

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

MOTION FOR AN ORDER AUTHORIZING THE DISTRICT COURT
TO CONSIDER A SUCCESSIVE OR SECOND HABEAS CORPUS APPLICATION
PURSUANT to 28 U.S.C. §§ 2244 (b), 2254
BY A PRISONER IN STATE CUSTODY

NAME:

PLACE OF CONFINEMENT:	PRISONER NUMBER:
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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. In capital cases only, the use of this form is optional.
- (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 was not presented in a prior application and that
- (1) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
 - (2)
 - (a) the facts underlying the claim could not have been discovered previously through the exercise of due diligence; and
 - (b) those facts, 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 fact finder would have found the applicant guilty of the underlying offense.
28 U.S.C. § 2244 (b)
- (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) Name and location of 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 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 6 and 7 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 petition, application, or motion?
Yes () No ()
(f) Result _____

(g) Date of result _____
6. As to any second federal petition, application, or 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 petition, application, or motion?

Yes () No ()

(f) Result _____

(g) Date of result _____

7. As to any third federal petition, application, or 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 petition, application, or motion?

Yes () No ()

(f) Result _____

(g) Date of result _____

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

(1) First petition, etc. No () Yes () Appeal No. _____

(2) Second petition, etc. No () Yes () Appeal No. _____

(3) Third petition, etc. No () Yes () Appeal No. _____

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

10. 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 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):

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.

B. 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 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 extra pages if necessary]

11. 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 Applicant' 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 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 attorney general of the state in which applicant was 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."