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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Brian O. Claros-Bey,

No. CV-15-00501-TUC-BGM

10 Petitioner,

ORDER

11 v.

12 J.T. Shartle, Warden,

13
14 Respondent.

15 Currently pending before the Court is Petitioner Brian Claros-Bey's *pro se*
16 Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus by a Person in Federal
17 Custody ("Petition") (Doc. 1). Respondent has filed his Return and Answer ("Answer")
18 (Doc. 10). Petitioner did not file a Reply, but rather filed a Motion for Summary
19 Judgment (Doc. 16). Respondent filed a Response to Petitioner's Motion for Summary
20 Judgment (Doc. 17).
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24 **I. FACTUAL AND PROCEDURAL BACKGROUND**

25 Petitioner is an inmate currently incarcerated at the United States Penitentiary
26 ("USP") in Tucson, Arizona, serving a 500 month sentence. *See* Fed. Bureau of Prisons
27 ("BOP") Inmate Locator, <https://www.bop.gov/inmateloc/> (last visited September 16,
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1 2016); Answer (Doc. 10), Huband Decl. (Exh. “1”), Superior Ct. of the Distr. of
2 Columbia, Judgment in a Criminal Case (Attach. “2”) at 1. At sentencing, the Superior
3 Court for the District of Columbia ordered Petitioner to pay \$500 pursuant to the Victims
4 of Violent Crime Compensation Act of 1996. *Id.* The Judgment indicates that these
5 costs “ha[d] not been paid” at the time of sentencing. *Id.*
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8 On October 19, 2015, Petitioner filed his Petition for Writ of Habeas Corpus
9 pursuant to 28 U.S.C. § 2241 in this Court. Petition (Doc. 1). Petitioner contends that
10 “[b]y being subjected to the lowest score on ‘Responsibility’ on the Custody
11 Classification Form (BP-338) in accordance with the United States Bureau of Prisons’
12 (‘BOP’) Security Designation and Custody Classification Manuel [sic] Program
13 Statement, and receiving poor ‘program reviews’ for not participating in the BOP’s
14 Inmate Financial Responsibility Program (‘IFRP’) violates [sic] the treaty and/or contract
15 that the District of Columbia has with the BOP (D.C. Code 24-101).” Petition (Doc. 1) at
16 4. Petitioner further asserts that Section 24-101(b), of the District of Columbia code,
17 gives “BOP authority to subject District of Columbia prisoners . . . ‘to any law or
18 regulation applicable to persons committed for violations of laws of the United States
19 CONSISTENT with the sentenced [sic] imposed.”” Petition (Doc. 1) at 4. Petitioner
20 asserts that because BOP Program Statement Number P5380.08 regarding the Inmate
21 Financial Responsibility Program “does not include the Victims of Violent Crime
22 Compensation Act of 1996 (“VVCCA”) . . . [a]ssessments under the VVCCA is [sic] not
23 an applicable IFRP assignment.”
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1 **II. ANALYSIS**

2 **A. Jurisdiction**

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

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15 Here, Petitioner does not claim that the sentencing court imposed an illegal
16 sentence; rather, he seeks relief with respect as to how the ordered criminal monetary
17 penalties are being collected while he is incarcerated at a federal facility. Thus, Petitioner
18 is challenging the manner, location, or condition of the execution of his sentence. When a
19 petitioner challenges the “manner in which his sentence was executed,” the action is
20 “maintainable only in a petition for habeas corpus filed pursuant to 28 U.S.C. § 2241.”
21 *Tucker v. Carlson*, 925 F.2d 330, 331 (9th Cir. 1991); *see also Ward v. Chavez*, 678 F.3d
22 1042 (9th Cir. 2012) (considering whether the district court impermissibly delegated its
23 authority to BOP under the Mandatory Victims Restitution Act (“MVRA”) under §
24 2241); *United States v. Lemoine*, 546 F.3d 1042 (9th Cir. 2008) (considering validity of
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1 IFRP requiring restitution payments at a greater rate than specified by the sentencing
2 court under § 2241). Challenges brought pursuant to § 2241 must be brought in the
3 custodial court. At the time of filing the Petition, Petitioner was incarcerated at USP-
4 Tucson in Arizona. Accordingly, this Court has jurisdiction over this matter. *See*
5 *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir. 1990).

