

1 untimely or because of procedural default, the dismissal constitutes a disposition on the
2 merits and renders a subsequent petition second or successive for purposes of 28
3 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009);
4 *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

5 On April 27, 2004, this court dismissed Hernandez's first petition challenging this
6 judgment of conviction with prejudice as procedurally barred, and judgment was entered
7 (2:03-cv-01008-KJD-RJJ, ECF Nos. 9, 10). The Ninth Circuit Court of Appeals affirmed
8 this court's order on March 23, 2005 (2:03-cv-01008-KJD-RJJ, ECF No. 16). Moreover,
9 on June 25, 2014, this court dismissed Hernandez's second federal habeas petition
10 challenging this judgment of conviction as second and successive (2:12-cv-02003-JCM-
11 PAL, ECF No. 27). This current action, therefore, is actually a second or successive
12 habeas corpus petition. *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).
13 Petitioner was required to obtain authorization from the Ninth Circuit Court of appeals
14 before he could proceed with a second or successive petition. 28 U.S.C. § 2244(b)(3).
15 Hernandez has not demonstrated that he obtained such authorization. Accordingly, this
16 petition shall be dismissed with prejudice as a second and successive federal habeas
17 petition.

18 Reasonable jurists would not find this conclusion to be debatable or wrong, and
19 the court will not issue a certificate of appealability.

20 **IT IS THEREFORE ORDERED** that the Clerk shall **DETACH** and **FILE** the
21 petition (ECF No. 1-1).

22 **IT IS FURTHER ORDERED** that petitioner's application to proceed *in forma*
23 *pauperis* (ECF No. 3) is **DENIED** as moot.

24 **IT IS FURTHER ORDERED** that petitioner's motion for status check (ECF No. 6)
25 is **DENIED** as moot.

26 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** with prejudice as a
27 successive petition.
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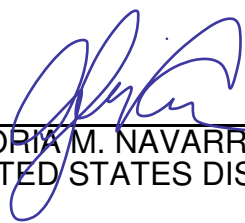
IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that the Clerk shall add Adam Paul Laxalt, Nevada Attorney General, as counsel for respondents.

IT IS FURTHER ORDERED that the Clerk shall electronically serve the petition, along with a copy of this order, on respondents. No response by respondents is necessary.

IT IS FURTHER ORDERED that the Clerk shall **ENTER JUDGMENT** accordingly and close this case.

DATED: 6 November 2017.



GLORIA M. NAVARRO, CHIEF JUDGE
UNITED STATES DISTRICT COURT