UNITED STATES COURT OF APPEALS
ELEVENTH 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 _____ Prisoner Number _____

Institution _____

Street Address _____

City _____ State _____ Zip Code _____

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 applicants seeking leave to file a second or successive motion to vacate should use this form. In capital cases, the use of this form is optional.

(3) All questions must be answered concisely in the proper space on the form.

(4) Additional pages are not permitted except with respect to identifying additional grounds for relief and facts on which you rely to support those grounds. To raise any additional claims, use the "Additional Claim" pages attached at the end of this application, which may be copied as necessary. DO NOT SUBMIT SEPARATE PETITIONS, MOTIONS, BRIEFS, ARGUMENTS, ETC., EXCEPT IN CAPITAL CASES.

(5) 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 satisfies either of the two conditions in 28 U.S.C. § 2255(h), stated below.

> A second or successive motion must be certified as provided in [28 U.S.C.] section 2244 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.

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

Clerk of Court
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

APPLICATION

1. (a) Identify the United States District Court which entered the judgment of conviction being challenged:

_____

_____

(b) Case number _____

2. Date of judgment of conviction _____

3. Length of sentence _____ Sentencing Judge _____

4. List all offenses for which you were convicted in the case identified above:

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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 _____

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(d) Grounds raised (list <u>all</u> grounds; use extra pages if necessary)_____

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(e) Did you receive an evidentiary hearing on your motion? Yes ☐ No ☐

(f) Result _____

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(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 _____

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(d) Grounds raised (list all grounds; use extra pages if necessary)_____

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(e) Did you receive an evidentiary hearing on your motion? Yes ☐ No ☐

(f) Result _____

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(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 _____

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(d) Grounds raised (list all grounds; use extra pages if necessary)_____

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(e) Did you receive an evidentiary hearing on your motion? Yes ☐ No ☐

(f) Result _____

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(g) Date of result _____

8. Did you appeal the result of any action taken on your federal motion? (Use extra pages to reflect additional motions 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:

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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: _____

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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 federal petition, motion, or application for leave to file a second or successive motion to vacate? Yes No

Does this claim rely on a "new rule of constitutional law"? Yes No

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

Does this claim rely on "newly discovered evidence"? Yes ☐ No ☐

If "yes," briefly state the newly discovered evidence, why it was not previously available to you, and how it establishes by clear and convincing evidence that no reasonable factfinder would have found you guilty of the offense.

B. Ground two:

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

Was this claim raised in a prior federal petition, motion, or application for leave to file a second or successive motion to vacate? Yes No

Does this claim rely on a "new rule of constitutional law"? Yes No

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

Does this claim rely on "newly discovered evidence"? Yes No

If "yes," briefly state the newly discovered evidence, why it was not previously available to you, and how it establishes by clear and convincing evidence that no reasonable factfinder would have found you guilty of the offense.

C. Ground three: _____

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

Was this claim raised in a prior federal petition, motion, or application for leave to file a second or successive motion to vacate? Yes ☐ No ☐

Does this claim rely on a "new rule of constitutional law"? Yes ☐ No ☐

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

Does this claim rely on "newly discovered evidence"? Yes ☐ No ☐

If "yes," briefly state the newly discovered evidence, why it was not previously available to you, and how it establishes by clear and convincing evidence that no reasonable factfinder would have found you guilty of the offense.

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☐ **CHECK HERE IF ADDITIONAL CLAIM PAGES ARE ATTACHED.**

11. Do you have any motion, petition, application, or appeal now pending in any court as to the judgment now being challenged? Yes ☐ No ☐

If "yes," name of court _____ Case number _____

Wherefore, applicant prays that the United States Court of Appeals for the Eleventh 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)(2)(A)(iii), "If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 25(a)(2)(A)(iii). A paper not filed electronically by an inmate is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

- it is accompanied by: a declaration in compliance with 28 U.S.C. § 1746—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or evidence (such as a postmark or date stamp) showing that the paper was so deposited and that postage was prepaid; or
- the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 25(a)(2)(A)(iii)."

ADDITIONAL CLAIM

Ground _____:

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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 federal petition, motion, or application for leave to file a second or successive motion to vacate? Yes ☐ No ☐

Does this claim rely on a "new rule of constitutional law"? Yes ☐ No ☐

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

_____

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 (Continue to Page 2 to complete this claim)

Does this claim rely on "newly discovered evidence"? Yes ☐ No ☐

If "yes," briefly state the newly discovered evidence, why it was not previously available to you, and how it establishes by clear and convincing evidence that no reasonable factfinder would have found you guilty of the offense.