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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK STEFFENSEN,

Petitioner,

No. CIV S-11-0866 GEB GGH P

vs.

RICHARD B. IVES,

Respondent.

FINDINGS AND RECOMMENDATIONS

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Introduction

Petitioner is a federal prisoner proceeding pro se with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pending before the court is respondent’s motion to dismiss (MTD), filed on June 28, 2011, to which petitioner filed an opposition on July 25, 2011. Respondent contends that the petition should be dismissed for lack of subject matter jurisdiction based on ripeness, failure to state a cognizable habeas claim and because petitioner lacks standing. Petitioner, who is incarcerated at the Federal Correctional Institution (FCI) - Herlong, contends that the Bureau of Prisons (BOP) has not yet made a determination if he will be eligible for a year off his sentence, pursuant to 18 U.S.C. § 3621(e), if he is accepted into and completes

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1 the Residential Drug Abuse Program (RDAP).¹

2 Petitioner is presently serving a 168 month sentence for being in possession with
3 the intent to distribute cocaine base. His scheduled release date is in 2020. Petitioner has also
4 previously been in the custody of the BOP on three prior occasions. Petitioner was in custody
5 from August 1994 to December 2002, from September 2003 to December 2003 and from August
6 2004 to April 2005. During his first period of incarceration petitioner completed the RDAP
7 program in 2002, yet was found ineligible for a year off his sentence at that time.²

8 For a determination to be made regarding the year off of a sentence, an inmate
9 must first be found appropriate for the RDAP program. MTD at 6. The statute governing RDAP
10 specifies “priority [for treatment will be] accorded based on an eligible prisoner’s proximity to
11 release.” 18 U.S.C. § 3621(e)(1)(C). While the statute does not define “proximity to release” the
12 RDAP program states that “[i]nterviews will be conducted based on the inmate’s proximity to
13 release, ordinarily no less than 24 months from release.” MTD, Appx. 1, Chapter 2, page 13.

14 The gravamen of the petition is that it is a violation of petitioner’s rights that he
15 must wait until the end of his prison term before he can be eligible for the program and learn if
16 he is accepted.³ Petitioner requests this court to force the BOP to make the determination now if
17 he is eligible for the program and the year off his sentence. Petitioner also asks the court to

18 ¹ RDAP is an intensive drug treatment program for federal inmates with documented
19 substance abuse problems. The program utilizes both individual and group activities and
20 requires at least 500 hours of treatment over a period of 6 to 12 months. Treatment is conducted
21 in a unit set apart from the general prison population and is followed by institutional and/or
22 community-based transitional programs. Successful completion of RDAP can result in up to a
one-year reduction in a prisoner's sentence. Reeb v. Thomas, 636 F.3d 1224, 1225 (9th Cir.
2011)

23 ² Petitioner also seeks a year off his current sentence for his completion of RDAP during
a prior term of incarceration. Not surprisingly, inmates are only eligible for the time off their
24 sentence for completing RDAP during their current commitment. 28 C.FR. 550.55(a)(2).

25 ³ To the extent petitioner states this is an equal protection violation, he has failed to
26 demonstrate that he is in a protected class. Therefore, any Equal Protection claim would fail if
the BOP had any rational basis for waiting until near the end of a prisoner’s term to determine
eligibility for RDAP.

1 assume that he will be denied entry to the program and the year off his sentence.

2 Discussion

3 The court has no jurisdiction to review claims unless they are ripe. United States
4 v. Streich, 560 F.3d 926, 931 (9th Cir. 2009). The Supreme Court has explained, the

5 basic rationale [of the ripeness doctrine] is to prevent the courts, through
6 avoidance of premature adjudication, from entangling themselves in abstract
7 disagreements over administrative policies, and also to protect the agencies from
8 judicial interference until an administrative decision has been formalized and its
9 effects felt in a concrete way by the challenging parties.

8 Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49, 87 S.Ct. 1507 (1967). A claim is not ripe
9 “if it involves contingent future events that may not occur as anticipated, or indeed may not occur
10 at all.” Streich, 560 F.3d at 931 (quoting Thomas v. Union Carbide Agr. Prods. Co., 473 U.S.
11 568, 580-81, 105 S.Ct. 3325, (1985)).

12 The requirement that a party have “standing” to bring an action is part of the
13 case-or-controversy provisions of Article III of the Constitution. Lujan v. Defenders of Wildlife,
14 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). There are three elements:

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

20 Id. at 50-51 (internal quotations & citations omitted).

21 The two doctrines are related: “ripeness can be characterized as standing on a
22 timeline” and often “coincides squarely with standing’s injury in fact prong.” Thomas v.
23 Anchorage Equal Rights Commission, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc). To have
24 standing, a party must demonstrate a realistic danger that he will suffer some injury as the result
25 of the operation of the challenged statute or regulation. Id. at 1139.

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1 In the instant case, plaintiff has not been rejected from the program and thus has
2 not suffered any injury for the court to provide relief. Simply assuming that he will not be
3 eligible for the program and the year off his sentence is insufficient. Petitioner urges the court to
4 rule based on future events that may not occur as anticipated, or indeed may not occur at all.
5 Petitioner asks this court to predict the issues upon which his RDAP may be denied. This is the
6 exact type of situation that the Ninth Circuit sought to avoid in Streich.

7 To the extent the petition could be construed to challenge how the BOP prioritizes
8 entry into the RDAP program based on 24 months from release, petitioner is not entitled to any
9 relief. See Ruby v. Thomas, 2011 WL 1549205 (D. Or. April 21, 2011) (reviewing the
10 “24-month rule” in the context of the BOP’s charge to manage a residential drug treatment
11 program, the court found reasonable for the BOP to establish a time-frame for conducting
12 program interviews that takes into account the time needed for inmates to complete the program
13 and the requirement that treatment be prioritized based on proximity to release); Su’esu’e v.
14 Thomas, 2011 WL 2934315 (D. Or. June 22, 2011) (same); see also Mora–Meraz v. Thomas,
15 601 F.3d 933, 935 (9th Cir. 2010) (determining that the BOP’s “unwritten requirement” that
16 prisoners must present documented evidence of substance abuse within twelve months of
17 admission into RDAP was valid under the APA).⁴

18 Petitioner could be arguing that his case is ripe because he says it is, i.e., he
19 demands an early decision such that he may litigate it with plenty of time to exhaust any type of
20 judicial review. However, petitioner cites no authority that he can force an agency to make a
21 ruling now, despite the fact that expedited decision making for RDAP contravenes agency
22 regulations, because he desires to further litigate an adverse decision, speculating that it will be
23 adverse. Moreover, as set forth in Reeb 636 F.3d at 1228, in challenging an individualized
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25 ⁴ As it is one of the requirements to be eligible for the RDAP program that an inmate
26 have had a substance abuse issue, the undersigned will assume that petitioner had a substance
abuse problem even though he does not affirmatively plead that fact.

