

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA**

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

I. General Information About the Form:

- A. The Form. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or sentence. This form is your motion for relief. The judges of this court require that the motion be filed on the court-approved form. Your motion must be typewritten or legibly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, attach additional pages. The form, however, must be completely filled in to the extent applicable. Do **not** write on the back of any page.
- B. Your Signature. You (the movant) must sign the motion under penalty of perjury. Any false statement of a material fact may serve as a basis for prosecution and conviction for perjury. Your signature must be an original signature, not a photocopy.
- C. Filing Fee and Other Costs. There is no filing fee to file the motion. 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 or without prepayment of fees by completing and signing the Motion to Proceed Without Prepayment of Fees and Declaration provided with the motion form. You must also have an official at the prison or jail complete the enclosed Prisoner Trust Account Report. If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.
- D. Court Divisions. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion in the federal court that entered that judgment.

If you were sentenced in the District of South Dakota, you should mail the motion to the appropriate divisional office:

Southern Division:

U.S. District Court Clerk
U.S. Courthouse
400 S. Phillips Avenue #128
Sioux Falls, SD 57104

Central & Northern Divisions:

U.S. District Court Clerk
U.S. Post Office & Courthouse
225 South Pierre Street #405
Pierre, SD 57501

Western Division:

U.S. District Court Clerk
Andrew W. Bogue Federal
Building & U.S. Courthouse
515 Ninth Street #302
Rapid City, SD 57701

- E. Certificate of Service. You must furnish the United States Attorney's Office with a copy of any document you submit to the court other than the initial motion. Pursuant to Rules 5(a) and (d) of the Federal Rules of Civil Procedure, each original document (except the initial motion) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the United States Attorney's Office and the address to which it was mailed. Any document received by the court which does not include a certificate may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed this ____ day of (month), (year), to:

Name: _____

Address: _____

United States Attorney's Office

(Signature of Movant)

- F. Inquiries and Copying Requests. You will be notified as soon as the court issues an order in your case. Because of the large volume of cases filed by prisoners in this court and limited court resources, the court and clerk's office will not answer inquiries concerning the status of your case or provide copies of documents, except at a charge of fifty cents (\$0.50) per page. You must therefore keep copies of all documents submitted to the court for your own records.
- G. Change of Address. You must immediately notify the clerk and the United States Attorney's Office in writing of any change in your mailing address. Failure to notify the court of any change in your mailing address may result in the dismissal of your case.
- H. Amended Motion. If you need to change any of the information in the initial motion you must file an amended motion. The amended motion must be written on the court-approved motion form. The amended motion will take the place of the original motion so you must include any and all grounds for relief in the amended motion. Any grounds not included in the amended motion are considered dismissed.
- I. Letters and Motions. It is generally inappropriate to write a letter to any of the district judges, magistrate judges, or the staff of any of the judicial officers. The appropriate way to communicate with these persons is by filing a written pleading or motion.

II. Completing the Motion Form:

HEADING:

1. Your Name and Address. Print your name, prison or jail number, and mailing address on the lines provided in the upper left hand corner of the form.
2. Movant. Print your full name and also include the name under which you were convicted.

Part A. JUDGMENT OF CONVICTION:

Only one federal judgment of conviction may be challenged in a single motion. Multiple counts which resulted in a single judgment of conviction may be challenged in the same motion. If you wish to challenge more than one judgment, however, you must file separate motions for each judgment. Print all the requested information regarding your judgment of conviction and sentence on the spaces provided.

Part B. DIRECT APPEALS:

Answer each of the questions regarding your direct appeals in the federal courts. If you filed appeals in the federal courts, you must provide the requested information for each appeal on the spaces provided. Attach a copy of all written decisions on your appeal.

Part C. OTHER PROCEEDINGS:

Answer each of the questions regarding any other court proceedings regarding this judgment. Attach a copy of all written decisions.

