No. 25-2609

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Ivan J. Stark, Jr.,

Petitioner-Appellant,

v.

Brian Lammer, Warden,

Respondent-Appellee.

On Appeal from a Final Judgment of the
United States District Court for the Northern District of Illinois
Case No. 3:24-cv-50236, Hon Iain D. Johnston

OPENING BRIEF FOR PETITIONER-APPELLANT IVAN J. STARK, JR.

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December 3, 2025

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Attorney's Signature: /s/ Becca Steinberg Date: 9/15/2025

Attorney's Printed Name: Becca Steinberg

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Attorney's Signature: /s/Brian Wolfman Date: 12/3/2025

Attorney's Printed Name: Brian Wolfman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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Table of Contents

Page(s)

Table of Authorities

Cases **Page(s)**

Statutes

Regulations

Other Authorities

Introduction

Through the First Step Act, Congress sought to promote rehabilitation by awarding a new form of time credits to prisoners who participate in recidivism-reduction programs. Unlike previous statutes that vested substantial discretion in the Bureau of Prisons, the First Step Act imposed mandatory obligations: BOP must provide programming to all prisoners throughout their entire term of incarceration, and it must award credits to prisoners who participate in that programming.

BOP has disregarded that mandate. After a prisoner is sentenced and in custody, his term of incarceration begins. At that point, BOP must provide programming and corresponding credits. But BOP instead waits to assign programming and award credits until after a prisoner arrives at his designated facility. That wait time can be substantial—for Ivan Stark, it was eleven months. Seeking to justify this categorical exclusion, BOP says that a prisoner cannot earn credits until after he has undergone a risk and needs assessment, even when BOP delays that assessment—again, sometimes for months—until after a prisoner arrives at his designated facility.

And even after the assessment, BOP continues to withhold credits. As relevant here, BOP prohibits prisoners from earning credits during the time that BOP holds them at any institution other than their designated facility, even when they have engaged in programming and regardless of how long they are there.

BOP's practice runs headlong into the mandates of the First Step Act. The Act requires BOP to provide programming (and corresponding credits) to prisoners "throughout their entire term of incarceration," 18 U.S.C. § 3621(h)(6)—not just after they've undergone an assessment or while they're at their designated facility. By selectively exempting itself from its statutory obligations, BOP has violated the First Step Act's commands. This Court should reverse.

Jurisdictional Statement

On June 18, 2024, Ivan Stark filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. App. 1-8. The district court had jurisdiction under 28 U.S.C. §§ 2241(a) and 1331. On August 14, 2025, the district court dismissed Stark's petition and entered judgment for the warden. App. 126-30. Stark timely filed a notice of appeal on September 12, 2025. App. 131. This Court has jurisdiction under 28 U.S.C. § 1291.

Issues Presented

I. Whether the district court erred in concluding that Ivan Stark, a federal prisoner, was ineligible to accrue Earned Time Credits under the First Step Act for the eleven months he was incarcerated after he was sentenced but before he was transferred to FCI Pollock, the designated BOP facility where he was to serve his sentence.

II. Whether the district court erred in concluding that Stark was ineligible to accrue credits during the 31 days he was housed at MCC

Chicago, a BOP facility, while en route to FCI Thompson, his new designated facility.

III. If this Court finds that BOP improperly withheld credits from Stark, whether those credits may be applied to reduce the term of his supervised release.

Statement of the Case

I. Legal background

First Step Act. The First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, was hailed as "once-in-a-generation criminal justice reform" to combat overincarceration and reduce recidivism. 164 Cong. Rec. S7838 (daily ed. Dec. 19, 2018) (statement of Sen. Chuck Grassley). The Act both shortened the length of federal sentences and imposed new obligations on the Bureau of Prisons in administering those sentences. Relevant here, the Act obligates BOP to develop a risk and needs assessment system that provides prisoners with appropriate recidivism-reduction programs and incentivizes prisoners to participate in that programming. 18 U.S.C. § 3632.

Through that system, BOP must determine each prisoner's recidivism risk and assess each prisoner's risk of violent or serious misconduct. 18 U.S.C. § 3632(a)(1)-(2). It must also periodically reassess each prisoner's risk of recidivism. *Id.* § 3632(a)(4), (d)(5). Those assessments provide BOP with "guidance on the type, amount, and intensity" of the evidence-based

recidivism-reduction programs to be assigned to each prisoner. *Id.* § 3632(b); *see id.* § 3632(a)(3).

BOP also "shall provide all prisoners with the opportunity to actively participate in evidence-based recidivism reduction programs or productive activities, according to their specific criminogenic needs, throughout their entire term of incarceration." 18 U.S.C. § 3621(h)(6). A "prisoner" is "a person who has been sentenced to a term of imprisonment pursuant to a conviction for a Federal criminal offense, or a person in the custody of the Bureau of Prisons." *Id.* § 3635(4); *see id.* § 3621(h)(7) (incorporating this definition). And the statute defines "evidence-based recidivism reduction program" to mean an activity that (1) has been shown by empirical evidence or research to reduce recidivism or be likely to reduce recidivism and (2) "is designed to help prisoners succeed in their communities upon release from prison." *Id.* § 3635(3)(A)-(B). Examples of these programs include certain classes, training, and prison jobs. *Id.* § 3635(3)(C).

BOP also "shall provide incentives and rewards for prisoners to participate in and complete evidence-based recidivism reduction programs." 18 U.S.C. § 3632(d). Among other incentives, prisoners can earn credits that reduce their period of incarceration. *Id.* § 3632(d)(4). We now explain how prisoners earn credits under the First Step Act.

The First Step Act first details *who* may earn credits toward early release. All prisoners who complete programming "shall earn" credits, 18

U.S.C. § 3632(d)(4)(A), subject to specified eligibility-related exceptions. Prisoners convicted of a disqualifying offense, primarily violent and terrorism-related offenses, are ineligible. *Id.* § 3632(d)(4)(D).[1]

Next, the Act outlines *how* eligible prisoners earn credits. Eligible prisoners "shall earn 10 days of time credits for every 30 days of successful participation" in programming. 18 U.S.C. § 3632(d)(4)(A)(i). Prisoners at "minimum or low risk for recidivating" who have not "increased their risk of recidivism" over two "consecutive" assessments "shall earn an additional 5 days of time credits for every 30 days of successful participation." *Id.* § 3632(d)(4)(A)(ii).

