

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

GLENN EVERETT WALTMAN,	§	CIVIL ACTION NO. 2:23-CV-00751
	§	
Petitioner,	§	
	§	
vs.	§	JUDGE JAMES D. CAIN, JR.
	§	
	§	
WARDEN MARTINEZ,	§	MAGISTRATE JUDGE KATHLEEN KAY
	§	
Respondent,	§	

**RESPONDENT'S RETURN**

COMES NOW Respondent, Warden Felipe Martinez, by Brandon B. Brown, United States Attorney for the Western District of Louisiana, and through Shannon Brown, Assistant United States Attorney for the Western District of Louisiana, and files this return to Petitioner's petition for writ of habeas corpus.

**INTRODUCTION**

Glenn Waltman (Petitioner), Federal Register Number 77019-097, has filed a petition for writ of habeas corpus claiming that the Bureau of Prisons (BOP) has refused to apply all earned First Step Act time credits. Specifically, he challenges BOP's decision to house him at FCI Oakdale, rather than in community confinement, and demands an immediate transfer to pre-release confinement. For the reasons stated below, this petition should be denied or dismissed.

**PARTIES**

Petitioner is a federal inmate at the Federal Correctional Institution (FCI) in Oakdale, Louisiana. He is serving a 98 month sentence for violation of 21 U.S.C. § 841(A)(1), Possession with Intent to Distribute Methamphetamine; and 18 U.S.C. § 922(g)(1), Felon in Possession of a Firearm. *See* Declaration of Crystal Bellino (Bellino Decl.), Att. 1, Public Information. Petitioner is currently projected for release on December 24, 2023. *See id.* Petitioner is also subject to a detainer that was filed by the State of Nebraska. Earlier this year, Petitioner was convicted in the

State of Nebraska for violation of attempting to Possess Methamphetamine with Intent to Deliver. On March 14, 2023, Petitioner was sentenced by the District Court of Lancaster County, Nebraska, to serve a sentence of between twelve and eighteen years in custody, consecutive to his current federal sentence. Nebraska thereafter filed a detainer with the Federal Bureau of Prisons: “Please advise when subject is done with [federal] sentence and we will transport back to... Nebraska.” *See* Declaration of Tyron Ardoin, Att. 1, Detainer. Accordingly, as Petitioner is perfectly aware, at the conclusion of his federal sentence he will not be released to the community but must instead serve between twelve and eighteen additional years in state custody.

Under 28 U.S.C. § 2241, the custodian of the institution having custody of Petitioner is the proper respondent. *See Rumsfield v. Padilla*, 542 U.S. 426, 434-35 (2004). Warden Martinez is Petitioner’s custodian and is therefore properly named as Respondent.

### **PROCEDURAL PREREQUISITES**

#### **A. Venue**

Under 28 U.S.C. § 2241, venue in a habeas corpus action requires that the petition be brought in the district court in the place where Petitioner is confined. Since Petitioner is confined in Oakdale, Louisiana, which is located within the Western District of Louisiana, venue is proper. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 495 (1973).

#### **B. Personal Service**

Service of process under 28 U.S.C. § 2243 requires that the custodian of Petitioner be served with a copy of the complaint and order to show cause in a habeas action. There is no evidence that Respondent was properly served in this matter. However, Respondent waives any defect in service.

### **FACTS**

#### **A. The First Step Act of 2018**

##### **1. Accruing Time Credits**

The First Step Act (FSA) authorizes the Bureau of Prisons to grant Federal Time Credits (FTC or “FSA Time Credits”) to eligible inmates. *See* 18 U.S.C. § 3624(g). “An eligible inmate... may earn FSA Time Credits for programming and activities in which he or she participated from

December 21, 2018, until January 14, 2020,” and “may earn FSA Time Credit if he or she is successfully participating in [Evidence-based Recidivism Reduction (EBRR)] programs or [Productive Activities (PAs)] that the Bureau has recommended based on the inmate’s individualized risk needs assessment on or after January 15, 2020.” 28 CFR § 523.42(b).