Part D. APPEALS FROM OTHER PROCEEDINGS:

Indicate whether or not you appealed the decision made in any other proceeding regarding this judgment. If you did not appeal, explain briefly why you did not.

Part E. PENDING PROCEEDINGS:

If you have any other proceedings now pending regarding this judgment answer each of the questions.

Part F. REPRESENTATION:

Print the name of the attorney who represented you at each stage of your federal proceedings. If you represented yourself at any stage, check the box marked "Pro Se."

Part G. OTHER SENTENCES:

If you have any other sentences to serve aside from the sentence imposed by the judgment you are challenging in this motion, answer each of the questions regarding your other convictions and sentences.

CLAIMS FOR RELIEF:

State concisely every ground for which you claim that your conviction or sentence violates the United States Constitution or other federal law or treaty. Your claims should not be based on state law. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and supporting facts. **You must raise all grounds based on the United States Constitution or other federal law for relief from your conviction or sentence that you wish to pursue.**

Parts H-K. GROUNDS:

The form includes space for only four grounds. If you are alleging more than four grounds answer all of the questions for each additional ground on a separate page.

1. You must identify which constitutional right or other federal law was violated. You may allege the violation of only one federal right per ground. Your claim should not be based on state law.
2. Supporting facts. After you have identified which federal right was violated, you need to state the supporting facts. Be as specific as possible. Tell your story briefly without citing cases or law.

SIGNATURE:

You must sign your name and print the date you signed the motion. Your signature must be an original signature, not a photocopy. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your motion being stricken or denied by the court. All questions must be answered concisely in the proper space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the motion is being continued and number all pages.

**UNITED STATES CODE SECTIONS
UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA**

TITLE 28 UNITED STATES CODE

§ 2255. FEDERAL CUSTODY; REMEDIES ON MOTION ATTACKING SENTENCE

- (a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
- (b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.
- (c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.
- (d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.
- (e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.
- (f) A 1-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 becomes 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 a motion by such governmental action;
 - (3) the date on which the right asserted was initially recognized by the Supreme Court, if that 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.
- (g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to

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statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

- (h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain -
 - (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
 - (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

**RULES GOVERNING SECTION 2255 PROCEEDINGS
FOR THE UNITED STATES DISTRICT COURTS**

Rule 1. Scope

These rules govern a motion filed in a United States district court under 28 U.S.C. § 2255 by:

- (a) a person in custody under a judgment of that court who seeks a determination that:
 - (1) the judgment violates the Constitution or laws of the United States;
 - (2) the court lacked jurisdiction to enter the judgment;
 - (3) the sentence exceeded the maximum allowed by law; or
 - (4) the judgment or sentence is otherwise subject to collateral review; and
- (b) a person in custody under a judgment of a state court or another federal court, and subject to future custody under a judgment of the district court, who seeks a determination that:
 - (1) future custody under a judgment of the district court would violate the Constitution or laws of the United States;
 - (2) the district court lacked jurisdiction to enter the judgment;
 - (3) the district court's sentence exceeded the maximum allowed by law; or
 - (4) the district court's judgment or sentence is otherwise subject to collateral review.

Rule 2. The Motion

- (a) **Applying for Relief.** The application must be in the form of a motion to vacate, set aside, or correct the sentence.
- (b) **Form.** The motion must:
 - (1) specify all the grounds for relief available to the moving party;
 - (2) state the facts supporting each ground;
 - (3) state the relief requested;
 - (4) be printed, typewritten, or legibly handwritten; and
 - (5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.
- (c) **Standard Form.** The motion must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule. The clerk must make forms available to moving parties without charge.

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- (d) **Separate Motions for Separate Judgments.** A moving party who seeks relief from more than one judgment must file a separate motion covering each judgment.

