compulsory. If one appellate court can change the "agreement," what stops the others? The answer — this Court.

A. Whether the term "exclusive jurisdiction" is open to interpretation.

10 USC §858(a) states, "Prisoners

Attachment "A"

I. Whether it was Congress' intent for the U.S. Parole Commission to determine the parole eligibility date (PED) of federally-transferred military inmates.

As recently as 2018, Judge Michelson from the Court of Appeals quotes Bates v. Wilkinson (5th circuit) as 10 U.S.C. §858(a) as subjecting military prisoners, confined in federal penitentiaries to "the [parole] statute applicable to federal prisoners." In fact, several circuits have been in agreeance — until now. The Court of Appeals for the Sixth Circuit has exposed the fact that their agreement was voluntary and now this Honorable Court is called upon to make it

the Rules and Procedures Manual, § 2.2 of Subpart A, defines an eligible prisoner. Petitioner asks that this Honorable Court ORDER the USPC to apply it to every federally-transferred military inmate.

V. whether 10 USC §58(a) incorporates USC § 4202 and USC §4205 for parole considerations of federally-transferred military prisoners even though the Sentencing Reform Act is repealed.

THIS is the "House of cards" the lower courts' argument is based on. If this Honorable Court roles that this is an error than the only conclusion is that the Petitioner has been wrongfully denied parole and

Conclusion:

This Honorable Court is being called upon to:

1) INTERPRET the will of Congress in regards to 10 USC § 858(a)
- and -
COMPEL the lower courts to enforce it uniformly.

2) TO ORDER the U.S. Parole Commission to apply § 2.2 - of its Rules and Procedures Manual to every federally-transferred military inmate.

3) Any other remedy that this Honorable Court may see fit.

NOT RECOMMENDED FOR PUBLICATION

No. 19-6381

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMAAL A. LEWIS, SR.,	)	
	)	
Petitioner-Appellant,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE EASTERN DISTRICT OF
HECTOR JOYNER, Warden,	)	KENTUCKY
	)	
Respondent-Appellee.	)	

ORDER

Before: SILER, STRANCH, and DONALD, Circuit Judges.

Jamaal A. Lewis, Sr., a pro se federal prisoner, appeals the district court's judgment denying his petition for a writ of habeas corpus under 28 U.S.C. § 2241. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In October 2006, Lewis, then a soldier in the United States Army, was convicted in a general court-martial of murder, attempted robbery, and aggravated assault with a firearm. The military court sentenced Lewis to a term of life imprisonment with the possibility of parole. Lewis was convicted in a second court-martial of willfully disobeying a superior non-commissioned officer, mutiny, damaging military property, assault and battery, and kidnapping. Lewis received a four-year term of imprisonment for these convictions. In 2012, the Army transferred Lewis from confinement at the United States Disciplinary Barracks (USDB) at Fort Leavenworth, Kansas, to the Federal Bureau of Prisons (BOP).[1]

[1] *See* 10 U.S.C. § 858(a) ("[A] sentence of confinement adjudged by a court-martial or other military tribunal . . . may be carried into execution by confinement in any place of

In October 2014, Lewis applied to the United States Parole Commission for parole. The Parole Commission initially intended to consider Lewis's application because he was nearing completion of ten years of his sentence, but it cancelled his parole hearing upon receiving notice from the USDB that he was not eligible for parole for twenty years. The Parole Commission therefore changed Lewis's parole-eligibility date to September 2025.

Lewis then filed grievances disputing the computation of his parole-eligibility date. The BOP rejected Lewis's grievances pursuant to its program statement on the administration of sentences for military prisoners, which requires it to accept sentence computations provided by the Records Office of the USDB. *See* BOP Program Statement 5110.16 ¶ 4. And under Department of Defense regulations, service members sentenced to a term of life imprisonment for crimes committed after February 15, 2000, are not eligible for parole until they have served twenty years of imprisonment. The BOP determined therefore that Lewis's sentence computation was correct.

