

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

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**MAY 26 2000**

**PATRICK FISHER**  
Clerk

STEVEN LAWRENCE SCHARDEIN,

Petitioner-Appellee,

v.

L.E. FLEMING,

Respondent-Appellant.

No. 00-6001

(D.C. No. 99-CV-519-L)  
(W.D.Okla.)

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**ORDER AND JUDGMENT** \*

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Before **SEYMOUR** , Chief Judge, **EBEL** and **BRISCOE**, Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Petitioner Steven Schardein, a federal inmate housed at the Federal Correctional Institution in El Reno, Oklahoma (FCI El Reno), filed this habeas action against respondent L. E. Fleming, the warden at FCI El Reno, challenging

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

a nationwide Bureau of Prisons regulation and program statement that rendered him ineligible for early release consideration pursuant to § 32001 of the Violent Crime Control and Law Enforcement Act of 1994, codified at 18 U.S.C.

§ 3621(e)(2)(B). The district court granted habeas relief in favor of Schardein.

Fleming now appeals. We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

Fleming asserts the district court erred in concluding that the BOP regulation and program statement in question conflict with the clear language of § 3621(e)(2)(B). We recently rejected the precise arguments asserted by Fleming on appeal. See Ward v. Booker, 202 F.3d 1249 (10th Cir. 2000). In his appellate brief, Fleming acknowledges the decision in Booker “is directly on point with this case,” and simply asks the panel to “hold this case pending the resolution of [an] en banc suggestion and issuance of the mandate” in Booker. Respondent’s Aplt Brief at v. This court entered an order denying the petition for rehearing in Booker on April 4, 2000, and the mandate issued in that case on April 12, 2000. Booker is binding on this panel and, as appropriately noted by Fleming, directly controls the outcome of this appeal.

The order of the district court conditionally granting Schardein’s petition

for writ of habeas corpus is AFFIRMED.

Entered for the Court

Mary Beck Briscoe  
Circuit Judge