1		
2		
3		
4		
5		
6		
7		
8	UNITED STAT	ES DISTRICT COURT
9	EASTERN DISTRICT OF CALIFORNIA	
10		
11	TYRONE S. OAKS,) 1:14-cv-00703 LJO GSA HC
12	Petitioner,)) FINDINGS AND RECOMMENDATION
13	v.) REGARDING PETITION FOR WRIT OF HABEAS) CORPUS
14	PAUL COPENHAVER,)
15	Respondent.))
16))
17		
18	Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus	
19	pursuant to 28 U.S.C. § 2241.	
20	Petitioner is currently incarcerated at the United States Penitentiary in Atwater, California. He	
21	challenges his 2008 conviction in the United States District Court for the District of Minnesota for	
22	violation of 18 U.S.C. §§ 922(g)(1), 924(e)(1). He states he appealed to the Eighth Circuit Court of	
23	Appeals and the appeal was denied. He states he then filed a motion pursuant to 28 U.S.C. § 2255 in	
24	the United States District Court for the District of Minnesota. The § 2255 motion was denied. He	
25	states he then filed a second motion under § 2255 but the motion was denied as successive. He filed a	
26	petition for relief in the Eighth Circuit, and the court denied the petition in full.	
27		
28		
		1

Petitioner filed the instant petition for writ of habeas corpus on May 12, 2014. He claims that due to the Supreme Court's recent statutory interpretation of what constitutes a prior conviction under the Armed Career Criminal Act, he is now sentenced above the statutory maximum allowed by law.

DISCUSSION

A federal prisoner who wishes to challenge the validity or constitutionality of his federal conviction or sentence must do so by way of a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. <u>Tripati v. Henman</u>, 843 F.2d 1160, 1162 (9th Cir.1988); <u>see also Stephens v.</u> <u>Herrera</u>, 464 F.3d 895, 897 (9th Cir.2006), *cert. denied*, 549 U.S. 1313 (2007); <u>Thompson v. Smith</u>, 719 F.2d 938, 940 (8th Cir.1983); <u>In re Dorsainvil</u>, 119 F.3d 245, 249 (3rd 1997); <u>Broussard v.</u> <u>Lippman</u>, 643 F.2d 1131, 1134 (5th Cir.1981). In such cases, only the sentencing court has jurisdiction. <u>Tripati</u>, 843 F.2d at 1163. A prisoner may not collaterally attack a federal conviction or sentence by way of a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. <u>Grady v.</u> <u>United States</u>, 929 F.2d 468, 470 (9th Cir.1991); <u>Tripati</u>, 843 F.2d at 1162; <u>see also United States v.</u> <u>Flores</u>, 616 F.2d 840, 842 (5th Cir.1980).

15In contrast, a prisoner challenging the manner, location, or conditions of that sentence's16execution must bring a petition for writ of habeas corpus under 28 U.S.C. § 2241 in the district where17the petitioner is in custody. Stephens, 464 F.3d at 897; Hernandez v. Campbell, 204 F.3d 861, 864-6518(9th Cir.2000) (per curiam); Brown v. United States, 610 F.2d 672, 677 (9th Cir. 1990); Capaldi v.19Pontesso, 135 F.3d 1122, 1123 (6th Cir. 1998); United States v. Tubwell, 37 F.3d 175, 177 (5th Cir.201994); Kingsley v. Bureau of Prisons, 937 F.2d 26, 30 n.5 (2nd Cir. 1991); United States v. Jalili, 92521F.2d 889, 893-94 (6th Cir. 1991); Barden v. Keohane, 921 F.2d 476, 478-79 (3rd Cir. 1991); United22States v. Hutchings, 835 F.2d 185, 186-87 (8th Cir. 1987). "The general rule is that a motion under 2823U.S.C. § 2255 is the exclusive means by which a federal prisoner may test the legality of his detention,24and that restrictions on the availability of a § 2255 motion cannot be avoided through a petition under2528 U.S.C. § 2241." Stephens, 464 F.3d at 897 (citations omitted).

As Petitioner acknowledges, an exception exists by which a federal prisoner may seek relief under § 2241 if he can demonstrate the remedy available under § 2255 to be "inadequate or ineffective to test the validity of his detention." <u>United States v. Pirro</u>, 104 F.3d 297, 299 (9th Cir.1997) (quoting 28 U.S.C. § 2255); see Hernandez, 204 F.3d at 864-65. The Ninth Circuit has recognized that it is a very narrow exception. <u>Ivy v. Pontesso</u>, 328 F.3d 1057, 1059 (9th Cir.2003). The remedy under § 2255 usually will not be deemed inadequate or ineffective merely because a prior § 2255 motion was denied, or because a remedy under that section is procedurally barred. <u>See Aronson v. May</u>, 85 S.Ct. 3, 5 (1964) (a court's denial of a prior § 2255 motion is insufficient to render § 2255 inadequate.); <u>Tripati</u>, 843 F.2d at 1162-63 (a petitioner's fears of bias or unequal treatment do not render a § 2255 petition inadequate); <u>Williams v. Heritage</u>, 250 F.2d 390 (9th Cir.1957); <u>Hildebrandt v. Swope</u>, 229 F.2d 582 (9th Cir.1956).

