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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JANICE WEEKS-KATONA,

Petitioner,

vs.

RANDY TEWS,

Respondent.

No. C 12-5723 PJH (PR)

**ORDER DISMISSING
PETITION**

Petitioner, 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. The original petition was dismissed with leave to amend and petitioner has filed an amended petition.

DISCUSSION

A. 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. §

1 2241." (citation omitted)). In contrast, a § 2241 habeas petition is the proper mechanism
2 for a federal prisoner seeking to challenge the manner, location or conditions of the
3 execution of the sentence. *Hernandez*, 204 F.3d at 864

4 There is, however, an exception to that general rule. Under the "escape hatch" of §
5 2255, a federal prisoner may file a § 2241 petition if, and only if, the remedy under § 2255
6 is "inadequate or ineffective to test the legality of his detention." *Id.* (internal quotation
7 marks omitted). We have held that a prisoner may file a § 2241 petition under the escape
8 hatch when the prisoner "(1) makes a claim of actual innocence, and (2) has not had an
9 unobstructed procedural shot at presenting that claim." *Id.* at 898 (internal quotation marks
10 omitted).

11 **B. Legal Claims**

12 The original petition was dismissed with leave to amend as the petition was
13 confusing and rambling and it was not clear the relief the petitioner sought. The amended
14 petition is no clearer and is also confusing and at times incomprehensible. Petitioner
15 discusses a 1993 plea bargain that seems to have occurred in the Middle District of Florida
16 and a 2012 incident in the District of Montana. It is still not clear the relief that petitioner
17 seeks.

18 **CONCLUSION**

19 Accordingly, the petition is **DISMISSED**. To the extent petitioner is challenging the
20 legality of her conviction, a COA is **DENIED** because reasonable jurists would not find the
21 court's dismissal debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 483 (2000)
22 (standard). The clerk shall close the file.

23 **IT IS SO ORDERED.**

24 Dated: February 4, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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