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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 REGINALD VAL DAVIN, ) NO. CV 09-4706-RSWL(E)  
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REGINALD VAL DAVIN, )  
Petitioner, )  
v. ) ORDER OF DISMISSAL  
DOMINGO URIBE, JR., Warden, )  
Respondent. )  
\_\_\_\_\_ )

18 Petitioner filed a "Petition for Writ of Habeas Corpus by a  
19 Person in State Custody" on June 30, 2009. Respondent filed an Answer  
20 on February 17, 2010. Petitioner filed a Traverse on April 5, 2010.  
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22 The Petition challenges the criminal judgment in Los Angeles  
23 Superior Court case number YA069114 (Petition at 2 & Exhibits A, B).  
24 Petitioner previously challenged this same judgment in a prior habeas  
25 corpus petition filed in this Court. See Davin v. Baca, CV 08-2877-  
26 RSWL(E). On August 5, 2008, this Court entered Judgment in Davin v.  
27 Baca, CV 08-2877-RSWL, denying and dismissing the prior petition on  
28 the merits with prejudice.

1 The Court must dismiss the present Petition in accordance with  
2 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and  
3 Effective Death Penalty Act of 1996"). Section 2244(b) requires that  
4 a petitioner seeking to file a "second or successive" habeas petition  
5 first obtain authorization from the court of appeals. See Burton v.  
6 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive  
7 authorization from Court of Appeal before filing second or successive  
8 petition, "the District Court was without jurisdiction to entertain  
9 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.  
10 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)  
11 requires the permission of the court of appeals before 'a second or  
12 successive habeas application under § 2254' may be commenced"). A  
13 petition need not be repetitive to be "second or successive," within  
14 the meaning of 28 U.S.C. section 2244(b). See, e.g., Calbert v.  
15 Marshall, 2008 WL 649798, at \*2-4 (C.D. Cal. Mar. 6, 2008); Miles v.  
16 Mendoza-Powers, 2007 WL 4523987, at \*2-3 (E.D. Cal. Dec. 19, 2007).  
17 Petitioner evidently has not yet obtained authorization from the Ninth  
18 Circuit Court of Appeals. Consequently, this Court cannot entertain  
19 the present Petition. See Burton v. Stewart, 549 U.S. at 157.<sup>1</sup>

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24 <sup>1</sup> Respondent's Answer does not argue that the Petition is  
25 "second or successive." In fact, the Answer states that "[t]he  
26 Petition does not appear to be successive" (Answer at 1).  
27 Respondent's position in this regard is irrelevant, however. The  
28 absence of Circuit Court authorization to file a "second or  
successive" petition is a jurisdictional defect that cannot be  
waived in District Court proceedings. See, e.g., Torres v.  
Senkowski, 316 F.3d 147, 151 (2nd Cir. 2003).

1 For all of the foregoing reasons, the Petition is denied and  
2 dismissed without prejudice.

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4 LET JUDGMENT BE ENTERED ACCORDINGLY.

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6 DATED: 4-12-10.

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9 RONALD S.W. LEW

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RONALD S. W. LEW  
11 SENIOR UNITED STATES DISTRICT JUDGE  
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14 PRESENTED this 6th day of  
15 April, 2010, by:

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/S/  
18 CHARLES F. EICK  
19 UNITED STATES MAGISTRATE JUDGE  
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