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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. GULLETT-EL TAQUAN-RASHE, AKA Taquan Gullett, AKA Taquan Riogent Gullett, AKA Taquan Rashe Gullett-El, AKA Maalik Rahshe El, Defendant-Appellant.	No. 20-55808 D.C. Nos. 2:19-cv-10247-CAS 2:14-cr-00725-CAS-1 Central District of California, Los Angeles ORDER

Before: CLIFTON and BENNETT, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 4) is denied because appellant has not shown that "jurists of reason would find it debatable whether the [section 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

JS-6

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff/Respondent, v. TAQUAN-RASHE GULLETT-EL, Defendant/Petitioner	Case No. 2:19-CV-10247-CAS 2:14-CR-00725-CAS-1 **ORDER DENYING PETITIONER'S MOTION FOR RELIEF PURSUANT TO 28 U.S.C. § 2255 AND OTHER FILINGS**

I. INTRODUCTION & BACKGROUND

Petitioner Taquan-Rashe Gullett-El was convicted of two counts of making false claims against the United States in violation of 18 U.S.C. § 287 and two counts of retaliating against federal law enforcement officers in violation of 18 U.S.C. § 1521. The Court sentenced petitioner to 77 months in prison, and the Ninth Circuit affirmed his conviction and sentence.

Before the Court is petitioner's motion for relief pursuant to 28 U.S.C. § 2255 ("Pet."), filed on December 3, 2019. See ECF No. 1. The Court also considers petitioner's filings relating to requests for discovery and for a letter rogatory. See ECF Nos. 5, 6, 27.

On May 28, 2020, the government filed an opposition ("Opp.") in response to petitioner's motion for relief and other filings. See ECF No. 34.

II. PROCEDURAL HISTORY

Petitioner, who is incarcerated, filed a petition to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 on December 3, 2019. See Pet. On December 12, 2019, the Court entered an order that set a briefing schedule. See ECF No. 3. Pursuant to that order, the United States of America was to file an opposition to the § 2255 petition by January 13, 2020, and petitioner was to file any reply not later than February 14, 2020. Id. That same day, however, petitioner filed requests (i) to modify his detention order, (ii) for discovery, and (iii) for a letter rogatory for international judicial assistance and humanitarian intervention. See ECF Nos. 4, 5, 6. Then, on December 16, 2019, petitioner filed a motion for default judgment against the United States. See ECF No. 7.

To allow the United States an opportunity to oppose petitioner's additional requests and separately respond to the motion for a default judgment, the Court entered an order on December 30, 2019, setting a consolidated briefing schedule for the § 2255 petition and the petitioner's additional requests (excluding the motion for default judgment). See ECF No. 9. Pursuant to that order, the United States was to file an opposition not later than February 3, 2020, and the petitioner was to file any reply not later than March 6, 2020. On January 2, 2020, the Court granted the government's ex parte application to continue the briefing schedule. See ECF No. 11. Pursuant to that order, the United States was to file a response by April 13, 2020, and the petitioner was to file any reply not later than May 15, 2020. Id.

On January 6, 2020, the Ninth Circuit entered an order stating that it had received notice from the petitioner appealing his pending requests, as well as his pending motion for default judgment. See ECF No. 12. Because the Court had not yet ruled on the § 2255 petition, the Ninth Circuit returned the case to this Court for ruling. Id. Petitioner then filed a second motion for default judgment on his § 2255 petition on January 21, 2020. See ECF No. 13. Petitioner concurrently filed a notice with the Ninth Circuit appealing the

Court's December 19, 2019, December 30, 2019, and January 3, 2020 orders setting the briefing schedule for petitioner's § 2255 petition and related requests, as well as his just-filed second motion for default judgment. See ECF Nos. 15-16.

On January 23, 2020, the Court denied petitioner's motions for default judgment as premature because the government's April 13, 2020 deadline to respond to petitioner's § 2255 petition and discovery requests had not yet elapsed. See ECF No. 18. The Ninth Circuit subsequently dismissed petitioner's appeal for lack of jurisdiction. See ECF Nos. 21-22. To provide the government additional time to respond following the delay caused by petitioner's intervening motion practice, on April 3, 2020, the Court granted the government's ex parte application to continue the briefing schedule further. Pursuant to that order—the operative order setting a briefing schedule for the § 2255 petition and petitioner's other requests—the United States was to file a response to petitioner's motion not later than May 28, 2020, and the petitioner was to file any reply not later than June 29, 2020. See ECF No. 24. On April 22, 2020, petitioner submitted an "Affidavit to Compel Discovery and for Sanctions." See ECF No. 27. On May 28, 2020, the government filed an opposition in response to petitioner's motion for relief and other filings. See Opp.

Having considered the parties' submissions, the Court finds and concludes as follows.

III. LEGAL STANDARD

A petition pursuant to 28 U.S.C. § 2255 challenges a federal conviction and/or sentence to confinement where a prisoner claims "that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." Sanders v. United States, 373 U.S. 1, 2 (1963). A § 2255 motion may be resolved without an evidentiary hearing if "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b).

To warrant relief under § 2255, the petitioner has the burden of proof of demonstrating the existence of a "fundamental defect which inherently results in a complete miscarriage of justice." Davis v. United States, 417 U.S. 333, 346 (1974); see Williams v. United States, 481 F.2d 339, 346 (2d Cir. 1973) (petitioner must "overcome the threshold hurdle that the challenged judgment carries with it a presumption of regularity, and that the burden of proof is on the party seeking relief."). The defect must be an error of constitutional proportions that had a substantial, injurious effect on the jury's verdict. See Brecht v. Abrahamson, 507 U.S. 619, 637 (1993). Non-constitutional violations of federal law, such as violations of the Federal Rules of Criminal Procedure, are not cognizable for purposes of a § 2255 motion. See United States v. Timmreck, 441 U.S. 780, 783-84 (1979); Hill v. United States, 368 U.S. 424, 429 (1962). Furthermore, habeas petitions may not be used to relitigate claims that have already been decided on direct appeal. See United States v. Scrivner, 189 F.3d 825, 828 (9th Cir. 1999); Odom v. United States, 455 F.2d 159, 160 (9th Cir. 1972).

If a petitioner fails to raise a habeas issue on direct appeal, that claim is procedurally defaulted. See United States v. Frady, 456 U.S. 154, 162, 164-65 (1982); United States v. Ratigan, 351 F.3d 957, 962 (9th Cir. 2003). The Court will examine procedurally defaulted § 2255 claims only if a petitioner can demonstrate both "cause" and "actual prejudice." See Bousley v. United States, 523 U.S. 614, 621-22 (1998). The Supreme Court has construed the "cause" prong narrowly, excusing procedurally defaulted claims only where (1) petitioner received ineffective assistance of counsel, see Edwards v. Carpenter, 529 U.S. 446, 450-51 (2000); (2) petitioner introduced a "novel" claim, see Reed v. Ross, 468 U.S. 1, 16 (1984); or (3) petitioner was actually innocent, see, e.g., McQuiggin v. Perkins, 569 U.S. 383, 392-93 (2013). With respect to the "prejudice" prong, the Ninth Circuit has found that a petitioner must demonstrate that the alleged errors "not merely . . . created a *possibility* of prejudice, but that [the errors] worked to [petitioner's] *actual* and substantial disadvantage, infecting [petitioner's] entire [proceedings] with error of constitutional

dimensions." United States v. Braswell, 501 F.3d 1147, 1150 (9th Cir. 2007) (quoting Frady, 456 U.S. at 170).

