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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSEPH RENE MEZA,
Petitioner,
v.
MARTINEZ, Warden,
Respondent.

Case No. CV 20-2343-MCS (SP)

**MEMORANDUM AND ORDER
SUMMARILY DISMISSING
PETITION FOR WRIT OF
HABEAS CORPUS**

I.

INTRODUCTION

On March 11, 2020, petitioner Joseph Rene Meza filed a Petition for a Writ of Habeas Corpus (“Petition”) in this Court pursuant to 28 U.S.C. § 2241. Petitioner is incarcerated at the United States Penitentiary in Victorville, California, where he is serving a 55-year sentence imposed by the United States District Court for the Northern District of Texas in 2001 following his convictions for bank robbery (18 U.S.C. § 2113(a)) and possession of a firearm in furtherance of the crime (18 U.S.C. § 924(c)).

Petitioner contests the legality of his detention by arguing that, due to

1 changes in the law, § 924(c) is unconstitutionally vague and he would only be
2 facing a 15-year sentence today, and therefore his sentence should be reduced. On
3 March 30, 2020, this Court issued an Order directing petitioner to show cause why
4 the Petition should not be recharacterized as a 28 U.S.C. § 2255 motion and
5 dismissed as filed in the wrong jurisdiction, as an improper successive § 2255
6 motion, and as time-barred (“OSC”).

7 On April 29, 2020, petitioner responded to the OSC (“Response”). In his
8 Response, petitioner argues this Court has jurisdiction to consider the Petition
9 under § 2241 pursuant to § 2255’s savings clause. *See* 28 U.S.C. § 2255(e). In
10 the alternative, petitioner argues the Petition should be recharacterized as one
11 under 18 U.S.C. § 3582, he should be given 30 days to amend the Petition, or the
12 Petition should be dismissed without prejudice.

13 For the reasons that follow, this Court lacks jurisdiction to entertain the
14 Petition, and transfer to another court would not be in the interest of justice
15 because the Petition is impermissibly successive and time-barred. Consequently,
16 the Court summarily dismisses the Petition with prejudice.

17 II.

18 PROCEDURAL HISTORY¹

19 On October 17, 2000, petitioner pleaded guilty to three counts of bank
20 robbery (18 U.S.C. § 2113(a)) and proceeded to trial on his charges for unlawful
21 use of a firearm in connection with a crime of violence (18 U.S.C. § 924(c)) in
22 case number 4:00-CR-121 in the United States District Court for the Northern
23 District of Texas. Petitioner was found guilty of three § 924(c) counts. On
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25 ¹ The Court adopts and sets forth below the procedural history recounted by
26 the United States District Court for the Northern District of Texas in case number
27 4:13-CV-831, docket no. 4, and as reflected on the dockets of case numbers 4:00-
28 CR-121, 4:03-CV-189, and 4:16-CV-688 (N.D. Tex.), and 01-10310 (5th Cir.).

1 February 9, 2001, petitioner was sentenced to an aggregate term of 768 months in
2 prison. Petitioner appealed the judgment, and the Fifth Circuit Court of Appeals
3 affirmed it on December 19, 2001.

4 Petitioner filed his first motion collaterally attacking his convictions and
5 sentence under 28 U.S.C. § 2255 on March 17, 2003, in the Northern District of
6 Texas. That motion was denied on April 29, 2003.

7 On September 30, 2013, petitioner filed a second § 2255 motion in the
8 Northern District of Texas, which was denied on October 15, 2013. Petitioner
9 then filed a motion for reconsideration on November 18, 2013, which was denied
10 on December 2, 2013.

11 On July 18, 2016, petitioner filed a third § 2255 motion in the Northern
12 District of Texas. It too was denied, on July 20, 2016.

13 Nearly four years later, on March 11, 2020, petitioner filed the instant
14 § 2241 Petition in this Court. On March 30, 2020, the Court issued an OSC
15 directing petitioner to show cause why the Petition should not be recharacterized
16 as a § 2255 motion and dismissed for lack of jurisdiction, as improperly
17 successive, and as time-barred. On April 29, 2020, petitioner filed his Response to
18 the OSC.