The Act also states *when* eligible prisoners earn credits. All eligible prisoners earn credits for participation in programming, subject to two time-based limitations. 18 U.S.C. § 3632(d). First, prisoners may not earn credits for participation in programming "prior to the date of enactment" of the Act. *Id.* § 3632(d)(4)(B)(i). Second, credits are not available for participation in programming "during official detention prior to the date that the prisoner's sentence commences under section 3585(a)." *Id.* § 3632(d)(4)(B)(ii). A prisoner's sentence "commences on the date the defendant is received in custody awaiting transportation to … the official detention facility at which the sentence is to be served." *Id.* § 3585(a).

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[1] A second category of prisoners—those subject to final immigration removal orders—may earn credits but are ineligible to have them applied. 18 U.S.C. § 3632(d)(4)(E).

Subparagraph 3632(d)(4)(C) dictates how credits that a prisoner has earned will ultimately be applied. Its first sentence provides that credits "shall be applied toward time in prerelease custody or supervised release." 18 U.S.C. § 3632(d)(4)(C). The second sentence of the subparagraph states that the BOP Director "shall transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release." *Id.* § 3632(d)(4)(C).

Just because a prisoner is eligible to earn credits does not mean that he is necessarily eligible to have those credits applied. As just discussed, all eligible prisoners can earn credits. But subsection 3624(g) sets forth additional eligibility requirements for which prisoners may have those credits applied. To apply credits, the prisoner must have "earned time credits under the risk and needs assessment system ... in an amount that is equal to the remainder of the prisoner's imposed term of imprisonment." 18 U.S.C. § 3624(g)(1)(A). The prisoner must also be minimum or low risk (as determined by a risk and needs assessment). *Id.* § 3624(g)(1)(B). Some requirements are imposed when credits are applied to place a prisoner in prerelease custody or supervised release: To be transferred to prerelease custody, a prisoner must either have been minimum or low risk on his last two assessments or had his transfer approved by the warden; to be placed on supervised release, the prisoner must have been minimum or low risk on his last assessment. *Id.* § 3624(g)(1)(D).

BOP regulations. BOP issued regulations to implement the First Step Act's time-credits provision. 28 C.F.R. §§ 523.40-44. Although the Act requires that BOP "shall" provide credits to eligible prisoners who successfully participate in programming, 18 U.S.C. § 3632(d)(4), BOP's regulations are permissive, providing only that those prisoners "may earn" credits, 28 C.F.R. § 523.40(b). Here's how the regulations operate.

Like the First Step Act, the regulations detail *who* may earn credits toward early release. They track the eligibility provisions of the First Step Act, providing that "[a]ny inmate sentenced to a term of imprisonment pursuant to a conviction for a Federal criminal offense … is *eligible to earn* [First Step Act] Time Credits." 28 C.F.R. § 523.41(d)(1). Likewise, they reiterate that prisoners rendered statutorily ineligible under 18 U.S.C. § 3632(d)(4)(D) may not earn credits. 28 C.F.R. § 523.41(d)(2).

BOP regulations also outline *how* eligible prisoners "successful[ly] participat[e]" in programming that earns them credits. 28 C.F.R. §§ 523.41(c), 523.42(c). Unlike the regulations just discussed, these regulations add new requirements that are not grounded in the statute. Under these regulations, "successful participation" requires that BOP staff determine that a prisoner has participated in programs that BOP has "recommended based on the inmate's individualized risk and needs assessment." *Id.* § 523.41(c)(2). BOP also imposes a location requirement on participation: Inmates may not successfully participate, and thus

cannot earn credits, if they have "[d]esignation status outside the institution" to which they were assigned. *Id.* § 523.41(c)(4)(ii). Inmates also may not participate if they are placed in a special housing unit, are termporarily transferred to another agency, are placed in a mental-health or psychiatric hold, or opt out of participation. *Id.* § 523.41(c)(4)(i), (iii), (iv), (v). But when "[t]emporary operational or programmatic interruptions authorized by the Bureau" prevent a prisoner from participating in programming, BOP "ordinarily" deems him to have successfully participated. *Id.* § 523.41(c)(3).

BOP regulations also state *when* eligible prisoners earn credits. Like the First Step Act, these regulations state that eligible prisoners earn credits for participation in programming, subject to two time-based limitations. 28 C.F.R. § 523.42. The first limitation tracks the First Step Act: Eligible inmates cannot earn credits for participation before the "date of enactment" of the Act. *Id.* § 523.42(b)(1).

The second limitation begins by echoing the Act, providing that inmates can start to earn credits "after the inmate's term of imprisonment commences." *Id.* § 523.42(a). But it then deviates from the Act, *see* 18 U.S.C. § 3585(a), by defining commencement of an inmate's sentence—and thus the date on which eligibility begins—as "the date the inmate arrives … at the designated [BOP] facility where the sentence will be served," 28 C.F.R. § 523.42(a). That is, in contrast to the statutory definition, time served under a federal sentence at an institution other

than the prisoner's designated BOP facility does not count for credits under BOP's regulations. And depending on when a prisoner is transferred to his designated facility, the date when his sentence "commences," as defined by the First Step Act, may be a very different date from when his sentence "commences," as defined by BOP regulations.

BOP program statement. In 2022, BOP published a program statement to implement its regulations and clarify its procedures for awarding and applying credits under the First Step Act. Fed. Bureau of Prisons, U.S. Dep't of Just., Program Statement 5410.01, First Step Act of 2018 – Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4) (2022) (Program Statement 5410.01).[2]

The program statement described the tool BOP developed to conduct assessments. The tool consists of two components: the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN), which measures an inmate's risk of recidivism, and the Standardized Prisoner Assessment for Reduction in Criminality (SPARC-13), which identifies criminogenic needs. Program Statement 5410.01 at 8.

[2] The later version of Program Statement 5410.01 is available at https://www.bop.gov/policy/progstat/5410.01_cn2.pdf. The original version is available at pages 61 to 78 of the Appendix, and we have also archived this version at https://perma.cc/7R4E-46X7.

Per the program statement, BOP administers inmates' initial assessments only after they arrive at their designated facility. Program Statement 5410.01 at 8. Although PATTERN is "[o]rdinarily" completed within twenty-eight days of the inmate's arrival at his designated facility, and SPARC-13 within thirty days, the program statement contemplates that further delays are possible. *Id.* The program statement does not purport to alter BOP's regulation providing that inmates begin earning credits immediately upon arrival at the facility, not after the assessment is completed. *See* 28 C.F.R. § 523.42(a).

