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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

MARIO MADRIGAL MIRANDA, ) Case No. CV 17-02821-JLS (AS)  
 )  
Petitioner, )  
 ) **ORDER OF DISMISSAL**  
 )  
v. )  
 )  
DANIEL PARAMO, Warden RJDCF, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**BACKGROUND**

On April 13, 2017, Mario Madrigal Miranda ("Petitioner"), a California state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 ("Petition"). (Docket Entry No. 1). Petitioner challenges his 2007 convictions for murder and kidnapping and his sentence of life without the possibility of parole plus ten years,

1 in Los Angeles County Superior Court<sup>1</sup> (Case No. GA059712). (See  
2 Petition at 1-2). The Petition alleges the following grounds for  
3 federal habeas relief: (1) "The evidence was insufficient to prove  
4 premeditated [sic] and deliberation;" (2) "Petitioner could not  
5 have validly been convicted of felony murder based on the assumed  
6 kidnapping;" (3) "[Petitioner] could not validly be convicted of  
7 felony murder based on either the kidnapping or robbery;" (4)  
8 "Defense counsel's conduct and the court's response to it denied  
9 [Petitioner] his rights to effective assistance of counsel and a  
10 fair trial;" and (5) "The conviction imposed in this case was not  
11 commensurate with the jury's evidence under the repeated  
12 admonishments[] and instruction on their expressed findings  
13 pursuant to the California felony murder rule." (Petition,  
14 Memorandum at 2, 7-43<sup>2</sup>).

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16 On May 12, 2010, Petitioner filed a Petition for Writ of  
17 Habeas Corpus pursuant to 28 U.S.C. § 2254 in which he challenged  
18 the same 2007 convictions. See Mario Miranda Madrigal v. Leland  
19 McEwen, Case No. CV 10-03552-MMM (MAN); Docket Entry No. 1 ("the  
20 prior habeas action"). On June 13, 2013, the Court issued an  
21 Order and Judgment denying that habeas petition with prejudice,  
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24 <sup>1</sup> A Los Angeles Superior Court jury convicted Petitioner  
25 of one count of murder and one count of kidnapping and found true  
26 the allegation that the murder was committed while Petitioner was  
27 engaged in the commission of the kidnapping. Petitioner was  
28 sentenced to state prison for life without the possibility of  
parole, plus ten years. (See Mario Miranda Madrigal v. Leland  
McEwen, Case No. CV 10-03552-MMM (MAN); Docket No. 16 at 2).

<sup>2</sup> The Court refers to Petitioner's page-numbering system  
in citing to the Memorandum.

1 in accordance with the findings and recommendations of the  
2 Magistrate Judge. (Id.; Docket Entry Nos. 21-22). On the same  
3 date, the Court denied a certificate of appealability. (Id.;  
4 Docket Entry No. 23).

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6 **DISCUSSION**

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8 The Antiterrorism and Effective Death Penalty Act of 1996  
9 ("AEDPA"), enacted on April 24, 1996, provides in pertinent part  
10 that:

11 (a) No circuit or district judge shall be required  
12 to entertain an application for a writ of habeas corpus  
13 to inquire into the detention of a person pursuant to a  
14 judgment of a court of the United States if it appears  
15 that the legality of such detention has been determined  
16 by a judge or court of the United States on a prior  
17 application for a writ of habeas corpus, except as  
18 provided in §2255.

19 (b) (1) A claim presented in a second or successive  
20 habeas corpus application under section 2254 that was  
21 presented in a prior application shall be dismissed.

22 (2) A claim presented in a second or successive  
23 habeas corpus application under section 2254 that was  
24 not presented in a prior application shall be dismissed  
25 unless--

26 (A) the applicant shows that the claim relies on a  
27 new rule of constitutional law, made retroactive to  
28 cases on collateral review by the Supreme Court, that  
was previously unavailable; or

(B) (i) the factual predicate for the claim could  
not have been discovered previously through the exercise  
of due diligence; and

(ii) the facts underlying the claim, if proven and  
viewed in light of the evidence as a whole, would be  
sufficient to establish by clear and convincing evidence  
that, but for constitutional error, no reasonable fact  
finder would have found the applicant guilty of the  
underlying offense.

