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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEDRO CRUZ HERNANDEZ,	)	
	)	
Petitioner,	)	No. C 09-6007 CRB (PR)
	)	
vs.	)	ORDER
	)	
F. GONZALEZ, Warden,	)	(Docket # 7 & 8)
	)	
Respondent(s).	)	
_____	)	

Petitioner, a prisoner at the California Correctional Institution, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the order of restitution issued in connection with his criminal conviction in the Superior Court of the State of California in and for the County of Monterey.

Per order filed on January 13, 2010, the court noted that petitioner's direct appeal (case # H033701) is still pending in the California Court of Appeal and therefore dismissed the federal petition without prejudice to refiling after all pending state post-conviction proceedings are completed.

Petitioner has filed an "objection" (docket # 7) and a request for a response (docket # 8) which the court construes as a motion for reconsideration and DENIES for lack of merit. Moreover, the petition must be dismissed because the Ninth Circuit recently held that federal courts lack habeas jurisdiction where, as here, the petitioner

1 challenges only the money portion of a sentence that includes imprisonment. See Bailey  
2 v. Hill, No. 09-35450, slip op. 4859, 4868 (9th Cir. Mar. 25, 2010) ((imprisoned  
3 petitioner failed to satisfy custody requirement for his petition challenging only the  
4 restitution component of his sentence because the "elimination or alteration of a money  
5 judgment, does not directly impact – and is not directed at the source of the restraint  
6 on–his liberty" as long as he has to serve the rest of his prison sentence in the same  
7 manner).

8 SO ORDERED.

9 DATED: April 28, 2010

  
10 CHARLES R. BREYER  
11 United States District Judge  
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