

1 being a felon in possession of a firearm. (*Id.*) Petitioner has a projected Good Conduct Time
2 release date of September 24, 2009, and a Full Term Expiration Date of February 4, 2011.
3 (*Id.* at 6.)

4 In September 2006, the Bureau of Prisons (BOP) found Petitioner eligible to
5 participate in its Non-Residential Drug Treatment Program (RDAP). (Dkt. 4-2 at 4, 14, 16.)
6 Successful completion of the program may result in up to a one year sentence reduction for
7 the prisoner. 18 U.S.C. § 3621(e)(2)(B).¹ The accompanying regulations provided that, due
8 to his conviction for felon in possession of a firearm, Petitioner was ineligible for a sentence
9 reduction based on completion of the RDAP. 28 C.F.R. § 550.58(a).² Therefore, Petitioner

11
12 ¹ 18 U.S.C. § 3621(e)(2)(B) provides:

13 (e) Substance abuse treatment. –

14

15 (2) Incentive for prisoners’ successful completion of treatment program. –

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17 (B) Period of custody.– The period a prisoner convicted of a
18 nonviolent offense remains in custody after successfully completing
19 a treatment program may be reduced by the Bureau of Prisons, but
such reduction may not be more than one year from the term the
prisoner must otherwise serve.

20 ² 28 C.F.R. § 550.58(a)(1)(vi)(B), in effect in 2006, provided:

21 An inmate who was sentenced to a term of imprisonment pursuant to the provisions
22 of 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense, and who is
23 determined to have a substance abuse problem, and successfully completes a
24 residential drug abuse treatment program during his or her current commitment may
be eligible, in accordance with paragraph (a) of this section, for early release by a
period not to exceed 12 months.

25 (a) Additional early release criteria.

26 (1) As an exercise of the discretion vested in the Director of the Federal
Bureau of Prisons, the following categories of inmates are not eligible for
27 early release:

28

(vi) Inmates whose current offense is a felony:

1 elected not to participate in the RDAP. (Dkt. 4-2 at 16.)

2 **DISCUSSION**

3 On January 7, 2008, Petitioner filed the instant Petition for Writ of Habeas Corpus
4 pursuant to 28 U.S.C. § 2241 challenging the BOP’s decision that he was ineligible for a
5 sentence reduction if he successfully completed the RDAP. (Dkt. 1 at 4.) Petitioner requests
6 the Court to deem him eligible for early release under 18 U.S.C. § 3621(e). (*Id.* at 16.)

7 Because Petitioner did not successfully complete the RDAP, he lacks standing to
8 challenge his eligibility for a sentence reduction under that program. Article III of the
9 Constitution limits the judicial power of the United States to the resolution of “cases” and
10 “controversies.” “No principle is more fundamental to the judiciary’s proper role in our
11 system of government than the constitutional limitation of federal-court jurisdiction to actual
12 cases or controversies.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341-342 (2006)
13 (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). “[O]ne of the controlling elements in
14 the definition of a case or controversy under Article III’ is standing.” *Hein v. Freedom From*
15 *Religion Foundation, Inc.*, 551 U.S. 587, 598 (2007) (quoting *ASARCO Inc. v. Kadish*, 490
16 U.S. 605, 613 (1989) (opinion of Kennedy, J.)).

17 Standing requires, at a minimum, three elements:

18 First, the plaintiff must have suffered an “injury in fact” – an invasion of a
19 legally protected interest which is (a) concrete and particularized, and (b)
20 “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must
21 be a causal connection between the injury and the conduct complained of – the
22 injury has to be “fairly . . . trace[able] to the challenged action of the
23 defendant, and not . . . th[e] result [of] the independent action of some third
24 party not before the court.” Third, it must be “likely,” as opposed to merely
25 “speculative,” that the injury will be “redressed by a favorable decision.”

26 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (citations omitted).

27 An eligibility prerequisite for the early release sought by Petitioner is successful
28 completion of the RADP program. Because Plaintiff has not completed the program and is
not eligible for early release, he has no legally protected interest in early release. Petitioner’s

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(B) That involved the carrying, possession, or use of a firearm
or other dangerous weapon or explosives (including any
explosive material or explosive device)

1 claim is “conjectural” or “hypothetical,” based on a speculative assertion of successful
2 completion some time in the future. For the same reason, there is no causal connection
3 between Petitioner’s ineligibility for early release, which is currently premised on his failure
4 to successfully complete the RADP not the regulations limiting his eligibility based on his
5 conviction for possession of a firearm. His failure to avail himself of the program breaks
6 even a hypothetical connection between the injury and the complained conduct.³

7 Finally, in *Arrington v. Daniels*, 516 F.3d 1106 (9th Cir 2008), the court invalidated
8 28 C.F.R. § 550.58(a)(1)(vi)(B) because it violated the Administrative Procedure Act.
9 Hence, since February 20, 2008, the regulations have not barred Petitioner from a sentence
10 reduction upon successful completion of the RDAP. Therefore, Petitioner’s claim is moot.
11 Additionally, Petitioner fails to satisfy the third element of standing because *Arrington* has
12 remedied his speculative injury.

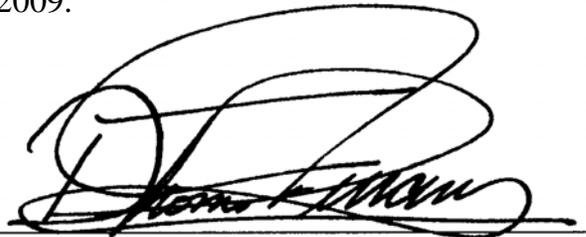
13 **RECOMMENDATION**

14 Based on the foregoing, the Magistrate Judge recommends that the District Court enter
15 an order DISMISSING the Petition for Writ of Habeas Corpus.

16 Pursuant to 28 U.S.C. § 636(b), any party may serve and file written objections within
17 ten days of being served with a copy of the Report and Recommendation. If objections are
18 not timely filed, they may be deemed waived. The parties are advised that any objections
19 filed are to be identified with the following case number: **CV-08-016-TUC-FRZ**.

20 The Clerk is directed to mail a copy of the Report and Recommendation to Petitioner.

21 DATED this 14th day of August, 2009.

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25 

26 D. Thomas Ferraro
27 United States Magistrate Judge

28 ³ The ability to participate in a drug treatment program is a benefit in itself, not an injury, regardless of the availability of early release. *See Murphy v. Hood*, 276 F.3d 475, 478 (9th Cir. 2001).