

**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) 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 authorization 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 [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 must be answered completely and concisely in the proper space on the form. Attach additional pages if necessary to list all the grounds for relief and facts upon which you rely to support those grounds. **Your failure to provide complete answers may result in the court of appeals denying your motion for authorization.**
- (5) You must sign the motion in three places at the end of pages 11 and 12. **Your failure to sign the motion for authorization or to complete the “proof of service” may result in the court of appeals denying your motion.**
- (6) Attach to your motion for authorization copies of the following documents:
 - (a) The § 2255 motion you want to file in the district court if the court of appeals grants your motion for authorization, unless this matter was transferred to the Tenth Circuit from the district court. If the case was transferred from the district court, we will consider the transferred filings from the district court to be your proposed § 2255 motion.
 - (b) All § 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 § 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 § 2255 motions that challenged the judgment of conviction or sentence you now want to challenge.
- (7) 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.

- (8) There is no fee for filing 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.
- (9) If your motion for authorization seeks relief under 28 U.S.C. § 2255, 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. **Your failure to serve the United States Attorney may result in the court of appeals denying your motion.**
- (10) When this motion for authorization is fully completed, **mail the original to the below address. Your failure to provide an 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 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, set aside or correct sentence under 28 U.S.C. § 2255 in any federal court which is related to this conviction and sentence?

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

(If more than once, complete 8 and 9 below as necessary.)

As to the first federal motion, give the following information. (You must attach a copy of the motion and any dispositional orders to this motion for authorization.)

(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 following information. (You must attach a copy of the motion and any dispositional orders to this motion for authorization.)

(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 following information. (You must attach a copy of the motion and any dispositional orders to this motion for authorization.)

(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 motions 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.

Ground One: _____

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

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 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 a copy of this Motion* for
(date)

Authorization and all attachments to: _____

at the following address: _____

Movant’s Signature

* Pursuant to Fed. R. App. P. 25(a)(2)(A)(iii), “If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically by an inmate is timely if it is deposited in the institution’s internal mail system on or before the last day for filing and . . . [1] it is accompanied by: a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or [2] the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii).