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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVIS MICHAEL ORTIZ,  
Petitioner,  
v.  
UNKNOWN,  
Respondent.

No. 2:19-cv-0144-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup> The court has reviewed the petition as required by Rule 4 of the Rules Governing Section 2254 Proceedings, and finds that the petition is second or successive and must therefore be dismissed.

A petition is second or successive if it makes “claims contesting the same custody imposed by the same judgment of a state court” that the petitioner previously challenged, and on which the federal court issued a decision on the merits. *Burton v. Stewart*, 549 U.S. 147 (2007); *see also Slack v. McDaniel*, 529 U.S. 473, 485-86 (2000). Before filing a second or successive petition in a district court, a petitioner must obtain from the appellate court “an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Without an order from

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<sup>1</sup> Petitioner also seeks leave to proceed in forma pauperis (ECF No. 2). That request is granted.

1 the appellate court, the district court is without jurisdiction to consider a second or successive  
2 petition. *See Burton*, 549 U.S. 147.

3 In the present action, petitioner challenges the first-degree murder conviction and fifty  
4 years-to-life sentence entered against him in 2012, in the California Superior Court, County of  
5 Butte, case number CM031995. ECF No. 1 at 1. Court records reflect that in *Ortiz v. Baughman*,  
6 No. 2:16-cv-0659-KJM-CKD (E.D. Cal.), the court considered petitioner’s challenge to the same  
7 judgment of conviction. *See Ortiz*, ECF No. 25 (magistrate judge’s February 7, 2018 findings  
8 and recommendations recommending denial of petition on the merits) & ECF No. 27 (district  
9 judge’s order dated March 20, 2018, adopting findings and recommendations and denying  
10 petition on the merits). Since petitioner challenges the same judgment now that he previously  
11 challenged and which was adjudicated on the merits, the petition now pending is second or  
12 successive.

13 Petitioner offers no evidence that the appellate court has authorized this court to consider  
14 a second or successive petition. Therefore, this action must be dismissed for lack of jurisdiction.  
15 *See Burton*, 549 U.S. 147; *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (per curiam).

16 Accordingly, IT IS HEREBY ORDERED that


- 17 1. Petitioner’s application for leave to proceed in forma pauperis (ECF No. 2) is granted;
- 18 and
- 19 2. The Clerk of the Court shall randomly assign a United States District Judge to this  
20 action.

21 Further, IT IS HEREBY RECOMMENDED that this action be dismissed for lack of  
22 jurisdiction.

23 These findings and recommendations are submitted to the United States District Judge  
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
25 after being served with these findings and recommendations, any party may file written  
26 objections with the court and serve a copy on all parties. Such a document should be captioned  
27 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
28 shall be served and filed within fourteen days after service of the objections. Failure to file

1 objections within the specified time may waive the right to appeal the District Court's order.  
2 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.  
3 1991). In his objections petitioner may address whether a certificate of appealability should issue  
4 in the event he files an appeal of the judgment in this case. *See* Rule 11, Rules Governing Section  
5 2254 Cases (the district court must issue or deny a certificate of appealability when it enters a  
6 final order adverse to the applicant).

7 DATED: July 30, 2019.

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9 EDMUND F. BRENNAN  
10 UNITED STATES MAGISTRATE JUDGE  
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