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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

BRANDON L. TAYLOR,	)	Case No.: 1:12-cv-00870-JLT
	)	
Petitioner,	)	ORDER GRANTING PETITIONER’S MOTION
	)	TO AMEND PETITION (Doc. 12)
v.	)	
	)	FINDINGS AND RECOMMENDATIONS TO
PAUL COPENHAVER,	)	DISMISS FIRST AMENDED PETITION (Doc. 12)
	)	
Respondent.	)	ORDER DIRECTING THAT OBJECTIONS BE
	)	FILED WITHIN TWENTY DAYS
	)	
	)	ORDER DIRECTING CLERK OF COURT TO
	)	FILE DOCUMENT 12 AS “FIRST AMENDED
	)	PETITION”
	)	

Petitioner is a federal prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The original petition was filed on May 29, 2012. (Doc. 1). Petitioner originally named as Respondent the “United States of America,” which is not the appropriate respondent for purposes of the Court’s habeas jurisdiction. Accordingly, on July 17, 2012, the Court issued an order requiring Petitioner to file a motion to amend the petition to name the proper respondent. (Doc. 6). On August 1, 2012, Respondent filed that motion and, on August 14, 2012, the Court issued an order granting Petitioner’s motion to amend the caption and directing the Clerk of the Court to amend the caption

1 with the name of the correct respondent. (Doc. 8).

2 In that same order, the Court also ordered Respondent to file a response and established a  
3 briefing schedule for the parties. (Id.). That latter portion of the Court's August 14, 2012 order,  
4 however, was premature. Accordingly, on October 10, 2012, the Court issued an order vacating that  
5 order to file a response. (Doc. 13). In the interim, on October 5, 2012, Petitioner filed a motion to  
6 amend the petition and a proposed first amended petition containing two claims, i.e., ineffective  
7 assistance of counsel and violation of federal double jeopardy. (Doc. 12).

## 8 DISCUSSION

### 9 A. Motion to Amend.

10 A petitioner may amend a petition for writ of habeas corpus once "as a matter of course," and  
11 without leave of Court, before a response has been filed under Federal Rule of Civil Procedure 15(a),  
12 as applied to habeas corpus actions pursuant to 28 U.S.C. § 2242 and Rule 11 of the Rules Governing  
13 Section 2254 Cases. Calderon v. United States District Court (Thomas), 144 F.3d 618, 620 (9th Cir.  
14 1998); Bonn v. Calderon, 59 F.3d 815, 845 (9<sup>th</sup> Cir. 1995). Leave of Court is required for all other  
15 amendments. Rule Civ. P. 15(a). Here, Respondent had not filed a response as of October 10, 2012,  
16 the date Petitioner filed his motion to amend and his proposed first amended petition. Thus, leave of  
17 Court is not required for any amendment to the petition. Accordingly, the motion to amend the  
18 petition is granted and the Clerk of the Court will be directed to file the proposed amended petition as  
19 a first amended petition in the Court's docket. The original petition will be disregarded.

### 20 B. Screening of the First Amended Petition.

21 A federal court may not entertain an action over which it has no jurisdiction. Hernandez v.  
22 Campbell, 204 F.3d 861, 865 (9<sup>th</sup> Cir. 2000). A federal prisoner who wishes to challenge the validity  
23 or constitutionality of his conviction or sentence must do so by way of a motion to vacate, set aside, or  
24 correct the sentence under 28 U.S.C. § 2255. Tripati v. Henman, 843 F.2d 1160, 1162 (9<sup>th</sup> Cir.1988);  
25 Thompson v. Smith, 719 F.2d 938, 940 (8<sup>th</sup> Cir.1983); In re Dorsainvil, 119 F.3d 245, 249 (3<sup>rd</sup> 1997);  
26 Broussard v. Lippman, 643 F.2d 1131, 1134 (5<sup>th</sup> Cir.1981). In such cases, only the sentencing court  
27 has jurisdiction. Tripati, 843 F.2d at 1163. A prisoner may not collaterally attack a federal  
28 conviction or sentence by way of a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

1 Grady v. United States, 929 F.2d 468, 470 (9<sup>th</sup> Cir.1991); Tripati, 843 F.2d at 1162; see also United  
2 States v. Flores, 616 F.2d 840, 842 (5<sup>th</sup> Cir.1980).

