

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

RICHARD ZEITLIN,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No.: 2:26-cv-00213-BL-SMD
	)	
WARDEN, FPC MONTGOMERY	)	
	)	
Respondent.	)	
	)	

ANSWER AND RESPONSE TO 28 U.S.C. § 2241 HABEAS PETITION

COMES NOW Respondent Warden, FPC Montgomery, by and through Thomas Govan, United States Attorney for the Middle District of Alabama, and submits this Answer and Response to Petitioner’s 28 U.S.C. § 2241 Habeas Petition. Petitioner alleges that he was wrongfully disallowed First Step Act (“FSA”) time credits for a 93-day period between his sentencing and his arrival at FPC Montgomery, his designated facility. As set forth below, the Court should dismiss this Petition because Petitioner’s claims are not ripe for review and the Court lacks jurisdiction to consider them. Furthermore, even if the Court had jurisdiction, Petitioner did not exhaust his mandatory administrative remedies prior to filing his Petition. Finally, Petitioner did not successfully participate in recommended FSA programming during the time period in question and thus is not entitled to the credits which he seeks in his Petition.

I. INTRODUCTION AND FACTS

Petitioner Richard Zeitlin, Federal Register number 73600-510, is a BOP inmate currently residing at FPC-Montgomery, in Montgomery, Alabama. (Ex. 1, Declaration of Spanishia Glass, ¶ 3, Attachment 1, Public Information Inmate Data). Petitioner was sentenced on December 10,

2024, to a 121-month (10 years, 1 month) term of imprisonment. (*Id.* at ¶ 4). His projected good conduct time release date is March 20, 2032, and his projected date of release, via First Step Act release, is September 7, 2031. (*Id.*) He alleges in Petition that the BOP denied him 30 to 35 days of FSA credits he should have earned between December 10, 2024, when he was sentenced, and March 13, 2025, when he arrived at his designated facility. (Doc. 1, Petition, at pg. 27). He seeks a court order directing the BOP to apply all his FSA credits as earned. (*Id.*).

Under the FSA, federal inmates who meet certain criteria, including participating in BOP recommended recidivism reduction programs and productive activities, are entitled to earn a number of credits that can be applied towards prerelease custody or an early transfer to supervised release. *See* 18 U.S.C. § 3632(d)(4)(C). *See also* 18 U.S.C. 3624(g)(3). More specifically, the FSA provides that “[a] prisoner shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.” 18 U.S.C. § 3632(d)(4)(A)(i); 28 C.F.R. § 523.42(c)(1). “A prisoner determined by the [BOP] to be at a minimum or low risk for recidivating, who, over 2 consecutive assessments, has not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.” 18 U.S.C. § 3632(d)(4)(A)(ii); 28 C.F.R. § 523.42(c)(2).

In this case, Petitioner argues that he was denied FSA time credits from the date of his sentencing until he arrived at his designated BOP facility. During this time, Petitioner was temporarily housed at in-transit facilities on his way to his designated facility at FPC Montgomery. (Ex. 1, Glass Decl., at ¶ 6, Attachment 4, Assignment History, pg. 5). Petitioner first began taking EBBRs and PAs recommended by the BOP on March 18, 2025, when he enrolled in an “Aids Awareness” class at FPC Montgomery. (*Id.*, Attachment 4, Assignment History, pg. 3). He did

not successfully participate in any EBBRS or PAs prior to this date. (*Id.*) All other courses that Petitioner completed prior to March 18, 2025, were completed prior to his sentencing and were not recommended EBBRS or PAs. (*Id.*)

