

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TI LU,

Petitioner-Appellant,

v.

BRYAN BIRKHOLZ, Warden,

Respondent-Appellee.

No. 22-15555

D.C. No. 1:22-cv-00114-LEK-RT

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Leslie E. Kobayashi, District Judge, Presiding

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Federal prisoner Ti Lu appeals pro se from the district court's judgment dismissing his petition for a writ of habeas corpus under 28 U.S.C. § 2241. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *see Rodriguez v. Copenhaver*, 823 F.3d 1238, 1242 (9th Cir. 2016), and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lu contends that he meets the criteria for home confinement under the Coronavirus Aid, Relief, and Economic Security Act, but that the Bureau of Prisons (“BOP”) has not considered his eligibility in accordance with a BOP policy memorandum. To the extent Lu challenges the BOP’s individualized determination concerning his placement, the district court properly concluded that it lacked jurisdiction to consider that claim. *See* 18 U.S.C. § 3621(b); *Reeb v. Thomas*, 636 F.3d 1224, 1228 (9th Cir. 2011). The district court also properly dismissed as not cognizable Lu’s claim regarding the BOP’s alleged non-compliance with its policy memorandum. *See Reeb*, 636 F.3d at 1227 (“A habeas claim cannot be sustained based solely upon the BOP’s purported violation of its own program statement because noncompliance with a BOP program statement is not a violation of federal law.”).

AFFIRMED.