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

JESUS ENRIQUE SANCHEZ
VASQUEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Case Nos. 3:21-cv-2155-LAB
3:18-cr-03560-LAB-1

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS
[Dkt. 1]**

In April 2019, this Court sentenced Petitioner Jesus Enrique Sanchez Vasquez (“Petitioner”) to 71 months’ imprisonment and assessed costs of \$100, but no fine, for felony importation of methamphetamine pursuant to 21 U.S.C. § 960(b). In June 2019, in a related case filed before the Court, Petitioner filed a petition for writ of habeas corpus, claiming that although his sentence didn’t include a fine, he nevertheless paid a considerable fine (more than the maximum allowed by statute), which absolved him from serving the remainder of his custodial sentence. *Sanchez Vasquez v. United States of America*, Case No. 19-cv1154-LAB-JLB, Dkt. 1 at 1, 7–8. But the Court denied his petition, finding that “Petitioner can’t override the Court’s statutory authority to impose a custodial sentence by paying a fine the Court didn’t impose.” *Id.*, Dkt. 4 at 2.

1 Now before the Court is another petition for writ of habeas corpus under
2 28 U.S.C. § 2255, filed on December 14, 2021. (Dkt. 1). Because Petitioner’s
3 prior petition was adjudicated on the merits, the present habeas petition is
4 barred as a second or successive petition. 28 U.S.C. § 2244(b). Indeed,
5 Petitioner may not file a second or successive § 2255 petition unless he makes
6 a *prima facie* showing to the appropriate court of appeals that the petition is
7 based on:

8 (1) newly discovered evidence that, if proven and
9 viewed in light of the evidence as a whole, would be
10 sufficient to establish by clear and convincing
11 evidence that no reasonable factfinder would have
found the movant guilty of the offense; or

12 (2) a new rule of constitutional law, made retroactive
13 to cases on collateral review by the Supreme Court,
14 that was previously unavailable.

15 28 U.S.C. § 2255(h). Section 2255(h)(2) creates a jurisdictional bar to
16 Petitioner’s claims: “If the petitioner does not first obtain [] authorization [from
17 the appellate court], the district court lacks jurisdiction to consider the second
18 or successive application.” *United States v. Lopez*, 577 F.3d 1053, 1061 (9th
19 Cir. 2009).

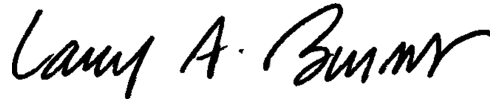
20 The Court is unable to ascertain from the Petition the basis for
21 Petitioner’s challenge to his conviction and sentence. Nonetheless, Petitioner
22 has failed to present any evidence that he was granted leave to file a second
23 or successive § 2255 petition by the Ninth Circuit, let alone how any of the
24 exceptions that allow for a second or successive habeas petition apply here.

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1 The Court therefore **DISMISSES** the second or successive petition for
2 writ of habeas corpus pursuant to 28 U.S.C. § 2255 without prejudice subject
3 to refiling if Petitioner obtains the necessary order from the Ninth Circuit.¹

4 **IT IS SO ORDERED.**

5 Dated: July 1, 2022



6 **HON. LARRY ALAN BURNS**
7 United States District Judge

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28 ¹ The Court also notes that there may be a statute of limitations issue as there is a one-year statute of limitation for a § 2255 petition. See 28 U.S.C. § 2255(f).