

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

Case Number To Be Determined

Richard Zeitlin
Petitioner,

v.

2:26-cv-00213-BL-SMD

Warden, FPC Montgomery
Respondent,

Submitted By:

Richard Zeitlin, # 73600-510
Pro Se
Federal Prison Camp Montgomery
1001 Willow St.
Montgomery, AL 36113

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Statement of the Case and Motion

Petitioner Richard Zeitlin was sentenced 12/10/2024 and placed in BOP-designated holding facilities. He did not arrive at his "final" designated facility, "FPC Montgomery", until 03/13/2025. From the date of sentencing on 12/10/2024 until 03/13/2025, a period of 93 days, Zeitlin was denied 10 FTC days, even though he participated in evidence-based recidivism reduction programs (EBRRs) and productive activities (PAs). During this 93 day period, Zeitlin had a prison job he was an assigned orderly in the holding facilities and was required to participate relative to BOP-mandated behavioral modification requirements. The missing FTCs would have shortened Zeitlin's early qualification for FTC-approved supervised release in accordance with 18 U.S.C. 3632(D)(4)(C), 18 U.S.C. 3624(g), and 3624(g)(3). According to Court rulings, handed-down across a wide swath of Circuits nationwide referred herein to the progeny of cases, FSA statutes MANDATE that the BOP apply earned FTCs to supervised release and/or pre-release custody, from (1) sentencing and (2) incarceration. Zeitlin argues that the BOP's interpretation of the above FSA-mandated statutes primarily memorialized in BOP regulation 28 CFR 523.42(a) and 28 CFR 523.41(c)(4)(i)-(v), (a) "sets a timeline that conflicts with an unambiguous (FSA) statute" (Jobin v. Warden, LEXIS 60046, Case 23-CV-01700-WBS-SKO (E.D. of Calif., April 2024) and (b) "is contrary to the FSA" (Pelulio v. Warden, LEXIS 143499, Case 23-CV-189189-WFJ-PRL (M.D. of Florida, August 2024)). Because

of the BOP denial of earned FTCs during this 93 day period, Zeitlin motions that the Court order the BOP to correct their FTC issuance accordingly to the plain reading of the FSA, as supported by the progeny of cases cited herein, and "reset" Zeitlin FTC qualification date to 12/10/2024, the day of sentencing.

Memorandum of Law in Support of
Motion for 2241 Writ of Habeas Corpus

COMES NOW, Petitioner, Pro Se, an inmate at the Federal Prison Camp Montgomery, Alabama, sentenced by the United States District as noted below, bringing this formal writ of Habeas Corpus under U.S.C. 2241 to this Honorable Court.

I. Introduction

In December 2018, Congress enacted the First Step Act ("FSA"), to provide early release and home confinement/halfway house (pre-release custody) for inmates serving prison sentences in the Federal Prison System, the "Bureau of Prisons" ("BOP"), whose charged crimes made them eligible for earning up to an additional 12-months of supervised release (18 U.S.C. 3624(g)(3) or reduced time behind bars, serving the remaining time on pre-release custody-halfway house or home confinement placement (18 U.S.C. 3624 (g)(1)(A), 3624(g)(2)(A)-(B). Congressional clear intent, as memorialized in the FSA, was to afford inmates First Step Act Credits ("FTCs", sometime referred to as "ETCs", 18 U.S.C. 3632(d)(4), awarded and earned following sentencing, the purpose of which was to decrease rates of recidivism (First Step Act, Title I-RECIDIVISM REDUCTION- 18 U.S.C. 3631(b)(2). Notwithstanding clear intent, the BOP added requirements (in addition to the requirements in the First Step Act) necessary for inmates to qualify for the award or receipt of FTCs (28 CFR 523.42(a) and 28

CFR 523.41(c)(4)(i)-(v). These "additions" to the FSA, rewrite the FSA, subverting the clear language of the FSA and Congressional intent. A progeny of cases, following the seminal case in *Huihui v. Derr*, 2023 US Dist. LEXIS 106532, 2023 WL 4086073 (D. of Hawaii, June 20, 2023), challenged the BOP's interpretation, and case around the country have overturned the BOP's interpretation.

Courts have ruled that:

1. FTCs should begin being awarded and earned from the (1) day of sentencing, and (2) custody, not from the day the inmate arrives at the final BOP-designated facility;
2. FTCs should continue to be earned by inmate who are transported from one BOP facility to another, or to Court, as long as that inmate continues programming (EBRRs- "Evidence Based Recivism Reduction" activities or productive activities (PA). Currently, the BOP stops all FTC awards during transport, or while on writ, regardless of whether the inmate is continually engaged in EBRRs or PAs at the "writ-mandated" BOP facility.

II. Inmate Specifics

The sentencing and crime characteristics of the inmate in question in this 28 U.S.C. 2241 filing are as follows:

- | | |
|---|---|
| 1. Name of Inmate and
Federal Register Number | Richard Zeitlin
73600-510 |
| 2. Nature of Crime | 18 U.S.C. 1349 & 2326
Conspiracy to Committ Wire Fraud |
| 3. Length of Sentence | 121 Months |
| 4. Number of Days Not Counted Prior
To Arriving at "Designated Facility" | 93 |
| 5. Date of Sentencing | 12/10/2024 |
| 6. Date of Arrival at Final BOP
"Designated Facility" | 03/13/2025 |

7. Projected GCT (Good Conduct Time)
Adjusted Release Date 03/20/2032
8. Projected FTC (First Step Time Credits)
Conditional release Date 01/20/2032
9. FTC Release Date Had FTCs Been Properly
Awarded and Applied

Inmate's Request to Court

Inmate Zeitlin humbly requests that the Court approve his request that his FTC "start date" be reset to the date he was both (1) sentenced and (2) incarcerated, that date being 12/10/2024. The BOP currently lists Zeitlin's FTC start date at 3/13/2025- the date he arrived at FPC Montgomery- the "final" BOP-designated facility.

