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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JASON DONALD SELSOR,

Petitioner,

v.

FELICIA PONCE, Warden,

Respondent.

Case No. CV 17-05206 PA (AFM)

**ORDER SUMMARILY  
DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS  
(28 U.S.C. § 2241)**

**INTRODUCTION**

Petitioner is incarcerated at the Federal Correctional Institution Terminal Island in San Pedro, California. On July 14, 2017, he filed a Petition for Writ of Habeas Corpus by a Person in Federal Custody (28 U.S.C. § 2241).

Petitioner claims that officials at the Bureau of Prisons (BOP) abused their discretion in denying him a one-year reduction in his sentence upon his successful completion of a residential drug abuse program (RDAP). The BOP had denied the sentence reduction because petitioner had a disqualifying conviction for dealing in firearms without a license. (ECF No. 1 at 18.)

As discussed below, the Petition is dismissed without prejudice because petitioner's challenge to the BOP's discretionary decision to deny him a sentence reduction upon completion of the RDAP is not subject to judicial review.

## DISCUSSION

1  
2 Rule 4 of the Rules Governing Section 2254 Cases in the United States  
3 District Courts provides in pertinent part: “If it plainly appears from the face of the  
4 petition and any exhibits annexed to it that the petitioner is not entitled to relief in  
5 the district court, the judge shall make an order for its summary dismissal and cause  
6 the petitioner to be notified.” Rule 1(b) provides that the district court may apply  
7 this rule to “a habeas corpus petition not covered by” 28 U.S.C. § 2254, such as a  
8 habeas petition covered by 28 U.S.C. § 2241. *See Lane v. Feather*, 2013 WL  
9 3280212, at \*1 (D. Or. Jun. 27, 2013) (“Pursuant to Rule 1(b) of the Rules  
10 Governing Section 2254 Cases, this court elects to apply Rule 4 to this 28 U.S.C.  
11 2241 action.”).

12 Congress has delegated to the BOP the duty to provide appropriate substance  
13 abuse treatment for each prisoner the BOP determines has a treatable condition of  
14 substance addiction or abuse. 18 U.S.C. § 3621(b). To carry out this requirement,  
15 the BOP must make available residential drug abuse programs (RDAP) for eligible  
16 prisoners. 18 U.S.C. § 3621(e)(1). As an incentive for successful completion of  
17 the RDAP, the BOP may reduce a prisoner’s sentence by up to one year. 18 U.S.C.  
18 § 3621(e)(2)(B). “Determining which prisoners are eligible to participate in RDAP  
19 is within the discretion of the BOP, as is the decision to grant or deny eligible  
20 prisoners sentence reductions upon successful completion of the program.” *Reeb v.*  
21 *Thomas*, 636 F.3d 1224, 1226 (9th Cir. 2011).

22 In 18 U.S.C. § 3625, Congress explicitly precluded judicial review of the  
23 BOP’s individualized RDAP decisions by excluding any “determination, decision,  
24 or order” made by the BOP pursuant to 18 U.S.C. §§ 3621-3624 from the  
25 provisions of the Administrative Procedure Act (which authorizes federal courts to  
26 hear actions involving a “legal wrong” suffered because of an agency action).  
27 Consequently, the BOP’s discretionary determinations in implementing the RDAP  
28 in individual cases are not subject to judicial review. *See Reeb*, 636 F.3d at 1227

1 (“[A]ny substantive decision by the BOP to admit a particular prisoner into RDAP,  
2 or to grant or deny a sentence reduction for completion of the program, is not  
3 reviewable by the district court.”). It follows that petitioner’s claim that the BOP  
4 abused its discretion in his individual case by denying him the sentence reduction  
5 for completion of the program cannot be reviewed by the Court.

6 Petitioner further contends that the BOP violated the law in denying him the  
7 sentence reduction because the BOP violated its own program statement about  
8 RDAP eligibility. (ECF No. 1 at 9.) Although federal courts may not review the  
9 BOP’s discretionary decisions in individual RDAP cases, it may review an  
10 allegation that a BOP action in this regard was unlawful. *See Close v. Thomas*, 653  
11 F.3d 970, 974 (9th Cir. 2011). This particular contention, however, is not subject to  
12 judicial review. “A habeas claim cannot be sustained based . . . upon the BOP’s  
13 purported violation of its own program statement because noncompliance with a  
14 BOP program statement is not a violation of federal law.” *Reeb*, 636 F.3d at 1227.  
15 Program statements are only interpretative guidelines that may be altered at will;  
16 they are not federal rules or regulations with the force of law. *See id.* The Court  
17 therefore cannot review petitioner’s argument that the denial of a sentence  
18 reduction in his case violated a BOP program statement. *See id.* (holding that the  
19 district court lacked jurisdiction to review a federal inmate’s claim that his  
20 expulsion from RDAP violated the BOP’s own program statement).

21 Finally, although the BOP’s discretionary decisions in individual cases  
22 involving the RDAP, particularly decisions based on program statements, are not  
23 subject to judicial review, federal courts may still review federal regulations  
24 implementing § 3621 to determine whether they are consistent with the statute. *See*  
25 *Abbott v. Federal Bureau of Prisons*, 771 F.3d 512, 514 (9th Cir. 2014). In this  
26 case, the BOP explained to petitioner that he was being denied a sentence reduction  
27 in part because his conviction for dealing in firearms without a license made him  
28 ineligible under 28 C.F.R. § 550.55(b)(5)(ii)-(iii), which precludes early release for

1 inmates with an offense involving the carrying, possession, or use of a firearm, or  
2 an offense that by its nature or conduct presented a serious potential risk of physical  
3 force against the person or property of another. (ECF No. 1 at 18.) Petitioner's  
4 argument that a conviction for dealing in firearms without a license is not an  
5 offense involving the carrying, possession, or use of a firearm or an offense that  
6 presented a serious potential risk of physical force (ECF No. 1 at 9) is frivolous. A  
7 conviction under 18 U.S.C. § 922(a)(1)(A) requires proof of importing,  
8 manufacturing, or dealing in firearms or shipping, transporting or receiving  
9 firearms -- all of which necessarily involve possession of a firearm.

10 Petitioner also appears to argue that a federal regulation that excludes him or  
11 other federal inmates from early release because they had convictions involving the  
12 carrying, possession, or use of a firearm is arbitrary and capricious because the  
13 regulation is not accompanied by any articulated rationale for the exclusion. (ECF  
14 No. 1 at 11.) Petitioner's argument is squarely foreclosed by the Ninth Circuit's  
15 decision in *Peck v. Thomas*, 697 F.3d 767, 772-73 (9th Cir. 2012), which held that  
16 the BOP's exclusion of federal inmates with an offense involving the carrying,  
17 possession, or use of a firearm from a sentence reduction under the RDAP had been  
18 adequately supported by the BOP's articulated rationale of the protection of public  
19 safety.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the Petition is summarily dismissed  
22 without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases in  
23 the United States District Courts.

24 LET JUDGMENT BE ENTERED ACCORDINGLY.

25 DATED: July 25, 2017

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28 PERCY ANDERSON  
UNITED STATES DISTRICT JUDGE