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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDY RAMIREZ,) NO. CV 17-4222-BRO(E)
)
Petitioner,)
)
v.) ORDER OF DISMISSAL
)
SCOTT FRAUENHEIM, Warden,)
)
Respondent.)
_____)

On June 7, 2015, Petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody." The Petition challenges a 1997 Los Angeles Superior Court "conviction and/or sentence" (Petition at 2). Petitioner previously challenged this same 1997 Superior Court proceeding in a prior habeas corpus petition filed in this Court. See Ramirez v. Cate, CV 12-9331-MMM(E). On November 4, 2013, this Court entered Judgment in Ramirez v. Cate, CV 12-9331-MMM(E), denying and dismissing the prior petition with prejudice as untimely.

The Court must dismiss the present Petition in accordance with 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and

1 Effective Death Penalty Act of 1996"). Section 2244(b) requires that
2 a petitioner seeking to file a "second or successive" habeas petition
3 first obtain authorization from the Court of Appeals. See Burton v.
4 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive
5 authorization from Court of Appeals before filing second or successive
6 petition, "the District Court was without jurisdiction to entertain
7 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.
8 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)
9 requires the permission of the court of appeals before 'a second or
10 successive habeas application under § 2254' may be commenced").
11 Contrary to Petitioner's apparent argument, a petition need not be
12 repetitive to be "second or successive," within the meaning of 28
13 U.S.C. section 2244(b). See, e.g., Thompson v. Calderon, 151 F.3d
14 918, 920-21 (9th Cir.), cert. denied, 524 U.S. 965 (1998); Calbert v.
15 Marshall, 2008 WL 649798, at *2-4 (C.D. Cal. Mar. 6, 2008). The
16 dismissal of a habeas petition as untimely "constitutes an
17 adjudication on the merits that renders future petitions under § 2254
18 challenging the same conviction 'second or successive' petitions under
19 § 2244(b)." McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009).
20 Petitioner evidently has not yet obtained authorization from the Ninth
21 Circuit Court of Appeals.¹ Consequently, this Court cannot entertain
22 the present Petition. See Burton v. Stewart, 549 U.S. at 157; see
23 also Remsen v. Att'y Gen. of Calif., 471 Fed. App'x 571, 571 (9th Cir.
24 2012) (if a petitioner fails to obtain authorization from the Court of

25
26 ¹ The docket for the United States Court of Appeals for
27 the Ninth Circuit, available on the Pacer database on
28 www.pacer.gov does not reflect that anyone named Edy Ramirez has
received authorization to file a second or successive petition.
See Mir v. Little Company of Mary Hosp., 844 F.2d 646, 649 (9th
Cir. 1988) (court may take judicial notice of court records).

1 Appeals to file a second or successive petition, "the district court
2 lacks jurisdiction to consider the petition and should dismiss it."
3 (citation omitted).

4
5 For all of the foregoing reasons, the Petition is denied and
6 dismissed without prejudice.²

7
8 LET JUDGMENT BE ENTERED ACCORDINGLY.

9
10 DATED: June 13, 2017.

11 

12
13 _____
14 BEVERLY REID O'CONNELL
15 UNITED STATES DISTRICT JUDGE

16
17 PRESENTED this 8th day
18 of June, 2017, by:

19
20 _____
21 /s/
22 CHARLES F. EICK
23 UNITED STATES MAGISTRATE JUDGE

24
25 ² Ninth Circuit Rule 22-3(a) provides that "if a second
26 or successive petition . . . is mistakenly submitted to the
27 district court, the district court shall refer it to the court of
28 appeals." Assuming arguendo that the conflict between 28 U.S.C.
section 2244(b) and Rule 22-3(a) does not invalidate the latter,
dismissal rather than "reference" still would be appropriate
herein. It is apparent that Petitioner submitted the present
Petition to this Court intentionally rather than mistakenly.