III. BOP Background

A. The "Designated Facility" Argument

Since the inception of the First Step Act (FSA), the BOP has argued that FTCs only start accruing upon arrival at the inmate's "designated facility". 28 C.F.R. 523.42(a) reads:

"(a) When an eligible inmate begins earning FSA Time Credits. An eligible inmate begins earning FSA Time Credits after the inmate's term of imprisonment commences (the date the inmate arrives or voluntarily surrenders at the designated Bureau facility where the sentence will be served)."

Therefore, if an inmate were incarcerated in a BOP-controlled facility (i.e., BOP contracted jail, BOP authorized holding or transfer place of imprisonment) following sentencing, the BOP would NOT start awarding FTCs until the inmate reaches his or her final designated facility. In *Kaniu Huihui v. Estella Derr, Warden*, 2023 U.S. Dist. LEXIS 106532, 2023 WL 4086073 (D. of Hawaii, June 20, 2023); *Austen Yufenyuy v. Warden FCI Berlin*, 2023 US Dist. LEXIS 40186, Case 22-CV-443-AJ (D. of New Hampshire, March 7, 2023); *Damon v. Jobin v. Warden FCI-Mendota*, 2024 US Dist. LEXIS 60046, Case 1:23-CV-01700-WBS-SKO (HC) (E.D. of Cali., April 1, 2024); *Aleah Mohammed v. Warden Stover, FCI Danbury*, 2024 US Dist. LEXIS 73508, Case 3:23-CV-757 (SVN) (D. of Connecticut, Apr. 23, 2024); and other, similar cases, the Courts ruled, without equivocation, that

the BOP approach of denying FTCs (or "FSA participation") until the inmate reaches his or her "designated facility," to be contrary to the clear language of the First Step Act, which provides (18 USC §3632(d) (4) (B) (ii)):

"A prisoner may not earn time credits under this paragraph for an evidence-based recidivism reduction program that the prisoner successfully completed - (i) prior to the date of enactment of this subchapter; or (ii) during official detention prior to the date that the prisoner's sentence commences under section 3585(a)."

As referred to above, 18 USC §3585(a) reads:

"(a) Commencement of sentence. A sentence to a term of imprisonment commences on 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."

The two sections use the phrase "sentence commences." 18 USC §3585(a) defines "commencement of sentence" as "the date the defendant is received in custody" (the date of sentencing). The BOP changed these two sections into an alternate interpretation, modifying "official detention" into "designated facility" under 28 CFR §523.42(a), which reads:

"When an eligible inmate begins earning FSA Time Credits. An eligible inmate begins earning FSA Time Credits after the inmate's term of imprisonment commences (the date the inmate arrives or voluntarily surrenders at the designated Bureau facility where the sentence will be served).

Judge Oberto in *Damon V. Jobin v. Warden FCI-Mendota*, 2024 US Dist. LEXIS 60046, Case 1:23-CV-01700-WBS-SKO (HCV) (E.D. of Calif., April 1, 2024), stated the following regarding the BOP's "reinterpretation" of 18 USC §3632(d) (4) (B) (ii):

"This regulation [28 CFR §523.42(a)] conflicts with 18 USC §3632."

Judge Oberto also ruled:

"Congress has directly spoken to the precise question of when a prisoner is ineligible for FSA ETCs. In 18 USC §3632(d) (4) (B), a prisoner is explicitly barred from earning credits (1) before the statute and (2) during official detention before the prisoner's sentence commences under 3585(a) unambiguously provides that "[a] term of imprisonment commences" when a prisoner is received in custody awaiting transportation to the official detention facility at which the

sentence is to be served. 18 USC §3585(a). Accordingly, under 18 USC §3632(d)(4)(B)(ii), Petitioner's eligibility for FSA time credits commenced the MOMENT he was sentenced under 18 USC §3585(a), because he was in BOP custody. Because Section 523.42 sets a timeline that conflicts with an unambiguous statute..."

The BOP next altered its approach to focus on 28 CFR §523.41(c)(4)(i)-(v), which prohibits earning FTCs under certain circumstances. Here, like the requirements in BOP regulation §523.42(a), which prohibited earning FTCs prior to reaching one's "designated facility," BOP argued that sections (i)-(v) likewise prohibited earning FTCs, such as when the inmate is in the "SHU," or transferred on writ, *inter alia*. Under this "new" section, the BOP also sought to deny FTCs.