In April 2019, Lewis filed a § 2241 petition in the Eastern District of Kentucky, the district of his confinement, contesting the BOP's calculation of his sentence. Lewis claimed that since he was in BOP custody, he was subject to the laws and regulations of the Parole Commission which, according to him, meant that he was eligible for parole after serving ten years of his life sentence.[2] Lewis claimed that the BOP's policy of deferring to the USDB's computation of his sentence unreasonably discriminates against military prisoners, in violation of his right to the equal protection of the laws. Lewis also claimed that the BOP miscalculated his "two-thirds" release

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confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States."); 18 U.S.C. § 4083 ("Persons convicted of offenses against the United States or by courts-martial punishable by imprisonment for more than one year may be confined in any United States penitentiary.").

[2] *See* 10 U.S.C. § 858(a) (providing that military prisoners confined in the BOP custody "are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated"); 18 U.S.C. § 4205(a) ("Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years."), *repealed by* Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 2027.

date.[3] Lewis asked the district court to order the BOP to change his parole-eligibility date "to reflect U.S. Parole Commission's standards" and "to stop discriminating against military inmates."

Lewis also filed a motion for a change of venue, claiming that the district court was biased against him because it had dismissed his previous § 2241 petition without prejudice for failing to pay the district court filing fee. He also claimed that the district court would not correctly apply the controlling precedents to his petition because it had rejected his claims in another lawsuit challenging his sentence computation that he had filed pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The district court construed Lewis's motion to change venue as a motion to disqualify under 28 U.S.C. § 455 and denied it because he failed to establish any grounds upon which an objective person could question the court's impartiality. The court then concluded that the parole-eligibility provisions of 18 U.S.C. § 4205 did not apply to Lewis because they were repealed by the Sentencing Reform Act of 1984, and he committed his offenses after the effective date of the Act. The district court rejected Lewis's claim that failure to apply the repealed provisions of § 4205 results in discrimination against military inmates because ordinary federal prisoners are not entitled to parole at all. Additionally, the court pointed out that accepting Lewis's argument would mean that he would be eligible for parole earlier than military prisoners in military custody, thus resulting in discrimination against those inmates. Finally, the district court concluded that it was reasonable for the BOP to defer to the USDB's computation of Lewis's sentence because he had been sentenced by a military court. The district court therefore denied Lewis's petition.

Repeating the arguments that he raised below, Lewis contends that the district court erred in denying his petition and his motion for a change of venue.

A § 2241 petition filed in the district of his confinement is the appropriate method for a federal prisoner to challenge the BOP's execution of his sentence. *See Charles v. Chandler*, 180

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[3] *See* 18 U.S.C. § 4206(d) ("Any prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier."), *repealed by* Sentencing Reform Act of 1984.

F.3d 753, 756 (6th Cir. 1999) (per curiam). We review de novo a district court's judgment denying a § 2241 habeas petition. *See id.* at 755.

The BOP determined that Lewis was not eligible for parole until 2025 based on its policy for administrating sentences for military inmates that requires it to accept the sentence computations of the USDB. The BOP adopted this program statement in order to implement its agreement with the Army to confine military inmates consistent with the requirements of 10 U.S.C. § 858. *See* BOP Program Statement 5110.16 ¶ 3. Because the BOP is charged with implementing § 858, this program statement is entitled to "some deference," *Reno v. Koray*, 515 U.S. 50, 61 (1995), and "where the agency's interpretation of a statute is at least as plausible as competing ones, there is little, if any, reason not to defer to its construction," *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993). And here, the BOP's program statement is a plausible interpretation of § 858(a).

As the Fourth Circuit has persuasively reasoned, although military inmates may be confined in the BOP, the Department of the Army retains legal custody of a military inmate like Lewis because § 858(a) provides that the "execution" of such a prisoner's sentence may be accomplished by "confinement in" the BOP. *See United States v. Joshua*, 607 F.3d 379, 389 (4th Cir. 2010). In comparison, the court observed, other federal offenders "shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed." *Id.* (quoting 18 U.S.C. § 3621(a)) (emphasis omitted). "That Congress chose the words 'confinement in' rather than 'committed to the custody of,'" the court concluded, indicates that a military prisoner's transfer to the BOP does "not remove the Army's legal custody over him," and thus that "the Army retain[s] ultimate authority over his detention." *Id.* This conclusion is consistent with the notice that the USDB provided to Lewis upon transferring him to the BOP, which informed him that "[t]he U.S. Disciplinary Barracks will retain administrative control over you for the purpose of disposition boards and sentence computation."[4] And because computation of a prisoner's sentence is central

[4] We may take judicial notice of the administrative records relevant to Lewis's parole eligibility because they were filed in his previous lawsuit. *See Harrington v. Vandalia-Butler Bd. of Educ.*, 649 F.2d 434, 441 (6th Cir. 1981).

to "the execution or manner in which the sentence is served," *Charles*, 180 F.3d at 756, the BOP's program statement requiring it to defer to the USDB's sentence computation for a military inmate is a plausible construction of § 858(a).

And as the district court observed, the program statement treats Lewis, as a military inmate, *more* favorably than other federal offenders because he retains his eligibility for parole under military regulations, whereas the Sentencing Reform Act abolished parole for all other offenders for offenses committed after the effective date of the Act. *See Terrell v. United States*, 564 F.3d 442, 444-45 (6th Cir. 2009). The program statement is therefore consistent with § 858(a)'s requirement that military inmates in the BOP be given the same treatment as other federal inmates. The cases that Lewis cites for the proposition that military inmates are eligible for parole under § 4205 involved offenses that predate the passage of the Sentencing Reform Act and therefore do not apply in his case. And because the repealed parole provisions do not apply to Lewis, he is not entitled to a calculation of his "two-thirds" release date.

Accordingly, we defer to the BOP's program statement on administrating military sentences and conclude that the BOP appropriately deferred to the USDB's calculation of Lewis's parole-eligibility date.

Because the BOP does not treat military inmates less favorably than other federal inmates with respect to parole eligibility, Lewis's equal protection claim fails as a matter of law. *See Dixon v. Univ. of Toledo*, 702 F.3d 269, 278 (6th Cir. 2012).

Finally, the district court correctly denied Lewis's motion for a change of venue, construed as a motion to disqualify, because it was based entirely on the court's previous adverse rulings, which is insufficient to establish judicial bias. *See Liteky v. United States*, 510 U.S. 540, 555 (1994).

We **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 19-6381

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMAAL A. LEWIS, SR.,

Petitioner-Appellant,

v.

HECTOR JOYNER, Warden,

Respondent-Appellee.

ORDER

Before: SILER, STRANCH, and DONALD, Circuit Judges.

Jamaal A. Lewis, Sr., a pro se federal prisoner, petitions the court to rehear its order of June 1, 2020, affirming the district court's judgment denying his petition for a writ of habeas corpus under 28 U.S.C. § 2241.

Lewis has not shown that we overlooked or misapprehended a point of law or fact in affirming the district court's judgment. *See* Fed. R. App. P. 40(a)(2).

Accordingly, we **DENY** the petition. Additionally, we **DENY** Lewis's requests to publish our order, *see* 6 Cir. I.O.P. 32.1(b)(1), and to submit his petition for rehearing to a new panel, *see Liteky v. United States*, 510 U.S. 540, 555 (1994).

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

JAMAAL LEWIS, SR.,

Petitioner,

v.

HECTOR JOYNER,

Respondent.

Case No. 7:19-36-REW

MEMORANDUM OPINION
AND ORDER

*** *** *** ***

Petitioner Jamaal Lewis, Sr., is an inmate at the United States Penitentiary ("USP")-Big Sandy in Inez, Kentucky. Proceeding without an attorney, Lewis filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and has paid the $5.00 filing fee. DE 1. In his § 2241 petition, Lewis seeks relief regarding eligibility for parole.

This matter is before the Court to conduct the initial screening required by 28 U.S.C. § 2243. *Alexander v. Bureau of Prisons*, 419 F. App'x 544, 545 (6th Cir. 2011). A petition will be denied on screening "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief." Rule 4, Rules Governing § 2254 Cases in the U.S. Dist. Cts. (applicable to § 2241 petitions pursuant to Rule 1(b)).

I.

