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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Martin Sanchez-Alaniz,¹

No. CV-14-00324-TUC-RCC (BGM)

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Petitioner,

REPORT AND RECOMMENDATION

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v.

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J. T. Shartle, Warden,

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Respondent.

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Currently pending before the Court is Petitioner Martin Sanchez-Alaniz’s *pro se* First Amended Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus by a Person in Federal Custody (“Petition”) (Doc. 18). Respondent has filed his Return and Answer to Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus and Motion to Dismiss Petition (“Response”) (Doc. 38). Petitioner filed his Reply and Petitioners [sic] Motion for Summary Judgment (Doc. 50). Also pending before the Court is Petitioner’s Motion for Summary Judgment and Motion to Strike (Doc. 51) and Motion for Waiver of Form Requirements (Doc. 58).

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¹ The Court docket spells Petitioner’s name as “Martin Sanchez Alanis;” however, the Federal Bureau of Prisons (“BOP”) list Petitioner as “Martin Sanchez-Alaniz.” See BOP Inmate Locator, available at <http://www.bop.gov/inmateloc/> (last visited June 10, 2015). For consistency with BOP, the Court adopts the latter spelling.

1 As an initial matter, Petitioner named Craig Apker, Warden of the United States
2 Penitentiary–Tucson (“USP–Tucson”) as the Respondent. *See* Petition (Doc. 18). The
3 Court takes judicial notice, however, that Craig Apker is no longer warden of USP–
4 Tucson. As such, the Court will substitute the new Warden of USP–Tucson, J. T.
5 Shartle, as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.
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7 Pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure,² this matter
8 was referred to Magistrate Judge Macdonald for Report and Recommendation. The
9 Magistrate Judge recommends that the District Court deny the Petition (Doc. 1).
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11 **I. PROCEDURAL BACKGROUND**

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14 Petitioner is currently incarcerated at USP–Tucson, serving a 108-month sentence
15 for Re-entry of a Deported Alien in violation of 8 U.S.C. § 1326(a) & (b)(2). *See*
16 Response (Doc. 38), Talplacido Decl. (Exh. “A”), Judgment & Commitment 3/6/2012
17 (Attach. “2”) & Sentence Monitoring Computation Data (Attach. “3”). Petitioner
18 committed the underlying offense which gave rise to his incarceration on July 14, 2011.
19 *Id.*, Exh. “A,” Attach. “2” at 1 & Attach. “3” at 1. Petitioner’s projected release date is
20 October 4, 2019 via Good Conduct Time (“GCT”) release. *Id.*, Exh. “A,” Attach. “3” at
21 1. Petitioner filed a First Amended Petition Under 28 U.S.C. § 2241 for a Writ of Habeas
22 Corpus by a Person in Federal Custody on April 21, 2014. *See* Petition (Doc. 18).
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26 Petitioner challenges a disciplinary conviction that resulted in his loss of good
27 time credits. Petitioner alleges that “administrative staff has [sic] illegally forfeited [sic]
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² Rules of Practice of the United States District Court for the District of Arizona.

1 a grand total of 108 days of NONVESTED GOOD TIME CREDITS” in violation of his
2 constitutional rights. Petition (Doc. 18) at 4. Petitioner requests this Court order
3 Respondents to return the 108 days of good time credits. *Id.* at 6.
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5 6 **II. FACTUAL BACKGROUND**

7 This matter arises from four (4) separate Incident Reports. Petitioner seeks relief
8 from the aggregate punishment of those proceedings. Petitioner instituted the current
9 proceeding on October 25, 2013. *See* Petition’s Writ of Habeas Corpus 28 U.S.C. § 2241
10 (Doc. 1).
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12 **A. Incident Report Number 2322016**

13 On June 30, 2012 at approximately 5:50 p.m., Correctional Officer (“CO”)
14 Derrington was feeding the evening meal in the Special Housing Unit (“SHU”), when
15 Petitioner blocked the food slot and demanded a no egg tray. Response (Doc. 38), Exh.
16 “A,” Incident Report No. 2322016 (Attach. “6”) at 4. CO Derrington ordered Petitioner
17 to allow him to close the food slot, but he refused. *Id.* Petitioner then threw his food tray
18 at CO Derrington, who avoided being hit. *Id.* Petitioner then used a long piece of metal
19 from the shower stall, put it through the food slot, and knocked the remaining food trays
20 from CO Derrington’s cart. *Id.* CO Derrington removed the weapon and notified the
21 Operations Lieutenant. *Id.* CO Derrington charged Petitioner with the prohibited act of
22 Attempt to Assault Any Person in violation of Code 224A. Response (Doc. 38), Exh.
23 “A,” Attach. “6” at 4. The following day, Lieutenant L. Williams delivered the incident
24 report to Petitioner. *Id.* Lieutenant Williams also investigated the incident and advised
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1 Petitioner of his rights. *Id.*, Exh. “A,” Attach. “6” at 5. During Lieutenant Williams’s
2 investigation, Petitioner stated that “they were trying to give me Spaghetti as the meal
3 and I do not eat eggs.” *Id.* Petitioner did not request any witnesses. *Id.* Lieutenant
4 Williams forwarded the Incident Report to the Unit Discipline Committee (“UDC”) for
5 further disposition. *Id.*

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7 On July 5, 2012, the UDC conducted its hearing. Response (Doc. 38), Exh. “A,”
8 Attach. “6” at 6.³ At the hearing, Petitioner was advised of his rights, and stated that he
9 understood those rights. *Id.* Petitioner’s only statement was “no comment.” *Id.* Based
10 on the severity of the alleged misconduct, the UDC referred the matter to the Discipline
11 Hearing Officer (“DHO”) for final disposition, and if Petitioner was found guilty,
12 recommended sanctions including loss of Good Conduct Time (“GCT”), loss of
13 telephone privileges, and loss of commissary privileges. *Id.* The UDC also provided
14 Petitioner with a Notice of Discipline Hearing Before the DHO and his rights at that
15 hearing. *Id.*, Exh. “A,” Attach. “6” at 7–8. Petitioner indicated that he wished to have a
16 staff representative, as well as a witness at his DHO hearing. *Id.*, Exh. “A,” Attach. “6”
17 at 8. Later, Petitioner apparently signed a statement indicating that he had decided
18 against utilizing a staff representative at the DHO hearing. *Id.*, Exh. “A,” Attach. “6” at
19 8–9.

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21 On October 10, 2012, Petitioner had a DHO hearing before DHO A. Truex. *See*
22 Response (Doc. 38), Exh. “A,” DHO Report for Incident Report No. 2322016 (Attach.

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³ The typewritten date on Part II of Incident Report No. 2322016 is July 5, 2011,
28 but all other dates associated with this portion of the incident were dated 2012. The
Court finds that the 2011 date was a typographical error.

