

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBERT SHIPP	:	
	:	CIVIL ACTION NO.:
	:	
Plaintiff,	:	COMPLAINT
	:	
v.	:	
	:	
	:	
HUGH J. HURWITZ	:	
ACTING DIRECTOR	:	
U.S. BUREAU OF PRISONS	:	
	:	
&	:	
	:	
U.S. BUREAU OF PRISONS	:	
	:	
Defendants.	:	

COMPLAINT

Plaintiff, by his attorney Caleb Kruckenberg, Litigation Counsel, New Civil Liberties Alliance, hereby alleges the following:

PARTIES

1. Plaintiff, Robert Shipp, is a natural person and resident of the State of Illinois.
2. Mr. Shipp is currently in the custody of the U.S. Bureau of Prisons.
3. Defendant United States Bureau of Prisons (BOP) is an agency of the United States.
4. Acting Director Hugh J. Hurwitz is the acting head of the BOP.
5. Acting Director Hurwitz is sued in his official capacity.

JURISDICTION AND VENUE

6. This Court has federal question and supplemental jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under federal law, specifically the Administrative Procedure Act, 5 U.S.C. § 702.

7. This Court has the authority to order agency action in this matter pursuant to 5 U.S.C. § 702(1) and 28 U.S.C. §§ 2201 and 2202.

8. Venue for this action properly lies in this district pursuant to 28 U.S.C. § 1391(e)(1) because defendants are located within this district.

STATEMENT OF FACTS

9. A term of imprisonment is satisfied through actual time in custody plus good time credits. 18 U.S.C. §§ 3624(a), (b).

10. The Sentencing Reform Act of 1984 eliminated the federal parole system and sharply cut back on the rate at which federal prisoners could earn good time credit, providing in § 3624(b) that prisoners could receive “credit toward the service of the prisoner’s sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner’s term of imprisonment.”

11. This statute was restated in 28 C.F.R. § 523.20(c), which provided, “For inmates serving a sentence for an offense committed on or after April 26, 1996, the Bureau will award (1) 54 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has earned or is making satisfactory progress toward earning a GED credential or high school diploma[.]”

12. On July 16, 1993, the BOP implemented Program Statement 5880.30 to calculate good time credits under the statute and its implementing regulation.

13. This program statement implemented a calculation methodology that granted good time only for a person’s time spent in prison, as opposed to the duration of the sentence imposed by the court. *Barber v. Thomas*, 560 U.S. 474, 476-77 (2010).

14. As a result, the “prorated” good time calculation results in the availability of fewer than 54 days of good time credit per year of the “term of the imprisonment that the sentencing judge imposes.” *Id.* at 479.

15. Instead, a person is eligible only for a maximum of 47 days of good time for that period. *Id.*

16. The First Step Act, Public Law No. 115-391, was signed into law on December 21, 2018. Section 102(b)(1)(A) amended 18 U.S.C. § 3624 “(i) by striking ‘, beyond the time served, of up to 54 days at the end of each year of the prisoner’s term of imprisonment, beginning at the end of the first year of the term,’ and inserting ‘of up to 54 days for each year of the prisoner’s sentence imposed by the court,’; and (ii) by striking ‘credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence’ and inserting ‘credit for the last year of a term of imprisonment shall be credited on the first day of the last year of the term of imprisonment.’”

17. The statute *now* says that an eligible prisoner “may receive credit toward the service of the prisoner’s sentence of up to 54 days for each year of the prisoner’s sentence imposed by the court[.]” 18 U.S.C. § 3624(b).

18. Despite the clear mandate of the First Step Act, the BOP continues to calculate good time credit pursuant to Program Statement 5880.30 for all persons in custody of the BOP.

19. Mr. Shipp was charged in Case Number 1993-cr-350 in the United States District Court for the Northern District of Illinois.