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8 **B. Exhaustion**

9 The Ninth Circuit Court of Appeals has stated:

10 [28 U.S.C. § 2241] does not specifically require petitioners to exhaust
11 direct appeals before filing petitions for habeas corpus. [Footnote omitted.]
12 However, we require, as a prudential matter, that habeas petitioners exhaust
13 available judicial and administrative remedies before seeking relief under §
2241.

14 *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds*
15 *by Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 126 S.Ct. 2422, 165 L.Ed.2d 323 (2006).
16 “The requirement that federal prisoners exhaust administrative remedies before filing a
17 habeas corpus petition was judicially created; it is not a statutory requirement.” *Brown v.*
18 *Rison*, 895 F.2d 533, 535 (9th Cir. 1990), *overruled on other grounds by Reno v. Koray*,
19 515 U.S. 50, 54–55, 115 S.Ct. 2021, 2023–24, 132 L.Ed.2d 46 (1995). “Nevertheless,
20 ‘[p]rudential limits like jurisdictional limits and limits on venue, are ordinarily not
21 optional.’” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (alterations in original)
22 (quoting *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*
23 *grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 126 S.Ct. 2422, 165 L.Ed.2d
24 323 (2006)).

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28 “Courts may require prudential exhaustion if ‘(1) agency expertise makes agency

1 consideration necessary to generate a proper record and reach a proper decision; (2)
2 relaxation of the requirement would encourage the deliberate bypass of the administrative
3 scheme; and (3) administrative review is likely to allow the agency to correct its own
4 mistakes and to preclude the need for judicial review.” *Id.* (quoting *Noriega-Lopez v.*
5 *Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). “When a petitioner does not exhaust
6 administrative remedies, a district court ordinarily should either dismiss the petition
7 without prejudice or stay the proceedings until the petitioner has exhausted remedies,
8 unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir.
9 2011) (citations omitted). Exhaustion may be excused if pursuing an administrative
10 remedy would be futile. *Fraleley v. United States Bureau of Prisons*, 1 F.3d 924, 925 (9th
11 Cir. 1993).

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15 If a prisoner is unable to obtain an administrative remedy because of his failure to
16 appeal in a timely manner, then the petitioner has procedurally defaulted his habeas
17 corpus claim. *See Nigro v. Sullivan*, 40 F.3d 990, 997 (9th Cir. 1994) (citing *Francis*,
18 *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir. 1990); *Martinez v. Roberts*, 804 F.2d 570,
19 571 (9th Cir. 1986)). If a claim is procedurally defaulted, the court may require the
20 petitioner to demonstrate cause for the procedural default and actual prejudice from the
21 alleged constitutional violation. *See Francis*, 894 F.2d at 355 (suggesting that the cause
22 and prejudice test is the appropriate test); *Murray v. Carrier*, 477 U.S. 478, 492, 106
23 S.Ct. 2639, 2647–48, 91 L.Ed.2d 397 (1986) (cause and prejudice test applied to
24 procedural defaults on appeal); *Hughes v. Idaho State Bd. of Corrections*, 800 F.2d 905,
25 906–08 (9th Cir. 1986) (cause and prejudice test applied to *pro se* litigants).

1 The BOP has established an administrative remedy process permitting an inmate
2 to seek review of an issue relating to “any aspect of his/her own confinement.” 28 C.F.R.
3 § 542.10(a). Here, Respondent asserts that Petitioner has failed to exhaust his
4 administrative remedies prior to filing his Petition. Answer (Doc. 10) at 5. Indeed,
5 Petitioner admits that he has not exhausted his claim, stating that “[i]t would be useless to
6 exhaust administrative remedies, because this Ground raises only issues of law upon
7 which the BOP has already assumed that the IFRP is applicable to VVCCA assessments
8 and is using BOP Program Statement Number P5380.08 to articulate its position.”
9 Petition (Doc. 1) at 4. “Because of the existence of official BOP policy—the IFRP—
10 exhaustion would be futile here[.]” *Ward v. Chavez*, 678 F.3d 1042, 1046 (9th Cir.
11 2012). As such, this Court will reach the merits of Petitioner’s claim.