As a default, all inmates eligible to earn FTC are awarded 10 days for every 30 days of programming: “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). Some inmates may qualify to earn an additional five days per month:

A prisoner determined by the Bureau of Prisons 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); *see also* 28 CFR § 523.42(c). There is no dispute as to Petitioner’s eligibility to earn FSA Time Credits, or as to the number of credits he has earned.

## 2. Applying Time Credits

The First Step Act authorizes the Bureau of Prisons to apply FSA Time Credits to an eligible inmate’s sentence:

Time credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities 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 U.S.C. § 3632(d)(4)(C) (emphasis added).

While this language uses terms like shall, it is not absolute. Instead, the inmate may apply earned credits only if eligible to do so, as determined by the Bureau of Prisons. *See* 18 U.S.C. § 3624(g). If an inmate has earned credits equal to the remainder of the inmate’s sentence, 18 U.S.C. § 3624(g)(1)(a), and otherwise meets the eligibility criteria laid out in 18 U.S.C. § 3624(g)(1), then the prisoner is eligible to have credits applied to prerelease custody and/or early transfer to supervised release. 18 U.S.C. § 3624(g)(2).

BOP is granted discretion to allocate these credits to either prerelease custody, or supervised release. *See* 18 U.S.C. § 3632(d)(4)(C). Congress defines pre-release custody as home confinement (HC) or placement in a residential reentry center (“RRC” or “halfway house”). 18 U.S.C. § 3624(g)(2). Although Congress has thus authorized the Bureau of Prisons to utilize either or both of these types of pre-release custody, it does not define when one should be used rather than the other. Instead, this is left to the discretion of the Bureau of Prisons. Notably, a transfer to prerelease custody does not terminate an inmate’s confinement. Instead, this is merely a transfer to a lower level of confinement, as generally authorized by 18 U.S.C. § 3621(b) (“The Bureau of Prisons shall designate the place of the prisoner’s imprisonment...”). Ultimately, he must continue his pre-release custody until his sentence is satisfied.

Second, assuming an inmate has a term of supervised release as part of his sentence, the BOP may apply some of his Federal Time Credits to transfer (in effect release) the inmate to begin his term of supervised release up to twelve months early:

If the sentencing court included as a part of the sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons *may* transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under 3632.

18 U.S.C. § 3624(g)(3); *see also* 28 C.F.R. § 523.44(d) (stating that BOP may apply FSA Time Credits toward early transfer to supervised release “no earlier than 12 months before the date that transfer to supervised release would otherwise have occurred.”). Unlike prerelease custody, a transfer to begin supervised release is in effect an early release.

The Bureau of Prisons has exercised this discretion to apply the first 365 FSA Time Credits to early release (early transfer to supervised release). *See* Program Statement 5410.01 at 16 (for inmates meeting eligibility criteria, “up to 365 days of earned FTCs will be automatically applied to early release”)(available at [www.bop.gov](http://www.bop.gov)). This maximizes the early release benefit to eligible inmates.

Any remaining credits may then be applied to pre-release custody. However, in order to apply such credits to prerelease custody, the “inmate must be eligible to participate in prerelease

custody separate from any FSA eligibility criteria.” *Id.* at 14. The Bureau of Prisons has longstanding policy regarding community confinement, Program Statement 7320.04, *Community Corrections Center (CCC) Utilization and Transfer Procedure*, available at [www.bop.gov](http://www.bop.gov). This policy, quite understandably, states that inmates with “unresolved pending charges, or detainers, which will likely lead to arrest, conviction, or confinement” will not ordinarily participate in community confinement. *See id.* at 10-11. An inmate with a detainer to serve a lengthy sentence with another sovereign poses an escape risk that would justify keeping that inmate in a secure facility through the completion of his federal sentence.