II. ARGUMENT AND CITATION OF AUTHORITY

A. This Court Lacks Jurisdiction Because Petitioner's Claims are Not Ripe.

As an initial matter, this Court should dismiss this Petition for lack of jurisdiction because Petitioner is not yet eligible to have any FSA credits applied and his claims are not ripe for review. *See Council v. Washington*, Case No. 25-cv-312, 2025 U.S. Dist. LEXIS 234630, at *5-8 (M.D. Ala. Dec. 2, 2025) (Watkins, J.). Under Article III of the Constitution, courts are constrained to decide only live cases or controversies. *See Gardner v. Mutz*, 962 F.3d 1329, 1338 (11th Cir. 2020). This means a court cannot adjudicate a claim that is not ripe for review. *See Lozman v. City of Riviera Beach*, 119 F.4th 913, 917 (11th Cir. 2024); *Club Madonna v. City of Miami Beach*, 924 F.3d 1370, 1379 (11th Cir. 2019). The purpose of the ripeness doctrine is to, among other things, “protect ... agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *See Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). Thus, a claim is not ripe if it “rests upon contingent future events that may not occur as anticipated or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998) (quotations omitted). As set forth below, Petitioner's claims are not ripe because he has not yet earned enough FSA credits to equal the time that he has left on his sentence even if he were awarded additional credits for the challenged time periods when he did not participate in FSA programming, *see* 18 U.S.C. § 3624(g)(1)(A), and thus a decision about his credits is premature.

As stated *supra*, under the FSA, eligible prisoners who successfully complete BOP

recommended evidence-based recidivism reduction programming earn FTCs that are applied toward time in prerelease custody or supervised release. *See* 18 U.S.C. § 3632(d)(4)(A), (C). Under the FSA, however, prisoners are only eligible to have their FSA time credits applied if they meet certain criteria. *See* 18 U.S.C. § 3624(g). The relevant statute defines eligible prisoners as ones who have, among other things, “*earned time credits* ... in an amount equal to the remainder of the prisoner’s imposed term of imprisonment.” *See* 18 U.S.C. § 3624(g)(1)(A) (emphasis added). Thus, as the Eleventh Circuit recently reiterated, “[a] prisoner is not eligible to be released to prerelease custody or supervised release based on their participation in FSA programs until he has ‘earned time credits under [the FSA] ... in an amount that is equal to the remainder of the prisoner’s imposed term of imprisonment.’” *Bolze v. Warden, FCC Coleman-Low*, 2026 U.S. App. LEXIS 6581, at *1 (11th Cir. March 4, 2026) (*citing and quoting* 18 U.S.C. § 3624(g)(1)(A)). Only when a prisoner meets this eligibility criteria can they “have their time credits applied toward prerelease custody or supervised release.” *See Mills v. Starr*, Case No. 21-1335, 2022 U.S. Dist. LEXIS 160325, at *10 (D. Minn. Aug. 17, 2022), *report and recommendation adopted*, 2023 U.S. Dist. LEXIS 51190 (D. Minn. Mar. 27, 2023). Indeed, “[f]ederal courts around the country have routinely held § 3624(g)(1)(A) to mean that the BOP is permitted to apply time credits only once an inmate has earned enough credits to equal the remainder of his sentence.” *See Nieto-Molina v. Warden, FCI Petersburg Low*, Case No. 25-cv-315, 2026 U.S. Dist. LEXIS 7584, at *8 (E.D. Va. Jan. 13, 2026) (*quoting Patrick v. Heckard*, Case No. 23-CV-00234, 2024 U.S. Dist. LEXIS 31404, at *7 (S.D. W. Va. Jan. 26, 2024)).

This “statutory requirement has a common-sense basis.” *See Adkins v. Engleman*, Case No. 22-cv-1988, 2022 U.S. Dist. LEXIS 196100, at *4-5 (C.D. Cal. Sept. 8, 2022), *report and recommendation adopted*, 2022 U.S. Dist. LEXIS 195279 (C.D. Cal. Oct. 24, 2022). An inmate

may not continue to earn FSA credits in the future at the same rate, or he may lose credits due to misconduct in prison. *See id.* *See also Snider*, 2026 U.S. Dist. LEXIS 84896, at *8 (“Courts interpreting this provision have recognized that the statute conditions application on credits actually earned, not anticipated, and that earned credits may be lost through misconduct.”). Accordingly, “[b]y waiting to apply earned FSA time credits until an inmate has accumulated a sufficient number to cover the remainder of his or her term of imprisonment, time credits can be immediately applied and would no longer be subject to loss for future prohibited acts.” *See Carrillo v. Warden FPC Pensacola*, Case No. 23-cv-525, 2025 U.S. Dist. LEXIS 95939, at *10-11 (N.D. Fla. April 21, 2025), *report and recommendation adopted*, 2025 U.S. Dist. LEXIS 94681 (N.D. Fla. May 19, 2025).

