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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 James Brandon Strouse,  
10 Petitioner,

11 v.

12 J.T. Shartle,  
13 Respondent.  
14

No. CV-16-00237-TUC-RCC (EJM)

**REPORT AND  
RECOMMENDATION**

15 Pending before the Court is a pro se Petition for a Writ of Habeas Corpus (Doc.  
16 34) filed pursuant to 28 U.S.C. § 2241 by James Brandon Strouse (“Petitioner”), who is  
17 confined in the United States Penitentiary in Tucson, Arizona (“USP-Tucson”).

18 As an initial matter, the Court notes that the proper respondent in an action for  
19 habeas corpus is the Petitioner’s custodian. *See* 28 U.S.C. § 2242; *Rumsfeld v. Padilla*,  
20 542 U.S. 426, 435–36 (2004). When Petitioner filed his first petition under § 2241, he  
21 named “Joe Santana, DSCC” and “John Doe, Acting Director of Bureau of Prisons” as  
22 the respondents. (Doc. 3). When Petitioner filed his amended petition (Doc. 34), he  
23 properly named the Warden of USP-Tucson, J. T. Shartle, as the respondent.  
24 Accordingly, the Court takes judicial notice that the case caption in this matter should be  
25 amended to terminate “Joe Santana” and “John Doe” as respondents.

26 Pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure, this matter  
27 was referred to Magistrate Judge Markovich for a Report and Recommendation. For the  
28 reasons discussed below, it is recommended that the District Court dismiss the petition.

1           **I. FACTUAL AND PROCEDURAL BACKGROUND**

2           On December 9, 2009, the United States District Court for the Eastern District of  
3 Texas sentenced Petitioner to a 120-month sentence for Possession of Sexually Explicit  
4 Visual Depictions of Minors in violation of 18 U.S.C. § 2252(a)(4)(B). (Doc. 42 Ex. A at  
5 ¶ 3). On April 26, 2011, Petitioner was sentenced to a 46-month consecutive sentence for  
6 Retaliatory Threats Against a Government Official, in violation of 18 U.S.C. § 115, and  
7 Mailing Threatening Communications, in violation of 18 U.S.C. § 876. *Id.* Petitioner’s  
8 aggregate 166-month sentence will expire on July 25, 2021 (assuming he receives good  
9 time credits). *Id.* at ¶¶ 3–4.

10           Petitioner arrived at USP-Tucson on April 25, 2014. *Id.* at ¶ 5. Petitioner asserts  
11 that he was under a 2-year management variable from April 1, 2014 to April 1, 2016.  
12 (Doc. 34 at 2). Petitioner had a custody classification review on April 1, 2016. (Doc. 42  
13 at 6; Ex. A ¶ 16). Petitioner’s custody classification score was calculated at 12 points,  
14 which would place him at a low-security institution. *Id.* BOP staff prepared a transfer  
15 request to determine whether it was appropriate to transfer Petitioner to a lower security  
16 institution. *Id.* This request was approved by the Complex Warden and sent to the  
17 Designation and Sentence Computation Center (“DSCC”) for review. *Id.* The DSCC  
18 Administrator denied the transfer and determined that a transfer was not warranted due to  
19 Petitioner’s Public Safety Factors of Sex Offender and Threats to Government Officials.  
20 *Id.*

21           Petitioner filed the instant § 2241 petition on July 25, 2016 raising three grounds  
22 for relief. (Doc. 34). In Ground One, Petitioner alleges that the Bureau of Prisons  
23 (“BOP”) violated his due process rights under the Administrative Procedures Act  
24 (“APA”) by placing a second Management Variable on him “without reason,” which  
25 affects his custody classification. In Ground Two, Petitioner claims that the BOP violated  
26 his due process rights by sanctioning him for possession of Uniform Commercial Code  
27 (“UCC”) materials, and alleges that this sanctioning affects his transfer to a lower  
28 custody prison. Petitioner further states that his due process rights were violated because

