

1 charged in a superseding indictment originating in Montana of which Lopez elected to dispose in
2 this district.

3 On June 21, 2004, Lopez filed a motion to vacate, set aside or correct sentence pursuant
4 to 28 U.S.C. § 2255 (“First Section 2255 Motion”). In that motion, she claimed that her counsel
5 was ineffective in failing to advise her of her right to appeal, the consequences of her plea
6 agreement, and the possibility of deportation.

7 On February 17, 2005, this Court issued an Order denying Lopez’s First Section 2255
8 Motion as time-barred. The Court denied Lopez’s application for a certificate of appealability by
9 order filed May 10, 2005. On November 22, 2005, the Ninth Circuit also denied Lopez’s request
10 for a certificate of appealability.

11 On August 23, 2005, Lopez filed a second motion to vacate, set aside or correct sentence
12 pursuant to 28 U.S.C. § 2255 (“Second Section 2255 Motion”). On December 5, 2005, she filed
13 an application in the Ninth Circuit for leave to file a second or successive petition, which was
14 denied.

15 On September 6, 2006, Lopez filed the instant motion to vacate, set aside or correct
16 sentence pursuant to 28 U.S.C. § 2255 (“Third Section 2255 Motion”). On October 18, 2006,
17 this Court issued an Order to Show Cause directing the United States to respond. On December
18 22, 2006, the Court granted the United States’ motion for extension of time. The United States
19 filed its opposition brief on January 12, 2007.

20 21 **II. DISCUSSION**

22 Under 28 U.S.C. § 2244, “[n]o circuit or district court judge shall be required to entertain
23 an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a
24 judgment of a court of the United States if it appears that the legality of such detention has been
25 determined by a judge or court of the United States on a prior application for a writ of habeas
26 corpus, except as provided in section 2255.” 28 U.S.C. § 2244. Section 2255 requires that “[a]
27 second or successive motion must be certified as provided in section 2244 by a panel of the
28 appropriate court of appeals to contain . . . (1) newly discovered evidence . . . or (2) a new rule of

1 constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was
2 previously made unavailable.” Section 2244(3)(B) requires that “[a] motion in the court of
3 appeals for an order authorizing the district court to consider a second or successive application
4 shall be determined by a three-judge panel of the court of appeals.” The Ninth Circuit has held
5 that a district court has no jurisdiction to consider a second or successive § 2255 petition until the
6 court of appeals has authorized its filing. *See United States v. Allen*, 157 F.3d 661, 664 (9th Cir.
7 1998); *see also Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998) (“An individual seeking
8 to file a ‘second or successive’ application must move in the appropriate court of appeals for an
9 order directing the district court to consider the application.”). Because Lopez has not obtained
10 the required certification from the Ninth Circuit, this Court lacks jurisdiction to consider the
11 instant motion.

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13 **III. ORDER**

14 The motion to vacate, set aside or correct sentence is DENIED.

15 **IT IS SO ORDERED.**

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17 DATED: 9/16/2009

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20 JEREMY FOCX
United States District Judge
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1 This Order has been served upon the following persons:

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3 Maria Garcia de Lopez
99624-011
4 Federal Correctional Institution
5701 8th Street Camp Parks
5 Dublin, CA 94568

6 Miguel Hernandez
mhernandez@cbmlaw.com

7

8 Shawna Yen
shawna.yen2@usdoj.gov

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