**B. Petitioner’s Federal Time Credits**

Petitioner’s most recent FSA Time Credit Assessment, dated October 5, 2023, indicates Petitioner has earned 570 credits, of which 365 days can be applied towards early release (early transfer to supervised release), and the remaining 205 days are available to be applied to transfer to prerelease custody. *See Bellino Decl.*, Att. 2, FSA Time Credit Assessment.

Petitioner’s Projected Release Date (PRD), via Good Conduct Time (GCT) release, also known as his Statutory Release Date (SRD), is December 23, 2024. *See Bellino Decl.*, Att. 1. What this means is that, without taking into account any Federal Time Credits (FTC or “FSA Time Credits”) earned under the First Step Act (FSA), Petitioner is projected for release on December 23, 2024. Projecting Petitioner’s release date, taking into account the 365 credits he is projected to apply to his sentence, advances his PRD to December 24, 2023. *See id.*, Att. 1.

Petitioner, while within 205 days of his projected release date, has not been transferred to community confinement. Instead, he will be required to stay in a secure facility until transferred to Nebraska state authorities for service of his consecutive state sentence.

## **ARGUMENT**

**A. Petitioner Is Not Entitled To Release Any Earlier Than Already Projected**

In order for relief to be granted under 28 U.S.C. § 2241, Petitioner must demonstrate that he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2244(c)(3). It is well settled that “[a] necessary predicate for the granting of federal habeas relief [to a petitioner] is a determination by the federal court that [his or her] custody violates the

Constitution, laws, or treaties of the United States.” *Rose v. Hodges*, 423 U.S. 19, 21 (1975) (citing 28 U.S.C. § 2241). In determining when an inmate may bring a claim via habeas, “the instructive principle” is that “challenges to the fact or duration of confinement are properly brought under habeas, while challenges to the conditions of confinement are properly brought [as civil rights actions].” *Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017). The Fifth Circuit has previously clarified that where the inmate’s challenge “affects the timing of his release from custody,” it should be brought under habeas. *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997). However, “[i]f a favorable determination would not automatically entitle the prisoner to accelerated release, the proper vehicle is a [civil rights action].” *Id.*

Petitioner has not demonstrated that his projected release date of December 24, 2023 in any way violates the law. Nor does he disagree that he has been found eligible to earn FSA Time Credits, or that his projected release date already takes into account the maximum amount of FSA Time Credits authorized by law:

If the sentencing court included as a part of the sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under 3632.

18 U.S.C. § 3624(g)(3). The Bureau of Prisons has already projected that Plaintiff will be eligible to apply the full 365 days to reduce his sentence. *See Bellino Decl.*, Att. 1, Public Information. The earliest Petitioner would qualify for release from custody would be December 24, 2023. Petitioner is not entitled to immediate release, or indeed to release any sooner than the date already projected by the Bureau of Prisons. He has not shown an entitlement to habeas relief, and this petition should be denied.

**B. The Court Lacks Jurisdiction Over The Location of Petitioner’s Confinement**

Petitioner instead argues he should be transferred to prerelease custody (either an RRC or HC). However, the Court lacks jurisdiction to review the designation of his facility, to include potential prerelease custody in the community. Again, in determining when an inmate may bring a claim via habeas, “the instructive principle” is that “challenges to the fact or duration of

confinement are properly brought under habeas...” *Poree v. Collins*, 866 F.3d 235, 243 (5th Cir. 2017). Petitioner does not allege that the government is without authority to detain him. To the contrary, there is no dispute that Petitioner was convicted in a court of law and is incarcerated pursuant to a lawful sentence. Petitioner does not allege that BOP has miscalculated his sentence, or disallowed Good Conduct Time in violation of due process. His demand for transfer to a lower security facility (community confinement) is not enough to demonstrate that a favorable ruling in this case would result in an early release.