19 III.

20 DISCUSSION

21 Section 2255 allows a federal prisoner claiming that his sentence was
22 imposed “in violation of the Constitution or laws of the United States” to “move
23 the court which imposed the sentence to vacate, set aside or correct the sentence.”
24 28 U.S.C. § 2255(a). Petitioner here contests the legality of his detention by
25 arguing 18 U.S.C. § 924(c) is unconstitutionally vague as set forth in *U.S. v.*
26 *Davis*, 588 U.S. ___, 139 S. Ct. 2319, 204 L. Ed. 2d 757 (2019), *Johnson v. U.S.*,
27 576 U.S. 591, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015), and *Sessions v. Dimaya*,

1 584 U.S. ___, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018). Pet. at 3, 6; Response at
2 3.² Petitioner contends he would only have been sentenced to 15 years today and
3 his sentence should be reduced. Pet. at 3; Response at 6. But petitioner raises this
4 challenge to his sentence not in a § 2255 motion filed in the district of conviction,
5 but rather in a habeas petition filed under 28 U.S.C. § 2241 in the district of his
6 current incarceration.

7 In his Response to the Court’s OSC, petitioner primarily argues that this
8 Court may exercise jurisdiction over the Petition under § 2255(e), but in the
9 alternative, petitioner requests that his Petition be recharacterized as a request for
10 resentencing under 18 U.S.C. § 3582 if the Court is not inclined to grant habeas
11 relief. A motion for reduction of a sentence is “beyond the scope of a habeas
12 petition.” *Garcia v. U.S.*, 2012 WL 3217707, at *3 (C.D. Cal. Aug. 3, 2012)
13 (citation omitted). Furthermore, even if the Court recharacterized the instant
14 Petition, petitioner has provided no explanation of why his sentence warrants
15 modification under § 3582. *See* 18 U.S.C. § 3582(c) (listing limited circumstances
16 in which a court may modify a sentence). Accordingly, since there is no basis for
17 the Court to recharacterize the Petition as brought under § 3582, the Court turns to
18 its jurisdiction over the Petition as filed, and whether it should be recharacterized
19 as a § 2255 motion.

20 “Generally, motions to contest the legality of a sentence must be filed under
21 § 2255 in the sentencing court, while petitions that challenge the manner, location,
22 or conditions of a sentence’s execution must be brought pursuant to § 2241 in the
23 custodial court.” *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000) (per
24 curiam); *see Lorentsen v. Hood*, 223 F.3d 950, 953 (9th Cir. 2000) (“In general,
25 § 2255 provides the exclusive procedural mechanism by which a federal prisoner
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27 ² Citations to pages in the Petition and Response refer to those designated by
28 CM/ECF.

1 may test the legality of detention.”). A prisoner may not bring a second or
2 successive § 2255 motion in district court without first seeking and obtaining
3 certification from “a panel of the appropriate court of appeals.” 28 U.S.C.
4 § 2255(h); *Harrison v. Ollison*, 519 F.3d 952, 955 (9th Cir. 2008). Only the
5 sentencing court has jurisdiction over a § 2255 motion. *Hernandez*, 204 F.3d at
6 864; *Tripati v. Henman*, 843 F.2d 1160, 1163 (9th Cir. 1988).

7 The Petition here is plainly a challenge to the legality of petitioner’s
8 convictions and sentence. Thus, the relief petitioner seeks here can only be
9 obtained by way of a § 2255 motion filed in the Northern District of Texas. As
10 noted above, petitioner has previously filed three § 2255 motions in the Northern
11 District of Texas, and there is no indication petitioner has received permission
12 from the Fifth or Ninth Circuits to bring a second or successive § 2255 motion.

13 There is an exception – a “savings clause” or “escape hatch” – to the general
14 rule that claims such as those petitioner raises here must be brought in a § 2255
15 motion. *See Harrison*, 519 F.3d at 956; *Hernandez*, 204 F.3d at 864 n.2. A
16 federal prisoner may file a habeas petition under § 2241 to challenge the legality
17 of a sentence when the prisoner’s remedy under § 2255 is “inadequate or
18 ineffective to test the legality of his detention.” 28 U.S.C. § 2255(e). In his
19 Response to the Court’s March 30, 2020 OSC, petitioner contends he falls under
20 the savings clause.

