

**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 **are prohibited from giving legal advice**. Legal questions should be directed to an attorney.