

O

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

RAYMOND BINGHAM  
Petitioner,  
vs.  
UNITED STATES OF AMERICA  
Respondent.

Case No. CV 10-2596 CAS  
CR 91-770 CAS

PETITIONER’S THIRD MOTION FOR  
RECONSIDERATION OF  
PETITIONER’S PETITION FOR  
RELIEF UNDER CORAM NOBIS AND  
MOTIONS FOR EMERGENCY RELIEF  
AND TO INVOKE THE COURT’S  
EQUITABLE AUTHORITY

**I. BACKGROUND**

On December 27, 2010, petitioner Raymond Bingham, a person in federal custody proceeding pro se, filed a third motion for reconsideration of this Court’s August 9, 2010 order. In the order, the Court denied his petition for writ of error coram nobis under 28 U.S.C. § 1651 challenging his 1991 sentence of 300-months, finding that the petition for writ of error coram nobis was inappropriate under the circumstances, that it should be treated as a second or successive § 2255 motion, and that this Court lacked jurisdiction to review a second or successive petition without

1 approval from the court of appeals pursuant to 28 U.S.C. § 2244(b)(3)(A). Petitioner  
2 has since twice moved the Court to reconsider, arguing that his petition should not be  
3 treated as a second or successive § 2255 motion. In his third and most recent motion for  
4 reconsideration, petitioner focuses his arguments on the retroactive applicability of the  
5 Fair Sentencing Act of 2010.

6 Petitioner was sentenced to 240 months for violations of 21 U.S.C. § 846  
7 (conspiracy to distribute cocaine) and 21 U.S.C. § 841(a)(1) (possession with intent to  
8 distribute cocaine), and 60 months for violation of 18 U.S.C. § 924 (c) (carrying/using a  
9 firearm during and in relation to a drug trafficking crime). Records in a prior federal  
10 habeas corpus action brought by petitioner, of which this Court has taken judicial  
11 notice, show that on October 10, 1997, petitioner filed his first federal habeas corpus  
12 petition challenging his sentence. On November 10, 1998, judgment was entered  
13 denying the habeas petition on the merits. The petitioner did not appeal the judgment to  
14 the Ninth Circuit Court of Appeals.

## 15 **II. DISCUSSION**

16 In his third motion for reconsideration, petitioner argues that his April 9, 2010  
17 petition was not “second and successive” because the Fair Sentencing Act of 2010  
18 should be applied retroactively, and as such, it constitutes a new claim that could not  
19 have been raised at the time when he filed his first federal habeas petition. In support of  
20 his argument, petitioner extensively relies on the legislative history of the Act,  
21 highlighting sections that describe the disparate impact of the pre-amendment  
22 sentencing guidelines.

23 However, as this Court previously discussed in its October 19, 2010 and  
24 November 30, 2010 orders denying petitioner’s first and second motions for  
25 reconsideration, respectively, the Fair Sentencing Act of 2010 does not apply  
26 retroactively. See Dkt. Nos. 12, 18; see also United States v. Hall, No. 09-10216, 2010  
27 WL 4561363, at \*3 (9th Cir. Nov. 10, 2010). Without a claim of retroactivity, allowing  
28 the petitioner to file a second § 2255 petition would not further the purposes of the

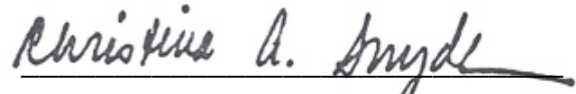
1 Antiterrorism and Effective Death Penalty Act with regard to finality. Therefore, the  
2 Court appropriately treated the claim as a literal second or successive motion. As this  
3 Court discussed in its August 9, 2010 order, the Court is without jurisdiction to consider  
4 a second or successive petition absent certification from the court of appeals pursuant to  
5 28 U.S.C. § 2244(b)(3)(A).

6 **III. CONCLUSION**

7 Having considered petitioner's arguments, the Court finds that the record shows  
8 conclusively that petitioner is not entitled to the requested relief. The Court concludes  
9 that an evidentiary hearing is not required to adjudicate this matter.

10 For the reasons discussed above, petitioner's petition is hereby DISMISSED.

11  
12 Dated: January 24, 2010



13 CHRISTINA A. SNYDER  
14 UNITED STATES DISTRICT JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28