20. Mr. Shipp was arrested on September 7, 1993 on federal charges and has been confined since.

21. Following a jury trial, Mr. Shipp was convicted of violating 21 U.S.C. §§ 841(a)(1), 843(b), and 846, and sentenced to a then-mandatory life term of imprisonment.
22. On February 26, 2015, the district court reduced Mr. Shipp's sentence to 360 months in custody under Amendment 782 to the U.S. Sentencing Guidelines.
23. Mr. Shipp began serving his federal sentence on July 14, 1994, and the BOP began computing his good time credits consistent with Program Statement 5880.30.
24. He is currently being held in home confinement in Chicago while he serves the remainder of his sentence.
25. As of May 7, 2019, the BOP calculated that Mr. Shipp's full-term sentence expiration was September 1, 2023, but calculated his projected release date as November 26, 2019, based on his good time credits.
26. Applying Program Statement 5880.30, the BOP calculated Mr. Shipp had earned 1309 days of good time credit and projected him to have earned 1375 days by November 26, 2019.
27. As of June 12, 2019, the BOP revised this calculation to reflect a "First Step Act Release" date of July 19, 2019.
28. At the same time, the BOP has also calculated Mr. Shipp's release date as **May 6, 2019**, based on his "projected" good time as of July 19th.
29. It appears therefore, that the BOP has already recalculated Mr. Shipp's sentence, but refuses to apply that calculation until July 19th, thereby keeping him confined for what will be 74 days beyond what BOP itself has calculated to be his release date.
30. If, however, the BOP were to properly apply the calculation found in amended Section 3624(b) and grant Mr. Shipp 54 days of good time per year of the "sentence imposed by the

court,” as of June 12, 2019, he would have earned 1601 days of good time, and would be projected to earn 1620 days of good time by November 26, 2019.

31. This new statutory calculation would result in a release date of **March 25, 2019**, which date has already passed.

32. On May 30, 2019, Mr. Shipp filed a formal grievance with the BOP Regional Director and included a signed FORM BP-10 grievance form and cover letter of counsel.

33. Mr. Shipp did not receive a response to his grievance.

34. No other avenues for an administrative remedy exist.

COUNT ONE—AGENCY ACTION UNLAWFULLY WITHHELD (5 U.S.C. § 706(1))
PLAINTIFF V. DEFENDANTS

35. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

36. 18 U.S.C. § 3624(b) commands the BOP to calculate good time “credit toward the service of the prisoner’s sentence of up to 54 days for each year of the prisoner’s sentence imposed by the court[.]”

37. 18 U.S.C. § 3624(b) became effective on December 21, 2018.

38. The BOP continues to calculate good time credit pursuant to Program Statement 5880.30 for all persons in custody of the BOP, and refuses to apply the statutory change set out in 18 U.S.C. § 3624(b)

39. The BOP has already calculated Mr. Shipp’s release date as **May 6, 2019**, based on the statutory change, but has not yet applied that date to Mr. Shipp’s sentence.

40. If the BOP applied 18 U.S.C. § 3624(b) to Mr. Shipp he would be entitled to immediate release from custody.

41. Upon information and belief the BOP has refused to apply the changes to 18 U.S.C. § 3624(b) for every other person in BOP's custody.

42. The BOP thus continues to hold Mr. Shipp, and others similarly situated, in custody contrary to the directive of 18 U.S.C. § 3624(b).

43. The BOP has thus failed to take discrete action it is required to take by applying the statutory change to the good time calculation.

44. This Court must "compel" the BOP to comply with 18 U.S.C. § 3624(b) pursuant to 5 U.S.C. § 706(1).

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiff Mr. Shipp demands a declaratory judgment and order compelling Defendants to apply 18 U.S.C. § 3624(b), as amended on December 21, 2018, to Mr. Shipp and all those similarly situated within the custody of the U.S. Bureau of Prisons, and an award of attorneys' fees, expenses, costs and disbursements, and any other relief that may be appropriate.

June 14, 2019

Respectfully,

/s/ Caleb Kruckenberg

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Appearing Pursuant to LCvR 83.2(g)