

1 R&R, arguing Magistrate Judge Anderson misunderstood the nature of her petition. (Doc.
2 13). Petitioner explained that she “is not appealing her case(s), nor is she appealing her
3 sentence(s).” Instead, it appears Petitioner is seeking an order requiring Arizona either
4 initiate probation revocation proceedings against her or elect to permanently dismiss the
5 probation revocation charges.

6 **I. Standard for Review of Magistrate Judge Anderson’s Findings**

7 A district judge “may accept, reject, or modify, in whole or in part, the findings or
8 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). Where any party has
9 filed timely objections to the magistrate judge’s report and recommendations, the district
10 court’s review of the part objected to is to be *de novo*. *Id.* Generally, objections must be
11 *specific*. Fed. R. Civ. P. 72(b)(2). And “general, non-specific objections” are not sufficient
12 to require the District Court “conduct *de novo* review of the entire R & R.” *Sullivan v.*
13 *Schriro*, 2006 WL 1516005 (D. Ariz.).

14 **II. Review of Magistrate Judge Anderson’s Findings**

15 Petitioner did not object to the factual findings made by Magistrate Judge Anderson.
16 Therefore, the following factual findings will be accepted. In September 2008, Petitioner
17 was sentenced in Maricopa County Superior Court to serve two concurrent two-year terms
18 of supervised probation. Approximately one month later, Petitioner was indicted in the
19 United States District Court for the Western District of Texas. In May 2009, Petitioner pled
20 guilty in Texas and was sentenced to 210 months in the Bureau of Prisons, followed by a
21 five-year term of supervised release. While in federal custody, Petitioner learned Arizona
22 had initiated probation revocation proceedings against her. Petitioner then filed a request
23 with the Maricopa County Superior Court to “terminate probation and quash warrants.”
24 (Doc. 9-1 at 21). That motion argued the pending Arizona probation proceedings were
25 preventing her from participating in certain programs while in federal custody. The
26 Maricopa County Superior Court construed the request as a Rule 32 petition for post-
27 conviction relief but denied the request, finding it had no authority to modify Petitioner’s
28 sentence.

1 Based on these events, Petitioner turned to the federal courts. As best as the Court can
2 determine, Petitioner is now seeking to compel Arizona to immediately move forward with
3 the probation revocation hearing. Alternatively, Petitioner requests the Court rule that any
4 probation revocation hearing when she is released from federal custody would violate her
5 right to a speedy trial. (Doc. 13 at 3). Magistrate Judge Anderson concluded Petitioner was
6 not entitled to either type of relief. The Court agrees, but for slightly different reasons than
7 those set forth in the R&R.

8 To the extent Petitioner is seeking an order requiring Arizona take immediate action
9 regarding her probation, the Court has no power to order such relief.¹ *Cf. Von Staich v.*
10 *Gonzales*, 2011 WL 7971744, at *2 (C.D. Cal. Nov. 18, 2011) (dismissing challenge to
11 federal detainer by inmate in state custody); *Carter v. Uribe*, 2010 WL 234803, at *2 (C.D.
12 Cal. Jan. 13, 2010) (dismissing for lack of jurisdiction a challenge to detainer). And
13 Petitioner cannot challenge the Arizona probation revocation proceeding that has not yet
14 occurred. Of course, if Arizona should choose to initiate probation revocation hearings upon
15 Petitioner’s release from federal custody, and Petitioner’s probation is revoked, she would
16 be free to file suit claiming her federal constitutional rights were violated in obtaining that
17 revocation.² *See Carter*, 2010 WL 234803, at *2 (C.D. Cal. Jan. 13, 2010) (noting prisoner
18 in state custody must wait until he is actually in federal custody to challenge a federal
19 detainer). But at the present time, no revocation has occurred and Petitioner has not

21 ¹ The Northern District of California may have been incorrect when it construed the
22 petition as one brought under 28 U.S.C. § 2254. That statute applies only to individuals “in
23 custody pursuant to the judgment of a State court.” 28 U.S.C. 2254(a). It is undisputed that
24 Petitioner is in *federal* custody, not custody pursuant to a state judgment. Therefore,
25 Petitioner may be correct that 28 U.S.C. § 2241 is the more appropriate basis for her suit.
26 *See Stow v. Murashige*, 389 F.3d 880, 886 (9th Cir. 2004). But even § 2241 only allows for
27 relief in limited circumstances, and the present circumstances do not qualify as Petitioner is
not alleging her *current* confinement is in violation of the Constitution or laws or treaties of
the United States. *See Von Staich*, 2011 WL 7971744, at *2 (noting petitioner challenging
detrainer did not fall into any category set forth in § 2241).

28 ² The Court expresses no opinion regarding the merits of any such future petition.

1 identified a federal constitutional violation she has already suffered. The fact that Petitioner
2 is not eligible to participate in certain programs due to Arizona's detainer does not make
3 federal habeas corpus available.

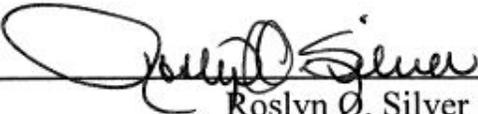
4 Accordingly,

5 **IT IS ORDERED** the Report and Recommendation (Doc. 12) is **ADOPTED IN**
6 **PART.**

7 **IT IS FURTHER ORDERED** the Clerk of Court shall enter judgment dismissing
8 this case without prejudice.

9 DATED this 30th day of January, 2013.

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Roslyn O. Silver
Chief United States District Judge