1 “6”) at 1–3. DHO Truex noted that on July 5, 2012, Counselor H. Preston had advised
2 Petitioner of his rights before the DHO, and he indicated that he understood them. *Id.*,
3 Exh. “A,” Attach. “6” at 1. Petitioner waived his right to a staff representative at the
4 DHO hearing. *Id.* Petitioner also waived his requested witnesses, stated that he
5 understood his rights before the DHO, and “admitted guilt to attempting to assault an
6 officer by throwing the lid to his food tray at him.” *Id.* Petitioner declined to make any
7 further statement, and did not submit any documentary evidence. *Id.*

10 DHO Truex considered the Incident Report; Petitioner’s admission at the DHO
11 hearing to committing the offense; and Petitioner’s silence during the investigation and
12 before the UDC, drawing an adverse inference therefrom. Response (Doc. 38), Exh. “A,”
13 Attach. “6” at 2. DHO Truex also noted that upon commitment to the BOP, Petitioner
14 participated in the Admission and Orientation (“A&O”) program, and was advised of
15 BOP rules and regulations, as well as provided an A&O handbook. *Id.* Accordingly,
16 DHO Truex determined sufficient facts existed to find Petitioner guilty of the prohibited
17 act of Attempting to Assault Any Person (Code 224A). *Id.* DHO Truex imposed
18 sanctions totaling thirty (30) days Disciplinary Segregation, twenty-seven (27) days
19 Disallowance of Good Conduct Time, and ninety (90) days loss of telephone privileges to
20 begin on January 8, 2013, consecutive to Incident Report Number 2341527. *Id.* On
21 November 30, 2012, DHO Truex signed the DHO report and it was delivered to
22 Petitioner on December 7, 2012. *Id.*, Exh. “A,” Attach. “6” at 3.

27 On February 15, 2013, Petitioner filed his Regional Administrative Remedy
28 Appeal regarding Incident Report Number 2322016. Petition (Doc. 18) at 13. On March

1 19, 2013, Petitioner received a denial of his Regional Appeal. Response (Doc. 38),
2 Attach. “A,” Admin. Remedy Index & Copies of Relevant Admin. Remedies (Attach.
3 “7”) at 145, 146. On June 4, 2013, Petitioner filed a Central Office Administrative
4 Remedy Appeal to the Director. Petition (Doc. 18) at 12. In his appeal, Petitioner
5 explains that although he received the Regional Director’s response on March 19, 2013,
6 he was transferred on March 20, 2013 to USP–Tucson. *Id.* The record is unclear as to
7 when Petitioner received his legal papers and other personal property. A note by
8 Petitioner on an Administrative Remedy Receipt dated February 15, 2013, regarding
9 Incident Report No. 2322016, indicates that Petitioner received the Regional Appeal
10 decision on June 23, 2013. Response (Doc. 38), Exh. “A,” Attach. “7” at 80.⁴ On July 2,
11 2013, Petitioner resubmitted his Central Office Appeal, which was denied due to
12 Petitioner’s failure to include a staff memo excusing the untimeliness on July 5, 2013.
13 *Id.*, Exh. “A,” Attach. “7” at 57. On September 17, 2013, Petitioner wrote a letter to the
14 Central Office Director indicating that he had been unsuccessfully attempting to obtain a
15 “late memo” from prison staff, and accused BOP of preventing him from exhausting his
16 administrative remedies. *Id.*, Exh. “A,” Attach. “7” at 101. On March 20, 2014, Unit
17 Manager S. Hansen issued a Memorandum for Administrative Remedy Clerk indicating
18 that Petitioner had arrived at USP–Tucson on December 2, 2013, and received his
19 personal property on or about May 16, 2013. Petition (Doc. 18) at 7. On June 23, 2014,
20 Petitioner’s Central Office Appeal was accepted. Response (Doc. 38), Exh. “A,” Attach.

27 ⁴ The February 15, 2013 “Receipt – Administrative Remedy” appears at page 80 of
28 Attachment “7,” but the page number of the court’s docket is 130. Except where otherwise
noted, this Order refers to the actual page number within an attachment.

1 “7” at 70. No response was issued for Petitioner’s Central Office Appeal. Response
2 (Doc. 38) at 7.
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4 ***B. Incident Report Number 2323351***

5 On July 4, 2012 at approximately 6:15 p.m., CO K. Luse “was passing out the
6 evening meal on A-2 Range.” Response (Doc. 38), Exh. “A,” Incident Report No.
7 2323351 (Attach. “8”) at 4. When CO Luse attempted to hand the evening meal through
8 the food slot to Petitioner, Petitioner refused and “placed his arm on the food slot
9 preventing it from being closed.” *Id.* Petitioner stated that the noodles contained eggs, to
10 which he is allergic, and demanded CO Luse call the kitchen. *Id.* CO Luse and CO
11 Williamson informed Petitioner that the kitchen had been notified prior to the delivery of
12 the hot food tray, and the food service staff verified that the noodles did not contain any
13 eggs. *Id.* Petitioner was ordered to remove his arm from the food, but he refused. *Id.*
14 Petitioner became irate and used profanity, and as CO Luse proceeded down the range
15 toward the next cell, Petitioner threw milk, trays, books, and trash in his direction.
16 Response (Doc. 38), Exh. “A,” Attach. “8” at 4. CO Luse was struck in the upper body
17 by a book thrown by Petitioner through his food slot. *Id.* CO Luse charged Petitioner
18 with the prohibited act of Assaulting any Person, Refusing to obey an order of any staff
19 member in violation of Code 224. *Id.* The following day, Lieutenant A. Phillips
20 delivered the incident report to Petitioner. *Id.* Lieutenant Phillips also investigated the
21 incident and advised Petitioner of his rights. *Id.*, Exh. “A,” Attach. “8” at 5. During
22 Lieutenant Phillips’s investigation, Petitioner stated that he was “throwing items at the
23 food cart trying to knock the food trays off . . . not trying to hit the officer.” *Id.*
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1 Petitioner further stated that “he was trying to get the Officer to get a meal replacement
2 for the spaghetti, stating it is an egg product.” *Id.* Lieutenant Phillips forwarded the
3 Incident Report to the UDC for further disposition. *Id.*
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5 On July 6, 2012, the UDC conducted its hearing. Response (Doc. 38), Exh. “A,”
6 Attach. “8” at 6. At the hearing, Petitioner was advised of his rights, and acknowledged
7 the same. *Id.* Petitioner’s only statement was “no comment.” *Id.* Based on the severity
8 of the misconduct, the UDC referred the matter to the DHO for final disposition, and if
9 Petitioner was found guilty, recommended sanctions including loss of GCT, disciplinary
10 segregation, and loss of commissary privileges. *Id.* The UDC also provided Petitioner
11 with a Notice of Discipline Hearing Before the DHO and his rights at that hearing. *Id.*,
12 Exh. “A,” Attach. “8” at 7–8. Petitioner indicated that he wished to have a staff
13 representative, but did not request any witnesses, at his DHO hearing. Response (Doc.
14 38), Exh. “A,” Attach. “8” at 8. Later, Petitioner apparently decided against utilizing a
15 staff representative at the DHO hearing. *Id.*, Exh. “A,” Attach. “8” at 8–9.
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19 On October 10, 2012, Petitioner had a DHO hearing before DHO A. Truex. *See*
20 Response (Doc. 38), Exh. “A,” DHO Report for Incident Report No. 2323351 (Attach.
21 “8”) at 1–3. DHO Truex noted that on July 6, 2012, Counselor H. Preston had advised
22 Petitioner of his rights before the DHO. *Id.*, Exh. “A,” Attach. “8” at 1. At the DHO
23 hearing, Petitioner indicated that he understood his rights, waived his right to a staff
24 representative at the DHO hearing, and requested no witnesses. *Id.* Petitioner “admitted
25 guilt to assaulting an Officer by throwing a book at him and hitting him in [sic] the upper
26 side of his body.” *Id.* Petitioner declined to make any further statement, and did not
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1 submit any documentary evidence. *Id.*