Rule 3. Filing the Motion; Inmate Filing

- (a) **Where to File; Copies.** An original of the motion must be filed with the clerk.
- (b) **Filing and Service.** The clerk must file the motion and enter it on the criminal docket of the case in which the challenged judgment was entered. The clerk must then deliver or serve a copy of the motion on the United States attorney in that district, together with a notice of its filing.
- (c) **Time to File.** The time for filing a motion is governed by 28 U.S.C. § 2255 para. 6.
- (d) **Inmate Filing.** A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

Rule 4. Preliminary Review.

- (a) **Referral to a Judge.** The clerk must promptly forward the motion to the judge who conducted the trial and imposed sentence or, if the judge who imposed sentence was not the trial judge, to the judge who conducted the proceedings being challenged. If the appropriate judge is not available, the clerk must forward the motion to a judge under the court's assignment procedure.
- (b) **Initial Consideration by the Judge.** The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Rule 5. The Answer and the Reply

- (a) **When Required.** The respondent is not required to answer the motion unless a judge so orders.
- (b) **Contents.** The answer must address the allegations in the motion. In addition, it must state whether the moving party has used any other federal remedies, including any prior post-conviction motions under these rules or any previous rules, and whether the moving party received an evidentiary hearing.
- (c) **Records of Prior Proceedings.** If the answer refers to briefs or transcripts of the prior proceedings that are not available in the court's records, the judge must order the government to furnish them within a reasonable time that will not unduly delay the proceedings.

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- (d) **Reply.** The moving party may submit a reply to the respondent's answer or other pleading within a time fixed by the judge.

Rule 6. Discovery

- (a) **Leave of Court Required.** A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law. If necessary for effective discovery, the judge must appoint an attorney for a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A.
- (b) **Requesting Discovery.** A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and requests for admission, and must specify any requested documents.
- (c) **Deposition Expenses.** If the government is granted leave to take a deposition, the judge may require the government to pay the travel expenses, subsistence expenses, and fees of the moving party's attorney to attend the deposition.

Rule 7. Expanding the Record

- (a) **In General.** If the motion is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the motion. The judge may require that these materials be authenticated.
- (b) **Types of Materials.** The materials that may be required include letters predating the filing of the motion, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits also may be submitted and considered as part of the record.
- (c) **Review by the Opposing Party.** The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.

Rule 8. Evidentiary Hearing

- (a) **Determining Whether to Hold a Hearing.** If the motion is not dismissed, the judge must review the answer, any transcripts and records of prior proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.
- (b) **Reference to a Magistrate Judge.** A judge may, under 28 U.S.C. § 636(b), refer the motion to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 14 days after being served, a party may file objections as provided by local court rule. The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.
- (c) **Appointing Counsel; Time of Hearing.** If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A. The judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. These rules do not limit the appointment of counsel under § 3006A at any stage of the proceeding.

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- (d) **Producing a Statement.** Federal Rule of Criminal Procedure 26.2(a)-(d) and (f) applies at a hearing under this rule. If a party does not comply with a Rule 26.2(a) order to produce a witness's statement, the court must not consider that witness's testimony.

Rule 9. Second or Successive Motions

Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion as required by 28 U.S.C. § 2255, para. 8.

Rule 10. Powers of a Magistrate Judge

A magistrate judge may perform the duties of a district judge under these rules, as authorized under 28 U.S.C. § 636.

Rule 11. Certificate of Appealability; Time to Appeal

- (a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.
- (b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability. These rules do not extend the time to appeal the original judgment of conviction.

Rule 12. Applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure

The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
_____ DIVISION**

UNITED STATES OF AMERICA,

CASE NUMBER:

vs.

