UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

APPLICATION FOR LEAVE TO FILE A SECOND OR
SUCCESSIVE HABEAS CORPUS PETITION
28 U.S.C. § 2244(b)
BY A PRISONER IN STATE 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 8 ½ 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 8 ½ 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 (death penalty) 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. You may submit separate petitions, motions, briefs, arguments, etc., that support your application.

(6) A claim presented in a second or successive habeas corpus application under 28 U.S.C. § 2254 that was presented in a prior application shall be

dismissed.

(7) In accordance with the "Anti-Terrorism and Effective Death Penalty Act of 1996," as codified at 28 U.S.C. § 2244(b), effective April 24, 1996, before leave to file a second or successive petition can be granted by the United States Court of Appeals, <u>it is the applicant's burden</u> to make a <u>prima facie</u> showing that he satisfies either of the two conditions stated below and in 28 U.S.C. § 2244(b).

> [A] claim presented in a second or successive habeas corpus application under [28 U.S.C.] section 2254 that was not presented in a prior application shall be dismissed unless--
>
> > (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, 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.

(8) When this application is fully completed, the original and four copies, *with proof of service on all parties through counsel*, must be mailed to:

Clerk of Court
United States Court of Appeals for the First Circuit
John Joseph Moakley Courthouse
1 Courthouse Way, Suite #2500
Boston, Massachusetts 02210

APPLICATION

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 <u>all</u> 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 additional 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, applicant prays that the United States Court of Appeals for the First 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.

_____
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 attorney general of the state in which applicant was convicted.

I certify that on _____, I mailed a copy of this Application and all
[date]

attachments to _____

at the following address:

_____

_____

_____
Applicant's Signature

_____

Pursuant to Fed.R.App.P. 25(c), "If an inmate confined in an institution files a notice of appeal . . ., the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day of filing. Timely filing 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."

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