Ineffective assistance of counsel constitutes a violation of the Sixth Amendment right to counsel, and thus, if established, is grounds for relief under § 2255. To establish ineffective assistance of counsel, a petitioner must prove by a preponderance of the evidence that: (1) the assistance provided by counsel fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 688, 694 (1984). A claim of ineffective assistance of counsel fails if either prong of the test is not satisfied, and petitioner has the burden of establishing both prongs. Id. at 697; United States v. Quintero-Barraza, 78 F.3d 1344, 1348 (9th Cir. 1995). "[B]ald legal conclusions with no supporting factual allegations" are not enough to carry a petitioner's burden under § 2255, or to establish a basis to hold an evidentiary hearing. Sanders, 373 U.S. at 19. Although *pro se* habeas claims are construed liberally, see, e.g., Porter v. Ollison, 620 F.3d 952, 958 (9th Cir. 2010), "conclusory assertions" of ineffectiveness "fall far short of stating a valid claim of constitutional violation," even for a *pro se* petitioner. Jones v. Gomez, 66 F.3d 199, 204-05 (9th Cir. 1995).

With respect to the first prong, the Court's review of the reasonableness of counsel's performance is "highly deferential," and there is a "strong presumption" that counsel exercised reasonable professional judgment. Quintero-Barraza, 78 F.3d at 1348. The petitioner must "surmount the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." Id.

After establishing an error by counsel and thus satisfying the first prong, a petitioner must satisfy the second prong by demonstrating that his counsel's error rendered the result unreliable or the trial fundamentally unfair. Lockhart v. Fretwell, 506 U.S. 364, 372 (1993). A petitioner must show that there is a reasonable probability that, but for his counsel's error, the result of the proceeding would have been different. Strickland, 466

U.S. at 694. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. Id.

The Court need not necessarily determine whether petitioner has satisfied the first prong before considering the second. The Supreme Court has held that "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed." Id. at 670. Indeed, a petitioner's failure to allege the kind of prejudice necessary to satisfy the second prong is sufficient by itself to justify a denial of a petitioner's § 2255 motion without hearing. Hill v. Lockhart, 474 U.S. 52, 60 (1985).

IV. PETITIONER'S § 2255 MOTION

Petitioner asserts the following fourteen claims in his December 3, 2019 petition to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. See Pet. at 4-48. The Court addresses each claim below.

A. Claim 1: Lack of Jurisdiction

Petitioner claims that the Court lacked jurisdiction to hear his criminal matter. See Pet. at 4-7. That is incorrect. Since petitioner was charged with violating federal laws, the Court has original jurisdiction pursuant to 18 U.S.C. § 3231.

B. Claim 2: Due Process Violations

Petitioner claims that "court officers" violated his due process rights by failing to disclose their alleged "Conflict of Interest and Honest Services Fraud by Misrepresentation, Non-Disclosure, Kickbacks, and Brides [sic]" as well as by "failure/neglect to comply with the Foreign Agents Registration Act." See Pet. at 8. Petitioner did not bring this claim on direct review, and the government contends that this argument is unintelligible and frivolous. See Hendricks v. Vasquez, 909 F.2d 490, 491 (9th Cir. 1990) (noting that when allegations are patently frivolous, vague, or conclusory, summary dismissal is appropriate). Whether it is or is not frivolous, petitioner cannot bring this claim since it was not raised on direct review, and therefore has been procedurally defaulted. See Ratigan, 351 F.3d at 962.

C. Claim 3: Ineffective Assistance of Counsel

Petitioner claims that he received ineffective assistance of counsel both at trial and on appeal. See Pet. at 21-24. To establish ineffective assistance of counsel, petitioner must prove that (1) counsel's performance was so unreasonably deficient that petitioner did not receive "counsel" as guaranteed by the Sixth Amendment, and (2) petitioner was prejudiced by counsel's deficient performance. See Strickland, 466 U.S. at 687. To meet the legal standard for prejudice, petitioner must put forward a reasonably probable showing that "but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. Petitioner proffers five bases for ineffective assistance of counsel. Although these claims have not been procedurally defaulted, none of petitioner's claims of ineffective counsel is meritorious.

First, petitioner alleges that trial counsel failed to renew a Federal Rule of Criminal Procedure 29 motion. See Pet. at 21. Petitioner also alleges that appellate counsel erred by failing to raise the issue on appeal. Id. Petitioner provides no valid legal basis on which such a motion could have been granted, and "the failure to raise a meritless legal argument [can]not constitute ineffective assistance of counsel[.]" Shah v. United States, 878 F.2d 1156, 1162 (9th Cir. 1989) (citing Baumann v. United States, 692 F.2d 565, 572 (9th Cir. 1982)).

Second, petitioner claims that trial counsel failed to provide effective assistance by requesting a pre-plea presentence report without first obtaining petitioner's consent. See Pet. at 21. This argument is without merit. By making a standard written procedural request on petitioner's behalf, trial counsel acted effectively, abided by common practice, and prejudiced neither the outcome of the case nor petitioner's sentence. See Strickland, 466 U.S. at 694.

Third, petitioner claims that trial counsel failed to provide effective assistance by "fail[ing]/refus[ing]" to present mitigating evidence at the initial sentencing hearing. See Pet. at 22. This is incorrect. In fact, trial counsel filed a sentencing position under seal which specifically referenced mitigating evidence. See ECF CR No. 170. Petitioner was

also granted a continuance, which would have permitted petitioner to submit any mitigating evidence to the Court on his own behalf prior to sentencing. See ECF CR No. 172. Petitioner's contentions on this account are accordingly baseless and factually incorrect.

Fourth, petitioner alleges that trial counsel failed to present exculpatory evidence of "administrative proceedings before the Internal Revenue Service ('IRS')" to the jury. See Pet. at 22. This claim is meritless because the supposedly "exculpatory evidence" consisted entirely of documents that petitioner himself submitted to the IRS, none of which were admissible or exculpatory. Failure to present these documents did not amount to ineffective assistance of counsel, nor did the omission of these documents from the record prejudice petitioner. See Shah, 878 F.2d at 1162 (counsel's decision not to assert a meritless argument is not ineffective assistance of counsel).

And fifth, petitioner claims that his appellate counsel failed to argue that the Court had impermissibly treated the sentencing guidelines as a presumptive sentence. See Pet. at 23. Appellate counsel did not provide ineffective assistance or prejudice petitioner by failing to raise this frivolous argument. See Morrison v. Estelle, 981 F.2d 425, 429 (9th Cir. 1992) (finding that appellate counsel's failing to argue an issue did not constitute ineffective assistance if there was no reasonable likelihood of success in raising the claim on appeal).

