

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Raymond Glen Berry v. Marales, Warden

No. CV 25-8197-GW(E) (C.D. Cal. Sept. 10, 2025) · No. No. CV 25-8197-GW(E) · Decided September 10, 2025

SUMMARY

The United States District Court for the Central District of California dismissed Raymond Glen Berry’s successive habeas corpus petition challenging his Los Angeles Superior Court conviction and sentence. The court held that it lacked jurisdiction because Berry had not obtained authorization from the Ninth Circuit to file a second or successive petition under 28 U.S.C. § 2244(b). The petition was denied and dismissed without prejudice.

CASE DETAILS

COURT	United States District Court for the Central District of California
JURISDICTION	United States District Court for the Central District of California
DECIDED	September 10, 2025
DOCKET	No. CV 25-8197-GW(E)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner filed a second federal habeas petition under 28 U.S.C. § 2254 challenging the same state conviction and sentence previously challenged in an earlier habeas action. The district court dismissed the petition without prejudice because petitioner had not obtained authorization from the Ninth Circuit to file a second or successive petition.
STANDARD OF REVIEW	The court applied the jurisdictional requirements governing second or successive habeas petitions under 28 U.S.C. § 2244(b).
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Raymond Glen Berry, Petitioner v. Marales, Warden, Respondent

TOPICS

- federal habeas corpus
- successive petitions
- post-conviction relief
- appellate procedure
- subject matter jurisdiction

PRACTICE AREAS

federal habeas corpus

post-conviction relief

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the present habeas petition was a second or successive petition under 28 U.S.C. § 2244(b).
2. Whether the district court had jurisdiction to entertain the petition absent prior authorization from the Ninth Circuit Court of Appeals.

HOLDINGS

1. A habeas petition challenging the same state conviction and sentence previously challenged in an earlier federal habeas petition is a second or successive petition under 28 U.S.C. § 2244(b), even if the new petition is not repetitive in its claims.
2. A district court lacks jurisdiction to entertain a second or successive habeas petition under § 2254 when the petitioner has not first obtained authorization from the court of appeals.

KEY QUOTATIONS

“the District Court was without jurisdiction to entertain [the petition]” (slip op. at 1)

“the district court lacks jurisdiction to consider the petition and should dismiss it.” (slip op. at 1)

FACTUAL BACKGROUND

The petition challenged Berry's conviction and sentence in Los Angeles Superior Court case number BA 397700-01. Berry had previously challenged the same conviction and sentence in a federal habeas petition that was dismissed with prejudice in 2018. The record did not reflect that Berry had obtained Ninth Circuit authorization to file the present petition.

PROCEDURAL HISTORY

Berry filed the present petition on August 25, 2025, challenging his conviction and sentence in Los Angeles Superior Court case number BA 397700-01. He had previously filed a habeas petition concerning the same conviction and sentence, which the district court denied and dismissed with prejudice on February 1, 2018. The court also noted that it had previously rebuffed another attempt to file a second or successive petition in *Berry v. Johnson*, No. CV 20-6863-GW(E).

DISPOSITION

dismissed

CASES CITED

- *Berry v. Davey*, No. CV 17-3680-GW(E)
- *Thompson v. Calderon*, 151 F.3d 918, 920-21 (9th Cir.), cert. denied, 524 U.S. 965 (1998)

- Calbert v. Marshall, 2008 WL 649798, at *2-4 (C.D. Cal. Mar. 6, 2008)
- Burton v. Stewart, 549 U.S. at 157
- Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir. 2000)
- Remsen v. Att'y Gen. of Calif., 471 Fed. App'x 571, 571 (9th Cir. 2012)
- Mir v. Little Company of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988)
- Berry v. Johnson, No. CV 20-6863-GW(E)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF
CALIFORNIA 10 11 RAYMOND GLEN BERRY, No. CV 25-8197-GW(E) 12 Petitioner, 13 v.
ORDER OF DISMISSAL 14 MARALES, WARDEN, 15 Respondent. 16 17 On August 25, 2025,
Petitioner filed a “Petition for Writ of Habeas Corpus by a Person 18 in State Custody.” The
Petition challenges Petitioner’s conviction and sentence in Los 19 Angeles Superior Court case
number BA 397700-01 (Petition at 2).

Petitioner previously 20 challenged the same conviction and sentence in a habeas petition filed in
this Court in 2017. 21 See Berry v. Davey, No. CV 17-3680-GW(E) (“the prior habeas petition”).
By Judgment 22 entered February 1, 2018, this Court denied and dismissed the prior habeas
petition with 23 prejudice. 24 25 The Court must dismiss the present Petition in accordance with
28 U.S.C. section 26 2244(b) (as amended by the “Antiterrorism and Effective Death Penalty Act
of 1996”).

Section 27 2244(b) requires that a petitioner seeking to file a “second or successive” habeas
petition first 1 (2007) (where petitioner did not receive authorization from Court of Appeals before
filing 2 second or successive petition, “the District Court was without jurisdiction to entertain [the
3 petition]”); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.

2000) (“the prior-appellate-review 4 mechanism set forth in § 2244(b) requires the permission of
the court of appeals before ‘a 5 second or successive habeas application under § 2254’ may be
commenced”). A petition 6 need not be repetitive to be “second or successive,” within the meaning
of 28 U.S.C. section 7 2244(b). See, e.g., Thompson v. Calderon, 151 F.3d 918, 920-21 (9th Cir.),
cert. denied, 524 8 U.S. 965 (1998); Calbert v. Marshall, 2008 WL 649798, at *2-4 (C.D.

Cal. Mar. 6, 2008). 9 Petitioner evidently has not yet obtained authorization from the Ninth Circuit
Court of 10 Appeals.¹ Consequently, this Court cannot entertain the present Petition.² See Burton
v. 11 Stewart, 549 U.S. at 157; see also Remsen v. Att’y Gen. of Calif., 471 Fed. App’x 571, 571
12 (9th Cir. 2012) (if a petitioner fails to obtain authorization from the Court of Appeals to file a
13 second or successive petition, “the district court lacks jurisdiction to consider the petition and
14 should dismiss it.”) (citation omitted).

15 /// 16 /// 17 /// 18 /// 19 /// 20 /// 21 /// 22 /// 23 24 1 The docket for the United States Court of Appeals for the Ninth Circuit, available 25 on the Pacer database on www.pacer.gov, does not reflect that anyone named Raymond Berry has received authorization to file a second or successive petition. See *Mir v. Little* 26 Company of Mary Hosp., 844 F.2d 646, 649 (9th Cir.

1988) (court may take judicial notice of court records). 27 2 The Court previously rebuffed Petitioner's attempt to bring a second or successive petition. See *Berry v. Johnson*, No. CV 20-6863-GW(E). 1 For all of the foregoing reasons, the Petition is denied and dismissed without prejudice. 2 3 LET JUDGMENT BE ENTERED ACCORDINGLY. 4 5 DATED: September 10, 2025.

6 Afrg Be Ve 7 GEORGE H. WU UNITED STATES DISTRICT JUDGE 8 9 || PRESENTED this 8th day of 10 || September, 2025, by: 11 12 IS/ CHARLES F. EICK 13 || UNITED STATES MAGISTRATE JUDGE 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28