

09-1205-pr

To Be Argued By :
ALAN M. SOLOWAY

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 09-1205-pr

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SALA-THIEL THOMPSON,
Plaintiff-Appellant,

-vs-

WAYNE CHOINSKI AND
FEDERAL BUREAU OF PRISONS,
Defendants-Appellees.

—————

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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**BRIEF FOR DEFENDANT-APPELLEE
FEDERAL BUREAU OF PRISONS**

=====

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STATEMENT OF JURISDICTION

The district court (Dorsey, J.) had subject matter jurisdiction over this petition for a writ of habeas corpus under 28 U.S.C. § 2241(a). The district court denied the petition, and judgment entered on March 11, 2009. GA 274. Thompson filed a timely notice of appeal on March 23, 2009. GA 281-282. This Court has jurisdiction over this appeal from a final order denying the petition under 28 U.S.C. § 1291.

**STATEMENT OF ISSUES
PRESENTED FOR REVIEW**

1. Whether the district court properly rejected Thompson's claim that he was deprived of due process at his prison disciplinary proceeding involving his 1991 attempt to escape from the federal prison in Miami, where the administrative decision was supported by much more than "some evidence" of his guilt.
2. Whether the district court properly rejected Thompson's challenge to his prison security classification and his transfers among various prison facilities, because he has no constitutional right to a particular classification or facility assignment.
3. Whether the district court properly rejected Thompson's claim that the procedures set forth in the Interstate Agreement on Detainers – which applies only to charges pending in other U.S. jurisdictions – should also apply to a detainer lodged by the Bahamas in connection with charges pending there.
4. Whether this Court's prior decision precluding challenges to the validity of Thompson's underlying criminal conviction bars relitigation of the issue.
5. Whether the district court properly rejected Thompson's challenge to the administrative sanctions imposed for his failure to comply with an order to return to the general prison population.

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SALA-THIEL THOMPSON,
Plaintiff-Appellant,

-vs-

WAYNE CHOINSKI AND
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR DEFENDANT-APPELLEE FEDERAL BUREAU OF PRISONS

Preliminary Statement

In 1992, Petitioner-Appellant Sala-Thiel Thompson was convicted of armed bank robbery in the United States District Court for the Southern District of Florida and sentenced to 371 months of imprisonment. Thompson served that sentence in various federal facilities until 2004, when he was transferred to a Connecticut state prison

pursuant to an agreement between Connecticut and the Federal Bureau of Prisons. Later that same year, Thompson filed this petition under 28 U.S.C. § 2241, complaining primarily about the continuing consequences of an allegedly improper prison disciplinary proceeding that occurred in 1991. He also challenged the conditions of his confinement in the Connecticut state prison and the jurisdiction of the court that convicted him of bank robbery in 1992. The district court dismissed his petition because Thompson had failed to exhaust his claims regarding conditions in the Connecticut state prisons by presenting them to the Connecticut state courts before filing his habeas petition.

Thompson appealed the dismissal of his petition. This Court affirmed the dismissal of Thompson's claims relating to his underlying conviction. It also held that Thompson's claims relating to the actions of his custodians in the Connecticut prison system were rendered moot upon his transfer back to federal custody. The Court remanded the remaining claims relating to Thompson's conditions of confinement in the federal system.

Upon remand, the district court denied Thompson's challenge to his federal conditions of confinement. This appeal followed.

Statement of the Case

On May 21, 2004, Thompson filed a petition for writ of habeas corpus in the United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 2241. GA

5-18. The district court (Peter C. Dorsey, J.) dismissed the petition *sua sponte* on August 11, 2004. GA 18-25. On August 30, 2004, Thompson appealed. GA 2. On May 8, 2008, this Court affirmed in part, and vacated and remanded in part for consideration of Thompson's claims relating to his federal conditions of confinement. 525 F.3d 205 (2d Cir. 2008).

On May 14, 2008, Judge Dorsey issued an Order to Show Cause directing the Government to respond to the federal conditions of confinement issues. GA 2. On June 18, 2008, the Government filed a response with numerous attachments. GA 3. On July 2, 2008, Thompson filed a reply. GA 3. On March 10, 2009, Judge Dorsey denied the petition in all respects. GA 274-280. The district court entered judgment on March 11, 2009. GA 3.

On March 23, 2009, Thompson filed a timely notice of appeal. GA 281-282.¹

Statement of Facts and Proceedings Relevant to this Appeal

In 1992, Thompson was convicted by a jury in the Southern District of Florida of two counts of armed bank robbery and two counts of using a firearm in the commission of a felony. His convictions and sentence

¹ On April 21, 2009, Judge Dorsey issued a certificate of appealability. GA 4. There was no need for a certificate in this case, however, because Thompson does not fall within either of the categories set forth in 28 U.S.C. § 2253(c)(1).

were upheld on appeal by the United States Court of Appeals for the Eleventh Circuit. *United States v. Blackman*, 66 F.3d 1572 (11th Cir. 1995).

In 1997, Thompson filed a motion to vacate his conviction under 28 U.S.C. § 2255. The district court denied that motion, and the Court of Appeals for the Eleventh Circuit affirmed. *Thompson v. United States*, 252 F.3d 438 (11th Cir. 2001) (table).

In 2004, Thompson filed two actions captioned as petitions under 28 U.S.C. § 2241 in the United States District Court for the District of Connecticut.² The first petition was filed on May 17, 2004, and assigned to Judge Christopher F. Droney. In that petition, Thompson challenged his 1992 conviction, alleging that the court that convicted him lacked jurisdiction and venue. Judge Droney held that Thompson's challenges to the jurisdiction and venue of the court were properly the subject of a motion under 28 U.S.C. § 2255. *Thompson v. Choinski*, No. 3:04-CV-823 (CFD), 2004 WL 1900428 (D. Conn. Aug. 16, 2004). Judge Droney further held he

² Thompson filed a third petition under 28 U.S.C. § 2241 in the District of Connecticut on June 7, 2005. *See Thompson v. Martin*, No. 3:05-CV-926 (PCD). The district court dismissed this petition on February 26, 2006, finding that it lacked jurisdiction to consider claims regarding the validity of Thompson's conviction and sentence under § 2241. Thompson appealed, and this Court dismissed the appeal as meritless on October 30, 2006. *See Thompson v. Martin*, 06-1181-pr.

lacked jurisdiction to consider such claims and therefore transferred the petition to the Southern District of Florida. That court dismissed Thompson's petition for failure to obtain permission to file a second or successive § 2255 petition. The Court of Appeals for the Eleventh Circuit dismissed Thompson's appeal from this decision. *Thompson v. United States*, No. 04-15861-A (11th Cir. Jan. 26, 2005).

The present appeal involves Thompson's second petition under § 2241 filed in the District of Connecticut. In this petition, filed May 21, 2004, and assigned to Judge Peter C. Dorsey, Thompson raised various challenges to the execution of his sentence and the conditions of his confinement. Most of Thompson's claims relate to a July 1991 prison incident report, and the subsequent prison disciplinary proceeding, stemming from a hostage-taking incident in the federal facility where Thompson was incarcerated at the time. Pet. Br. 3-5. Thompson alleged that the 1991 incident report, which he claims to be false, has been the underlying factor motivating multiple decisions by federal prison officials over the years involving his security classification and assignment to certain high-security prison facilities. Thompson also complains about the Bureau of Prisons' denial of his request for what he refers to as a final decision on a detainer lodged in connection with unrelated charges in the Bahamas, and the resulting increase in his security classification. Pet. Br. 10. Although it is not entirely clear from Thompson's petition, he appears to be claiming that he is entitled to invoke the procedures set forth in the

Interstate Agreement on Detainers, which governs charges pending in other U.S. jurisdictions.

On August 11, 2004, the district court *sua sponte* issued an order dismissing Thompson's petition without prejudice and denying his motions for injunctive relief, discovery, and evidentiary hearings as moot. GA 270-277. The court noted that certain of Thompson's claims were more appropriately raised in a civil rights action rather than in a habeas petition and suggested that he file separate civil rights and habeas actions to properly raise his claims. GA 21.

In the event that the claims were all properly cognizable under § 2241, however, the court held that Thompson's petition had to be dismissed for failure to exhaust state court remedies with respect to some of the claims. GA 23-24. Specifically, according to the district court, because part of Thompson's petition challenged conditions of confinement in a Connecticut state prison, Thompson had to present those claims to Connecticut state courts in the first instance. And because Thompson's petition contained both exhausted and unexhausted claims, the district court dismissed the petition without prejudice to refiling after he exhausted his state court remedies. GA 24-25. Thompson then appealed.

On May 8, 2008, this Court affirmed in part and remanded in part. *Thompson v. Choinski*, 525 F.3d 205 (2d Cir. 2008). The Court held that the petition was barred as a second or successive petition to the extent it challenged the validity of Thompson's underlying criminal

conviction. It further held that claims challenging prison conditions during confinement in Connecticut were mooted by Thompson's intervening transfer back to federal facilities. By contrast, the Court found that Thompson's challenges to federal conditions of confinement were properly raised pursuant to § 2241, and remanded the case back to Judge Dorsey. On March 11, 2009, Judge Dorsey issued an opinion rejecting Thompson's remaining claims and entered judgment.³

Summary of Argument

1. The district court properly rejected Thompson's claim that he was denied due process at his disciplinary hearing. The evidence relied upon by the DHO far exceeded the constitutional threshold of "some evidence" needed to satisfy due process. The DHO considered reports of prison officials who found Thompson in an off-limits area at the same time that three other inmates had taken a lieutenant hostage at gunpoint and were trying to escape through a hole in the prison fence. The DHO also relied on a report that at the time, Thompson and the three

³ On December 9, 2004, Thompson filed a civil rights complaint against various state and federal officials under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), raising claims substantially similar to those raised in the present appeal. *See Thompson v. Lanz*, No. 3:04-CV-2084 (AWT). Currently pending is a motion to dismiss by the United States and the State of Connecticut based upon Thompson's failure to stand for a deposition that had been ordered by the court.

hostage-takers were the only prisoners missing from their housing units. Officers also found that both Thompson and one of the hostage-takers had hidden books in the crotch of their pants, consistent with an attempt to protect themselves from injury if they needed to scale fences topped with razor wire. Moreover, the DHO also relied on statements by a confidential informant that Thompson had been a planner of the escape, that he had helped to hide the gun in the days before the attempt, and that his job was to serve as a lookout for the others.

None of Thompson's other constitutional challenges to the disciplinary hearing has any merit. First, his challenges to an earlier disciplinary hearing are irrelevant because it was overruled on administrative appeal and superseded by a later disciplinary hearing. Second, the fact that he was acquitted on these charges at a criminal trial had no preclusive effect at the disciplinary hearing, because the standard of proof in administrative proceedings is lower than that applicable in criminal trials. Third, there was nothing inappropriate (much less unconstitutional) about the regional director of the Federal Bureau of Prisons obtaining additional evidence of Thompson's guilt from the U.S. Attorney's Office that had conducted his criminal prosecution.

2. The district court properly denied Thompson's challenges to his security classification and prison transfers. An inmate has no cognizable liberty or property interest in his security classification or prison assignment, and so Thompson cannot state a viable claim. Moreover, because he cannot establish a due process violation at his

disciplinary hearing for the reasons established in Point I, he is also unable to show that any resulting classification or assignment was the fruit of a due process violation. Moreover, it bears note that the Bureau of Prisons bases its classification and assignment decisions on the severity of an inmate's underlying conviction and the inmate's disciplinary record while in custody. Thompson's subsequent disciplinary record seriously undercuts any claim that he does not merit a high security classification.