After an inmate's assessment is completed, BOP recommends programming based on that assessment. Program Statement 5410.01 at 8. If the inmate agrees to participate, he is either placed in an available program or added to a waitlist. *Id.* In both scenarios, the inmate earns credits by virtue of opting in to programming, even when he is not actively participating, "as long as the inmate has not refused or declined to participate." *Id.* at 4. But if the inmate has a "[d]esignation status outside the institution," like at an "in-transit facility," BOP may treat him as "unable or unwilling to participate in [programming]," and thus unable to earn credits. *Id.* at 15.

II. Factual and procedural background

Ivan Stark was taken into federal custody in on December 21, 2018, and ultimately convicted of bank fraud and aggravated identity theft.

App. 10, 49-50. On July 30, 2020, he was sentenced to 120 months of imprisonment. App. 1. He was designated to serve his sentence at a BOP facility, FCI Pollock. App. 3.

A. After Stark was sentenced, he spent the first eleven months incarcerated at various holdover facilities in Missouri, Oklahoma, and Mississippi. App. 2. While at these holdover facilities, Stark "completed work as a orderly, shower orderly, meal tray [distributor]," and also completed "drug prevention and various psychology and religious programs." App. 3-4. BOP did not award him credits under the First Step Act during this time. App. 12, 42.

On July 1, 2021, Stark was transferred to FCI Pollock. App. 3. Later that month, BOP completed his risk and needs assessment, which identified that Stark "had a work need." App. 3; *see* App. 14-16 (initial assessment); *see also* App. 18 (noting work need). Tee assessment also identified a range of programs for him, including nonresidential drug treatment and "Building a Better Credit Report." App. 14.[3]

On May 8, 2023, Stark was again transferred, this time to MCC Chicago, a BOP facility. App. 5. Stark remained there for 31 days before being transferred to FCI Thompson, his new designated facility. App. 5. While at MCC Chicago, Stark "was enrolled in drug education and met

[3] The record is unclear as to the precise date that Stark's initial assessment was administered, although it seems to have been administered on July 20, 2021. *See* App. 14.

numerous times" with a psychologist. App. 5. BOP refused to award Stark Earned Time Credits under the First Step Act while he was at MCC Chicago. App. 43.

In a grievance submitted by Stark dated March 26, 2024 (but not marked "received" by BOP until April 10, 2024), Stark sought credits both for the period before he arrived at FCI Pollock and for the period while he was at MCC Chicago waiting to be transferred to FCI Thompson. App. 13. Stark wrote that "[n]owhere in the FSA law does it say 'you have to be at your assigned institution to earn FTC credits,'" and that "it's not my fault I was stuck in Holdovers," and "[w]hile at the holdover I worked [and] programmed so I should be given the credits." App. 13.

BOP denied Stark's grievance. App. 12. BOP explained that, under its regulations and program statement, "'[s]uccessful participation' requires a determination by BOP staff that the inmate has participated in the [programs] that were recommended based on the inmate's individualized risk and needs assessment." *Id.* BOP further explained that Stark had not arrived at his designated institution until July 1, 2021, and "did not receive an individualized risk and needs assessment until after July 1, 2021," so "prior to that date, [he] w[as] not eligible to earn FSA time credits." *Id.*

B. Stark then filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2241. App. 1-8. Stark maintained that BOP improperly withheld credits that he should have earned while not at his designated

BOP facility. App. 7. Had BOP credited Stark for these activities during his time before arriving at FCI Pollock and while waiting to be transferred to FCI Thompson, his sentence would be about 120 days shorter. Warden Lammer responded, asking the Court to deny Stark's petition. App. 30-40.

The district court agreed with the warden and denied Stark's petition. App. 128. The district court relied on two BOP regulations: 28 C.F.R. § 523.42, which says that a prisoner may earn credits based only on programming that BOP recommends after a risk and needs assessment, and 28 C.F.R. § 523.41, which says that inmates have not successfully participated in programming when they have a designation status outside the institution, such as at an in-transit facility. App. 127-28.[4]

Stark is currently on home confinement, and his anticipated release date is January 24, 2026. *See* Federal Bureau of Prisons, Inmate Locator, https://www.bop.gov/inmateloc (last visited Dec. 3, 2025).[5]

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[4] The district court identified the first of these two regulations as 28 C.F.R. § 532.42, but the substance of the district court's opinion makes clear that it was referring to Section 523.42. *See* App. 127.

[5] Stark's current status is not reflected in the record, which was compiled while he was still incarcerated. The inmate locator function on BOP's website indicates that he is currently located at RRM Kansas City, a residential reentry management field office that oversees both halfway houses and individuals on home confinement. *See* Federal Bureau of Prisons, RRM Kansas City, https://www.bop.gov/locations/ccm/ckc.

Summary of Argument

I. BOP violated the First Step Act when it withheld credits that Stark earned between July 30, 2020, when his sentence commenced, and July 1, 2021, when he arrived at FCI Pollock, his designated facility. The district court was wrong to approve BOP's practice on the ground that Stark had not yet undergone a risk and needs assessment.

A. The First Step Act imposes a mandatory duty on BOP to provide programming and corresponding credits throughout a prisoner's entire term of incarceration, starting as soon as he is incarcerated after sentencing. The First Step Act lists *other* conditions for earning credits and elsewhere denotes situations where assessments are required. But it does not condition credits on the completion of an assessment. And BOP's own practice comports with this understanding: It has regularly awarded credits that do not depend on an inmate having undergone an assessment. So, with no applicable exception, BOP must provide credits to Stark from the date he was sentenced. This Court should reverse on this basis alone.

B. But that's not the only illegality at issue here. BOP is using its purported assessment requirement to implement an unlawful regulation that delays credits until a prisoner arrives at his designated facility. That's evident from BOP's practice both in this case and more generally: BOP tethers award of credits to the date of arrival, not the date of the assessment. But BOP is not allowed to do this either, because a prisoner's

entitlement to programming and credits starts immediately upon sentencing, not after arrival at his designated facility. Thus, BOP is also wrong to delay the assessment until a prisoner arrives at his designated facility, and use the delayed assessment to withhold credits before the prisoner's arrival.

C. Even if an assessment were required, it need not pre-date the programming for a prisoner to earn credits. Before his assessment, Stark worked and participated in programming that aligned with the needs later identified in his assessment. There is no lawful reason that this programming shouldn't count and thus entitle Stark to credits.

II. For the same reasons, the First Step Act does not permit BOP to withhold credits during the 31-day period that Stark spent at MCC Chicago, a BOP facility. BOP's regulation allowing it to withhold credits during this time violates the First Step Act. While at MCC Chicago, Stark participated in programming, so he should earn credits.

