

1 from military service as part of their claims. *Glazier v. Hackel*, 440 F.2d 592 (9th Cir. 1971);
2 *Bratcher v. McNamara*, 448 F.2d 222 (9th Cir. 1971). Petitioner alleges that the restraint on
3 liberty he is being subjected to is a court martial proceeding that would violate his Fifth
4 Amendment right to be free from double jeopardy. Dkt. 1 at 9. The Supreme Court of the United
5 States has held that being required to appear for trial is sufficient to show custody over an
6 individual for habeas purposes. *Justices of Boston Municipal Court v. Lydon*, 466 U.S. 294,
7 300-301 (1984).

8 As a general rule, where members of the armed forces file habeas petitions seeking relief
9 from the military's wrongful restraint of liberty, federal civilian courts should not entertain such
10 petitions until all available remedies within the military court system have been exhausted. *Noyd*
11 *v. Bond*, 395 U.S. 683, 693 (1969). Petitioner's habeas petition asks this Court to determine
12 issues that have also been placed before the military trial court, the Army Court of Criminal
13 Appeals, and the United States Court of Appeals for the Armed Forces. Dkt. 2 at 2. Both the
14 military trial court and the Army Court of Criminal Appeals have denied Petitioner's claims. *Id.*
15 On October 5, 2007, the United States Court of Appeals for the Armed Forces issued an order
16 denying Petitioner's claims. Dkt. 7 at 4-6. As of the date of this Order, Petitioner has exhausted
17 his available military court remedies with respect to his double jeopardy claim that forms the
18 basis of his habeas petition. This Court may therefore rightfully entertain the instant habeas
19 petition.

20 II. REQUIREMENT OF STAY

21 Having decided that Petitioner has exhausted his military court remedies with respect to
22 the double jeopardy claim, thereby affording the Court jurisdiction over the habeas petition, the
23 Court must now determine whether a stay of the second military court martial proceeding is
24 justified. The Double Jeopardy Clause "not only protects an individual against being subjected
25 to double punishment but also is a guarantee against being twice put to trial for the same
26 offense." *Abney v. U.S.*, 431 U.S. 651, 652 (1977). The Supreme Court held in *Abney* that for a
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