

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

Guang Ju Lin v. Respondent

Lin · No. 1:25-cv-01363-SAB-HC · Decided December 12, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 GUANG JU LIN, Case No. 1:25-cv-01363-SAB-HC 12 Petitioner, ORDER
GRANTING PETITIONER LEAVE TO FILE FIRST AMENDED PETITION 13 v. ORDER
DIRECTING CLERK OF COURT 14 ON HABEAS CORPUS, TO SEND PETITIONER
BLANK § 2241 FORM 15 Respondent. 16 17 Petitioner is a federal prisoner proceeding pro se
with a petition for writ of habeas corpus 18 pursuant to 28 U.S.C. § 2241.

19 I. 20 BACKGROUND 21 Petitioner is currently incarcerated at the U.S. Penitentiary in
Atwater, California, serving 22 a sentence imposed by the United States District Court for the
Southern District of New York. 23 (ECF No. 1 at 2.1) On October 14, 2025, Petitioner filed the
instant petition for writ of habeas 24 corpus.

In Ground One, Petitioner asserts that in 2019, the California felony-murder rule, the 25 elements
of which were “incorporated into the VICAR murder for which [Petitioner] was 26 convicted,”
was amended. (Id. at 3.)

In Ground Two, Petitioner asserts ineffective assistance of 27 counsel for not raising an elements
argument under *United States v. Johnson*, “for the 18 U.S.C. 1 1959(a) conviction.” (ECF No. 1 at
3.) In Ground Three, Petitioner asserts legally deficient 2 conduct or insufficient evidence
regarding Petitioner’s “convict[ion] under 18 U.S.C. 3 1959(a)(1)” and contends that his “VICAR
conviction is unlawful.” (Id. at 4, 5.)

4 II. 5 DISCUSSION 6 Rule 4 of the Rules Governing Section 2254 Cases² requires preliminary
review of a 7 habeas petition and allows a district court to dismiss a petition before the respondent
is ordered 8 to file a response, if it “plainly appears from the petition and any attached exhibits
that the 9 petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section
2254 10 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

11 A federal prisoner who wishes to challenge the validity or constitutionality of his federal 12
conviction or sentence must do so by moving the court that imposed the sentence to vacate, set 13
aside, or correct the sentence under 28 U.S.C. § 2255. *Alaimalo v. United States*, 645 F.3d 1042,
14 1046 (9th Cir. 2011). “The general rule is that a motion under 28 U.S.C. § 2255 is the exclusive
15 means by which a federal prisoner may test the legality of his detention, and that restrictions on

16 the availability of a § 2255 motion cannot be avoided through a petition under 28 U.S.C. 17 § 2241.” *Stephens v. Herrera*, 464 F.3d 895, 897 (9th Cir.

2006) (citations omitted). 18 Nevertheless, a “savings clause” or “escape hatch” exists in § 2255(e) by which a federal 19 prisoner may seek relief under § 2241 if he can demonstrate the remedy available under § 2255 20 to be “inadequate or ineffective to test the validity of his detention.” *Alaimalo*, 645 F.3d at 1047 21 (internal quotation marks omitted) (quoting 28 U.S.C. § 2255); *Harrison v. Ollison*, 519 F.3d 22 952, 956 (9th Cir.

2008); *Hernandez v. Campbell*, 204 F.3d 861, 864–65 (9th Cir. 2000) (per 23 curiam). The Ninth Circuit has recognized that it is a very narrow exception. See *Ivy v. Pontesso*, 24 328 F.3d 1057, 1059 (9th Cir. 2003). The remedy under § 2255 usually will not be deemed 25 inadequate or ineffective merely because a prior § 2255 motion was denied, or because a remedy 26 27 2 The Rules Governing Section 2254 Cases apply to § 2241 habeas petitions.

See Rule 1(b) of the Rules Governing Section 2254 Cases (“The district court may apply any or all of these rules to a habeas corpus petition not covered 1 under § 2255 is procedurally barred. *Id.* The burden is on the petitioner to show that the remedy 2 is inadequate or ineffective. *Redfield v. United States*, 315 F.2d 76, 83 (9th Cir. 1963). 3 “An inquiry into whether a § 2241 petition is proper under these circumstances is critical 4 to the determination of district court jurisdiction” because § 2241 petitions must be heard in the 5 custodial court while § 2255 motions must be heard in the sentencing court.