CIV. _____
To be supplied by the Clerk of Court

FULL NAME OF MOVANT
(include name under which you were convicted)

CR. _____
Criminal case in which sentence was imposed

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

A. JUDGMENT OF CONVICTION

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

2. Case number: _____

3. Date of judgment of conviction: _____ (month/day/year)

4. Length of sentence(s): _____

5. Nature of offense(s) of which you were convicted (all counts): _____

6. What was your plea? ☐ Guilty ☐ Not guilty ☐ Nolo contendere

If you entered a guilty plea to one count or indictment and a not guilty plea to another count or indictment, give details: _____

7. If you went to trial, what kind of trial did you have? ☐ Jury ☐ Judge only

8. Did you testify? ☐ Yes ☐ No

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

B. DIRECT APPEALS

1. Did you appeal the conviction or sentence you are challenging? ☐ Yes ☐ No
If you did appeal, answer the following:
- a. Name of court: _____
 - b. Date the appeal was filed: _____ (month/day/year)
 - c. Case number: _____
 - d. Grounds raised: _____

 - e. Result: _____
 - f. Date the appeal was decided: _____ (month/day/year)
2. Did you file a petition for writ of certiorari in the United States Supreme Court? ☐ Yes ☐ No
If you answered "yes", answer the following:
- a. Date the petition was filed: _____ (month/day/year)
 - b. Case number: _____
 - c. Result: _____
 - d. Date the petition was decided: _____ (month/day/year)

Attach a copy of all written decisions on your appeal

C. OTHER PROCEEDINGS

1. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? ☐ Yes ☐ No
If you did, answer the following:
- a. N a m e o f c o u r t : _____
 - b. Date of filing: _____ (month/day/year)
 - c. Case number: _____
 - d. Nature of the proceeding: _____
 - e. Grounds raised: _____

 - f. Did you receive a hearing on your motion, petition, or application? ☐ Yes ☐ No
 - g. Result: _____
 - h. Date of result: _____ (month/day/year)
2. If you filed a second motion, petition, or application, give the same information:
- a. N a m e o f c o u r t : _____
 - b. Date of filing: _____ (month/day/year)
 - c. Case number: _____
 - d. Nature of the proceeding: _____
 - e. Grounds raised: _____

- f. Did you receive a hearing on your motion, petition, or application? ☐ Yes ☐ No
- g. Result: _____
- h. Date of result: _____ (month/day/year)

Attach a copy of all written decisions from other proceedings

D. APPEALS FROM OTHER PROCEEDINGS

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

If you did not appeal from the action on any motion, petition, or application, explain briefly why not: _____

Attach a copy of all written decisions on your appeal from other proceedings

E. PENDING PROCEEDINGS

Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court regarding the conviction or sentence you are challenging in this motion? ☐ Yes ☐ No

- a. Name and location of the court: _____
- b. Date of filing: _____ (month/day/year)
- c. Case number: _____
- d. Nature of the proceeding: _____
- e. Grounds raised: _____

F. REPRESENTATION

Who was the attorney who represented you in the following proceedings? Identify whether the attorney was appointed, retained, or whether you represented yourself pro se (without counsel).

	Name of Attorney	Appointed	Retained	Pro Se
1. Preliminary hearing:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Arraignment and plea:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Trial/guilty plea:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Sentencing:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Direct appeal:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. In any post-conviction proceeding:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. On appeal from any ruling against you in a post-conviction proceeding:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

G. OTHER SENTENCES

Do you have any future sentence to serve after you complete the sentence imposed by the judgment you are challenging in this motion? ☐ Yes ☐ No

If you do have another sentence to serve, answer the following:

1. Name and location of the court that imposed the other sentence: _____
2. Date of judgment of conviction: _____ (month/day/year)
3. Length and terms of sentence: _____
4. Have you filed or do you plan to file a motion, petition or application attacking the judgment which imposed the sentence to be served in the future? ☐ Yes ☐ No

CLAIMS FOR RELIEF

On the following pages, state concisely every ground for which you claim that your conviction or sentence violates the United States Constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and supporting facts.

CAUTION:

- **Single Motion:** If you fail to set forth all grounds in this Motion challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts setting forth specifically what your attorney did or failed to do. A rule of thumb to follow is – state who did exactly what to violate your federal constitutional rights at what time or place.
- **Timeliness of Motion:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255¹ does not bar your motion. _____

¹ The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255(f) provides in part that:

- (f) A 1-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 becomes 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 a motion by such governmental action;
 - (3) the date on which the right asserted was initially recognized by the Supreme Court, if that 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.

