

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

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

Case Number \_\_\_\_\_

Name \_\_\_\_\_ Prisoner No. \_\_\_\_\_

Place of Confinement \_\_\_\_\_

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**Instructions**  
*Read Carefully*

- (1) Under 28 U.S.C. § 2244(b), a federal court of appeals may authorize the filing of a second or successive application seeking relief under 28 U.S.C. § 2254 only if *you make a prima facie showing* of at least one of these two things stated in § 2244(b)(2):
- § 2244(b)(2)(A): 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; **or**
  - § 2244(b)(2)(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.

- (2) A claim that was presented in a prior application cannot be authorized. § 2244(b)(1).
- (3) Use the attached form to file a motion for authorization under 28 U.S.C. § 2244 to obtain an order authorizing the district court to consider a second or successive application under 28 U.S.C. § 2254.
- (4) The motion for authorization 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 a basis for prosecution and conviction for perjury.
- (5) All questions on the form must be answered completely and concisely in the space provided. Attach additional pages if necessary to list all the grounds for relief and facts upon which you rely to support those grounds. **Failure to provide complete answers may result in denial of your motion for authorization.**
- (6) You must sign the motion in three places at the end of pages 11 and 12. **Failure to sign the motion for authorization or to complete the “proof of service” section of the form may result in denial of your motion.**
- (7) Attach copies of the following documents to your motion for authorization:
  - (a) The § 2254 application you want to file in the district court if the court of appeals grants your motion for authorization. If your case was transferred to the court of appeals from the district court, we will consider the filings transferred by the district court to be your proposed § 2254 application.
  - (b) All § 2254 applications you have filed in any federal court challenging the conviction or sentence you now want to challenge.
  - (c) All court opinions and orders (both final and non-final) disposing of the claims in your previous § 2254 applications that challenged the conviction or sentence you now want to challenge.
  - (d) All magistrate judges’ reports and recommendations issued in all previous § 2254 applications that challenged the conviction or sentence you now want to challenge.

- (8) All paper filings must be on 8½ x 11 inch paper or the court will not accept them.
- (9) There is no fee to file a motion for authorization under 28 U.S.C. § 2244 to file a second or successive application under 28 U.S.C. § 2254.
- (10) You must serve a copy of the motion for authorization and all documents attached to it on the **Attorney General** of the State in which you are confined. **Failure to serve the Attorney General may result in denial of your motion.**
- (11) When your motion for authorization is completed, **mail the original (with all documents attached) to the below address. Failure to provide the original may result in the court of appeals denying your motion for authorization.**

**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 for Authorization to File a Second or Successive  
Habeas Corpus Application Under 28 U.S.C. § 2244(b)  
by a Prisoner in State Custody**

1. (a) Name and location of the court that entered the judgment of conviction or sentence you wish to challenge:

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(b) Case number: \_\_\_\_\_

2. Date of judgment of conviction: \_\_\_\_\_

Guilty plea: \_\_\_\_\_ Jury verdict: \_\_\_\_\_

3. Length of sentence: \_\_\_\_\_ Sentencing Judge: \_\_\_\_\_

4. Nature of offense(s) for which you were convicted:

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

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

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7. Did you seek post-conviction relief, collateral review, or state habeas relief from this conviction and sentence **in a state court**?

**YES ( ) NO ( )**

8. If you sought such post-conviction, collateral, or state habeas relief, provide name of court, result, and date of result:

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

**YES** ( ) **NO** ( ) If "yes," how many times? \_\_\_\_\_

(If more than one, complete 11 and 12 below as necessary.)

10. For the first **federal** petition, application, or motion, give the following information. (You must attach copies of the petition, application, motion, and any dispositional court orders.)

(a) Name of court: \_\_\_\_\_

(b) Case number: \_\_\_\_\_

(c) Nature of proceeding: \_\_\_\_\_

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

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

11. For any second **federal** petition, application, or motion, give the following information. (You must attach copies of the petition, application, motion, and any dispositional court orders.)

(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: \_\_\_\_\_

12. For any third **federal** petition, application, or motion, give the following information. (You must attach copies of the petition, application, motion, and any dispositional court orders.)

(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: \_\_\_\_\_

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

(1) First Petition:            **NO** ( ) **YES** ( )            Appeal No. \_\_\_\_\_

(2) Second Petition:        **NO** ( ) **YES** ( )            Appeal No. \_\_\_\_\_

(3) Third Petition:         **NO** ( ) **YES** ( )            Appeal No. \_\_\_\_\_

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

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

Ground One: \_\_\_\_\_

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

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Have you raised this claim in a prior **federal** petition, application, or motion?

**YES ( ) NO ( )**

Does this claim rely on a “new rule of constitutional law”?

**YES ( ) NO ( )**

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

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Does this claim rely on facts that (1) “could not have been discovered previously” and (2) show that but for a constitutional error, you would not have been found guilty of the underlying offense?

**YES ( ) NO ( )**

If “yes,” briefly state the facts supporting your claim, and explain why you could not previously have discovered them, the claim(s) of constitutional error you are asserting, and why these facts show you were not guilty of the offense:

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Ground Two: \_\_\_\_\_

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

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Have you raised this claim 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):

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Does this claim rely on facts that (1) “could not have been previously discovered” and (2) show that but for a constitutional error, you would not have been found guilty of the underlying offense?

**YES** ( ) **NO** ( )

If “yes,” briefly state the facts supporting your claim, and explain why you could not previously have discovered them, the claim(s) of constitutional error you are asserting, and why these facts show you were not guilty of the offense:

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**Additional grounds may be asserted on additional pages if necessary.**

16. Do you have any motion or appeal now pending in any court relating to the conviction or sentence you now want to challenge? **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 the movant’s second or successive application 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 for authorization are true and correct.

Executed on \_\_\_\_\_  
(date)

\_\_\_\_\_  
Movant’s Signature

