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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	AARON LAMONT STRIBLING,	No. 2:17-cv-1143 DB P
12	Petitioner,	
13	V.	ORDER AND FINDINGS AND
14	MUNIZ,	RECOMMENDTIONS
15	Respondent.	
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17	Petitioner, a state prisoner proceeding	pro se, has filed a petition for writ of habeas corpus
18	pursuant to 28 U.S.C. § 2254. Petitioner claim	ns his conviction and incarceration are illegal
19	because he was apprehended and charged with	nout the issuance of an arrest warrant. Presently
20	before the court is petitioner's motion to proce	eed in forma pauperis (ECF No. 3) and his petition
21	for screening (ECF No. 1). For the reasons se	t forth below, the court will grant the motion to
22	proceed in forma pauperis and dismiss the pet	ition without prejudice.
23	IN FORM	IA PAUPERIS
24	Examination of the in forma pauperis a	application reveals that petitioner is unable to afford
25	the costs of suit. Accordingly, the application	to proceed in forma pauperis will be granted. See
26	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. ¹ 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	¹ A court may take judicial notice of its own records and the records of other courts. <u>See MGIC</u> Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d	
28	118, 119 (9th Cir. 1980).	
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1	"[A] 'claim' as used in § 2244(b) is an asserted federal basis for relief from a state court's	
2	judgment of conviction." Gonzalez v. Crosby, 545 U.S. 524, 530 (2005). "A habeas petition is	
3	second or successive only if it raises claims that were or could have been adjudicated on the	
4	merits." McNabb v. Yates, 576 F.3d 1028, 1029 (9th Cir. 2009) (citing Woods v. Carey, 525	
5	F.3d 886, 888 (9th Cir. 2008)). "[D]ismissal of a habeas petition as untimely constitutes a	
6	disposition on the merits and a further petition challenging the same conviction" is "second	
7	or successive' for purposes of 28 U.S.C. § 2244(b)." Id.	
8	Petitioner is presently "contesting the same custody imposed by the same judgment of a	
9	state court" that he challenged in Stribling v. Grounds, No. 2:12-cv-3084 MCE KJN P (E.D.	
10	Cal.), which was dismissed on the merits. Before petitioner can proceed with the instant petition,	
11	he must move in, and obtain from, the Ninth Circuit Court of Appeals, an order authorizing the	
12	district court to consider the merits of his successive petition. See 28 U.S.C. § 2244(b)(3).	
13	Absent such authorization, the instant petition must be dismissed without prejudice. Id.	
14	CONCLUSION	
15	Because petitioner previously filed a petition for writ of habeas corpus attacking the same	
13	because peritonel previously filed a periton for with of habeas corpus attacking the same	
15 16	conviction and sentence challenged in this case, his petition must be dismissed without prejudice	
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16 17	conviction and sentence challenged in this case, his petition must be dismissed without prejudice to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals.	
16 17 18	conviction and sentence challenged in this case, his petition must be dismissed without prejudice to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals. Accordingly, IT IS HEREBY ORDERED that:	
16 17 18 19	 conviction and sentence challenged in this case, his petition must be dismissed without prejudice to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals. Accordingly, IT IS HEREBY ORDERED that: 1. Petitioner's motion to proceed in forma pauperis (ECF No. 3) is granted; and 	
16 17 18 19 20	 conviction and sentence challenged in this case, his petition must be dismissed without prejudice to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals. Accordingly, IT IS HEREBY ORDERED that: Petitioner's motion to proceed in forma pauperis (ECF No. 3) is granted; and The Clerk of the Court is directed to randomly assign a district judge to this action 	
 16 17 18 19 20 21 	 conviction and sentence challenged in this case, his petition must be dismissed without prejudice to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals. Accordingly, IT IS HEREBY ORDERED that: 1. Petitioner's motion to proceed in forma pauperis (ECF No. 3) is granted; and 2. The Clerk of the Court is directed to randomly assign a district judge to this action IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice 	
 16 17 18 19 20 21 22 	 conviction and sentence challenged in this case, his petition must be dismissed without prejudice to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals. Accordingly, IT IS HEREBY ORDERED that: Petitioner's motion to proceed in forma pauperis (ECF No. 3) is granted; and The Clerk of the Court is directed to randomly assign a district judge to this action IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice because it is premised on an unauthorized successive petition for writ of habeas corpus under 28 	
 16 17 18 19 20 21 22 23 	 conviction and sentence challenged in this case, his petition must be dismissed without prejudice to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals. Accordingly, IT IS HEREBY ORDERED that: Petitioner's motion to proceed in forma pauperis (ECF No. 3) is granted; and The Clerk of the Court is directed to randomly assign a district judge to this action IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice because it is premised on an unauthorized successive petition for writ of habeas corpus under 28 U.S.C. § 2254. 	
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 16 17 18 19 20 21 22 23 24 25 26 	 conviction and sentence challenged in this case, his petition must be dismissed without prejudice to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals. Accordingly, IT IS HEREBY ORDERED that: Petitioner's motion to proceed in forma pauperis (ECF No. 3) is granted; and The Clerk of the Court is directed to randomly assign a district judge to this action IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice because it is premised on an unauthorized successive petition for writ of habeas corpus under 28 U.S.C. § 2254. These findings and recommendations are submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, petitioner may file written 	

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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6	UNITED STATES MAGISTRATE JUDGE
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