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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 Reynaldo Vasquez Rivera,

No. CV-14-02302-TUC-BGM

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Petitioner,

ORDER

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v.

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13 Louis Winn, Warden,

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Respondent.

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16 Currently pending before the Court is Petitioner Reynaldo Vasquez Rivera’s *pro*
17 *se* Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus by a Person in Federal
18 Custody (“Petition”) (Doc. 1). Respondent has filed a Return and Answer (“Answer”) (Doc. 13).
19 Petitioner did not file a Reply. The Petition is ripe for adjudication.

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21 As an initial matter, Petitioner named Louis Winn, Warden of the United States
22 Penitentiary–Tucson (“USP–Tucson”) as the Respondent. *See* Petition (Doc. 1). The
23 Court takes judicial notice, however, that Louis Winn is no longer warden of USP–
24 Tucson. As such, the Court will substitute the new Warden of USP–Tucson, J. T.
25 Shartle, as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

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1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 At the time Petitioner filed his Petition (Doc. 1), Petitioner was an inmate
3 incarcerated at USP Tucson in Tucson, Arizona. *See* Petition (Doc. 1). Petitioner was
4 released from custody on September 6, 2016. *See* Fed. Bureau of Prisons (“BOP”) Inmate
5 Locator, <https://www.bop.gov/inmateloc/> (last visited July 27, 2017).
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7 On March 19, 2014 at approximately 10:20 a.m., Special Investigative Support
8 Technician (“SIS Technician”) Madrid conducted a pat search on inmate Reynaldo
9 Vazquez-Rivera. Response (Doc. 13), Talplacido Decl. (Exh. “A”), Incident Report No.
10 2561169 (Rewrite) (Attach. “5”) at 8 & Discipline Hearing Report (Attach. “5”) at 2. SIS
11 Technician Madrid “found what appeared to be a cell phone charger.” Response (Doc.
12 13), Exh. “A”, Attach. “5” at 2 & 8. Petitioner stated that it was to charge his MP3
13 player; however, SIS Technician Madrid demonstrated that the charger did not fit the
14 MP3 player port. Response (Doc. 13), Exh. “A”, Attach. “5” at 2 & 8. Subsequently,
15 SIS Technician Madrid and SIS Technician A. Cristinzio conducted a cell search in F-2
16 cell 110. Response (Doc. 13), Exh. “A”, Memo. to Operations Lieut. 3/19/2014 (Attach.
17 “5”) at 13. During this search, “one black Alcatel cell phone was found in a box of Tide
18 laundry soap, within the common area of the cell.” *Id.*, Exh. “A”, Attach. “5” at 13. SIS
19 Technician A. Cristinzio notified the Operations Lieutenant, “and the cell phone was
20 placed in the SIS evidence safe.” *Id.*, Exh. “A”, Attach. “5” at 13. SIS Technician D.
21 Madrid charged Petitioner with the prohibited act of Possession of a Hazardous Tool in
22 violation of Code 108. *Id.*, Exh. “A”, Attach. “5” at 8. Later the same day, Lieutenant
23 M. Castro delivered the incident report to Petitioner. *Id.*; *see also* Petition (Doc. 1) at 13.
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1 Lieutenant Castro also investigated the incident and advised Petitioner of his rights.
2 Response (Doc. 13), Exh. "A", Attach. "5" at 1, 9. During Lieutenant Castro's
3 investigation, petitioner stated, "The phone and charger was mine. My celly knew
4 nothing about." *Id.* Exh. "A", Attach. "5" at 9. Petitioner did not request a staff
5 representative. *Id.* Lieutenant Castro forwarded the Incident Report to the Unit
6 Discipline Committee ("UDC") for further disposition. *Id.*
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9 On March 25, 2014, the UDC conducted its hearing. Response (Doc. 13),
10 Talplacido Decl. (Exh. "A"), Incident Report No. 2561169 (Rewrite) (Attach. "5") at 8.
11 Petitioner stated "I take full responsibility. My cellmate didn't know anything." *Id.*
12 Based on the severity of the alleged misconduct, the UDC referred the matter to the
13 Discipline Hearing Officer ("DHO") for final disposition, and if Petitioner was found
14 guilty, recommended "any available sanctions that will deter future behavior." *Id.* Also
15 on March 25, 2014, Petitioner was provided with a Notice of Discipline Hearing Before
16 the DHO and his rights at that hearing. Response (Doc. 13), Exh. "A," Attach. "5" at 4-
17 5. Petitioner indicated that he did not wish to have a staff representative at his DH oh
18 hearing. *Id.*, Exh. "A," Attach. "5" at 5.
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22 On July 22, 2014, petitioner had a DHO hearing before DHO T. Phillips. *See*
23 Response (Doc. 13), Exh. "A," Discipline Hearing Report (Attach. "5") at 1-3. DHO
24 Phillips considered the evidence photographs; chain of custody log; staff memorandum;
25 and Petitioner's admissions to the investigating Lieutenant, the UDC, and the DHO. *Id.*,
26 Exh. "A," Attach. "5" at 1-2. Accordingly, DHO Phillips determined, "[b]ased on the
27 admission and weight of the evidence," that petitioner "committed the prohibited act(s) of
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1 Possession, manufacture, introduction, or loss of a hazardous tool, Code(s) 108.” *Id.*,
2 Exh. “A,” Attach. “5” at 2. DHO Phillips imposed sanctions totaling thirty (30) days
3 Disciplinary Segregation, forty-one (41) days Disallowance of Good Conduct Time, one
4 year lost phone privileges, one year lost commissary, and one year lost visitation. *Id.*,
5 Exh. “A,” Attach. “5” at 3. On August 4, 2014, DHO Phillips signed the DHO report and
6 it was delivered to Petitioner on the same date. *Id.*
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9 On September 9, 2014 Petitioner filed his Regional Administrative Remedy
10 Appeal regarding Disciplinary Case No. 2561169. Response (Doc. 13), Exh. “A,”
11 Regional Administrative Remedy Appeal (Attach. “6”) at 7. The Regional Director
12 denied this appeal. *Id.*, Exh. “A,” Attach. “6” at 5. Petitioner did not appeal to the
13 General Counsel’s Office.¹ *See id.*, Exh. “A,” Attach. “6.”
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15 On August 26, 2014, Petitioner filed his Petition Under 28 U.S.C. § 2241 for a
16 Writ of Habeas Corpus by a Person in Federal Custody (Doc. 1). Petitioner asserts that
17 the incident report in this matter was “inappropriately re-written in violation of the
18 [C]ode of [F]ederal [R]egulation.” Petition (Doc. 1) at 4. Petitioner further asserts that
19 this “violation denied the Petitioner and the right to receive notice of the charges within
20 24 hours of that incident as required by *Wolff*.” *Id.* Petitioner also alleges that “[t]he
21 warden has violated the law of settled expectation by refusing to release the petitioner
22 from the prison [] and the continued detention in the S[pecial] H[ousing] U[nit]
23 constitute illegal detention.” *Id.* at 5. Petitioner seeks reversal of the disciplinary
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28 ¹ Petitioner indicates that he notified the central office director that he wished to appeal
his disciplinary case; however, there is no evidence, beyond the bare assertion, of any such
appeal in the record.