21 **A. The Petition Does Not Qualify for § 2255(e)’s Savings Clause**

22 The exception under § 2255(e) is “narrow” and will not apply “merely
23 because § 2255’s gatekeeping provisions,” such as the statute of limitations or the
24 limitation on successive petitions, now prevent the courts from considering a
25 § 2255 motion. *Ivy v. Pontesso*, 328 F.3d 1057, 1059 (9th Cir. 2003); *see also*
26 *Lorentsen*, 223 F.3d at 953 (ban on unauthorized successive petitions does not per
27 se make § 2255 “inadequate or ineffective”); *Moore v. Reno*, 185 F.3d 1054, 1055
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1 (9th Cir. 1999) (per curiam) (§ 2255 not inadequate or ineffective simply because
2 the district court dismissed the § 2255 motion as successive and court of appeals
3 did not authorize a successive motion). A petition meets the savings clause
4 criteria of § 2255(e) “when a petitioner (1) makes a claim of actual innocence, and
5 (2) has not had an unobstructed procedural shot at presenting that claim.”
6 *Harrison*, 519 F.3d at 959 (internal quotation marks and citation omitted).

7 Petitioner here does not satisfy either of these criteria.

8 In his Response to the Court’s March 30, 2020 OSC, petitioner contends he
9 is actually innocent, but then states he has had an unobstructed procedural shot at
10 presenting his claim. Response at 2. Even if petitioner meant to say the opposite
11 – that he has *not* had an unobstructed procedural shot – petitioner still would not
12 qualify for § 2255(e)’s savings clause.

13 Petitioner’s claim of actual innocence goes solely to his § 924(c)
14 convictions. Petitioner acknowledges he committed the robberies, but appears to
15 claim innocence of his convictions for using a firearm in connection with a crime
16 of violence, arguing robbery armed with a pellet gun cannot constitute a crime of
17 violence and § 924(c)’s residual clause is unconstitutionally vague. *See* Pet. at 3,
18 6; Response at 3-4. The Court assumes petitioner is raising a claim of actual
19 innocence and can meet the first element to qualify for § 2255(e)’s savings clause.

20 But petitioner cannot meet the second element. Petitioner fails to
21 demonstrate he never had an “unobstructed procedural shot” to raise his claims on
22 appeal or in a § 2255 motion. *See Harrison*, 519 F.3d at 960. In making this
23 determination, the court considers “(1) whether the legal basis for petitioner’s
24 claim did not arise until after he had exhausted his direct appeal and first § 2255
25 motion; and (2) whether the law changed in any way relevant to petitioner’s claim
26 after that first § 2255 motion.” *Id.* (internal quotation marks and citation omitted).

27 Here, the Fifth Circuit affirmed petitioner’s convictions on appeal on
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1 December 19, 2001, and petitioner filed his first § 2255 motion on March 17,
2 2003, which was denied on April 29, 2003. *See Meza v. U.S.*, No. 4:13-CV-00831
3 (N.D. Tex.), docket no. 4 at 2. In the Petition and Response, petitioner cites to
4 three cases decided after his first § 2255 motion was filed on March 17, 2003:
5 *Davis*, 139 S. Ct. at 2319, *Johnson*, 576 U.S. at 591, and *Dimaya*, 138 S. Ct. at
6 1204. Pet. at 3, 6; Response at 3.

7 These United States Supreme Court cases addressed whether clauses in
8 criminal statutes that rely on a categorical approach to define terms such as “crime
9 of violence” or “violent felony” are unconstitutionally vague. Each of these cases
10 addressed a different clause, with *Johnson* addressing 18 U.S.C.
11 § 924(e)(2)(B)(ii), *Dimaya* 18 U.S.C. § 16; and *Davis* 18 U.S.C. § 924(c)(3). In
12 all three cases, the clauses at issue used the “categorical approach,” which requires
13 judges to estimate the degree of risk that an imagined “ordinary case” of a crime
14 poses to determine whether a particular offense is a “crime of violence” or “violent
15 felony.” *Johnson*, 576 U.S. at 597-602; *Dimaya*, 138 S. Ct. at 1215-16; *Davis*,
16 139 S. Ct. at 2336. The Supreme Court rejected this categorical approach in all
17 three cases, holding that it rendered the residual clauses in these criminal statutes
18 unconstitutionally vague. *Id.*

19 These cases are not applicable here. As petitioner argues, he was convicted
20 of firearm charges under 18 U.S.C. § 924(c), which was the same clause at issue in
21 *Davis*. But in *Davis*, the Supreme Court explained that § 924(c)(3) defines a crime
22 of violence as an offense that is a felony and relies on either the elements clause of
23 subsection (A) or the residual clause of subsection (B). The elements clause
24 includes felonies that have “as an element the use, attempted use, or threatened use
25 of physical force against the person or property of another.” 18 U.S.C.
26 § 924(c)(3)(A); *see Davis*, 139 S. Ct. at 2324. The residual clause includes a
27 felony that “by its nature, involves a substantial risk that physical force against the
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1 person or property of another may be used in the course of committing the
2 offense.” 18 U.S.C. § 924(c)(3)(B); *see Davis*, 139 S. Ct. at 2324.