B. The "On-Writ" Argument

In *Salvatore Pelullo v. Warden, FCC Coleman - LOW*, 2024 US Dist. LEXIS 143499, Case 5:23-CV-189-WFJ-PRL (Middle Dist. of Florida, Tampa Division, Aug. 13, 2024), Judge Jung ruled that the BOP cannot make "blanket denials" of FTCs to inmates without determining "whether Petitioner participated" in EBRRs or PAs, wherein the BOP failed to (1) offer the inmate PAs during periods of transfer, and (2) failed to properly qualify the limits of PAs (productive activities could be classified as any number of activities in which the inmate is obligated to participate as subject to positive behavioral adherence to required rules while on transport). Judge Jung ruled the following:

"The FSA itself does not tie a prisoner's eligibility to any specific BOP facility. Thereunder, time credits are available for successfully completed programming unless that programming is completed: (1) "prior to the date of enactment of this subchapter; or...during official detention prior to the date that the prisoner's sentence commences under section 3585(a)"; or (2) the prisoner is otherwise ineligible under section 3632(d)(4)(D). 18 USC §3632(d)(4)(B). None of these disqualifications apply to Petitioner. BOP attempts to alleviate this tension by qualifying ineligibility under section 523.41(c)(4)(iii) as an ineligibility to "successfully participate"

rather than an ineligibility to earn time credits generally, but **such a blanket, automatic prohibition** in Petitioner's case appears contrary to the FSA. BOP itself makes clear that "[t]he calculation of FTCs is fully automated and based on the number of 30-day periods in earning status." Dkt. 9-1 at 5. An ineligibility to "successfully participate" under a section 523.41(c)(4)(iii) designation status caused an automatic ineligibility for Petitioner to earn time credits when he was in BOP facilities taking BOP programs, albeit on a USMS writ. In this case, it resulted in the **automatic denial** of time credits that Petitioner was eligible to earn under FSA. As a final matter, the Court is not persuaded that Petitioner could not successfully participate in programming merely because he was outside his designated facility, and therefore outside of that facility's purview. The FSA does not lay a limit on a prisoner's eligibility to earn time credits or constrain BOP's ability to review a prisoner's programming separate BOP facilities. Furthermore, section 523.41(c)(2) merely states that "[s]uccessful participation" requires a determination by Bureau staff that an eligible inmate has participated in the EBRP 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 EBRP Program or PA." Nowhere has BOP claimed that all of Petitioner's disallowed programming was non-recommended or non-compliant. Nor has the BOP adequately explained why the BOP staff at Petitioner's non-designated facilities were unable to make a determination about the nature of his participation in EBRPs. If anything, it appears that BOP's application of section 523.41(c)(4)(iii) in this case was **purposed to dissuade Petitioner from participating in programming**. Or this application as to Petitioner is to create a system where BOP is not responsible for **administering the FSA with respect to a sizeable class of federal inmates who are in federal prisons. This is contrary to the FSA.**"

Judge Jung makes the argument for the Petitioner: (1) FSA programming and PAs must be offered inmates during times of transfer, (2) BOP is responsible for defining what qualifies as "successful" programming and PAs, (3) inmates cannot be held to a "participation standard" that is neither offered nor defined, and (4) regardless of the facility at which the inmate is housed, the FSA is "facility agnostic," and FTCs are determined based on 30-day periods of incarceration.

C. The FSA "Doesn't Apply Credits Toward Prerelease Custody" Argument

The BOP has argued that, notwithstanding all of the clear language of the FSA regarding "**shall earn time credits as follows**" (18 USC §3632(d)(4)(A), or "**time credits earned...shall be applied toward time**

in prerelease custody or supervised release. The Director of the [BOP] shall transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release" (18 USC §3632(d)(4)(C)), "that Courts only have jurisdiction for the first 365-FTC earned days (18 USC §3624(g)(3)), forgoing the "shall transfer" requirements as mandated by Congress under 18 USC §3632(d)(4)(C). Such an interpretation by the BOP, that the Courts have "jurisdiction up to 365-FTC awarded or earned days," renders the plain language in 18 USC §3632(d)(4)(C) as meaningless.

The Kansas Court in *Woodley v. Warden*, 2024 US LEXIS 87521, Case 24-3053-JWL (D. of Kansas, May 2024) held that 18 USC §3632(d)(4)(C) was "clear and unequivocal," as the word "shall" requires application of FTCs "which mandate prerelease custody."

D. Argument Conclusion(s)

In conclusion, the Courts are interpreting the FSA for its clear meaning and rules against the BOP's contrary revisions. There is a movement across the nation toward a proper interpretation of the FSA and the instant case falls logically within the sound reasoning of the progeny of cases cited above.

IV. 28 USC §2241 Standard

"A federal prisoner may petition for Habeas relief if he or she is "in custody in violation of the Constitution or laws or treaties of the United States. 28 USC §2241(c)(3)" "(see *Aleah Mohammed, v. Warden Stover, FCI Danbury*, 2024 US Dist. LEXIS 73508, Case 3:23-CV-757 (SVN) (District of Connecticut, April 23, 2024)). "A writ of Habeas Corpus

under §2241 is available to a federal prisoner who does not challenge the legality of [his or her] sentence, but challenges, instead, its execution subsequent to [his or her] conviction"(see Mohammed v. Stover, FCI Dublin, 2024 US LEXIS 73508, Case 3:23-CV-757 (SVN) (D. of Connecticut, April 23, 2024)). Thus, §2241 petitions are appropriately used to challenge FTC calculations. See Daily v. Pullen, 2023 US LEXI 84392, Case 3:22-CV-1121 (D. of Connecticut, May 2023).

