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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WILLIAM MACK BRYSON, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

1:11-cv-01818 LJO MJS

FINDINGS AND RECOMMENDATION  
REGARDING APPLICATION FOR  
RELIEF FROM ILLEGAL RESTRAINT

In this case, petitioner William Mack Bryson, Jr. ("Petitioner") seeks relief from a one hundred dollar assessment in connection with his underlying conviction by the United States District Court, District of South Carolina on May 23, 2002, on several counts involving money laundering. (Pet., ECF No. 1.) However, it is unclear from the application which method Petitioner seeks to use obtain such relief.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Petitioner was sentenced to a prison term of 188 months on May 23, 2002. Since that time, Petitioner has filed several post-conviction petitions with little success. See e.g., Bryson v. U.S., 553 F.3d 402 (5th Cir. 2008) (stating that Petitioner has filed sixteen petitions for habeas corpus and other post-conviction actions for relief in the District of South Carolina and

1 the Western District of Louisiana.); Bryson v. Keffer, 357 Fed. Appx. 566 (5th Cir. 2008)  
2 (Petitioner has been sanctioned based on his filing of numerous frivolous collateral challenges  
3 to his sentence.) Petitioner has since been transferred to United States Penitentiary, Atwater,  
4 located in the Eastern District of California.

5 Most recently, on November 18, 2010, Petitioner filed a petition with this Court. See  
6 Bryson v. USA, Case No. 1:10-cv-02131-LJO-MJS (E.D. Cal. 2010). The Court construed the  
7 petition as a petition for writ of audita querela and denied relief on September 20, 2011.

8 In the present case, Petitioner filed a document titled “Motion for Reconsideration”.  
9 (Mot., ECF No. 14.) In the motion, the Petitioner challenges the designation of the matter as  
10 a petition of habeas corpus under 28 U.S.C. § 2241 by the Clerk of Court. Petitioner states  
11 that since he is only challenging a monetary award, a petition for habeas corpus is  
12 inappropriate. Instead, Petitioner asserts that he “is following the filing procedure in Kessack  
13 and 1:10-cv-02131-LJO-MJS (HC) in order to proceed under the Writ of Audita Querela in a  
14 United States District Court.” (Mot. at 2.)

## 15 **II. ANALYSIS**

16 Petitioner is correct that a claim challenging a monetary assessment is not cognizable  
17 by way of a petition of habeas corpus. The basic scope of habeas corpus is prescribed by  
18 statute. Subsection (c) of Section 2241 of Title 28 of the United States Code provides that  
19 habeas corpus shall not extend to a prisoner unless he is “in custody in violation of the  
20 Constitution.” Further, the Supreme Court has held that “the essence of habeas corpus is an  
21 attack by a person in custody upon the legality of that custody . . .” Preiser v. Rodriguez, 411  
22 U.S. 475, 484 (1973).

23 Petitioner’s challenge to a monetary assessment does not challenge the fact or duration  
24 of his sentence. This is not an proper claim in a federal habeas action as an order of  
25 restitution does not satisfy the custody requirement. United States v. Kramer, 195 F.3d 1129,  
26 1130 (9th Cir.1999); United States v. Thiele, 314 F.3d 399, 401 (9th Cir. 2002).

27 Knowing that the claim may not be brought by way of a petition of habeas corpus,  
28 Petitioner attempts to pursue his claim by way of a petition for writ of audita querela. The

1 petition, if considered a petition for writ of audita querela, still fails.

2 As described in dismissing Petitioner's last petition for writ of audita querela, the writ  
3 is not a viable avenue of relief:

4 Although Petitioner moves this court for a writ of audita querela, the  
5 arguments Petitioner proffers in favor of his motion are essentially the same  
6 issues Petitioner raised on direct appeal, and in subsequent Section 2255  
7 motions or requests for authorization to file successive Section 2255 motions.  
8 The only significant difference between Petitioner's past motions and the current  
9 petition is Petitioner's extensive reliance and factual comparison to Kessack v.  
10 United States, No. CV-05-1828-TSZ, 2008 U.S. Dist. LEXIS 7739, 2008 WL  
11 189679 (W.D. Wash. Jan. 18, 2008), a district court decision from the Western  
12 District of Washington granting a writ of audita querela and ordering the  
re-sentencing of a petitioner that presented similar sentencing issues under  
United States v. Booker, 543 U.S. 220, 245 (2005). The Court notes that the  
Kessack decision has not been followed by any of the courts that have  
subsequently considered it, and it is inconsistent with the law of this circuit  
holding that a writ of audita querela is not available for a claim that otherwise  
falls within the scope of § 2255 relief. See U.S. v. Gamboa, 608 F.3d 492, 494-  
95 (9th Cir. 2010) (“[Petitioner]’s reliance on Kessack is misplaced. It is contrary  
to the law of this Circuit”).

13 Bryson v. United States, 2011 U.S. Dist. LEXIS 79058, \*5-6 (E.D. Cal. July 19, 2011).

14 Petitioner has not shown why his present claim does not fall within the scope of habeas  
15 relief. Petitioner may not circumvent the contours of the habeas framework created by the  
16 ADEPA simply by considering his petition as a writ of audita querela. In re Davenport, 147  
17 F.3d 605, 608 (7th Cir. 1998) (concluding that if the AEDPA foreclosed the use of 28 U.S.C.  
18 §§ 2241 and 2255 by federal prisoners, "it would be senseless to suppose that Congress  
19 permitted [federal prisoners] to pass through the closed door [by way of the All Writs Act]  
20 simply by changing the number 2241 to 1651 on their motions).

21 The Court once again finds that the writ of writ of audita querela is not available to  
22 Petitioner. Accordingly, the Court recommends the petition be dismissed with prejudice for  
23 failure to state a claim upon which relief can be granted, and that this civil action be closed.

24 **III. CONCLUSION AND RECOMMENDATION**

25 Therefore it is RECOMMENDED that Petitioner's October 31, 2011 petition for writ of  
26 audita querela be denied.

27 These findings and recommendations are submitted to the United States District Court  
28 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule

1 304 of the Local Rules of Practice for the United States District Court, Eastern District of  
2 California. Within thirty (30) days after being served with a copy, any party may file written  
3 objections with the Court and serve a copy on all parties. Such a document should be  
4 captioned "Objections to Magistrate Judge's Findings and Recommendations." Replies to the  
5 objections shall be served and filed within fourteen (14) days (plus three days if served by  
6 mail) after service of the objections. The Court will then review the Magistrate Judge's ruling  
7 pursuant to 28 U.S.C. § 636 (b)(1)(c). The parties are advised that failure to file objections  
8 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
9 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: November 28, 2011

1s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE