IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION Edward Harold Saunders, Jr., 11022-058,) Case No. 2:19-cv-02886-JFA-MGB Petitioner,) v.) REPORT AND RECOMMENDATION Bryan K. Dobbs,) Respondent.) _____) Petitioner, proceeding pro se, has filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241, challenging his sentence of life imprisonment, which was imposed in 1994 in the Western District of North Carolina. (Dkt. No. 1.) Currently before the Court is Respondent's Motion to Dismiss. (Dkt. No. 13.) Petitioner has also filed a Motion for Order to Show Cause. (Dkt. No. 21.) Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Rule 73.02(B)(2) (D.S.C.), the assigned United States Magistrate Judge is authorized to review the petition and submit findings and recommendations to the United States District Judge. The undersigned recommends that Respondent's Motion to Dismiss be granted.

BACKGROUND In 1994, a federal grand jury in the Western District of North Carolina indicted Petitioner and eleven others for conspiracy to possess with intent to distribute and distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. See United States v. Saunders, Case No. 3:94-cr-17-FDW-11 (W.D.N.C.); Dkt. No. 9. Petitioner was tried and convicted by a jury. Id. Dkt. No. 159. On September 24, 1994, the district court sentenced Petitioner based on a total offense level of 37 and a criminal history category of VI. The Guidelines range of imprisonment was 360

months to life. Id. Dkt. No. 192. The district judge sentenced Petitioner to life imprisonment, citing Petitioner's serious criminal record . Id. A career-offender enhancement was applied to the sentence. Petitioner and three of his co-defendants filed a direct appeal. The Fourth Circuit affirmed their convictions and sentences. United States v. Walker, Nos. 94-5661, 94-5745, 94- 5746, 94-5765, 1995 WL 551361 (4th Cir. Sept. 18, 1995). In April 1997, Petitioner filed his first § 2255 motion, id. Dkt. No. 280, which the district court denied, id. Dkt. No. 284. The Fourth Circuit denied a certificate of appealability and dismissed the appeal. United States v. Saunders, No. 97-7230, 1998 WL 122120 (4th Cir. Mar. 18, 1998). In 2001, Petitioner filed a petition pursuant to 28 U.S.C. § 2241 in the Eastern District of North Carolina. See Saunders v. United States, No. 5:01-hc-737-H (E.D.N.C. Nov. 8, 2001). His petition was dismissed for lack of jurisdiction. Id. Dkt. No. 5. The Fourth Circuit dismissed his appeal. Saunders v. United States, No. 02-6226, 34 F. App'x 101 (4th Cir. 2002). In 2003, Petitioner

filed a motion in the Western District of North Carolina to modify his sentence. United States v. Saunders, Case No. 3:94-cr-17-FDW-11 (W.D.N.C.); Dkt. No. 345. The district court dismissed the motion as an unauthorized successive § 2255. Id. Dkt. No. 346. In 2006, Petitioner filed a petition to have his sentence reduced pursuant to 18 U.S.C. § 3582(b)(2), relying upon a Supreme Court decision, United States v. Booker, 543 U.S. 220 (2005). Id. Dkt. No. 363. The district court construed the petition as a motion under 28 U.S.C. § 2255 and dismissed it for being an unauthorized successive motion. Id. Dkt. No. 368. In August 2007, Petitioner filed another motion challenging his sentence, which the district court construed as a motion under 28 U.S.C. § 2255. Id. Dkt. No. 369. The district court

