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5	UNITED STAT	TES DISTRICT COURT
6	CENTRAL DIS	TRICT OF CALIFORNIA
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9	VARTAN M. STEPHAN,	Case No. CV 09-6394-RSWL(RC)
10	Petitioner,	
11	vs.)	OPINION AND ORDER ON A
	JAMES WALKER [WARDEN],	PETITION FOR HABEAS CORPUS
12	Respondent.)	
13)	
14		

On September 2, 2009, petitioner 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 25 years to life sentence in Los Angeles County Superior Court case no. GA024107.

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BACKGROUND

20 This Court, pursuant to Federal Rule of Evidence 201, takes judicial notice of the records in a prior federal habeas corpus action 21 22 brought by petitioner: (1) Stephan v. Galasa, case no. CV 98-2225-23 RSWL(RC) ("Stephan I"). The records in Stephan I show that on March 27, 1998, petitioner filed a federal habeas corpus petition 24 25 challenging the same criminal judgment he challenges here, and on October 16, 1998, Judgment was entered in Stephan I denying the habeas 26 27 petition on the merits and dismissing the action. The petitioner did not appeal the Judgment to the Ninth Circuit Court of Appeals. 28

DISCUSSION

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

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

20 Here, the instant petition is a second or successive petition 21 challenging petitioner's sentence. Moreover, it plainly appears on the face of the petition that petitioner has not moved in the Ninth 22 Circuit Court of Appeals for an order authorizing this Court to 23 24 consider the instant successive petition. Under the Act, a successive 25 habeas petition is not a matter of right -- and the gatekeeping function belongs to the Court of Appeals, not to the district court. 26 27 Felker v. Turpin, 518 U.S. 651, 661, 116 S. Ct. 2333, 135 L. Ed. 2d This Court, thus, must dismiss the instant habeas corpus 28 827 (1996).

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1	petition as a successive petition for which it lacks subject matter		
2	jurisdiction under 28 U.S.C. § 2244(b)(3).		
3	Rule 4 of the Rules Governing Section 2254 Cases in the United		
4	States Courts provides that "[i]f it plainly appears from the petition		
5	and any attached exhibits that the petitioner is not entitled to		
6	relief in the district court, the judge must dismiss the petition and		
7	direct the clerk to notify the petitioner." 28 foll. U.S.C. § 2254,		
8	Rule 4.		
9	ORDER		
10	IT IS HEREBY ORDERED that Judgment be entered SUMMARILY		
11	DISMISSING the successive petition for writ of habeas corpus for lack		
12	of subject matter jurisdiction.		
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14	IT IS FURTHER ORDERED that the Clerk shall notify petitioner of		
15	the dismissal.		
16			
17	DATE: September 11, 2009 HONORABLE RONALD S.W. LEW		
18	SENIOR U.S. DISTRICT COURT JUDGE		
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20	PRESENTED BY:		
21	DATE: <u>September 4, 2009</u>		
22	ROSALYN M. CHAPMAN UNITED STATES MAGISTRATE JUDGE		
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24	R&R-MDO\09-6394.mdo 9/4/09		
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