

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Cunningham v. Warden

Cunningham · No. 1:25-cv-00180-KES-SKO (HC) · Decided April 22, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 AARON JOSEPH CUNNINGHAM, No. 1:25-cv-00180-KES-SKO (HC) 12
Petitioner, ORDER VACATING FINDINGS AND RECOMMENDATION 13 (Doc. 11) 14 v.
ORDER DIRECTING CLERK OF COURT TO DISREGARD PETITION FILED IN THIS 15
CASE, OPEN A NEW § 2255 CASE UTILIZING THE DOCUMENT, AND 16 WARDEN, FCI
MENDOTA, TRANSFER CASE TO THE EASTERN DISTRICT OF WASHINGTON 17
Respondent.

(Doc. 9) 18 ORDER RESETTING BRIEFING SCHEDULE 19 [FOURTEEN-DAY DEADLINE]
20 21 Petitioner is a federal prisoner proceeding pro se and in forma pauperis with a petition for
22 writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On January 24, 2025, Petitioner filed a 23 habeas petition in the Sacramento Division of the
Eastern District of California. (Doc. 1.) Because 24 Petitioner is incarcerated in the Federal
Correctional Institution in Mendota, California, and the 25 institution lies within the Fresno
Division of the Eastern District, the case was transferred to this 26 Court on February 11, 2025.

(Doc. 4.) 27 On February 13, 2025, the Court issued an order directing Respondent to file a
response to 28 the petition. (Doc. 7.) Thereafter, on April 7, 2025, Petitioner filed a subsequent
petition for writ 1 of habeas corpus in this Court. (Doc. 9.) A second petition filed while another
one is pending is 2 generally construed as a motion to amend the first petition.

Goodrum v. Busby, 824 F.3d 1188, 3 1192 (9th Cir. 2016); see also Woods v. Carey, 525 F.3d 886,
890 (9th Cir. 2008). Accordingly, 4 on April 9, 2025, the Court construed Petitioner's petition as a
motion to amend and 5 recommended denying said motion. (Doc. 11.) 6 On April 16, 2025,
Petitioner filed objections to the Findings and Recommendation. (Doc. 7 12.)

Petitioner states he did not intend to amend the petition, and misfiled the petition in this 8 Court.
He states he should have filed the petition in the Eastern District of Washington, as that is 9 the
court of conviction. 10 Accordingly, IT IS HEREBY ORDERED: 11 1) The Findings and
Recommendation issued on April 9, 2025, (Doc. 11), is VACATED; 12 2) The Clerk of Court is
directed to disregard the petition of April 9, 2025, (Doc.

9) in 13 this case; open a new § 2255 case using the petition, and transfer the petition to the 14 Eastern District of Washington; and 15 3) The deadline to file a response to the petition is set fourteen (14) days from the date of 16 service of this order. 17 IT IS SO ORDERED. 18 19 Dated: April 21, 2025 /s/ Sheila K. Oberto. UNITED STATES MAGISTRATE JUDGE 20 21 22 23 24 25 26 27 28