

1 order to show cause, the Petition for Writ of Habeas Corpus may be dismissed
2 without prejudice based on lack of jurisdiction. (*Id.* at 4.)

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4 Petitioner did not file a response to the order to show cause or request an
5 extension of time to do so. The Supreme Court’s subsequent decision in *Jones v.*
6 *Hendrix*, 143 S. Ct. 1857 (2023), confirms that this Court lacks jurisdiction over
7 the Petition.

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9 II

10 **SUMMARY OF PROCEEDINGS**

11 Petitioner’s underlying criminal case was filed in the District of South
12 Dakota. *United States v. Stead*, CR 95-30098 (D.S.D.) (hereinafter “South
13 Dakota Criminal Case”). On April 3, 1996, a jury found Petitioner guilty of
14 second-degree murder, assaulting a federal officer, using or carrying a firearm
15 during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1),
16 and being a felon in possession of a firearm. (Dkt. No. 41, South Dakota Criminal
17 Case.) The Eighth Circuit affirmed the judgment. *United States v. Stead*, 1997
18 U.S. App. LEXIS 3902 (8th Cir. Mar. 6, 1997).

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21 On March 16, 1998, Petitioner filed a motion to vacate, set aside, or correct
22 the sentence under 28 U.S.C. § 2255, and an amendment to that motion. (Dkt.
23 Nos. 70, 73, South Dakota Criminal Case.)

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25 On September 3, 1999, the District Court denied Petitioner’s motion to
26 vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. *Stead v.*
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1 *United States*, 64 F. Supp. 2d 1064 (D.S.D. 1999); *United States v. Stead*, 1999
2 U.S. Dist. LEXIS 14818 (D.S.D. Sept. 3, 1999).

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4 On January 30, 2021, the District Court denied Petitioner’s motion for
5 compassionate release. 2021 U.S. Dist. LEXIS 20604 (D.S.D. Jan. 30, 2021).

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III

DISCUSSION

A federal prisoner who challenges the legality of his federal conviction or sentence ordinarily must file a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. *Harrison v. Ollison*, 519 F.3d 952, 954 (9th Cir. 2008).

A motion under §2255 must be filed in the sentencing court. 28 U.S.C. § 2255; *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000) (per curiam). By contrast, a federal prisoner challenging the manner, location, or conditions of his sentence must file a petition for writ of habeas corpus under 28 U.S.C. § 2241 in the district where Petitioner is in custody. *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 494-95 (1973); *Hernandez*, 204 F.3d at 864.

A federal prisoner may not substitute a § 2241 petition for a § 2255 motion. See *Porter v. Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001) (“Merely labeling a section 2255 motion as a section 2241 petition does not overcome the bar against successive section 2255 motions”).

A narrow exception exists under § 2255’s “savings clause.” A prisoner may proceed under § 2241 “if, and only if, the remedy under § 2255 is ‘inadequate or

1 ineffective to test the legality of his detention.” *Marrero v. Ives*, 682 F.3d 1190,
2 1192 (9th Cir. 2012) (citation omitted).

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4 In *Jones*, the Supreme Court rejected the contention that § 2255 was
5 inadequate or ineffective for purposes of the savings clause “when AEDPA’s
6 second-or-successive restrictions barred a prisoner from seeking relief based on
7 a newly adopted narrowing interpretation of a criminal statute that circuit
8 precedent had foreclosed at the time of the prisoner’s trial, appeal, and first §
9 2255 motion.” *Jones*, 143 S. Ct. at 1868.

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11 In the Petition, Petitioner argues that his conviction and sentence under 18
12 U.S.C. 924(c)(1) must be vacated because his conviction for second degree
13 murder does not qualify as a “crime of violence” after *Borden v. United States*,
14 141 S. Ct. 1817 (2021). Under *Jones*, Petitioner cannot avail himself of the
15 savings clause.
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17 Moreover, Petitioner’s argument is foreclosed in the Ninth Circuit by *United*
18 *States v. Begay*, 33 F.4th 1081 (9th Cir. 2022) (en banc). The Ninth Circuit
19 applied *Borden* and concluded that “a conviction for second-degree murder
20 pursuant to § 1111(a) constitutes a crime of violence because murder is the
21 unlawful killing of a human being with malice aforethought, see 18 U.S.C. §
22 1111(a), and to kill with malice aforethought means to kill either deliberately or
23 recklessly with extreme disregard for human life.” *Id.* at 1093. “A § 1111(a)
24 conviction qualifies as a crime of violence because a defendant who acts with the
25 requisite mens rea to commit second-degree murder necessarily employs force
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1 'against the person or property of another,' and rather than acting with ordinary
2 recklessness, the defendant acts with recklessness that rises to the level of
3 extreme disregard for human life." *Id.* The court explained that, whereas criminal
4 homicide constitutes manslaughter when it is committed recklessly, criminal
5 homicide constitutes murder when "it is committed recklessly under
6 circumstances manifesting *extreme indifference to the value of human life.*" *Id.* at
7 1094 (citation omitted). "[S]econd-degree murder qualifies as a crime of violence
8 pursuant to the elements clause of § 924(c)(3)." *Id.* at 1096. The Eighth Circuit
9 has concluded that attempted second degree murder qualifies as a crime of
10 violence. *See United States v. Matthews*, 25 F.4th 601, 603-04 (8th Cir. 2022).

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14 **IV**

15 **ORDER**

16 IT IS THEREFORE ORDERED that the Petition for Writ of Habeas Corpus is
17 dismissed without prejudice based on lack of jurisdiction.
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21 Dated: February 7, 2024



22 _____
23 Hon. Fred W. Slaughter
24 UNITED STATES DISTRICT JUDGE
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