

United States Court of Appeals for the Third Circuit

INSTRUCTIONS FOR FILING MOTION UNDER 28 U.S.C. § 2244 FOR ORDER AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE APPLICATION FOR RELIEF UNDER 28 U.S.C. §§ 2254 OR 2255

Permission must be obtained from the Court of Appeals before a party can file a second or successive habeas corpus petition under 28 U.S.C. § 2254 or motion to vacate under 28 U.S.C. § 2255.

1. Use the attached form to file a **MOTION UNDER 28 U.S.C. § 2244 FOR ORDER AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE APPLICATION FOR RELIEF UNDER 28 U.S.C. § 2254 OR § 2255**.

2. Answer completely all the questions on the attached form. Your failure to provide complete answers may result in the Court denying your motion.

3. **Attach to your motion copies of the following documents:**

A. The § 2254 or § 2255 application you want to file in the district court if the Court of Appeals grants your motion.

B. All § 2254 or § 2255 applications you previously filed in any **federal** court challenging the judgment of conviction or sentence you now want to challenge.

C. All court opinions and orders, final and interlocutory, disposing of the claims in your previous § 2254 or § 2255 applications that challenged the judgment of conviction or sentence you now want to challenge.

D. All magistrate judges' reports and recommendations issued in all previous § 2254 or § 2255 applications that challenged the judgment of conviction or sentence you now want to challenge.

4. You must **sign the motion in two places** at the end of page 5. Your failure to sign the motion or to complete the Proof of Service on page 7 may result in the Court denying your motion.

5. You must file with the Court of Appeals the **original motion and all documents attached to it**. Please keep a copy for your records.

6. If your motion seeks relief under 28 U.S.C. § 2254, you must serve a copy of the motion and all documents attached to it on the attorney general of the state in which you are confined or the district attorney for the county in which you were convicted. Your failure to serve the attorney general may result in the Court denying your motion.

7. If your motion seeks relief under 28 U.S.C. § 2255, you must serve a copy of the motion and all documents attached to it on the United States Attorney for the federal judicial district in which you were convicted. Your failure to serve the United States Attorney may result in the Court denying your motion.

**MOTION UNDER 28 U.S.C. § 2244 FOR ORDER AUTHORIZING DISTRICT COURT TO CONSIDER
SECOND OR SUCCESSIVE APPLICATION FOR RELIEF UNDER 28 U.S.C. § 2254 OR § 2255**

United States Court of Appeals for the Third Circuit

Name of Movant	Prisoner Number	Case Number (leave blank)
Place of Confinement		
IN RE: _____, MOVANT		

1. Name and location of court which entered the judgment of conviction from which relief is sought: _____

2. Parties' Names: _____ vs. _____

3. Docket Number: _____ 4. Date Filed: _____ 5. Date of

judgment of conviction: _____ 6. Length of sentence: _____ 7. Nature of offense(s)

involved (all counts): _____

8. What was your plea? (Check one) Not Guilty Guilty Nolo Contendere

9. If you pleaded not guilty, what kind of trial did you have? (Check one) Jury Judge only

10. Did you testify at your trial? (Check one) Yes No

11. Did you appeal from the judgment of conviction? (Check one) Yes No

12. If you did appeal, what was the

Name of court appealed to: _____

Parties' names on appeal: _____ vs. _____

Docket number of appeal: _____ Date of decision: _____

Result of appeal: _____

13. Other than a direct appeal from the judgment of conviction and sentence, have you filed any other petitions, applications for relief, or other motions regarding this judgment in any federal court? Yes No

14. If you answered "yes" to question 13, answer the following questions:

A. FIRST PETITION, APPLICATION, OR MOTION

(1) In what court did you file the petition, application, or motion? _____

(2) What were the parties' names? _____ vs. _____

(3) What was the docket number of the case? _____

(4) What relief did you seek? _____

(5) What grounds for relief did you state in your petition, application, or motion? _____