1 conviction, a return of forty-one (41) days good time, and immediate release from the
2 Special Housing Unit. *Id.*

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4 **II. ANALYSIS**

5 **A. Jurisdiction—In General**

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7 “Federal courts are always ‘under an independent obligation to examine their own
8 jurisdiction,’ . . . and a federal court may not entertain an action over which it has no
9 jurisdiction.” *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000) (quoting
10 *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990)). “Generally, motions to
11 contest the legality of a sentence must be filed under § 2255 in the sentencing court,
12 while petitions that challenge the manner, location, or conditions of a sentence’s
13 execution must be brought pursuant to § 2241 in the custodial court.” *Id.* at 864.
14 Therefore, before proceeding to any other issue a court must establish whether a habeas
15 petition is filed pursuant to § 2241 or § 2255 to determine whether jurisdiction is proper.
16 *Id.* at 865.

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18 Here, Petitioner does not claim that the sentencing court imposed an illegal
19 sentence; rather he seeks relief with respect to disciplinary proceedings while
20 incarcerated at a federal facility. As such, Petitioner is challenging the manner, location
21 or condition of the execution of his sentence. *See e.g., Rogers v. United States*, 180 F.3d
22 349 (1st Cir. 1999) (Section 2241 petition is appropriate vehicle to challenge the
23 correctness of a jail-time credit determination, once administrative remedies have been
24 exhausted); *Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) (en banc),
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1 (“[c]hallenges to the validity of any confinement or to the particulars affecting its
2 duration are the province of habeas corpus[.]” (quoting *Muhammad v. Close*, 540 U.S.
3 749, 750, 124 S.Ct. 1303, 158 L.Ed.2d 32 (2004)); *Tucker v. Carlson*, 925 F.2d 330, 332
4 (9th Cir. 1991) (a prisoner’s challenge to the “manner in which his sentence was executed
5 . . . [is] maintainable only in a petition for habeas corpus filed pursuant to 28 U.S.C. §
6 2241”); *Weinstein v. U.S. Parole Comm’n*, 902 F.2d 1451, 1452 (9th Cir. 1990) (“The
7 district court had jurisdiction pursuant to 28 U.S.C. § 2241 to review a claim by a federal
8 prisoner challenging a decision of the United States Parole Commission”). Such a
9 challenge must be brought pursuant to § 2241 in the custodial court.

