

**INFORMATION AND INSTRUCTIONS
FOR FILING A MOTION TO VACATE SENTENCE
PURSUANT TO 28 U.S.C. § 2255
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

You should follow these instructions carefully. The failure to do so may result in your petition not being filed and considered by the court, or at least being delayed. If you add additional pages, be sure to identify what is being continued or the number of the additional ground(s).

- 1) The attached form is designed to assist you in preparation of a Motion to Vacate, Set Aside or Correct Sentence. In order for your motion to be considered by the district court, it must be typewritten or legibly handwritten. All questions must be answered concisely in the appropriate spaces on the form. The motion must be signed and include a declaration under penalty of perjury. You are cautioned that any false statement of material fact may serve as basis for prosecution and conviction for perjury. You should, therefore, exercise care to assure that all answers are true, correct and complete.
- 2) **Extra pages are not permitted**, except that up to two additional pages (8 ½" x 11") may be attached if necessary to complete your answers to question #17. A copy of an appellate court opinion or order specifically concerning your conviction may also be attached. Citation of legal authority is not necessary and no briefs or argument are to be submitted unless specifically requested by an order of the court.
- 3) In your motion you should raise all available grounds for relief. If you fail to do so, you may be barred from presenting additional grounds at a later date. Rule 9 of the Supreme Court Rules governing §2255 proceedings provides that a second or successive motion may be dismissed if the judge finds that it fails to allege new and different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds the failure of the movant to assert those grounds in a prior motion constitutes an abuse of this procedure.
- 4) The following list of the most frequently raised grounds for relief in post-conviction proceedings is furnished for your information only. This list is not complete and you may raise any other grounds for relief you may have.
 - (a) denial of effective assistance of counsel;
 - (b) denial of right of appeal;
 - (c) conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge or the consequences of the plea;
 - (d) conviction obtained by use of coerced confession;
 - (e) conviction obtained by use of evidence obtained pursuant to an unlawful search and seizure;
 - (f) conviction obtained by use of evidence obtained pursuant to an unlawful arrest;

- (g) conviction obtained by a violation of privilege against self-incrimination;
- (h) conviction obtained by the unlawful failure of the prosecution to disclose evidence favorable to the defendant;
- (i) conviction obtained by a violation of the protection against double jeopardy;
- (j) conviction obtained by the action of a grand or petit jury which was unconstitutionally selected and impaneled;
- (k) conviction was obtained by the knowing use of perjured testimony;
- (l) denial of compulsory process to obtain witnesses favorable to the defendant;
- (m) sentence imposed is cruel and unusual punishment;
- (n) conviction obtained by the use of evidence obtained pursuant to an unlawful lineup or identification procedure;
- (o) denial of speedy trial; and
- (p) conviction was obtained as a result of a plea of guilty or trial while the defendant was mentally incompetent.

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

6) When your motion is fully completed, the original and three copies must be mailed to the Clerk of the United States District Court whose address is:

Clerk, U.S. District Court
 District of Nevada
 400 South Virginia Street
 Suite 301
 Reno, Nevada 89501

OR

Clerk, U.S. District Court
 District of Nevada
 333 Las Vegas Boulevard South
 Room 1334
 Las Vegas, Nevada 89101

7) No filing fee is required. However, if you do not have the necessary funds for transcripts, counsel, appeal or other costs associated with a motion of this type, you may request permission to proceed in forma pauperis. To do this you must execute the attached motion and declaration setting forth information regarding your inability to pay costs and fees. You must also have an authorized officer of the penal institution complete the certificate indicating the amount of money or securities on deposit to your credit in any account in the institutions.

8) **Motions which do not conform to these instructions will not be filed**, and will be returned by the clerk with a notation as to the deficiency.

9) Except for the original motion which requires an original and three copies, you must furnish an original and one copy of all motions, pleadings, correspondence or other documents submitted to the court for filing and consideration. You must furnish one additional copy to the clerk if you wish to have a conformed copy returned to you by mail.

10) You must furnish the respondent or his attorney with a copy of all documents submitted by you to the court. Each original document (except the original motion) must include a certificate of service stating the date a copy of the document was mailed to the respondent or his attorney and the address to which it was mailed. Pursuant to Local Rule 5-1 and LCR 47-11 of the Local Rules of

this Court, any pleading or other document received which fails to include a certificate of service may be disregarded by the court or returned. A certificate of service may be in the following form:

**“I hereby certify that a copy of the foregoing pleading/document was mailed to
_____ at _____ on _____, 20____.”
(Opposing Party or Counsel) (Address) (Date)**

(Signature)

11) You must notify the clerk and the respondent or his attorney immediately in writing of any change in your address.

12) The United States Magistrate, the Clerk of Court and deputy clerks are officers of the court and are prohibited from giving legal advice. Questions of this nature should be directed to an attorney.

Name

Prison Number

Place of Confinement

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)

)

)

CASE NO. _____

(To be supplied by the Clerk)

vs.)