denied the motion as successive. Id. Dkt. No. 370. Petitioner appealed. Id. Dkt. No. 372. The Fourth Circuit denied a certificate of appealability and dismissed the appeal. United States v. Saunders, 275 F. App'x 265 (4th Cir. Apr. 30, 2008). The court also de nied authorization to file a successive § 2255 motion. Id. In September 2008, Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in this court. Saunders v. LaManna, 8:08-cv-3333-GRA; Dkt. No. 1. The district court construed the petition as a motion under § 2255, noting that Petitioner had not demonstrated that he had met the requirements to proceed under §2241. Id. Dkt. No. 25. The court thus dismissed the petition without prejudice. Id. The Fourth Circuit affirmed. Saunders v. Lamanna, No. 09-6349, 345 F. App'x 871 (4th Cir. 2009). In October 2012, Petitioner filed a motion to vacate under 28 U.S.C. § 2255 in the Western District of North Carolina. United States v. Saunders, Case No. 3:94-cr-17-FDW-11 (W.D.N.C.); Dkt. No. 389. The motion was dismissed as successive. Id. Dkt. No. 391. In 2014, Petitioner filed a motion in the Fourth Circuit seeking authorization to file a successive § 2255 motion based on the Supreme Court's decision in Carachuri -Rosendo v. Holder, 560 U.S. 563 (2010), and the Fourth Circuit's interpretation of that opinion in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). In re: Edward Saunders, Jr., No. 14-304 (4th Cir. 2014); Dkt. No. 2. The Fourth Circuit denied the motion. Id. Dkt. No. 4. In December 2015, Petitioner filed a motion to have his sentence reduced under Amendment 782 of the Sentencing Guidelines. See United States v. Saunders, Case No. 3:94-cr- 17-FDW-11 (W.D.N.C.); Dkt. No. 396. The motion was denied with the district court finding that there was no change to the Guideline calculations "[b]ecause the defendant's offense level is based upon classification as a Career Offender . . . ." Id. Dkt. No. 298.

On October 9, 2019, Petitioner filed the instant § 2241 petition. (Dkt. No. 1.) Petitioner attacks his sentence of life imprisonment on the basis that he was incorrectly sentenced as a career offender under the advisory Guidelines because at least one of his predicate state convictions that qualified him as a career offender no longer qualifies as a predicate offense in light of Simmons. (Dkt. No. 1-1 at 1, 6–16.) Petitioner additionally attacks his sentence based on the United States Supreme Court's opinion Alleyne v. United States , 570 U.S. 99 (2013). On February 4, 2020, Respondent filed a Motion

to Dismiss. (Dkt. No. 13.) On February 18, 2020, Petitioner advised the Court that he had not received Respondent's motion, which prompted the Court to direct Respondent to re-serve the motion and file a proof of service. (Dkt. Nos. 17 & 18.) On March 5, 2020, Petitioner filed a Motion for Order to Show Cause as to "WHY Respondent is opening, reading, photocopying, and withholding properly identified legal mail, outside Petitioner's presence without notice." (Dkt. No. 21 at 1.) Respondent was directed to respond and did so on March 16, 2020. (Dkt. Nos. 22 & 27.) On March 17, 2020, the Court directed Respondent to file a response to the Motion to dismiss by April 6, 2020. (Dkt. No. 28.) On April 6, 2020, Petitioner submitted a letter indicating that he had not received the motion. (Dkt. No. 34.) Also in that letter, Petitioner alleged that "[t]he Warden is instructing his mailroom clerks to destroy the mail," and he requested that this action be stayed pending the outcome of the COVID-19 crisis. (Id.) On April 10, 2020, the Court ordered Respondent to re-serve the Motion to Dismiss and to file an affidavit from the Warden of Petitioner's correctional institution averring that Petitioner had received the motion. (Dkt. No. 35.) Petitioner was given a deadline of May 25, 2020, to file a response to the Motion to Dismiss. (Id.)

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 4 of 15

On April 20, 2020, Respondent filed an affidavit by the Warden Bryan K. Dobbs, indicating that the Executive Assistant and Legal Liason for FCI Williamsburg attempted to provide a copy of the Respondent's motion, memorandum, and attachments to Petitioner and to allow Petitioner to review the Statement of Reasons from Petitioner's criminal case, but Petitioner refused to sign an acknowledgement of receipt of those documents and refused the documents themselves. (Dkt. No. 37.) On April 21, 2020, the Court issued an order giving Petitioner until May 25, 2020 to respond to the Motion to Dismiss. (Dkt. No. 38.) Additionally, the Court instructed the Clerk of Court to mail Petitioner a copy of Respondent's Motion to Dismiss and additional attachments. (Dkt. No. 38.) On April 22, 2020, Respondent filed a Motion to Show Cause, asserting that he was not being properly served and asking that this Court direct Respondent's attorney to justify the allegedly improper service. (Dkt. No. 40.) The motion was deemed moot in light of the Court's April 21st order. (Dkt. No. 42.) Petitioner did not file a response to the Motion to Dismiss. On June 11, 2020, the Court received a letter from Petitioner indicating that he had "been locked in a 6 by 9 since March 2020 without access to paper, stamps, copies or law." (Dkt. No. 46.) The deadlines for Petitioner to respond to Respondent's motion have lapsed. Petitioner's motion to show cause is fully briefed. As such, these motions are ripe for disposition.