2 DHO Truex considered the Incident Report; Petitioner's admission at the DHO
3 hearing to committing the offense; Petitioner's admission during the investigation; and
4 Petitioner's silence before the UDC, drawing an adverse inference therefrom. *Id.*, Exh.
5 "A," Attach. "8" at 2. DHO Truex also noted that upon commitment to the BOP,
6 Petitioner participated in the A&O program, and was advised of BOP rules and
7 regulations, as well as provided an A&O handbook. *Id.* Accordingly, DHO Truex
8 determined sufficient facts existed to find Petitioner committed the prohibited act of
9 Assaulting Any Person (Code 224). *Id.* DHO Truex imposed sanctions totaling thirty
10 (30) days Disciplinary Segregation, twenty-seven (27) days disallowance of GCT, and
11 one hundred twenty (120) days loss of telephone privileges to begin on April 8, 2013,
12 consecutive to Incident Report Numbers 2341527 and 2322016. *Id.*, Exh. "A," Attach.
13 "8" at 3. On November 30, 2012, DHO Truex signed the DHO report and it was
14 delivered to Petitioner on December 7, 2012. *Id.*

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19 On February 15, 2013, Petitioner filed his Regional Administrative Remedy
20 Appeal regarding Incident Report Number 2323351. Petition (Doc. 18) at 23; *see also*
21 Response (Doc. 38), Exh. "A," Attach. "7" at 52. Petitioner's Regional Appeal was
22 denied.⁵ Petition (Doc. 18) at 24. On May 30, 2013, Petitioner filed a Central Office
23 Administrative Remedy Appeal. Petition (Doc. 18) at 22. In his appeal, Petitioner
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26 ⁵ Petitioner redacted the date from his Regional Appeal Response, and the copy that
27 appears to match filed by Respondent has a different Regional Administrative Remedy Appeal
28 No. handwritten in, because it appears that the original page was miscopied. *See* Response (Doc.
38), Exh. "A," Att. "7" at 224. The Court notes that the signature on each copy appears to
match, and Respondent's copy is dated March 7, 2013.

1 explains that although he received the Regional Director's response on March 19, 2013,
2 he was transferred on March 20, 2013. *Id.* On June 5, 2013, Petitioner's Central Office
3 Appeal was denied as untimely. *Id.* at 21; *see also* Response (Doc. 38), Exh. "A,"
4 Attach. "7" at 55. On August 19, 2013, Petitioner resubmitted his Central Office Appeal,
5 which was denied on August 29, 2013, because it lacked staff verification regarding its
6 untimeliness. *Id.*, Exh. "A," Attach. "7" at 59. On September 27, 2013, Petitioner again
7 resubmitted his Central Office Appeal, which was denied on October 17, 2013, because it
8 lacked staff verification regarding its untimeliness. *Id.*, Exh. "A," Attach. "7" at 60. On
9 November 12, 2013, Petitioner resubmitted his Central Office Appeal, which was again
10 denied on November 18, 2013, because it lacked staff verification regarding its
11 untimeliness. *Id.*, Exh. "A," Attach. "7" at 63. On April 20, 2014, Petitioner resubmitted
12 his Central Office Appeal, with a March 20, 2014 memorandum containing staff
13 verification that his prior untimely submissions were not his fault. Petition (Doc. 18) at
14 20. Petitioner's appeal was rejected, because "photocopies of the first page of [his] BP-
15 11 form [were] not acceptable." Response (Doc. 38), Exh. "A," Attach. "7" at 66. On
16 June 23, 2014, Petitioner's Central Office Appeal was accepted. Response (Doc. 38),
17 Exh. "A," Attach. "7" at 69. No response was issued. Response (Doc. 38) at 9.

23 ***C. Incident Report Number 2323375***

24 On July 4, 2012 at approximately 6:15 p.m., CO L. Williamson handed his keys to
25 CO Luse and "proceeded down A-2 range to notify Inmate Sanchez-Alaniz, Martin Reg.
26 #31293-177 what food service said about his dinner meal." Response (Doc. 38), Exh.
27 "A," Incident Report No. 2323375 (Attach. "9") at 4. CO Williamson approached
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1 Petitioner's cell # 215, and noted that the food slot was open and Petitioner had his arm
2 resting on the slot. *Id.* CO Williamson informed Petitioner "that food service said the
3 dinner meal contained no eggs, [Petitioner] said[,] 'they [sic] are a FUCKING lie and I'm
4 tired of them playing Fucking games.'" *Id.* Petitioner then picked up a Styrofoam cup
5 filled with red liquid and threw it at CO Williamson, striking him on his right shoulder.
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7 *Id.* CO Williamson notified the Special Housing Lieutenant of the incident. *Id.* CO
8 Williamson charged Petitioner with the prohibited act of Assaulting Any Person,
9 Refusing to obey an order of any staff member in violation of Code 224. Response (Doc.
10 38), Exh. "A," Attach. "9" at 4. The following day, Lieutenant A. Phillips delivered the
11 incident report to Petitioner. *Id.* Lieutenant Phillips also investigated the incident and
12 advised Petitioner of his rights. *Id.*, Exh. "A," Attach. "9" at 5. During Lieutenant
13 Phillips's investigation, Petitioner indicated that he understood his rights, and stated "that
14 he did throw a cup of Kool-Aid on the Officer due to being mad about his meal . . . [and]
15 that he was trying to get the Officer to get a meal replacement for the spaghetti, stating it
16 is an egg product." *Id.* Lieutenant Phillips forwarded the Incident Report to the UDC for
17 further disposition. *Id.*