1 he already resolved Incident Report (“IR”) No. 2843344 in court. (This IR charged  
2 Petitioner with violating Code 305, Possession of Anything Not Authorized (Doc. 42 Ex.  
3 A ¶ 21)). Finally, in Ground Three, Petitioner claims that the BOP unconstitutionally  
4 violated his due process rights under the First Amendment when they intercepted an  
5 email from his father with Senator John McCain’s address, denying him access to public  
6 officials and the courts. Petitioner further states that BOP staff denied him access to pens  
7 and legal magazines, and that as a result, his appeal was dismissed by the Fourth Circuit  
8 for failure to prosecute. In each ground for relief, Petitioner also alleges that BOP staff  
9 are impeding his access to the courts by refusing to process his administrative remedies.

10 On August 23, 2016, the District Court ordered Respondent to answer Grounds  
11 One and Two of the Petition “because, arguably, Petitioner could be challenging the  
12 execution of his sentence.” (Doc. 33 at 3). The District Court noted that “[i]n Ground  
13 Three, Petitioner does not challenge the legality of his sentence or confinement . . . or  
14 seek speedier release from custody.” *Id.* at 4. The District Court concluded that  
15 Petitioner’s claims regarding interception of email and access to legal materials are  
16 properly brought in a *Bivens* civil rights complaint and not a § 2241 petition. *Id.*

17 As discussed below, the undersigned concludes that this Court lacks jurisdiction  
18 over Petitioner’s remaining claims made in his § 2241 petition.

## 19 **II. DISCUSSION**

20 “Federal courts are always ‘under an independent obligation to examine their own  
21 jurisdiction,’ . . . and a federal court may not entertain an action over which it has no  
22 jurisdiction.” *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000) (quoting  
23 *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990), *holding modified by City of*  
24 *Littleton, Colo. v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004)). “Generally, motions to  
25 contest the legality of a sentence must be filed under § 2255 in the sentencing court,  
26 while petitions that challenge the manner, location, or conditions of a sentence’s  
27 execution must be brought pursuant to § 2241 in the custodial court.” *Id.* at 864.  
28 Therefore, a proper characterization of the petition is necessary to a determination of

1 jurisdiction. *Id.*

2 The Ninth Circuit has made clear that jurisdiction over a petition filed pursuant to  
3 28 U.S.C. § 2241 exists in a federal prison setting in three circumstances: (1) when a  
4 prisoner “claims that he has been denied good time credits without due process”; (2)  
5 when a prisoner claims “that he has been subjected to greater restrictions of his liberty,  
6 such as disciplinary segregation, without due process”; and (3) when a prisoner “seeks  
7 expungement of a disciplinary finding from his record if expungement is likely to  
8 accelerate the prisoner’s eligibility for parole.” *Bostic v. Carlson*, 884 F.3d 1267, 1269  
9 (9th Cir. 1989), *overruled on other grounds by Nettles v. Grounds*, 830 F.3d 922 (9th Cir.  
10 2016). Thus, a prisoner may only utilize a § 2241 petition when he is challenging the fact  
11 or duration of his custody with the traditional remedy being immediate or sooner release  
12 from custody. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

13 Here, Petitioner has not raised claims challenging the fact or duration of his  
14 confinement. Accordingly, the Petition should be dismissed for lack of jurisdiction.

15 In Ground One, Petitioner alleges that the BOP placed a second management  
16 variable on him without reason. In *Moody v. Daggett*, the Supreme Court noted in dicta  
17 that prisoner classification and eligibility for rehabilitative programs in the federal system  
18 are matters delegated by Congress to the “full discretion” of federal prison officials. 429  
19 U.S. 78, 88 n.9 (1976). Inmates do not have “legitimate statutory or constitutional  
20 entitlement sufficient to invoke due process” regarding their classification. *Id.* Thus, “a  
21 prisoner has no constitutional right to a particular classification status,” *Hernandez v.*  
22 *Johnston*, 833 F.2d 1316, 1318 (9th Cir. 1987), and prisoners have “no right to be at any  
23 particular prison” *Grayson v. Rison*, 945 F.2d 1064, 1067 (9th Cir. 1991). Here, the  
24 assignment of a management variable to Petitioner’s custody classification does not  
25 create a liberty interest entitling Petitioner to procedural protections of due process. Thus,  
26 because Petitioner has no constitutional right to a particular classification status, and  
27 because Petitioner’s challenge to his custody classification does not affect the duration of  
28 his confinement, Count One should be dismissed for lack of jurisdiction. *See Davidson v.*