III. Although Stark will transition to supervised release during the pendency of this appeal, that will not render the appeal moot. Under the First Step Act, credits "shall be applied toward time in ... supervised release." 18 U.S.C. § 3632(d)(4)(C). That means that the credits can be applied to reduce the time Stark spends in supervised release. And even if the statute did not require credits to be used in this way, habeas is an equitable remedy, and the district court may fashion relief to ensure that Stark has a remedy for BOP's unlawful denial of credits.

Standard of Review

This Court reviews de novo a district court's denial of a habeas petition under 28 U.S.C. § 2241. *Camacho v. English*, 872 F.3d 811, 813 (7th Cir. 2017). Questions of statutory interpretation are also reviewed de novo. *United States v. Hudson*, 967 F.3d 605, 609 (7th Cir. 2020). Because Stark proceeded pro se, his district-court filings must be liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Argument

I. BOP must award Stark credits for the period after his sentencing but prior to his arrival at his designated BOP facility.

The First Step Act imposes mandatory, complementary duties: BOP must offer programming and must award credits to eligible, participating prisoners. *See* 18 U.S.C. §§ 3621(h)(6), 3632(d)(4). Yet BOP failed to deliver. For nearly a year after Stark was sentenced and incarcerated, BOP denied him credits he had a right to earn.

The district court wrongly found that BOP was permitted to withhold credits because a BOP regulation—28 C.F.R. § 523.42—conditions the award of credits on an inmate having first undergone a risk and needs assessment and been assigned programming based on that assessment. App. 127. But that regulation is invalid because the First Step Act does not authorize it. To the contrary, the First Step Act mandates that BOP provide prisoners with programming and corresponding credits, and

nothing in the Act makes completion of an assessment a precondition to earning credits. And even if an assessment were required, there's no reason the assessment needs to happen *before* a prisoner participates in credit-bearing programming. BOP may not delay the assessment and then use its own delay to deny eligible prisoners credits.

A. Under the First Step Act, a prisoner earns credits without first undergoing a risk and needs assessment.

1. The First Step Act imposes an affirmative obligation on BOP to provide programming and award credits to eligible prisoners. The statute repeatedly uses mandatory language. BOP "shall provide" recidivism-reduction programs to prisoners for the entire time they are incarcerated. 18 U.S.C. § 3621(h)(6). BOP "shall provide" incentives and rewards for prisoners who participate in that programming. *Id.* § 3632(d). Critically, eligible prisoners who participate in programming "shall earn" credits. *Id.* § 3632(d)(4)(A). This language leaves no room for discretion. BOP must award credits for all programming that it is required to provide.

Congress's repeated use of "shall" establishes this obligation. "Shall" imposes a "mandatory command" on BOP. *Bufkin v. Collins*, 604 U.S. 369, 379 (2025). It creates a "duty" and expresses "the mandatory sense that drafters typically intend." *Shall*, Black's Law Dictionary (12th ed. 2024). Where Congress intends to confer discretion on BOP, it uses "may," not "shall." *Lopez v. Davis*, 531 U.S. 230, 241 (2001); *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 346 (2005). Congress did so, for

example, in 18 U.S.C. § 3624(c)(2), which affords BOP discretion over where a prisoner's prerelease reentry occurs. *See Brandon v. Cauley*, 2010 WL 750355, at *2 (E.D. Ky. Mar. 2, 2010).

BOP's obligation to award credits is reinforced by Congress's express declaration about when credits may *not* be awarded. The First Step Act sets forth disqualifying criteria for earning credits, none of which applies to Stark. 18 U.S.C. § 3632(d)(4)(B), (D). These "express exception[s]" to eligibility "impl[y] that there are no *other* circumstances under which" a prisoner can be rendered ineligible. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). Put differently, this statutory list of exceptions precludes additional "implicit" exclusions. *Id.* (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012)).

2. BOP cannot make an assessment a precondition for participating in programming because the First Step Act does not tether programming to the completion of an assessment. Rather, BOP "shall provide all prisoners" with programming "throughout their *entire term of incarceration*," 18 U.S.C. § 3621(h)(6) (emphasis added), which necessarily includes any time before an assessment occurs. Incarceration means "confinement in a jail or penitentiary." *Incarceration*, Black's Law Dictionary (5th ed. 1979). So, the "entire term of incarceration" begins once a prisoner is confined at a jail or penitentiary. And the First Step Act recognizes that: It defines "a sentence to a term of imprisonment" as commencing on the date a prisoner is "received in custody." 18 U.S.C.

§ 3585(a). Accordingly, BOP's obligation to provide programming begins when custody begins, not when an assessment is completed.

This statutory obligation makes sense because the assessment provides only "guidance" as to appropriate programming for each prisoner. 18 U.S.C. § 3632(b). "Guidance" has a "heavily optional flavor." *Pub. Citizen v. Nuclear Regul. Comm'n*, 901 F.2d 147, 154-55 (D.C. Cir. 1990). So, Congress's use of "guidance"—not "requirement"—indicates that a prisoner is not limited to programming assigned through the assessment. If programming need not be assigned through an assessment, then credit eligibility cannot rationally turn on whether one has occurred.

Further, the statutory provision that outlines how credits are earned does not condition them on the completion of an assessment. 18 U.S.C. § 3632(d)(4); *see Mohammed v. Stover*, 2024 WL 1769307, at *4 (D. Conn. Apr. 23, 2024). It includes express limitations on earning those credits at the default rate (ten days of credits for every thirty days of participation), none of which is an assessment. *See id.* § 3632(d)(4)(B), (D). The inclusion of specified eligibility conditions on credits implies the exclusion of others. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012). Congress could have made the assessment a prerequisite to earning credits, but it didn't.

This statutory silence contrasts with a separate First Step Act provision under which an assessment *is* a stated prerequisite for earning

credits above the baseline ten days. Prisoners assessed as having a "minimum or low risk" of recidivism earn an additional five days of credits. 18 U.S.C. § 3632(d)(4)(A)(ii). A prisoner who has not undergone an assessment cannot receive those additional days. *See id.* But Congress did not impose that condition on the baseline ten days earned through successful program participation contained in the Act's immediately preceding provision. *See id.* § 3632(d)(4)(A)(i).

That omission is telling. When Congress includes "language in one section of a statute but omits it from a neighbor," it normally "convey[s] a difference in meaning." *Bittner v. United States*, 598 U.S. 85, 94 (2023). The absence of any assessment requirement for baseline credits confirms that no assessment is needed to earn them.