STANDARD OF REVIEW Under established local procedure in this judicial district, a careful review has been made of the pro se petition filed in this case pursuant to the Rules Governing § 2254 Cases, 28 U.S.C. § 2254; the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No.

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 5 of 15

104-132, 110 Stat. 1214; and in light of the following precedents: Denton v. Hernandez, 504 U.S. 25

(1992); Neitzke v. Williams, 490 U.S. 319, 324-25 (1989); Haines v. Kerner, 404 U.S. 519 (1972); Nasim v. Warden, Md. House of Corr., 64 F.3d 951 (4th Cir. 1995) (en banc); and Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983).0F 1 Pro se pleadings are given liberal construction and are held to a less stringent standard than formal pleadings drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); De'Lonta v. Angelone , 330 F.3d 630, 633 (4th Cir. 2003). However, "[t]he 'special judicial solicitude' with which a district court should view . . . pro se complaints does not transform the court into an advocate." United States v. Wilson, 699 F.3d 789, 797 (4th Cir. 2012), cert. denied, 133 S. Ct. 2401 (2013). "Only those questions which are squarely presented to a court may properly be addressed." Weller v. Dept. of Soc . Servs. for City of Baltimore, 901 F.2d 387, 391 (4th Cir. 1990). Giving "liberal construction" does not mean that the Court can ignore a prisoner's clear failure to allege facts that set forth a cognizable claim. "Principles requiring generous construction of pro se complaints . . . [do] not require . . . courts to conjure up questions never squarely presented to them." Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985), cert. denied, 475 U.S. 1088 (1986).

DISCUSSION A. Motion to Dismiss Respondent argues that this action should be dismissed because Petitioner has not shown that § 2255 is inadequate or ineffective such that he may proceed under the savings clause. (Dkt. No. 13-1 at 5–8.) "It is well established that defendants convicted i n federal court are obliged to 1 The Rules Governing Section 2254 Cases in the United States District Courts may be applied in habeas actions filed pursuant to 28 U.S.C. § 2241. Rule 1(b) of the Rules Governing Section 2254 Cases in the United States District Courts states a "district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a)."

seek habeas relief from their convictions and sentences through § 2255." Rice v. Rivera , 617 F.3d 802, 807 (4th Cir. 2010) (citing In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997)). In contrast, a petition filed under § 2241 is used to challenge the manner in which a sentence is executed. Vial, 115 F.3d at 1194 n.5. Although Petitioner has labeled his present petition as one brought pursuant to § 2241, review of the petition reflects that Petitioner is attempting to bring an unauthorized successive § 2255 motion. As already discussed, Petitioner has previously brought § 2255 motions—the first was denied by the district court in the Western District of North Carolina, and the others were dismissed as successive in the various courts in which they were filed. Further, the Fourth Circuit Court of Appeals denied Petitioner's motion for authorization to file a successive § 2255 motion in the Fourth Circuit. Petitioner appears to be characterizing his present petition as a § 2241 petition in an effort to circumvent the requirement of obtaining permission to file a successive § 2255 motion. A prisoner cannot challenge his conviction and sentence under § 2241 unless he can satisfy the narrow exception of the § 2255 "savings clause," wh ich states:

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him

relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention. 28 U.S.C. § 2255(e); see Prousalis v. Moore, 751 F.3d 272, 275 (4th Cir. 2014) (observing that a prisoner "may file a habeas petition under § 2241 only if the collateral relief typically available under § 2255 'is inadequate or ineffective to test the legality of his detention'"), cert. denied, 135 S. Ct. 990 (2015). If a petitioner cannot meet the savings clause requirements then the § 2241