1

2

3

4

5

6

7

8

9

10

11

12

13

The Ninth Circuit has held that Section 2255 provides an 'inadequate and ineffective' remedy (and thus that the petitioner may proceed under Section 2241) when the petitioner: (1) makes a claim of actual innocence; and, (2) has never had an 'unobstructed procedural shot' at presenting the claim. <u>Stephens</u>, 464 F.3d at 898. The burden is on the petitioner to show that the remedy is inadequate or ineffective. <u>Redfield v. United States</u>, 315 F.2d 76, 83 (9th Cir.1963).

14 In this case, Petitioner is challenging the validity and constitutionality of his federal sentence as imposed by the United States District Court for the District of Minnesota, rather than an error in the 15 16 administration of his sentence. Therefore, the appropriate procedure would be to file a motion pursuant to § 2255 in the District of Minnesota, not a habeas petition pursuant to § 2241 in this Court. 17 Petitioner acknowledges this fact, but argues he should be allowed to pass through the savings clause 18 19 because his prior § 2255 motion was denied as successive. The argument is unavailing. As noted 20 above, the remedy under § 2255 usually will not be deemed inadequate or ineffective merely because 21 the remedy under that section is procedurally barred. Aronson, 85 S.Ct. at 5. In addition, Petitioner states he presented his claims to the Eighth Circuit and the petition was denied. Therefore, Petitioner 22 23 fails to show that he has never had an unobstructed procedural opportunity to present his claims.

Moreover, Petitioner has failed to demonstrate that his claims qualify under the savings clause of Section 2255 because Petitioner's claims are not proper claims of "actual innocence." In the Ninth Circuit, a claim of actual innocence for purposes of the Section 2255 savings clause is tested by the standard articulated by the United States Supreme Court in <u>Bousley v. United States</u>, 523 U.S. 614 (1998). <u>Stephens</u>, 464 U.S. at 898. In <u>Bousley</u>, the Supreme Court explained that, "[t]o establish actual

3

innocence, petitioner must demonstrate that, in light of all the evidence, it is more likely than not that 1 2 no reasonable juror would have convicted him." Bousley, 523 U.S. at 623 (internal quotation marks 3 omitted). Petitioner bears the burden of proof on this issue by a preponderance of the evidence, and he must show not just that the evidence against him was weak, but that it was so weak that "no reasonable 4 5 juror" would have convicted him. Lorentsen, 223 F.3d at 954. In this case, Petitioner does not assert that he is factually innocent of the crime for which he was convicted. Rather, he takes issue with his 6 7 sentence. Under the savings clause, Petitioner must demonstrate that he is actually innocent of the 8 crime for which he has been convicted, not the sentence imposed. See Ivy, 328 F.3d at 1060; Lorentsen, 223 F.3d at 954 (to establish jurisdiction under Section 2241, petitioner must allege that he 9 is "actually innocent' of the crime of conviction"); Edwards v. Daniels, 2006 U.S. Dist. LEXIS 10 94750, at *7, 2006 WL 3877525 (D.Or.2006) ("Petitioner's assertion that he is actually innocent of a 11 portion of his sentence does not qualify him for the 'escape hatch' of § 2255 because he must allege 12 that he is 'legally innocent of the crime for which he has been convicted,' not the sentence imposed."), 13 adopted by Edwards v. Daniels, 2007 U.S. Dist. LEXIS 12356, 2007 WL 608115 (D.Or.2007). 14 Therefore, the instant § 2241 petition does not fit within the exception to the general bar against using 15 16 Section 2241 to collaterally attack a conviction or sentence imposed by a federal court. See Lorentsen, 223 F.3d at 954 (declining to decide whether federal prisoners who are actually innocent may resort to 17 Section 2241 when relief is not available under Section 2255 because the petitioner had not shown 18 19 actual innocence); see also Stephens, 464 F.3d at 898-99 (concluding that, although petitioner satisfied 20 the requirement of not having had an "unobstructed procedural shot" at presenting his instructional 21 error claim under Richardson v. United States, 526 U.S. 813, 119 (1999), petitioner could not satisfy the actual innocence requirement as articulated in Bousley and, thus, failed to properly invoke the 22 escape hatch exception of Section 2255); Harrison, 519 F.3d at 959 ("[A] motion meets the escape 23 24 hatch criteria of § 2255 'when a petitioner (1) makes a claim of actual innocence, and (2) has not had 25 an unobstructed procedural shot at presenting that claim."").

Accordingly, the Court concludes that Petitioner has not demonstrated that Section 2255 constitutes an "inadequate or ineffective" remedy for raising his claims. Section 2241 is not the

28

proper statute for raising Petitioner's claims, and the petition should be dismissed for lack of 1 jurisdiction. 2 RECOMMENDATION 3 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas corpus 4 be DISMISSED with prejudice for lack of jurisdiction. 5

6	This Findings and Recommendation is submitted to the Honorable Lawrence J. O'Neill, United
7	States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304
8	of the Local Rules of Practice for the United States District Court, Eastern District of California.
9	Within thirty (30) days after being served with a copy, Petitioner may file written objections with the
10	Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
11	Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
12	636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified time may waive
13	the right to appeal the District Court's order. <u>Martinez v. Ylst</u> , 951 F.2d 1153 (9th Cir. 1991).
14	
15	IT IS SO ORDERED.
16	Dated: June 3, 2014 /s/ Gary S. Austin
17	UNITED STATES MAGISTRATE JUDGE
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
	5