Before screening Lewis's petition, the Court must address a motion for change of venue filed by Lewis (DE 4). As justification for a new venue, Lewis points to two earlier dispositions: *Lewis v. Joyner*, No. 7:19-cv-24-REW (E.D. Ky. 2019), in which the undersigned dismissed without prejudice Lewis's § 2241 habeas petition for failure to pay the filing fee, and *Lewis v.*

Kizziah, No. 7:17-cv-6-KKC, 2019 WL 722569 (E.D. Ky. Feb. 20, 2019), in which then-Chief Judge Caldwell dismissed Lewis's civil-rights complaint filed pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 91 S. Ct. 1999 (1971). *See* DE 4. According to Lewis, these prior dismissals merit a "change of venue where he could get a fair/unbiased judgment based on Sixth Circuit precedent." *Id.* Although styled as a motion for change of venue, the substance of Lewis's motion seeks to disqualify the undersigned from ruling on Lewis's petition.

A judge is required to disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). This standard is "not based on the subjective view of a party," *Burley v. Gagacki*, 834 F.3d 606, 615–16 (6th Cir. 2016) (internal quotation omitted), but is instead an objective one, requiring a judge to recuse "if a reasonable, objective person, knowing all of the circumstances, would have questioned the judge's impartiality." *Hughes v. United States*, 899 F.2d 1495, 1501 (6th Cir. 1990) (citations omitted).

Section 455(b)(1) further requires disqualification when a judge "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(b)(1). In this context, the words "bias or prejudice" refer to "a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not possess . . . or because it is excessive in degree." *Liteky v. United States*, 114 S. Ct. 1147, 1155 (1994) (emphasis in original); *see also Williams v. Anderson*, 460 F.3d 789, 814 (6th Cir. 2006). To justify recusal under 28 U.S.C. § 455, "[t]he alleged bias must 'stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.'" *Youn v. Track*, 324 F.3d 409, 423 (6th Cir. 2003) (quoting *United States v. Grinnell Corp.*, 86 S. Ct. 1698, 1710 (1966)).

The Sixth Circuit has cautioned that "[t]here is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is." *Easley v. Univ. of Mich. Bd. of Regents*, 853 F.2d 1351, 1356 (6th Cir. 1988) (internal quotation omitted); *see also Lyell v. Renico*, 470 F.3d 1177, 1186–87 (6th Cir. 2006). And, as the Sixth Circuit noted in *City of Cleveland v. Krupansky*, 619 F.2d 576 (6th Cir. 1980), unnecessary recusals waste judicial resources. *Id.* at 579. Likewise, granting groundless disqualification motions encourages judge-shopping. *See id.*

Here, Lewis proffers no reason why a reasonable, objective person would question the undersigned's impartiality, nor does he make any allegation that the undersigned has knowledge resulting from any extrajudicial activities or exposure to this case. Rather, Lewis argues that the undersigned should recuse because of Lewis's own belief that "either the Court does not know the precedent [of the issues presented in his petition], does not respect it, or will not give the Petitioner a fair and equitable judgment." *See* DE 4. As evidence of the Court's bias, Lewis points only to his dissatisfaction with judicial rulings in his other cases. However, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. . . . Almost invariably, they are proper grounds for appeal, not for recusal." *Liteky*, 114 S. Ct. at 1157. While Lewis may disagree with the Court's legal conclusions, the proper method to assert his arguments for a different result—once a final judgment has been entered—is to pursue an appeal, which he did not do in either of his prior cases. The Court has considered the factors under 28 U.S.C. § 455 and determines that recusal is neither required nor warranted.

II.

Turning to the substance of Lewis's petition, Lewis claims that his current parole-eligibility date, as calculated by the Federal Bureau of Prisons ("BOP"), is incorrect. Lewis first presented

his challenge to the BOP's calculation by way of a civil-rights complaint filed in this Court pursuant to *Bivens*. *See Lewis v. Kizziah*, No. 7:17-cv-6-KKC. In that case, then-Chief Judge Caldwell summarized the facts giving rise to Lewis's argument on parole-eligibility calculation:

> On October 6, 2006, Lewis was sentenced by a Department of the Army, General Court-Martial to a life term of confinement with the possibility of parole for his convictions of the following: 1) attempted robbery in violation of 10 U.S.C. § 880; 2) murder in violation of 10 U.S.C. § 918; and 3) aggravated assault with a firearm in violation of 10 U.S.C. § 928. [R. 18, 25-1] While he was serving this sentence, Lewis was again court martialed and sentenced on December 16, 2011 to a 4-year term of confinement for his convictions of: 1) willfully disobeying a superior non-commissioned officer in violation of 10 U.S.C. § 890; 2) mutiny in violation of 10 U.S.C. § 894; 3) damaging military property in violation of 10 U.S.C. § 908; 4) assault and battery in violation of 10 U.S.C. § 928; and 5) kidnapping in violation of 10 U.S.C. § 934. [R. 18-4, 25-1]
>
> Although Lewis began serving his sentence in Army custody at the United States Disciplinary Barracks ("USDB") at Ft. Leavenworth, Kansas, he was transferred to the custody of the federal Bureau of Prisons ("BOP") in July 2012. [R. 18, 25-1] On October 30, 2014, Lewis applied to the United States Parole Commission ("USPC") for an initial parole hearing. [R. 25-1] Lewis states that the BOP initially calculated his parole eligibility date as September 6, 2015, which coincided with his service of 10 years on his life sentence. [R. 18; 25-1 at p. 3] According to Lewis, although he signed paperwork to appear before the USPC, his case manager at FCI-Hazelton did not turn in the paperwork because she did not believe that Lewis' parole eligibility date was correct. [R. 18] According to Defendant's motion, as the USPC prepared to conduct Lewis' parole hearing, a USPC employee contacted USDB to obtain Lewis' records, at which time a USDB employee informed the USPC employee that, because Lewis was serving a life sentence, he should not be eligible for parole until he has served 20 years of his life sentence. [R. 25; 25-1 at p. 11] Thus, according to the USDB employee, Lewis' parole eligibility date should be changed to September 5, 2025. [*Id.*]
>
> Accordingly, the BOP changed its computation to correct Lewis' parole eligibility date to September 5, 2025. [R. 18-4 at p. 4] Lewis claims that the BOP is now wrongfully denying him parole privileges because it is enforcing an allegedly inaccurate parole eligibility date. Lewis filed this lawsuit as a civil rights action seeking declaratory judgment and injunctive relief. [R. 1]

See Lewis v. Kizziah, No. 7:17-cv-6-KKC, at DE 31.

In his *Bivens* action, Lewis claimed that the BOP's enforcement of the September 2025 parole-eligibility date violates Lewis's rights under 10 U.S.C. § 858 and 18 U.S.C. § 4205(a). *See*

Lewis v. Kizziah, No. 7:17-cv-6-KKC at DE 1; *id.* at DE 18. After being served with a copy of the complaint, Defendant Warden Gregory Kizziah (the former Warden at USP-Big Sandy), filed a motion to dismiss Lewis's complaint pursuant to Fed. R. Civ. P. 12(b), for failure to state a claim. *Id.* at DE 25. Kizziah's motion asserted that, under applicable Department of Defense ("DOD") regulations, Lewis is not eligible for parole until he serves at least twenty years of his sentence; thus he is not entitled to the earlier parole-eligibility date that he seeks. *Id.* After full briefing, Judge Caldwell granted Kizziah's motion and dismissed Lewis's complaint with prejudice. *Id.* at DE 31.

Lewis has now, in essence, re-packaged his previously presented claims as a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. DE 1.[1] In his habeas petition, Lewis argues that the BOP is "unreasonably discriminating against a military transferred prisoner in violation of his Fifth Amendment right to equal protection and there is no rational basis for its actions." *Id.* at 6. In support of this claim, Lewis alleges that the BOP's method of calculating his parole-eligibility date treats military prisoners that have been transferred to a federal BOP facility (like Lewis) differently from those military prisoners confined at U.S. Disciplinary Barracks. *Id.* at 7. That is his textual statement, but Lewis quickly pivots to demanding that he, as a military transferee, receive treatment equivalent to persons convicted in civil courts. *See id.* ¶ 13(a). Because he claims that the BOP is not correctly calculating his "two-thirds" parole-eligibility date, he requests that the Court "ORDER the parole eligibility date to reflect the U.S. Parole Commission's standards, and ORDER the USBOP to stop discriminating against military

[1] Although presented as a "new" habeas petition, in reality, Lewis's petition appears to be more in the nature of an appeal of Judge Caldwell's dismissal of his case, as he specifically challenges many of the legal conclusions reached in her Memorandum Opinion and Order dismissing the *Bivens* complaint. *See* DE 1 at 12–14. However, Lewis did not appeal that dismissal, and the time for doing so has long since expired.

inmates." *Id.* at 8. However, as already determined by Judge Caldwell, there has been no violation of the equal-protection component of the Due Process Clause of the Fifth Amendment, as Lewis is not being treated any differently than similarly situated military inmates. *See Lewis v. Kizziah*, No. 7:17-cv-6-KKC, at DE 31. He is receiving the precise military justice sentence and treatment as a like military detainee would receive.

In the petition here, Lewis rehashes his theory that the BOP's enforcement of the September 2025 parole-eligibility date violates his rights under 10 U.S.C. § 858 and 18 U.S.C. § 4205. However, in her thorough, well-reasoned decision, Judge Caldwell rejected that argument and specifically found that neither Lewis's statutory nor constitutional rights were violated. *Lewis v. Kizziah*, No. 7:17-cv-6-KKC, at DE 31. Arguably, because Lewis's current pleading has been filed as a habeas case, rather than a civil-rights case, the causes of actions may be considered to be non-identical for res judicata purposes.[2] Even so, the Court takes judicial notice of the proceedings in *Lewis v. Kizziah*, No. 7:17-cv-6-KKC, particularly Kizziah's motion to dismiss (DE 25), Lewis's Response in Opposition (DE 27), and the Memorandum Opinion and Order (DE 31) granting the motion to dismiss and dismissing the case with prejudice. Lewis's habeas petition must be dismissed for the same substantive reasons that warranted dismissal of his earlier *Bivens* claim.[3]

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[2] A claim is barred by res judicata "if all of the following elements are present: '(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their 'privies'; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action.'" *Browning v. Levy*, 283 F.3d 761, 771–72 (6th Cir. 2002) (quoting *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 880 (6th Cir. 1997)).

[3] This Court "may take judicial notice of proceedings in other courts of record." *Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980); *see also* Fed. R. Evid. 201(b)(2).

According to Department of Defense ("DOD") policy regarding parole eligibility, "[i]n cases in which a prisoner is convicted of an offense committed after February 15, 2000, and has been sentenced to confinement for life, the prisoner must have served at least 20 years of confinement" before being eligible for release on parole. *See id.* at DE 25-2 (Attachment 2: Department of Defense Instructions (DoDI) 1325.07, Enclosure 2, § 18(a)(2)(c) (March 11, 2013)). Lewis concedes that: 1) he was sentenced by a military court after February 15, 2000; and 2) he was sentenced to confinement for life. *See* DE 1 at 11 (Statement of Fact). Thus, DOD policy on parole eligibility requires that he serve 20 years of confinement before being eligible for parole.

Lewis does not appear to dispute that, were he in military custody, the DOD policy requiring service of at least twenty years of confinement would apply to him. *See id.* at 4. Nor could he, on account of the indisputable clarity of the DOD policy. But according to Lewis, in light of his transfer to BOP custody, neither the BOP nor the USPC may rely on the parole-eligibility date provided by the USDB (determined pursuant to the DOD policy), but instead must apply the now-repealed federal parole statutes to determine his parole-eligibility date. *Id.* at 13–15.

It is not clear on which statute Lewis relies to calculate what he concludes is his parole-eligibility date of September 6, 2015. At one point in his petition, he claims that he should be eligible for parole after serving only ten years of his sentence in accordance with 18 U.S.C. § 4205(a), which—prior to its repeal—provided that "[w]henever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law." 18 U.S.C. § 4205 (*repealed by* Pub. L. 98-473, Title II, § 218(a)(5), 98 Stat. 2027 (Oct. 12, 1984)). *See* DE 1 at 12. However, he later argues that his parole-eligibility date should have been computed pursuant to a formula for life

sentences provided by 18 U.S.C. § 4206(d), which provided that "[a]ny prisoner, serving a sentence of five years or longer, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier." 18 U.S.C. § 4206(d) (*repealed by* Pub. L. 98-473, Title II, § 218(a)(5), 98 Stat. 2027 (Oct. 12, 1984)). *See* DE 1 at 15. Thus, under § 4206, he would be eligible for parole after serving thirty years of his life sentence.

Regardless of whether he relies on § 4205 or § 4206, Lewis's argument depends on his theory that 10 U.S.C. § 858(a) incorporates the federal parole-eligibility standards of 18 U.S.C. § 4202. *See* DE 1 at 13. However, Lewis continues to overlook that the Sentencing Reform Act of 1984 repealed both § 4205 and § 4206; these provisions yet only apply in cases where the crimes were committed before November 1, 1987, the effective date of the repeal. *See* 18 U.S.C. §§ 4201–4218, *repealed by* Pub. L. 98-473, Title II, § 218(a)(5), 98 Stat. 2027 (Oct. 12, 1984); *see also* 18 U.S.C. § 3551. Since a military court sentenced Lewis in 2006—well after the repeal of the federal parole statutes—neither § 4205 nor § 4206 applies to him.

Lewis relies upon 10 U.S.C. § 858(a) to bolster his argument. Section 858(a) provides:

> a sentence of confinement adjudged by a court-martial . . . may be carried into execution by confinement . . . in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

10 U.S.C. § 858(a). According to Lewis, § 858's incorporation of the federal parole-eligibility standards of § 4205 and § 4206, and his transfer from military custody, render inapplicable the military parole-eligibility standards. DE 1 at 14–15. However, Lewis cites outdated law for this

proposition; for example, *King v. Federal Bureau of Prisons*, 406 F. Supp. 36 (E.D. Ill. 1976) and *O'Callahan v. Attorney General*, 230 F. Supp. 766 (D. Mass. 1964) both predate the Sentencing Reform Act, which repealed the federal parole statutes.[4] *See* DE 1 at 13–14.

In *Lewis v. Kizziah*, No. 7:17-cv-6-KKC, Judge Caldwell addressed the significance of *King*:

> Moreover, in *King*, a case in which the application of the federal parole eligibility standards of 18 U.S.C. § 4202 resulted in an increase in a military prisoner's minimum term of confinement, the Court held that there is no rational basis for the increase to his term of confinement based solely on a change in his place of confinement from a military to a federal prison. *King*, 406 F. Supp. at 39.
> The Court then explained[:] "Since there is no rational basis for calculating petitioner's parole eligibility pursuant to the statute applicable to federal prisoners, 10 U.S.C. § 858(a) is unconstitutional. It unconstitutionally discriminates against petitioner by denying him the same parole treatment provided to military prisoners who are not transferred to a federal penitentiary. To provide petitioner equal protection of the laws his parole eligibility must be calculated in the same manner as these prisoners. The Court therefore finds that petitioner's parole eligibility should be calculated pursuant to the Army regulation and that he is therefore eligible for parole after serving ten years." *Id.*

Lewis v. Kizziah, No. 7:17-cv-6-KKC, at DE 31 at 5.

Lewis argues that the failure to apply the repealed federal parole statutes to him amounts to unconstitutional discrimination against him by denying him the same parole treatment of

[4] Lewis also relies on *Holt v. Terris*, although he provides no citation for this opinion. Presumably, he intends to rely on *Holt v. Terris*, 269 F. Supp. 3d 788 (E.D. Mich. 2017), which held that, where a military prisoner is serving a life sentence, he may not use his Military Abatement Good Time ("MAGT") to advance the date that he will likely be released on parole. *Id.* at 789. Rather, "MAGT earned by a prisoner serving an indeterminate life sentence must be held in abeyance unless and until that prisoner's sentence is reduced to a determinate sentence." *Id.* Although the Court stated in passing that the USPC in *Holt* directed the BOP to calculate a "two-thirds" date for purposes of determining Holt's parole eligibility date (in an apparent reference to § 4206(d)), its reasons for doing so were not relevant to the Court's decision and, accordingly, were not further discussed by the Court. *See id.* at 789–91. Even so, because Holt was serving a life sentence, his "two-thirds" date calculated by § 4206(d) was 30 years from the start of his sentence. *Id.* at 790. Thus, applying *Holt*, Lewis (who is also serving a life sentence) would not be eligible for parole until 30 years from the start of his sentence, rather than the 20 years provided by the DOD Policy. This surely is of no appeal to Lewis.

