



1 The Petition now pending is governed by the provisions of the Antiterrorism  
2 and Effective Death Penalty Act of 1996 (Pub. L. 104-132, 110 Stat. 1214) (“the  
3 Act”) which became effective April 24, 1996. Section 106 of the Act amended 28  
4 U.S.C. § 2244(b) to read, in pertinent part, as follows:

5 “(1) A claim presented in a second or successive habeas corpus  
6 application under section 2254 that was presented in a prior application  
7 shall be dismissed.

8 (2) A claim presented in a second or successive habeas corpus  
9 application under section 2254 that was not presented in a prior  
10 application shall be dismissed unless --

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

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

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

21 (3)(A) Before a second or successive application permitted by this  
22 section is filed in the district court, the applicant shall move in the  
23 appropriate court of appeals for an order authorizing the district court  
24 to consider the application.”

25 Petitioner’s prior federal habeas petition was denied on the merits.

26 Therefore, because the Petition now pending challenges the same conviction  
27 as petitioner’s prior habeas petition in Case No. EDCV 07-1124 DMG (FFM), it  
28 constitutes a second and/or successive petition within the meaning of 28 U.S.C. §

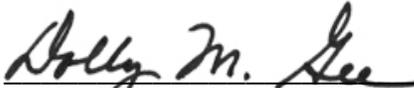
1 2244(b). To the extent Petitioner seeks to pursue the same claims he previously  
2 asserted, the Petition is barred by the provisions of 28 U.S.C. § 2244(b)(1). To  
3 the extent Petitioner seeks to pursue claims not previously asserted, it was  
4 incumbent on him under § 2244(b)(3)(A) to secure an order from the Ninth  
5 Circuit authorizing the District Court to consider the Petition, prior to his filing of  
6 it in this Court. Petitioner's failure to secure such an order from the Ninth Circuit  
7 deprives the Court of subject matter jurisdiction.

8 For the foregoing reasons,

9 IT IS ORDERED that this action be summarily dismissed, pursuant to Rule  
10 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

11 LET JUDGMENT BE ENTERED ACCORDINGLY.

12  
13 DATED: April 11, 2014

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16 DOLLY M. GEE  
17 United States District Judge

18 Presented by:

19  
20 /S/ FREDERICK F. MUMM  
21 FREDERICK F. MUMM  
22 United States Magistrate Judge  
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