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15 ***C. Merits of the Petition***

16 **1. Statutory and Regulatory Background of the IFRP**

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18 **a. District of Columbia Prisoners and the Victims of Violent
19 Crime Compensation Act of 1996**

20 Section 24-101(b), District of Columbia Code, governs felons sentenced pursuant
21 to the D.C. Official code and provides for their transfer “to a penal or correctional facility
22 operated or contracted for by the Bureau of Prisons.” D.C. Code § 24-101(b). The
23 statute further provides that “[s]uch persons shall be subject to any law or regulation
24 applicable to persons committed for violations of laws of the United States consistent
25 with the sentence imposed, and the Bureau of Prisons shall be responsible for the
26 custody, care, subsistence, education, treatment and training of such persons.” *Id.*
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1 The Victims of Violent Crime Compensation Act of 1996 provides in relevant part
2 that:

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4 In addition to and separate from punishment imposed, an assessment of
5 \$100 for each violation of § 50-2201.05, an assessment of between \$50 and
6 \$250 for other serious traffic or misdemeanor offenses, and an assessment
7 of between \$100 and \$5,000 for each felony offense shall be imposed upon
8 each person convicted of or pleading guilty or *nolo contendere* to the
9 offense in the Superior Court of the District of Columbia or any other court
10 in which the offense is charged. The decision of the sentencing court
11 regarding assessments is final. ***If an offender is indigent at the time of
12 sentencing and is later employed for salary, receives compensation while
13 on probation or parole, or is incarcerated in a facility of the Department
14 of Corrections or elsewhere and receives wages or compensation therein,
15 the amount of assessments under this section shall be paid from such
16 salary, wages, or other compensation.***

17 D.C. Code § 4-516(a) (emphasis added). As such, the Act clearly contemplates that
18 incarcerated individuals shall be responsible for paying their assessment from prison
19 “wages or compensation.” Furthermore, “[a]ssessments under this chapter shall be
20 collected as fines.” D.C. Code § 4-516(c). The Ninth Circuit Court of Appeals has held
21 that the scheduling of payment of fines may be delegated to the BOP. *United States v.*
22 *Gunning (Gunning II)*, 401 F.3d 1145, 1150 (9th Cir. 2005) (citing *Montano-Figueroa v.*
23 *Crabtree*, 162 F.3d 548, 550 (9th Cir. 1998)).

24 **b. Inmate Financial Responsibility Program (IFRP)**

25 The BOP “encourages each sentenced inmate to meet his or her legitimate
26 financial obligations” through the IFRP. *See* 28 C.F.R. § 545.10. “As part of the initial
27 classification process, [BOP] staff will assist the inmate in developing a financial plan for
28 meeting those obligations.” *Id.* The financial plan is designed to meet the inmate’s
financial obligations in the following order of priority: (1) special assessment; (2) court-

1 ordered restitution; (3) fines and court costs; (4) state or local court obligations; and (5)
2 other federal government obligations. 28 C.F.R. § 545.11(a). Payments for the
3 aforementioned obligations may be made from institution resources, such as prison work
4 assignments, or from community resources. 28 C.F.R. § 545.11(b).

6 Through the IFRP, the BOP encourages inmates with financial obligations to
7 participate in the voluntary program, but does not force inmates to participate. *United*
8 *States v. Lemoine*, 546 F.3d 1042, 1047 (9th Cir. 2008); *see also* 28 C.F.R. § 545.10. The
9 Ninth Circuit Court of Appeals has squarely addressed an inmate claims that the IFRP
10 was “involuntary and that he only assented to the terms of his financial plan ‘to avoid the
11 adverse consequences of not agreeing.’” *Lemoine*, 546 F.3d at 1049. The *Lemoine* court
12 held that the IFRP “does not implicate [an inmate’s] constitutional rights[,]” because an
13 inmate “ha[s] no entitlement, constitutional or otherwise, to any of the benefits agreeing
14 to participate in the IFRP would provide, such as work detail outside the prison
15 perimeter, a higher commissary spending limit, a release gratuity, or pay beyond the
16 maintenance pay level.” *Id.* Accordingly, “[t]he BOP . . . ha[s] the authority to create a
17 financial plan . . . through the IFRP and to impose penalties if [an inmate] fail[s] to accept
18 its terms.” *Id.*