3. The district court properly rejected Thompson's claim that the Bureau of Prisons failed to "resolve" the detainer that has been lodged by the Government of the Bahamas in connection with pending murder and robbery charges in that country. Thompson incorrectly assumes that the procedures set forth in the Interstate Agreement on Detainers – which requires the timely transfer of a prisoner to another *American* jurisdiction for trial on pending charges, or else dismissal of the charges and the concomitant detainer – also applies to detainers lodged in connection with extradition requests by foreign countries. Even though the Federal Bureau of Prisons used the wrong form to notify Thompson of the Bahamian detainer, and described the procedures for resolving pending charges in other U.S. states, the Interstate Agreement on Detainers remains inapplicable to him.

4. This Court previously rejected Thompson's claim that he was not lawfully convicted of bank robbery in 1992. As this Court held, Thompson's present challenge is a second or successive § 2255 petition, which is not authorized by law. Thompson points to no change in law

or fact that would disturb the law of the case, and so he is barred from revisiting that issue on appeal.

5. The district court properly rejected Thompson's challenge to the disciplinary sanctions imposed when he refused to return to the general population from the special housing unit. Thompson concedes that he disobeyed a direct order of a prison official to return to the general population, and so there is undoubtedly "some evidence" to support the finding of a disciplinary violation.

Prison officials were amply justified in rejecting Thompson's proffered excuse for his disobedience – that he would be in danger in the general population due to his claimed status as a former Bahamian police officer and as a prison snitch. There was no independent verification of Thompson's status as a former police officer; he only claimed to have worked as a police officer for a short time; and other inmates would have no reason to know that Thompson had been a Bahamian police officer. Moreover, Thompson was not in danger as a known informant, since the reported appellate decision in his case stated simply that he had made inculpatory statements about himself and his co-conspirators to police officers upon his arrest for bank robbery.

ARGUMENT

I. The district court properly rejected Thompson's claim that he was deprived of due process at his prison disciplinary proceeding involving his 1991 attempt to escape from the federal prison in Miami, because the administrative decision was supported by much more than "some evidence" of his guilt.

A. Relevant facts

On July 19, 1991, federal prison officers thwarted an attempted escape at the Metropolitan Correction Center in Miami, Florida. At about 9:00 p.m., Lieutenant Thomas Wilson went to investigate reports of movements in an area of the prison near the rear sally port of the prison. GA 45-46, 51-53. He found three prisoners hiding behind trailers. GA 46. One of the inmates was armed with a .22 caliber revolver and managed to take Lt. Wilson hostage. GA 36. He repeatedly threatened to shoot the hostage unless prison authorities opened the gates, which they refused to do. GA 46-47. After a tense stand-off, during which the inmates cut a hole through the fence and debated how to use their human shield, they were finally convinced to free the hostage and surrender. GA 46-47.

While this was going on, Senior Officer L. A. Cruz heard the call that there were inmates near the rear gate trying to escape, and that they had a weapon. GA 62-63. Officer Cruz headed toward the rear gate, and found petitioner Thompson in front of the control center. GA 74-

75. He ordered Thompson to the floor, cuffed him, and took him to the Special Housing Unit. GA 74-75. Officer Cruz then returned to the hostage scene, where he assisted in apprehending the inmate who had been holding the gun. GA 74-75. He found that both Thompson and the armed inmate had stashed a book in the front crotch area of their pants. GA 74-75. During a headcount of the housing units, four inmates were found missing – the three inmates who took the hostage, and Thompson. GA 69.

On July 20, 1991, the Federal Bureau of Prisons issued an incident report that charged Thompson with a number of administrative violations, including attempted killing, attempted escape from a secure institution, attempted possession of a weapon, and attempted taking of a hostage. GA 45-48.

Thompson and three other inmates were indicted in federal court for their roles in the escape. On November 2, 1992, the district court granted Thompson a motion for judgment of acquittal, finding that the government had not proven the charges beyond a reasonable doubt. Pet. App. Section B, Ex. 2, at transcript p. 99.

After the acquittal, the incident was released for administrative action. A hearing was held before the Unit Discipline Committee (“UDC”) on November 19, 1992. GA 46. Due to the severity of the incident, the UDC referred the matter to the Discipline Hearing Officer (“DHO”). 46. The UDC recommended a disciplinary transfer, 60 days of disciplinary segregation and a disallowance of all good conduct time. GA 46.

The first hearing was held before the DHO on December 1, 1992. GA 43. After that hearing, the DHO concluded that Thompson had committed the charged acts.

On May 14, 1993, the regional director ordered that the DHO conduct a rehearing in Thompson's case. The director concluded that the original DHO packet had not contained sufficient evidence to sustain all the charges. GA 111. Through additional investigation, however, the Bureau of Prisons had been able to obtain additional evidence from the U.S. Attorney's Office in Miami, indicating that Thompson was one of the original proponents of the escape plan and that he served as a lookout. GA 111. This additional evidence constituted sufficient proof of his guilt in the administrative context. GA 111.

On June 8, 1993, the DHO held another hearing, and again concluded that Thompson was guilty of the charged acts. GA 86-97.

On July 13, 1993, the regional director ordered that a new hearing be held, because Thompson had not been given proper notice of the June 1993 hearing. GA 99.

The final hearing before a DHO took place on July 20, 1993. GA 103-110. There, Thompson denied his involvement in the incident and submitted 46 pages of handwritten and typed pages, some of which were partial copies of earlier hearings. GA 103-110. The DHO considered the evidence submitted by Thompson but also considered, among other things, the following evidence in

support of the charges: (1) a statement from a confidential informant that Thompson was an original proponent of the escape plan, that he assisted in passing around the gun to avoid staff detection, and that he acted as a lookout; (2) an incident report submitted by Lt. Wilson; (3) an incident report submitted by Lt. Lopez that clarified the statement of Lt. Wilson; (4) a memorandum of Officer Cruz describing how he found Thompson in an out of bounds area that was off limits to inmates, with a book in the crotch of his pants; and (5) a memorandum submitted by the correctional captain which indicated that during the lockdown Thompson was one of only four inmates who were missing from their housing units. GA 103-110.

