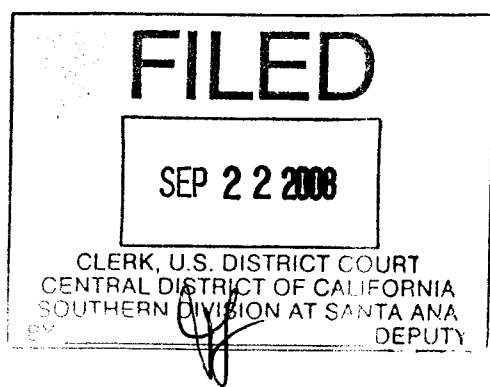


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JOSE REYES,) Case NO. CV 08-4889-MLG
)
) Petitioner,)
)
) v.) MEMORANDUM OPINION AND ORDER
)
) LINDA SANDERS, Warden,)
)
) Respondent.)

I. Introduction

This is a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. Petitioner Jose Reyes is currently a federal prisoner incarcerated at the United States Penitentiary in Lompoc, California. In 1990, Reyes was convicted of engaging in a continuing criminal enterprise ("CCE") 28 U.S.C. § 848 and nine related counts in the United States District Court for the District of Idaho. He was sentenced to a 360 month term of imprisonment on the CCE conviction and a concurrent 240 month term on the remaining nine convictions.

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1 Petitioner's conviction was affirmed on direct appeal by the United
2 States Court of Appeals for the Ninth Circuit in April 1992. On January
3 19, 1995, Petitioner filed a motion for relief from judgment pursuant to
4 28 U.S.C § 2255. The motion was denied and the denial was affirmed by
5 the Ninth Circuit on May 26, 1999. *United States v. Reyes*, 185 F.3d 871,
6 1999 WL 394886 (9th Cir. 1999).

7 Six days after the Ninth Circuit's decision, the Supreme Court
8 decided *Richardson v. United States*, 526 U.S. 813 (1999). *Richardson*
9 held that in a CCE prosecution the trial court is required to instruct
10 the jury that it must reach a unanimous and separate agreement as to
11 each violation constituting a "continuing series of violations" in the
12 CCE.

13 Petitioner did not file a petition for rehearing in the Ninth
14 Circuit. Rather, on April 7, 2000, Petitioner filed a petition with the
15 Ninth Circuit for leave to file a successive section 2255 motion,
16 claiming that his conviction was unconstitutional under *Richardson*. On
17 August 11, 2000, Petitioner's motion for leave to file a successive
18 petition was granted.

19 August 28, 2000, Petitioner filed his second section 2255 motion in
20 the trial court. On May 11, 2001, the trial court denied the motion on
21 the merits, finding that the failure to give the unanimity instruction
22 at trial was harmless because the jury had found petitioner guilty of at
23 least three predicate offenses.

24 The Ninth Circuit granted a certificate of appealability. On
25 January 23, 2004, the Ninth Circuit issued an order dismissing the
26 appeal with instructions to the district court to dismiss the petition.
27 *United States v. Reyes*, Case No. 01-35757 (9th Cir. 2004). The Court held
28 that "[A]lthough *Richardson* applied retroactively to initial habeas

1 petitions as a new substantive rule of law, *United States v. Montalvo*,
2 331 F.3d 1052, 1055 (9th Cir. 2003), it cannot form the basis of a second
3 or successive habeas petition." The Court found that under 28 U.S.C. §
4 2244, a second habeas petition may be certified only if it contains a
5 new rule of constitutional law made retroactive on collateral review by
6 the Supreme Court. Because *Richardson* was decided on statutory
7 interpretation grounds and not on a constitutional basis, *Reyes* was not
8 entitled to a file a second or consecutive section 2255 petition.

9 Petitioner has now brought this petition in another attempt to
10 obtain relief based upon the *Richardson* decision. He asserts that
11 section 2241 provides an avenue for relief because section 2255 is
12 inadequate and ineffective to test the legality of his detention. On
13 September 2, 2008, Respondent filed a motion to dismiss the petition.
14 Petitioner filed an opposition on September 18, 2008. Because this Court
15 does not have jurisdiction to review Petitioner's conviction under
16 section 2241, this matter is subject to mandatory dismissal.