23 **2. Petitioner’s Fine Pursuant to the Victims of Violent**
24 **Crimes Compensation Act of 1996 is Being Lawfully**
25 **Collected**

26 At sentencing, the Superior Court of the District of Columbia assessed a \$500
27 penalty against Petitioner pursuant to the Victims of Violent Crime Compensation Act of
28 1996. Answer (Doc. 10), Huband Decl. (Exh. “1”), Superior Ct. of the Distr. of

1 Columbia, Judgment in a Criminal Case (Attach. “2”) at 1. The VVCCA directs that
2 assessments made pursuant to it “shall be collected as fines.” D.C. Code § 4-516(c). The
3 Ninth Circuit Court of Appeals has held that the scheduling of the payment of fines may
4 be delegated to the BOP. *Gunning II*, 401 F.3d at 1150 (citing *Montano-Figueroa v.*
5 *Crabtree*, 162 F.3d 548, 550 (9th Cir. 1998)). As such, the collection of Petitioner’s
6 VVCCA obligations through the IFRP are valid.
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9 Petitioner voluntarily enrolled in IFRP, and currently participates in the program.
10 Answer (Doc. 10), Exh. “A,” Inmate Financial Plan (Attach. “3”) at 1–2. Petitioner is
11 free to stop participating in the IFRP at any time. Petitioner claims that he is only
12 participating in the program “to avoid receiving the lowest score on ‘Responsibility’ on
13 the Custody Classification form (BP 338). Pet.’s Mot. for Summ. J. (Doc. 16) at 3.
14 Petitioner “did not have a preexisting right to receive any of the benefits conditioned on
15 his participation” in the IFRP, nor does he have any constitutional rights to those
16 privileges. *Lemoine*, 546 F.3d at 1046–49. Moreover, the BOP is within its authority
17 offer the IFRP, and Petitioner’s voluntarily participation allows the BOP to collect and
18 allocate Petitioner’s funds to his fines and special assessment. Accordingly, Petitioner’s
19 claims are without merit and his Petition (Doc. 1) shall be denied.
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23 ***D. Petitioner’s Motion for Summary Judgment***

24 On January 14, 2016, Petitioner filed his Motion for Summary Judgment (Doc.
25 16). Motions for Summary Judgment are not contemplated by the statutes governing
26 habeas corpus. 28 U.S.C. § 2241, *et seq.* As such, and based on the foregoing denial of
27 Petitioner’s habeas petition on the merits, the Court will deny Petitioner’s motion for
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1 summary judgment.¹

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3 **III. CONCLUSION**

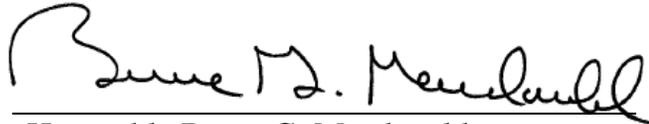
4 Accordingly, IT IS HEREBY ORDERED that

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6 (1) Petitioner's Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus
7 by a Person in Federal Custody (Doc. 1) is DENIED;

8 (2) Petitioner's Motion for Summary Judgment (Doc. 16) is DENIED; and

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10 (3) The Clerk of the Court shall enter judgment and close its file in this matter.

11 Dated this 16th day of September, 2016.

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14 Honorable Bruce G. Macdonald
15 United States Magistrate Judge
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¹ In light of Petitioner's failure to file a Reply, as well as the contents of the Motion for Summary Judgment, the Court treated Petitioner's motion as his Reply in assessing the merits of his habeas petition.