3 The limited question presented to the Supreme Court in *Davis* was whether
4 the residual clause of § 924(c)(3)(B) is unconstitutionally vague. Whether the
5 elements clause of § 924(c)(3)(A) is similarly unconstitutional was not at issue.
6 Indeed, before the case was heard by the Supreme Court, the Fifth Circuit held that
7 the *Davis* defendants’ convictions on one of their two § 924(c) counts, which
8 charged robbery as the predicate crime of violence, could be sustained under the
9 elements clause. *Id.* at 2325. Accordingly, the holding in *Davis* only invalidated
10 the residual clause of § 924(c) and did not extend to the entirety of § 924(c).

11 To the extent petitioner argues his robberies were not crimes of violence
12 under the elements clause of § 924(c)(3)(A), this argument is not supported by the
13 caselaw or statutes. As discussed above, the Supreme Court in *Davis* did not
14 address the question of whether a robbery qualifies as a predicate offense under
15 the elements clause of § 924(c). But courts of appeals in other circuits have held
16 that a bank robbery under 18 U.S.C. § 2113(a) – whether armed or not – is a crime
17 of violence because it includes as an element the use, attempted use, or threat of
18 force. *See, e.g., In re Price*, 964 F.3d 1045, 1049 (11th Cir. 2020) (“Bank robbery
19 is a crime of violence under § 924(c)’s elements clause.”) (citing *In re Sams*, 830
20 F.3d 1234, 1239 (11th Cir. 2016) (holding bank robbery, and not just armed bank
21 robbery, involves use or threatened use of force and therefore is a crime of
22 violence under § 924(c)(3)(A)’s elements clause)); *U.S. v. Pervis*, 937 F.3d 546,
23 552 (5th Cir. 2019) (Bank robbery under “§2113(a) is a crime of violence under 18
24 U.S.C. § 924(c)(3)(A)”). Similarly, in a case of armed bank robbery, the Ninth
25 Circuit’s reasoning in finding the robbery to be a crime of violence under
26 § 924(c)’s elements clause looked only at the elements required for a bank robbery
27 conviction, not an armed bank robbery conviction. *U.S. v. Wright*, 215 F.3d 1020,
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1 1028 (9th Cir. 2000); *accord U.S. v. Pritchard*, 692 Fed. Appx. 349, 351-52 (9th
2 Cir. 2017). Accordingly, petitioner’s argument that the bank robberies he
3 committed were not crimes of violence because he carried a pellet gun necessarily
4 fails since a bank robbery without any gun at all qualifies as a crime of violence
5 under § 924(c)’s elements clause. Indeed, petitioner’s arguments are similar to
6 those he has previously made to the United States District Court for the Northern
7 District of Texas, which that court rejected. *See Meza v. U.S.*, No. 4:16-CV-688
8 (N.D. Tex.), docket no. 4 at 3 (finding “the bank robberies for which [petitioner]
9 was convicted, clearly were crimes of violence within the meaning of 18 U.S.C.
10 § 924(c)(1)(A). . .”).

11 As such, the cases petitioner cites do not present any change in the pertinent
12 law for purposes of the Court’s determination of whether petitioner had an
13 “unobstructed procedural shot” to raise his claims on appeal or in a § 2255 motion.
14 *See Harrison*, 519 F.3d at 960. There has been no change in relevant law since
15 petitioner filed his first § 2255 motion. Petitioner has failed to show he lacked an
16 unobstructed procedural shot to raise his claims previously on appeal or in a
17 § 2255 motion filed in the sentencing court, and therefore petitioner does not
18 qualify for § 2255(e)’s savings clause.

19 **B. This Court Lacks Jurisdiction**

20 Because petitioner does not qualify for § 2255(e)’s savings clause,
21 petitioner may not pursue his claims in a § 2241 habeas petition, but may instead
22 pursue his claims only in a § 2255 motion. *See* 28 U.S.C. § 2255(e). This raises
23 the question of whether this Court should recharacterize the Petition as a § 2255
24 motion. There are restrictions on the Court doing so. *See U.S. v. Seesing*, 234
25 F.3d 456, 464 (9th Cir. 2000). But because, as discussed below, dismissal of the
26 Petition rather than recharacterization is warranted here, the Court finds there is no
27 need for it to go through the steps required by *Seesing*.

