

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

*Motion for Leave to File a Second or
Successive Habeas Corpus Petition
under 28 U.S.C. § 2244(b)
by a Prisoner in State Custody*

Name _____

Prisoner No. _____

Place of Confinement _____

Instructions
Read Carefully

- 1) This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.
- 2) All questions must be answered concisely in the proper space on the form.
- 3) The Judicial Conference of the United States has adopted the 8 1/2 x 11 inch paper size for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings must be on 8 1/2 x 11 inch paper. Otherwise we cannot accept them.
- 4) Additional pages are not permitted except with respect to additional grounds for relief and facts upon which you rely to support those grounds. Do not submit separate petitions, motions, briefs, arguments, etc., *except* in capital cases.
- 5) In accordance with the Antiterrorism and Effective Death Penalty Act of 1996, as codified at 28 U.S.C. § 2244(b), effective April 24, 1996, before leave to file a second or successive petition can be granted by the United States Court of Appeals, *it is the movant's burden* to make a *prima facie* showing that he or she satisfies either of the following two conditions found in 28 U.S.C. § 2244(b)(2).

(A) The applicant shows that the claim relies on a

new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; **or**

- (B)(i) The factual predicate for the claim could not have been discovered previously through the exercise of due diligence; **and**
- (ii) The facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

- 6) A claim which was presented in a prior application will not be considered.
- 7) When this motion is fully completed, **mail the original and three copies to:**

**United States Court of Appeals for the Tenth Circuit
Office of the Clerk
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257**

MOTION

1. (a) Name and location of the court which entered the judgment of conviction under attack

(b) Case number

2. Date of judgment of conviction_____ Guilty Plea_____ Jury Verdict_____

3. Length of sentence _____ Sentencing Judge_____

4. Nature of offense or offenses for which you were convicted _____

5. Did you appeal the conviction and sentence? **YES** () **NO** ()

6. If you appealed, name of court, result, date of result: _____

7. Have you ever filed a post-conviction petition, application, or motion for collateral relief in any **federal** court related to this conviction and sentence?

YES () **NO** () If “yes,” how many times? _____
(If more than one, complete 8 and 9 below as necessary.)

As to the first federal petition, application, or motion, give the following information:

(a) Name of court

(b) Case number

(c) Nature of proceeding

(d) Grounds raised (list **all** grounds, using extra pages if necessary)

(e) Did you receive an evidentiary hearing on your petition, application, or motion? **YES** () **NO** ()

(f) Result

(g) Date of result

8. As to a second federal petition, application, or motion give the same information:

(a) Name of court

(b) Case number

(c) Nature of proceeding

(d) Grounds raised (list **all** grounds, using extra pages if necessary) _____

(e) Did you receive an evidentiary hearing on your petition, application, or motion? **YES** () **NO** ()

(f) Result

(g) Date of result

9. As to a third federal petition, application, or motion, give the same information:

(a) Name of court

(b) Case number

(c) Nature of proceeding

(d) Grounds raised (list **all** grounds, using extra pages if necessary)

(e) Did you receive an evidentiary hearing on your petition, application, or motion? **YES** () **NO** ()

(f) Result _____

(g) Date of result _____

10. Did you appeal the result of any action taken on your **federal** petition, application, or motion? (Use extra pages to reflect additional petitions if necessary.)

(1) First Petition **NO** () **YES** () Appeal No. _____

(2) Second Petition **NO** () **YES** () Appeal No. _____

(3) Third Petition **NO** () **YES** () Appeal No. _____

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

12. State **concisely** every ground on which you **now** claim that you are being held unlawfully. Summarize **briefly** the **facts** supporting each ground.

A. Ground One:

Supporting **FACTS** (tell your story briefly without citing cases or law):

Was this claim raised in a prior federal petition, application, or motion?

YES () **NO** ()

Does this claim rely on a “new rule of law?” **YES** () **NO** ()

If “yes,” state the new rule of law (give case name and citation):

Does this claim rely on “newly discovered evidence?” **YES** () **NO** ()

If “yes,” briefly state the newly discovered evidence and why it was not previously available to you _____

B. Ground Two:

Supporting **FACTS** (tell your story briefly without citing cases or law): _____

Was this claim raised in a prior federal petition, application, or motion?

