

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8

9 MOHAMMAD S. RASHID,

10 Petitioner,

11 v.

12 ANDRE MATEVOUSIAN, Warden,

13 Respondent.
14

CASE NO. 1:15-CV-1312-DAD-SMS (HC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF THE
PETITION FOR LACK OF JURISDICTION

15
16 Petitioner is proceeding *in pro se* and *in forma pauperis* with a petition for writ of habeas
17 corpus pursuant to 28 U.S.C. § 2241. He challenges the trial court’s designation of him as a
18 “career offender” under the Armed Career Criminal Act (“ACCA” 18 U.S.C. § 924), which
19 subjected him to a 262-month sentence rather than the 70-87 months he would have received
20 absent this designation. Petitioner argues that the Supreme Court’s decision in *Johnson v. United*
21 *States*, 135 S.Ct. 2551, 192 L. Ed. 2d 569 (2015), which ruled that ACCA’s “residual clause” was
22 void for vagueness, rendered his sentence unconstitutional for a violation of due process.

23 **I. SCREENING STANDARD**

24 The Court is required to screen pleadings filed by prisoners, and to dismiss them to the
25 extent they fail to state a claim. 28 U.S.C. § 1915A(a). Rule 4 of the Rules Governing Section
26 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the petition and
27 any attached exhibits that the petitioner is not entitled to relief in the district court.” Rule 4 of the
28 Rules Governing Section 2254 Cases.

1 **II. SUMMARY OF ARGUMENT**

2 Petitioner alleges in his petition that he was convicted of 18 U.S.C. § 1951 (Interference
3 with commerce by threats or violence). He was also subject to an additional penalty under 18
4 U.S.C. § 924, governing use or carrying of a firearm during and in relation to, or in furtherance of,
5 any crime of violence or drug trafficking crime. Petitioner was designated as a career offender
6 based on three prior burglary convictions in Missouri, which were designated as crimes of
7 violence under ACCA’s residual clause. His federal conviction was also designated a crime of
8 violence under the residual clause. Petitioner argues that he would have been sentenced under the
9 U.S. Sentencing Guidelines to 70-87 months imprisonment without being classified and sentenced
10 as a career offender. However, he was classified as a career offender and sentenced to 262 months.

11 In June 2015, the Supreme Court ruled that ACCA’s residual clause was unconstitutionally
12 vague in violation of due process. *Johnson v. United States*, 135 S.Ct. 2551, 2555-56, 192 L. Ed.
13 2d 569 (2015). Petitioner argues that, based on this ruling, the instant offense and his prior
14 burglary convictions were not crimes of violence. Petitioner argues that *Johnson* is retroactive.

15 **III. DISCUSSION**

16 28 U.S.C. § 2255 and 28 U.S.C. § 2241

17 A federal prisoner who wishes to challenge the validity or constitutionality of his
18 conviction or sentence must do so by way of a motion to vacate, set aside, or correct the sentence
19 under 28 U.S.C. § 2255. *Tripati v. Henman*, 843 F.2d 1160, 1162 (9th Cir.1988). In such cases,
20 only the sentencing court has jurisdiction. *Id.* at 1163. However, under the savings clause of §
21 2255, or the “escape hatch,” a federal prisoner seeking to challenge the legality of confinement
22 may file a § 2241 habeas petition “if, and only if, the remedy under § 2255 is ‘inadequate or
23 ineffective to test the legality of his detention.’” *Marrero v. Ives*, 682 F.3d 1190, 1192 (9th Cir.
24 2012)(quoting *Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006)). The Ninth Circuit has
25 recognized that this is a very narrow exception. *E.g. Ivy v. Pontesso*, 328 F.3d 1057 (9th Cir.
26 2003) (a petitioner must show actual innocence and that he never had the opportunity to raise it by
27 motion to demonstrate that § 2255 is inadequate or ineffective); *Holland v. Pontesso*, 234 F.3d
28 1277 (9th Cir. 2000) (§ 2255 not inadequate or ineffective because Petitioner misses statute of

1 limitations); *Aronson v. May*, 85 S.Ct. 3, 5, 13 L. Ed. 2d 6 (1964) (a court’s denial of a prior §
2 2255 motion is insufficient to render § 2255 inadequate.).

3 “[A] prisoner may file a § 2241 petition under the escape hatch when the prisoner
4 (1) makes a claim of actual innocence, and (2) has not had an unobstructed procedural shot at
5 presenting that claim.” *Marrero*, 682 F.3d at 1192 (internal quotation marks omitted). A claim of
6 actual innocence for purposes of the escape hatch means factual innocence, not mere legal
7 insufficiency. *Id.* at 1193 (citing *Bousley v. United States*, 523 U.S. 614, 623 (1998)). “[T]he
8 purely legal argument that a petitioner was wrongly classified as a career offender under the
9 Sentencing Guidelines is not cognizable as a claim of actual innocence under the escape hatch.”
10 *Id.* Thus, *Marrero* reiterates the requirement of a claim of factual innocence in order to proceed
11 under section 2255’s escape hatch, including when the petitioner challenges a sentencing defect.

12 Actual Innocence

13 Here, Petitioner’s allegations are a direct challenge to the sentence imposed, not to the
14 administration of that sentence. Thus, the proper vehicle for challenging such a mistake is a
15 motion to vacate, set aside, or correct the sentence pursuant to 28 U.S.C. § 2255, not 28 U.S.C. §
16 2241, unless Petitioner is entitled to proceed under § 2255’s savings clause. However, Petitioner
17 has not satisfied the actual innocence requirement.

18 Petitioner has not set forth specific facts not previously presented that make a convincing
19 case that Petitioner did not commit the offenses. He does not argue that he did not commit the
20 crimes for which he was convicted. His argument is purely legal –that he was wrongly classified
21 as a career offender- and has nothing to do with factual innocence. Thus, he has not asserted a
22 cognizable claim of actual innocence, and has not satisfied the savings clause. He is not permitted
23 to proceed under § 2241.

24 Jurisdiction

25 If Petitioner wishes to pursue his claims in federal court, he must do so by way of a motion
26 to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 in the sentencing court.
27 This Court does not have jurisdiction to hear the petition. Therefore, the petition should be
28 dismissed.

