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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NAHU RODRIGUEZ,
Petitioner,
v.
GARY SWARTHOUT,
Respondent.

No. 2:14-cv-1803 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding with counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee. (ECF No. 1.)

The court’s records reveal, and petitioner acknowledges, that petitioner has previously filed an application for a writ of habeas corpus attacking the conviction and sentence challenged in this case. See Case No. 1:98-cv-6098 REC LJO (E.D. Cal.). The previous application was filed on September 28, 1998, and was denied on the merits on January 22, 2001. Before petitioner can proceed with the instant application, he must move in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner’s application must be dismissed without prejudice to its refiling upon obtaining authorization from the United States Court of Appeals for the Ninth Circuit.

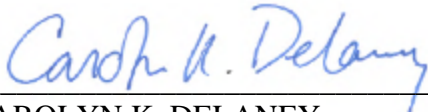
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1 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court is directed to assign a
2 district judge to this action.

3 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
6 after being served with these findings and recommendations, petitioner may file written
7 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
8 Findings and Recommendations.” Petitioner is advised that failure to file objections within the
9 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
10 F.2d 1153 (9th Cir. 1991).

11 Dated: September 9, 2014



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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