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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BENJAMIN SHERMAN MATHIS,

No. C-11-3345 EMC (pr)

Petitioner,

v.

ORDER OF DISMISSAL

GEORGE NEOTTI, Warden,

Respondent.

Benjamin Sherman Mathis, a prisoner incarcerated at the R. J. Donovan Correctional Facility in San Diego, California, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition is not his first federal habeas petition concerning his 1988 conviction from the Santa Clara County Superior Court. His earlier habeas petition in *Mathis v. Marshall*, No. C 91-20050 SW, was denied on the merits on July 29, 1992.

A second or successive petition may not be filed in this Court unless the Petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this Court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner Mathis has not obtained such an order from the Ninth Circuit. This Court will not entertain a new petition from Petitioner Mathis until he first obtains permission from the Court of Appeals for the Ninth Circuit to file such a petition. This action is **DISMISSED** without prejudice to Petitioner Mathis filing a petition in this Court after he obtains the necessary order from the Court of Appeals for the Ninth Circuit.

If Petitioner Mathis wants to attempt to obtain the necessary order from the Ninth Circuit, he should very clearly mark the first page of his document as a “MOTION FOR ORDER


1 AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE PETITION
2 PURSUANT TO 28 U.S.C. § 2244(b)(3)” rather than labeling it as a habeas petition because the
3 Ninth Circuit Clerk’s office is apt to simply forward to this Court any document labeled as a habeas
4 petition. He also should mail the motion to the Ninth Circuit (at 95 Seventh Street, San Francisco,
5 CA 94103), rather than to this Court. In his motion to the Ninth Circuit, he should explain how he
6 meets the requirements of 28 U.S.C. § 2244(b).

7 Petitioner’s *in forma pauperis* application is **DENIED**. (Docket # 6.)

8 The Clerk shall close the file.

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10 IT IS SO ORDERED.

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12 Dated: August 1, 2011

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15 EDWARD M. CHEN
16 United States District Judge
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