Following this reasoning, many courts have concluded that claims challenging the alleged miscalculation of FSA credits are not ripe for judicial review until an inmate has earned enough credits to equal the time remaining on his sentence. *See e.g., Athikulrat v. Cooper*, Case No. 25-cv-00191, 2025 U.S. Dist. LEXIS 103376, at *7 (W.D. Wash. May 14, 2025) (“[A] habeas claim alleging that the BOP miscalculated FSA time credits is ripe for review only if a favorable disposition of the claim would result in the petitioner’s imminent release.”), *report and recommendation adopted*, 2025 U.S. Dist. LEXIS 102334 (May 29, 2025). *See Cook v. Gunther*, Case No. CV-25-00966, 2025 U.S. Dist. LEXIS 223222, at *3-4 (D. Az. Nov. 13, 2025) (“District courts throughout the Ninth Circuit ... have cited [section 3624(g)(1)(A)] in finding § 2241 petitions premature because they cannot award the relief sought under the FSA until the petitioner’s recalculated time credits would equal the remainder of the imposed term of imprisonment.”); *Sharp v. Brown*, Case No. 23-cv-138, 2024 U.S. Dist. LEXIS 129046, at *6 (N.D. W. Va. July 22, 2024) (“federal courts have consistently held prisoners’ claims seeking

application of FSA Credits are not ripe until the prisoner is statutorily eligible for the same.”). *See also Council*, 2025 U.S. Dist. LEXIS 234630, at *7-8 (Analyzing whether claim regarding application of credits to prerelease custody was ripe as a facial challenge and thus relying on the petitioner’s calculations rather than the BOP’s calculations to conclude that it was not ripe).

In the present case, Petitioner’s claims are not ripe under Petitioner’s calculations. *See Council*, 2025 U.S. Dist. LEXIS 234630, at *5-8 (considering Petitioner’s calculations when concluding habeas claim was not ripe for review). Petitioner’s projected release via good conduct time is March 20, 2032, which is approximately six years away. (Ex. 1, Glass Decl., at ¶ 3). As of the date of this filing, Petitioner has earned 195 FTCs toward early release and 0 FTCs toward prerelease custody. (*Id.*). Petitioner claims that he is due 30 to 35 additional days of FSA credits for the 93-day time period between December 10, 2024, and when he arrived at FPC Montgomery. (Doc. 1, at pg. 28). Even taking Petitioner’s best-case scenario, he will not be eligible for transfer to prerelease custody until August 1, 2031. (Doc. 1, *Generally*). This is the result of adding 30 to 35-days of proposed FSA credits to his current balance of 195-days of credits.

In conclusion, Petitioner’s claims are not ripe for review because even if the Court ordered the BOP to award him the additional credits sought in this Petition, those credits would not result in his immediate release to supervised release or his immediate transfer to prerelease custody. Petitioner has accumulated and earned FSA time-credits, he is not prevented from participating in the FSA program and earning new credits, and he has several years remaining on his sentence. (Ex. 1, Glass Decl., Attachment 1, Public Information Inmate Data). Since Petitioner’s FSA credits cannot yet be applied, a court order directing the BOP to calculate possible credits at this time would be an advisory opinion. *See Lallave v. Martinez*, 609 F. Supp. 3d 164, 183 (E.D.N.Y. 2022) (“[S]ince Petitioner’s FSA credits do not equal the remainder of her sentence, it would be

inappropriate for the court to direct the BOP to adjudicate the credits at this time.”).