V. Exhaustion of Remedies

Where a statute is unambiguous and provides authority for release, exhaustion of administrative remedies is not required as the doctrine for exhaustion of administrative remedies is not statutory, but Judicial. See Damon V. Jobin v. Warden, FCI-Mendota, 2024 US LEXIS 60046, Case 1:24-CV-01700-UBS-SNO (HC) (E.D. of Calif., Apr. 1, 2024).

Where the agency remedy would be futile, exhaustion is likewise under the Judicial Doctrine. *Id.* Here, the BOP is engaged in a deliberate scheme to deny FTCs to inmates until they reach their designated facility. The "III. BOP Background" arguments makes it clear that the BOP's modus is to rewrite the FSA, adding requirements, but, even now, conceding the "futility of exhaustion" argument in Court (see Jobin, *5 LEXIS), yet, not altering its behavior in other District Courts.

The BOP's Administrative Remedy process of filing BP-8s, BP-9s, and BP--10s, would require no less than 120 days and **most certainly not change** the record before this Court. Conversely, the inmate would lose time and end up with a moot motion if this Court does not exercise its right of

Judicial determination, causing irreparable harm (see Jobin, *5 LEXIS).

Accordingly, the matter before the Court should not require exhaustion of Administrative Remedies. Simply put, BOP employees that review and administer grievance processes would be following their own regulations. Precisely, the BOP would follow the dictates of 28 CFR §523.42(a), determining that inmates only begin to earn FTCs upon arrival at their "designated facility." Or, they would quote their rewriting of the FSA, citing their regulation under 28 CFR §523.41 (c)(4)(iii), denying FTCs to inmates while on transfer or writ, regardless of whether that inmate engaged in FTC EBRR programs or PAs while on transfer or writ. Anyone, including this Court, would expect a Warden to follow his own agency FSA interpretations and requirements, and rightly so. The error here is in the BOP rule itself, and, therefore, requires a Court to direct the BOP that its rule(s) are invalid. This requires Court interpretation. By the BOP rewriting the FSA to "fit" their preferred interpretation, they are violating the clear and unambiguous language of the FSA, and clearly written Congressional intent. They take this "stance" even though they have conceded these wrong positions in other Courts (as argued further along).

VI. FSA Case Progenies

A. Earning FTCs Start at (1) Sentencing and (2) Incarceration, Not "Designated Facility"

All the cases cited above, and all other cases like these, bear the same reasoning:

1. Even before Loper overturned "Chevron" (Chevron U.S.A. v. Natural Resources Defense Council, Inc., et.al., 467 US 837, 81 L Ed 2d 694 104 S.Ct. 2778 (Feb. 29, 1984)), BOP regulation CFR 28 §523.42(a)

provided:

"(a)When an eligible inmate begins earning FSA Time Credits:
An eligible inmate begins earning FSA Time Credits after the inmate's term of imprisonment commences (the date the inmate arrives or voluntarily surrenders at the DESIGNATED BUREAU FACILITY where the sentence will be served."

is completely, clearly and unambiguously contrary to 18 USC §3585(a) and, therefore, FSA credits start accruing at the time of both (1) sentencing and (2) incarceration.

Case Law in Support

In *Austen Yufenyuy v. Warden, FCI Berlin*, 2023 US Dist. LEXIS 40186, Case 22-CV-443-AJ (D. of New Hampshire, March 7, 2023), Austen Yufenyuy filed a 28 USC §2241 Writ of Habeas Corpus "alleging that the Federal Bureau of Prisons ("BOP") failed to apply First Step Act ("FSA") time credits he has earned to his sentence" (see Yufenyuy, *1 LEXIS). Yufenyuy sought FTCs earned from June 9, 2021 through November 24, 2021. Yufenyuy was sentenced on June 9, 2021 and remained under BOP custody of U.S. Marshall Service in facilities in Maryland and Oklahoma, but did not arrive at his designated facility until November 24, 2021. Yufenyuy argued that the clear language of 18 USC §§3632 and 3585(a) provide a date as to when earning FTCs begin. But, instead of following 18 USC §§3632 and §3585(a), the BOP inserted their own rule, 28 CFR §523.42(a), which was previously quoted, claiming that FTCs only begin accruing upon reaching the final designated facility (note: all BOP "transfers" are "designated" by the BOP, but the BOP chooses to begin counting FTCs at the "final" designation). The Court in Yufenyuy held that §523.42(a) violated the clear and unambiguous language of the FSA, and therefore, Yufenyuy was entitled to start earning FTCs from his date of sentencing, June 9, 2021. The Yufenyuy Court did not wade into issues of "applying" as opposed to "earning" FTCs. The Yufenyuy Court held that the FSA was clear and

unambiguous, and that FTCs started accruing on the date Yufenyuy was sentenced, being June 9, 2021, not the date he arrived at the "final designated facility" on November 24, 2021. The Court ruled that 28 CFR §523.42(a) was clearly contrary to the FSA, thus, no "ambiguity test" under Chevron (Chevron U.S.A. v. Natural Resources Defense Council, Inc., et.al., S.Ct. 2778 (1984), was required. This case PREDATED the overturn of Chevron in Loper Bright Enterprises, et.al., v. Gina Raimondo, Secretary of Commerce, 603 U.S., Case 22-451 and 22-1219 (June 28, 2024).

