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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**MARK JOHN WALKER,**  
**Defendant.**

**3:10-cr-00298-RRB**

**GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MOTION FOR  
HABEAS CORPUS RELIEF AND FOR  
INTERIM CONDITIONAL RELEASE  
PENDING DETERMINATION  
REGARDING THE APPLICABILITY  
OF THE FIRST STEP ACT  
AMENDMENT TO THE GOOD TIME  
CREDIT STATUTE**

The United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, through Pamala R. Holsinger and Hannah Horsley, Assistant United States Attorneys, submits this response in opposition to Defendant's Motion For Habeas Corpus Relief

and For Interim Conditional Release Pending Determination Regarding the Applicability of the First Step Act Amendment to the Good Time Credit Statute. ECF 103. Petitioner's motion should be dismissed for lack of jurisdiction because it may only be brought before a court with custodial jurisdiction pursuant to 28 U.S.C. § 2241.

### **BACKGROUND**

In 2011, Mark John Walker pled guilty to five counts of deprivation of rights under color of law, in violation of 18 U.S.C. § 242. ECF 75. One count included a sentencing enhancement for aggravated sexual abuse, and he was sentenced to 120 months imprisonment. ECF 83. He is currently in custody at Big Spring FCI, located in Big Spring, Texas. Exhibit A at 1. Big Spring FCI is within the custodial jurisdiction of the United States District Court for the Northern District of Texas. Exhibit A at 2.

On January 25, 2019, Defendant filed this motion, seeking recalculation of his good conduct time credit pursuant to the First Step Act of 2018 and immediate release. ECF 103. Section 102(b) of the First Step Act amends 18 U.S.C. § 3642(b) to change the method by which the Bureau of Prisons must calculate good conduct time credits. Pursuant to Section 102(b)(2) and newly enacted 18 U.S.C. § 3632(a), the effective date is deferred until after BOP creates and releases its risk assessment program, as required by Section 101(a) of the First Step Act, within 210 days of the First Step Act's enactment.<sup>1</sup>

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<sup>1</sup> Section 102(b)(2) states: "EFFECTIVE DATE.—The amendments made by this subsection shall take effect beginning on the date that the Attorney General completes and releases the risk and needs assessment system under subchapter D of Chapter 229 of title 18, United States Code, as added by section 101(a) of this Act."

## DISCUSSION

Motions to contest the legality of a sentence must be filed under § 2255 in the sentencing court, while petitions that challenge the manner, location, or conditions of a sentence's execution must be brought pursuant to § 2241 in the custodial court. *Harrison v. Ollison*, 519 F.3d 952, 956 (9th Cir. 2008) (citing *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000)).

Furthermore, prior to filing a petition under 28 U.S.C. § 2241, a petitioner must exhaust his administrative remedies. *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004).

Defendant challenges the computation of his good conduct time credit under the recently enacted First Step Act of 2018. Because this is a challenge to the manner in which his sentence is being executed, as opposed to the legality of his sentence, Walker must file a petition under § 2241 in the Northern District of Texas where he is in custody. *See Strausbaugh v. Shartle*, 2018 WL 6831964, at \*3 (D. Ariz. Dec. 28, 2018) (challenging the reduction in good conduct time is a challenge to the manner in which sentence is executed under § 2241).

Defendant's motion must be dismissed for lack of jurisdiction. This Court lacks jurisdiction over the computation of defendant's sentence and good time credit because he is not in custody in this district. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (plain language of habeas statute confirms general rule that for challenges to present confinement, jurisdiction lies /

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only in the district of confinement).<sup>2</sup> Defendant must instead seek relief in the Northern District of Texas where he is in custody.

Dated: February 1, 2019

Respectfully submitted,

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<sup>2</sup> The government reserves the right to oppose defendant's substantive arguments, and seeks leave to file a substantive response to defendant's motion if the Court chooses to exercise jurisdiction and reach the merits.