B. Petitioner Failed to Exhaust his Administrative Remedies.

Even if this matter was jurisdictionally ripe, which it is not, this Petition should still be dismissed because Petitioner did not exhaust his mandatory administrative remedies concerning the claims in this Petition. A petitioner seeking habeas relief pursuant to 28 U.S.C. § 2241 must first exhaust his available BOP administrative remedies before filing a petition in federal court. *See Davis v. Warden*, 661 Fed. App’x 561, 562 (11th Cir. 2016); *Powell v. Jordan*, 159 Fed. App’x 97, 99 (11th Cir. 2005); *Lindsay v. Warden, FPC Montgomery*, Case No. 25-cv-887, 2026 U.S. Dist. LEXIS 180107, at *4 (M.D. Ala. Aug. 12, 2026). Administrative exhaustion is a non-jurisdictional requirement. *See Santiago–Lugo v. Warden*, 785 F.3d 467, 474-75 (11th Cir. 2015); *Tompkins v. Washington*, Case No. 25-cv-215, 2025 U.S. Dist. LEXIS 228616, at *24 (M.D. Ala. Nov. 20, 2025). The exhaustion requirement allows a custodian “to address complaints about [a] program it administers before being subjected to suit, reduce[] litigation to the extent complaints are satisfactorily resolved, and improve[] litigation that does occur by leading to the preparation of a useful record.” *Jones v. Bock*, 549 U.S. 199, 218 (2007). It is especially important in cases involving the application of FSA credits, “where the accuracy of a credit calculation frequently turns on fact-intensive inputs – an inmate’s earning status during discrete periods, the timing of risk and needs assessments, program participation, and the dates and circumstances of transfer and writ movements.” *See Lindsay*, 2026 U.S. Dist. LEXIS 180107, at *4; *Jackson v. FCC Coleman*, Case No. 25-cv-637, 2026 U.S. Dist. LEXIS 87114, at *3 (M.D. Fla. April 21, 2026).

“In order to properly exhaust administrative remedies, a petitioner must comply with an agency’s deadlines and procedural rules.” *See Davis*, 661 F. App’x at 562. The BOP’s Administrative Remedy Program allows an inmate to “seek formal review of an issue relating to

any aspect of” his confinement. *See* 28 C.F.R. § 542.10(a); *Powell*, 159 Fed. App’x at 99. Pursuant to this administrative process, an inmate must generally present any issue of concern informally to his Unit Team. *See* 18 C.F.R. § 542.13. A record of that attempt is usually signed by the inmate and a member of his Unit Team. If informal resolution is insufficient to resolve the matter, then an inmate may file a formal written complaint (BP-9) to the Warden. *See* 28 C.F.R. § 542.14. If dissatisfied with the Warden’s response, the inmate must submit an appeal (BP-10) to the appropriate Regional Director within 20 calendar days of the Warden’s response. *See* 28 C.F.R. § 542.15. If an inmate is not satisfied with that response, he must submit a national appeal (BP-11) to the Office of General Counsel in Washington D.C, within 30 calendar days of the Regional Director’s response. *See* 28 C.F.R. § 542.15. Appeal to the Office of General Counsel is the final administrative step in the BOP exhaustion process.

To exhaust a claim, an inmate must “properly take each step within the administrative process.” *See Bryant v. Rich*, 530 F.3d 1368, 1378 (11th Cir. 2008). Accordingly, a claim has not been exhausted under these BOP regulations until it has been presented at all levels and been denied at all levels. *See Bentley v. Pistro*, Case No. 5:22-cv-190, 2023 U.S. Dist. LEXIS 194252, at *6 (N.D. Fla. Sept. 19, 2023), *report and recommendation adopted*, 2023 U.S. Dist. LEXIS 192919 (N.D. Fla. Oct. 27, 2023). *See also Fiorito v. Woods*, Case No. 20-cv-2744, 2021 U.S. Dist. LEXIS 267726, at * 4 (N.D. Ga. Dec. 13, 2021) (“A federal prisoner must proceed through all levels of the BOP administrative remedy program to exhaust administrative remedies fully.”), *report and recommendation adopted*, 2022 U.S. Dist. LEXIS 244798 (N.D. Ga. Feb. 4, 2022).

