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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ADELMO ISIDRO ROSALES
12 VELASQUEZ,

13 Plaintiff,

14 v.

15 UNITED STATES OF AMERICA,

16 Defendant.

Case No.: 17cv1549-CAB-WVG

**ORDER DISMISSING WITHOUT
PREJUDICE PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28
U.S.C. SECTION 2241**

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18 On July 31, 2017, Petitioner, a federal prisoner currently incarcerated at D. Ray
19 James C.F. in Folkston, Georgia, proceeding pro se, filed a Petition for a Writ of Habeas
20 Corpus by a Person in Federal Custody pursuant to 28 U.S.C. §2241. [Doc. No. 1.] The
21 Petition, which was originally before District Judge Roger T. Benitez, was dismissed for
22 failure to pay the filing fee. [Doc. No. 2.] However, on August 28, 2017, the filing fee
23 was paid and the case was reopened. [Doc. No. 3.] On January 31, 2018, the case was
24 reassigned to the undersigned.

25 **BACKGROUND**

26 On September 7, 2006, in the United States District Court for the Southern District
27 of Texas, Petitioner pled guilty to one count of re-entry of a deported alien pursuant to 8
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1 U.S.C. §1326(b)(2). [5:06CR01106-001 (the “Texas Action”), Doc. No. 30.]¹ On
2 February 16, 2007, the Texas District Court sentenced Petitioner to 63 months of custody
3 and 3 years’ supervised release. [The Texas Action, Doc. No. 30 at 2-3.]

4 On October 15, 2013, prior to the expiration of his supervised release in the Texas
5 Action, Petitioner was arrested near El Centro, California, for attempted reentry of a
6 removed alien pursuant to 8 U.S.C. §1326(a). [Case No. 14cr350-AJB (the “California
7 Action”), Doc. No. 32 at 1.] On May 13, 2014, Petitioner was found guilty. [Doc. No.
8 31.] On August 6, 2014, Petitioner was sentenced to 63 months of custody and 3 years’
9 supervised release in the California Action. [Doc. No. 39.] According to the Pre-
10 Sentence Report in the California Action, the Texas District Court was made aware of the
11 supervised release violation, but there is no indication the Texas Action was ever
12 transferred to this Court. [Doc. No. 32 at 10.]

13 Petitioner alleges that the Texas District Court issued a sentence on November 6,
14 2014, for the supervised release violation. [Doc. No. 1 at 2.] It is clear that it is this
15 sentence by the Texas District Court to which Petitioner objects, as he argues that the
16 sentence for the supervised release violation should have run concurrent with the
17 sentence imposed in the California Action. [Doc. No. 1 at 2, 6.]

18 DISCUSSION

19 Federal prisoners have two statutory paths by which they may seek a writ of
20 habeas corpus. “As a general rule,” federal inmates may collaterally attack their
21 conviction only under 28 U.S.C. § 2255. *Alaimalo v. United States*, 645 F.3d 1042, 1046
22 (9th Cir. 2011); *Ivy v. Pontesso*, 328 F.3d 1057, 1059 (9th Cir. 2003) (section 2255
23 provides “the exclusive procedural mechanism by which a federal prisoner may test the
24 legality of his detention”).

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28 ¹ Under Fed.R.Evid. 201, a court may take judicial notice of “matters of public record.” *Mack v. South
Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir.1986).