ordinary federal prisoners. DE 1 at 15. But Lewis resists the reality that "ordinary federal prisoners" are, categorically, no longer entitled to parole. Additionally, Lewis compares himself to the wrong set of prisoners. In *King*, the Court identified as discriminatory the failure to treat the petitioner like other military prisoners who had not been transferred to a federal facility. *King*, 406 F. Supp. at 39. Applying *King* requires that Lewis's parole-eligibility date be determined by applying the same standards and policies applicable to other military prisoners not in BOP custody. Lewis's argument runs counter to the logic of *King*; as Judge Caldwell previously noted, "it would be discriminatory to find that Lewis should be eligible for parole significantly sooner than other inmates remaining in military custody simply because he was transferred to a BOP facility." *Lewis v. Kizziah*, No. 7:17-cv-6-KKC, at DE 31 at 6. Moreover, to the extent Lewis argues that his parole-eligibility date should be determined pursuant to § 4206, because he is serving a life sentence, he would not be eligible for parole under § 4206 until he had served thirty years of his sentence, rather than the twenty years provided by the DOD Policy. Finally, of course, the BOP defers to the USDB calculation; that results, here, in Lewis being treated exactly like military prisoners not transferred to the BOP. In other words, Lewis gets the precise equality his petition pursues. He most assuredly does not want equal treatment relative to BOP civil system convicts from the same period; that set has no eligibility for parole.

Lastly, Lewis repeatedly suggests that neither the BOP nor the USDB have any role to play in calculating his parole-eligibility date, in light of the USPC Manual, which provides that "[p]risoners sentenced by military courts-martial and then transferred to a federal institution come under the exclusive jurisdiction of the United States Parole Commission for parole purposes." United States Parole Commission Rules and Procedures Manual, 2.2-03 Military Prisoners,https://www.justice.gov/sites/default/files/uspc/legacy/2010/08/27/uspc-

manual111507.pdf. Judge Caldwell likewise addressed—and rejected—Lewis's theory on this point:

> However, this grant of exclusive jurisdiction does not preclude the USPC from deferring to the BOP with respect to calculation of the parole eligibility date. As noted by Defendant[] [in the motion to dismiss Lewis's *Bivens* complaint], the USPC, [] an agency of the Department of Justice ("DOJ"), is not declining jurisdiction; rather it is electing to defer to the BOP, another DOJ agency, with respect to the determination of the parole eligibility date.

See Lewis v. Kizziah, No. 7:17-cv-6-KKC, at DE 31 at 6; *id.* at DE 25 at 4–5; *see also Gomez v. U.S. Parole Comm'n*, No. CIV. 05-3829 (RBK), 2006 WL 2465628, at *7 (D.N.J. Aug. 19, 2006), *aff'd*, 246 F. App'x 102 (3d Cir. 2007) (noting that "[t]he USPC relies on the BOP to compute a federal prisoner's sentence, which would include certain dates pertinent to the USPC's activities, such as, the parole eligibility date, the two-thirds date, and mandatory release date, but it is the USPC that makes the substantive determination as to whether parole should be granted").

Judge Caldwell continued: "In turn, the BOP defers to the Records Office of the U.S. Army Disciplinary Barracks in Fort Leavenworth, Kansas, with respect to military sentence computations." *See Lewis v. Kizziah*, No. 7:17-cv-6-KKC, at DE 31 at 6; *id.* at DE 25-3 (Attachment 3: BOP Program Statement 5110.16(4) (Sept. 13, 2011)) (noting that the BOP "must accept the sentence computation provided by military authorities, and refer suspected errors, or challenges to the sentence computation by the inmate, to the military Records Office for resolution."). Because a military court, rather than a civilian court, sentenced Lewis, "this deference is entirely appropriate." *See id.* at DE 31 at 7.

For all of these reasons, the Court finds that it plainly appears from Lewis's petition that he is not entitled to relief based on the § 2241 petition filed in this Court, as he has failed to demonstrate a violation of his constitutional rights in connection with the calculation of his parole-eligibility date. The sound analysis of Judge Caldwell, from the prior iteration, abides.

Accordingly, the Court **ORDERS** as follows:

1. The Court **DENIES** DE 4, Lewis's motion for change of venue;
2. The Court **DENIES** DE 1, Lewis's petition for a writ of habeas corpus;
3. The Clerk **SHALL** dismiss this matter and strike it from this Court's active docket; and
4. The Court will enter a corresponding judgment this date.

This the 22nd day of October, 2019.

Signed By:
Robert E. Wier
United States District Judge