For these reasons, none of petitioner's ineffective assistance of counsel claims has merit.

D. Claim 4: Unlawful Lien

Petitioner next alleges that he was denied his constitutional rights when the IRS "filed an approximately $74,431 unlawful lien . . . in violation of agency regulations and substantial and procedural due process of law, before any of the allegedly criminal conduct charged in the defective indictment." See Pet. at 24. To the extent this claim is even intelligible, it has been procedurally defaulted since petitioner did not raise it on direct appeal. See Ratigan, 351 F.3d at 962.

E. Claim 5: Denial of Right to Trial by a Jury of Petitioner's Peers

Petitioner claims that he was denied his right to a trial by an impartial jury. Specifically, he contends that "[t]here is no evidence of the requisite quorum of 12 informed qualified Grand Jurors from among [petitioner's] peers." See Pet. at 28. Since petitioner identifies as an "alien," he seems to argue that the jury should also have been comprised of "aliens." See generally id. at 28-31. Even to the extent this claim is intelligible and not frivolous, it has been procedurally defaulted since petitioner did not raise it at trial or on direct appeal. See Ratigan, 351 F.3d at 962.

F. Claim 6: Unlawful Detention

Petitioner next claims that he was unlawfully and unconstitutionally arrested and detained on February 12, 2015 and on July 20, 2017. See Pet. at 32. However, valid warrants were issued for petitioner's arrest in both instances, which followed petitioner's indictment and his failure to self-surrender, respectively. See ECF CR Nos. 9, 243. Petitioner also does not explain how the supposedly-defective arrests relate to his conviction or sentence. In any event, even if the claim presented a cognizable challenge, it has been procedurally defaulted since petitioner did not raise it on direct appeal. See Ratigan, 351 F.3d at 962.

G. Claim 7: Government Counsel's "Default" on Petitioner's § 2241 Petition

Petitioner claims that in July 2015, the government "defaulted" on his prior habeas corpus petition filed pursuant to 28 U.S.C. § 2241. See Pet. at 35. This claim is baseless. The Court dismissed petitioner's § 2241 petition as premature, see ECF CR No. 43, which the Ninth Circuit subsequently affirmed in Taquan Gullett v. United States Attorney General et al., No. 15-56378 (9th Cir. Nov. 17, 2015). In addition, petitioner procedurally defaulted on this claim since he failed to raise it on direct appeal. See Ratigan, 351 F.3d at 962.

H. Claim 8: Denial of Opportunity to Consult with Defense Experts

Petitioner claims that he was denied a reasonable opportunity to consult with two experts, or to use their testimony in his defense. See Pet. at 36. The Court excluded

petitioner's proposed expert testimony because petitioner failed to identify the nature of the proposed expert testimony, and never provided the government with notice of his intent to utilize the defense experts, pursuant to the procedural requirements outlined in Federal Rule of Criminal Procedure 16(b)(1)(C). See ECF CR No. 121 ("July 14, 2016 Order").

The claim fails. First, procedural rulings such as the Court's July 14, 2016 Order do not provide a basis for review pursuant to § 2255. See Timmreck, 441 U.S. at 783-84. Second, petitioner has not presented any evidence indicating what the excluded testimony would have entailed, or establishing that the Court erred in barring the unspecified testimony, that the unspecified testimony would have been admissible at trial, or that excluding the testimony prejudiced petitioner in any way. See Strickland, 466 U.S. at 694. And third, petitioner also procedurally defaulted on this claim since he failed to raise it on direct appeal. See Ratigan, 351 F.3d at 962.

I. Claim 9: Failure to Consider Mitigating Evidence During Sentencing

Petitioner claims that the Court violated his due process rights by failing to consider mitigating evidence during sentencing. See Pet. at 37. This is incorrect. The Court reviewed all of the documents properly filed to reach its sentencing determination. But in any event, the claim is procedurally defaulted since petitioner failed to raise it on direct appeal. See Ratigan, 351 F.3d at 962.

J. Claim 10: Treatment of Sentencing Guidelines as a Presumptive Sentence

Petitioner next claims that the Court violated his due process rights by treating the sentencing guidelines as a "presumptive sentence." See Pet. at 38. The Court did not do so. Prior to making its ruling, the Court considered the applicable § 3553(a) factors, the sentencing guidelines, and government counsel's arguments. See ECF CR No. 216 at 14:17-15:25, 16:01-18:20. In any event, this claim has been procedurally defaulted since it was never raised on direct appeal. See Ratigan, 351 F.3d at 962.

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K. Claim 11: Violation of Constitutional Rights Because Government Did Not File a Criminal Complaint

Petitioner argues that the government violated his constitutional rights by failing to file a criminal complaint in this case. See Pet. at 39. This claim is frivolous. There is no requirement that the government file a criminal complaint. Here, the government proceeded by obtaining a valid indictment. See ECF CR No. 1. That is perfectly acceptable, and petitioner's claim is baseless. In addition, this claim is also procedurally defaulted since it was not raised on direct appeal. See Ratigan, 351 F.3d at 962.

L. Claim 12: Return of Indictment

Petitioner claims that "there is no evidence" that his indictment was returned in open court, as required by Federal Rule of Criminal Procedure 6(f). See Pet. at 40. Petitioner does not present any evidence to support this claim. As the government rightly points out in its opposition, petitioner's indictment would not have been filed unless it had been returned in open court in compliance with the Federal Rules of Criminal Procedure. Further, as previously addressed in Claim 8, procedural claims such as these are not cognizable for purposes of a § 2255 motion. See Timmreck, 441 U.S. at 783-84. And here too, petitioner's claim is procedurally defaulted because petitioner failed to raise it on direct appeal. See Ratigan, 351 F.3d at 962.

M. Claim 13: Grand Jury Misconduct

Petitioner asserts three grand jury misconduct claims. First, petitioner argues that the grand jury did not contain a quorum of 12 qualified jurors. Second, petitioner claims that the government engaged in prosecutorial misconduct by failing to present exculpatory evidence to the grand jury. And third, petitioner contends that the government engaged in prosecutorial misconduct by unduly influencing the jury. See Pet. at 41.

To begin, petitioner has not provided any evidence to support these grand jury misconduct claims. Claims based solely on speculation and conclusory allegations are insufficient to entitle petitioner to habeas relief. See Hendricks, 908 F.2d at 491. Additionally, even if petitioner's jury misconduct allegations were true and supported by

evidence, such errors would not entitle petitioner to habeas relief. The Ninth Circuit has established that "errors concerning evidence presented to the grand jury cannot trigger dismissal of charges or a new trial when a subsequent petit jury returns a verdict of guilty." United States v. Harmon, 833 F.3d 1199, 1204 (9th Cir. 2016) (finding that even intentional grand jury misconduct is harmless once a petit jury returns a guilty verdict); see also United States v. Mechanik, 475 U.S. 66, 70 (1986) (following a conviction, "any error in the grand jury proceeding connected with the charging decision [is deemed] harmless beyond a reasonable doubt" as a matter of law). Finally, each of petitioner's grand jury misconduct claims is also procedurally defaulted since petitioner did not raise any of them at trial or on direct appeal. See Ratigan, 351 F.3d at 962.