1 *McClintock*, No. CV-13-0530-TUC-DTF, 2014 WL 2921900, at \*1 (D. Ariz. June 27,  
2 2014) (“Claims which pertain to prisoner’s classifications, especially individual custodial  
3 classification scores, are not cognizable in a federal habeas petition.”) (citing *Estrada v.*  
4 *Chavez*, CV 08–1358–PHXNVWLOA, 2009 WL 1383328 at \*5 (D. Ariz. May 15, 2009)  
5 (holding a prisoner’s challenge to changes in the P.S. 5100.08 scorecard did not affect the  
6 execution of his sentence and, therefore, the court lacked habeas jurisdiction over these  
7 claims under § 2241); *Franklin v. Gipson*, CV 12–7411–R PLA, 2013 WL 1339545 at \*2  
8 (C.D. Cal. Feb. 19, 2013) (a challenge to classification status lacked habeas jurisdiction  
9 because the prisoner “would not be released from confinement or even be provided with a  
10 lesser term of confinement; rather, at most, he would receive a different or lower  
11 classification score”); *Lerma v. Gutierrez*, CV 11–07996–PSG VBK, 2012 WL 1320145  
12 (C.D. Cal. Mar. 7, 2012) (finding that the court lacked habeas jurisdiction even if the  
13 classification designation impacted the prisoner’s housing determination); *Levi v. Ebbert*,  
14 CIV 1:CV09–0193, 2009 WL 2169171 at \*5–7 (M.D. Pa. July 20, 2009), *aff’d*, 353 F.  
15 App’x 681 (3d Cir. 2009)).

16 In Ground Two, Petitioner asks the Court to vacate and reverse IR No. 2843344 as  
17 a violation of his due process rights because he has already resolved the issue of whether  
18 he is entitled to possess UCC materials in a court of law. (Doc. 34 at 9). Petitioner further  
19 asserts that he was sanctioned for possession of UCC materials and that the sanction  
20 affects his ability to be transferred to a lower level facility. To the extent that Petitioner  
21 appears to claim that another court took judicial notice of his right to possess UCC  
22 materials, that assertion has no bearing on the present matter. First, that court’s order  
23 does not appear to affirm Petitioner’s right to possession of UCC materials while  
24 incarcerated; rather, it appears that the court simply took judicial notice of the fact that  
25 Petitioner filed a document with the court asserting that the UCC is commercial law and  
26 constitutes legal materials/documents.<sup>1</sup> Second, even if that court did order that Petitioner

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28 <sup>1</sup> See Doc. 39 at 23 (copy of order from the Eastern District of Virginia stating that  
“Strouse’s ‘Motion to Petition this Court to Take Judicial Notice’ (EFC No. 26) will be  
granted.”). That same order granted the respondent’s motion for summary judgment and

1 has a right to possession of UCC materials, which from the face of the order, it did not,  
2 the order from the Eastern District of Virginia is not binding on this Court. Finally, and  
3 most importantly, Petitioner’s claim regarding access to UCC materials is not proper  
4 under § 2241. “[P]etitions that challenge the manner, location, or conditions of a  
5 sentence’s execution must be brought pursuant to § 2241[,]” *Hernandez*, 204 F.3d at 864,  
6 whereas challenges to conditions of confinement must be brought through a civil rights  
7 action, *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). As such, “[a] civil rights action  
8 is the ‘proper remedy’ for a prisoner ‘who is making a constitutional challenge to the  
9 conditions of his prison life, but not to the fact or length of his custody.’” *Herrera v.*  
10 *Sanders*, 2012 WL 424378, \*1 (C.D. Cal.) (quoting *Preiser*, 411 U.S. at 500). As such, to  
11 the extent Petitioner is challenging BOP’s policy barring inmates from possessing UCC  
12 materials, his proper remedy is through a § 1983 civil rights action. Regarding the BOP  
13 IR, Petitioner was sanctioned with the loss of 30 days commissary privileges. This  
14 sanction did not affect the duration of Petitioner’s custody. Accordingly, Petitioner’s  
15 claims in Ground Two must fail for lack of jurisdiction.

