



1 sovereign immunity, regardless of the relief sought.

2 Due to these multiple defects, the petition in this improperly-commenced action will be  
3 dismissed without prejudice. It does not appear that a dismissal without prejudice to a new  
4 action would materially impact adjudication of any issue in a promptly filed new action or  
5 otherwise cause substantial prejudice.<sup>1</sup>

6 **IT THEREFORE IS ORDERED** that this action shall be **DISMISSED without**  
7 **prejudice** to the filing of a new petition on the required form with a pauper application with all  
8 required financial attachments in a new civil action under a new docket number.

9 **IT FURTHER IS ORDERED** that a certificate of appealability is **DENIED**, as jurists  
10 of reason would not find the dismissal of this improperly-commenced action to be either  
11 debatable or incorrect, given the absence of any substantial prejudice to petitioner from the  
12 dismissal without prejudice.

13 The Clerk of Court shall SEND petitioner with this order two copies each of an AO 242  
14 habeas petition form (available on the J-Net) and a prisoner pauper application along with one  
15 copy of the instructions for the pauper form and of the papers submitted in this action.

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17 <sup>1</sup>The papers on file and the online docket of the Eastern District of Washington reflect the following.

18 Petitioner seeks to challenge his January 14, 2008, conviction for felon in possession of a firearm  
19 and ammunition in No. 2:05-cr-00104-FVS in the Eastern District of Washington in Spokane, Washington.  
20 The Ninth Circuit affirmed the application of a sentence enhancement under the Armed Career Criminal Act  
21 (ACCA) on January 10, 2012, in No. 08-30013. The United States Supreme Court reversed on that issue,  
22 however, on June 20, 2013, in *Descamps v. United States*, 133 S.Ct. 2276 (2013). The Supreme Court  
23 denied a petition for rehearing on August 30, 2013. The Ninth Circuit thereafter reversed and remanded on  
24 September 16, 2013, for further proceedings consistent with *Descamps*. Resentencing currently is scheduled  
25 for November 14, 2013, in Spokane. Petitioner further filed a number of petitions or motions under 28  
26 U.S.C. §§ 2241 and/or 2255 in the Eastern District of Washington during the pendency of the foregoing  
27 proceedings that were dismissed without prejudice as premature during such proceedings.

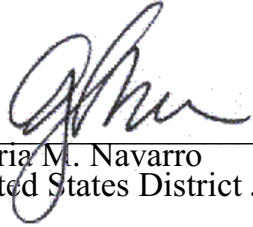
28 The present dismissal without prejudice will not materially impact the analysis in a properly and  
promptly commenced new action of prematurity, timeliness, the propriety of § 2241 relief in this Court on  
the allegations presented, and/or any other material issue of substance.

Nothing in this order directs petitioner to file any proceeding, grants petitioner permission to do so,  
and/or opines as to the propriety of any type of procedural vehicle, whether in this Court or another. The  
Court simply is dismissing the present improperly-commenced action without prejudice.

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The Clerk shall enter final judgment accordingly, **DISMISSING** this action **without prejudice**.

**DATED** this 29th day of October, 2013.

  
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Gloria M. Navarro  
United States District Judge