Elsewhere, too, the First Step Act makes clear when an assessment is required. Paragraph 3624(g)(1) states that a prisoner must have undergone an assessment to be eligible for transfer into prerelease custody or supervised release. But that provision governs when credits may be *applied* to early or supervised release, not when credits may be *earned*. Nothing in the provision, or elsewhere in the statute, makes completion of an assessment a prerequisite to *earning* credits. *See Mohammed*, 2024 WL 1769307, at *3. And this case concerns whether Stark earned credits—not whether he is eligible to have those credits *applied* to his sentence.

3. BOP's own practice belies the notion that an assessment is a prerequisite to earning the baseline ten days of credits. That's because BOP regularly awards prisoners credits that are not connected to any assessment.

To start, prisoners earned credits before the assessment tool ever existed. When the First Step Act took effect in December 2018, BOP lacked an assessment tool. *Goodman v. Ortiz*, 2020 WL 5015613, at *4 (D.N.J. Aug. 25, 2020). That tool was not released until July 2019, and no assessments of any prisoner were completed until January 2020. *Id.* District courts held that the First Step Act required credits to be awarded starting on the statute's enactment date notwithstanding the absence of any assessment. *See, e.g.*, *Hare v. Ortiz*, 2021 WL 391280, at *6-7 (D.N.J. Feb. 4, 2021); *Cazares v. Hendrix*, 575 F. Supp. 3d 1289, 1304 (D. Or. 2021). Following these rulings, BOP adopted a regulation allowing prisoners to have earned credits for any programming completed prior to January 2020, even in the absence of an assessment. *See* 28 C.F.R. § 523.42(b)(2).

Even when an assessment has been completed, BOP routinely awards credits for programming that has no connection to that assessment. As a matter of on-the-ground reality, "inmates are not necessarily required to be participating in [programming] specifically assigned to them at any given time to earn credits." *Borker v. Bowers*, 2024 WL 2186742, at *2 (D. Mass. May 15, 2024) (quoting Decl. of Darla Wolf ¶ 14); *see also Dunlap*

v. Warden FMC Devens, 2024 WL 5285006, at *2 (D. Mass. Dec. 13, 2024), *report and recommendation adopted*, 2025 WL 35248 (D. Mass. Jan. 6, 2025) (quoting Decl. of A. Bourke ¶ 17). When BOP awards prisoners credits for programming unrelated to a prisoner's assessment, the assessment is not serving any function.

Other BOP practices confirm that credits are not contingent on the completion of assessment-related programming. Under BOP's own policy, prisoners are successfully participating if they are "'able and willing … to complete' programming." *Borker*, 2024 WL 2186742, at *2 (quoting Decl. of Darla Wolf ¶ 14); *see* Program Statement 5410.01 at 4. That standard exposes any assessment requirement as artificial: If a prisoner's willingness to participate in programming alone is enough to earn credits, as BOP's practice shows, then BOP cannot impose on Stark (or others similarly situated) an assessment requirement before participation or credit accrual can begin.

BOP's regulation on temporary program interruptions makes the same point. It provides that "[t]emporary operational or programmatic interruptions authorized by the Bureau that would prevent an inmate from participation in [programming] will not ordinarily affect an eligible inmate's 'successful participation.'" 28 C.F.R. § 523.41(c)(3). In other words, even when prisoners cannot participate because BOP suspends operations or interrupts programming, they are still successfully

participating (and earn credits) so long as they remain willing to participate.

The takeaway is simple: Successful participation has nothing to do with whether a prisoner has completed an assessment. The First Step Act requires BOP to provide a prisoner with an opportunity to earn credits through programming during his entire sentence. But BOP is erecting an artificial barrier that a prisoner must have undergone an assessment before he can earn credits. In doing so, BOP is shirking its statutory obligations.

In contrast, Stark has done everything in his power to earn credits under the statute. Over eleven months, he worked three prison jobs and participated in drug-prevention, mental-health, and religious programming. App. 3-4. In comparable circumstances, BOP awards credits to prisoners. It must do the same here.

B. BOP is using the assessment requirement to implement an unlawful regulation.

BOP has sought to justify withholding credits on the ground that, for the credit period involved, Stark had yet to undergo a risk and needs assessment. As just explained, an assessment is not required to earn credits. But even if it were, BOP is otherwise acting in a manner not permitted by the statute, as demonstrated by the timing of both the assessment and the award of credits.

To begin with, BOP does not actually start awarding credits on the date of an assessment. A prisoner first is transferred to his designated facility and then undergoes an assessment. BOP tethers the award of credits to the date of arrival, not the date of the assessment. In doing so, BOP implements an unlawful regulation that directly conflicts with the First Step Act's text.

And even if BOP had tethered credits to the assessment, it improperly delayed administering that assessment to Stark. BOP refuses to administer an assessment until after a prisoner arrives at his designated facility. Here, that took eleven months. It cannot use its own delay to justify withholding credits.

1. Under a BOP regulation, BOP starts awarding prisoners credits as soon as they arrive at their designated facility. 28 C.F.R. § 523.42(a). That holds true even when an assessment has not been completed.

That's important because a prisoner does not generally complete an assessment on the same date that he arrives at his designated facility. Instead, under BOP's own policy, a prisoner's initial assessment is "[o]rdinarily" completed within twenty-eight or thirty days of the prisoner's arrival at his designated facility, not immediately when he gets there. Program Statement 5410.01 at 8. And by stating that the assessment "[o]rdinarily"—not universally—takes place on this timeline, BOP officially contemplates that the assessment might occur even later. *Id.*

But "BOP allows inmates to begin immediately earning time credits upon their arrival at their designated BOP facility, even if the assessment has not yet been completed." *Mohammed v. Stover*, 2024 WL 1769307, at *6 (D. Conn. Apr. 23, 2024); *see* 28 C.F.R. § 523.42(a). So, regardless of whether a prisoner undergoes an assessment on day twenty-eight, day thirty, or later, he earns credits from day one. BOP has acknowledged this discrepancy.[6]

In fact, BOP often backdates assessments, even while insisting, paradoxically, that the assessments are prerequisites for programming and earning credits. *See, e.g.*, *Puana v. Williams*, 2024 WL 4932514, at *1 (Dec. 2, 2024). That seems to be what happened here. Stark arrived at FCI Pollock on July 1, 2021, and began earning credits on that date. App. 42 ¶¶ 9-10. But it appears that his assessment was not completed until later that month. App. 14-16; App. 44 ¶ 15; App. 53. BOP's willingness to backdate the assessment to the date that a person arrives at the designated facility suggests that what really matters is the date of arrival, not the date of assessment. But, as we now explain, the First Step Act does not permit credit accrual to turn on the date of arrival.