(6) Did the court hold an evidentiary hearing on your petition, application or motion? Yes No

(7) What was the result? Relief granted Relief denied on the merits
 Relief denied for failure to exhaust Relief denied for procedural default

(8) Date of court's decision: _____

B. SECOND PETITION, APPLICATION, OR MOTION

(1) In what court did you file the petition, application, or motion? _____ (2) What were the parties' names? _____ vs. _____ (3) What was the docket number of the case? _____ (4) What relief did you seek? _____

C. THIRD AND SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS

For any third or subsequent petition, application, or motion, attach a separate page providing the information required in items (1) through (8) above for first and second petitions, applications, or motions.

D. PRIOR APPELLATE REVIEW(S)

Did you appeal any order regarding your petitions, applications, or motions to a federal court of appeals having jurisdiction over your case? If so, list the docket numbers and dates of final disposition for all subsequent petitions, applications, or motions filed in a federal court of appeals.

First petition, application, or motion	<input type="checkbox"/> Yes	Appeal No. _____	Date _____	<input type="checkbox"/> No
Second petition, application, or motion	<input type="checkbox"/> Yes	Appeal No. _____	Date _____	<input type="checkbox"/> No
Subsequent petitions, applications or motions	<input type="checkbox"/> Yes	Appeal No. _____	Date _____	<input type="checkbox"/> No
Subsequent petitions, applications or motions	<input type="checkbox"/> Yes	Appeal No. _____	Date _____	<input type="checkbox"/> No
Subsequent petitions, applications or motions	<input type="checkbox"/> Yes	Appeal No. _____	Date _____	<input type="checkbox"/> No
Subsequent petitions, applications or motions	<input type="checkbox"/> Yes	Appeal No. _____	Date _____	<input type="checkbox"/> No

If you did not appeal from the denial of relief on any of your prior petitions, applications, or motions, state which denials you did not appeal and explain why you did not.

15. Did you present any of the claims in this application in any previous petition, application, or motion for relief under 28 U.S.C. § 2254 or § 2255? (Check one) Yes No

16. If your answer to question 15 is "yes," give the docket number(s) and court(s) in which such claims were raised and state the basis on which relief was denied.

17. If your answer to question

15 is "No," answer the following questions:

A. State the claims which you did not present in any previous petition, application, or motion for relief under 28 U.S.C. § 2254 or § 2255: _____

B. State the reasons why you did not present the above claims in any previous petition, application or motion for relief under 28 U.S.C. § 2254 or § 2255:* _____

***NOTE: This Court will grant you authority to file in the district court only if you show that you could not have presented your present claims in your previous § 2254 or § 2255 application because . . .**

A. (For § 2255 motions only) the claims involve “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 [you] guilty”; or,

B. (For § 2254 petitions only) “the factual predicate for the claim could not have been discovered previously through the exercise of due diligence” and “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 [you] guilty of the offense”; or,

C. (For both § 2254 and § 2255 applicants) the claims involve “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court [of the United States], that was previously unavailable.”

State how you meet the above requirements:

If it has been more than one year since either (1) your conviction became final; (2) you discovered the new evidence on which you rely; or (3) the United States Supreme Court case on which you rely was decided, state why you could not file your petition earlier:

Movant prays that the United States Court of Appeals for the Third Circuit grant an Order Authorizing the District Court to Consider Movant’s Second or Successive Application for Relief Under 28 U.S.C. §§ 2254 or 2255.

Movant’s Signature

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

Executed on _____
[date]

Movant’s Signature

PROOF OF SERVICE

A copy of this motion and all attachments must be sent to the state attorney general (§ 2254 cases) or the United States Attorney for the United States judicial district in which you were convicted (§ 2255 cases).

**I certify that on _____ I mailed a copy of this motion and all attachments
[date]**

to _____ at the following address:

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Movant's Signature