)

)

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

_____, Movant.)

)

)

(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 terms 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 the judge who imposed sentence under attack in this motion: _____

- 7) Nature of the offense involved (all counts): _____

- 8) What was your plea? **(check one)**
 a) Not Guilty b) Guilty c) Nolo Contendere
- 9) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement: _____

- 10) If you were found guilty after a plea of not guilty, was the finding made by: **(check one)**
 a) A jury b) A judge without a jury
- 11) Did you testify at trial (if any)? Yes No
- 12) Did you **appeal** from the judgment of conviction? Yes No
- 13) 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 opinion or order):

 b) State the issues raised: _____

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

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

16) If your answer to question 15 was “Yes”, give the following information:

a) As to the first petition, application or motion:

1) Name of court: _____

2) Nature of proceeding: _____

3) Issues raised: _____

4) Did you receive an 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, briefly explain why you did not:

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

- 1) Name of court: _____
- 2) Nature of proceeding: _____
- 3) Issues raised: _____

- 4) Did you receive an 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, briefly explain why you did not:

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

- 1) Name of court: _____
- 2) Nature of proceeding: _____
- 3) Issues raised: _____

- 4) Did you receive an 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, briefly explain why you did not:

17) 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 up to two extra pages (8 1/2" x 11") stating additional grounds or supporting facts. You should raise in this motion all available grounds for relief which relate to the conviction under attack.

a) Ground One: _____

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

2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. § 2255, or any other petition, motion or application?
Yes No

a) If your answer is "Yes", indicate which type of proceeding you used to present this ground: _____

b) If your answer is “No”, state briefly your reason(s) for not presenting this ground:_____

b) Ground Two:_____

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

2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §2255, or any other petition, motion or application?

Yes No

a) If your answer is “Yes”, indicate which type of proceeding you used to present this ground:_____

b) If your answer is “No”, state briefly your reason(s) for not presenting this ground:_____

c) Ground Three: _____

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

2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §2255, or any other petition, motion or application? Yes No

a) If your answer is “Yes”, indicate which type of proceeding you used to present this ground: _____

b) If your answer is “No”, state briefly your reason(s) for not presenting this ground: _____

d) Ground Four: _____

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

2) Has this ground been previously presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. §2255, or any other petition, motion or application? Yes No

a) If your answer is “Yes”, indicate which type of proceeding you used to present this ground: _____

b) If your answer is “No”, state briefly your reason(s) for not presenting this ground: _____

18) Do you have any petition, application, motion or appeal now pending in any court regarding the conviction under attack? Yes No If “Yes”, state the name of the court and the nature of the proceeding: _____

19) Were you represented by an attorney at any time during the course of your arraignment and plea, trial (if any), sentencing, appeal (if any), or during the preparation, presentation or consideration of any petitions, motions or applications which you filed with respect to this conviction? Yes No If “Yes”, state the name(s) and address (es) of any such attorney(s), the proceedings in which you were so represented and whether said attorney(s) was/were of your own choosing or if appointed by the court: _____

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

Signature of Attorney (if any)

Signature of Movant

(Attorney's full address and telephone number.)

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the movant in the above action, that he 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 _____, 20____.
(Location) (Date)

(Signature)

**United States District Court
DISTRICT OF NEVADA**

Plaintiff/Petitioner,

**APPLICATION TO PROCEED
IN FORMA PAUPERIS**

v.

CASE NUMBER:

Defendant/Respondent,

I, _____, declare that I am the (*check the appropriate box*)

Plaintiff
(filing 42 U.S.C. § 1983)

Movant
(filing 28 U.S.C. § 2255 motion)

Petitioner
(writ of habeas corpus
28 U.S.C. §§ 2254 or 2241)

Other
 Defendant/Respondent

in this case. I am unable to prepay the fees of this proceeding or give security because of my poverty. I acknowledge and consent that a portion of any recovery, as directed by the court, shall be paid to the clerk for reimbursement of all fees incurred by me as a result of being granted leave to proceed *in forma pauperis*.

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 gross and net salary.)
 - b. If the answer is “no,” state the date of last employment and the amount of the salary or 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 (include any funds in prison accounts, and any funds on deposit with a bank, saving & loan, etc., outside the prison) ?
- Yes No

If the answer is “yes,” state the total value and list the location of each account, type of account, and amount or balance in the account. Do not include your account number(s).

4. Do you own or have any interest in any real estate, stocks, bonds, notes, trusts, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?
- Yes No

If the answer is “yes,” describe the property, its location 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 each month.

6. Do you receive any income from disability, Social Security or any other pension?
- Yes No

If the answer is “yes,” describe the source and amount received each month.

7. Have you placed any property, assets or money in the name or custody of anyone else in the last two years?
- Yes No

If the answer is “yes,” give the date, describe the property, assets or money, give the name of the person given custody of the item and the reason for the transfer.

ACKNOWLEDGMENT

I, the undersigned, acknowledge that I have read the foregoing and that the information contained therein is true and correct to my own knowledge and belief.