After considering all of this evidence, the DHO held that Thompson had committed the charged acts. GA 45. The DHO relied in part on the information provided by the confidential informant, noting that he was aware of the confidential informant's identity, and that the information was 100% reliable. GA 98, 108. The DHO imposed administrative sanctions against Thompson. On the charge of attempted killing, the DHO disallowed 40 days of good conduct time and imposed 60 days of disciplinary segregation. On the attempted escape charge, the DHO disallowed 14 days of good conduct time and imposed 60 days of disciplinary segregation. Finally, on the weapons-related charge, the DHO ordered Thompson to serve 60 days in disciplinary segregation and to be subject to a disciplinary transfer. GA 92-93.

In this case, the district court rejected Thompson's claim that he was deprived of due process at his DHO

hearing. GA 275-277. The court concluded that all of the procedural requirements for disciplinary hearings were satisfied, GA 275-276, and that the guilty finding was supported by “some evidence” – particularly in light of the fact that the DHO relied on additional information, besides the 1991 incident report. GA 279-280.

B. Governing law and standard of review

Inmates are not entitled to the same rights at prison disciplinary hearings compared with the rights that they receive in a criminal prosecution. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). Where a prisoner claims he was denied due process in a prison disciplinary hearing because he was found guilty on the basis of insufficient evidence, the claim must be rejected if there was at least “some evidence” to support the decision. *Superintendent, Massachusetts Correctional Institution v. Hill*, 472 U.S. 445, 455 (1985). When evaluating prison disciplinary hearings, a court does not examine the entire record, assess the credibility of individual witnesses, or retry the issues presented at the disciplinary hearing. Rather, the court determines only whether the decision of the disciplinary authority is supported by some evidence. *Sira v. Morton*, 380 F.3d 57, 76 (2d Cir. 2004). “The decision can be upheld even if the evidence supporting the decision is ‘meager.’” *Mitchell v. Maynard*, 80 F.3d 1433, 1445 (10th Cir. 1996) (quoting *Hill*, 472 U.S. at 457).

In the prison disciplinary context, due process requires only that the prisoner receive advance written notice of the charges, an opportunity to present testimony and

documentary evidence to an impartial decision-maker and a written explanation for the discipline. *Wolff*, 418 U.S. at 564-66.

This Court “review[s] de novo the denial of an application for a writ of habeas corpus brought pursuant to § 2241.” *Armstrong v. Guccione*, 470 F.3d 89, 96 (2d Cir. 2006).

C. Discussion

Thompson received all the process he was due at the final DHO hearing. He was given advance notice of the charges, GA 86-93, was given the opportunity to have a staff representative, GA 86-93, and submitted voluminous documentation in support of his contention that he was not guilty of the disciplinary incident with which he was charged, GA 86-93. The DHO rendered a written decision, with which Thompson was provided, that detailed all of the evidence marshaled both for and against Thompson. GA 86-93. Thompson offered no evidence to the district court that called into question the impartiality of the DHO.

Most importantly for present purposes, the DHO relied on plentiful information pointing to Thompson’s complicity in the escape, which rises well beyond the constitutional standard of “some evidence.” *Hill*, 472 U.S. at 455. The DHO relied on the statements of prison officials who were present during the escape attempt, and who apprehended Thompson in an off-limits area, with a book hidden in the crotch of his pants (suggestive of an attempt to protect himself while climbing over a razor-

wire fence), at a time when he and the three hostage-takers were the only inmates outside their housing units. GA 86-93. The DHO also had the benefit of the confidential informant's statements, which pointed to Thompson as a planner and lookout for the would-be escapees.⁴ GA 96-108. Indeed, the only flaw in the incident report that Thompson points to is a passing reference by Lt. Wilson that he was taken hostage by four inmates. Pet. Br. 3-4. Yet that statement was clarified at the administrative hearing. Lt. Wilson gave a supplemental statement explaining that he did not see Thompson among the three hostage takers, and included him among the accused inmates based on information he subsequently obtained from other prison officials. GA 53. Because the DHO had ample evidence of Thompson's guilt, and did not rely on the one flawed portion of the incident report, Thompson has failed to demonstrate a due process violation.

⁴ This Court has held that "the 'some evidence' standard may be met even where the only evidence was supplied by a confidential informant, 'as long as there has been some examination of indicia relevant to [the informant's] credibility.'" *Gaston*, 249 F.3d at 163 (quoting *Giakoumelos v. Coughlin*, 88 F.3d 56, 61 (2d Cir. 1996) (internal quotation marks omitted)). Here, the DHO made express findings regarding the reliability of the informant and indicated that he was aware of the informant's identity. GA 97-98. Accordingly, the DHO's finding would likely be supportable based on the statements of the informant alone. Of course, the Court need not reach that question here, where there was additional evidence about Thompson's complicity unrelated to the informant's statement.

Although Thompson's pro se brief is not entirely clear, he seems to suggest that his due process rights were violated in several respects by his disciplinary hearing. None of his claims – vague and confusing as they are – is meritorious.

First, Thompson seems to claim that he was denied his due process rights at his original administrative hearing in 1992. Pet. Br. 1. He argues that this is demonstrated by the regional director's later conclusion that there was insufficient evidence of his guilt presented at that time. This argument completely overlooks the fact that Thompson was granted rehearings in 1993, and so the first hearing had no impact on him at all. Where a first hearing is administratively overruled, any defects in that hearing do not give rise to a due process claim. *See Gaston v. Coughlin*, 249 F.3d 156, 164 (2d Cir. 2001).

Second, Thompson seems to argue that his acquittal of criminal charges stemming from the escape incident required the DHO to likewise find him not guilty of the administrative charges. Pet. Br. 2. This argument fails for at least two reasons. For one thing, administrative disciplinary hearings are governed by a lower standard of proof than criminal trials. It is well established that an acquittal under the more exacting beyond-a-reasonable-doubt standard of proof does not preclude a finding of guilt under a lower standard. *See, e.g., United States v. Watts*, 519 U.S. 148 (1997) (per curiam) (holding that Due Process Clause permits sentencing court to consider conduct of which defendant has been acquitted at criminal trial, if conduct has been proved by preponderance).