N. Claim 14: Improper Jury Instructions

Petitioner asserts that his constitutional rights were violated when the grand jury and trial jury received improper instructions regarding "presumptions and the burden of proof." See Pet. at 46. Petitioner does not specify what he means by "presumptions" aside from providing a general definition of the term. See id. (citing *Presumption*, BLACK'S LAW DICTIONARY (6th ed. 1990)). In any event, the Court properly instructed the jury regarding the government's burden of proof and the presumption of petitioner's innocence until proven guilty. See ECF CR 141 at 2-3. Moreover, these instructions were not necessary to support the grand jury's finding of probable cause for the charges. See, e.g., United States v. Marcucci, 299 F.3d 1156, 1159 (9th Cir. 2002) (discussing the role of the grand jury and the standard grand jury charge). Finally, this claim is also procedurally defaulted since petitioner did not raise it at trial or on direct appeal. See Ratigan, 351 F.3d at 962.

* * *

For the foregoing reasons, all of petitioner's claims are without merit. In addition to the substantive defects set forth above, petitioner has also procedurally defaulted on claims 2 and 4-14, and failed to establish either the "cause" or "actual prejudice" necessary to obtain relief on the basis of those claims. See Bousley, 523 U.S. at 621-22. Specifically, with respect to cause, petitioner has failed to establish that any of the subject claims are

"novel," see Edwards, 529 U.S. at 450-51, reflect inequities that result from the ineffective assistance of counsel, see Reed, 468 U.S. at 16, or demonstrate that petitioner is actually innocent, see McQuiggin, 569 U.S. at 392-93. And with respect to "actual prejudice," petitioner fails to provide any evidence suggesting a "reasonable probability" that his trial or appeal would have yielded different results without the claimed errors. See, e.g., Strickler v. Greene, 527 U.S. 263, 289-91 (1999). The § 2255 petition is therefore denied.

V. DISCOVERY REQUESTS

In his § 2255 petition, petitioner also requests broad discovery related to the grand jury proceedings in this case. See Pet. at 43-44. For example, petitioner requests the "Minutes, Attendance, Payroll, and Voting Records of the Grand Jury," disclosure of "Unauthorized Person(s) in the Grand Jury Room," transcripts of grand jury proceedings, and "All Exculpatory Information" presented by prosecutors in this case. See id. Petitioner also filed a separate request for answers to twenty-one "(Proposed) Interrogatories" and the production of sixteen documents. See ECF No. 5 at 12-25. On April 22, 2020, petitioner submitted an "Affidavit to Compel Discovery and for Sanctions," again requesting interrogatory answers and document production. See ECF No. 27 at 2-5.

Unlike typical civil litigants or criminal defendants, habeas petitioners must make a "sufficient showing . . . to establish 'good cause' for discovery," pursuant to Habeas Corpus Rule 6(a). Bracy v. Gramley, 520 U.S. 899, 909 (1997). Good cause exists "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief[.]" Id. at 908-09 (quoting Harris v. Nelson, 394 U.S. 286, 300 (1969)). The Ninth Circuit has stated that habeas petitioners may not "use federal discovery for fishing expeditions to investigate mere speculation." Calderon v. U.S. Dist. Court for the N. Dist. of Cal., 98 F.3d 1102, 1106 (9th Cir. 1996).

Here, petitioner has not established good cause for discovery, especially given the fact that all but two of his § 2255 claims have been procedurally defaulted. Further, many of his requests would not provide any basis for relief. Petitioner's discovery requests are

largely unintelligible and frivolous, while others request pleadings, public documents, or prior discovery materials which petitioner either has access to or could gain access to through his former counsel. His requests are therefore denied.

VI. LETTER ROGATORY FOR INTERNATIONAL ASSISTANCE

Petitioner also submitted a separate filing entitled "Letter Rogatory for International Judicial Assistance and Application for Ex Rel. Action/Humanitarian Intervention." See ECF No. 6. In this document, petitioner calls for an "examination" of the Court, government counsel, defense counsel, and others in accordance with the Hague Evidence Convention. See id. at 2-3. Petitioner also claims that the United States has committed war crimes and genocide in violation of international law. Id. at 17.

The discretion to issue letters rogatory rests squarely with the Court. See United States v. Staples, 256 F.2d 290, 292 (9th Cir. 1958); see, e.g., United States v. Sedaghaty, 728 F.3d 885, 917 (9th Cir. 2013) (finding that the Court did not abuse its discretion in declining to issue letters rogatory where the potential testimony was not material or necessary to ensure a fair trial). Since petitioner's letter rogatory request is frivolous, largely unintelligible, and unlikely to result in the discovery of admissible evidence, the Court denies the request.

VII. EVIDENTIARY HEARING

The Court agrees with the government that petitioner is not entitled to an evidentiary hearing on his various claims. The Ninth Circuit has found that an evidentiary hearing is not required if petitioner's allegations "do not state a claim for relief or are so palpably incredible or patently frivolous as to warrant summary dismissal." United States v. Schaflander, 743 F.2d 714, 717 (9th Cir. 1984). Conclusory, unsupported statements similarly do not merit an evidentiary hearing. See id. at 721. Since all but two of petitioner's § 2255 claims have been procedurally defaulted, and since Claim 1 and Claim 3 do not warrant relief when viewed against the record, an evidentiary hearing is not required.

VIII. CERTIFICATE OF APPEALABILITY

The Court also agrees with the government's argument to deny any forthcoming request for a certificate of appealability ("COA") on this ruling. To warrant a COA, petitioner must have "made a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2)-(3); see also Slack v. McDaniel, 529 U.S. 473, 484 (2000) (articulating that when a district court denies a habeas petition on procedural grounds, a COA may be obtained only if the petitioner shows that (1) "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right" and (2) "jurists of reason would find it debatable whether the district court was correct in its procedural ruling"); United States v. Winkles, 795 F.3d 1134, 1143 (9th Cir. 2015) (adopting the COA standard from Slack). Petitioner's claims are plainly without merit, and cannot meet this standard.

IX. CONCLUSION

For the foregoing reasons, petitioner's motion for relief pursuant to 28 U.S.C. § 2255 and other filings are **DENIED**.[1]

IT IS SO ORDERED.

DATED: July 13, 2020

Christina A. Snyder

CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

[1] Shortly before the Court issued this order, petitioner again filed two additional motions to compel discovery and request the clerk to enter default judgment. See ECF Nos. 42, 43. Because the Court decides petitioner's § 2255 petition and requests for discovery in this order, these additional motions are **DENIED AS MOOT.**

FILED

JAN 14 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TAQUAN RAHSHE GULLETT-EL, Petitioner-Appellant, v. LUCY SALAS; et al., Respondents-Appellees.	No. 21-56275 D.C. No. 2:21-cv-05720-JAK-JDE Central District of California, Los Angeles ORDER

Before: PAEZ and HURWITZ, Circuit Judges.