1 If the Petition were construed as a § 2255 motion, this Court would lack
2 jurisdiction. As previously noted, only the sentencing court has jurisdiction over a
3 § 2255 motion. *Hernandez*, 204 F.3d at 864-65; *Tripati*, 843 F.2d at 1163; see 28
4 U.S.C. § 2255(a); *Muth v. Fondren*, 676 F.3d 815, 818 (9th Cir. 2012) (“§ 2255
5 motions must be filed in the district where the petitioner was sentenced”). Since
6 petitioner is seeking to challenge a sentence imposed by the United States District
7 Court for the Northern District of Texas, only that court has jurisdiction to
8 entertain a § 2255 motion by petitioner.

9 The question then is whether the Court should dismiss the Petition for lack
10 of jurisdiction or transfer it to the Northern District of Texas.

11 **C. The Petition Warrants Dismissal Rather Than Transfer**

12 The transfer of civil actions to cure jurisdictional defects is governed by 28
13 U.S.C. § 1631. *Hernandez*, 204 F.3d at 865 n.6. Transfer is appropriate under
14 § 1631 if three conditions are satisfied: (1) the transferring court lacks jurisdiction;
15 (2) the transferee court could have exercised jurisdiction at the time the action was
16 filed; and (3) the transfer is in the interest of justice. *Cruz Aguilera v. INS*, 245
17 F.3d 1070, 1074 (9th Cir. 2001) (citing *Kolek v. Engen*, 869 F.2d 1281, 1284 (9th
18 Cir. 1989)). Here, the first condition is met, as this Court lacks jurisdiction, but
19 the second and third conditions are not.

20 At the time of filing, the sentencing court was effectively barred from
21 exercising jurisdiction over the Petition, which challenges petitioner’s conviction
22 and sentence. A prisoner may not bring a second or successive § 2255 motion in
23 district court without first seeking and obtaining permission to do so from “a panel
24 of the appropriate court of appeals.” 28 U.S.C. § 2255(h). As discussed,
25 petitioner already brought several § 2255 motions, which were all denied by the
26 United States District Court for the Northern District of Texas. There is no
27 indication petitioner has received permission from the Fifth Circuit to bring a
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1 second or successive § 2255 motion. The Court therefore expects the instant
2 Petition would be denied as an impermissible successive § 2255 motion if it were
3 transferred to the Northern District of Texas.

4 In addition, transfer would not be in the interest of justice. Before
5 transferring a case to another jurisdiction, district courts may “consider the
6 consequences of transfer.” *Phillips v. Seiter*, 173 F.3d 609, 610-11 (7th Cir.
7 1999). To determine if transfer is in the interest of justice, the court undertakes a
8 limited review of a petition in light of its likelihood of success. *Miller v.*
9 *Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990); *Boultinghouse v. Lappin*, 816 F.
10 Supp. 2d 107, 113 (D.D.C. 2011). Here, transfer would be futile since, in addition
11 to being impermissibly successive, the Petition as a whole is time-barred.

12 There is a one-year statute of limitations to bring a § 2255 motion. 28
13 U.S.C. § 2255(f). The one-year limitation period runs from, as pertinent here, “the
14 date on which the judgment of conviction becomes final.” 28 U.S.C. § 2255(f)(1).
15 A judgment of conviction becomes final when the time expires for filing a petition
16 for writ of certiorari contesting the appellate court ruling. *Clay v. U.S.*, 537 U.S.
17 522, 524-25, 123 S. Ct. 1072, 155 L. Ed. 2d 88 (2003). Pursuant to 28 U.S.C.
18 § 2101(c), petitioner had ninety days after the entry of judgment to file his petition
19 for writ of certiorari to the Supreme Court. Since the Fifth Circuit denied
20 petitioner’s appeal and affirmed his convictions on December 19, 2001,
21 petitioner’s filing of this Petition on March 11, 2020 was well after the one-year
22 period to bring a § 2255 motion expired.

23 As such, transfer to the Northern District of Texas would be futile and is not
24 in the interest of justice. Instead, the Petition will be dismissed for lack of
25 jurisdiction.

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IV.

CONCLUSION

IT IS THEREFORE ORDERED that Judgment be entered summarily dismissing the Petition and this action with prejudice.

DATED: February 16, 2021



HONORABLE MARK C. SCARSI
UNITED STATES DISTRICT JUDGE

Presented by:



SHERI PYM
United States Magistrate Judge