Further, it appears that the administrative fact-finder here was presented with more evidence than had been introduced during the criminal trial. The DHO had the benefit of evidence provided by a confidential informant, who outlined Thompson's role in planning the escape, hiding the gun during the days preceding the event, and serving as a lookout for the other inmates. GA 90. It should not be surprising that a factfinder presented with different evidence, and applying a lower standard of proof, might reach a different conclusion about Thompson's guilt.

Finally, Thompson seems to claim that his rehearing was neither fair nor impartial because the regional director obtained additional evidence from the U.S. Attorney's Office, which contributed to the DHO's determination of guilt. Pet. Br. at 2. Yet he points to no authority suggesting that the Federal Bureau of Prisons may not continue to gather relevant evidence, whether from other parts of the U.S. Department of Justice or elsewhere.

The district court properly denied Thompson's petition for habeas relief with respect to the disciplinary hearing.

II. The district court properly rejected Thompson’s challenge to his prison security classification and his transfers among various prison facilities, because he has no constitutional right to a particular classification or facility assignment.

A. Relevant facts

Based on his history and offense behavior, Thompson was classified as a high-security level inmate and assigned to maximum custody in 1992. GA 121 (designated “security classification high” on March 2, 1992; designated “maximum custody” as of May 7, 1992).

As noted in Part I.A, Thompson received administrative sanctions for his participation in the 1991 escape attempt from federal prison in Miami.

Thompson received additional disciplinary sanctions while incarcerated, aside from the discipline assessed against him for the aborted prison escape. Thompson was sanctioned twice for assaults committed in Miami on February 26, 1992, and August 14, 1992. GA 33, 114-119. In March 1993, he was again sanctioned for assault, this time at the U.S. Penitentiary in Lompoc, California. GA 33, 114-119. In 1994, while at the United States Penitentiary at Marion, Illinois, Thompson received numerous incident reports and was sanctioned for assault, threatening another with bodily harm, and being insolent to a staff member. GA 33, 114-119. And in 1998, while housed at the maximum-security federal prison in

Florence, Colorado, Thompson was disciplined for refusing to obey a staff member's order. GA33, 114-119.

Finally, on April 8, 2003, Thompson received a disciplinary infraction for refusing to work or accept a program assignment. GA 33, 114-119. That discipline stems from his refusal to accept assignment to the general population from the Special Housing Unit. *See infra* Part IV.

In May 2003, Thompson contested his custody classification by filing a request for administrative remedy. GA 232-236. That request was denied on June 6, 2003. GA 234. The regional director upheld the warden's determination on administrative appeal. GA 234-236. On October 9, 2003, the Administrator of National Inmate Appeals upheld the regional director's decision. GA 103. The Administrator found no evidence to support Thompson's claims of constitutional violations, and agreed that his history of violence had been properly calculated under Bureau rules. *Id.*

Thompson's disciplinary involvement did not end with his transfer to the State of Connecticut. On February 2, 2004, Thompson received discipline because he refused several orders to move to a new cell, thereby causing all prisoner movements within the Northern Correctional Institution to stop until Thompson thereafter changed his mind and complied with the demand to switch cells. GA 269-274. Thereafter, Thompson was disciplined three more times between January 19, 2005, and March 14, 2006, while in State of Connecticut prisons. GA 269-271.

In the present case, the district court rejected Thompson's challenge to his security classification, holding that he had "no constitutional right to avoid confinement in a high security state or federal facility." GA 277.

B. Governing law and standard of review

Inmates do not have liberty or property interests in their security classifications or in the prison to which they are assigned. *Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976); *Pugliese v. Nelson*, 617 F.2d 916, 923-24 (2d Cir. 1980) (inmates had no right to challenge status as monitored inmates because they had no liberty interest in status). *See also Abed v. Armstrong*, 209 F.3d 63, 67-68 (2d Cir. 2000) (prisoner had no protected liberty interest in an opportunity to earn good credit time). The Attorney General has delegated complete discretion to the Bureau of Prisons with respect to the incarceration, classification and segregation of lawfully convicted prisoners. *Id.*; 28 C.F.R. § 0.96.

As noted in Part I.B, this Court reviews de novo the denial of habeas corpus relief under § 2241.

C. Discussion

Thompson claims that the district court improperly rejected his challenges to his security classification and prison transfers, which he claims "arose solely following the DHO's finding of Thompson's guilt" on the 1991 escape charges. These claims fail for several reasons.

First, prisoners do not have a protected liberty interest in their security classification, *Moody*, 429 U.S. at 88 n.9, nor do they have a cognizable interest in being housed at any particular prison, *Davis v. Kelly*, 160 F.3d 917 (2d Cir. 1998) (citing *Meachum v. Fano*, 427 U.S. 215, 225 (1976)). The Bureau of Prisons was not obliged to conduct an individual review into the personal circumstances of Thompson when setting his security classification and when determining the location of his incarceration – be it within the Bureau of Prisons or within the Connecticut Department of Corrections. The Bureau of Prisons is vested with absolute authority in setting a prisoner’s security classification and in choosing a facility in which to house a prisoner. *Moody*, 429 U.S. at 88 n.9 (“Congress has given federal prison officials full discretion to control these conditions of confinement, 18 U.S.C. § 4081, and [a prisoner] has no legitimate statutory or constitutional entitlement sufficient to invoke due process.”). Thompson’s arguments therefore fail because he cannot state a viable constitutional claim.

Second, as explained in Part I above, Thompson has failed to demonstrate that there was any constitutional flaw in the DHO’s administrative finding that he was responsible for the attempted escape. Accordingly, even if a federal prisoner were theoretically permitted to challenge his security classification or transfer, Thompson’s claim would fail because he has not demonstrated the invalidity of his own classification or prison assignment.⁵

⁵ As noted in Part II.A., Thompson has remained at a high
(continued...)

III. The district court properly rejected Thompson’s claim that the procedures set forth in the Interstate Agreement on Detainers – which applies only to charges pending in other U.S. jurisdictions – should also apply to a detainer lodged by the Bahamas in connection with charges pending there.

A. Relevant facts

On January 24, 1994, a detainer was lodged with the Federal Bureau of Prisons against Thompson in connection with criminal charges then pending in the Bahamas. GA 43. The detainer detailed that Thompson had been charged in the Bahamas with eleven counts of armed robbery and murder. GA 43. The detainers were

⁵ (...continued)

level security rating since 1992. It bears note that a prisoner’s security classification is based on the nature of the events that underlie his criminal conviction, as well as his prison disciplinary record. *See generally* Bureau of Prisons Program Statement 5100.08, available online at <http://www.bop.gov/DataSource/execute/dspolicyLoc>

As stated in response to Thompson’s appeal of the DHO decision related to the hostage taking incident, Thompson’s underlying criminal conviction, which involved violence, was taken into consideration when arriving at a security classification in addition to Thompson’s disciplinary record while in custody. GA 253. Moreover, given Thompson’s repeated pattern of disciplinary infractions since 1992, there is no indication that ignoring the 1991 escape attempt would alter his security classification.

supported by a series of arrest warrants issued by a Bahamian Magistrate in connection with a series of events ranging from 1989 to 1991. GA 35-38.

In June 2003, Thompson filed a request with the Federal Bureau of Prisons, “seeking final disposition” of his Bahamian detainees. *See* GA 238 (Thompson’s appeal, referencing earlier complaint). The Warden denied that request. *Id.* On July 11, 2003, Thompson filed an administrative appeal, claiming that he had a right under the Interstate Agreement on Detainers to have a final resolution of his foreign detainees. *Id.* Thompson complained that, as a result of the pending detainer, the BOP had increased his custody/security level by seven points. GA 237. He insisted that there must be some “forms to initiate Request for Final Disposition” of his detainer. *Id.*

On July 28, 2003, the Regional Director denied Thompson’s appeal. He explained that “[t]here are no forms to request disposition of outstanding charges in a foreign country.” GA 237. When a prisoner faces charges abroad, it is up to the foreign country to request extradition. *Id.* The request is then handled by an Assistant United States Attorney, who may ask a federal court to issue an extradition warrant. *Id.* The Bureau of Prisons will not act as a prisoner’s intermediary with the foreign government that has brought the relevant charges. *Id.* If a prisoner wishes “to address the outstanding charges which are the basis of the [foreign] detainer, [the prisoner] must correspond with the Consulate” of that foreign country. *Id.* Thompson’s appeal of this decision was denied, on the

same grounds, by the Administrator of National Inmate Appeals. GA 246.

In the present case, the district court concluded that “there is no legal basis for Thompson’s assumption that he can initiate final disposition of the charges [lodged against him in the Bahamas] and his challenge fails.” GA 279. The court noted that Thompson relied on a section of a Bureau of Prisons program statement that set forth procedures and time frames for investigating pending charges in other U.S. states and territories, which are drawn from the Interstate Agreement on Detainers (“IAD”). GA 279-280. Because the IAD does not apply to detainers lodged by foreign governments, the court concluded that Thompson could not complain that he had a right to insist on compliance with the IAD’s rules with respect to a Bahamian detainer. GA 278-279.

B. Governing law and standard of review

Requests for extradition to foreign countries on criminal charges are governed by 18 U.S.C. §§ 3181-3196. Extradition requests are generally based on bilateral treaties, which set forth a list of extraditable offenses and establish a set of procedures. *See generally Cheung v. United States*, 213 F.3d 82, 87-88 (2d Cir. 2000). Federal courts are charged with deciding extradition requests, and may issue arrest warrants based on such requests and thereafter determine whether there is sufficient evidence to sustain the charge under the appropriate treaty, whereupon an extradition warrant may issue. 18 U.S.C. § 3184.

The filing of a detainer with a particular institution is different from the filing of a formal extradition request. “The filing of a detainer is an informal process advising prison officials that a prisoner is wanted on other pending charges and requesting notification prior to the prisoner’s release.” *Orozco v. U.S. I.N.S.*, 911 F.2d 539, 541 n.2 (11th Cir. 1990) (per curiam). “Rather than requiring the immediate presence of the prisoner, a detainer merely puts the officials of the institution in which the prisoner is incarcerated on notice that the prisoner is wanted in another jurisdiction for trial upon his release from prison. Further action must be taken by the receiving State in order to obtain the prisoner.” *United States v. Mauro*, 436 U.S. 340, 358 (1978).

C. Discussion

Thompson complains that the Bahamian detainer inflates his security status and that the denial of the request for a final disposition pursuant to the terms of the Interstate Agreement on Detainers amounts to a violation of due process.

As an initial matter, there is no basis for Thompson’s challenge to the procedures surrounding his Bahamian detainer, because his claim arises entirely from the detainer’s alleged effect on his security classification. As explained in Part I above, a prisoner does not have a cognizable liberty or property interest in a particular security classification. Because the existence of a Bahamian detainer does not impact any of Thompson’s constitutional rights, his claim fails at the outset.

Even if the effect of a detainer on a security classification could give rise to a constitutional claim, there is no substance to Thompson's underlying complaint that he has a right to invoke the procedures outlined in the Interstate Agreement on Detainers for seeking final resolution of his Bahamian charges. The IAD is an interstate compact among 48 states, the federal government, and the District of Columbia, codified at 18 U.S.C. App. § 2. "The Agreement creates uniform procedures for lodging and executing a detainer, i.e., a legal order that requires a State in which an individual is currently imprisoned to hold that individual when he has finished serving his sentence so that he may be tried *by a different State* for a different crime." *Alabama v. Bozeman*, 533 U.S. 146, 149 (2001) (emphasis added). Under the IAD, an inmate held in one U.S. jurisdiction may "request" a "final disposition" of charges pending in another U.S. jurisdiction, in which case he will be temporarily transferred to that jurisdiction and his trial must begin within 180 days (with certain exceptions). *Id.* If that deadline is exceeded, the federal court must dismiss the charges with prejudice. *Id.* (citing Art. III(a), (d)).