H. GROUND I

1. My federal conviction or sentence violates the following constitutional right, federal law or treaty:_____

2. **Supporting Facts:** (State as briefly as possible the FACTS supporting Ground I. State the facts clearly in your own words without citing cases or legal arguments).

I. GROUND II

1. My federal conviction or sentence violates the following constitutional right, federal law or treaty:_____

2. **Supporting Facts:** (State as briefly as possible the FACTS supporting Ground II. State the facts clearly in your own words without citing cases or legal arguments).

J. GROUND III

1. My federal conviction or sentence violates the following constitutional right, federal law or treaty:_____

2. **Supporting Facts:** (State as briefly as possible the FACTS supporting Ground III. State the facts clearly in your own words without citing cases or legal arguments).

K. GROUND IV

1. My federal conviction or sentence violates the following constitutional right, federal law or treaty:_____

2. **Supporting Facts:** (State as briefly as possible the FACTS supporting Ground IV. State the facts clearly in your own words without citing cases or legal arguments).

WHEREFORE, Movant prays that the court will grant Movant the relief to which he may be entitled in this proceeding.

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

Signed on _____

DATE

SIGNATURE OF MOVANT

(Name and title of paralegal, legal assistant,
or other person who helped prepare this petition)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable.

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
_____ DIVISION**

_____, Case No. _____
Plaintiff/Petitioner, (To be supplied by the Clerk)
vs.
_____,
Defendant/Respondent.

**MOTION TO PROCEED
WITHOUT PREPAYMENT OF FEES
AND DECLARATION**

I, _____, declare that I am the plaintiff/petitioner in the above-entitled case; that in support of my request to proceed without being required to prepay fees or costs under 28 U.S.C. § 1915 I declare that because of my poverty I am unable to pay the costs of said proceeding and that I believe I am entitled to the relief sought in the complaint/petition.

In support of this motion, I answer the following questions under penalty of perjury:

1. Are you currently 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: _____

- 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 form of self-employment? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. Rent payments, interest or dividends? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. Pensions, annuities or life insurance payments? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. Disability or workers compensation payments? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| e. Gifts or inheritances? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| f. Any other sources? | <input type="checkbox"/> Yes | <input type="checkbox"/> 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 have any cash or have money in a checking or savings account (include any funds in prison accounts)? ☐ Yes ☐ No

If the answer is "yes," state the total dollar amount: _____

4. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles, or any other thing of value (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 above information is true and correct.

DATE

SIGNATURE OF APPLICANT

NOTICE TO PRISONERS: A Prisoner seeking to proceed in forma pauperis shall also submit a Prisoner Trust Account Report certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified report for each account.

PRISONER TRUST ACCOUNT REPORT

(To be Completed by the Institution of Incarceration)

PRISONER'S FULL NAME: _____

PRISONER'S IDENTIFICATION NUMBER: _____

Under the Prison Litigation Reform Act, a prisoner filing a civil case or appeal in the United States courts under 28 U.S.C. § 1915, must obtain from the trust officer of each institution in which the prisoner was confined during the preceding six months, a certified copy of the prisoner's trust account statement for the six months prior to filing the case.

Please complete this form, attach supporting ledger sheets if any, and return these documents to the prisoner for mailing to the court.

CERTIFICATE OF AUTHORIZED OFFICER

I certify that I have reviewed the financial records of the above-named prisoner and the following information is correct:

CURRENT BALANCE OF PRISON ACCOUNT: _____

AVERAGE MONTHLY DEPOSITS (past six months): _____

AVERAGE MONTHLY BALANCE (past six months): _____

(Any frozen funds must not be included in the calculations.)

I certify that the above information accurately states the deposits and balances in the applicant's trust account for the period shown and that the attached ledger sheets are true copies of account records maintained in the ordinary course of business.

DATE

Authorized Officer of Institution (signature)