The court construes appellant's Affidavit of Merits Appeal (Docket Entry No. 6) as a request for a certificate of appealability. So construed, the request is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Porter v. Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001) (order) (holding that a successive 28 U.S.C. § 2255 motion disguised as a 28 U.S.C. § 2241 petition requires a certificate of appealability).

Any pending motions are denied as moot.

DENIED.

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

TAQUAN GULLETT,

Petitioner,

v.

LUCY SALAS, et al.,

Respondents.

Case No. 2:21-cv-05720-JAK-JDE

JUDGMENT

Pursuant to the Order Re: Summary Dismissal of Action,

IT IS ADJUDGED that the Petition is denied, and this action is dismissed without prejudice.

Dated: November 18, 2021

JOHN A. KRONSTADT
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

TAQUAN GULLETT,

Petitioner,

v.

LUCY SALAS, et al.,

Respondents.

Case No. 2:21-cv-05720-JAK-JDE

ORDER RE: SUMMARY DISMISSAL OF ACTION

I.

BACKGROUND

On July 13, 2021, Taquan Gullett ("Petitioner"), a federal prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, seeking to challenge the denial of his request for a transfer to Florida. Dkt. 1 ("Petition" or "Pet."). On August 23, 2021, after the assigned magistrate judge issued an Order to Show Cause ("OSC") that identified several deficiencies in the Petition, Petitioner filed an "Amended Petition," which abandoned the original ground for relief and asserted a myriad of claims -- most of which are largely incoherent -- involving multiple prior actions. Dkt. 5 ("FAP"). On September 24, 2021, the assigned magistrate judge issued a

second order identifying defects with the FAP and giving Petitioner several options on how he could proceed. Dkt. 6. On October 13, 2021, Petitioner filed a notice of intent to proceed with the FAP. Dkt. 9.

For the reasons stated in this Order, this matter is subject to summary dismissal under the Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules").

II.

PROCEDURAL HISTORY

In his original Petition, Petitioner asserted a single ground for relief, seeking his transfer to Florida, where he has family support and community ties. Pet. at 6 (CM/ECF pagination). Petitioner is currently incarcerated at the Vinewood Residential Reentry Center in Los Angeles, California following his 2016 conviction in the United States District Court for the Central District of California for two counts of making false, fictitious, or fraudulent claims against the United States in violation of 18 U.S.C. § 287 and 18 U.S.C. § 2(b) and two counts of attempting to file a false lien or encumbrance against government employees and officials in violation of 18 U.S.C. § 1521 and 18 U.S.C. § 2(b). See id. at 1; United States v. Gullett, Case No. 2:14-cr-00725-CAS (C.D. Cal.) ("Underlying Criminal Action"), Dkt. 150, 187.[1] On March 15, 2017, Petitioner was sentenced to 77 months in custody. Underlying Criminal Action, Dkt. 187. On February 14, 2019, the Ninth Circuit affirmed Petitioner's conviction and sentence. Id., Dkt. 241.

[1] Under Fed. R. Evid. 201, judicial notice is taken of relevant federal records available electronically. See United States v. Raygoza-Garcia, 902 F.3d 994, 1001 (9th Cir. 2018) ("A court may take judicial notice of undisputed matters of public record, which may include court records available through [the Public Access to Court Electronic Records]."); Holder v. Holder, 305 F.3d 854, 866 (9th Cir. 2002) (taking judicial notice of opinion and briefs filed in another proceeding).

On December 3, 2019, Petitioner filed a motion to vacate pursuant to 28 U.S.C. § 2255, alleging lack of jurisdiction, due process violations, ineffective assistance of counsel, unlawful lien, denial of right to trial by a jury of Petitioner's peers, unlawful detention, the government defaulted on his prior Section 2241 petition, denial of opportunity to consult with defense experts, failure to consider mitigating evidence during sentencing, violation of due process rights by treating the sentencing guidelines as a "presumptive sentence," violation of constitutional rights because government did not file a criminal complaint, lack of evidence that his indictment was returned in open court, grand jury misconduct, and improper jury instructions. United States v. Gullett-El, 2020 WL 3963743, at *3-7 (C.D. Cal. July 13, 2020). On July 13, 2020, the district court denied Petitioner's Section 2255 motion and request for a certificate of appealability. Id. at *8. Petitioner filed an appeal and a request for certificate of appealability with the Ninth Circuit, which remain pending. See United States v. Gullett-El Taquan-Rashe, Case No. 20-55808 (9th Cir.).

As noted, Petitioner initiated this action on July 13, 2021. On July 27, 2021, the assigned magistrate judge issued an OSC describing several deficiencies in the Petition and ordering Petitioner to show cause why this action should not be dismissed without prejudice. Dkt. 3. Rather than filing a response to the OSC addressing the deficiencies identified, on August 23, 2021, Petitioner filed a 117-page document titled "Amended Petition in Response to Show Cause Order," in which Petitioner purported to amend his Petition to assert entirely different grounds for relief relating to several different actions. Dkt. 5. As framed, the FAP fails to comply with the requirements for clarity under the Habeas Rules and appears to challenge one or more prior federal criminal convictions. On September 24, 2021, the assigned magistrate judge issued an Order that described the apparent defects with the FAP and provided Petitioner various options on how to proceed, including the option to file an

amended petition attempting to remedy the defects of the Petition and FAP or to file a Notice of Intent to Proceed on either the Petition or the FAP as the operative pleading. Dkt. 6 ("Order"). Petitioner was advised that, if he chose to proceed with either the Petition or FAP, the Court would interpret the decision not to file an amended petition as a concession that further allegations could not be made to cure the deficiencies identified in the Order or the OSC. Id.

Also, on September 24, 2021, Petitioner filed documents titled "Judicial Notice of Adjudicative Facts: Treaty of Peace and Friendship 1787" and "Judicial Notice of Adjudicative Facts: Notice of Severance and Waiver, Forfeiture, and Rejection of Any and All Admiralty Enfranchisement Benefits," neither of which was filed in compliance with the OSC or Order. Dkt. 7-8 ("September 24 Notices"). Thereafter, on October 13, 2021, Petitioner filed a document titled "Judicial Notice of Adjudicative Facts: Intent to Proceed On Amended Petition" (Dkt. 9, "Notice of Intent"), indicating his desire to proceed with the FAP and "annexes by reference" the Notice of Intent; the September 24 Notices; and documents he filed in two other actions, Case No. 1:17-mc-00007-SJD-SKB (S.D. Ohio) and Case No. 20-55808 (9th Cir.), neither of which was attached. See Notice of Intent ¶ 5. On October 27, 2021, Petitioner filed a document titled "Judicial Notice of Adjudicative Facts: Jury Verdict Form (Redacted) C.D.Cal. 2:14-cr-00725-CAS," in which he attached the redacted jury verdict forms from his Underlying Criminal Action. Dkt. 10. On November 12, 2021, Petitioner filed a document titled "Judicial Notice of Adjudicative Facts: International Tribunal Renders Verdict Finding United States Guilty of Genocide and Crimes Against Humanity," summarizing and attaching purported summaries of an "International Tribunal on Human Rights Abuses Against Black, Brown and Indigenous Peoples." Dkt. 11.

