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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALEJANDRO S. DOMENECH,

 Petitioner,

 v.

WARDEN,

 Respondent.

Case No. 1:18-cv-01601-LJO-SAB-HC

FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS

(ECF No. 5)

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

I.

BACKGROUND

After a jury trial in the United States District Court for the Western District of Michigan, Petitioner was convicted of possession with intent to distribute 5 grams or more of cocaine base, possession with intent to distribute unknown quantity of marijuana, possession of a firearm in furtherance of a drug trafficking crime, felon in possession of firearm, and possession of counterfeit Federal Reserve notes. (ECF No. 5 at 13).¹ On February 11, 2008, Petitioner was sentenced to a 420-month term of imprisonment. (Id. at 14). The Sixth Circuit affirmed the judgment, and the petition for writ of certiorari was denied. (Id. at 2–3). Thereafter, Petitioner

¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 filed a motion under 28 U.S.C. § 2255, which was denied by the district court as time-barred on
2 January 16, 2014. The Sixth Circuit denied Petitioner’s motion seeking permission to file a
3 second or successive § 2255 motion. (ECF No. 5 at 4).

4 On November 27, 2018, Petitioner filed the instant petition for writ of habeas corpus,
5 challenging the conviction and sentence imposed by the United States District Court for the
6 Western District of Michigan based on impermissible use of suppressed evidence and Johnson v.
7 United States, 135 S. Ct. 2552 (2015). (ECF No. 5 at 1, 6–7).

8 II.

9 DISCUSSION

10 A federal court may not entertain an action over which it has no jurisdiction. Hernandez
11 v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000) (per curiam). A federal prisoner who wishes to
12 challenge the validity or constitutionality of his federal conviction or sentence must do so by
13 moving the court that imposed the sentence to vacate, set aside, or correct the sentence under 28
14 U.S.C. § 2255. Alaimalo v. United States, 645 F.3d 1042, 1046 (9th Cir. 2011). “The general
15 rule is that a motion under 28 U.S.C. § 2255 is the exclusive means by which a federal prisoner
16 may test the legality of his detention, and that restrictions on the availability of a § 2255 motion
17 cannot be avoided through a petition under 28 U.S.C. § 2241.” Stephens v. Herrera, 464 F.3d
18 895, 897 (9th Cir. 2006) (citations omitted).

19 Nevertheless, a “savings clause” or “escape hatch” exists in § 2255(e) by which a federal
20 prisoner may seek relief under § 2241 if he can demonstrate the remedy available under § 2255
21 to be “inadequate or ineffective to test the validity of his detention.” Alaimalo, 645 F.3d at 1047
22 (internal quotation marks omitted) (quoting 28 U.S.C. § 2255); Harrison v. Ollison, 519 F.3d
23 952, 956 (9th Cir. 2008); Hernandez, 204 F.3d at 864–65. The Ninth Circuit has recognized that
24 it is a very narrow exception. See Ivy v. Pontesso, 328 F.3d 1057, 1059 (9th Cir. 2003). The
25 remedy under § 2255 usually will not be deemed inadequate or ineffective merely because a
26 prior § 2255 motion was denied, or because a remedy under § 2255 is procedurally barred. Id.
27 The burden is on the petitioner to show that the remedy is inadequate or ineffective. Redfield v.
28 United States, 315 F.2d 76, 83 (9th Cir. 1963).

1 “An inquiry into whether a § 2241 petition is proper under these circumstances is critical
2 to the determination of district court jurisdiction” because § 2241 petitions must be heard in the
3 custodial court while § 2255 motions must be heard in the sentencing court. Hernandez, 204 F.3d
4 at 865. If the instant petition is properly brought under 28 U.S.C. § 2241, it may be heard in this
5 Court.² Conversely, if the instant petition is in fact a disguised § 2255 motion, the United States
6 District Court for the Western District of Michigan, as the sentencing court, has jurisdiction.

7 A petitioner may proceed under § 2241 pursuant to the savings clause when the petitioner
8 “(1) makes a claim of actual innocence, and (2) has not had an ‘unobstructed procedural shot’ at
9 presenting that claim.” Stephens, 464 F.3d at 898 (citing Ivy, 328 F.3d at 1060). In the Ninth
10 Circuit, a claim of actual innocence for purposes of the § 2255 savings clause is tested by the
11 standard articulated by the Supreme Court in Bousley v. United States, 523 U.S. 614 (1998).
12 Stephens, 464 F.3d at 898. In Bousley, the Supreme Court explained that “[t]o establish actual
13 innocence, petitioner must demonstrate that, in light of all the evidence, it is more likely than not
14 that no reasonable juror would have convicted him.” 523 U.S. at 623 (internal quotation marks
15 and citation omitted). Furthermore, “actual innocence means factual innocence, not mere legal
16 insufficiency.” Id.

17 In the petition, Petitioner asserts that his “current detention is illegal because his
18 conviction is predicated upon the state and federal authorities impermissible use of suppressed
19 evidence, in violation of Petitioner’s rights of due process and established law.” (ECF No. 5 at
20 6). However, Petitioner’s argument regarding impermissible use of suppressed evidence
21 challenges the legal sufficiency of his conviction rather than demonstrating Petitioner’s factual
22 innocence. Petitioner also contends that after Johnson his sentence is based upon
23 unconstitutionally vague career offender enhancements in the Sentencing Guidelines. (ECF No.
24 5 at 22). In the instant case, relief pursuant to § 2241 is foreclosed by Marrero v. Ives, 682 F.3d

25 ² The Court notes that Petitioner is currently incarcerated at the United States Penitentiary in Victorville, which is
26 located in the Central District of California. However, at the time the instant petition was filed, Petitioner was
27 confined at the United States Penitentiary in Atwater, which is located in the Eastern District of California, and this
28 Court retains jurisdiction. See Rumsfeld v. Padilla, 542 U.S. 426, 441 (2004) (noting that “when the Government
moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court
retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to
effectuate the prisoner’s release”).

1 1190 (9th Cir. 2012), in which the Ninth Circuit held that “the purely legal argument that a
2 petitioner was wrongly classified as a career offender under the Sentencing Guidelines is not
3 cognizable as a claim of actual innocence under the escape hatch.” Id. at 1195.

4 Based on the foregoing, the Court finds that Petitioner has failed to establish a cognizable
5 claim of actual innocence for purposes of qualifying to bring a § 2241 habeas petition under the
6 escape hatch or savings clause of 28 U.S.C. § 2255(e). Therefore, this Court lacks jurisdiction
7 over the petition.

8 **III.**

9 **RECOMMENDATION**

10 Accordingly, the undersigned HEREBY RECOMMENDS that the petition for writ of
11 habeas corpus (ECF No. 5) be dismissed for lack of jurisdiction.

12 Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
13 Rules of Practice for the United States District Court, Eastern District of California. Within
14 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file
15 written objections with the court and serve a copy on all parties. Such a document should be
16 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned
17 District Judge will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C.
18 § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time
19 may waive the right to appeal the District Court’s order. Wilkerson v. Wheeler, 772 F.3d 834,
20 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21 IT IS SO ORDERED.

22 Dated: December 27, 2018

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25 UNITED STATES MAGISTRATE JUDGE
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