YES () **NO** ()

Does this claim rely on a “new rule of law?” **YES** () **NO** ()

If “yes,” state the new rule of law (give case name and citation): _____

Does this claim rely on “newly discovered evidence?” **YES** () **NO** ()

If “yes,” briefly state the newly discovered evidence and why it was not previously available to you _____

Additional grounds may be asserted on additional pages if necessary.

13. Do you have any motion or appeal now pending in any court as to the judgment now under attack? **YES** () **NO** ()

If “yes,” name of court _____ Case number _____

Nature of proceeding

Grounds raised

Wherefore, movant prays that the United States Court of Appeals for the Tenth Circuit enter an order authorizing the district court to consider movant's second or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Movant's Signature

I declare under Penalty of Perjury that my answers to all the questions in this motion are true and correct.

Executed on _____
(date)

Movant's Signature

PROOF OF SERVICE

The movant must send a copy of this motion and all attachments to the Attorney General of the state in which the movant is confined.

I certify that on _____, I mailed a copy of this Motion* and
(date)

all attachments to _____

at the following address: _____

Movant's Signature

*Pursuant to Fed. R. App. P. 25(a)(2)(c), "A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system on or before the last date for filing. Timely filing of a paper by an inmate confined in an institution may be shown by a notarized statement or declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid."

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

INSTRUCTIONS FOR FILING A MOTION UNDER 28 U.S.C. § 2244 FOR ORDER AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE PETITION UNDER 28 U.S.C. § 2254 OR MOTION UNDER U.S.C. § 2255.

Permission must be obtained from the court of appeals before a party may file a second or successive petition under 28 U.S.C. § 2254 or motion a under 28 U.S.C. § 2255 in the district court.

1. Use the attached form to file a motion under 28 U.S.C. § 2244 for order authorizing district court to consider second or successive petition under 28 U.S.C. § 2254 or motion under 28 U.S.C. § 2255.
2. Answer completely all the questions on the attached form. *Your failure to provide complete answers may result in the court of appeals denying your motion.*
3. **Attach to your motion copies of the following documents:**
 - A. The § 2254 petition or § 2255 motion you want to file in the district court if the court of appeals grants your motion.
 - B. All § 2254 petitions or § 2255 motions you previously filed in any federal court challenging the judgment of conviction or sentence you now want to challenge.
 - C. All court opinions and orders, final and interlocutory, disposing of the claims in your previous § 2254 petitions or § 2255 motions that challenged the judgment of conviction or sentence you now want to challenge.
 - D. All magistrate judges' reports and recommendations issued in all previous § 2254 petitions or § 2255 motions that challenged the judgment of conviction or sentence you now want to challenge.
4. You must sign the motion in three places at the end of pages 8 and 9. *Your failure to sign the motion or to complete the "proof of service" may result in the court of appeals denying your motion.*

5. You must file with the court of appeals the **original and three copies** of your motion and **all documents** attached to it. *Your failure to provide the original and three copies may result in the court of appeals denying your motion.*
6. There is **no fee** for filing a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive petition under 28 U.S.C. § 2254 or motion under 28 U.S.C. § 2255.
7. If your motion seeks relief under **28 U.S.C. § 2254**, you must serve a copy of the motion and all documents attached to it on the **Attorney General** of the State in which you are confined. *Your failure to serve the Attorney General may result in the court of appeals denying your motion.*
8. If your motion seeks relief under **28 U.S.C. § 2255**, you must serve a copy of the motion and all documents attached to it on the **United States Attorney** for the federal judicial district in which you were convicted. *Your failure to serve the United States Attorney may result in the court of appeals denying your motion.*

NOTE: THIS COURT WILL GRANT YOU AUTHORIZATION TO FILE YOUR § 2254 PETITION OR § 2255 MOTION IN THE DISTRICT COURT **ONLY** IF YOU SHOW THAT YOU COULD NOT HAVE PRESENTED YOUR PRESENT CLAIMS IN YOUR PREVIOUS § 2254 PETITION or § 2255 MOTION BECAUSE:

A. (For § **2255 motions** only) The claim relies on “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 [you] guilty” or,

B. (For § **2254 petitions** only) The claim relies on “a factual predicate that could not have been previously discovered through the exercise of due diligence” and “the facts underlying the claim, would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found [you] guilty of the underlying offense” or,

C. (For **both** § 2254 petitions and § 2255 motions) The claim relies on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court [of the United States], that was previously unavailable.”