

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

MOTION FOR AN ORDER AUTHORIZING THE DISTRICT COURT
TO CONSIDER A SUCCESSIVE OR SECOND MOTION TO
VACATE, SET ASIDE OR CORRECT SENTENCE
PURSUANT to 28 U.S.C. §§ 2244 (b), 2255(h)
BY A PRISONER IN FEDERAL CUSTODY

NAME:

PLACE OF CONFINEMENT:

PRISONER NUMBER:

Instructions—Read Carefully

- (1) This motion must be legibly handwritten or typewritten and signed by the applicant under penalty of perjury. All documents must be on 8½ x 11 inch paper; the Court will not accept other paper sizes. Any false statements 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) Movant seeking leave to file a second or successive petition is required to use this form.
- (4) Movant may use additional pages only to explain additional grounds for relief and facts that support those grounds. Separate petitions, motions, briefs, arguments, etc. should not be submitted.
- (5) In capital cases only, the use of this form is optional, and separate petitions, motions, briefs, arguments may be submitted.

- (6) Movant must show in the motion to the Court of Appeals that the claim to be presented in a second or successive habeas corpus application is based upon either
- (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 fact finder 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.
- (7) Send the completed motion, the original and two copies, to:

**Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Court House
40 Foley Square
New York, New York 10007**

MOTION

1. (a) State and division of the United States District Court which entered the judgment of conviction under attack

(b) Case number _____

2. Date of judgment of conviction _____

3. Length of sentence _____ Sentencing Judge _____

4. Nature of offense or offenses for which you were convicted: _____

5. Have you taken a direct appeal relating to this conviction and sentence in the federal court?

Yes () No () If "yes", please note below:

(a) Name of court _____

(b) Case number _____

(c) Grounds raised (list all grounds; use extra pages if necessary) _____

(d) Result _____

(e) Date of result _____

6. Related to this conviction and sentence, have you ever filed a motion to vacate in any federal court?

Yes () No ()

If "yes", how many times? _____ (if more than one, complete 7 and 8 below as necessary)

(a) Name of court _____

(b) Case number _____

(c) Nature of proceeding _____

(d) Grounds raised (list all grounds; use extra pages if necessary) _____

(e) Did you receive an evidentiary hearing on your motion? Yes () No ()
(f) Result _____

(g) Date of result _____

7. 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; use 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 third federal motion, give the same information:

(a) Name of court _____

(b) Case number _____

(c) Nature of proceeding _____

(d) Grounds raised (list all grounds; use extra pages if necessary) _____

(e) Did you receive an evidentiary hearing on your motion? Yes () No ()

(f) Result _____

(g) Date of result _____

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

(1) First motion No () Yes () Appeal No. _____

(2) Second motion No () Yes () Appeal No. _____

(3) Third motion No () Yes () Appeal No. _____

10. If you did not appeal from the adverse action on any motion, explain briefly why you did not: _____

11. 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 when it was discovered, 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 when it was discovered, and why it was not previously available to you.

[Additional grounds may be asserted on additional pages if necessary]

12. 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 _____

Wherefore, movant prays that the United States Court of Appeals for the Second Circuit grant 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

Movant must send a copy of this motion and all attachments to the United States Attorney's office in the district in which you were convicted.

I certify that on _____, I mailed a copy of this motion*
[date]

and all attachments to _____ at the following address:

Movant's Signature

* Pursuant to FRAP 25(a), " Papers filed by an inmate confined in an institution are timely filed if deposited in the institution's internal mail system on or before the last day of filing. Timely filing of papers 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."