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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WILLIAM KENNERSON,

Petitioner,

vs.

DEAN BORDERS, et al.,

Respondents.

CASE NO. 17cv1847-LAB (BLM)

ORDER OF DISMISSAL

“An individual seeking to file a ‘second or successive’ application must move in the appropriate court of appeals for an order directing the district court to consider his application. § 2244(b)(3)(A).” *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998). Judge Curiel previously denied William Kennerson’s habeas petition. Kennerson admits he hasn’t obtained Ninth Circuit permission to file a second habeas petition but argues he didn’t need to under *Stewart v. Martinez-Villareal*. But *Stewart* held that a prisoner didn’t need to obtain permission to file a second petition where the first was dismissed for failure to exhaust state remedies. *Id.* at 644. Here, Judge Curiel dismissed the first petition on the merits. Therefore, Kennerson’s second petition is **DISMISSED** without prejudice. The clerk will attach a Ninth Circuit Application for Leave to File a Second Petition. Kennerson’s motions to proceed IFP and for a TRO are **DENIED** as moot.

IT IS SO ORDERED.

Dated: October 2, 2017



HONORABLE LARRY ALAN BURNS
United States District Judge