

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

LOPEZ *v.* DAVIS, WARDEN, ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT

No. 99–7504. Argued October 30, 2000– Decided January 10, 2001

Under 18 U. S. C. §3621(e)(2)(B), “[t]he period a [federal] prisoner convicted of a nonviolent offense remains in custody after successfully completing a [substance abuse] treatment program may be reduced by the Bureau of Prisons” (BOP). The BOP therefore ranked ineligible for early release all inmates incarcerated for “crime[s] of violence.” Initially, the BOP defined the term “crimes of violence” to include, among other offenses, a drug trafficking conviction under 21 U. S. C. §841, if the offender received a two-level sentence enhancement under United States Sentencing Commission, Guidelines Manual (USSG) §2D1.1(b)(1), for possessing a dangerous weapon in connection with the drug offense. The Courts of Appeals thereafter divided over the validity of classifying drug offenses involving firearms possession as crimes of violence. The Circuit division prompted the BOP to issue the regulation now before the Court. That regulation denies early release to several categories of prisoners, including inmates whose current offense is a felony attended by “the carrying, possession, or use of a firearm.” 28 CFR §550.58(a)(1)(vi)(B). The BOP rests this denial not on a definition of “crimes of violence,” but on the BOP’s asserted discretion to prescribe additional early release criteria.

Petitioner Lopez was convicted of possession with intent to distribute methamphetamine in violation of 21 U. S. C. §841. Finding that Lopez possessed a firearm in connection with his offense, the District Court enhanced his sentence by two levels pursuant to USSG §2D1.1(b)(1). While incarcerated, Lopez requested substance abuse treatment. The BOP found him qualified for its treatment program, but categorically ineligible, under 28 CFR §550.58(a)(1)(vi), for early release. Ordering the BOP to reconsider Lopez’s eligibility for early

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release, the District Court held that the BOP may not categorically count out, based upon sentencing factors or weapon possession, inmates whose underlying conviction was for a nonviolent crime. The Eighth Circuit reversed. It reasoned that §3621(e)(2)(B)'s "may . . . reduc[e]" formulation allows the BOP discretion to devise a regime based on criteria that can be uniformly applied. To the extent Congress left a gap in §3621(e)(2)(B) for the BOP to fill, the Court of Appeals stated, deference is owed the BOP's interpretation under *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–845, 866, so long as the interpretation is a permissible construction of the statute. The BOP's decision to deny early release to drug traffickers who carry firearms, the court concluded, represents a manifestly permissible statutory construction and an appropriate exercise of discretion.

*Held:* The regulation at issue is a permissible exercise of the BOP's discretion under §3621(e)(2)(B). Pp. 7–14.

(a) Section 3621(e)(2)(B) gives the BOP discretion to grant or deny a sentence reduction, but leaves open the manner in which the discretion is to be exercised. If an inmate meets the two statutory prerequisites for sentence reduction— conviction of a nonviolence offense and successful completion of drug treatment— then §3621(e)(2)(B) instructs that the BOP "may," not that it must, grant early release. The statute's use of the permissive "may" contrasts with Congress' use of a mandatory "shall" elsewhere in §3621 to impose discretionless obligations, *e.g.*, the obligation to provide drug treatment when funds are available, see §3621(e)(1). Sensibly read, §3621(e)(2)(B)'s sentence reduction discretion parallels the grant of discretion in §3621(e)(2)(A) to retain a prisoner who successfully completes drug treatment "under such [custodial] conditions as the [BOP] deems appropriate." The constraints Lopez urges— requiring the BOP to make individualized determinations based only on postconviction conduct— are nowhere to be found in §3621(e)(2)(B). Beyond instructing that the BOP has discretion to reduce the period of imprisonment for a nonviolent offender who successfully completes drug treatment, Congress has not identified any further circumstance in which the BOP either must grant the reduction, or is forbidden to do so. In this familiar situation, where Congress has enacted a law that does not answer the precise question at issue, all this Court must decide is whether the BOP, the agency empowered to administer the early release program, has filled the statutory gap in a way that is reasonable in light of the Legislature's revealed design. *E.g.*, *NationsBank of N. C., N. A. v. Variable Annuity Life Ins. Co.*, 513 U. S. 251, 257. Pp. 7–11.

(b) The BOP may categorically exclude prisoners from early release

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eligibility based on their preconviction conduct. The Court rejects Lopez's argument that the BOP may take into account only postconviction conduct. The BOP need not blind itself to preconviction conduct that the agency reasonably views as jeopardizing life and limb. By denying eligibility to violent offenders, the statute manifests congressional concern for preconviction behavior— and for the very conduct leading to conviction. The BOP may reasonably attend to these factors as well. The statute's restriction of early release eligibility to nonviolent offenders does not cut short the considerations that may guide the BOP in implementing §3621(e)(2)(B). See *INS v. Yueh-Shaio Yang*, 519 U. S. 26, 31. The Court also rejects Lopez's argument that the BOP must not make categorical exclusions, but may rely only on case-by-case assessments. Even if a statutory scheme requires individualized determinations, which this scheme does not, the decisionmaker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority. *E.g.*, *Heckler v. Campbell*, 461 U. S. 458, 467. The approach pressed by Lopez— case-by-case decisionmaking in thousands of cases each year— could invite favoritism, disunity, and inconsistency. Pp. 11–13.

(c) The regulation excluding Lopez is permissible. The BOP reasonably concluded that an inmate's prior involvement with firearms, in connection with the commission of a felony, suggests his readiness to resort to life-endangering violence and therefore appropriately determines the early release decision. P. 13.

186 F. 3d 1092, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, SOUTER, THOMAS, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and KENNEDY, J., joined.