17
18 **II. Analysis**

19 This petition is, without a doubt, a challenge to the convictions
20 obtained in and the sentences imposed by the United States District
21 Court for District of Idaho in 1990. As such, this Court lacks
22 jurisdiction over the petition because Petitioner's challenge to his
23 sentence must be raised by a motion pursuant to 28 U.S.C. § 2255 in the
24 District of Idaho.

25 In general, section 2255 is the exclusive procedural mechanism by
26 which a federal prisoner can challenge the legality of his detention.
27 See *Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006); *Ivy v.*
28 *Pontesso*, 328 F.3d 1057, 1059 (9th Cir. 2003). By contrast, a § 2241

1 petition is the vehicle through which a federal prisoner challenges the
2 manner, location or condition of the execution of a sentence.
3 *See Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000).

4 The distinction between § 2255 motions and § 2241 petitions also
5 has a jurisdictional component: § 2255 motions must be heard in the
6 federal district in which the prisoner was convicted and sentenced,
7 while § 2241 petitions must be heard in the federal district in which
8 the prisoner is confined. *See Hernandez*, 204 F.3d at 864-65. In cases
9 where a custodial court receives a pleading from a federal prisoner that
10 purports to be a § 2241 petition, but in fact seeks a form of relief
11 generally only available under § 2255, that court must, as an initial
12 matter, identify the true nature of the pleading so as to determine
13 whether or not jurisdiction is proper. *See id.*, at 865; *see also*
14 *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) (federal courts
15 are always "under an independent obligation to examine their own
16 jurisdiction")

17 Although Petitioner was convicted and sentenced in the District of
18 Idaho, he is currently incarcerated at the Lompoc Federal Prison Camp in
19 Lompoc, California. Thus, this Court has jurisdiction over claims
20 relating to the manner, location or condition of the execution of
21 Petitioner's sentence. However, Petitioner's claims challenge the
22 validity of the underlying sentences, not the manner in which the
23 sentences are being executed. Accordingly, the claims in this petition
24 may be raised only by way of a § 2255 motion in the District of Idaho.

25 There is an exception to the general bar on the use of § 2241 to
26 collaterally attack a conviction or sentence. Under the so-called
27 "savings clause" or "escape hatch" of § 2255, a federal prisoner may
28 utilize § 2241 to seek the type of relief otherwise only available under

1 § 2255 where the remedy provided by § 2255 is "inadequate or ineffective
2 to test the legality of his detention." For example, the Ninth Circuit
3 has held that a § 2241 petition is available under the "escape hatch" of
4 § 2255 "when a petitioner (1) makes a claim of actual innocence and (2)
5 has not had an 'unobstructed procedural shot' at presenting that claim."
6 *Stephens*, 464 F.3d at 898.

7 Petitioner claims that he is actually innocent. However, that
8 claim is predicated upon the jury instruction found to be erroneous in
9 *Richardson*. There is no allegation or showing that he is actually
10 innocent of the crime and Petitioner has failed to establish that the
11 court cannot have confidence in the finding of guilt. See e.g., *Schlup*
12 v. *DeLo*, 513 U.S. 298, 317 (1995), *Johnson v. Knowles*, Case No. 07-
13 15221, Slip Op. at 12044-47, (9th Cir., September 2, 2008)

14 Petitioner's claims challenging his convictions and sentences must
15 be raised in a § 2255 motion filed in the District of Utah.
16 Accordingly, the instant petition should be dismissed without prejudice
17 for lack of jurisdiction.

18
19 **III. Conclusion**

20 For the foregoing reasons, it is ORDERED that judgment be entered
21 dismissing this petition without prejudice for lack of jurisdiction.

22
23 DATED: September 22, 2008

24
25 
26 _____
27 Marc L. Goldman
28 United States Magistrate Judge