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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON LAMONT STRIBLING,  
Petitioner,  
v.  
MUNIZ,  
Respondent.

No. 2:17-cv-1143 DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner claims his conviction and incarceration are illegal because he was apprehended and charged without the issuance of an arrest warrant. Presently before the court is petitioner’s motion to proceed in forma pauperis (ECF No. 3) and his petition for screening (ECF No. 1). For the reasons set forth below, the court will grant the motion to proceed in forma pauperis and dismiss the petition without prejudice.

**IN FORMA PAUPERIS**

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

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1 **SCREENING**

2 **I. Screening Requirement**

3 Under Rule 4 of the Rules Governing Section 2254 Cases, this court is required to conduct  
4 a preliminary review of all petitions for writ of habeas corpus filed by state prisoners. Pursuant to  
5 Rule 4, this court must summarily dismiss a petition if it “plainly appears from the petition and  
6 any attached exhibits that the petitioner is not entitled to relief in the district court.”

7 **II. The Petition**

8 Petitioner states the basis for relief is his 2007 conviction and sentence in the Sacramento  
9 Superior Court. (ECF No. 1 at 1.) The court’s records reveal that petitioner previously filed two  
10 petitions for writ of habeas corpus attacking the same conviction and sentence challenged in the  
11 instant case.<sup>1</sup> Petitioner’s first habeas petition was filed in this court in December 2012 and  
12 dismissed in 2013 because it was barred by the statute of limitations. See *Stribling v. Grounds*,  
13 No. 2:12-cv-3084 MCE KJN P (E.D. Cal.). Petitioner’s second petition challenging his 2007  
14 conviction was filed in this court in December 2016 and dismissed in June 2017. See *Stribling v.*  
15 *Baughman*, No. 2:17-cv-0253 AC P (E.D. Cal.). Petitioner was informed in the dismissal order  
16 that he was required to receive authorization from the court of appeals before filing a second  
17 challenge to the 2007 conviction.

18 **III. Analysis**

19 A second or successive application for habeas relief may not be filed in the district court  
20 without prior authorization from the Ninth Circuit Court of Appeals. See 28 U.S.C. § 2244(b);  
21 *Felker v. Turpin*, 518 U.S. 651, 656-57 (1996). Prior authorization is a jurisdictional requisite.  
22 *Burton v. Stewart*, 549 U.S. 147, 152 (2007); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir.  
23 2001) (once district court has recognized a petition as second or successive pursuant to § 2254(b),  
24 it lacks jurisdiction to consider the merits).


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27 <sup>1</sup> A court may take judicial notice of its own records and the records of other courts. See *MGIC*  
28 *Indem. Co. v. Weisman*, 803 F.2d 500, 505 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d  
118, 119 (9th Cir. 1980).



1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
2 F.2d 1153 (9th Cir. 1991).

3 Dated: November 26, 2018

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7 DEBORAH BARNES  
8 UNITED STATES MAGISTRATE JUDGE

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