Thompson's claim rests on the faulty assumption that the procedures outlined in the IAD also apply to charges arising in foreign countries. The IAD, by its terms, applies only to domestic jurisdictions that have adopted that compact. *See Beukes v. Pizzi*, 888 F. Supp. 465, 469 (E.D.N.Y. 1995). Foreign countries, such as the Bahamas, are not parties to the IAD and so any international detainers that have been lodged as a result of foreign criminal charges are not covered by the procedures

outlined in the IAD. Accordingly, the IAD “confers no rights on [prisoners] with respect to [a] detainer lodged as a result of [an] extradition request.” *Id.* This is a sensible result, because the international arena is materially unlike the domestic setting. The method for “final resolution” of detainees outlined in the IAD involves relinquishment of the defendant to the requesting state for trial. If Thompson were relinquished to the Bahamas for trial, there is no guarantee that he would be returned to the United States to complete his sentence, which exceeds thirty years. This is unlike the situation domestically in the United States, where the IAD requires the requesting state to return the defendant to the requested state for completion of his sentence upon final resolution of its own case. 18 U.S.C. App. § 2, Art. V(e).

Rather than pointing to any provision of the IAD that arguably supports his position, Thompson relies entirely on a form that the Bureau of Prisons used to notify him of the Bahamian detainer. GA 241. It is apparent that the Bureau of Prisons mistakenly used a form that is designed for detainees based on charges pending in other U.S. jurisdictions. The form erroneously advised Thompson of the procedural rights afforded by the IAD. However inadvertent and unfortunate this suggestion may have been, it did not confer on Thompson any novel right to invoke the IAD to deal with a request for extradition to the Bahamas. *Cf. Orozco*, 911 F.2d at 541 (holding that prisoner cannot invoke § 2241 to demand that U.S. immigration authorities commence proceedings to determine deportability, to resolve immigration detainer); *Roldan v. Racette*, 984 F.2d 85, 88 (2d Cir. 1993)

(embracing the “clear majority view that an INS detainer constitutes (1) a notice that future INS custody will be sought at the conclusion of a prisoner’s pending confinement by another jurisdiction, and (2) a request for prior notice regarding the termination of that confinement, and thus does not result in present confinement by the INS” authorizing a court to entertain a present challenge to the future immigration charges).

IV. This Court previously rejected Thompson’s challenges to the validity of his underlying criminal conviction, and so he is barred from relitigating that issue.

At pages 14-19 of his pro se appellate brief, Thompson renews his contention that he was not lawfully convicted in 1992. This Court has already rejected that claim. *Thompson v. Choinski*, 525 F.3d 205 (2d Cir. 2008). Thompson’s conviction and sentence had previously been upheld both on direct appeal and in § 2255 proceedings before the United States District Court for the Southern District of Florida and the United States Court of Appeals for the Eleventh Circuit. *Id.* at 207. As this Court explained, Thompson’s challenge to the jurisdiction of the court in which he was convicted must be brought under § 2255, not § 2241. *Id.* at 208. Because Thompson does not satisfy any of the criteria for bringing a second or successive § 2255 petition, his claim “was not authorized by law.” *Id.*

Nothing has changed since this Court’s previous decision, which would allow Thompson to relitigate the

validity of his underlying conviction. “The law of the case doctrine commands that ‘when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case’ unless ‘cogent and compelling reasons militate otherwise.’” *Johnson v. Holder*, 564 F.3d 95, 99 (2d Cir. 2009) (quoting *United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2002)). Such reasons may include “an intervening change in law, availability of new evidence, or ‘the need to correct a clear error or prevent manifest injustice.’” *Johnson*, 564 F.3d at 99-100 (quoting *Quintieri*, 306 F.3d at 1230). Thompson has cited no new facts or legal authority relating to his eligibility for filing a second or successive § 2255 petition. In short, no cogent reason exists to disturb the earlier decision of this Court as it relates to his underlying conviction.⁶

⁶ Although the Court did not need to reach the issue in its previous decision, it is also clear that Thompson would be required to seek permission from the U.S. Court of Appeals for the *Eleventh Circuit* (where he was convicted), rather than from this Court, to file a second or successive petition. *See* 28 U.S.C. § 2244(b)(3)(A) (requiring applicant to seek permission “in the *appropriate* court of appeals”) (emphasis added); 28 U.S.C. § 2255(a) (providing that venue over § 2255 lies in district of conviction); § 2255(h) (setting forth requirements for second or successive motion, as certified by “a panel of the *appropriate* court of appeals”).

V. The district court properly rejected Thompson's challenge to the administrative sanctions imposed by prison authorities for his failure to comply with an order to return to the general prison population.

A. Relevant facts

On March 6, 2003, while incarcerated at the U.S. prison facility in Marion, Illinois, Thompson received an incident report for refusing a prison official's order to move from the Special Housing Unit to a General Population Unit. GA 115; Pet. App. A, Ex. 4, at 2-3.

At his DHO hearing, Thompson claimed that his safety would be jeopardized in the general population because of his claimed status as a former law enforcement officer and his having given the government information about other people. *Id.* The DHO postponed the hearing so that prison authorities could determine whether there was any substance to Thompson's claims. *Id.* at 2. On April 10, 2003, the hearing resumed after prison authorities determined that, after an investigation, Thompson's claims were not valid. *Id.* The DHO found Thompson guilty of the offense of refusing a program assignment, and imposed punishment of seven days of disciplinary segregation. *Id.* at 3.

Thompson filed a Request for Administrative Remedy in June 2003, arguing that he should be housed in a less secure institution in light of his own protection concerns.

GA 259-260.⁷ He claimed that his security concerns arose both from his “law enforcement background” as a supposed former Bahamian police officer, GA 259-260, and from the label of “snitch” that had supposedly attached to him, as a result of statements about his case in law reports, GA 259-260. He did not explain how shifting him to a lower-security prison could possibly mitigate those concerns.