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13 **B. Mootness**

14 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins.*
15 *Co. of America*, 511 U.S. 375, 377, 114 S.Ct. 1673, 1675, 128 L.Ed.2d 391 (1994). “The
16 jurisdiction of federal courts is defined and limited by Article III of the Constitution.”
17 *Flast v. Cohen*, 392 U.S. 83, 94, 88 S.Ct. 1942, 1949, 20 L.Ed. 947 (1968). Further, the
18 judicial power of this and all federal courts is limited to actual cases or controversies.
19 U.S. Const. art. III; *see also*, *Flast v. Cohen*, 392 U.S. 83, 94–95, 88 S.Ct. 1942, 1949–
20 50, 20 L.Ed.2d 947 (1968). “In general a case becomes moot ‘when the issues presented
21 are no longer “live” or the parties lack a legally cognizable interest in the outcome.’”
22 *Murphy v. Hunt*, 455 U.S. 478, 481, 102 S. Ct. 1181, 1183, 71 L.Ed.2d 353 (1982)
23 (quoting *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 396, 100 S. Ct. 1202,
24 1208, 63 L.Ed.2d 479 (1980)). “Once the convict’s sentence has expired, however, some
25 concrete and continuing injury other than the now-ended incarceration or parole—some
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1 ‘collateral consequence’ of the conviction—must exist if the suit is to be maintained.”
2 *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S.Ct. 978, 983, 140 L.Ed.2d 43 (1998) (citations
3 omitted). The effect that this sentence may have on future sentences is not a sufficient
4 injury for standing. *Lane v. Williams*, 455 U.S. 624, 633 n.13, 102 S. Ct. 1322, 1328
5 n.13, 71 L.Ed.2d 508 (1982) (“parole violations that remain a part of respondents’
6 records cannot affect a subsequent parole determination unless respondents again violate
7 state law, are returned to prison, and become eligible for parole. Respondents themselves
8 are able – and indeed required by law – to prevent such a possibility from occurring.”);
9 *see also United States v. Palomba*, 182 F.3d 1121, 182 F.3d 1121, 1123 (9th Cir. 1999).

10 “[T]he function of the writ [of habeas corpus] is to secure immediate release from
11 illegal physical custody.” *Picrin-Peron v. Rison*, 930 F.2d 773, 775 (9th Cir. 1991)
12 (citations omitted). “The Supreme Court has held that ‘under the writ of *habeas corpus*
13 we cannot do anything else than discharge the prisoner from the wrongful confinement.’”
14 *Id.* (quoting *Ex parte Medley*, 134 U.S. 160, 173, 10 S.Ct. 384, 388, 33 L.Ed. 835 (1890))
15 (emphasis in original). Where a habeas petitioner is not challenging the validity of his
16 underlying conviction, but rather the location or condition of his confinement, release
17 from custody moots the habeas petition. *Munoz v. Rowland*, 104 F.3d 1096 (9th Cir.
18 1997) (finding § 2241 petition challenging conditions of confinement moot because
19 petitioner had been paroled, thus, relief sought was unavailable); *Pecrin-Peron*
20 (dismissing § 2241 petition because petitioner had been granted immigration parole and
21 released from custody).

22 Here, Petitioner was released from federal custody on September 6, 2016. *See*

1 Fed. Bureau of Prisons (“BOP”) Inmate Locator, <https://www.bop.gov/inmateloc/> (last
2 visited July 27, 2017). In his habeas petition, Petitioner sought the return of good
3 conduct time and reversal of his disciplinary conviction. In light of Petitioner’s release,
4 this Court cannot provide him with the relief sought. Moreover, there is no expectation
5 that Petitioner will again be subjected to this same set of circumstances, and as such,
6 “[t]his is not a situation ‘capable of repetition, yet evading review’ to which the doctrine
7 of mootness may not apply.” *Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir. 1988)
8 (quoting *Cox v. McCarthy*, 829 F.2d 800, 803 (9th Cir. 1987)). Accordingly, Petitioner’s
9 claims are moot, and his petition should be dismissed. *Munoz*, 104 F.3d at 1098.

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13 Based on the foregoing, the Court finds that Petitioner’s Petition (Doc. 1) is now
14 moot and should be dismissed.

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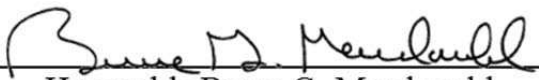
1 **III. CONCLUSION**

2 Based on the foregoing, the Court finds that Petitioner’s Petition (Doc. 1) is now
3 moot and should be dismissed. Accordingly, IT IS HEREBY ORDERED that:
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5 (1) J. T. Shartle, Warden, is SUBSTITUTED as Respondent for Louis Winn
6 pursuant to Rule 25(d) of the Federal Rules of Civil Procedure and Rule 43(c)(2) of the
7 Federal Rules of Appellate Procedure; and
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9 (2) Petitioner’s Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus
10 by a Person in Federal Custody (Doc. 1) is DISMISSED.
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12 Dated this 7th day of August, 2017.

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14 _____
15 Honorable Bruce G. Macdonald
16 United States Magistrate Judge
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