

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 27 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ISMAEL ANTONIO MURPHY-
RICHARDSON,

No. 24-4267

Petitioner,

v.

MEMORANDUM*

STACI IBARRA,

Respondent.

Application to File Second or Successive Petition
Under 28 U.S.C. § 2254

Submitted October 23, 2025**
Phoenix, Arizona

Before: GRABER, TALLMAN, and BADE, Circuit Judges.

This is Ismael Murphy-Richardson's second attempt to challenge his state convictions through federal habeas proceedings. In 2018, he was convicted of three counts of sexual assault in Arizona state court and sentenced to twenty-one years in prison. His first round in pursuit of the federal writ ended in 2024 when

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his petition was dismissed without prejudice for failure to exhaust state remedies for one of his claims. *See Murphy-Richardson v. Att’y Gen. of Ariz.*, No. 22-15001, 2024 WL 359371 (9th Cir. Jan. 31, 2024) (mem.). He has returned to us seeking authorization to file a “second or successive” habeas petition under 28 U.S.C. § 2254.

We have jurisdiction under 28 U.S.C. § 2244(b)(3). We review de novo an application for authorization to file a second or successive habeas petition. *See Clayton v. Biter*, 868 F.3d 840, 843 (9th Cir. 2017). For the reasons set forth below, we deny Murphy-Richardson’s application as unnecessary.¹

Murphy-Richardson does not need our authorization under § 2244(b)(3)(A) to file his new petition because the petition is not “second or successive” as that term is used in § 2244(b). Not every second-in-time habeas petition is a “second or successive” one. *Clayton*, 868 F.3d at 843. When a second petition is filed after the inmate’s first petition “was dismissed without adjudication on the merits for failure to exhaust state remedies,” the second-in-time petition is not “second or successive.” *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

That is what happened with Murphy-Richardson’s first petition. Our prior panel ruled that state remedies had not been exhausted for one of the claims in his

¹ We grant Ibarra’s unopposed request that we take judicial notice of the docket entries in Murphy-Richardson’s prior appeal, No. 22-15001. *See Ray v. Lara*, 31 F.4th 692, 697 n.4 (9th Cir. 2022).

petition and declined to bar the claim as procedurally defaulted because it was still pending in state court. *Murphy-Richardson*, 2024 WL 359371, at *1.

Accordingly, the case was remanded “for the district court to dismiss the petition without prejudice,” which it did. *Id.* at *2. A dismissal for failure to exhaust state remedies does not constitute an adjudication on the merits. *See Tong v. United States*, 81 F.4th 1022, 1025–26 (9th Cir. 2023) (citing *Howard v. Lewis*, 905 F.2d 1318, 1322 (9th Cir. 1990)).

We emphasize that Murphy-Richardson’s entire *petition*, not individual *claims*, was dismissed without prejudice. *See Mena v. Long*, 813 F.3d 907, 909–10 (9th Cir. 2016) (citing *Rose v. Lundy*, 455 U.S. 509, 510 (1982)) (noting that district courts must “dismiss petitions that contain even one unexhausted claim”). “[W]hatever particular claims” an initial mixed petition may raise, “none could be considered by the federal court.” *Slack*, 529 U.S. at 488 (citing *Rose*, 455 U.S. 509).

Because Murphy-Richardson’s initial habeas petition “was dismissed without adjudication on the merits for failure to exhaust state remedies,” his present petition is not “second or successive.” *Slack*, 529 U.S. at 478.

Accordingly, it is “not subject to § 2244(b) at all,” *Magwood v. Patterson*, 561 U.S. 320, 331 (2010), and he does not need our authorization under § 2244(b)(3) to file it, *In re Turner*, 101 F.3d 1323, 1323–24 (9th Cir. 1996).

As we have determined that his petition must now be treated as an initial petition, we “may proceed no further” to consider the merits of his claims. *Turner v. Baker*, 912 F.3d 1236, 1241 (9th Cir. 2019). We deny the application as unnecessary.²

APPLICATION DENIED. No costs awarded.

² We express no view on the merits of the district court’s prior rulings on the claims presented in Murphy-Richardson’s first petition, or on the procedural consequences of his decision regarding when to file in the district court.