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 7 of 15

petition "must be dismissed for lack of jurisdiction." Rice , 617 F.3d at 807; U.S. v. Wheeler, 886 F.3d 415, 423 (4th Cir. 2018) ("[W]e hold that the savings clause is a jurisdictional pr ovision."). Accordingly, as applied here, Petitioner's § 2241 action is barred unless he can demonstrate that the relief available to him under § 2255 is inadequate or ineffective. Recently, the Fourth Circuit established a test for when a petitioner may meet the savings clause under § 2255 when he contests his sentence, not only his conviction:

§ 2255 is inadequate and ineffective to test the legality of a sentence when: (1) at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review; (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions; and (4) due to this retroactive change, the sentence now presents an error sufficiently grave to be deemed a fundamental defect. Wheeler, 886 F.3d at 429. 1. Simmons Argument Petitioner first asserts that he satisfies the Wheeler savings clause test given the Fourth Circuit Court of Appeals' decision in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). In Simmons, the Fourth Circuit amended the method by which a prior North Carolina conviction is considered a felony under federal sentencing laws. 649 F.3d 249–50. Petitioner argues that, in light of Carachuri and Simmons, one of his prior North Carolina convictions is no longer considered a felony, and therefore, cannot be used to enhance his sentence to career offender status. (Dkt. No. 1-1 at 6– 16.) Respondent disagrees, asserting that Petitioner cannot state a claim under Simmons. (Dkt. No. 13-1 at 6–8.) Thus, he cannot proceed under the savings clause. (Id.) According to the presentence investigation report ("PSR") in Petitioner's case, the base offense level for Petitioner's sentence was 34, which was adjusted to 37 based on Petitioner's

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 8 of 15

status as a career offender in accordance with U.S.S.G. § 4B1.1.1F 2

(PSR, ¶ 34.) The statutory sentencing range was twenty years' to life imprisonment pursuant to 21 U.S.C. § 841(b)(1)(A), and the Guideline sentencing range was 360 months to life imprisonment based on a total offense level of 37 and a criminal history category of VI. (PSR, ¶ 78 & 79.) Petitioner was

sentenced to life. According to U.S.S.G. § 4B.1.1, a defendant is a career offender if: (1) he was at least eighteen years old at the time he committed the instant offense; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) he has at least two prior felony convictions of either a crime of violence or a controlled substance offense. Under the Guidelines, a "controlled substance offense" includes a number of offenses under both state and federal law, but the offense must be "punishable by imprisonment for a term exceeding one year" to qualify. U.S.S.G. § 4B1.2. The record reflects that Petitioner was sentenced to five years' imprisonment for ea ch of the state controlled offense convictions used as the basis for Petitioner's career offender enhancement. (See PSR, ¶ 31 & 32.) As such, the district court's determination that Petitioner was a career offender followed the Guidelines.

2 The PSR states,

[T]he defendant has been convicted of Assault on a Law Enforcement Officer, Possession With Intent to Sell and Deliver Cocaine (two counts), Assault With a Deadly Weapon, and Possession With Intent to Sell and Deliver Marijuana. Since the instant offense involves a controlled substances offense; Conspiracy to Possess With Intent to Distribute, and Distribute, Cocaine and the defendant was 18 years or older at the time of its commission, the defendant is a career offender within the meaning of U.S.S.G. § 4B1.1 of the guidelines. The offense level determined under U.S.S.G. § 4B.1.1 is 37, rather than the lower level calculated above. (PSR, ¶ 24.)

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 9 of 15

Petitioner now argues that his sentence was improperly enhanced because his "North Carolina drug conviction was not a felony drug offense under federal law, and therefore could not trigger the enhancing provisions under USSG § 4B1.1 and 21 USC § 851." (Dkt. N o. 1-1 at 7.) He also alleges that his sentence "was enhanced upon an uncharged prior offense that was not determined to be an 'aggravating felony' for sentencing purpose[s] by either a judge or jury." (Id. at 8.) Petitioner's arguments are based on his in terpretation of Carachuri and Simmons and how those cases are applicable to his own. In Simmons, the Fourth Circuit held that a defendant's prior North Carolina conviction for non-aggravated, first-time marijuana possession was for an offense not "puni shable by imprisonment for a term exceeding one year," and thus did not qualify as a predicate felony conviction for purposes of the Controlled Substances Act ("CSA"). 649 F.3d 237. The Fourth Circuit held that the government could not rely on a hypothetical enhancement to set the maximum term of imprisonment under the CSA, and that the hypothetical aggravating factors could not be considered when calculating the defendant's maximum punishment. Id. at 243–44. In other words, the prior conviction constituted a felony under North Carolina law for purposes of an enhanced punishment only if the prior conviction was actually punishable for more than one year of imprisonment as to that defendant, not as to any hypothetical or "possible" defendant. Id. at 247. The Simmons decision was based on an interpretation of the Supreme Court's opinion in Carachuri , 560 U.S. 563, which held that, in the context of determining what constitutes a qualifying felony, the sentencing court

must examine the criminal record of the defendant presently before the court and not the record of a hypothetical defendant.2F 3