III.

DISCUSSION

A habeas petition under 28 U.S.C. § 2241 is subject to the same screening requirements that apply to habeas petitions brought under 28 U.S.C. § 2254. See Habeas Rule, Rule 1(b) (providing that district courts may apply the Habeas Rules to habeas petitions that are not brought under 28 U.S.C. § 2254). Thus, a district court "must promptly examine" the petition and, "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to relief," the "judge must dismiss the petition." Habeas Rule 4; Mayle v. Felix, 545 U.S. 644, 656 (2005). The Court has reviewed the operative FAP under Rule 4 of the Habeas Rules and finds it is subject to dismissal for the reasons stated below.

A. Petitioner Has Not Clearly Set Forth His Grounds for Relief

First, the FAP does not clearly set forth the grounds upon which Petitioner seeks relief. Habeas Rules 2(c) and 4 require a petition for writ of habeas corpus to "specify all the grounds for relief available to the petitioner" and "state the facts supporting each ground"; the petition should state facts that point to a real possibility of constitutional error and show the relationship of the facts to the claim. See Habeas Rule 4, Advisory Committee Notes to 1976 Adoption; Felix, 545 U.S. at 655; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990) (as amended). Allegations in a petition that are vague, conclusory, palpably incredible, or unsupported by a statement of specific facts, are insufficient to warrant relief, and are subject to summary dismissal. See, e.g., Jones v. Gomez, 66 F.3d 199, 204-05 (9th Cir. 1995); James v. Borg, 24 F.3d 20, 26 (9th Cir. 1994).

As noted, the initial Petition raised a single ground for relief, i.e., that Petitioner's request for his transfer to Florida was unlawfully denied. Pet. at 6. In his FAP, Petitioner abandons that claim and instead, appears to seek reconsideration and/or challenge multiple prior actions, including one or more

criminal convictions, bankruptcy proceedings, and civil actions. See, e.g., FAP at 8, 14, 17, 20, 22-25, 27-29, 31. The FAP is confusing and largely unintelligible. It asserts a litany of allegations regarding these various actions, including jurisdictional issues, the lack of probable cause, prosecutorial misconduct, conspiracies, irregularities in the grand jury proceedings, insufficient evidence, "excessive double punishment," prejudicial delays, and due process violations. Id. at 8-19, 22-23, 29-30. In addition to seeking habeas relief, Petitioner purports to pursue civil rights claims and seeks to invoke the jurisdiction of the Supreme Court, United Nations Security Council, International Court of Justice, and International Criminal Court. Id. at 11, 24-25, 36, 39. Among other remedies, he seeks discovery, the issuance of letters rogatory, a stay of his civil rights claims, and a "discharge gratuity" of $500. Id. at 14, 20, 25-27, 32-33, 39-40. The FAP falls well short of the minimal clarity required to proceed. Therefore, it is subject to dismissal.

Further, Petitioner's Notice of Intent does not clarify Petitioner's grounds for relief. In his Notice of Intent, Petitioner identifies five "substantive and procedural due process violations stated in the Amended Petition":

> First Ground for Relief: "no evidence of violation of 18 U.S.C. § 2(b) and insufficient evidence of violation of 18 U.S.C. §§ 287, 1521 – Affiant is actual innocent";
>
> Second Ground for Relief: "denial of meaningful opportunity to present a defense – inadequate / ineffective § 2255 and procedural obstruction";
>
> Third Ground for Relief: "violation of bankruptcy stay & discharge injunction – damages";
>
> Fourth Ground for Relief: "prejudicial delay in the directly related Bankruptcy Proceeding (Bankr.M.D.Fla. 3:20-bk-00618-JAF) and §2255 Appeal (9th Cir. # 20-55808) – inadequate / ineffective § 2255 and

procedural obstruction"; and

Fifth Ground for Relief: "inability / unwillingness of the 'safeguards of the crucible of the judicial process' to check Constitutional Rights, Natural Rights, and Human Rights infringements pursuant to an 'official Federal policy' of retaliation – denial of redress for grievances."

Notice of Intent ¶ 11 (footnotes and emphasis omitted). It is unclear from the Notice of Intent and the "facts supporting" each ground for relief whether these are the only grounds being asserted in the FAP. For example, the Notice of Intent describes Ground Three as a "violation of bankruptcy stay & discharge injunction – damages" and refers to pages 24-41 of the FAP for the "facts" in support of this ground for relief. Id. Page 24 of the FAP has a heading titled "Application for Ex Rel. Action / Humanitarian Intervention," and within pages 24-41, Petitioner alleges "unchecked Constitutional Rights, Natural Rights, and Human Rights infringements" in ten cases (FAP ¶¶ 77, 113), "unlawful collection activity and denial of redress for grievances" (id. ¶ 96), the improper initiation of the Underlying Criminal Action (id. ¶¶ 91, 115), violations of his "substantial and procedural due process" (id. ¶ 94), and purports to assert a Brady violation (id. ¶ 109). He seeks appellate review (id. ¶ 80), criminal liability (id. ¶ 119), damages for prosecutorial misconduct (id. ¶ 99), "a discharge gratuity" of $500 (id. ¶ 131), letters rogatory and discovery for other actions (id. ¶¶ 83, 88, 104, 106, 127, 130), and requests the Court's intervention to resolve a conflict between the decision in his Underlying Criminal Action and a bankruptcy discharge action (id. ¶ 89) and "supervisory powers to address the abuses in this matter" (id. ¶ 116). He also purports to be asserting civil rights claims (id. ¶ 132), raises claims on behalf of his mother (id. ¶¶ 100-102, 113), and seeks to invoke the jurisdiction of the Supreme Court, United Nations Security Council, International Court of Justice, and International Criminal Court (id. ¶¶ 79, 82, 118, 120, 128-129). Such allegations

do not clearly and concisely set forth Petitioner's grounds for relief.

In addition to submitting a largely incoherent FAP, Petitioner also seeks to supplement his FAP with his Notice of Intent, the September 24 Notices, and filings from other actions. Notice of Intent ¶ 5. Not only was Petitioner previously advised that his petition must be complete in and of itself without reference to other documents, Order at 3, it is unclear what, if any, additional grounds for relief Petitioner purports to be asserting or supplementing in these other documents. Petitioner's piecemeal additions and supplements to his FAP do not comply with the Federal Rules of Civil Procedure, Habeas Rules, or the Local Civil Rules of this Court.[2]

B. Petitioner May Not Challenge His Criminal Conviction in a Section 2241 Petition

Challenges to the legality of a federal conviction or sentence generally must be made under 28 U.S.C. § 2255 in the sentencing court, while challenges to the manner, location, or conditions of a sentence's execution must be filed under 28 U.S.C. § 2241 in the custodial court. See Hernandez v. Campbell, 204 F.3d 861, 864 (9th Cir. 2000) (per curiam); Doganiere v. United States, 914 F.2d 165, 169-70 (9th Cir. 1990).

