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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

|                      |   |                              |
|----------------------|---|------------------------------|
| HON LAU,             | ) | 1:10-cv-02199-SKO-HC         |
|                      | ) |                              |
| Petitioner,          | ) | ORDER TRANSFERRING CASE      |
|                      | ) | PURSUANT TO 28 U.S.C. § 1631 |
|                      | ) |                              |
| v.                   | ) |                              |
|                      | ) |                              |
| STATE OF CALIFORNIA, | ) |                              |
|                      | ) |                              |
| Respondent.          | ) |                              |
|                      | ) |                              |
|                      | ) |                              |

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Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court is the petition, which was filed on November 29, 2010.

I. Background

Petitioner, an inmate of Kern Valley State Prison, alleges that he is innocent of the murder of which he was convicted in 2003 in the Los Angeles Superior Court and for which he is serving a life sentence. Petitioner asserts a right to have counsel appointed in order to obtain DNA testing. He is thus challenging his Los Angeles County conviction of murder.

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1           II. Transfer of the Petition

2           Title 28 U.S.C. § 2241(d) provides as follows which respect  
3 to venue, jurisdiction and transfer in a habeas proceeding  
4 pursuant to 28 U.S.C. § 2254:

5           Where an application for a writ of habeas corpus  
6 is made by a person in custody under the judgment  
7 and sentence of a State court of a State which  
8 contains two or more Federal judicial districts,  
9 the application may be filed in the district court  
10 for the district wherein such person is in custody  
11 or in the district court for the district  
12 within which the State court was held which  
13 convicted and sentenced him and each of such  
14 district courts shall have concurrent jurisdiction  
15 to entertain the application. The district court  
16 for the district wherein such application is filed  
17 in the exercise of its discretion and in furtherance  
18 of justice may transfer the application to the  
19 other district court for hearing and determination.

20 Although venue is generally proper in either the district of the  
21 prisoner's confinement or the convicting court's location,  
22 petitions challenging a conviction preferably are heard in the  
23 district of conviction, Laue v. Nelson, 279 F.Supp. 265, 266  
24 (N.D.Cal. 1968); petitions challenging execution of sentence are  
25 preferably heard in the district where the inmate is confined,  
26 Dunne v. Henman, 875 F.2d 244, 249 (9<sup>th</sup> Cir. 1989). A court  
27 should further consider traditional considerations of venue, such  
28 as the convenience of parties and witnesses and the interests of  
justice. Braden v. 30<sup>th</sup> Judicial Circuit Court of Kentucky, 410  
U.S. 484, 495 (1973).

          Title 28 U.S.C. § 1406(a) provides that "a district court of  
a district in which is filed a case laying venue in the wrong  
division or district shall dismiss, or if it be in the interest  
of justice, transfer such case to any district or division in  
which it could have been brought."

1 Title 28 U.S.C. § 1631 provides that if a civil action is  
2 filed in a court that lacks jurisdiction, the court shall, if it  
3 is in the interest of justice, transfer such action to any other  
4 court in which the action could have been brought at the time it  
5 was filed or noticed, and the action shall proceed as if it had  
6 been filed in or noticed for the court to which it is transferred  
7 on the date upon which it was actually filed in or noticed for  
8 the court from which it is transferred.

9 Here, the Court takes judicial notice<sup>1</sup> of the decision and  
10 judgment of the United States District Court for the Central  
11 District of California constituting a decision on the merits in a  
12 habeas proceeding in which Petitioner challenged his murder  
13 conviction, which was entitled Hon C. Lau v. Derral G. Adams,  
14 2:06-cv-06989-JSL-FMO. On February 23, 2009, the court denied  
15 the petition. (Docs. 34, 40, 41.)

16 The instant petition appears to be a second or successive  
17 petition barred by 28 U.S.C. § 2244(b)(1)-(2). Therefore, this  
18 Court lacks jurisdiction over the instant petition, and the case  
19 should be transferred pursuant to 28 U.S.C. § 1631.

20 Accordingly, IT IS ORDERED that the petition be transferred  
21 to the United States District Court for the Central District of  
22 California.

23 IT IS SO ORDERED.

24 **Dated: December 6, 2010**

**/s/ Sheila K. Oberto**  
**UNITED STATES MAGISTRATE JUDGE**

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26  
27 <sup>1</sup>The Court may take judicial notice of court records. Fed. R. Evid.  
28 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333 (9<sup>th</sup> Cir. 1993);  
Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n. 1 (N.D. Cal. 1978),  
aff'd, 645 F.2d 699 (9<sup>th</sup> Cir. 1981).