16 In sum, Petitioner has not raised claims challenging the fact or duration of his  
17 confinement; rather, he challenges his custody classification and the IR he received for  
18 possession of UCC materials, which resulted in the loss of commissary privileges. The  
19 custody classification affects only the type of facility that Petitioner should be housed in,  
20 and not the length of his confinement. The same is true for the IR—Petitioner was not  
21 sanctioned with loss of good-time credits, but with the loss of commissary privileges.  
22 Thus, Petitioner has neither raised claims implicating his due process or other  
23 constitutional rights, nor has he demonstrated that he has been subjected to greater  
24 restriction of his liberty, such as disciplinary segregation. He also does not claim that the  
25 duration of his sentence has been affected through the loss of good time credits. The  
26 Ninth Circuit has held that “habeas jurisdiction is absent . . . where a successful challenge

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28 dismissed Petitioner’s case. *Id.* Petitioner also includes a copy of the motion for judicial  
notice, where he states that the UCC is commercial law and therefore legal  
materials/documents. (Doc. 39 at 25–27).

1 to a prison condition will not necessarily shorten the prisoner’s sentence.” *Ramirez v.*  
2 *Galaza*, 334 F.3d 850, 858-59 (9th Cir. 2003); *see also Nettles*, 788 F.3d at 998–1006  
3 (holding that a state prisoner may seek relief under § 2241 only if success on the claim  
4 would necessarily result in speedier release from custody). Therefore, even if Petitioner’s  
5 allegations about his custody classification and the IR were true, there would be no  
6 impact on the fact or duration of his incarceration. Accordingly, this Court recommends  
7 that the District Court dismiss the instant § 2241 petition for lack of jurisdiction.<sup>2</sup>

### 8 **III. RECOMMENDATION**

9 For the reasons delineated above, the Magistrate Judge recommends that the  
10 District Judge enter an order:

11 (1) **AMENDING** the case caption in this matter to terminate “Joe Santana” and  
12 “John Doe” as respondents; and

13 (2) **DISMISSING** the Petition (Doc. 34) under 28 U.S.C. § 2241 for lack of  
14 jurisdiction; and

15 (3) **DENYING** Petitioner’s Petition for Leave to Order Bureau of Prisons to File  
16 and Process Administrative Remedies (Doc. 39) as moot; and

17 (4) **DENYING** Petitioner’s Petition to Expedite for a Summary of Judgment (Doc.  
18 44) as moot.

19 Pursuant to 28 U.S.C. § 636(b) and Rule 72(b)(2) of the Federal Rules of Civil  
20 Procedure, any party may serve and file written objections within fourteen (14) days after  
21 being served with a copy of this Report and Recommendation. A party may respond to  
22 another party’s objections within fourteen (14) days after being served with a copy. Fed.  
23 R. Civ. P. 72(b)(2). No replies shall be filed unless leave is granted from the District  
24 Court. If objections are filed, the parties should use the following case number: **CV-16-**  
25 **237-TUC-RCC.**

26 Failure to file timely objections to any factual or legal determination of the  
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28 <sup>2</sup> Because the undersigned concludes that the Court lacks jurisdiction over this §  
2241 petition, the undersigned does not reach the issue of exhaustion.

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Magistrate Judge may result in waiver of the right of review. The Clerk of the Court shall send a copy of this Report and Recommendation to all parties.

Dated this 19th day of May, 2017.

  
Eric J. Markovich  
United States Magistrate Judge