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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY LEE MORGAN,

Petitioner,

No. CIV S-10-0928 EFB P

vs.

RICHARD B. IVES,

Respondent.

ORDER

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Petitioner, a federal prisoner without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2241. Respondent has filed a notice of appearance. This case is before the undersigned pursuant to the parties' consent. *See* 28 U.S.C. § 636.

Petitioner challenges the legality of his sentence, which was imposed by the United States District Court for the District of Nevada. On October 7, 2010, the court ordered petitioner to show cause why his petition should not be transferred to the United States District Court for the District of Nevada to be heard by that court under § 2255 rather than by this court under § 2241. The court explained to petitioner that the instant petition should be heard by that court under § 2255, absent a showing that such a motion is inadequate or ineffective to test the legality of the sentence; that is, petitioner was told that he must show that he (1) makes a claim of actual innocence, and (2) has not had an unobstructed procedural shot at presenting that claim.

1 On October 29, 2010, petitioner filed a response stating that “his action falls squarely  
2 under the execution of his sentence,” although the sentence “may stem from a criminal  
3 proceeding.” Dckt. No. 10 at 1-2. However, his petition alleges that he was “indicted for  
4 allegedly acting against sections 1201(a)(1) and 2119(2) of title 18 United States Code . . . the  
5 carjacking automatically triggered the kidnapping charge . . . [and] his rights to due process have  
6 been violated where a merger problem exists.” Dckt. No. 1 at 3. He asks that one of his  
7 convictions be vacated. Thus, the allegations in the petition clearly relate to the constitutionality  
8 of the imposition of petitioner’s sentence.

9 Accordingly, it is ORDERED that this action is transferred to the United States District  
10 Court for the District of Nevada.

11 Dated: December 10, 2010.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE