

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

*Motion for Leave to File a Second or  
Successive Motion to Vacate, Set Aside  
or Correct Sentence under  
28 U.S.C. § 2255  
by a Prisoner in Federal 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 8½ 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 8½ 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. § 2255, effective April 24, 1996, before leave to file a second or successive motion 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 two following conditions found in 28 U.S.C. § 2255:

- 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.
- 6) 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) Location of the United States District 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 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 motion to vacate in any federal court which is 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 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 motion? **YES** ( ) **NO** ( )

\_\_\_\_\_

(f) Result \_\_\_\_\_

(g) Date of result \_\_\_\_\_

8. As to any second federal 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 motion? **YES** ( ) **NO** ( )

\_\_\_\_\_

(f) Result \_\_\_\_\_

(g) Date of result \_\_\_\_\_

\_\_\_\_\_

9. As to any third federal 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 motion? **YES** ( ) **NO** ( )

---

(f) Result

(g) Date of result

---

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

(1) First Motion **NO** ( ) **YES** ( ) Appeal No. \_\_\_\_\_  
(2) Second Motion **NO** ( ) **YES** ( ) Appeal No. \_\_\_\_\_  
(3) Third Motion **NO** ( ) **YES** ( ) Appeal No. \_\_\_\_\_

11. If you did **not** appeal from the adverse action on any 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 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 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 motion to vacate under 28 U.S.C. § 2255.

---

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 United States Attorney’s office in the district in which he or she was convicted.)

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 day 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.”