Although his claim is not entirely clear, Thompson appeared to be referring to the following portion of the Eleventh Circuit’s opinion affirming his conviction, which recounted the circumstances of his arrest:

According to the government, law enforcement officials went to the Thompsons’ apartment after receiving a lead from Bahamian officials which linked defendants to the robberies. No arrest warrant was obtained. The agents went to the house, not to arrest defendants, but to investigate the robberies; and they handcuffed defendants for safety reasons. According to the agents, while being handcuffed, or immediately thereafter, Salathiel Thompson asked what the agents wanted.

⁷ It is not clear from the record whether this request related to the DHO’s decision, or to a separate request from Thompson for transfer to a lower-security institution. The Government assumes for the purposes of this appeal that the request related to the DHO’s decision, and that Thompson therefore is deemed to have exhausted his administrative remedies.

When an agent responded “this is involving a bank robbery of the First Union Bank,” Salathiel responded “O.K., I will tell you about that.” At this point, Salathiel was read his rights and arrested. And, *when Salathiel told the agents that the others were involved*, the other defendants were read their rights and arrested. All four defendants confessed at the FBI headquarters.

Blackman, 66 F.3d at 1574 (emphasis added); *see also id.* at 1577 (“As he was being handcuffed or immediately thereafter, Salathiel Thompson made statements incriminating himself and others; and the agents placed defendants under arrest.”).

On July 9, 2003, the Warden of the U.S. Penitentiary in Marion responded that Thompson did not “qualify for transfer to a less secure institution,” though authorities would review his request for status as a “verified protection case.” GA 261. With respect to Thompson’s claim that he was a former Bahamian police officer, the Warden determined (1) that the Presentence Report had determined that Thompson’s employment history was unverifiable, (2) that Thompson had self-reported employment as a police officer in the Bahamas only from May 1986 through September 1987 (at which point he was dismissed due to his arrest for armed robbery), and that this brief period of claimed employment did not constitute “substantial law enforcement background”; (3) that inmates did not have access to information about his ex-law-enforcement background; and (4) that such a background would not, in any event, preclude placement

in the general prison population. GA 261. With respect to Thompson's claim that his case report saddled him with the label of "snitch," the Warden determined that "[t]his is not the type of informant activity that often results in verified protection needs (e.g. confidential informant activity)." GA 261. On August 5, 2003, the Regional Director affirmed the Warden's determination. GA 265. On November 28, 2003, the Administrator of National Inmate Appeals denied Thompson's appeal. GA 267.

On January 13, 2004, Thompson was transferred to a Connecticut facility, GA 270, pursuant to a prisoner exchange program with the Federal Bureau of Prisons, GA 27-23.⁸

⁸ Thompson's brief refers to his request for international prisoner transfer, which would have permitted him to serve the remainder of his sentence in his native Bahamas. Pet. Br. at (b). On June 4, 2003, the Warden at the U.S. Penitentiary at Marion, Illinois, forwarded Thompson's application for the transfer program for further processing, noting that in light of Thompson's safety claims, "a return to his native country would be in his best interest regarding his safety concerns." Pet. App., Ex. 3, at 1 (unpaginated). On October 15, 1993, the Federal Bureau of Investigation expressed its opposition to the proposed transfer to the Office of Enforcement Operations at the U.S. Department of Justice. Pet. App., Ex. 8, at 9 (unpaginated). Thompson's transfer request was not approved. Instead, as noted above, he was transferred to a Connecticut prison.

B. Governing law and standard of review

The legal standards governing prisoner classification and discipline are set forth in Parts I.B and II.B above.

C. Discussion

Thompson concedes that he refused orders while incarcerated at the United States Penitentiary in Marion, Illinois, to return to the general population housing unit from the Special Housing Unit. Pet. Br. (a) and (b). Thompson claims that his refusal was justified “because it was disseminated wrongly throughout the prison population that he was ex-law enforcement and wrongly implicated as a ‘snitch.’” *Id.* He claims that this information was derived from the “false testimony of an FBI agent who[] testified that Thompson implicated himself and codefendants in bank robbery,” and that this information “was published in law books made accessible to inmate population.” Pet. Br. (b).

Because the disciplinary sanction here was supported by at least “some evidence,” Thompson cannot complain that his due process rights were violated. *Hill*, 472 U.S. at 455. Thompson admits that he refused a direct order by a prison official to change housing units. His admission alone constitutes “some evidence” to support the disciplinary determination, regardless of whether he agreed with the wisdom of the order he disobeyed. *Cf. Soto v. Dickey*, 744 F.2d 1260, 1267 (7th Cir. 1984) (“Orders given must be obeyed. Inmates cannot be permitted to decide which orders they will obey, and when

they will obey them.”); *United States v. Price*, 444 F.2d 248, 250 (10th Cir. 1971) (where prisoner did not deny physically resisting a correctional officer’s order but “insist[ed] that the order was unjust and thus unlawful,” prisoner’s defense to criminal prosecution for physically resisting officer was “patently untenable,” noting that “[j]ust or unjust” the order was made and “the remedy to test justification of an order . . . lies within the administrative processes at the institution and not in the prisoner’s subjective choice to physically resist”).

Moreover, the disciplinary finding was later properly affirmed for a variety of additional reasons. The warden determined that there was no independent verification of Thompson’s status as a former police officer, and even if the self reported status as a former law enforcement were true, Thompson had not served for so long that he would reasonably be expected to be treated as former law enforcement. The warden concluded that inmates would have no reason to know that Thompson had been a Bahamian police officer. Moreover, Thompson was not in the position of a confidential informant, since his case disclosed simply that he made statements to police officers upon his arrest. GA 261. Each of these grounds provides additional support for the conclusion that Thompson was not justified in disobeying a direct order to transfer housing units. *See Hill*, 472 U.S. at 455; *Sia*, 380 F.3d at 76. The challenge to the discipline assessed against Thompson based upon his failure to return to general population was properly rejected by the district court below.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Dated: September 3, 2009

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Alan M. Soloway', with a long horizontal line extending to the right.

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Docket Number: 09-1205-pr

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September 3, 2009

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