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[6] *See, e.g.*, *Mohammed v. Stover*, 2024 WL 1769307, at *6 (D. Conn. Apr. 23, 2024) (quoting Reply to Pet'r's Supp. Br. at 3 n.2); *Kvashuk v. Warden, FCI Berlin*, 2024 WL 4349850, at *4 (D.N.H. Sept. 30, 2024) (quoting Decl. of B. Beegle ¶¶ 12-13); *Dunlap v. Warden FMC Devens*, 2024 WL 5285006, at *2 (D. Mass. Dec. 13, 2024), *report and recommendation adopted*, 2025 WL 35248 (D. Mass. Jan. 6, 2025) (citing Decl. of A. Bourke ¶¶ 18-19).

2. BOP is not permitted to delay credits until after a prisoner arrives at his designated facility. As already shown (at 17-18), BOP must award credits unless one of the First Step Act eligibility- or time-based exceptions applies. The Act prohibits awarding credits "prior to the date that the prisoner's sentence commences under section 3585(a)." 18 U.S.C. § 3632(d)(4)(B)(ii). Subsection 3585(a), in turn, says that a sentence "commences" on the date the prisoner is "received in custody awaiting transportation" to his designated BOP facility. So, before a prisoner is "received in custody awaiting transportation" to his designated BOP facility, he does not earn credits under the First Step Act. But because the First Act's requirements are otherwise mandatory, once his sentence has commenced, as defined by subsection 3585(a), an eligible prisoner must be able to earn credits.

BOP's regulation says something entirely different: that a sentence "commences" on the date the prisoner arrives at the prisoner's designated facility, and a prisoner starts earning credits only then. 28 C.F.R. § 523.42(a). That is a different definition than the one contained in the First Step Act. Where, as here, the statute itself defines a term, "[s]tatutory definitions control the meaning of statutory words." *Burgess v. United States*, 553 U.S. 124, 129 (2008) (quoting *Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949)). And here, Congress defined when a sentence commences. Because BOP's regulation contradicts the FSA's text, it is invalid.

Many courts have agreed, holding that a prisoner's sentence commences, for credit-earning purposes, when the prisoner is sentenced and enters federal custody rather than the date he arrives at his designated facility, and that BOP's contrary regulation is invalid.[7] Congress's chosen statutory definition controls.

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[7] *See Yufenyuy v. Warden*, 659 F. Supp. 3d 213, 218 (D.N.H. 2023); *Modeste v. Birkholz*, 2025 WL 3141034, at *5-6 (D. Alaska Nov. 10, 2025); *Baker v. Rosalez*, 2025 WL 2304794, at *4 (W.D. Tex. July 24, 2024), *report and recommendation adopted*, 2025 WL 2299373 (W.D. Tex. Aug. 8, 2025); *Brenneman v. Salmonson*, 2025 WL 957216, at *4 (E.D. Tex. Feb. 25, 2025), *report and recommendation adopted*, 2025 WL 914352 (E.D. Tex. Mar. 26, 2025); *Gale v. Warden FCI Milan*, 2025 WL 223870, at *4 (E.D. Mich. Jan. 16, 2025); *Heath v. Knight*, 2024 WL 5198863, at *4-5 (D.N.J. Dec. 23, 2024); *Puana*, 2024 WL 4932514, at *4-5; *Tantuwaya v. Birkholz*, 2024 WL 4805423, at *2 (C.D. Cal. Oct. 10, 2024), *report and recommendation adopted*, 2024 WL 4803522 (C.D. Cal. Nov. 15, 2024); *Jackson v. Doerer*, 2024 WL 4719489, at *9 (C.D. Cal. Nov. 7, 2024); *Sharma v. Peters*, 756 F. Supp. 3d 1271, 1281-82 (M.D. Ala. 2024); *Kvashuk v. Warden, FCI Berlin*, 2024 WL 4349850, at *6 (D.N.H. Sept. 30, 2024); *Perevoznikov v. Stover*, 747 F. Supp. 3d 329, 333 (D. Conn. 2024); *Eytcheson v. Caternolo*, 2024 WL 3969227, at *3 (W.D. Wash. July 26, 2024), *report and recommendation adopted in part*, 2024 WL 3965611 (W.D. Wash. Aug. 28, 2024); *Jobin v. Warden, FCI-Mendota*, 2024 WL 1367902, at *4 (E.D. Cal. Apr. 1, 2024), *report and recommendation adopted*, 2024 WL 2786898 (E.D. Cal. May 30, 2024); *Borker v. Bowers*, 2024 WL 2186742, at *1-2 (D. Mass. May 15, 2024); *Mohammed*, 2024 WL 1769307, at *2 n.2; *Corrales v. Ricolcol*, 2024 WL 5275574, at *5 (C.D. Cal. Jan. 10, 2024); *Patel v. Barron*, 2023 WL 6319416, at *4-5 (W.D. Wash. Sept. 5, 2023), *report and recommendation adopted*, 2023 WL 6311281 (W.D. Wash. Sept. 28, 2023); *Huihui v. Derr*, 2023 WL 4086073, at *5 (D. Haw. June 20, 2023); *Komando v. Warden, FCI Berlin*, 2023 WL 4101540, at *4 (D.N.H. Mar. 16, 2023), *report and recommendation adopted*, 2023 WL 4101457 (D.N.H. Apr. 23, 2023); *Umejesi v. Warden*,

Because BOP must make credits available once a prisoner's sentence has commenced under the First Step Act, it cannot delay credit accrual until later. That's because BOP "does not have the discretion to exclude an eligible prisoner." *Kuzmenko v. Phillips*, 2025 WL 779743, at *5 (E.D. Cal. Mar. 10, 2025); *see Pelullo v. Warden, FCC Coleman-Low*, 2024 WL 3771691, at *4 (M.D. Fla. Aug. 13, 2024). BOP has acknowledged as much, stating that "[i]t is outside [its] authority to alter the exclusions as stated in the FSA." FSA Time Credits, 87 Fed. Reg. 2705, 2713 (Jan. 19, 2022) (codified at 28 C.F.R. pts. 523, 541). So, once a prisoner's sentence commences, credit accrual must begin.

Stark became eligible to earn credits on July 30, 2020 (when his sentence commenced under the First Step Act), not on July 1, 2021 (when his sentence commenced under BOP's invalid regulations). By delaying his credit award until this later date, BOP impermissibly added an extra exclusion—and an unlawful reduction in credits for Stark—not contemplated by the First Step Act.