Hernandez, 204 F.3d 6 at 865. If the instant petition is properly brought under 28 U.S.C. § 2241, it may be heard in this 7 Court. Conversely, if the instant petition is in fact a disguised § 2255 motion, it must be heard in 8 the United States District Court for the Southern District of New York as the sentencing court. 9 A petitioner may proceed under § 2241 pursuant to the escape hatch when the petitioner 10 “(1) makes a claim of actual innocence, and (2) has not had an ‘unobstructed procedural shot’ at 11 presenting that claim.” *Stephens*, 464 F.3d at 898 (citing *Ivy*, 328 F.3d at 1060).

In the Ninth 12 Circuit, a claim of actual innocence for purposes of the § 2255 escape hatch is tested by the 13 standard articulated by the Supreme Court in *Bousley v. United States*, 523 U.S. 614 (1998). 14 *Stephens*, 464 F.3d at 898.

In *Bousley*, the Supreme Court explained that “[t]o establish actual 15 innocence, petitioner must demonstrate that, in light of all the evidence, it is more likely than not 16 that no reasonable juror would have convicted him.” 523 U.S. at 623 (internal quotation marks 17 and citation omitted). Furthermore, “actual innocence means factual innocence, not mere legal 18 insufficiency.” *Id.* “In determining whether a petitioner had an unobstructed procedural shot to 19 pursue his claim, we ask whether petitioner’s claim ‘did not become available’ until after a 20 federal court decision.

In other words, we consider: (1) whether the legal basis for petitioner's 21 claim 'did not arise until after he had exhausted his direct appeal and first § 2255 motion;' and 22 (2) whether the law changed 'in any way relevant' to petitioner's claim after that first § 2255 23 motion." Harrison, 519 F.3d at 960 (citations omitted)). 24 Here, Petitioner's claims all concern his purported "VICAR murder" or "18 U.S.C. 25 1959(a)" conviction.

(ECF No. 1 at 3–5.) "Because [18 U.S.C.] § 1959's title is 'Violent crimes 26 in aid of racketeering activity,' that section is sometimes referred to as the 'VICAR statute.'" 27 United States v. Tillman, No. 19-16419, 2021 WL 3739175, at *1 (9th Cir. Aug. 24, 2021). 1 | racketeering conspiracy, in violation of 18 U.S.C. § 1962(d). Judgment, United States v. Lin, No. 2 | 1:09-cr-00746 (S.D.N.Y.

Dec. 8, 2011), ECF No. 124.7 See also United States v. Lin, 505 F. 3 | App'x 10, 11 @d Cir. 2012) ("Guang Ju Lin appeals a December 8, 2011 judgment of the 4 | District Court convicting him... of one count of racketeering, in violation of 18 U.S.C. § 5 | 1962(c), and one count of racketeering conspiracy, in violation of 18 U.S.C. § 1962(d)[.]" It 6 | does not appear that Petitioner was convicted under the VICAR statute, 18 U.S.C. 1959.

7 "[A] petition for habeas corpus should not be dismissed without leave to amend unless it 8 | appears that no tenable claim for relief can be pleaded were such leave granted." Jarvis v. 9 | Nelson, 440 F.2d 13, 14 (9th Cir. 1971) (per curiam).

Therefore, the Court will grant Petitioner 10 | an opportunity to file an amended petition. 11 III. 12 ORDER 13 Accordingly, the Court HEREBY ORDERS that: 14 1. Petitioner is GRANTED leave to file a first amended petition within THIRTY (30) days 15 of the date of service of this order; and 16 2.

The Clerk of Court is DIRECTED to send Petitioner blank § 2241 habeas forms. 17 18 IT IS SO ORDERED. AA. Se 19 | Dated: _December 12, 2025 _ eS STANLEY A. BOONE 20 United States Magistrate Judge 21 22 23 24 25 3 The Court "may take notice of proceedings in other courts, both within and without the federal judicial system, if 97 | those proceedings have a direct relation to matters at issue." U.S. ex rel.

Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (internal quotation marks and citation omitted)). See also United States v. Raygoza-Garcia, 902 F.3d 994, 1001 (9th Cir. 2018) ("A court may take judicial notice of undisputed 28 | matters of public record, which may include court records available through PACER.").