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22 On July 6, 2012, the UDC conducted its hearing. Response (Doc. 35), Exh. "A,"
23 Attach. "9" at 6. At the hearing, Petitioner was advised of his rights, and acknowledged
24 the same. *Id.* Petitioner's only statement was "no comment." *Id.* Based on the severity
25 of the misconduct, the UDC referred the matter to the DHO for final disposition, and if
26 Petitioner was found guilty, recommended sanctions including loss of GCT, disciplinary
27 segregation, and loss of telephone privileges. *Id.* The UDC also provided Petitioner with
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1 a Notice of Discipline Hearing Before the DHO and his rights at that hearing. *Id.*, Exh.
2 “A,” Attach. “9” at 7–8. Petitioner indicated that he wished to have a staff representative
3 at his DHO hearing, but no witnesses. Response (Doc. 38), Exh. “A,” Attach. “9” at 8.
4 Later, Petitioner apparently decided against utilizing a staff representative at the DHO
5 hearing. *Id.*, Exh. “A,” Attach. “9” at 8–9.
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8 On October 10, 2012, Petitioner had a DHO hearing before DHO A. Truex. *See*
9 Response (Doc. 35), Exh. “A,” DHO Report for Incident Report No. 2323375 (Attach.
10 “9”) at 1–3. DHO Truex noted that on July 6, 2012, Counselor H. Preston had advised
11 Petitioner of his rights before the DHO. *Id.*, Exh. “A,” Attach. “9” at 1. At the DHO
12 hearing, Petitioner indicated that he understood his rights, waived his right to a staff
13 representative at the DHO hearing, and requested no witnesses. *Id.* Petitioner “admitted
14 guilt to assaulting an Officer by throwing a cup filled with red liquid at him and hitting
15 him on his right shoulder.” *Id.* Petitioner declined to make any further statement, and
16 did not submit any documentary evidence. *Id.*
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19 DHO Truex considered the Incident Report; Petitioner’s admission at the DHO
20 hearing to committing the offense; Petitioner’s admission during the investigation; and
21 Petitioner’s silence before the UDC, drawing an adverse inference therefrom. *Id.*, Exh.
22 “A,” Attach. “9” at 2. DHO Truex also noted that upon commitment to the BOP,
23 Petitioner participated in the A&O program, and was advised of BOP rules and
24 regulations, as well as provided an A&O handbook. *Id.* Accordingly, DHO Truex
25 determined sufficient facts existed to find Petitioner committed the prohibited act of
26 Assaulting Any Person (Code 224). *Id.* DHO Truex imposed sanctions totaling thirty
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1 (30) days Disciplinary Segregation, twenty-seven (27) days disallowance of GCT, and
2 one hundred twenty (120) days loss of telephone privileges to begin on August 6, 2013,
3 consecutive to Incident Report Numbers 2341527, 2322016, and 2323351. *Id.* On
4 November 30, 2012, DHO Truex signed the DHO report and it was delivered to
5 Petitioner on December 7, 2012. *Id.*, Exh. “A,” Attach. “9” at 3.
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8 On February 15, 2013, Petitioner filed his Regional Administrative Remedy
9 Appeal regarding Incident Report Number 2323375. Petition (Doc. 18) at 28; *see also*
10 Response (Doc. 38), Exh. “A,” Attach. “7” at 52. On March 7, 2013, Petitioner’s
11 Regional Appeal was denied. Petition (Doc. 18) at 29; Response (Doc. 38), Exh. “A,”
12 Attach. “7” at 218. On May 31, 2013, Petitioner filed a Central Office Administrative
13 Remedy Appeal. Petition (Doc. 18) at 27. In his appeal, Petitioner explains that although
14 he received the Regional Director’s response on March 19, 2013, he was transferred on
15 March 20, 2013. *Id.* On July 1, 2013, Petitioner’s Central Office Appeal was denied as
16 untimely. Response (Doc. 38), Exh. “A,” Attach. “7” at 202. It appears that on July 1,
17 2013, Petitioner resubmitted the Central Office Appeal, which was rejected on July 3,
18 2013, reiterating the need to provide staff verification to excuse untimeliness. *Id.*, Exh.
19 “A,” Attach. “7” at 57. On August 19, 2013, Petitioner resubmitted his Central Office
20 Appeal, which was denied on August 29, 2013 due to a lack of staff verification
21 regarding the untimeliness. *Id.*, Exh. “A,” Attach. “7” at 58, 206. On September 27,
22 2013, Petitioner again resubmitted his Central Office Appeal, which was denied on
23 October 17, 2013, because it lacked staff verification regarding its untimeliness. *Id.*, Exh.
24 “A,” Attach. “7” at 61, 205. On November 12, 2013, Petitioner resubmitted his Central
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1 Office Appeal, which was again denied on November 18, 2013, because it lacked staff
2 verification regarding its untimeliness. *Id.*, Exh. “A,” Attach. “7” at 62, 204; *see also*
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4 Petition (Doc. 18) at 26. On April 28, 2014, Petitioner resubmitted his Central Office
5 Appeal. Response (Doc. 38), Exh. “A,” Attach. “7” at 68. Petitioner’s appeal was
6 rejected, because “photocopies of the first page of [his] BP-11 form [were] not
7 acceptable.” *Id.* On June 23, 2014, Petitioner’s Central Office Appeal was accepted.
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9 Response (Doc. 38), Exh. “A,” Attach. “7” at 70. No response was issued. Response
10 (Doc. 38) at 11.

11 ***D. Incident Report Number 2341527***

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13 On August 20, 2012 at approximately 3:00 p.m., CO J. Soule was working in the
14 medium security Special Housing Unit (“SHU”). Response (Doc. 38), Exh. “A,”
15 Incident Report No. 2341527 (Attach. “10”) at 4. Petitioner and Inmate Velasquez were
16 being held in an upstairs holding cell, so that their cell could be searched for contraband.
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18 *Id.* After the search, Petitioner and Inmate Velasquez saw contraband that was being
19 removed from their cell, and Petitioner became aggravated, banging the window of the
20 holding cell repeatedly with a food tray, and breaking the sprinkler head, which resulted
21 in flooding the upper and lower levels of the SHU. *Id.* CO Soule notified the SHU
22 Lieutenant, as well as the plumbing shop, in order to turn off the water, and assess the
23 damage. *Id.* CO Soule charged Petitioner with the prohibited act of Destroying
24 Government Property in violation of Code 218. *Id.* The following day, Lieutenant F.
25 Watts delivered the incident report to Petitioner. Response (Doc. 38), Exh. “A,” Attach.
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27 “10” at 4–5. Lieutenant Watts also investigated the incident and advised Petitioner of his
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1 rights. *Id.*, Exh. “A,” Attach. “10” at 5. During Lieutenant Watts’s investigation,
2 Petitioner stated that he did not do it. *Id.* Petitioner did not request any witnesses. *Id.*
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4 Lieutenant Watts forwarded the incident report for further disposition. *Id.*

5 On August 24, 2012, the UDC conducted its hearing. *Id.*, Exh. “A,” Attach. “10”
6 at 6. At the hearing, Petitioner read his rights, and stated that he understood those rights.
7 *Id.* Petitioner stated that “he did not break the sprinkler system. He has hair and his
8 cellmate is bald-headed.” *Id.* Based on the severity of the alleged misconduct, the UDC
9 referred the matter to the DHO for final disposition, and if Petitioner was found guilty,
10 recommended all appropriate sanctions deemed necessary by the DHO. *Id.* The UDC
11 also provided Petitioner with a Notice of Discipline Hearing Before the DHO and his
12 rights at that hearing. *Id.*, Exh. “A,” Attach “10” at 7–8. Petitioner indicated that he
13 wished to have a staff representative, as well as a witness, Lieutenant Fleming, at his
14 DHO hearing. *Id.*, Exh. “A,” Attach. “10” at 8. Later, Petitioner apparently decided
15 against utilizing a staff representative at the DHO hearing. *Id.*

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19 On October 10, 2012, Petitioner had a DHO hearing before DHO A. Truex. *See*
20 Response (Doc. 38), Exh. “A,” DHO Report for Incident Report No. 2341527 (Attach.
21 “10”) at 1–3. DHO Truex noted that on August 21, 2012, Case Manager L. Montgomery
22 had advised Petitioner of his rights before the DHO. *Id.*, Exh. “A,” Attach. “10” at 1. At
23 the DHO hearing, Petitioner indicated that he understood his rights, waived his right to a
24 staff representative at the DHO hearing, and requested no witnesses. *Id.* Petitioner
25 “admitted guilt to breaking a sprinkler head in a Special Housing Unit (SHU) holding
26 cell.” *Id.* Petitioner declined to make any further statement, and did not submit any
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1 documentary evidence. *Id.*

2 DHO Truex considered the Incident Report and Petitioner's admission at the DHO
3 hearing to committing the offense. *Id.*, Exh. "A," Attach. "10" at 2. DHO Truex also
4 noted that upon commitment to the BOP, Petitioner participated in the A&O program,
5 and was advised of BOP rules and regulations, as well as provided an A&O handbook.
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7 *Id.* Accordingly, DHO Truex determined sufficient facts existed to find Petitioner
8 committed the prohibited act of Damaging Life-Safety Devices (Sprinkler Head)
9 Regardless of Financial Value (Code 218). *Id.* DHO Truex imposed sanctions totaling
10 thirty (30) days Disciplinary Segregation, twenty-seven (27) days disallowance of GCT,
11 and ninety (90) days loss of telephone privileges to begin on October 10, 2012. *Id.* On
12 November 30, 2012, DHO Truex signed the DHO report and it was delivered to
13 Petitioner on December 7, 2012. *Id.*, Exh. "A," Attach. "10" at 3.

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17 On February 15, 2013, Petitioner filed his Regional Administrative Remedy
18 Appeal regarding Incident Report Number 2341527. Petition (Doc. 18) at 19; *see also*
19 Response (Doc. 38), Exh. "A," Attach. "7" at 52, 230. On March 7, 2013, Petitioner's
20 Regional Appeal was denied. Petition (Doc. 18) at 18; Response (Doc. 38), Exh. "A,"
21 Attach. "7" at 232, 233. On May 30, 2013, Petitioner filed a Central Office
22 Administrative Remedy Appeal. Petition (Doc. 18) at 17; Response (Doc. 38), Exh. "A,"
23 Attach. "7" at 54, 219. In his appeal, Petitioner explains that although he received the
24 Regional Director's response on March 19, 2013, he was transferred on March 20, 2013.
25
26 Petition (Doc. 18) at 17; Response (Doc. 38), Exh. "A," Attach. "7" at 219. On June 5,
27 2013, Petitioner's Central Office Appeal was denied as untimely. Petition (Doc. 18) at
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1 16; Response (Doc. 38), Exh. "A," Attach. "7" at 54, 227. It appears that Petitioner
2 resubmitted his Central Office Appeal on May 31, 2013; however, the reason for its
3 rejection are unclear. Response (Doc. 38), Exh. "A," Attach. "7" at 55. On August 19,
4 2013, Petitioner resubmitted his Central Office Appeal, which was denied on August 29,
5 2013 due to a lack of staff verification regarding the untimeliness. *Id.*, Exh. "A," Attach.
6 "7" at 59, 239. On September 27, 2013, Petitioner again resubmitted his Central Office
7 Appeal, which was denied on October 17, 2013, because it lacked staff verification
8 regarding its untimeliness. *Id.*, Exh. "A," Attach. "7" at 61, 238. On November 12,
9 2013, Petitioner resubmitted his Central Office Appeal, which was again denied on
10 November 18, 2013, because it lacked staff verification regarding its untimeliness. *Id.*,
11 Exh. "A," Attach. "7" at 63, 253. On April 28, 2014, Petitioner resubmitted his Central
12 Office Appeal. Response (Doc. 38), Exh. "A," Attach. "7" at 67. Petitioner's appeal was
13 rejected, because "photocopies of the first page of [his] BP-11 form [were] not
14 acceptable." *Id.* On June 23, 2014, Petitioner's Central Office Appeal was accepted.
15 Response (Doc. 38), Exh. "A," Attach. "7" at 71. No response was issued. Response
16 (Doc. 38) at 13.

23 **III. ANALYSIS**

24 **A. Jurisdiction**

25 "Federal courts are always 'under an independent obligation to examine their own
26 jurisdiction,' . . . and a federal court may not entertain an action over which it has no
27 jurisdiction." *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000) (quoting
28

1 *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231, 110 S.Ct. 596, 107 L.Ed.2d 603
2 (1990), *overruled in part on other grounds by City of Littleton, Colo. v. Z.J. Gifts D-4,*
3 *L.L.C.*, 541 U.S. 774 (2004)). “Generally, motions to contest the legality of a sentence
4 must be filed under § 2255 in the sentencing court, while petitions that challenge the
5 manner, location, or conditions of a sentence’s execution must be brought pursuant to §
6 2241 in the custodial court.” *Id.* at 864. Therefore, a proper characterization of the
7 petition is necessary to a determination of jurisdiction. *Id.*

10 Here, Petitioner does not claim that the sentencing court imposed an illegal
11 sentence, rather he seeks relief with respect to disciplinary proceedings while
12 incarcerated at a federal facility. As such, Petitioner is challenging the manner, location
13 or condition of the execution of his sentence. *See e.g., Rogers v. United States*, 180 F.3d
14 349 (1st Cir. 1999) (section 2241 petition is appropriate vehicle to challenge the
15 correctness of a jail-time credit determination, once administrative remedies have been
16 exhausted); *Nettles v. Grounds*, — F.3d — (9th Cir. 2015), (habeas relief is available “if
17 success on the claim would ‘necessarily spell speedier release’ from custody, which . . .
18 would include termination of custody, acceleration of the future date of release from
19 custody, or reduction of the level of custody.”) (citing *Skinner v. Switzer*, 562 U.S. 521,
20 534–35 & n. 13, 131 S.Ct. 1289, 1299 & n. 13, 179 L.Ed.2d 233 (2011)); *Tucker v.*
21 *Carlson*, 925 F.2d 330, 332 (9th Cir. 1991) (a prisoner’s challenge to the “manner in
22 which his sentence was executed . . . [is] maintainable only in a petition for habeas
23 corpus filed pursuant to 28 U.S.C. § 2241”); *Weinstein v. U.S. Parole Comm’n*, 902 F.2d
24 1451, 1452 (9th Cir. 1990) (“The district court had jurisdiction pursuant to 28 U.S.C. §
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1 2241 to review a claim by a federal prisoner challenging a decision of the United States
2 Parole Commission”); *Bostic v. Carlson*, 884 F.2d 1267, 1269 (9th Cir. 1989) (“Habeas
3 corpus jurisdiction is also available for a prisoner’s claims that he has been subjected to
4 greater restrictions of his liberty, such as disciplinary segregation without due process of
5 law”). Such a challenge must be brought pursuant to § 2241 in the custodial court. At
6 the time of filing the Petition, Petitioner was incarcerated at USP – Tucson in Arizona.
7 Accordingly, this Court has jurisdiction over this matter. *Francis v. Rison*, 894 F.2d 353
8 (9th Cir. 1990).

