

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARCELO SANDOVAL,

Petitioner,

v.

CAROL HOLINKA,

Respondent.

ORDER

11-cv-047-bbc

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This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241.

Petitioner Marcelo Sandoval is an inmate at the Federal Correctional Institution in Oxford, Wisconsin. He has paid the \$5 filing fee.

Petitioner states that he was coerced into taking part in the Inmate Financial Responsibility Program even though the district court never set a payment schedule for him. Petitioner was told that if he refused to join the program he would be placed in “refuse status” and might lose good-time credits. Now petitioner wants to end his participation in the program but staff tells him that he must continue to pay into the program or he will be punished and may even lose good-time credits. Petitioner wants this court to release him from further participation in the program without any sanctions.

Petitioner is challenging the execution of his sentence and not the imposition. Therefore, § 2241 is the proper statute under which to proceed. Kramer v. Olson, 347 F.3d 214, 217 (7th Cir. 2003). Nonetheless, I must deny the petition. Petitioner contends that

because the court that sentenced him failed to set a restitution payment schedule, the Bureau of Prisons cannot set such a schedule using the Inmate Financial Responsibility Program. The law is to the contrary. In United States v. Sawyer, 521 F.3d 792, 795 (7th Cir. 2008), the Court of Appeals for the Seventh Circuit made it clear that “judicial silence allows the Bureau to decide how much, if anything, to remit through the Inmate Financial Responsibility Program[.]” The court of appeals added that “[c]ourts are not authorized to override the Bureau’s discretion about such matters,” and that “[p]rison earnings and other transactions concerning prison trust accounts are so completely within the Bureau of Prisons’ control that it would be pointless for a judge to tell the convict how much to pay a month,” and thus, “a judgment of conviction need not contain a schedule of restitution payments to be made during incarceration.” Id. at 794-95.

Moreover, “[a]n inmate is free to decline to participate in the Inmate Financial Responsibility Program, but the failure either to participate or to comply with a financial plan created pursuant to the program carries certain consequences.” United States v. Lemoine, 546 F.3d 1042, 1047 (9th Cir. 2008). To the extent that petitioner is alleging that he is being threatened with the loss of good-time credits (a consequence not enumerated as an “effect of non-participation” in the regulation establishing procedures for the program, 28 CFR § 545.11), petitioner’s claim is not ripe. Although prisoners have a liberty interest in their good-time credits and thus must be afforded due process before prison officials interfere with those rights, Montgomery v. Anderson, 262 F.3d 641, 644-45 (7th Cir. 2001), petitioner alleges that his good-time credits have not yet been taken away. A claim is not

ripe if it depends on “contingent future events that may not occur as anticipated, or indeed may not occur at all.” Thomas v. Union Carbide Agricultural Products, 473 U.S. 568, 580-81, (1985). Because it uncertain whether petitioner’s good-time credits will be taken away if he chooses to leave the Inmate Financial Responsibility Program or whether those credits would be taken away without due process protections, this aspect of his petition is not ripe.

ORDER

IT IS ORDERED that

1. Petitioner Marcelo Sandoval’s petition for a writ of habeas corpus is DENIED.
2. The clerk of court is directed to enter judgment for respondent Carol Holinka and close this case.

Entered this 16th day of February, 2011.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge