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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ERIC LAMAR FALLS,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>DENNIS SMITH, Warden,</p> <p>Respondent - Appellee.</p>
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No. 07-55828

D.C. No. CV-05-08005-AHS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Alicemarie H. Stotler, District Judge, Presiding

Submitted December 15, 2009\*\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Federal prisoner Eric Lamar Falls appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2241 habeas petition challenging the legality of his sentence. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Falls contends that 28 U.S.C. § 2255 is an inadequate or ineffective means for raising his claim, entitling him to pursue his claim under 28 U.S.C. § 2241. The district court correctly determined that Falls failed to demonstrate that 28 U.S.C. § 2255 is “inadequate or ineffective” to test the legality of his detention. *See Lorentsen v. Hood*, 223 F.3d 950, 953 (9th Cir. 2000) (stating general rule that the unavailability of a second or successive petition does not itself make section 2255 inadequate or ineffective). Further, Falls has failed to demonstrate “actual innocence.” *See id.* at 954.

Accordingly, the district court properly dismissed Falls’ petition for lack of jurisdiction. *See Moore v. Reno*, 185 F.3d 1054, 1055 (9th Cir.1999) (per curiam) (rejecting the use of § 2241 as substitute for a dismissed § 2255 motion).

**AFFIRMED.**