

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

*Motion for Authorization 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*

Case Number _____

Name _____ Prisoner No. _____

Place of Confinement _____

Instructions
Read Carefully

- (1) A federal court of appeals may authorize the filing of a second or successive motion to vacate, set aside, or correct a sentence under 28 U.S.C. § 2255 only if you make a *prima facie* showing that the motion you want to file relies on at least one of these two things in § 2255:
 - 1) § 2255(h)(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) § 2255(h)(2): 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.
- (2) Use the attached form to file a motion for authorization under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive motion under 28 U.S.C. § 2255.

- (3) 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 the basis for prosecution and conviction for perjury.
- (4) 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.**
- (5) 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.**
- (6) Attach copies of the following documents to your motion for authorization:
 - (a) The § 2255 motion 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 from the district court to be your proposed § 2255 motion.
 - (b) All § 2255 motions 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 § 2255 motions that challenged the conviction or sentence you now want to challenge.
 - (d) All magistrate judges’ reports and recommendations issued in all previous § 2255 motions that challenged the conviction or sentence you now want to challenge.
- (7) All paper filings must be on 8½ x 11 inch paper or the court will not accept them.

- (8) There is no fee to file a motion for authorization under 28 U.S.C. § 2244 to file a second or successive motion to vacate, set aside, or correct a sentence under 28 U.S.C. § 2255.
- (9) You must serve a copy of the motion for authorization and all documents attached to it on the **United States Attorney** for the federal judicial district in which you were convicted. **Failure to serve the United States Attorney may result in denial of your motion.**
- (10) 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
Motion to Vacate, Set Aside, or Correct Sentence under
28 U.S.C. § 2255
by a Prisoner in Federal Custody**

1. (a) Location of the United States District Court which entered the judgment of conviction or sentence you wish to challenge:

(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:

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, set aside, or correct a sentence under 28 U.S.C. § 2255 in any federal court related to this conviction and sentence?

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

(If more than once, complete 9 and 10 below as necessary.)

8. For the first federal motion, give the following information. (You must attach a copy of the motion and any dispositional 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 motion?

YES () **NO** ()

(f) Result: _____

(g) Date of result: _____

9. For any second federal motion, give the following information. (You must attach a copy of the motion and any dispositional 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 motion?

YES () NO ()

(f) Result: _____

(g) Date of result: _____

10. For any third federal motion, give the following information. (You must attach a copy of the motion and any dispositional 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 motion?

YES () **NO** ()

(f) Result: _____

(g) Date of result: _____

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

(1) First Motion: **NO** () **YES** () Appeal No. _____

(2) Second Motion: **NO** () **YES** () Appeal No. _____

(3) Third Motion: **NO** () **YES** () Appeal No. _____

12. If you did **not** appeal from the adverse action on any motion, explain briefly why you did not.

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

Ground One: _____

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

Have you raised this claim in a prior 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):

Does this claim rely on “newly discovered evidence”?

YES () **NO ()**

If “yes,” briefly describe the newly discovered evidence and explain why you could not have previously discovered it:

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 constitutional 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 describe the newly discovered evidence and explain why you could not have previously discovered it:

Additional grounds may be asserted on additional pages if necessary.

14. 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 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 for authorization are true and correct.

Executed on _____
(date)

Movant’s Signature

PROOF OF SERVICE

The movant must send a copy of this motion for authorization 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 (or placed in the prison’s
(date)

legal mail system) a copy of this Motion for Authorization and all attachments to:

at the following address: _____

Movant’s Signature