

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2021

FOR THE NINTH CIRCUIT

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

HARRY J WHITMAN,

Petitioner-Appellant,

v.

JAMES KEYS, Superintendent Airway  
Heights Correction Center,

Respondent-Appellee.

No. 20-35314

D.C. No. 2:19-cv-00198-SAB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Stanley A. Bastian, Chief District Judge, Presiding

Argued and Submitted November 8, 2021  
Seattle, Washington

Before: GOULD, TALLMAN, and BUMATAY, Circuit Judges.

Appellant Harry J. Whitman appeals the dismissal of his 28 U.S.C. § 2241 petition for a writ of habeas corpus. While this case was on appeal before this Court, the Supreme Court decided a potentially dispositive case, *Borden v. United States*, 141 S. Ct. 1817 (2021). Further, in *Allen v. Ives*, 950 F.3d 1184 (9th Cir. 2020), this Court provided significant guidance on relevant issues that were not

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

briefed to the district court.

Both parties now raise arguments that were not before the district court. We therefore vacate and remand the dismissal of Whitman's petition on an open record. Both parties may assert new arguments and defenses before the district court. This panel will retain jurisdiction over any subsequent appeal.

VACATED AND REMANDED ON AN OPEN RECORD. Each party shall bear its own costs.