Further, I state that I have not directly or indirectly paid or caused to be paid to any inmate, agent of an inmate, or family member of any inmate a sum of money, favors or anything else for assistance in the preparation of this document or any other document in connection with this action.

Further, I acknowledge that if any of the information included in this motion for leave to proceed *in forma pauperis* is false or misleading, I understand that sanctions may be imposed against me. Those sanctions may include, but are not limited to, the following:

- (1) dismissal of my case with prejudice;
- (2) imposition of monetary sanctions;
- (3) the Nevada Department of Prisons may bring disciplinary proceedings for a violation of MJ-48 of the Code of Penal Discipline, which can include all sanctions authorized under the Code including the loss of good time credits and punitive confinement; and
- (4) perjury charges.

Further, I hereby authorize the United States District Court, District of Nevada, or its representative, to investigate my financial status, and authorize any individual, corporation, or governmental entity to release any such information to the said Court or its representative.

Further, I acknowledge and consent that a portion of any recovery, as directed by the court, shall be paid to the clerk for reimbursement of all fees and costs incurred by me as a result of being granted leave to proceed *in forma pauperis*.

Dated this _____ day of _____, 20__.

(Signature of Applicant)

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Signed at _____
(Location)

(Signature)

(Date)

(Inmate Prison Number)

FINANCIAL CERTIFICATE

I request that an authorized officer of the institution in which I am confined, or other designated entity, such as Inmate Services for the Nevada Department of Prisons (NDOC), complete the below Financial Certificate.

I understand that:

(1) if I commence a petition for writ of habeas corpus in federal court pursuant to 28 U.S.C. § 2254, the filing fee is \$5.00, and that such fee will have to be paid by me if the current account balance (line #1 below), or the average account balance (line #2 below), or the average deposits to my account (line #3), whichever is greater, is \$20.00 or more;

(2) if I commence a civil rights action in federal court pursuant to 42 U.S.C. § 1983, the filing fee is \$350.00, which I must pay in full; and

(a) if my current account balance (line #1 below) is \$350.00 or more, I will not qualify for *in forma pauperis* status and I must pay the full filing fee of \$350.00 before I will be allowed to proceed with the action;

(b) if I do **NOT** have \$350.00 in my account as reflected on line #1 below, before I will be allowed to proceed with an action I will be required to pay 20% of my average monthly balance (line #2 below), or the average monthly deposits to my account (line #3 below), whichever is greater, and thereafter I must pay installments of 20% of the preceding month's deposits to my account in months that my account balance exceeds \$10.00 (if I am in the custody of the NDOC, I hereby authorize the NDOC to make such deductions from deposits to my account, and I further understand that if I have a prison job, then the 20% of my paycheck that is guaranteed to me as spendable money will be sent to the court for payment of the filing fee); and

(c) I must continue to make installment payments until the \$350.00 filing fee is fully paid, without regard to whether my action is closed or my release from confinement.

Type of action (check one): civil rights habeas corpus

INMATE NAME (printed)

SIGNATURE & PRISON NUMBER

- | | |
|---|-------|
| 1. CURRENT ACCOUNT BALANCE | _____ |
| 2. AVERAGE MONTHLY BALANCE* | _____ |
| 3. AVERAGE MONTHLY DEPOSITS* | _____ |
| 4. FILING FEE (based on #1, #2 or #3, whichever is greater) | _____ |

* for the past six (6) months, from all sources, including amount in any savings account that is in excess of minimum amount that must be maintained

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

**(Please sign in ink in a)
(color other than black.)**

AUTHORIZED OFFICER

DATE

TITLE

Name

Identification Number

Correctional Institution

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

_____ Petitioner, vs. _____, et al., Respondent		_____-CV-_____ EX PARTE MOTION FOR APPOINTMENT OF COUNSEL
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COMES NOW _____, in Proper Person, and moves this Court for its order allowing the appointment of counsel for Petitioner. This motion is made and based in the interest of justice.

Pursuant to Title 18 § 3006A. of the Federal Rules of Criminal Procedure,

(2) Whenever the United States magistrate or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who . . .

* * *

(B) is seeking relief under section 2241, 2254, 2255 of title 28.

The Court must appoint counsel where the complexities of the case are such that denial of counsel would amount to a denial of due process, Brown v. United States, 623 F.2d 54, 61 (9th Cir. 1980), and/or where the petitioner is a person of such limited education as to be incapable of presenting his claims in such a way that the Court can afford him a fair hearing, see Hawkins v. Bennet, 423 F.2d 948 (8th Cir. 1970).

Petitioner alleges that the issues in this case are complex, that petitioner is unable to adequately present the claims without the assistance of counsel, and that Petitioner is unable to retain private counsel to represent him

Petitioner hereby respectfully requests that the Court appoint counsel for the reasons stated above.

DATED this _____ day of _____, 2011.

Respectfully submitted,

PETITIONER