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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LANA LE CHABRIER,
Plaintiff,

v.

ANDRE MATEVOUSIAN,
Defendant.

Case No. [14-cv-05506-JD](#)

ORDER OF DISMISSAL

Lana Le Chabrier, a federal prisoner incarcerated at F.C.I. Dublin has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

DISCUSSION

I. STANDARD OF REVIEW

A district court must determine at the outset whether a petition filed by a federal prisoner is pursuant to 28 U.S.C. § 2241 or 28 U.S.C. § 2255, because congress has given jurisdiction over these petitions to different courts. *Hernandez v. Campbell*, 204 F.3d 861, 865-66 (9th Cir. 2000). A petition under § 2241 must be heard in the district of confinement, whereas if the petition is properly brought under § 2255, it must be heard by the sentencing court. *Id.* at 865.

A federal prisoner who seeks to challenge the legality of confinement must generally rely on a § 2255 motion to do so. *See Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir. 2006) (“The general rule is that a motion under 28 U.S.C. § 2255 is the exclusive means by which a federal prisoner may test the legality of his detention, and that restrictions on the availability of a § 2255 motion cannot be avoided through a petition under 28 U.S.C. § 2241.” (citation omitted)). There is, however, an exception to that general rule. Under the “escape hatch” of § 2255, a federal prisoner may file a § 2241 petition if, and only if, the remedy under § 2255 is “inadequate or

1 ineffective to test the legality of his detention.” *Id.* (internal quotation marks omitted). We have
2 held that a prisoner may file a § 2241 petition under the escape hatch when the prisoner “(1)
3 makes a claim of actual innocence, and (2) has not had an unobstructed procedural shot at
4 presenting that claim.” *Id.* at 898 (internal quotation marks omitted).

5 **II. LEGAL CLAIMS**

6 Chabrier was found guilty after trial in the United States District Court for the Eastern
7 District of California in Case No. 08-cr-0427 MCE EFB. She filed a § 2255 motion, but it was
8 denied without prejudice as it had been filed prior to sentencing and judgment being entered.
9 Docket Nos. 638, 670 in Case No. 08-cr-0427 MCE EFB. Sentencing occurred on July 12, 2012,
10 and the Ninth Circuit affirmed the conviction on February 11, 2014. *U.S. v. Popov*, 555 Fed.
11 Appx. 671 (9th Cir. 2014). In this petition, she raises claims regarding due process violations at
12 trial, malicious prosecution, judicial misconduct and ineffective assistance of counsel. These
13 claims are more appropriately brought in a § 2255 motion as they challenge the legality of the
14 confinement. While Chabrier has already brought a § 2255 motion, that motion was denied
15 without prejudice, so she may bring another § 2255 motion in the district of conviction. Nor does
16 she qualify for the “escape hatch” as there is no claim of actual innocence and there still exists a
17 procedural avenue to present the claims.

18 Chabrier previously brought a § 2241 petition in this district that was nearly identical to
19 this petition and raised the exact same claims. Case No. 14-cv-2309-JD. That case was
20 transferred to the Eastern District of California where it continues as a § 2255 motion. *See* Case
21 No. 2:14-cv-01624-GEB-AC. The appeal of the handling of the § 2255 case in the Eastern
22 District was dismissed for lack of jurisdiction and Chabrier’s petition for writ of mandamus filed
23 with respect to Case No. 14-cv-2309-JD was also denied by the Ninth Circuit. For all these
24 reasons this case is dismissed.

25 **III. CONCLUSION**

- 26 1. The motion to proceed in forma pauperis (Docket No. 5) is **GRANTED**.
- 27 2. The case is **DISMISSED** for the reasons set forth above.
- 28 3. A certificate of appealability is **DENIED**.

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IT IS SO ORDERED.

Dated: March 16, 2015



JAMES DONATO
United States District Judge

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 3/16/2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Lana Le Chabrier ID: #55212-112
2231 W Street
c/o Donna Kilpatrick
Sacramento, CA 95818

Dated: 3/16/2015

Richard W. Wieking
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO