



1           The petition indicates (id. at 3), and the court’s records confirm, that petitioner has  
2 previously filed an application for a writ of habeas corpus attacking the conviction and sentence  
3 challenged in this case. The previous application was filed by the Clerk of the Court on April 23,  
4 2002, and was denied on the merits on August 29, 2006. Lowe v. People of California, No. 2:02-  
5 cv-00882 LKK GGH, ECF Nos. 1, 24, 28. This court takes judicial notice of the record in that  
6 proceeding. United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980) (“[A] court may take  
7 judicial notice of its own records in other cases.”).

8           Under 28 U.S.C. § 2244(b)(3)(A), a second or successive application for habeas relief  
9 may not be filed in district court without prior authorization by the court of appeals. Felker v.  
10 Turpin, 518 U.S. 651, 657 (1996). Prior authorization is a jurisdictional requisite. Burton v.  
11 Stewart, 549 U.S. 147, 152-53 (2007); Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001)  
12 (once district court has recognized a petition as second or successive pursuant to § 2244(b), it  
13 lacks jurisdiction to consider the merits). A petition is successive within the meaning of 28  
14 U.S.C. § 2244(b) where it “seeks to add a new ground for relief” or “if it attacks the federal  
15 court’s previous resolution of a claim *on the merits*.” Gonzalez v. Crosby, 545 U.S. 524, 532  
16 (2005) (emphasis in original). “[A] ‘claim’ as used in § 2244(b) is an asserted federal basis for  
17 relief from a state court’s judgment of conviction.” Id. at 530. “A habeas petition is second or  
18 successive only if it raises claims that were or could have been adjudicated on the merits.”  
19 McNabb v. Yates, 576 F.3d 1028, 1029 (9th Cir. 2009) (citing Woods v. Carey, 525 F.3d 886,  
20 888 (9th Cir. 2008)).

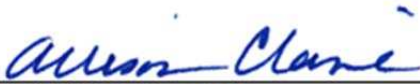
21           Before petitioner can proceed on his claims, he must move in the United States Court of  
22 Appeals for the Ninth Circuit for an order authorizing the district court to consider the  
23 application. 28 U.S.C. § 2244(b)(3). Petitioner has not provided any evidence that he has sought  
24 and received the required authorization. The undersigned will therefore recommend that this  
25 action be dismissed without prejudice to refile once petitioner receives authorization to proceed  
26 from the Ninth Circuit.

27           Accordingly, IT IS RECOMMENDED that this action be dismissed without prejudice.

28           These findings and recommendations are submitted to the United States District Judge

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

7 DATED: August 2, 2016

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10 ALLISON CLAIRE  
11 UNITED STATES MAGISTRATE JUDGE  
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