In Kaniu Huihui v. Estella Derr, Warden, 2023 US Dist. LEXIS 106532, (D. of Hawaii, June 20, 2023), Huihui filed a 28 USC §2241 petition for Writ of Habeas Corpus seeking an order "directing the Federal Bureau of Prisons ("BOP") to apply her earned time credits ("ETCs") and her Good Time Credits ("GTCs") under the First Step Act ("FSA")" (see Huihui, *1 LEXIS). First, the Huihui Court addressed whether the Judicially created doctrine of "exhaustion of Administrative Remedies" precluded hearing the case. Because there was no dispute, petitioner had not exhausted her Administrative Remedies, the Court found that following the Administrative Remedy process would be "futile" since "there is an error in respondent's understanding of when petitioner can begin earning credits under 18 USC §§3632(d)(4)(B) and 3632(A)." (see Huihui, *3 LEXIS).

Moving to the merits, the Huihui Court next addressed when petitioner could begin earning credits and, like Yufenyuy, the BOP once again argued their regulation 28 CFR §523.42(a), supporting the BOP "contention that Petitioner cannot begin earning FSA ETCs until she is at the

"designated facility"" (see *Huihui*, *2 LEXIS). The *Huihui* Court, like the *Yufenyuy* Court, found §523.42(a) to be contrary to the plain language of §3632. The Court reasoned that 18 USC §3632 already provided when a prisoner could NOT earn FTCs, and that was: (1) before §3632 was enacted (December 21, 2018), and (2) before the prisoner was in official detention, before the sentence commenced (18 USC §3632).

Pre-Loper (*Loper Bright Enterprises, et.al., v. Raimondo*, 603 US S.Ct (June 28, 2024)), the Court in *Huihui* addressed the Chevron analysis, and, like *Yufenyuy*, the *Huihui* Court found 18 USC §§3632 and 3585(a) clear and unambiguous providing that a prisoner starts earning FTCs upon (1) being sentenced and (2) being received into custody awaiting transfer to the official "designated facility" (BOP's words) at which the sentence is to be served. 18 USC §3585(a). "'Holdover" detainees must earn FTCs if sentenced before they arrive at their "designated facility"" (see *Huihui*, *6 LEXIS). Where petitioner was "sentenced, incarcerated and is currently serving her sentence in BOP' custody...she should not be prevented from earning FSA ETCs based on the whims of the BOP designation system." (see *Huihui*, *7 LEXIS).

With Courts in New Hampshire, in March 2023, and Hawaii, in June ruling in favor of §2241 petitioners to earn FTCs at the time of (1) sentencing and (2) custody (incarceration), the United States District Court for the Western District of Washington, in September 2023, next addressed this issue in *Ashokkumar Patel v. H. Barron, et.al., 2023 US Dist. LEXIS 174601, Case 23-CV-937-KKE* (W. Dist. of Washington, Sept. 28, 2023), where petitioner sought a 28 USC §2241 Habeas Corpus petition asserting the BOP failed to apply FSA credits under 28 USC

§3632(d). Like the Courts did under Yufenyuy and Huihui, the BOP, again, argued 28 CFR §523.42(a)'s reinterpretation of 28 USC §3632(d), i.e., that the inmate did not qualify to begin earning FTCs until the inmate reached the "designated facility." The Court first addressed the issue of "futility" relative to exhaustion of Administrative Remedies. Here, the Court honed in on Huihui, stating the "BOP followed its own regulations in denying petitioner's [Administrative Remedy process] request requiring Petitioner to file additional appeals up the chain of command at BOP is unlikely to yield a different result." (see Patel, *4 LEXIS).

On the merits, the Patel Court tracked Huihui (Huihui v. Derr, LEXIS 106532 (D. of Hawaii, June 2023)) and Yufenyuy (Yufenyuy v. Warden LEXIS 40186 (D. of N.H. (March 2023))), finding 28 USC §3585(a) provides "[a] term of imprisonment commences on the date the prisoner is received in custody awaiting transportation to, or arriving voluntarily to commence service of sentence at official...." 18 USC §3585(a). (see Patel *2, *3 LEXIS). Likewise, the Patel Court found 28 CFR §523.42(a) "sets a timeline that conflicts with the unambiguous statute...and the Court must give effect to the statutory text."

Next on April 1, 2024, the United States District Court for the Eastern District Court of California, considered Damon Vincent Jobin's petition (Damon V. Jobin v. Warden, FCI-Mendota, 2024 US Dist. LEXIS 60046, Case 1:23-CV-01700-WBS-SKO (HC) (E. Dist. of Calif., April 1 2024)) for a Writ of Habeas Corpus under 28 USC §2241, claiming that (1) his start date for commencement of awarded FTCs should be on the date he was sentenced and in BOP custody; (2) he was entitled to FTCs while on writ.

The BOP used its regulations to defend, citing 28 CFR §523.42(a), which, again, represents that FTCs do not start until the inmate arrives at the "designated facility," and 28 CFR §523.41(c)(4)(iii), which excludes FTCs while on writ. The Jobin Court first addressed exhaustion of Administrative Remedies and, like its sister Courts, found that exhaustion was futile, and, therefore excused because the BOP would simply rely on a mistaken interpretation of the FSA.

