

1
2
3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF ARIZONA**
5

6	VICENTE ORTIZ,)	
7)	
8	Petitioner/Movant,)	No. CV 08-550-PHX-MHM (CRP)
9	vs.)	CR 04-1303-PHX-MHM
10	UNITED STATES OF AMERICA,)	REPORT AND
11	Respondent.)	RECOMMENDATION
12	<hr/>)	

13 Movant requests emergency release from prison, alleging the Government is
14 incarcerating him beyond his sentence. (Doc 12). Movant has two active cases in Arizona
15 District Court, his criminal case and his related habeas petition pursuant to 28 U.S.C. § 2255
16 Motion to Vacate, Set Aside, or Correct Sentence. *See USA v. Ortiz*, cr-04-1303-PHX-
17 MHM; and *Ortiz v. USA*, cv-08-550-PHX-MHM (CRP). Movant filed his Motion for
18 Emergency Release (Doc 12) under the case number for his pending Habeas Petition.
19 Movant argues the Government is incarcerating him beyond his sentence due to a
20 miscalculation of his time-served credits. The docket in Movant’s criminal case shows
21 Movant is being held for violating conditions of his supervised release. (*USA v.Ortiz*; cr-04-
22 1303, Docs 128, 142).

23 Habeas corpus is the proper proceeding in which to challenge the legality or duration
24 of confinement. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir.1991). Movant’s request for
25 emergency release, however, is unrelated to his underlying habeas petition challenging the
26 constitutionality of the sentence imposed. Furthermore, Movant essentially requests
27 injunctive relief from his current confinement. Injunctive relief is appropriate when the
28 intermediate relief is of the same character as that which may be granted finally. Relief is

1 not proper when requested on matters lying wholly outside the issues in suit. *DeBeers*
2 *Consol. Mines v. United States*, 325 U.S. 212, 220 (1945).

3 Movant has not established that his request for emergency release relates to his request
4 for habeas relief from his original criminal sentence. Movant's request for an injunction is
5 inappropriate as it lies wholly outside the issues in his habeas petition.

6 **III. RECOMMENDATION**

7 Based on the foregoing, the Magistrate Judge recommends that the District Court,
8 after its independent review and analysis, enter an order DENYING Movant's request for
9 emergency release. (Doc 12).

10 This recommendation is not an order that is immediately appealable to the Ninth
11 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1) of the Federal
12 Rules of Appellate Procedure should not be filed until entry of the District Court's
13 judgment. The parties shall have ten days from the date of service of a copy of this
14 recommendation within which to file specific written objections with the court. *See* 28
15 U.S.C. § 636(b); Fed.R.Civ.P.Rules 72. The parties are advised that any objections filed
16 are to be identified with the following case number: cv-08-550-MHM.

17 The Clerk is directed to mail a copy of the Report and Recommendation to Movant
18 and counsel for Respondents.

19 DATED this 23rd day of June, 2009.

20
21 
22 **CHARLES R. PYLE**
23 **UNITED STATES MAGISTRATE JUDGE**