11 ***B. Exhaustion***

13 **1. In General**

14 The Ninth Circuit Court of Appeals has stated:

15 [28 U.S.C. § 2241] does not specifically require petitioners to exhaust
16 direct appeals before filing petitions for habeas corpus. [Footnote omitted.]
17 However, we require, as a prudential matter, that habeas petitioners exhaust
18 available judicial and administrative remedies before seeking relief under §
2241.

19 *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds*
20 *by Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 126 S.Ct. 2422, 165 L.Ed.2d 323 (2006).

21 “The requirement that federal prisoners exhaust administrative remedies before filing a
22 habeas corpus petition was judicially created; it is not a statutory requirement.” *Brown v.*
23 *Rison*, 895 F.2d 533, 535 (9th Cir. 1990), *overruled on other grounds by Reno v. Koray*,
24 515 U.S. 50, 54–55, 115 S.Ct. 2021, 2023–24, 132 L.Ed.2d 46 (1995). “Nevertheless,
25 ‘[p]rudential limits like jurisdictional limits and limits on venue, are ordinarily not
26 optional.’” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (alterations in original)
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28

1 (quoting *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*
2 *grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 126 S.Ct. 2422, 165 L.Ed.2d
3 323 (2006)).
4

5 “Courts may require prudential exhaustion if ‘(1) agency expertise makes agency
6 consideration necessary to generate a proper record and reach a proper decision; (2)
7 relaxation of the requirement would encourage the deliberate bypass of the administrative
8 scheme; and (3) administrative review is likely to allow the agency to correct its own
9 mistakes and to preclude the need for judicial review.’” *Id.* (quoting *Noriega-Lopez v.*
10 *Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). “When a petitioner does not exhaust
11 administrative remedies, a district court ordinarily should either dismiss the petition
12 without prejudice or stay the proceedings until the petitioner has exhausted remedies,
13 unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir.
14 2011) (citations omitted). Exhaustion may be excused if pursuing an administrative
15 remedy would be futile. *Fraley v. United States Bureau of Prisons*, 1 F.3d 924, 925 (9th
16 Cir. 1993).
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21 If a prisoner is unable to obtain an administrative remedy because of his failure to
22 appeal in a timely manner, then the petitioner has procedurally defaulted his habeas
23 corpus claim. *See Nigro v. Sullivan*, 40 F.3d 990, 997 (9th Cir. 1994) (citing *Francis,*
24 *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir. 1990); *Martinez v. Roberts*, 804 F.2d 570,
25 571 (9th Cir. 1986)). If a claim is procedurally defaulted, the court may require the
26 petitioner to demonstrate cause for the procedural default and actual prejudice from the
27 alleged constitutional violation. *See Francis*, 894 F.2d at 355 (suggesting that the cause
28

1 and prejudice test is the appropriate test); *Murray v. Carrier*, 477 U.S. 478, 492, 106
2 S.Ct. 2639, 2647–48, 91 L.Ed.2d 397 (1986) (cause and prejudice test applied to
3 procedural defaults on appeal); *Hughes v. Idaho State Bd. of Corrections*, 800 F.2d 905,
4 906–08 (9th Cir. 1986) (cause and prejudice test applied to *pro se* litigants).

6 **2. BOP Administrative Procedures**

7
8 The BOP has established an administrative remedy process permitting an inmate
9 to seek review of an issue relating to “any aspect of his/her own confinement.” 28 C.F.R.
10 § 542.10(a). Under that process, an inmate seeking to appeal a DHO decision shall
11 submit the appeal “initially to the Regional Director for the region where the inmate is
12 currently located.” 28 C.F.R. § 542.14(d)(2). “An inmate who is not satisfied with the
13 Regional Director’s response may submit an Appeal on the appropriate form (BP-11) to
14 the General Counsel within 30 calendar days of the date the Regional Director signed the
15 response.” 28 C.F.R. § 542.15(a). The deadlines contained within this process may be
16 extended upon request by the inmate and a showing of a valid reason for delay. 28
17 C.F.R. § 542.15(a); 28 C.F.R. § 542.14(b). An appeal is considered filed on the date it is
18 logged in the Administrative Remedy Index as received. 28 C.F.R. § 542.18. Once an
19 appeal is filed, a Regional Director shall respond within 30 days; General Counsel shall
20 respond within 40 calendar days. *Id.* “If the inmate does not receive a response within
21 the time allotted for reply, including extension, the inmate may consider the absence of a
22 response to be a denial at that level.” *Id.*

27 **3. Exhaustion in the Instant Case**

28 Here, Respondent avers that Petitioner has failed to exhaust his administrative

1 remedies. Response (Doc. 38) at 15. Respondent acknowledges that Petitioner “believes
2 that he has exhausted his administrative remedies[,]” but asserts that “Petitioner has
3 repeatedly sent administrative remedies to the Central Office without addressing the
4 defects in the remedies[,] [and] [t]he Central Office has not issued a final decision.” *Id.*
5 The Court disagrees with Respondent’s assertion.
6

7
8 The record shows that on June 23, 2014, each of Petitioner’s Central Office
9 Appeals was accepted. Response (Doc. 38), Exh. “A,” Attach. “7” at 69–71. Moreover,
10 as of November 7, 2014, General Counsel had not responded to any of the appeals.⁶
11 Response (Doc. 38) at 7, 9, 11, 13. “When a petitioner does not exhaust administrative
12 remedies, a district court ordinarily should either dismiss the petition without prejudice or
13 stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is
14 excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). In this case,
15 General Counsel had not responded to Petitioner’s BP-11 appeals more than four (4)
16 months after they were accepted. As such, the Court finds it appropriate to consider “the
17 absence of a response to be a denial at that level[.]” *See Martin v. Fed. Bureau of*
18 *Prisons*, 2011 WL 6057608, *2 (C.D. Cal. 2011) (“If General Counsel fails to respond
19 within 40 days, the inmate can assume that the appeal was denied and proceed with a
20 lawsuit”). Additionally, the Ninth Circuit Court of Appeals has recognized that:
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24 the requirement of exhaustion of remedies [is to] aid judicial review by
25 allowing the appropriate development of a factual record in an expert
26 forum; conserve the court’s time because of the possibility that the relief
27 applied for may be granted at the administrative level; and allow the

28 ⁶ November 7, 2014 is the date that Respondent’s Response was originally lodged with the Court.

1 administrative agency an opportunity to correct errors occurring in the
2 course of administrative proceedings.

