

**§ 2255 PETITIONER'S RESPONSE AS TO WHY THE MOTION
SHOULD NOT BE BARRED BY 28 U.S.C. § 2255**

1. A motion attacking sentence must be dismissed if the judge finds that it is untimely. Title 28 U.S.C. § 2255 establishes a one-year period of limitations for a motion attacking sentence by a person in federal custody. 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 petitioner 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. 28 U.S.C. § 2255.

2. Your motion has been found to be subject to dismissal pursuant to 28 U.S.C. § 2255 for the reasons set forth in the Decision and Order accompanying this form.

3. This form has been sent so that you may explain why your motion is not untimely as noted in the Decision and Order. You must fill out this form and return it to the Court by the deadline specified in the Decision and Order. Failure to do so will result in the automatic dismissal of your motion. You should be sure to include in the Response specific and detailed information addressing all of the Court's concerns; you should also include all pertinent dates when any collateral attacks were filed and when each was finally determined, if you filed any collateral attacks.

4. When you have fully completed this form, the original must be mailed to

Clerk of the United States District Court
304 U.S. Courthouse
68 Court Street
Buffalo, New York 14202.

5. This response must be legibly handwritten or typewritten and signed 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.

6. Additional pages are not permitted except with respect to the facts on which you rely in item 6 in the response. Do not cite case law unless there has been a change in the law since the sentence you are attacking was rendered.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

_____,
(Petitioner's name and inmate number)

Petitioner,

v.

____-CV-_____
____-CR-_____

UNITED STATES OF AMERICA,

Respondent.

**PETITIONER'S RESPONSE AS TO WHY THE MOTION
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1. Have you had the assistance of an attorney, other law-trained personnel, inmate law clerk or writ writer since the sentence your motion is attacking was entered?

_____ YES _____ NO

2. If you checked "yes" above, state as precisely as you can the dates during which you received such assistance, up to and including the present, describe the nature of the assistance and state the names of the people who assisted you.

4. If your motion is in jeopardy under 28 U.S.C. § 2255 because it appears to be untimely, explain why you feel that the motion is not untimely. Your explanation should rely on **facts**, not your opinions or conclusions.

5. Have you filed any collateral attacks on your conviction?

_____ YES _____ NO

6. If you have filed any collateral attacks, list each such attack, the date of its filing, the date of its determination, and the dates of filing and determination of any appeal. Be thorough and detailed; a collateral attack may toll the running of the statute and without complete information, you may not receive the full benefit of the tolling period.

Type of motion filed	Date collateral motion filed	Date collateral motion decided	Date appeal filed	Date appeal decided

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

Date: _____

_____ (Petitioner's Signature and Inmate Number)