3 The Fourth Circuit later held that Simmons is retroactive to cases on collateral review. See Miller v. United States, 735 F.3d 141, 146 (4th Cir. Aug. 21, 2013) ("This Court applied Carachuri to create a new substantive rule."). Miller involved a claim of actual innocence of an

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 10 of 15

There is a crucial distinction between Petitioner's sentence and Simmons's sentence. In particular, Simmons was deemed a career offender based on the fact that he hypothetically could have been sentenced to imprisonment for more than a year for his state offense. Petitioner, on the other hand, was sentenced to five years' imprisonment for each of his state offenses. Thus, the career offender enhancement was not inappropriate under the Guidelines. Although Petitioner notes that he served less than a year of incarceration for his state offenses, Dkt. No. 1-1 at 7, the actual amount of time served is not part of the Guidelines analysis. As to Petitioner's arguments regarding the fact that his state offenses were not determined to be "aggravating felonies," that issue was relevant in Carachuri because the question was whether the petitioner was subject to removal from the United States under the Immigration and Nationality Act. 560 U.S. at 566–67. However, that issue is not relevant to Petitioner's sentence as such determinations are not part of the process by which defendants are deemed to be career offenders for purposes of sentence enhancements under the Guidelines. Similarly, it is irrelevant whether Petitioner's state offenses were recognized as felonies under the federal statutory scheme. To the extent that Petitioner claims error under Carachuri and Simmons based on an allegation that his state offenses were not presented to a judge or jury, the record belies Petitioner's claim. (PSR, ¶ 31 & 32.) Petitioner has failed to identify any error in the calculation of his sentence. As a result, he has not identified an error that is sufficiently grave to satisfy Wheeler's fundamental defect standard, whether the petition is brought under § 2241 or § 2255. Petitioner therefore fails to meet the requirements of § 2255's savings clause, and this Court lacks jurisdiction to consider Petitioner's § 2241 petition.

underlying 18 U.S.C. § 922(g) conviction. The present case does not involve actual innocence of a firearm conviction under § 922(g).

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 11 of 15

2. Alleyne Argument Petitioner additionally argues that "because the indictment, charging him with violating 21 U.S.C. § 841(a)(1), did not contain the applicable penalty provision under section 841(b), his conviction and sentence violates the principle enunciated in Alleyne." (Dkt. No. 1- 1 at 16.) Specifically, Petitioner asserts that he was found guilty by a jury of conspiracy to possess with intent to distribute, and distribute, a detectable amount of cocaine, but during sentencing, the judge found that Petitioner was responsible for between 15 and 50 kilograms of cocaine, which increased the

statutory sentencing range. (Id. at 17.) Since Petitioner was sentenced, the United States Supreme Court decided Alleyne v. United States, 570 U.S. 99 (2013), in which the Court held that "because m andatory minimum sentences increase the penalty for a crime, any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury." Id. at 103. Petitioner argues that he should be able to proceed under the savings clause based on Alleyne. The Alleyne decision has not been made retroactively applicable to cases on collateral review. See, e.g., United States v. Stewart, 540 F. App'x 171 (4th Cir. 2013) (observing that Alleyne has not been made retroactively applicable on collateral review); Billups v. Deboo, 2014 WL 4102479, *1 (N.D.W. Va. Aug. 13, 2014) (dismissing § 2241 petition because Alleyne is not retroactively applicable on collateral review), affirmed, 589 F. App'x 207 (4th Cir. 2015); Winkelman v. Oddo, 2015 WL 6693353, *4 (N.D.W. Va. Nov. 3, 2015) (same). Petitioner admits as much, but he offers two distinct arguments as to why Alleyne should be applied retroactively on collateral review. First, he asserts that, in light of the Supreme Court's decision in Welch v. United States, 136 S. Ct. 1257 (2016), the rule established in Alleyne is substantive and therefore presumptively retroactive on collateral review. (Dkt. No. 1-1 at 17–23.) Second, even if the rule