3 *Ruviwat v. Smith*, 701 F.2d 844, 845 (9th Cir. 1983). In this case, the factual record is
4 adequately developed, and nothing in the record suggests that further administrative
5 review would result in any changes. Accordingly, the Court finds the Petitioner’s claims
6 exhausted; however, even if the exhaustion is faulty, it shall be excused and the Court
7 will reach the merits.
8

9 ***C. Due Process***

10
11 “Due process in a prison disciplinary hearing is satisfied if the inmate receives
12 written notice of the charges, and a statement of the evidence relied on by the prison
13 officials and the reasons for disciplinary action.” *Zimmerlee v. Keeny*, 831 F.2d 183, 186
14 (9th Cir. 1987) (citing *Wolff v. McDonnell*, 418 U.S. 539, 563–66, 94 S.Ct. 2963, 2978–
15 79, 41 L.Ed.2d 935 (1974)). Additionally, “[t]he inmate has a limited right to call
16 witnesses and to present documentary evidence when permitting him to do so would not
17 unduly threaten institutional safety and goals.” *Id.* (citations omitted). “Prison
18 disciplinary proceedings[, however,] are not part of a criminal prosecution, and the full
19 panoply of rights due a defendant in such proceedings do[] not apply.” *Wolff*, 418 U.S. at
20 556, 94 S.Ct. at 2975.
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24 Once the minimal procedural requirements of *Wolff* are met, the district court must
25 ask “whether there is any evidence in the record that could support the conclusion
26 reached by the disciplinary board.” *Superintendent, Mass. Corrections Inst. v. Hill*, 472
27 U.S. 445, 455–56, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985). “[T]he requirements of
28

1 due process are satisfied if some evidence supports the decision by the prison disciplinary
2 board to revoke good time credits.” *Id.* “Ascertaining whether this standard is satisfied
3 does not require examination of the entire record, independent assessment of the
4 credibility of witnesses, or weighing of the evidence.” *Id.* Indeed, “[t]he standard is
5 ‘minimally stringent’ only requiring ‘any evidence in the record that could support the
6 conclusion reached by the disciplinary board.” *Cato v. Rushen*, 824 F.2d 703, 705 (9th
7 Cir. 1987) (citing *Hill*, 472 U.S. at 454–56, 105 S.Ct. at 2774) (emphasis added in *Cato*).

10 **1. Good Conduct Time**

11 Petitioner asserts that on October 10, 2013, he was found guilty in four
12 separate disciplinary proceedings, and the DHO forfeited twenty-seven (27) days of
13 regular GCT in each case; however, as of that date Petitioner “had no good time credits
14 available for forfeiture [sic], therefore, administrative staff illegally forfeited [sic]
15 NONVESTED GOOD TIME CREDITS.” Petition (Doc. 18) at 4 (emphasis in original).
16 Petitioner further argues that “the DHO is not authorized to forfeit [sic] more than 54
17 days good time credits per calendar [sic] year for any 200 series disciplinary case(s) [and]
18 consequently, the DHO can not [sic] forfeit [sic] 108 days of regular good time or
19 NONVESTED GOOD TIME in these cases because it exceeds the maximum limit
20 allowed by law.” *Id.* (emphasis in original). Petitioner’s contention that there is a fifty-
21 four (54) day annual “limit” on the amount of GCT that an inmate may be disallowed is
22 incorrect. As such, his claims are without merit and shall be denied.

23 Section 3625(b), Title 18, of the United States Code governs the timing of federal
24 prisoners’ release from custody, including their eligibility for good conduct time. This
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26

1 section was enacted as part of the Sentencing Reform Act of 1984, 98 Stat. 1987, 18
2 U.S.C. § 3551 *et seq.*, 28 U.S.C. §§ 991–998 (“SRA”), “a comprehensive law that
3 reformed federal sentencing practice and directed the newly create United States
4 Sentencing Commission ‘to devise guidelines to be used for sentencing’ in district
5 courts.” *Barber v. Thomas*, 560 U.S. 474, 481–82, 130 S.Ct. 2499, 2505, 177 L.Ed.2d 1
6 (2010). The SRA was part of the Comprehensive Crime Control Act of 1984 (“CCCA”),
7 which repealed the previous statutes governing “good time.” Pub. L. No. 98-473; *see*
8 *also Brown v. McGrew*, 2013 WL 6512948, * 4 (C.D. Cal. Dec. 12, 2013) (reviewing
9 enactment of 18 U.S.C. § 3624(b) and amendments thereto). “For inmates serving a
10 sentence for offenses committed on or after November 1, 1987, but before September 13,
11 1994, the Bureau will award 54 days credit toward service of sentence (good conduct
12 time credit) for each year served.” 28 C.F.R. § 523.20(a). “This amount is prorated
13 when the time served by the inmate for the sentence during the year is less than a full
14 year.” *Id.* “For inmates serving a sentence for offenses committed on or after September
15 13, 1994, but before April 26, 1996, all yearly awards of good conduct time will vest for
16 inmates who have earned, or are making satisfactory progress . . . toward earning a
17 General Educational Development (GED) credential.” 28 C.F.R. § 523.20(b).

23 On April 26, 1996, Section 3624(b) was amended by the Prison Litigation Reform
24 Act (“PLRA”). *See* PL 104–134, April 26, 1996, 110 Stat 1321. Section 3624(b)
25 provides in relevant part:
26

27 (1) Subject to paragraph (2), a prisoner who is serving a term of
28 imprisonment of more than 1 year other than a term of imprisonment for
the duration of the prisoner’s life, may receive credit toward the service of

1 the prisoner's sentence, beyond the time served, of up to 54 days at the end
2 of each year of the prisoner's term of imprisonment, beginning at the end of
3 the first year of the term, subject to determination by the Bureau of Prisons
4 that, during that year, the prisoner has displayed exemplary compliance
5 with institutional disciplinary regulations. Subject to paragraph (2), if the
6 Bureau determines that during that year, the prisoner has not satisfactorily
7 complied with such institutional regulations, the prisoner shall receive no
8 such credit toward service of the prisoner's sentence or shall receive such
9 lesser credit as the Bureau determines to be appropriate. In awarding credit
10 under this section, the Bureau shall consider whether the prisoner, during
11 the relevant period, has earned, or is making satisfactory progress toward
12 earning, a high school diploma or an equivalent degree. Credit that has not
13 been earned may not later be granted. Subject to paragraph (2), credit for
14 the last year or portion of a year of the term of imprisonment shall be
15 prorated and credited within the last six weeks of the sentence.

16 (2) Notwithstanding any other law, credit awarded under this subsection
17 after the date of enactment of the Prison Litigation Reform Act shall vest
18 on the date the prisoner is released from custody.

19 18 U.S.C. § 3624(b); *see also* 28 C.F.R. § 523.20(c). Unlike previous amendments, GCT
20 awarded to an inmate under the PLRA does not vest under any circumstances until “the
21 date the prisoner is released from custody.” 18 U.S.C. § 3624(b)(2). “Thus, under the
22 PLRA, all of a prisoner's cumulative good-conduct time can be taken by the BOP as a
23 sanction for a prison disciplinary action.” *Brown*, 2013 WL 6512948 at *4 (citing 18
24 U.S.C. § 3624(b)(2); 28 C.F.R. § 523.20(e); *Gary v. Fed. Bureau of Prisons*, 2010 WL
25 1611020, *8 (E.D. Cal. Apr. 21, 2010).