This general rule has a limited exception. "[A] federal prisoner may file a habeas corpus petition pursuant to § 2241 to contest the legality of a sentence where his remedy under § 2255 is 'inadequate or ineffective to test the legality of his detention.'" Hernandez, 204 F.3d at 864-65 (quoting 28 U.S.C. § 2255); see also 28 U.S.C. § 2255(e) ("An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to

[2] He also claims his FAP is a "supplement to" his Section 2255 motion and documents he filed in the Ninth Circuit, the United States Bankruptcy Court for the Middle District of Florida, and the United States District Court for the District of Columbia. See FAP ¶ 4.

this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."). This exception is referred to as the "savings clause" or the "escape hatch." See Harrison v. Ollison, 519 F.3d 952, 956 (9th Cir. 2008); Lorentsen v. Hood, 223 F.3d 950, 953 (9th Cir. 2000).

The exception is narrow and will not apply "merely because § 2255's gatekeeping provisions prevent the petitioner from filing a second or successive petition[.]" See Ivy v. Pontesso, 328 F.3d 1057, 1059 (9th Cir. 2003) (as amended); Lorentsen, 223 F.3d at 953; Moore v. Reno, 185 F.3d 1054, 1055 (9th Cir. 1999) (per curiam). Rather, "a § 2241 petition is available under the 'escape hatch' of § 2255 when a petitioner (1) makes a claim of actual innocence, and (2) has not had an 'unobstructed procedural shot' at presenting that claim." Stephens v. Herrera, 464 F.3d 895, 898 (9th Cir. 2006) (citation omitted).

In the FAP, Petitioner challenges, among other things, the legality of his underlying criminal conviction and seeks an order for "immediate and unconditional discharge from unlawful and unconstitutional detainment[.]" See, e.g., FAP at 8-18, 22-23, 29-30, 40; see also Notice of Intent ¶ 9. As such, at least a portion of the FAP must be construed as a Section 2255 motion, unless the savings clause applies. See Hernandez, 204 F.3d at 864-65. Petitioner has not met his burden of showing that the remedy under Section 2255 is inadequate or ineffective.

With respect to the first requirement of the escape hatch, a claim of actual innocence in this context requires a showing that, "in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." See Stephens, 464 F.3d at 898 (citation omitted). The

petitioner must show "not just that the evidence against him was weak, but that it was so weak that 'no reasonable juror' would have convicted him." Lorentsen, 223 F.3d at 954 (citation omitted). Actual innocence requires a showing of factual innocence, not mere legal insufficiency. See Marrero v. Ives, 682 F.3d 1190, 1193 (9th Cir. 2012). The petitioner bears the burden of proving actual innocence by a preponderance of the evidence. See Lorentsen, 223 F.3d at 954.

Petitioner has not met his burden to show actual innocence. He appears to argue that he qualifies under the escape hatch because there was no evidence to establish probable cause to indict; the government failed to present any evidence to prove the elements of 18 U.S.C. § 2(b); and there was insufficient evidence to support a finding of guilt beyond a reasonable doubt that he violated 18 U.S.C. §§ 287 and 1521. Notice of Intent ¶¶ 11, 16-19. Petitioner's "actual innocence" claim is based entirely on the alleged legal insufficiency of the evidence and the inadequacy of the indictment, which is insufficient to demonstrate actual innocence. See Sutton v. United States, 2009 WL 2588328, at *4 (C.D. Cal. Aug. 18, 2009) ("Petitioner's argument based on insufficiency of the evidence is not the equivalent of actual innocence." (citing House v. Bell, 547 U.S. 518, 538 (2006)); McClinton v. Rios, 2009 WL 3211341, at *3 (E.D. Cal. Sept. 30, 2009) (distinguishing between contention that petitioner was actually innocent and contention that the prosecution failed to present sufficient evidence of guilt to support conviction). He has not alleged any new facts or presented any evidence to establish he is actual innocent of the underlying crimes, or that in light of all of the evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt.

Further, Petitioner has not shown he lacked "an unobstructed procedural shot" to pursue his actual innocence claim. To determine "whether a petitioner had an unobstructed procedural shot to pursue his claim, [the Court asks]

whether petitioner's claim 'did not become available' until after a federal court decision." Harrison, 519 F.3d at 960 (quoting Stephens, 464 F.3d at 898). In determining whether a petitioner had an unobstructed procedural shot, a reviewing court considers whether: (1) the legal basis for the claim did not arise until after the petitioner had exhausted his direct appeal and first Section 2255 motion; and (2) the law changed "in any way relevant" to the claim after the first Section 2255 motion. Id. (citation omitted).

Petitioner does not allege that his actual innocence claim did not become available until after he brought his Section 2255 motion. He does not argue that the legal basis for his claim did not arise until after he pursued his Section 2255 motion or that the law changed after his Section 2255 motion. To the contrary, his claim was available to him at the time he was sentenced and could have been raised in a direct appeal or Section 2255 motion. Indeed, Petitioner concedes he raised his actual innocence claim in his Section 2255 motion through an ineffective affective assistance of counsel claim. Notice of Intent ¶ 22. The district court rejected that claim on the merits. See Gullett-El, 2020 WL 3963743, at *4. Petitioner had an unobstructed procedural shot to assert his actual innocence claim on direct appeal or in his Section 2255 motion.

Petitioner argues that the Section 2255 motion is inadequate and ineffective because of "prejudicial delay" in ruling on his Section 2255 motion and certificate of appealability. Notice of Intent ¶¶ 22, 26. Such delays, however, do not make Section 2255 inadequate or ineffective: "delay in the resolution of a section 2255 motion does not entitle a defendant to bypass section 2255 in favor of section 2241[.]" United States v. Pirro, 104 F.3d 297, 300 (9th Cir. 1997); see also Oliver v. Mulisnic, 2019 WL 5420280, at *3 (C.D. Cal. Oct. 21, 2019) (sentencing court's 19-month delay in ruling on Section 2255 motion did not render it inadequate or ineffective); Davis v. DHS, 2019 WL 2267053, at *3

(E.D. Cal. May 28, 2019) ("The escape hatch . . . may not be used because of potential delays in the resolution of a Section 2255 motion.").

