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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	RICHARD DAVID HEMSLEY,	No. 2:18-cv-0634 CKD P
12	Petitioner,	
13	v.	ORDER AND
14	U.S. MARSHAL,	FINDINGS AND RECOMMENDATIONS
15	Respondent.	
16		
17	Petitioner has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241,	
18	together with a request to proceed in forma pauperis. Examination of the in forma pauperis	
19	affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for	
20	leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).	
21	Petitioner is a pro se defendant in 2:13-cr-0300 GEB; criminal proceedings which are	
22	ongoing in this court. In the petition filed in this action, petitioner challenges the district court's	
23	decision to order petitioner detained prior to trial. Title 18 U.S.C. § 3145 sets out the procedures	
24	available to a criminal defendant for challenging a pretrial order of detention. The procedures	
25	include an opportunity to appeal. A review of the docket in 2:13-cr-0300 GEB reveals that	
26	petitioner utilized the procedures available to him, including appeal. His appeal was denied by	
27	the Ninth Circuit on March 1, 2018, shortly before petitioner filed his § 2241 petition.	
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Essentially, the § 2241 petition is an attempt to appeal the Ninth Circuit's decision. Of course, this court has no authority to review a decision made by the Ninth Circuit and the Ninth Circuit has specifically held that an issue decided on direct appeal is not reviewable in a habeas action. Stein v. United States, 390 F.2d 625, 626 (9th Cir. 1968). For these reasons, the court will recommend that petitioner's § 2241 petition be dismissed.

In accordance with the above, IT IS HEREBY ORDERED that:

- 1. Petitioner's request to proceed in forma pauperis (ECF No. 2) is granted; and
- 2. The Clerk of the Court assign a district court judge to this case.

IT IS HEREBY RECOMMEDED that petitioner's 28 U.S.C. § 2241 petition be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, petitioner may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Petitioner is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 21, 2018

CAROLYN K. DELANEY

UNITED STATES MAGISTRATE JUDGE

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