In this case, Petitioner has failed to exhaust administrative remedies as evidenced by his failure to submit administrative remedies at each of the required levels that relate to his instant claims. (*Ex. 2. Declaration of Jason White, Attachment 2, Administrative Remedy Generalized*

Retrieval). During his incarceration, Petitioner has submitted 2 administrative remedy filings with the BOP that relate to the issues raised in his petition. (*Id.*). Specifically, Petitioner submitted administrative remedies at the BP-9 and BP-10 levels of review. (*Id.*) Prior to filing his Petition, however, Petitioner had not submitted at the BP-11 level of review. (*Id.*)

Inmates are “required to exhaust administrative remedies before filing a § 2241 petition.” *See Hunt v. Warden*, Case No. 23-cv-320, 2025 U.S. Dist. LEXIS 42399, at *4 (N.D. Fla. Feb. 13, 2025) (emphasis added). Because Petitioner did not complete the administrative process before filing his petition, this Court should dismiss his petition. *See Jackson v. Gabby*, Case No. 23-cv-4674, 2024 U.S. Dist. LEXIS 64979, at *10 (N.D. Fla. Feb. 28, 2024) (“Because [Petitioner] did not properly complete all levels of the BOP’s administrative remedy process before filing for habeas relief and the Warden has not waived the defense of exhaustion, the petition is subject to dismissal on that basis.”), *report and recommendation adopted*, 2024 U.S. Dist. LEXIS 63509 (N.D. Fla. Feb. 28, 2024).

Petitioner argues that exhaustion should be waived as futile. (Doc 1., at pgs. 14-15). Prior to its decision in *Santiago-Lugo*, the Eleventh Circuit consistently declined to excuse exhaustion based on a futility argument. *See Rey v. Warden, FCC Coleman-Low*, 359 F. App’x 88 (11th Cir. 2009) (“The futility exception to exhaustion is inapplicable to [the petitioner’s] claims because exhaustion is mandatory.”); *McGee v. Warden, FDC Miami*, 487 App’x 516 (11th Cir. 2012) (noting that the petitioner “has not cited any case establishing that there is a futility exception to the requirement to exhaust administrative remedies under § 2241 petition[s].”). Courts, however, have noted that whether there is a futility exception after the Eleventh Circuit’s decision in *Santiago-Lugo* is “an unsettled question.” *See, e.g., Tompkins*, 2025 U.S. Dist. LEXIS 228616, at *24. Even if there was a futility exception, however, an inmate would have to show the

existence of extraordinary circumstances to invoke it. *See Ross v. Wells*, Case No. 312-025, 2012 U.S. Dist. LEXIS 58768, at *7 (S.D. Ga. April 17, 2012) (“those courts which apply a futility exception do so in only ‘extraordinary circumstances’ and require the petitioner to ‘bear [] the burden of demonstrating futility of administrative review.’”), *report and recommendation adopted*, 2012 U.S. Dist. LEXIS 58779 (S.D. Ga. April 26, 2012). In this case, Petitioner’s mere belief that exhaustion would be futile is not sufficient to show extraordinary circumstances that would support waiving exhaustion. *See Lindsay*, 2026 U.S. Dist. LEXIS 180107, at *5-6; *Council*, 2025 U.S. Dist. LEXIS 234630, at *34-35; *Tompkins*, 2025 U.S. Dist. LEXIS 228616, at *38-39. Accordingly, this Court should dismiss his Petition for failure to exhaust administrative remedies.

C. Petitioner is not entitled to FSA Credits for Periods of Time when he did not Actually Participate in BOP Recommended Programming.

Finally, to the extent Petitioner seeks credits for the time period from his sentencing on December 10, 2024, to March 13, 2025, his records show that he did not participate in any FSA-eligible courses or Productive Activities during that time and thus is not entitled to FSA credit. (Ex. 1, Glass Decl., at ¶ 7). In *Sharma v Peters*, 756 F. Supp. 3d 1271, 1284 (M.D. Ala. 2024), Judge Huffaker held that the FSA’s implementing regulation at 28 C.F.R. § 523.42(a) conflicts with 18 U.S.C. § 3585(a), and that a prisoner is eligible to begin earning FSA credits from “the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served” per 18 U.S.C. §§ 3632(d)(4)(B) and 3585(a). The Court further explained in *Sharma*, “[e]ligibility from commencement of an inmate’s sentence is thus a key component to earning time credits, but the award and application of those credits is tied to the inmate’s successful participation and completion of eligible programming to fulfill the opportunity to be awarded FTCs during those periods an inmate is considered in eligible earning status.” 756 F. Supp. 3d at 1282. *See* 18