3. As shown (at 24-25), BOP is in fact tying credit accrual to arrival at a designated facility, something that it may not do. But even if this Court finds that (1) an assessment is required under the First Step Act and (2) BOP in fact ties credits to the assessment itself, BOP's practice is still

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2023 WL 4101471, at *4 (D.N.H. Mar. 16, 2023), *report and recommendation adopted*, 2023 WL 4101455, at *4 (D.N.H. Mar. 30, 2023).

unlawful because BOP improperly delays the assessment—here, for eleven months—until the prisoner arrives at his designated facility.

Under BOP policy, BOP administers the assessment only "[a]fter the inmate's arrival at their designated facility." Program Statement 5410.01 at 8. BOP's unlawful regulation delaying the award of credits until after a prisoner's arrival at his designated facility has therefore given "rise to a BOP policy and practice of waiting until after the transfer to a designated facility before undertaking the necessary risk-and-needs assessment and assignment of programming." *Borker v. Bowers*, 2024 WL 2186742, at *2 (D. Mass. May 15, 2024).

But BOP may not "do indirectly (through policy and practice) what the BOP cannot do directly (through the [invalid] regulation)." *Borker*, 2024 WL 2186742, at *2. Put differently, "prisoners should not have to wait several months to start earning any credits based solely on 'BOP's misunderstanding of when [they were] eligible to start earning credits.'" *Baker v. Rosalez*, 2025 WL 2299373, at *1 (W.D. Tex. Aug. 8, 2025) (quoting *Huihui v. Derr*, 2023 WL 4086073, at *7 (D. Haw. June 20, 2023)). "Surely the BOP cannot refuse to comply with the directive to complete a risk and needs assessment and fail to offer … programming for [eleven] months because it delayed in transferring petitioner to his designated facility." *Wong v. Warden, Yankton Fed. Prison Camp*, 2024 WL 4027918, at *3 (D.S.D. Sept. 3, 2024). Regardless of whether BOP's reading of the statute is correct, the FSA does not "authoriz[e]

unreasonable delay—or even bad faith—in the administration of the assessment." *Dunaev v. Engleman*, 2025 WL 1558454, at *4 (C.D. Cal. Apr. 28, 2025). "Any such unreasonable delay on the part of the BOP in assessing the prisoner should not inure to the detriment of the prisoner." *Id.*

No meaningful distinction exists between (1) refusing to award credits until a prisoner arrives at his designated facility and (2) refusing to award credits until a prisoner undergoes an assessment when BOP refuses, as a matter of policy, to administer an assessment until a prisoner arrives at his designated facility. In the second scenario, the assessment requirement becomes a proxy for arriving at the facility. BOP may not implement its invalid regulation by other means, and the Court should reverse on this basis alone.

C. Even if an assessment is required, the assessment does not have to pre-date the programming that earns a prisoner credits.

The district court held that Stark could not participate in programming before he arrived at FCI Pollock because he had not yet undergone a risk and needs assessment. App. 127. To reach this conclusion, the district court relied on 28 C.F.R. § 523.42, which provides that a prisoner may earn credits only if he "is successfully participating in [programming] that the Bureau has recommended based on the inmate's individualized risk and needs assessment." As we have

explained (at 17-23), this regulation is invalid because it conflicts with the First Step Act.

But the question presented in this case may be answered in a narrower way. Even if an assessment were required, nothing in the Act supports the proposition that the assessment must happen *before* a prisoner is provided programming. Under BOP's (invalid) regulation, BOP staff must determine that a prisoner participated in programming that BOP recommended based on the assessment. 28 C.F.R. § 523.41(c)(2). But "BOP can make these determinations before or after an inmate has completed [the programming]." *Puana v. Williams*, 2024 WL 4932514, at *3 (D. Colo. Dec. 2, 2024). Put differently, BOP can determine whether the programming lined up with the assessment, no matter which one happened first.

Consider the situation here. Everybody agrees that work was one of Stark's assessed needs. *See* App. 3; App. 43 ¶ 20; *see also* 18 U.S.C. § 3635(3)(C)(xi) (listing a "prison job, including through a prison work program," as a qualifying activity that earns a prisoner credits). Before Stark arrived at FCI Pollock, he had "completed work as a orderly, shower orderly, [and] meal tray [distributor]." App. 3-4. After he arrived at FCI Pollock, he was assigned to work as an orderly. App. 17. There is no good reason why this same work should count after his transfer, but not before. So, at the very least, once Stark underwent his risk and needs

assessment, he should have received credits for his earlier-completed programming.

Denying Stark credits despite his months of work is at odds with the context of the First Step Act: a "once-in-a-generation criminal justice reform" which "offer[ed] a fresh start to those who put in the work when they were in prison to get right with the law." 164 Cong. Rec. S7838 (daily ed. Dec. 19, 2018) (statement of Sen. Chuck Grassley). The First Step Act was enacted "with the purpose of modifying prior sentencing law and expanding vocational training, early-release programs, and other initiatives designed to reduce recidivism." *Kvashuk v. Warden, FCI Berlin*, 2024 WL 4349850, at *3 (D.N.H. Sept. 30, 2024) (quoting *United States v. Venable*, 943 F.3d 187, 188 (4th Cir. 2019)). Needlessly denying prisoners credits because of BOP's own delays undercuts these purposes by removing incentives to participate in programming before a prisoner arrives at his facility or undergoes an assessment. "If anything," BOP's refusal to award credits to Stark while outside of his designated facility seems "purposed to dissuade [Stark] from participating in programing." *Pelullo*, 2024 WL 3771691, at *5.

Adopting BOP's position could undermine the statute in other ways. If BOP could deny prisoners credits based on its own delay, inaction, or failure to meet its statutory obligations, BOP could categorically exclude a wide range of prisoners from earning credits in contravention of the First Step Act. For example, BOP could refuse to designate a BOP

facility, as required by the statute, and use its refusal to withhold credits. *Contra Huihui v. Derr*, 2023 WL 4086073, at *7 (D. Haw. June 20, 2023). Or BOP could allow only prisoners with a minimum- or low-risk of recidivism to earn credits, in contravention of the statutory requirement that *all* eligible prisoners be able to earn credits, regardless of their risk level. *Contra Tantuwaya v. Birkholz*, 2024 WL 4805423, at *3 (C.D. Cal. Oct. 10, 2024), *report and recommendation adopted*, 2024 WL 4803522 (C.D. Cal. Nov. 15, 2024). The Act does not allow BOP to skirt its obligations in these ways.

II. BOP must award Stark credits for the period he spent at MCC Chicago while awaiting transfer to a new designated facility.

