

# United States Court of Appeals for the Sixth Circuit

## MOTION UNDER 28 U.S.C. § 2244 FOR LEAVE TO FILE A SECOND OR SUCCESSIVE MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE UNDER 28 U.S.C. § 2255 BY A PERSON IN FEDERAL CUSTODY

Case Number (to be provided by the court): _____
Name: _____
Prisoner Number: _____
Place of Confinement: _____

### Instructions

- (1) **Purpose.** Use the attached form to file a motion 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.\*

\* If the district court transferred your motion to this court and you do not feel that you should be required to obtain prior authorization, you must still complete this form. You may, however, attach an additional statement explaining to the court why you oppose the transfer.

- (2) **Form.** You must answer all questions completely and concisely in the proper space on the form. Attach additional pages if necessary to list all of your claims and the facts upon which you rely to support those claims. Your failure to provide complete answers may result in the court of appeals denying your motion for authorization.
- (3) **Standard of Review.** In accordance with the Antiterrorism and Effective Death Penalty Act of 1996, as codified at 28 U.S.C. § 2255, before authorization to file a second or successive motion can be granted by the United States Court of Appeals, the movant must make a prima facie showing that he or she satisfies either of the following conditions found in 28 U.S.C. § 2255(h):

- (1) The claim contains 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) The claim contains a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court, that was previously unavailable.

Pursuant to 28 U.S.C. § 2244(b)(1), the court will not consider claims that were presented in a prior 28 U.S.C. § 2255 motion.

- (4) **Attestation.** You must sign the motion at the end of page 9. Failure to sign the motion for authorization may result in the court of appeals denying your motion.
- (5) **Copies.** If they are reasonably available, you must file with your motion the magistrate judge's report and recommendation and the district court's opinion from your prior 28 U.S.C. § 2255 proceedings.
- (6) **No Filing Fee.** There is no fee for filing a motion 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.
- (7) **Filing.** When this motion for authorization is fully completed, **mail the original (with all documents attached) to the below address.** The court of appeals will serve your motion and attachments on the appropriate United States Attorney using the electronic case filing (ECF) system.

Sixth Circuit Court of Appeals  
Clerk's Office  
Room 540, Potter Stewart U.S. Courthouse  
100 E. Fifth Street  
Cincinnati, OH 45202

**MOTION UNDER 28 U.S.C. § 2244 FOR LEAVE TO FILE A SECOND OR SUCCESSIVE  
MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE UNDER  
28 U.S.C. § 2255 BY A PERSON IN FEDERAL CUSTODY**

**A. CONVICTION AND DIRECT APPEAL PROCEEDINGS**

1. (a) Name and location of the United States District Court that entered the judgment of conviction under attack:

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(b) Case number: \_\_\_\_\_

2. Date of judgment of conviction: \_\_\_\_\_

3. Length of sentence: \_\_\_\_\_

4. Offense or offenses for which you were convicted:

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5. Did you appeal the conviction and sentence?                      **YES**                      **NO**

6. If you appealed, give the name of court, the result, and the date of the result:

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**B. PRIOR COLLATERAL PROCEEDINGS**

7. Have you ever filed a motion to vacate, set aside, or correct sentence related to this conviction and sentence?

**YES**                      **NO**                      If "yes," how many? \_\_\_\_\_

If more than one, attach a separate page providing the information required in items 7(a) through 7(g) for the additional petitions, applications, or motions.

As to the **first** motion, give the following information:

(a) District court: \_\_\_\_\_

(b) Case number: \_\_\_\_\_

(c) Claims raised (list **all** claims, using extra pages if necessary):

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

(d) Result and date of result: \_\_\_\_\_

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

(e) Did you appeal?            **YES**            **NO**

(f) If you appealed, give the result and the date of the result:

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

**C. PROPOSED CLAIMS IN CURRENT MOTION FOR AUTHORIZATION**

8. State concisely the claim (or claims) that you **now** wish to raise. Summarize briefly the facts supporting each ground.

**Claim 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 “newly discovered evidence”?            **YES**            **NO**

If “yes,” state the new evidence and why it was not previously available:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Does this claim rely on a “new rule of constitutional law”?    **YES**                    **NO**

If “yes,” state the new rule of law (give case name and citation):

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**Claim Two:** \_\_\_\_\_

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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 “newly discovered evidence”?    **YES**                    **NO**

If “yes,” briefly state the new evidence and why it was not previously available:

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Does this claim rely on a “new rule of constitutional law”?      **YES**      **NO**

If “yes,” state the new rule of law (give case name and citation):

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**Claim Three:** \_\_\_\_\_

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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 “newly discovered evidence”?      **YES**      **NO**

If “yes,” briefly state the new evidence and why it was not previously available:

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Does this claim rely on a “new rule of constitutional law”?      **YES**      **NO**

If “yes,” briefly state the new rule of law (give case name and citation):

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**Additional grounds may be asserted on additional pages if necessary.**

9. Do you have any motion or appeal now pending in any federal court as to the judgment now under attack?

**YES**      **NO**

If “yes,” name of court and nature of proceeding: \_\_\_\_\_

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Case number: \_\_\_\_\_

Wherefore, movant asks the United States Court of Appeals for the Sixth Circuit to grant an order authorizing the district court to consider the movant's second or successive motion to vacate, correct, or set aside sentence under 28 U.S.C. § 2255. 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