

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DANNY JEROME YOUNG,	)	NO. CV 20-8304-CJC(E)
	)	
Petitioner,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
DANIEL E. CUEVA, Warden (A),	)	
	)	
Respondent.	)	

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BACKGROUND

On September 9, 2020, Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in State Custody." The Petition seeks to challenge a 1982 Los Angeles criminal judgment. Petitioner previously challenged this same state court judgment in a prior federal habeas petition filed in this Court. See Young v. Evans, CV 05-0442-ABC(Mc). On October 19, 2005, this Court entered Judgment in Young v. Evans, CV 05-0442-ABC(Mc), dismissing the prior petition as untimely.

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## DISCUSSION

Section 2244(b) of Title 28, United States Code, requires that a petitioner seeking to file a "second or successive" habeas petition first obtain authorization from the Court of Appeals. See Burton v. Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive authorization from Court of Appeals before filing "second or successive" petition, "the District Court was without jurisdiction to entertain [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir. 2000) ("the prior-appellate-review mechanism set forth in § 2244(b) requires the permission of the court of appeals before 'a second or successive habeas application under § 2254' may be commenced"). A petition need not be repetitive to be "second or successive," within the meaning of 28 U.S.C. section 2244(b). See, e.g., Thompson v. Calderon, 151 F.3d 918, 920-21 (9th Cir.) (en banc), cert. denied, 524 U.S. 965 (1998); Calbert v. Marshall, 2008 WL 649798, at \*2-4 (C.D. Cal. Mar. 6, 2008).

The present Petition is second or successive. See McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009) ("dismissal of a section 2254 habeas petition for failure to comply with the statute of limitations renders subsequent petitions second or successive for purposes of the AEDPA, 28 U.S.C. § 2244(b)") (footnote omitted); see also Youngblood v. Superior Court of Butte Co., 610 Fed. App'x 664 (9th Cir.), cert. dismiss'd, 136 S. Ct. 546 (2015) (contention that petition was not second or successive because prior petition was dismissed as untimely "foreclosed" by McNabb v. Yates; quoting Hart v. Massanari, 266 F.3d 1155, 1171 (9th Cir. 2001) ("Once a panel resolves

1 an issue in a precedential opinion, the matter is deemed resolved,  
2 unless overruled by the court itself sitting en banc, or by the  
3 Supreme Court.")).

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5 Petitioner may argue that the exception contained in section  
6 2244(b)(2)(B)<sup>1</sup> applies in the present circumstances.<sup>2</sup> However, under  
7 section 2244(b)(3)(A), a petitioner seeking to file a "second or  
8 successive" petition must first obtain authorization from the Court of  
9 Appeals. See Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008) ("Even  
10 if a petitioner can demonstrate that he qualifies for one of [the]  
11 exceptions [contained in section 2244(B)(2)], he must seek  
12 authorization from the court of appeals before filing his new petition  
13 with the district court.") (citation omitted); Ramirez v. Figueroa,  
14 2016 WL 1296363, at \*3 (C.D. Cal. Apr. 1, 2016) ("Petitioner must seek  
15 the Ninth Circuit's authorization to file a successive petition even  
16 if he can demonstrate that he qualifies for one of the exceptions to  
17 AEDPA's bar on successive petitions.") (citation omitted); Chaney v.  
18 Dickerson, 2011 WL 781658, at \*3 (C.D. Cal. Feb. 25, 2011) ("It is the  
19 Ninth Circuit's responsibility, not this Court's, to determine that  
20 the requirements of § 2244(b)(2)(B) have been met by filing a proper  
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22 <sup>1</sup> Section 2244(b)(2)(B) provides that a claim presented  
23 in a second or successive habeas corpus application that was not  
24 presented in a prior application shall be dismissed unless: "(i)  
25 the factual predicate for the claim could not have been  
26 discovered previously through the exercise of due diligence; and  
27 [¶] (ii) the facts underlying the claim, if proven, and viewed in  
28 light of the evidence as a whole, would be sufficient to  
establish by clear and convincing evidence that, but for  
constitutional error, no reasonable factfinder would have found  
the applicant guilty of the underlying offense."

<sup>2</sup> In Young v. Barretto, CV 16-1519-E, Petitioner so  
argued in an unsuccessful attempt to persuade this Court to  
adjudicate a prior second or successive petition.

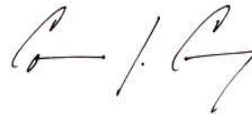
1 request with the Ninth Circuit for leave to file a successive  
2 petition.") (citations omitted). Petitioner evidently has not yet  
3 obtained the Ninth Circuit's authorization to file a "second or  
4 successive" petition.<sup>3</sup> Consequently, this Court cannot entertain the  
5 present Petition. See Burton v. Stewart, 549 U.S. at 157.

6  
7 **ORDER**

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9 For all the foregoing reasons, the Petition is denied and  
10 dismissed without prejudice.

11  
12 LET JUDGMENT BE ENTERED ACCORDINGLY.

13  
14 DATED: September 15, 2020.



15  
16 \_\_\_\_\_  
17 CORMAC J. CARNEY

18 UNITED STATES DISTRICT JUDGE

19 Presented this 11th day  
20 of September, 2020, by:

21 \_\_\_\_\_  
22 /s/  
23 CHARLES F. EICK  
24 UNITED STATES MAGISTRATE JUDGE

25 <sup>3</sup> The Court takes judicial notice of the docket of the  
26 United States Court of Appeals for the Ninth Circuit, available  
27 on the PACER database. See Mir v. Little Company of Mary Hosp.,  
28 844 F.2d 646, 649 (9th Cir. 1988) (court may take judicial notice  
of court records). The Ninth Circuit's docket does not show that  
any individual named Danny Young has obtained any order from the  
Ninth Circuit permitting the filing of a second or successive  
habeas petition in this Court.