Next, like the Courts in Yufenyuy, Huihui, and Patel (as cited), the Jobin Court reasoned:

"Congress has directly spoken to the precise question of when a prisoner is ineligible for FSA ETCs. In 18 USC §3632(d)(4)(B), a prisoner is explicitly barred from earning credits (1) before the statute was enacted, and (2) during official detention before the prisoner's sentence commences under §3585(a). As to the commencement of a sentence, Section 3585(a) **unambiguously** provides "[a] term of imprisonment commences" when a prisoner is received in custody awaiting transportation to the official detention facility at which the sentence is to be served." 18 USC §3585(a). Accordingly, under 18 USC §3632(d)(4)(B)(ii), Petitioner's eligibility for FSA time credits commenced the **MOMENT** he was sentenced under 18 USC §3585(a), because he was in BOP custody. Because Section §523.42(a) sets a timeline that conflicts with an unambiguous statute, it is not entitled to Chevron deference...18 USC §3585(a)."

Thus, again, as quoted, "Petitioner's eligibility for FSA time credits commences the **MOMENT** he was sentenced [and under] BOP custody." (see Jobin, *4 LEXIS). Because the BOP's regulation 28 CFR §523.42(a) was in direct conflict with the FSA, the Court declined Chevron deference (Chevron v. Natural Res. Def. Coun., 2778 S.Ct. (1984)) pre-Loper (Loper Bright Enterprises v. Raimondo, 603 U.S. S.Ct. (June 2024)). The Court reset petitioner's start date to earn FTCs to his date of sentencing while in BOP custody.

Finally, the Court reviewed petitioner's writ argument claiming 28 CFR §523.41(c)(4)(iii) was equally invalid. Here, the Jobin Court

declined to extend its analysis holding the BOP's regulation did not conflict with the FSA and excluding time on writ was correct. The Court did not address whether it was using "Chevron" (Chevron v. Natural Res. Def. Coun, 2778 S.Ct. (1984)), or not, and found "the BOP reasonably interpreted §3632 in determining that eligible inmates are not "successfully participating" in programming when they are in transit" (this ruling was decided "pre-Loper" (as cited)).

B. The FSA Warrants FTCs Earned While On Writ Argument

On April 23, 2024, the United States District Court of Connecticut considered a "Motion for Reconsideration" of the Court's decision denying a Writ of Habeas Corpus pursuant to 28 USC §2241 seeking that the BOP recognize FTCs earned at a facility, other than the "designated facility," Aleah Mohammed v. Warden Stover, 2024 US Dist. LEXIS 73508, Case 3:23-CV-757 (SVN) (D. of Connecticut, April 23, 2024). The Mohammed Court did not address exhaustion of Administrative Remedies.

On the merits, the Mohammed Court analyzed whether programming could be earned at a facility other than the "designated facility" (i.e., Mohammed being transferred to another BOP-contracted housing facility awaiting "writ," or transferred for other reasons, yet still participating in EBRRs and/or PAs at this alternate facility). Notably, the BOP conceded that federal inmates are "eligible to begin earning credits [when] ...her sentence commenced."¹ As to earning FTCs at an alternate facility, other than the "designated facility," the Mohammed Court found the "FSA statutory scheme does not unambiguously preclude the BOP from crediting petitioner's programming completed while she was housed at BOP-operative

1. "Party admission" rule. (see Mohammed, *3 LEXIS)

facilities but in the custody of the U.S. Marshall's service" (see Mohammed, *1 and *7 LEXIS). That is, petitioner Mohammed engaged in FSA-styled programming before she took the "initial risk and needs assessment survey (SPARC-13)." She sought credit for this participation, and the BOP denied FTCs earned prior to the "assessment." The Court disagreed with the BOP's denial of Mohammed's earned FTCs, ruling:

"[28 USC §3624(a)(1)] does not explain how an inmate may earn FSA time credits. Rather, [it] explains under what circumstances an inmate may apply accrued credits to secure early release."

The Court went on to hold that programming completed prior to reaching their designated facility could be credited and requested additional Chevron (Chevron v. Natural Res. Def. Coun., 2778 S.Ct. (1984)) briefing.

While the Mohammed Court "chewed away" at the pre-pattern FSA earned credits, and "transfer writ," the Court in Salvatore Pelullo v. Warden, FCC Coleman - LOW, 2024 US Dist. LEXIS 143499, Case 5:23-CV-169189-WFJ-PRL (Middle Dist. of Florida, Tampa Division, August 13, 2024) did rule on the award of FTCs while an inmate was on "writ" (transfer), on August 13, 2024. The Court ruled "**post-Loper**" (as cited), reviewing the BOP's regulation 28 CFR §523.41(C)(4)(i)-(v) which provides:

- (4) an eligible inmate...will generally **not be considered** to be "successfully participating" in EBRR ["Evidence Based Recidivism Reduction" programming] or PAs ["Productive Activities"] in situations including, but not limited to:
 - (i) Placement in a Special Housing Unit ("SHU").
 - (ii) Designation status outside the institution (e.g., for extended medical placement in a hospital or outside institution, an escorted trip, a furlough, etc.);
 - (iii) Temporary transfer to the custody of another Federal or non-Federal government agency (e.g., on state or Federal writ, transfer to state custody for service of sentence, etc.).
 - (iv) Placement in mental health/psychiatric holds; or
 - (v) "Opting out" (choosing not to participate in the EBRR programs or PAs that the Bureau has recommended based on the inmate's individualized risk and needs assessment).

