statement, you will establish the filing date as the date of deposit in that mailing system.

I, the undersigned, hereby declare under penalty of perjury that I placed this motion to vacate, set aside or correct federal sentence under 28 U.S.C. § 2255 in the prison/institutional/jail mailing system with a prepaid, first-class postage on \_\_\_\_\_.  
(month, day, year)

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Movant

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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\_\_\_\_\_  
Plaintiff or Petitioner (full name)

v.

Case No. \_\_\_\_\_  
(to be supplied by Clerk)

\_\_\_\_\_  
Defendant(s) or Respondent(s) (full name)

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**PRISONER'S PETITION AND AFFIDAVIT TO PROCEED  
WITHOUT PREPAYMENT OF FEES AND/OR COSTS**

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**THIS FORM IS FOR PRISONERS ONLY.**

*The cost of filing nearly every civil action is \$400.00. This includes the \$350.00 statutory filing fee and a \$50.00 administrative fee. If you cannot afford this \$400.00 fee you may ask permission to proceed without the prepayment of fees and/or costs by completing this form, the attached authorization, and providing the court with a certified copy of your institutional trust account statement for the past six months. The court will review your trust account statement and calculate the amount you must pay for your case to proceed. After you pay this initial partial filing fee, the court will review your complaint to determine whether it is sufficient to proceed. Every month, the prison will automatically deduct 20% of your monthly income from your institutional trust account. The money will be forwarded to the court to be paid towards the remainder of the \$350.00 statutory filing fee. These automatic deductions will continue until the \$350.00 statutory filing fee is paid in full. Prisoners granted permission to proceed without the prepayment of fees and/or costs do not have to pay the \$50.00 administrative fee.*

*The filing fee for a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 or 2254 is \$5.00. If you are unable to pay this \$5.00 filing fee, complete this form, the attached authorization, and provide the court with a certified copy of your institutional trust account statement for the past six months. If the court finds that you are unable to pay the \$5.00 filing fee, the court will grant your petition to proceed without prepayment of fees and/or costs and you will not have to prepay the \$5.00 fee.*

*If you are filing a motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255, there is no filing fee. However, you may want to complete and return this form and the attached authorization, and provide the court with a certified copy of your institutional trust account statement for the past six months if you believe you will be unable to pay other costs associated with your case such as the cost of obtaining transcripts.*

1. What type of case are you filing? \_\_\_\_\_  
(e.g. civil rights, petition for a writ of habeas corpus, etc.)

2. Are you currently married? Yes No

3. If you and/or your spouse have any of the following assets, provide details:

Type of Asset	Approximate Value
Bank account (checking, savings, money market etc.)	\$
Retirement account (IRA, 401(k), 403(b), pension, etc.)	\$
Investments (certificate of deposit, stocks, securities, bonds, mutual funds, exchange traded funds, etc.)	\$
Real estate (house, apartment building, condo, lots, etc.)	\$
Other valuable assets (motor vehicles, boats, jewelry, art work, collectibles, etc.)	\$

Are there any other circumstances that you would like the court to consider when reviewing your request to proceed without prepayment of costs and/or fees?

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I, \_\_\_\_\_, declare that I am the plaintiff or petitioner in the above-named action. In support of my request to proceed in forma pauperis, I declare that I am unable to pay the fees and/or costs of these proceedings and that I believe I am entitled to the relief sought in the present complaint, petition, or motion. I understand that a false statement may result in a dismissal of my claims. I answer the following questions fully, truthfully, and under penalty of perjury. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Institutional Identification Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*This form does not need to be notarized.*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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\_\_\_\_\_  
Plaintiff or Petitioner (full name)

v.

Case No. \_\_\_\_\_  
*(to be supplied by Clerk)*

\_\_\_\_\_  
Defendant(s) or Respondent(s) (full name)

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**AUTHORIZATION FOR RELEASE OF INSTITUTIONAL ACCOUNT INFORMATION  
AND PAYMENT OF THE FILING FEE**

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I, \_\_\_\_\_, \_\_\_\_\_,  
(your name) (institutional identification number)

hereby authorize the court to obtain from the agency having custody of me, information about my institutional trust account, including balances, deposits, and withdrawals over the prior six months.

I further authorize the agency or facility having custody of me to continue to disclose information about my institutional trust account, including balances, deposits, and withdrawals to the court until the filing fee in this matter is paid in full.

I further authorize the agency or facility having custody of me to withdraw funds from my institutional trust account in accordance with 28 U.S.C. § 1915 and to forward these funds to the court for payment of any filing fee.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

***This form does not need to be notarized.***