

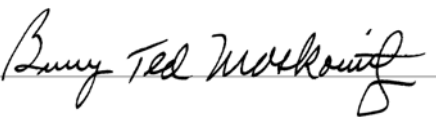
1 under 28 U.S.C. § 2244(b) when it “seeks vindication of” or “advances” one or more “claims.”
2 *Gonzalez v. Crosby*, 545 U.S. 524, 530-31 (2005). A claim is defined as “an asserted federal
3 basis for relief from a state court’s judgment of conviction”; a motion brings a claim “if it
4 attacks the federal court’s previous resolution of a claim on the merits.” *Id.* at 532. “On the
5 merits” refers “to a determination that there exist or do not exist grounds entitling a petitioner
6 to habeas corpus relief under 28 U.S.C. §§ 2254(a) and (d).” *Id.* at n.4. By contrast, a Rule
7 60(b) motion that “challenges only the District Court’s failure to reach the merits [of a habeas
8 claim] does not warrant such treatment, and can therefore be ruled upon by the District Court
9 without precertification by the Court of Appeals pursuant to § 2244(b)(3).” *Id.* at 538.

10 Here, Petitioner brings the same substantive claims for federal relief that were raised
11 in the habeas petition. The Court reached the merits of each of his claims in the denial of
12 his petition. *C.f. Phelps v. Alameida*, 569 F.3d 1120, 1132 (9th Cir. 2009) (Rule 60(b)(6)
13 motion not a successive petition where District Court’s denial of habeas petition rested on
14 statute of limitations grounds). Accordingly, Petitioner’s motion, “although labeled a Rule
15 60(b) motion, is in substance a successive habeas petition.” *Gonzalez*, 545 U.S. at 531.

16 The Court lacks jurisdiction to consider Defendant’s successive § 2254 motion
17 because the successive motion has not been certified by a panel of Ninth Circuit judges as
18 required by 28 U.S.C. § 2244(b). Therefore, Defendant’s successive § 2254 motion is
19 **DISMISSED.**

20
21 **IT IS SO ORDERED.**

22 DATED: December 6, 2010

23 
24 Honorable Barry Ted Moskowitz
25 United States District Judge
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