It is well established that an inmate has no protectable liberty interest in his custodial classification, or in being housed at a particular facility or custody level. *See Olim v. Wakinekona*, 461 U.S. 238, 250-51 (1983). The Constitution does not guarantee an inmate will be placed in a prison facility with any particular security classification. *See Meachum v. Fano*, 427 U.S. 215 (1976). The “decision to assign the convict to a particular institution is not subject to audit under the Due Process Clause, although the degree of confinement in one prison may be quite different from that in another.” *Id.* at 224. “As long as the conditions or degree of confinement to which the prisoner is subjected are within the sentence imposed upon him and are not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate’s treatment by prison authorities to judicial oversight.” *Montanye v. Haymes*, 427 U.S. 236, 242 (1976). “[I]t is well settled that ‘[p]rison officials must have broad discretion, free from judicial intervention, in classifying prisoners in terms of their custodial status.’” *McCord v. Maggie*, 910 F.2d 1248, 1250 (5th Cir. 1990), *citing Wilkerson v. Maggio*, 703 F.2d 909, 911 (5th Cir. 1983).

Congress has also acted to preclude Judicial review of BOP’s classification and designation decisions, including transfers to community confinement: “Notwithstanding any other provision of law, a designation of a place of imprisonment under this subsection is not reviewable by any court.” 18 U.S.C. § 3621(b)(5). Indeed, “the provisions of sections 554 and 555 and 701 through 706 of title 5, United States Code, do not apply to the making of any determination, decision, or order under this subchapter.” 18 U.S.C. § 3625 (referring to sections 3621 through 3626). For this reason, BOP’s determinations under sections 3621 and 3624 are unreviewable by the court.

*See e.g. Cook v. Wiley*, 208 F.3d 1314, 1319 (11th Cir. 2000)(applying section 3625 to preclude judicial review of 3621(e) decision).

As the Ninth Circuit stated in *Reeb v. Thomas*:

There is no ambiguity in the meaning of 18 U.S.C. § 3625. The plain language of this statute specifies that the judicial review provisions of the APA, 5 U.S.C. §§ 701–706, do not apply to “any determination, decision, or order” made pursuant to 18 U.S.C. §§ 3621–3624. ... To find that prisoners can bring habeas petitions under 28 U.S.C. § 2241 to challenge the BOP's discretionary determinations made pursuant to 18 U.S.C. § 3621 [or 3624] would be inconsistent with the language of 18 U.S.C. § 3625. Accordingly, any substantive decision by the BOP [under these provisions] is not reviewable by the district court.

636 F.3d 1224, 1227 (9th Cir. 2011).

The First Step Act has not changed this. *See, e.g. Mingo v. Bragg*, 2020 WL 8371203, \*2 (D. S.C. July 28, 2020) (“The First Step Act did not alter the BOP’s statutory authority to determine when, or if, [an inmate] is placed in an RRC or on home confinement.”). There is no jurisdiction to review the Bureau’s discretionary decisions on whether and when an inmate should be designated to community confinement.

Furthermore, spending the next two months in a halfway house or home confinement can serve no purpose, other than to facilitate an escape. The purpose of prerelease custody is to afford a prisoner “a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community.” 18 U.S.C. § 3624(c). This inmate is not on the cusp of reentry into society. He does not need community resources to help him reestablish a home, or to find a job. To the contrary, he needs to remain safely secure until he can be transferred to the custody of the State of Nebraska, which has determined that he must serve between twelve and eighteen years in state custody following the completion of his federal sentence. The Bureau of Prisons’ decision to keep him in a secure facility pending this transfer is not only reasonable, but fully within its discretion as granted by 18 U.S.C. § 3621(b).



### **CONCLUSION**

For the foregoing reasons, this Court should deny and dismiss this petition.

Respectfully submitted this 30<sup>th</sup> day of October 2023.

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### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on October 30, 2023, a copy of the foregoing Respondent's Return were filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system. I also certify that I have mailed by United States Postal Service this filing to the following non-CM/ECF participants:

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