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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
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11 TIMOTHY PETER RALBOVSKY, aka ) Case No. SACV 08-1376-CJC(RC)  
12 JAMES J. RALBOVSKI, aka JAMES )  
13 J. RALBOVSKY, aka TIMOTHY )  
RALBOVSKI, )  
14 ) OPINION AND ORDER ON A  
Petitioner ) PETITION FOR HABEAS CORPUS  
15 vs. )  
I.D. CLAY, WARDEN, )  
16 Respondent. )  
17

18 On December 4, 2008, petitioner Timothy Peter Ralbovsky, aka  
19 James J. Ralbovski, aka James J. Ralbovksy, aka Timothy Ralbovski, a  
20 person in state custody proceeding pro se, filed a petition for writ  
21 of habeas corpus under 28 U.S.C. § 2254 challenging his 2002 sentence  
22 on multiple drug offenses and other offenses,<sup>1</sup> following a guilty plea  
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24 <sup>1</sup> Petitioner was convicted of sale or transportation of a  
25 controlled substance in violation of California Health & Safety  
26 Code ("H.S.C.") § 11352(a), unlawful taking of vehicle in  
27 violation of California Vehicle Code § 10851(a), one count of  
28 receiving stolen property in violation of California Penal Code  
("P.C.") § 496(a), possession of a controlled substance in  
violation of H.S.C. § 11350(a), and being under the influence of  
a controlled substance in violation of H.S.C. § 11550(a), and  
petitioner also admitted he had six prior "strike" convictions

1 in Orange County Superior Court case nos. 01HF0611 and 01CF2107, on  
2 the sole ground the California Supreme Court "refused to comply with  
3 the United States Supreme Court's Order granting petitioner habeas  
4 relief and remanding his case for further consideration in light of  
5 Cunningham v. California, 549 U.S. [270, 127 S. Ct. 856, 166 L. Ed. 2d  
6 856] (2007)." Petition at 5, Exhibit A.

#### 8 DISCUSSION

9 This Court, pursuant to Federal Rule of Evidence 201, takes  
10 judicial notice of the records in a previous federal habeas corpus  
11 action brought by petitioner: Ralbovsky v. Kane, case no. SACV 04-  
12 1041-CJC(RC) ("Ralbovsky I"). The records in Ralbovsky I show that on  
13 August 25, 2004, petitioner filed a petition for writ of habeas corpus  
14 under 28 U.S.C. § 2254 challenging his 2002 convictions and sentence  
15 in Orange County Superior Court case nos. 01HF0611 and 01CF2107 on  
16 fourteen grounds, and on December 19, 2005, Judgment was entered  
17 denying the habeas petition on the merits. Petitioner filed an  
18 appeal, and on August 1, 2006, the Ninth Circuit granted petitioner's  
19 request for a certificate of appealability on one claim. However, in  
20 an unpublished opinion filed April 16, 2007, the Ninth Circuit  
21 affirmed the Judgment. Ralbovsky v. Kane, 227 Fed. Appx. 691 (9th  
22 Cir. 2007) (unpublished disposition).

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25 within the meaning of California's Three Strikes law, P.C. §§  
26 667(b)-(i) and 1170.12(a)-(d), and three prior convictions for  
27 which he served a prison term and did not remain free of custody  
28 for five years thereafter within the meaning of P.C. § 667.5(b).  
These facts are based on petitioner's previous habeas corpus  
petition, Ralbovsky v. Kane, case no. SACV 04-1041-CJC(RC),  
discussed herein.

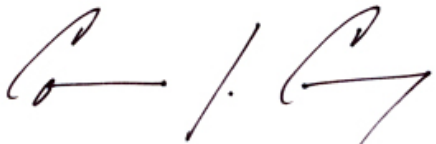
1           The instant petition is governed by the provisions of Section 106  
2 of the Antiterrorism and Effective Death Penalty Act of 1996 ("the  
3 Act"), which provides, in pertinent part: "Before a second or  
4 successive application permitted by this section is filed in the  
5 district court, the applicant shall move in the appropriate court of  
6 appeals for an order authorizing the district court to consider the  
7 application." 28 U.S.C. § 2244(b)(3)(A). "Section 2244(b)(3)(A) 'is  
8 an allocation of subject-matter jurisdiction to the court of appeals.  
9 A district court must dismiss a second or successive petition [. . .]  
10 unless the court of appeals has given approval for the filing.'" In  
11 re Page, 170 F.3d 659, 661 (7th Cir. 1999) (quoting Nunez v. United  
12 States, 96 F.3d 990, 991 (7th Cir. 1996)), cert. denied, 528 U.S. 1162  
13 (2000); see also Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir.  
14 2001)("When the [Act] is in play, the district court may not, in the  
15 absence of proper authorization from the court of appeals, consider a  
16 second or successive habeas application." (quoting Libby v.  
17 Magnusson, 177 F.3d 43, 46 (1st Cir. 1999)). Under the Act, a  
18 successive habeas petition is not a matter of right -- and the  
19 gatekeeping function belongs to the Court of Appeals, not to the  
20 district court. Felker v. Turpin, 518 U.S. 651, 661, 116 S. Ct. 2333,  
21 135 L. Ed. 2d 827 (1996).

22  
23           Here, it plainly appears on the face of the pending petition that  
24 petitioner has not received authorization from the Ninth Circuit Court  
25 of Appeals for the instant, successive petition to be brought. Thus,  
26 this Court must dismiss the instant habeas corpus petition as a  
27 successive petition for which it lacks subject matter jurisdiction  
28 under 28 U.S.C. § 2244(b)(3).



1 IT IS FURTHER ORDERED that the Clerk shall notify petitioner of  
2 this Opinion and Order.

3  
4 DATE: December 9, 2008

  
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CORMAC J. CARNEY  
UNITED STATES DISTRICT JUDGE

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6 PRESENTED BY:

7 DATE: December 5, 2009

8 /S/ Rosalyn M. Chapman  
9 ROSALYN M. CHAPMAN  
UNITED STATES MAGISTRATE JUDGE

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