

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

APPLICATION FOR LEAVE TO FILE A SECOND OR  
SUCCESSIVE MOTION TO VACATE, SET ASIDE  
OR CORRECT SENTENCE  
28 U.S.C. § 2255  
BY A PRISONER IN FEDERAL CUSTODY

NAME:

PLACE OF CONFINEMENT:

PRISONER NUMBER:

**INSTRUCTIONS--READ CAREFULLY**

- (1) This application must be legibly handwritten or typewritten and signed by the applicant under penalty of perjury. Any false statement 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) 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.
- (4) All applicants seeking leave to file a second or successive petition are required to use this form, except in capital cases. In capital cases only, the use of this form is optional.
- (5) Additional pages are not permitted except with respect to additional grounds for relief and facts which you rely upon to support those grounds. Do not submit separate petitions, motions, briefs, arguments, etc., except in capital cases.
- (6) 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 leave to file a second or successive

motion can be granted by the United States Court of Appeals, it is the applicant's burden to make a prima facie showing that he satisfies either of the two conditions stated below.

A second or successive motion must be certified as provided in [28 U.S.C.] section 2255 by a panel of the appropriate court of appeals to contain—

(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, that was previously unavailable.

(7) When this application is fully completed, the original and four copies must be mailed to:

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

**APPLICATION**

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 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 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:

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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):

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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):

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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.

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B. Ground two: \_\_\_\_\_

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

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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):

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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.

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**[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, applicant 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 Motion to Vacate under 28 U.S.C. § 2255.

\_\_\_\_\_  
Applicant's Signature

I declare under Penalty of Perjury that my answers to all the questions in this Application are true and correct.

Executed on \_\_\_\_\_  
[date]

\_\_\_\_\_  
Applicant's Signature

**PROOF OF SERVICE**

Applicant must send a copy of this application 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 Application\* and  
[date]  
all attachments to \_\_\_\_\_

at the following address:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
\* Pursuant to Fed.R.App.P. 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."