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5 UNITED STATES DISTRICT COURT  
6 CENTRAL DISTRICT OF CALIFORNIA  
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9 VARTAN STEPHAN, aka ) Case No. CV 09-6268-RSWL(RC)  
10 VARTAN M. STEPHAN, )  
11 )  
12 ) Petitioner, )  
13 vs. )  
14 ) OPINION AND ORDER ON A  
15 ) PETITION FOR HABEAS CORPUS  
16 )  
17 )  
18 ) ATTORNEY GENERAL, EDMUND G. )  
19 ) BROWN, JR., )  
20 )  
21 ) Respondent. )  
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On August 27, 2009, petitioner Vartan Stephan, aka Vartan M. Stephan, a person in state custody proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging his sentence in Los Angeles County Superior Court case no. GA024107.

**BACKGROUND**

This Court, pursuant to Federal Rule of Evidence 201, takes judicial notice of the records in a prior federal habeas corpus action brought by petitioner: (1) Stephan v. Galasa, case no. CV 98-2225-RSWL(RC) ("Stephan I"). The records in Stephan I show that on March 27, 1998, petitioner filed a federal habeas corpus petition challenging the same criminal judgment he challenges here, and on October 16, 1998, Judgment was entered in Stephan I denying the habeas petition on the merits and dismissing the action. The petitioner did not appeal the Judgment to the Ninth Circuit Court of Appeals.

1 **DISCUSSION**

2 The instant petition is governed by the provisions of Section 106  
3 of the Antiterrorism and Effective Death Penalty Act of 1996 ("the  
4 Act"), which amends 28 U.S.C. § 2244(b) to read, in pertinent part, as  
5 follows: "Before a second or successive application permitted by this  
6 section is filed in the district court, the applicant shall move in  
7 the appropriate court of appeals for an order authorizing the district  
8 court to consider the application."

9 28 U.S.C. § 2244(b)(3)(A).

10 "Section 2244(b)(3)(A) 'is an allocation of subject-matter  
11 jurisdiction to the court of appeals. A district court must dismiss a  
12 second or successive petition [. . .] unless the court of appeals has  
13 given approval for the filing.'" In re Page, 170 F.3d 659, 661 (7th  
14 Cir. 1999) (quoting Nunez v. United States, 96 F.3d 990, 991 (7th Cir.  
15 1996)), cert. denied, 528 U.S. 1162 (2000); see also Cooper v.  
16 Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001) ("When the AEDPA is in  
17 play, the district court may not, in the absence of proper authoriza-  
18 tion from the court of appeals, consider a second or successive habeas  
19 application." (quoting Libby v. Magnusson, 177 F.3d 43, 46 (1st Cir.  
20 1999))).

21 Here, the instant petition is a second or successive petition  
22 challenging petitioner's sentence, which raises claims petitioner  
23 could have raised in Stephan I. Moreover, it plainly appears on the  
24 face of the petition that petitioner has not moved in the Ninth Cir-  
25 cuit Court of Appeals for an order authorizing this Court to consider  
26 the instant successive petition. Under the Act, a successive habeas  
27 petition is not a matter of right -- and the gatekeeping function  
28 belongs to the Court of Appeals, not to the district court. Felker v.

1 Turpin, 518 U.S. 651, 661, 116 S. Ct. 2333, 135 L. Ed. 2d 827 (1996).  
2 This Court, thus, must dismiss the instant habeas corpus petition as a  
3 successive petition for which it lacks subject matter jurisdiction  
4 under 28 U.S.C. § 2244(b)(3).

5 Rule 4 of the Rules Governing Section 2254 Cases in the United  
6 States Courts provides that "[i]f it plainly appears from the petition  
7 and any attached exhibits that the petitioner is not entitled to  
8 relief in the district court, the judge must dismiss the petition and  
9 direct the clerk to notify the petitioner." 28 U.S.C. § 2254,  
10 Rule 4.

11 **ORDER**

12 IT IS HEREBY ORDERED that Judgment be entered SUMMARILY  
13 DISMISSING the successive petition for writ of habeas corpus for lack  
14 of subject matter jurisdiction.

15 IT IS FURTHER ORDERED that the Clerk shall notify petitioner of  
16 the dismissal.

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18 RONALD S.W. LEW

18 DATE: September 2, 2009

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19 HONORABLE RONALD S.W. LEW  
20 SENIOR U.S. DISTRICT COURT JUDGE

21  
22 PRESENTED BY:

23 DATE: August 31, 2009

24 /S/ ROSALYN M. CHAPMAN  
25 ROSALYN M. CHAPMAN  
26 UNITED STATES MAGISTRATE JUDGE

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