

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

*Motion for Authorization to File a Second or
Successive Habeas Corpus Petition
under 28 U.S.C. § 2244(b)
by a Prisoner in State 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. § 2244(b), effective April 24, 1996, before authorization 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 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 [of the United States], 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.

- (2) A claim which was presented in a prior application will not be considered.
- (3) 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 petition 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 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.**
- (6) 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.**
- (7) Attach to your motion for authorization copies of the following documents:
 - (a) The § 2254 petition 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 § 2254 petition.
 - (b) All § 2254 petitions 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 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 that challenged the judgment of conviction or sentence you now want to challenge.

- (8) 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.
- (9) 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 petition under 28 U.S.C. § 2254.
- (10) If your motion for authorization seeks relief under 28 U.S.C. § 2254, 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. **Your failure to serve the Attorney General may result in the court of appeals denying your motion.**
- (11) When this motion for authorization is fully completed, **mail the original (with all documents attached) 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
Habeas Corpus Petition Under 28 U.S.C. § 2244(b)
by a Prisoner in State Custody**

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. (You must attach copies of the petition, application, 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 petition, application, or motion? **YES** () **NO** ()

(f) Result: _____

(g) Date of result: _____

8. As to a second federal petition, application, or motion, give the following information. (You must attach copies of the petition, application, 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 petition, application, or motion? **YES** () **NO** ()

(f) Result: _____

(g) Date of result: _____

9. As to a third federal petition, application, or motion, give the following information. (You must attach copies of the petition, application, 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 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, 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. _____

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.

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 and 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: _____

* * * * *

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 and 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 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 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 Attorney General of the State in which the movant is confined.

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)(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."