(3) (A) Before a second or successive application

1 permitted by this section is filed in the district  
2 court, the applicant shall move in the appropriate court  
3 of appeals for an order authorizing the district court  
4 to consider the application.

5 (B) A motion in the court of appeals for an order  
6 authorizing the district court to consider a second or  
7 successive application shall be determined by a three-  
8 judge panel of the court of appeals.

9 (C) The court of appeals may authorize the filing  
10 of a second or successive application only if it  
11 determines that the application makes a prima facie  
12 showing that the application satisfies the requirements  
13 of this subsection.

14 (D) The court of appeals shall grant or deny the  
15 authorization to file a second or successive application  
16 not later than 30 days after the filing of the motion.

17 (E) The grant or denial of an authorization by a  
18 court of appeals to file a second or successive  
19 application shall not be appealable and shall not be the  
20 subject of a Petition for Rehearing or for a Writ of  
21 Certiorari.

22 (4) A district court shall dismiss any claim  
23 presented in a second or successive application that the  
24 court of appeals has authorized to be filed unless the  
25 applicant shows that the claim satisfies the  
26 requirements of this section. 28 U.S.C. § 2244.

27 28 U.S.C. § 2244(b) (3) "creates a 'gatekeeping' mechanism for  
28 the consideration of second or successive applications in district  
29 court. The prospective applicant must file in the court of  
30 appeals a motion for leave to file a second or successive habeas  
31 application in the district court. § 2244(b) (3) (A)." Felker v.  
32 Turpin, 518 U.S. 651, 657 (1996).

33 The instant Petition and the prior habeas action both  
34 challenge Petitioner's custody pursuant to the same 2007 judgment  
35 entered by the Los Angeles County Superior Court. Accordingly,  
36 the instant Petition, filed on April 13, 2017, well after the  
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1 effective date of the AEDPA, is a second or successive habeas  
2 petition for purposes of 28 U.S.C. § 2244. Therefore, Petitioner  
3 was required to obtain authorization from the Court of Appeals  
4 before filing the present Petition. See 28 U.S.C. §2244(b) (3) (A).  
5 No such authorization has been obtained in this case.

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7       Moreover, the claims asserted in the instant Petition do not  
8 appear to fall within the exceptions to the bar on second or  
9 successive petitions because the asserted claims are not based on  
10 newly discovered facts or a "a new rule of constitutional law,  
11 made retroactive to cases on collateral review by the Supreme  
12 Court, that was previously unavailable." Tyler v. Cain, 533 U.S.  
13 656, 662 (2001).<sup>3</sup> However, this determination must be made by  
14 the United States Court of Appeals upon a petitioner's motion for  
15 an order authorizing the district court to consider his second or  
16 successive petition. 28 U.S.C. § 2244(b); see also Burton v.  
17 Stewart, 549 U.S. 147, 157 (2007) (where the petitioner did not  
18 receive authorization from the Court of Appeals before filing  
19 second or successive petition, "the District Court was without  
20 jurisdiction to entertain [the petition]"); Barapind v. Reno, 225  
21 F.3d 1100, 1111 (9th Cir. 2000) ("[T]he prior-appellate-review  
22 mechanism set forth in § 2244(b) requires the permission of the  
23 court of appeals before 'a second or successive habeas application  
24 under § 2254' may be commenced."). Because Petitioner has not  
25 obtained authorization from the Ninth Circuit Court of Appeals,

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27 <sup>3</sup> The cases Petitioner relies on -- People v. Chiu, 59  
28 Cal.4th 155 (2014) and People v. Banks, 61 Cal.4th 788 (2015)  
(see Petition at ii, Memorandum at 1-2, 33, 39) -- are California  
Supreme Court cases.

1 this Court cannot entertain the present Petition. See Burton v.  
2 Stewart, supra.

3  
4 **ORDER**

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6 Accordingly, IT IS ORDERED that the Petition be dismissed  
7 without prejudice.

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9 LET JUDGMENT BE ENTERED ACCORDINGLY.

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11 DATED: April 24, 2017



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15 JOSEPHINE L. STATON  
16 UNITED STATES DISTRICT JUDGE  
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