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 12 of 15

in Alleyne is procedural, Petitioner asserts that it "qualifies for the Teague 'water shed' exception and therefore applies retroactively." (Id. at 23–32.) Since Petitioner filed his petition in October 2019 and Respondent filed the Motion to Dismiss in February 2020, the Fourth Circuit decided Jones v. Zych, No. 15-7399, 2020 WL 2119889 (4th Cir. Apr. 23, 2020), in which the court considered these same arguments and reaffirmed that Alleyne is not retroactive. Specifically, the Fourth Circuit found "the function of the rule at issue in Welch [to be] distinguishable from the function of the Alleyne rule." Id. at *7. And based on the function of the Alleyne rule, the court found it to be procedural, not substantive. Id. at *6–*7. The Fourth Circuit also considered whether the Alleyne rule, though procedural, applied retroactively "as a 'watershed rule[] of criminal procedure' . . . ." Id. at *7. The court found that it did not. Id. at *8 ("[W]e join our fellow circuits in holding that Alleyne, like Apprendi, does not announce a watershed rule of criminal procedure, and thus does not apply retroactively to cases on collateral review under Teague.") Because Alleyne does not apply retroactively to cases on collateral review, Petitioner may not proceed under the savings clause on that basis. Petitioner therefore fails to meet the requirements of § 2255's savings clause, and this Court lacks jurisdiction to consider Petitioner's § 2241 petition. The undersigned therefore recommends this action be dismissed. B. Motion For Order to Show Cause On March 5, 2020, Petitioner filed a Motion for Order to Show Cause alleging that Respondent was "opening, reading, photocopying, and withholding properly identified legal mail, outside Petitioner's presence without notice." (Dkt. No. 21 at 1.) Respondent filed a response in opposition to the motion, arguing that Petitioner's claim is not cognizable in habeas corpus. (Dkt. No. 27 at 3–4.)

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 13 of 15

Petitioner's allegations regarding his legal mail do not challenge the fact or duration of his imprisonment. Cf. Preiser v. Rodriguez, 411 U.S. 475, 498 (1973) (recognizing that "the heart of habeas corpus" is "challenging the fact or duration of . . . physical confinement itself, and . . . seeking immediate release or a speedier release from that confinement"). Instead, Petitioner's allegations challenge the conditions of his confinement. See Greenhill v. Lappin, 376 F. App'x 757, 757 (9th Cir. Apr. 19, 2010) (indicating that a prisoner's claims "that prison officials have been retaliating against him by mishandling his special/legal mail" is a claim which relates to conditions of confinement, and the appropriate remedy lies in a civil action, not a § 2241 petition). Generally, such claims not cognizable ground for habeas relief under § 2241. Wilborn v. Mansukhani, 795 F. App'x 157, 164 (4th Cir. Nov. 8, 2019) (noting "that 'courts have generally held that a § 1983 suit or a Bivens action is the appropriate means of challenging conditions of confinement, whereas § 2241 petitions are not" (quoting Rodriguez v. Ratledge, 715 F. App'x 261, 265 –66 (4th Cir. 2017))) . Even if true the allegations within Petitioner's Motion for Rule to Show Cause do not entitle him to habeas relief. Accordingly, the undersigned denies his motion here.

CONCLUSION It is therefore RECOMMENDED that Respondent's Motion to Dismiss (Dkt. No. 13) be GRANTED. The Motion for Rule to Show Cause (Dkt. No. 21) is DENIED. The undersigned therefore recommends the § 2241 petition be dismissed. IT IS SO RECOMMENDED.

July 2, 2020 Charleston, South Carolina

2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 14 of 15 2:19-cv-02886-JFA Date Filed 07/02/20 Entry Number 50 Page 15 of 15

Notice of Right to File Objections to Report and Recommendation The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4 th

Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk United States District Court

Post Office Box 835 Charleston, South Carolina 29402 Failure to timely file specific written

objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).