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

JOSEPH MICHAEL LEYVA,

No. C 09-4966 WHA (PR)

Petitioner,

ORDER OF DISMISSAL

v.

PEOPLE OF CALIFORNIA,

Respondent.


Petitioner, a state prisoner, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. 2241 in which he challenges the constitutionality of his conviction and sentence in state court. Section 2241 applies to challenges to the execution of a federal sentence, not a state conviction of sentence. *See United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984) (presentence time credit claim); *Brown v. United States*, 610 F.2d 672, 677 (9th Cir. 1980) (parole decision claim). Section 2241 may be used as a basis for a habeas petition by a state prisoner only when the prisoner is *not* held pursuant to the judgment of a state court, for instance a pre-trial detainee, a prisoner awaiting extradition, or a prisoner whose conviction has been reversed on appeal. *See, e.g., Hoyle v. Ada County*, 501 F.3d 1053, 1058 (9th Cir. 2007) (pre-trial double jeopardy challenge); *Stow v. Murashige*, 389 F.3d 880, 885-88 (9th Cir. 2004) (conviction reversed on appeal); *White v. Lambert*, 370 F.3d 1002, 1006 (9th Cir. 2004) (listing “awaiting extradition” and pretrial detention as examples of when Section 2241 applies). It is clear from the petition, however, that petitioner is being held “pursuant to the judgment of a

1 State court,” which he may only challenge in a habeas petition brought under 28 U.S.C. 2254.
2 *See Rose v. Hodges*, 423 U.S. 19, 21 (1975). Accordingly, the instant petition is **DISMISSED**
3 without prejudice to petitioner filing a habeas petition under 28 U.S.C. 2254.

4 The clerk shall close the file.

5 **IT IS SO ORDERED.**

6 Dated: November 30, 2009.

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9 WILLIAM ALSUP
10 UNITED STATES DISTRICT JUDGE
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