3 In contrast, a federal prisoner challenging the manner, location, or conditions of that sentence's  
4 execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241. Capaldi v.  
5 Pontesso, 135 F.3d 1122, 1123 (6<sup>th</sup> Cir. 1998); United States v. Tubwell, 37 F.3d 175, 177 (5<sup>th</sup> Cir.  
6 1994); Kingsley v. Bureau of Prisons, 937 F.2d 26, 30 n.5 (2<sup>nd</sup> Cir. 1991); United States v. Jalili, 925  
7 F.2d 889, 893-94 (6<sup>th</sup> Cir. 1991); Barden v. Keohane, 921 F.2d 476, 478-79 (3<sup>rd</sup> Cir. 1991); United  
8 States v. Hutchings, 835 F.2d 185, 186-87 (8<sup>th</sup> Cir. 1987); Brown v. United States, 610 F.2d 672, 677  
9 (9<sup>th</sup> Cir. 1990).

10 Petitioner's allegations that his trial counsel was ineffective and that he should not have been  
11 convicted of multiple firearm charges clearly represent challenges to Petitioner's conviction and  
12 sentence, not to the manner, location, or conditions of that sentence's execution. From the foregoing  
13 legal discussion, it is obvious that the proper vehicle for challenging such trial errors as those  
14 contained in the first amended petition is by way of a motion to vacate, set aside, or correct the  
15 sentence pursuant to 28 U.S.C. § 2255, not a habeas corpus petition.

16 Nevertheless, a federal prisoner authorized to seek relief under § 2255 may seek relief under §  
17 2241 *if* he can show that the remedy available under § 2255 is "inadequate or ineffective to test the  
18 validity of his detention." Hernandez v. Campbell, 204 F.3d 861, 864-5 (9<sup>th</sup> Cir.2000); United States  
19 v. Pirro, 104 F.3d 297, 299 (9<sup>th</sup> Cir.1997) (*quoting* § 2255). The Ninth Circuit has recognized that this  
20 is a very narrow exception. Id.; Ivy v. Pontesso, 328 F.3d 1057 (9<sup>th</sup> Cir. 2003) (a petitioner must show  
21 actual innocence *and* that he never had the opportunity to raise it by motion to demonstrate that § 2255  
22 is inadequate or ineffective); Holland v. Pontesso, 234 F.3d 1277 (9<sup>th</sup> Cir. 2000) (§ 2255 not  
23 inadequate or ineffective because Petitioner misses statute of limitations); Aronson v. May, 85 S.Ct. 3,  
24 5 (1964) (a court's denial of a prior § 2255 motion is insufficient to render § 2255 inadequate.);  
25 Lorentsen v. Hood, 223 F.3d 950, 953 (9<sup>th</sup> Cir. 2000) (same); Tripati, 843 F.2d at 1162-63 (9<sup>th</sup>  
26 Cir.1988) (a petitioner's fears of bias or unequal treatment do not render a § 2255 petition inadequate);  
27 Williams v. Heritage, 250 F.2d 390 (9<sup>th</sup> Cir.1957); Hildebrandt v. Swope, 229 F.2d 582 (9<sup>th</sup> Cir.1956);  
28 see United States v. Valdez-Pacheco, 237 F.3d 1077 (9<sup>th</sup> Cir. 2001) (procedural requirements of

1 § 2255 may not be circumvented by invoking the All Writs Act, 28 U.S.C. § 1651). The burden is on  
2 the petitioner to show that the remedy is inadequate or ineffective. Redfield v. United States, 315 F.2d  
3 76, 83 (9<sup>th</sup> Cir. 1963).

4 In the first amended petition, Petitioner makes no claim that he is actually innocent of the  
5 crimes he is challenging. Nor does Petitioner contend that § 2255 is inadequate or ineffective.  
6 Accordingly, the Court lacks habeas corpus jurisdiction and, thus, the first amended petition must be  
7 dismissed.

### 8 **ORDER**

9 For the foregoing reasons, it is HEREBY ORDERED as follows:

- 10 1. Petitioner’s motion to amend the petition (Doc. 12), is **GRANTED**;
- 11 2. The Clerk of the Court is **DIRECTED** to file Document 12 as the First Amended Petition;  
12 and,
- 13 3. The Clerk of the Court is **DIRECTED** to assign this case to a United States District Judge.

### 14 **RECOMMENDATIONS**

15 Accordingly, it is HEREBY RECOMMENDED that the first amended petition (Doc. 12), be  
16 DISMISSED for lack of habeas jurisdiction.

17 This Findings and Recommendation is submitted to the United States District Court Judge  
18 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
19 Rules of Practice for the United States District Court, Eastern District of California. Within twenty  
20 (20) days after being served with a copy of this Findings and Recommendation, any party may file  
21 written objections with the Court and serve a copy on all parties. Such a document should be  
22 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the  
23 Objections shall be served and filed within ten (10) court days (plus three days if served by mail) after  
24 service of the Objections. The Court will then review the Magistrate Judge’s ruling pursuant to 28  
25 U.S.C. § 636 (b)(1)(C).

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1 The parties are advised that failure to file objections within the specified time may waive the  
2 right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

3  
4 IT IS SO ORDERED.

5 Dated: October 15, 2012

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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