NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDREW STEVEN GRAY,

Petitioner - Appellant,

v.

MARION FEATHER, Warden, FDC
Seatac; DR. ROBERT LONE, RDAP
Coordinator,

Respondents - Appellees.

No. 12-35197

D.C. No. 2:10-cv-02045-MJP

MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, Chief Judge, Presiding

Submitted September 24, 2013[**]

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

Federal prisoner Andrew Steven Gray appeals from the district court's

judgment denying his 28 U.S.C. § 2241 habeas petition. We have jurisdiction

under 28 U.S.C. § 1291. We review de novo a district court's denial of a section

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[*]   This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

[**]   The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

2241 habeas petition, *Bowen v. Hood*, 202 F.3d 1211, 1218 (9th Cir. 2000), and we affirm.

Gray challenges a Bureau of Prisons rule categorically excluding inmates convicted of offenses involving "the carrying, possession, or use of a firearm" from eligibility for early release following completion of a Residential Drug Abuse Treatment Program. *See* 28 C.F.R. § 550.55(b)(5)(ii) (2009). Gray's claim is foreclosed by our decision in *Peck v. Thomas*, in which we upheld the challenged rule as procedurally valid under Section 706 of the Administrative Procedure Act. 697 F.3d 767, 772-73 (9th Cir. 2012), *cert. denied*, 133 S. Ct. 1289 (2013). Contrary to Gray's contention, *Peck* does not conflict with our earlier decisions in *Arrington v. Daniels*, 516 F.3d 1106 (9th Cir. 2008), and *Crickon v. Thomas*, 579 F.3d 978 (9th Cir. 2009).

Gray's motion to file the supplemental brief submitted on March 5, 2013, is granted. The arguments raised in the supplemental brief do not change our analysis.

AFFIRMED.