

**UNITED STATES COURT OF APPEALS
FOR THE FIRST 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 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) In accordance with the "Anti-Terrorism and Effective Death Penalty Act of

1996," as codified at 28 U.S.C. § 2255(b), 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, *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**

(Rev. 11/02)

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. 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: _____
6. 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: _____

7. 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: _____

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

(1) First motion	No () Yes ()	Appeal No. _____
(2) Second motion	No () Yes ()	Appeal No. _____
(3) Third motion	No () Yes ()	Appeal No. _____

9. If you did not appeal from the adverse action on any 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 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 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 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 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."