U.S.C. § 3632(d)(4)(A) (stating that an eligible prisoner “who successfully completes evidence-based recidivism reduction programming or productive activities” shall earn time credits). Successful participation “requires a determination by Bureau staff that an eligible inmate *has participated in the EBRR programs or PAs that the Bureau has recommended* based on the inmate’s individualized risk and needs assessment and has complied with the requirements of each particular EBRR program or PA.” 28 C.F.R. § 523.41(c)(2) (emphasis added).

Indeed, a prisoner cannot automatically accrue FSA credits without any actual participation in courses or activities as this would be contrary to the FSA’s plain language. *See White v. Warden of Fed. Corr. Inst. - Cumberland*, 164 F.4th 326, 331 (2026). *See also Stevens v. Jacquez*, Case No. 23-cv-1482, 2024 U.S. Dist. LEXIS 113382, at *11-12 (D. Or. June 25, 2024) (Petitioner appears to argue that he is entitled to time credit as of March 2, 2022, simply because he was sentenced and in federal custody as of that date. To the contrary, the FSA authorizes an award of time credits *only if an [inmate] earns them by participating in EBRR programs.*”) (emphasis added). *Accord Harper v. Warden*, Case No. 26-cv-240, 2026 U.S. Dist. LEXIS 55316, at *3 (D. Minn. Feb. 13, 2026) (“[E]ligibility [for FSA credits] turns on *activity*, not just *status*.”); *Crayton v. Eischen*, Case No. 25-cv-1102, 2025 U.S. Dist. LEXIS 163663, at * 5 (D. Minn. June 12, 2025) (“Any suggestion that [Petitioner] (or any other federal prisoner) is automatically entitled to FSA time credits regardless of whether actually participating in evidence-based recidivism reduction programming or productive activities is plainly contrary to the statutory language.”), *report and recommendation adopted*, 2025 U.S. Dist. LEXIS 162259 (Aug. 21, 2025).

Instead, under the FSA, an inmate must actually participate in BOP recommended and

qualifying FSA EBBR programs or PAs in order to earn credits.¹ *See Theodor v. Walker*, Case No. 25-cv-678, 2026 U.S. Dist. LEXIS 63205, at *15 (N.D. Ala. Jan. 23, 2226), *report and recommendation adopted*, 2026 U.S. Dist. LEXIS 61967 (N.D. Ala. Jan. 23, 2026); *Montoya v. Eischen*, Case No. 25-cv-00015, 2026 U.S. Dist. LEXIS 116973, at *24-25 (D. Minn. March 31, 2026), *report and recommendation adopted*, 2026 U.S. Dist. LEXIS 115036 (May 26, 2026); *Stevens*, 2024 U.S. Dist. LEXIS 113382, at *8-11. In *White*, 164 F.4th at 331, for example, the Fourth Circuit recently focused on this actual participation requirement. The petitioner sought FSA credits for three days when he was transferring between his designated BOP facility and another BOP facility. *See id.* at 328-329. During these three days, he was housed at Federal Transfer Center Oklahoma, where the BOP did not provide FSA programming. *See id.* The Fourth Circuit concluded that the FSA “requires participation for credits,” and that the petitioner was not entitled to credits during those days because he did not participate in programming regardless of whether BOP should have offered credits at the facility. *See id.* at * 330-332. More specifically, the Fourth Circuit stated as follows:

At bottom, because [Petitioner] did not participate in programming while at Federal Transfer Center Oklahoma City, he cannot claim that, under the FSA, he earned time credits for a period during which he did not participate in programming. That conclusion

