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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 CECILIA FRAHER,  
12                   Petitioner,  
13                   v.  
14 K. HUGHES, Warden,  
15                   Respondent.  
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NO. EDCV 14-506-SVW (AGR)

OPINION AND ORDER ON  
PETITION FOR WRIT OF  
HABEAS CORPUS

18           On March 14, 2014, Petitioner filed a Petition for Writ of Habeas Corpus by  
19 a Person in State Custody ("Petition") pursuant to 28 U.S.C. § 2254. Petitioner  
20 challenges her conviction in San Bernardino County Superior Court in 2002.  
21 (Petition at 2.)

22                                   I.

23                                   **PROCEDURAL BACKGROUND**

24           Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of the records  
25 in Petitioner's prior federal habeas corpus action in the Central District of  
26 California, *Fraher v. Patrick*, Case No. EDCV 06-1406-SVW (AGR) ("*Fraher I*").  
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1 In August 2002, Petitioner was convicted of three counts of vehicular  
2 manslaughter and three counts of second degree murder. (Petition at 2). On  
3 March 28, 2003, she was sentenced to 45 years to life. (*Id.*)

4 In *Fraher I*, Petitioner challenged the same conviction. Dkt. No. 46 at 2. A  
5 Report issued on the merits on June 5, 2008, recommending that the petition be  
6 denied and the action dismissed with prejudice. *Id.*, Dkt. No. 46. On February 9,  
7 2010, the Court adopted the Report and entered judgment dismissing the petition  
8 with prejudice. *Id.*, Dkt. Nos. 53-54. On March 8, 2010, Petitioner filed a notice  
9 of appeal. *Id.*, Dkt. No. 56. On March 1, 2012, the Ninth Circuit denied the  
10 request for a certificate of appealability. *Id.*, Dkt. No. 63.

## 11 II.

### 12 DISCUSSION

13 The Petition was filed after enactment of the Antiterrorism and Effective  
14 Death Penalty Act of 1996 (“AEDPA”). Therefore, the Court applies the AEDPA  
15 in reviewing the Petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059,  
16 138 L. Ed. 2d 481 (1997).

17 The AEDPA provides, in pertinent part: “Before a second or successive  
18 application permitted by this section is filed in the district court, the applicant shall  
19 move in the appropriate court of appeals for an order authorizing the district court  
20 to consider the application.” 28 U.S.C. § 2244(b)(3)(A). A district court does not  
21 have jurisdiction to consider a “second or successive” petition absent  
22 authorization from the Ninth Circuit. *Burton v. Stewart*, 549 U.S. 147, 152, 127 S.  
23 Ct. 793, 166 L. Ed. 2d 628 (2007); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th  
24 Cir. 2001) (“When the AEDPA is in play, the district court may not, in the absence  
25 of proper authorization from the court of appeals, consider a second or  
26 successive habeas application.”) (citation and quotation marks omitted).

1 Here, the Petition is a second or successive petition challenging the same  
2 conviction and sentence imposed by the same judgment of the state court as in  
3 *Fraher I.*

4 Rule 4 of the Rules Governing Section 2254 Cases in the United States  
5 Courts provides that “[i]f it plainly appears from the face of the petition and any  
6 attached exhibits that the petitioner is not entitled to relief in the district court, the  
7 judge must dismiss the petition and direct the clerk to notify the petitioner.” Here,  
8 summary dismissal is warranted.

9 **III.**

10 **ORDER**

11 IT IS HEREBY ORDERED that Judgment be entered summarily dismissing  
12 the Petition and action for lack of subject matter jurisdiction.

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14 DATED: March 26, 2014



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16 STEPHEN V. WILSON  
17 United States District Judge  
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