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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

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8 Vincent Salanardi,

Petitioner,

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v.

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Conrad Graber, Warden

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Respondant.

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CIV-10-704-TUC-DCB

**ORDER**

This matter was assigned to Magistrate Judge Glenda E. Edmonds on December 1, 2010. LRCiv. 72.1(a). On April 18, 2011, the Magistrate Judge issued a Report and Recommendation (R&R). She recommends granting Respondent’s Answer and Motion to Dismiss (R’s MD) the Petition alleging that the Bureau of Prisons (BOP) improperly raised his restitution payments and imposed sanctions when he refused to pay the increased amount. The Court accepts and adopts the Magistrate Judge’s R&R as the findings of fact and conclusions of law of this Court and dismisses the Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus by a Person in Federal Custody (Petition).

**STANDARD OF REVIEW**

The duties of the district court in connection with a R&R by a Magistrate Judge are set forth in Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1). Where the parties object to a R&R, “[a] judge of the [district] court shall make a *de novo* determination of those portions of the [R&R] to which objection is

1 made.” 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149-150 (1985). When no  
2 objections are filed, the district court need not review the R&R *de novo*.

3 This district court’s ruling is a *de novo* determination as to those portions of the  
4 R&R to which there are objections. 28 U.S.C. § 636(b)(1)(C); *Wang v. Masaitis*, 416  
5 F.3d 992, 1000 n. 13 (9<sup>th</sup> Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-  
6 22 (9<sup>th</sup> Cir. 2003) (*en banc*). To the extent that no objection has been made, arguments to  
7 the contrary have been waived. Fed. R. Civ. P. 72; *see* 28 U.S.C. § 636(b)(1) (objections  
8 are waived if they are not filed within fourteen days of service of the Report and  
9 Recommendation), *see also McCall v. Andrus*, 628 F.2d 1185, 1187 (9<sup>th</sup> Cir. 1980)  
10 (failure to object to Magistrate’s report waives right to do so on appeal); Advisory  
11 Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell v. United States Dist. Court*, 501  
12 F.2d 196, 206 (9<sup>th</sup> Cir. 1974) (when no timely objection is filed, the court need only  
13 satisfy itself that there is no clear error on the face of the record in order to accept the  
14 recommendation).

15 The parties were sent copies of the R&R and instructed that, pursuant to 28  
16 U.S.C. § 636(b)(1), they had 14 days to file written objections. Fed. R. Civ. P. 72. The  
17 Court has considered the Objection filed by the Petitioner, the R&R, and the parties’  
18 documents considered by the Magistrate Judge with respect to the Objections.

### 19 **OBJECTIONS**

20 On April 29, 2011, Petitioner filed an Objection to the R&R raising specific  
21 objections as follows: that the Magistrate Judge failed to consider certain case law with  
22 respect to denying the Petition and failed to consider the totality of all the issues  
23 Petitioner previously set forth in his Petition and Declaration in Opposition to the Motion  
24 to Dismiss.

25 This Court finds that the record in this case fully supports the Magistrate Judge’s  
26 conclusion to deny the Petition. The objections mirror arguments Petitioner made in his  
27 Petition and Declaration, except he identifies two cases that he did not previously

1 mention: *West v. Thomas*, 388 Fed.Appx. 742 (9<sup>th</sup> Cir. 2010), and *United States v. Munoz*,  
2 610 F.3d 989, 997 (7<sup>th</sup> Cir. 2010).

3 According to Petitioner, *West* held that “the language of the Judgment and  
4 Commitment is still paramount, controlling any efforts by the BOP to collect funds under  
5 the [Inmate Financial Responsibility Program (IFRP)], and requiring a case by case  
6 analysis.” (P’s Objections at 1.) However, *West* only stated that a sentencing court may  
7 not improperly delegate “its scheduling duties to the BOP by not setting a repayment  
8 schedule.” *West*, 388 Fed.Appx at 743. There is no commensurate failure by the trial  
9 court to set a schedule for repayment in the instant case. The Court ordered the following:  
10 “\$35,000 due immediately and to be paid at a rate of at least \$25 per quarter while in  
11 custody and at a rate of at least 25% of net disposable income per month while on  
12 supervised release.” (R’s MD at 5 (citing Judgment and Commitment (J&C) at 6.))

13 Petitioner also argues that where the sentencing court orders participation in the  
14 IFRP, this technically renders participation in the program “involuntary,” and is an error  
15 on the part of the court. (P’s Objections at 3 (citing *Munoz*, 610 F.3d at 997)). However,  
16 the sentencing court ordered: “*All criminal monetary penalties, except those payments*  
17 *made through the Federal Bureau of Prisons’ Inmate Financial Responsibility Program,*  
18 *are made to the clerk of the court.*” (R’s MD at 5 (citing J&C at 6.) (emphasis added)).  
19 As the R&R states, “The fact that Salanardi is subject to sanctions if he does not  
20 participate in the IFRP does not change the voluntary nature of the program.” R&R at 3.  
21 If payments are made through the IFRP, they satisfy Petitioner’s financial obligations, but  
22 all payments not voluntarily made through the IFRP are to be made to the clerk of the  
23 court, per the express language of the J&C. The sentencing court’s order did not mandate  
24 participation in the IFRP.

### 25 CONCLUSION

26 After *de novo* review of the issues raised in the Petitioner’s Objection, this Court  
27 agrees with the findings of fact and conclusions of law made by the Magistrate Judge in

1 her R&R for determining the Petition for Writ of Habeas Corpus. The Court adopts it,  
2 and for the reasons stated in the R&R, the Court denies the Petition.

3 **Accordingly,**

4 **IT IS ORDERED** that after a full and independent review of the record, in  
5 respect to the objections, the Magistrate Judge's Report and Recommendation (doc. 10) is  
6 accepted and adopted as the findings of fact and conclusions of law of this Court.

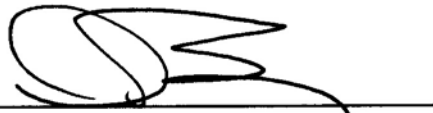
7 **IT IS FURTHER ORDERED** that Respondent's Motion to Dismiss (doc. 7) is  
8 GRANTED.

9 **IT IS FURTHER ORDERED** that the Petition (doc. 1) is DENIED.

10 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment  
11 accordingly.

12 DATED this 8<sup>th</sup> day of June, 2011.

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David C. Bury  
United States District Judge