¹ Notably, Congress tasked the BOP—not any other agency such as the USMS—with responsibility for administering the EBBR Programs and PAs. *See* 18 U.S.C. § 3632(b) (noting that it is the BOP that assigns prisoners programs in which to participate based on that prisoner’s specific criminogenic needs to effectively lower each prisoner’s risk of recidivism); *id.* at § 3633(a)(5)(A) (instructing the Attorney General to “direct the Bureau of Prisons regarding . . . evidence-based recidivism reduction programs”). *See* NATHAN JAMES, CONG. RESEARCH SERV., R45558, THE FIRST STEP ACT OF 2018: AN OVERVIEW 1 (2019), available at <https://crsreports.congress.gov/product/pdf/R/R45558> (“The act requires DOJ to develop the system to be used by BOP to assess the risk of recidivism of federal prisoners and assign prisoners to evidence-based recidivism reduction programs and productive activities to reduce this risk.”). Thus, “it would contravene the requirements of the FSA to award FTCs for activities that were not assigned pursuant to the FSA’s risk and needs assessment.” *See, e.g., Montoya*, 2026 U.S. Dist. LEXIS 116973, at *24-25.

flows straight from the FSA, which is not ambiguous in this regard. The Act provides that “a prisoner ... who successfully completes evidence-based recidivism reduction programming or productive activities, shall earn time credits.” 18 U.S.C. § 3632(d)(4)(A). [Petitioner] has not satisfied those statutory requirements and therefore is not entitled to the credits for the three days he spent at the Federal Transfer Center.

Id. at 331. The Fourth Circuit further noted that “Congress made clear that time credits have to be earned by successful participation in programming, and [courts] are not free to award such credits for periods during which a prisoner does not satisfy Congress’s requirement.” *See id. Accord Harris v. Warden, FCI – Leavenworth*, 2026 U.S. App. LEXIS 12171, at *10-11 (10th Cir. 2026) (“We similarly conclude that habeas relief is unwarranted where, as here, the evidence is insufficient to show the prisoner has earned FTCs through actual participation. At bottom, FTCS are granted only to federal prisoners who earn them by participating in qualifying programming.”).

In this case, Petitioner argues that he was denied time credits while he was in transit status for approximately 93 days. He claims that during this time he participated in physical activity programs that were available and worked as an orderly. (Doc. 1, at pg. 28). BOP records, however, show that he did not participate in any BOP recommended FSA-eligible courses or Productive Activities during that time. (Ex. 1, Glass Decl., at ¶ 7). Petitioner first began taking BOP recommended EBBR’s or PA’s on March 18, 2025, when he enrolled in “Aids Awareness” class at FPC Montgomery. (*Id.*, Attachment 4, Assignment History, p.3). Petitioner has received credit for all of the recommended EBBR’s and PA’s he’s successfully completed. (*Id.*)

Accordingly, Petitioner has not shown that he successfully participated in BOP recommended FSA programming or activities during this time, and he is not entitled to credits absent such participation. *See White*, 164 F.4th at 332; *Taylor*, 2026 U.S. Dist. LEXIS 29352, at *2; *Pittman v. Rardin*, Case No. 26-cv-1662, 2026 U.S. Dist. LEXIS 122231, at *4-5 (D. Minn. June 3, 2026). *See also Bartoli v. Peters*, Case No. 24-cv-276, 2026 U.S. Dist. LEXIS 77289, at

*4-5 (W.D. Pa. April 9, 2026). (denying habeas petition because, *inter alia*, “Petitioner does not assert that his purported productive activities while in USMS custody were *recommended* by the BOP.”) (emphasis added); *Montoya*, 2026 U.S. Dist. LEXIS 116973, at *24; *Cobb v. Warden, USP Atlanta*, Case No. 23-cv-8, 2026 U.S. Dist. LEXIS 39954, at *12-13 (S.D. Ga. Feb. 26, 2026) , *report and recommendation adopted*, 2026 U.S. Dist. LEXIS 70022 (S.D. Ga. Mar. 30, 2026).

CONCLUSION

For the above reasons, the Court should dismiss this Petition.

Respectfully submitted this 14th day of August 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing upon all parties of record by mailing a copy of same, first class, postage prepaid, addressed as follows:

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Dated this 14th day of August 2026.

/s/James DuBois
Assistant United States Attorney