To the extent Petitioner claims he lacked an unobstructed procedural shot at asserting his actual innocence claim because the district court did not conduct an evidentiary hearing on his Section 2255 motion (Notice of Intent ¶¶ 23-24), this contention is without merit. A petition for writ of habeas corpus pursuant to Section 2241 is not a substitute for a motion under Section 2255. See Charles v. Chandler, 180 F.3d 753, 758 (6th Cir. 1999) (per curiam) ("The remedy afforded under § 2241 is not an additional, alternative or supplemental remedy to that prescribed under § 2255."). "A remedy is not inadequate or ineffective under section 2255 merely because the sentencing court denied relief on the merits." Tripati v. Henman, 843 F.2d 1160, 1162 (9th Cir. 1988). The district court's denial of Section 2255 relief without conducting an evidentiary hearing is insufficient to establish that Petitioner's Section 2255 motion was inadequate or ineffective. Id. at 1162-63 (rejecting contention that Section 2255 remedy was ineffective because the district court summarily denied the petitioner's post-trial motions without a hearing); Stonier v. Sanders, 2011 WL 4529348, at *3-4 (C.D. Cal. May 6, 2011) (petitioner could not show that his procedural shot at presenting his claim was obstructed by arguing that the district court refused to hold an evidentiary hearing), report and recommendation adopted by 2011 WL 4529963 (C.D. Cal. Sept. 30, 2011); see also Wheeler v. Martin, 2017 WL 6417635, at *2 (S.D. Miss. July 19, 2017) (rejecting contention that Section 2255 was an ineffective remedy because he was denied an evidentiary hearing). For these reasons, Petitioner has not shown he lacked an "unobstructed procedural shot" to pursue his claim.

Accordingly, the escape hatch does not apply. Petitioner's claims challenging his Underlying Criminal Action may only be pursued in a Section

2255 motion. However, Petitioner previously filed a Section 2255 motion and does not contend he obtained authorization from the Ninth Circuit to file a second or successive motion. Therefore, based on the current record, this Court lacks jurisdiction to consider Petitioner's purported challenge to the Underlying Criminal Action. See 28 U.S.C. § 2255(h); United States v. Lopez, 577 F.3d 1053, 1056 (9th Cir. 2009) (district court did not have jurisdiction to reach the merits of a second-in-time claim because the petitioner failed to first obtain certification from the Ninth Circuit to file a second or successive petition pursuant to § 2255(h)).

C. Petitioner Seeks Relief Unavailable in This Proceeding

In addition to seeking improperly to set aside the judgment in his Underlying Criminal Action, most of the other remedies sought are unavailable in this action.

As federal courts are courts of limited jurisdiction, a petitioner bears the burden of establishing the case is properly in federal court. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). 28 U.S.C. § 2241 "provides generally for the granting of writs of habeas corpus by federal courts, implementing 'the general grant of habeas authority provided by the Constitution.'" Frantz v. Hazey, 533 F.3d 724, 735 (9th Cir. 2008) (en banc) (citation omitted). In general, habeas actions provide a forum to challenge the "legality or duration" of a prisoner's confinement. Crawford v. Bell, 599 F.2d 890, 891 (9th Cir. 1979) (as amended); see also Nettles v. Grounds, 830 F.3d 922, 927, 934 (9th Cir. 2016) (en banc) (habeas is "the exclusive vehicle" for claims that fall within "the core of habeas corpus," that is, claims challenging "the fact or duration of the conviction or sentence"). By contrast, a civil rights action is the "proper remedy" for a petitioner asserting "a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." Preiser v. Rodriguez, 411 U.S. 475, 499 (1973); Nelson v. Campbell,

541 U.S. 637, 643 (2004) ("[C]onstitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of [the] core" of habeas corpus and instead, should be brought as a civil rights action "in the first instance").

As explained, Petitioner cannot pursue his challenges to the Underlying Criminal Action in a Section 2241 petition. Petitioner also appears to be challenging decisions entered in various other actions. Petitioner provides no legal basis for such requests. Section 2241 is not the appropriate vehicle for challenging earlier decisions issued in other jurisdictions. To the extent Petitioner is seeking to pursue civil rights claims, such claims must be pursued in a civil rights action, not a Section 2241 petition. Relatedly, monetary damages are not available in Section 2241 actions. Therefore, Petitioner is not entitled to any "discharge gratuity" in this action. See Christian v. Norwood, 376 F. App'x 725, 726 (9th Cir. 2010) (Section 2241 petition "is not the proper vehicle for obtaining monetary damages."); Preiser, 411 U.S. at 494 ("habeas corpus is not an appropriate or available federal remedy" for a damages claim).

D. Petitioner's Requests for Discovery and Letters Rogatory

Petitioner also requests discovery and the issuance of letters rogatory. See FAP ¶¶ 42, 66, 83-84, 88, 104, 106, 130.

Habeas petitioners are not presumptively entitled to discovery. See Rich v. Calderon, 187 F.3d 1064, 1068 (9th Cir. 1999) (as amended) ("A habeas petitioner does not enjoy the presumptive entitlement to discovery of a traditional civil litigant."). Petitioners must make a "sufficient showing . . . to establish 'good cause' for discovery" under Habeas Rule 6(a). Bracy v. Gramley, 520 U.S. 899, 909 (1997). Good cause exists "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief[.]" Id. at 908-09 (citation omitted). The Ninth Circuit has explained that

petitioners may not "use federal discovery for fishing expeditions to investigate mere speculation." Calderon v. U.S. Dist. Court for the N. Dist. of Cal., 98 F.3d 1102, 1106 (9th Cir. 1996). "The availability of any discovery during a habeas proceeding is committed to the sound discretion of the district court." Campbell v. Blodgett, 982 F.2d 1356, 1358 (9th Cir. 1993) (as amended).

Petitioner has not shown good cause for discovery. His requests are largely unintelligible and seek information regarding other proceedings. Petitioner does not identify most of the discovery being sought, and instead, vaguely refers to unidentified "discovery" he requested in other actions. See FAP ¶¶ 42, 66, 88. The only discovery Petitioner specifically identifies relates to administrative remedies. He seeks "the 90-125 notarized documents of administrative proceedings" and all of his "Administrative Remedy Requests" filed with the Department of Justice and Federal Bureau of Prisons between 2017 and 2021. Id. ¶ 66. These documents would not provide a basis for relief in this action. Therefore, Petitioner's request for discovery is denied.

Petitioner's request for letters rogatory fail for similar reasons. FAP ¶¶ 83-84, 104. The discretion to issue letters rogatory rests squarely with the court. See United States v. Sedaghaty, 728 F.3d 885, 917 (9th Cir. 2013); Min Shian Indus. Co. v. Liquid Metal Motorsports, Inc., 2020 WL 2405274, at *2 (C.D. Cal. Jan. 31, 2020). Petitioner's vague request is frivolous, unintelligible, and unlikely to result in the discovery of admissible evidence. Again, Petitioner does not identify any specific requests, and instead, merely claims he is "renew[ing]" his requests for the issuance of letters rogatory he apparently filed in other actions, without specifying the substance of the requests. Therefore, this request is denied.

E. Petitioner's Request for an Evidentiary Hearing

Finally, Petitioner requests an evidentiary hearing. FAP ¶ 130; Notice of Intent ¶ 38. Petitioner has failed to demonstrate an evidentiary hearing is

warranted. The record conclusively shows that he is not entitled to habeas relief under 28 U.S.C. § 2241. See Anderson v. United States, 898 F.2d 751, 753 (9th Cir. 1990) (per curiam). Petitioner's request is denied.

IV.

ORDER

For the foregoing reasons, it is ORDERED that the FAP is dismissed without prejudice and Judgment shall be entered accordingly.

Dated: November 18, 2021

JOHN A. KRONSTADT
United States District Judge

Presented by:

JOHN D. EARLY
United States Magistrate Judge