In applying a post-Loper (Loper Bright Enterprises v. Rainmundo, 603

U.S. S.Ct. (June 2024)) independent analysis of the validity of the above cited BOP regulation(s), the Pelullo Court found the regulations partially valid. The Court reasoned that the FSA implied "presumptive bars" in EBRR programming or PAs, but nothing was absolute. And, yet, like the Courts in Yufenyuy, Huihui, and the Patel progeny, 28 CFR §523.41(C)(4)(iii) could not act as a blanket exclusion to earning FTCs. The pelullo Court, instead, engaged in an independent analysis of each block of time to see if the inmate was entitled because either: (1) the BOP whimsically made it impossible to complete programming, or (2) the inmate did. in fact, complete programming. The Puello Court reasoned that:

"The FSA itself does not tie a prisoner's eligibility to any specific BOP facility. Thereunder, time credits are available for successfully completed programming unless that programming is completed: (1) "prior to the date of enactment of this subchapter; or...during official detention prior to the date that the prisoner's sentence commences under section 3585(a)"; or (2) the prisoner is otherwise ineligible under section 3632(d)(4)(D). 18 USC §3632(d)(4)(B). None of these disqualifications apply to Petitioner. BOP attempts to alleviate this tension by qualifying ineligibility under section 523.41(c)(4)(iii) as an ineligibility to "successfully participate" rather than in ineligibility to earn time credits generally, but such a blanket, automatic prohibition in Petitioner's case appears contrary to the FSA. BOP itself makes clear that "[t]he calculation of FTCs is fully automated based on the number of 30-day periods in earning status." Dkt. 9-1 at 5. An ineligibility to "successfully participate" under a section 523.41(c)(4)(iii) designation status caused an automatic ineligibility for Petitioner to earn time credits when he was in BOP facilities taking BOP programs, albeit on a USMS writ. In this case, it resulted in the automatic denial of time credits that Petitioner was eligible to earn under FSA."

Essentially, the Court ruled that the petitioner, Pelullo, could not, by law, develop his own FTC programs, but, such program offerings were BOP-dependant, not "inmate-dependant," ruling:

"...it appears that BOP's application of section §523.41(c)(4)(iii) in this case was purposed to dissuade Petitioner from participating in programming. Or this application as to Petitioner is to create a system where BOP is not responsible for administering the FSA... This is CONTRARY TO THE FSA..."

Specifically, 18 USC §§3631 and 3632(a) provides that the "Attorney General SHALL... (5) reassign the prisoner to appropriate evidence-based recidivism reduction programs or productive activities... to ensure that... (C) all prisoners are able to successfully participate in such programs." The Pelullo Court ruled that the onus for FSA program offerings is not "up to chance," but on the shoulders of the BOP, not the inmate. Thus, if an inmate is denied the right to participate in EBRRs or PAs due to the BOP's lack of allowance, then the BOP is violating the terms of the FSA. 18 USC §3632(a)(3). The Puello Court ruled that denying inmates FSA-opportunities during "writ," is inconsistent with FSA EBRR and PA offering mandates.

C. The FSA Doesn't Apply Toward Prerelease Custody or Supervised Release Argument

With the Courts holding (1) 28 CFR §523.42(a) contradicted the FSA's clear language requiring FTCs to start accruing at the (a) date of sentencing and (b) incarceration, and (2) 28 CFR §523.41(c)(4)(i)-(iv) restrictions placed on EBRR and PA offerings are "presumptive," and not absolute, thereby denying inmates the opportunity to earn FTCs, allowing for inmates to earn FTCs while on writ, or transfer; all these holdings address time credits to be applied to the first 365 awarded or earned FTC days. Per 18 USC §3624(g)(3) the first 365 FTCs earned by an inmate can be additive to "supervised release," even as earned GTCs extend supervised release. None of these cases addressed the "second application" of FTCs earned beyond 365-FTC days being applied to prerelease custody.

However, on May 15, 2024, the United States District Court of the District of Kansas was faced with this precise issue. Alphonso Woodley

v. Warden USP Leavenworth, 2024 US Dist LEXIS 87521, Case 24-3053-JWL (D. of Kansas, May 15, 2024). In Woodley "the BOP [has] applied 365 days of ETCs toward Petitioner's release date, and 445 days of ETCs toward time in a residential reentry center (RRC)." (see Woodley, * LEXIS). Accordingly, the BOP correctly applied the first 365 FTCs shortening Woodley's release to supervised release by 1 year (365 days), and the remainder of FTCs toward an early transfer to either RRC or home confinement. In Woodley, Judge Lungstrum ruled:

"Under the plain reading of this provision of the FSA [18 USC §3624(c)(2)] which includes the word "shall," the BOP is **required to transfer a prisoner to prerelease custody** or supervised release if the prisoner is eligible as determined under Subsection §3624(g)... which [FTC] remainder amount has been computed...**transfer [to prerelease custody] is MANDATORY.**"

Judge Lungstrum combined statutes under 18 USC §3632(d)(4)(c) and 18 USC §3624(g), which read:

"Application of Time Credits Toward Prerelease Custody...time credits SHALL BE APPLIED toward time in prerelease custody or supervised release. The Director of the Bureau of Prisons **SHALL TRANSFER** eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release." [18 USC §3632(d)(4)(c)].

