

111TH CONGRESS
1ST SESSION

H. R. 3320

To amend title 28, United States Code, to provide an exception to the requirement of motion to the court of appeals before filing certain second or subsequent petitions for habeas corpus, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2009

Mr. MOORE of Kansas (for himself and Mr. PAYNE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide an exception to the requirement of motion to the court of appeals before filing certain second or subsequent petitions for habeas corpus, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for the Wrong-
5 fully Accused Act”.

1 **SEC. 2. EXCEPTION TO REQUIREMENT OF MOTION TO**
2 **COURT OF APPEALS BEFORE FILING CER-**
3 **TAIN SECOND OR SUBSEQUENT PETITIONS**
4 **FOR HABEAS CORPUS.**

5 Section 2244(b)(3) of title 28, United States Code,
6 is amended—

7 (1) in subparagraph (A), by striking “Before”
8 and inserting “Except as otherwise provided by law,
9 before”; and

10 (2) by adding at the end the following:

11 “(F) The requirement for a motion under
12 subparagraph (A) does not apply if the second
13 or subsequent application rests solely on a claim
14 of actual innocence arising from—

15 “(i) newly discovered evidence from
16 forensic testing;

17 “(ii) exculpatory evidence withheld
18 from the defense at trial; or

19 “(iii) newly discovered accounts by
20 credible witnesses who recant prior testi-
21 mony or establish improper action of State
22 or Federal agents.”.

23 **SEC. 3. EXHAUSTION OF REMEDIES.**

24 Section 2254(b) of title 28, United States Code, is
25 amended—

1 (1) in paragraph (1)(A), by inserting “, unless
2 exempted under paragraph (4),” after “has”; and

3 (2) by adding at the end the following:

4 “(4) If the application is based on a claim that
5 the police or prosecution withheld exculpatory, im-
6 peachment, or other evidence favorable to the de-
7 fendant, the exhaustion requirement of paragraph
8 (1)(A) does not apply.”.

9 **SEC. 4. EVIDENTIARY HEARING.**

10 The final paragraph of section 2243 of title 28,
11 United States Code, is amended by adding at the end the
12 following: “If the applicant makes a credible proffer of evi-
13 dence supporting a claim of actual innocence based on one
14 of the circumstances described in section 2244(b)(3)(F),
15 the court shall hold an evidentiary hearing to determine
16 the facts relating to the claim. If the proffer is based in
17 whole or in part on a witness who testified at the peti-
18 tioner’s trial, the witness’ evidentiary hearing testimony
19 is only admissible if it is a recantation or establishes im-
20 proper action of State agents. If the court determines the
21 claim is without merit, the petitioner is barred from rais-
22 ing that claim in a successor petition.”.

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