26 Here, Petitioner conviction stems from a November 28, 2011 offense. Response
27 (Doc. 38), Exh. “A,” Judgment & Commitment 3/6/2012 (Attach. “2”). As such, the
28 PLRA applies to his sentence. Each of Petitioner's violations, BOP Code Nos. 224,
224A, and 218, are classified as High Category offenses. 28 C.F.R. § 541.13, Table 3.
The prison can sanction a prisoner who performs a prohibited act by “[d]isallow[ing]

1 ordinarily between 25 and 50% (14–27 days) of good conduct time credit available for [a]
2 year[.]” 28 C.F.R. § 541.13, Table 3, High Category, Sanctions B.1. For PLRA inmates
3 committing High Category offenses, Sanction B.1 is mandatory. 28 C.F.R. §
4 541.13(a)(2). Pursuant to that regulation, the DHO imposed a sanction disallowing 27
5 days of GCT for each offense. Response (Doc. 38), Exh. “A,” Attach. “6” at 2, Attach
6 “8” at 2, Attach. “9” at 2, Attach. “10” at 2.
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9 Petitioner has not pointed to any rules, regulations or other authority stating that
10 the DHO could not impose Sanction B.1 to disallow more than fifty-four (54) days of
11 GCT in a twelve (12) month period. As noted by the *Brown* court, “[i]ndeed, such a rule
12 would appear to conflict with the PLRA, which states that good-conduct time does not
13 vest until a prisoner is released from prison, and thus the DHO can sanction a prisoner
14 either by forfeiting good-conduct time that the prisoner has already earned or
15 prospectively disallowing good-conduct time that a prisoner has not yet earned.” *Brown*,
16 2013 WL 6512948 at *5 (citations omitted); *see also* 18 U.S.C. § 3624(b). Accordingly,
17
18 Petitioner’s claim must fail.
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21 **2. Due Process in Petitioner’s Disciplinary Proceedings**

22 Petitioner does not allege any other irregularities in his disciplinary proceedings.
23 The record indicates that in each instance, Petitioner received written notice of the
24 charges; had the opportunity to call witnesses, present documentary evidence, and have a
25 staff representative; and received a statement of the evidence relied on by the prison
26 officials, and the reasons for disciplinary actions. Furthermore, there is sufficient
27 evidence to support the decision of the DHO. Accordingly, Petitioner received the
28

1 requisite due process in his proceedings.

2 ***D. Conclusion***

3
4 In light of the foregoing, the Court finds that the due process requirements as
5 delineated by *Wolff* were met in this case. Additionally, the Court finds that the DHO
6 findings were supported by “some evidence” as required by *Hill*. Petitioner’s contention
7 regarding the improper disallowance of GCT is without merit. Therefore, the Petitioner’s
8 Petition (Doc. 18) shall be denied.
9

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11 **IV. MOTION FOR SUMMARY JUDGMENT**

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13 Also pending before the Court is Petitioner’s Motion for Summary Judgment and
14 Motion to Strike (Doc. 51). Petitioner’s motion for summary judgment is identical to his
15 reply. As such, if the motion is addressed as a motion for summary judgment on
16 Petitioner’s claims, it is unnecessary and procedurally improper. Habeas proceedings are,
17 by their nature, presumptively summary proceedings. *See* Rules Governing Section 2254
18 Cases, Rule 8 (determination whether hearing required) and Rule 1 (rules applicable to §
19 2241 proceedings). In light of the Magistrate Judge’s determination that the Petition
20 (Doc. 18) is without merit, and because the motion is procedurally duplicative and
21 unnecessary, the Magistrate Judge recommends that the District Judge deny Petitioner’s
22 Motion for Summary Judgment (Doc. 51) as moot.
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26 Additionally, Petitioner seeks an Order from this Court striking the good time data
27 sheet because it is fraudulent and or falsified. Petitioner argues *inter alia* that the vested
28 amount and vested date are both blank “because the good time data sheet is fraudulent or

1 falsified.” Mot. for Summ. J. and Mot. to Strike (Doc. 51) at 5. This and Petitioner’s
2 other contentions regarding the “false” nature of the prison records are based on his
3 misunderstanding of GCT and the prisons ability to forfeit the same under the PLRA.
4 Accordingly, the Court finds Petitioner’s arguments regarding BOP falsifying records to
5 be without merit, and his motion to strike should be denied.
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9 **V. MOTION TO WAIVE FORM REQUIREMENTS**

10 Petitioner has also filed a Motion for Waiver of Form Requirements (Doc. 58),
11 seeking leave to “not comply with the basic form requirements of the federal rules of
12 civil procedure or . . . the local court rules that govern the basic form requirements issued
13 by the court.” Mot. for Waiver of Form Requirements (Doc. 58) at 1. Petitioner states
14 that he has lost his prescription glasses in transit, and therefore cannot comply with the
15 Court’s rules. *Id.* The Court has considered all filings made by Petitioner in reaching its
16 decision regarding his Petition, and as such Petitioner’s motion is moot. To the extent
17 that Petitioner seeks to be relieved of responsibility to follow this Court’s procedural
18 rules, his motion will be denied. Petitioner has been able to adequately address his
19 claims throughout this litigation. If Petitioner requires additional time or other specific
20 accommodation to file objections to this report and recommendation, he appears capable
21 of requesting the same through a motion to the District Court Judge. As such,
22 Petitioner’s Motion for Waiver of Form Requirements (Doc. 58) will be denied.
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1 **VI. RECOMMENDATION**

2 For the reasons delineated above, the Magistrate Judge recommends that the
3 District Judge enter an order:
4

5 (1) SUBSTITUTING J.T. Shartle, Warden, as Respondent for Charles E.
6 Samuels, Jr. pursuant to Rule 25(d) of the Federal Rules of Civil Procedure and Rule
7 43(c)(2) of the Federal Rules of Appellate Procedure;
8

9 (2) DENYING Petitioner's First Amended Petition Under 28 U.S.C. § 2241 for
10 a Writ of Habeas Corpus by a Person in Federal Custody (Doc. 18);

11 (3) DENYING AS MOOT Petitioner's Motion for Summary Judgment (Doc.
12 51);
13

14 (4) DENYING Petitioner's Motion to Strike (Doc. 51); and

15 (5) DENYING Petitioner's Motion for Waiver of Form Requirements (Doc.
16 58).
17

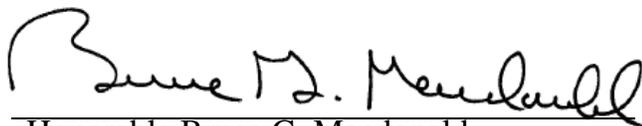
18 Pursuant to 28 U.S.C. § 636(b) and Rule 72(b)(2) of the Federal Rules of Civil
19 Procedure, any party may serve and file written objections within fourteen (14) days after
20 being served with a copy of this Report and Recommendation. A party may respond to
21 another party's objections within fourteen (14) days after being served with a copy. Fed.
22 R. Civ. P. 72(b)(2). No replies shall be filed unless leave is granted from the District
23 Court. If objections are filed, the parties should use the following case number: **CV-14-**
24 **0324-TUC-RCC.**
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26 Failure to file timely objections to any factual or legal determination of the
27 Magistrate Judge may result in waiver of the right of review. The Clerk of the Court
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shall send a copy of this Report and Recommendation to all parties.

Dated this 17th day of June, 2015.



Honorable Bruce G. Macdonald
United States Magistrate Judge