"Prelease Custody or Supervised Release for Risk and Needs Assessment System Participants. (1) Eligible Prisoners--This subsection applies in the case of a prisoner (as such term is defined in section 3635) who - (A) has earned time credits under the risk and assessment system developed under subchapter D (referred to in this subsection as the 'System') **in an amount that is equal to the remainder of the prisoner's imposed term of imprisonment.**" [18 USC §3624(g)]

As "authority," Judge Lungstrum quotes (1) Doe v. Federal Bureau of Prisons, 2024 US Dist. LEXIS 19755, 2024 WL 455306 at *1-4 (S.D.N.Y., Feb., 2024) and Ramirez v. Phillips, 2023 US Dist. LEXIS 228778, 2023 WL 8878993, at *4 (E.D. of California, Dec. 22, 2023) quoting both Courts in those cases as ruling:

"...transfer to prerelease custody [is] MANDATORY, THE BOP HAS NO DISCRETION NOT TO TRANSFER" (See Woodlev. *4 LEXIS)

The Woodley Court holds that the mandatory language of 18 USC §3632(d)(4)(c) trumps any BOP self-imposed "discretion," whereby the BOP relies on 18 USC §3621(b) to determine an inmate's place of confinement and to transfer a prisoner to prelease custody, or a different facility, with 18 USC §3621 reading "this subsection is not reviewable by any court (see *Lee v. English*, 2019, U.S. Dist. LEXIS 139767, 2019 WL 3891147, at *9-10 (D. of Kan. Aug. 19, 2019) (*Lungstrum J.*) aff'd sub nom. *Jones v. English*, 817 F. App'x 580 (10th Cir. 2020)). In the *Lee v. English* case, Judge Lungstrum stated this ruling was not about an inmate qualifying for ETCs, based on pre-FSA legal principles. However, the passage of the First Step Act changed the Court's position relative to the relationship between 18 USC §3621(b) and 18 USC §3632(d)(4)(c), because 18 USC §3632(d)(4)(c) modifies 18 USC §3621(b) through the use of the word "shall transfer" to prerelease custody, ruling:

"There is no indication that the prisoner in that case [the *Lee v. English* case] was an eligible prisoner who had earned ETCs, however, and neither this Court nor the Tenth Circuit addressed the applicability of Section 3632(d)(4)(C) in that case [as amended by the First Step Act] See *id.*; *Jones* 817 F. App'x 580. In this case, it is clear that the BOP has no discretion to refuse or delay the transfer of petitioner to prerelease custody [in accordance with 18 USC §3632(d)(4)(c)]"

The Court ordered Woodley's placement to prerelease custody to be immediate.

Petitioner Zeitlin's Argument

Petitioner Richard Zeitlin was incarcerated on Dec. 10, 2024. He was sentenced on Dec. 10, 2024. Zeitlin did not arrive at his final designated facility, FPC Montgomery, until March 13, 2025. Therefore, his eligibility to start earning FTCs began on the date he was both (1) incarcerated and (2) sentenced, that being Dec. 10, 2024.

As stated, Zeitlin arrived at FPC Montgomery on March 13, 2025.

Between Dec. 10, 2024 and March 13, 2025, a period of 93 days, the BOP refused to (1) afford Zeitlin the opportunity to earn FTC credits and (2) denied Zeitlin FTCs for these days. The total FTC loss at 10 FTCs per 30-FSA period, shorts Zeitlin 30-35 FTC days (93 days/30-Day Periods X 10 FTCs per period) = 31 lost FTCs. These "lost" FTCs would have been applied to Zeitlin's early release from prison to supervised release, per 18 U.S.C. 3624(g) and 3624(g)(3), MANDATED by the First Step Act.

During the 93 days, following sentencing, while Zeitlin was housed in a BOP-designated facility (not the final designated facility, but the facilities to which he was assigned prior to arriving at FPC Montgomery, Zeitlin was engaged in "Productive Activities" (PAs), being assigned as an "orderly" from Dec. 10, 2024 through March 13, 2025. Because Zeitlin was engaged in PAs, he is entitled to accrue FTCs per 18 U.S.C. 3632(d)(4) (i.e., "a prisoner who successfully completes evidence-based recidivism reduction programming or productive activities, shall earn time credits) and 18 U.S.C. 3635(5)(A)

(i.e., "Productive activity. The term "productive activity is defined as either a group or individual activity that is designed to allow prisoners.. to remain productive and

thereby maintain a minimum of low risk of recidivating...) and 18 U.S.C. 3635(3)(C)(xi) (i.e., [productive activities] may include- a prison job, including through a prison work program). During these 93 "missing FSA days, again, Zeitlin was an "orderly"-assigned to a "prison job", being defined as a "productive activity" under 18 U.S.C. (3)(C)(xi).

Zeitlin was eligible for FTCs (1) at sentencing and (2) incarceration, 12/10/2024 and extending through his arrival at FPOCMontgomery, on 3/13/2025, a 93 day period. Not only did Zeitlin work as an orderly, but, he also participated in all the "required interim" programs made available to him (physical activity programs) during this 93 day period. Zeitlin is due, at least, an additional 30-35 FTCs computed at 10 FTCs every 30 day FSA period. The start of his FTC accumulation period should have begun Dec. 10, 2024, the date when both (1) his sentencing and (2) his incarceration intersected.

Conclusion

For the reasons stated herein, Petitioner hereby requests that the Court order the BOP to apply all his FTC days as earned, yet, not currently, fully, recognized by the BOP.

Submitted this 3rd Day of March Year 2026

Signed By 

Richard Zeitlin
Federal Prison Camp, Montgomery
1001 Willow St.
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I, Richard Zeitlin, declare that the above submission is true and accurate, to the best of my knowledge pursuant to 28 U.S.C. 1746, under penalty of perjury.

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