The district court also held that BOP could deny Stark credits for the 31 days during which he was housed at MCC Chicago, a BOP facility. App. 127-28. In reaching this conclusion, the district court relied on another invalid BOP regulation—28 C.F.R. § 523.41(c)(4)(ii)—which allows it to withhold credits when a prisoner is on "[d]esignation status outside the institution" (meaning that he is housed somewhere other than his designated facility).

This regulation is invalid for all of the same reasons discussed above. The First Step Act's provisions are mandatory, so unless there's a listed exception, BOP must allow prisoners to participate in programming and earn credits. Nothing in the First Step Act ties participation to any

particular BOP facility. *See Pelullo v. Warden, FCC Coleman-Low*, 2024 WL 3771691, at *5 (M.D. Fla. Aug. 13, 2024). While Stark was at MCC Chicago, BOP was able to provide him with programming—in fact, while there, Stark "was enrolled in drug education and met numerous times" with a psychologist. App. 5. Nothing in the First Step Act permits BOP to categorically exclude Stark from earning credits, simply because BOP kept him at a separate BOP facility for thirty-one days.

By rendering prisoners who are outside their designated facility ineligible to earn credits, BOP is refusing to administer the First Step Act's credit requirement. It has thus "create[d] a system where BOP is not responsible for administering the FSA with respect to a sizeable class of federal inmates." *Pelullo*, 2024 WL 3771691, at *5.

III. Stark's remaining credits must be applied to reduce the term of Stark's supervised release.

Stark is currently on home confinement and will transition to supervised release in January 2026, while this appeal is pending. *See supra* at 13 n.4; Federal Bureau of Prisons, Inmate Locator, https://www.bop.gov/inmateloc/ (last visited Dec. 3, 2025). Stark's transition to supervised release will not moot this case. Instead, this case will remain a live controversy because any credits reinstated as a result of this lawsuit can be applied to shorten the length of Stark's term of supervised release.

1. The First Step Act says as much. Under the Act, Earned Time Credits "shall be applied toward time in prerelease custody or supervised release." 18 U.S.C. § 3632(d)(4)(C). Thus, as we explain further below, credits can reduce either a person's time in prerelease custody or his time in supervised release. Here, the credits may be applied to reduce Stark's term of supervised release.

Across the U.S. Code, when credits go "toward" a sentence, that consistently means that credits are applied to reduce the sentence. That's true when a prisoner's good-time credits go "*toward* service of [their] sentence." 18 U.S.C. § 3624(b)(1) (emphasis added). Similarly, an offender who had been incarcerated in a foreign country is "given credit *toward* the service of the sentence for any days, prior to the date of commencement of the sentence, spent in custody in connection with" the relevant criminal offense. *Id.* § 4105(b) (emphasis added). In that case, the days spent in foreign custody reduce the remainder of his sentence. And, although a term of imprisonment starts only after a prisoner is sentenced, defendants "shall be given credit *toward* the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences." *Id.* § 3585(b) (emphasis added). This provision means that that earlier time spent in detention is applied to reduce the overall term of imprisonment. Neither the Government nor any court has pointed to a single credit statute using the word "toward" that carries a different meaning.

And here, there's more evidence that credits can reduce a prisoner's supervised-release term. The statutory text says that credits are "*applied* toward" a supervised release term. 18 U.S.C. § 3632(d)(4)(C) (emphasis added). To "apply" means "to put to use," "to bring into action," or "to put into operation or effect."[8] Consider these examples. In common parlance, when a credit is applied toward a financial account, it reduces the amount owed on that account. That's the ordinary meaning no matter whether a person is looking at their credit-card bill, mortgage payment, or utility bill. The same is true of college-graduation requirements: course credits are "applied" toward the total number needed to graduate. It's also the meaning here, when "appl[ying] credits toward time in ... supervised release." 18 U.S.C. § 3632(d)(4)(C).

Dozens of statutes use the phrase "applied toward" to talk about applying something (like a credit) toward something else (like a term of supervised release).[9] In each, the value of the credit (or thing being

[8] "Apply," Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/apply.

[9] *See, e.g.*, 16 U.S.C. § 1726(b) (education credit "may be applied toward a program of postsecondary education"); 25 U.S.C. § 2204(c)(4)(B) (grants and loans "shall only be applied toward the purchase price" of land); *see also* 5 U.S.C. § 5550(b)(2)(F)(ii); *id.* § 8342(h); *id.* § 8423(a)(2)(B)(ii); 22 U.S.C. § 300(b); *id.* § 4055(h); *id.* § 4071f(c)(2); *id.* § 7102(7); 29 U.S.C. § 216(e)(5); 33 U.S.C. § 1268(c)(11)(E)(iii); 38 U.S.C. § 7321(d)(1)(E); 39 U.S.C. § 416(f)(2)(C); *id.* § 5402(g)(6)(B); 42 U.S.C. § 300jj-14(b)(2); *id.* § 702(b)(2)(B); *id.* § 1786(m)(6)(F)(i)-(ii); *id.* § 1962d-5b(a)(4)(F); 49 U.S.C. § 22902(g)(3); 50 U.S.C. § 98h(d)(1).

applied) reduces the debt, the price, or the program length. We have not found a single statute that supports a contrary position.

And, again, the First Step Act says as much. Credits are "applied toward *time in*" supervised release. 18 U.S.C. § 3632(d)(4)(C) (emphasis added). "Time" means "the measured or measurable period during which an action, process, or condition exists or continues."[10] And "in" is "used as a function word to indicate inclusion, location, or position within limits."[11] So, when the credits go toward "time in" supervised release, that means that they go toward the "period during which" supervised release "exists or continues."

Our understanding of the statute also comports with the statutory provision as a whole. Statutes are read to give effect to each of their words so that none would be rendered "altogether redundant." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 574 (1995). In subparagraph 3632(d)(4)(C), the First Step Act provides that credits "shall be applied toward time in prerelease custody or supervised release." 18 U.S.C § 3632(d)(4)(C). The next sentence states that "[t]he Bureau of Prisons shall transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release." *Id.* If the first sentence simply meant that credit

[10] "Time," Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/time.

[11] "In," Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/in.

could be used to bring entry into prerelease custody or supervised release closer, it would be doing no work other than what the second sentence already accomplishes.

2. We acknowledge that this issue has split the circuits. *Compare Gonzalez v. Herrera*, 151 F.4th 1076, 1083 (9th Cir. 2025) (holding that credits can reduce a person's term of supervised release), *with Hargrove v. Healy*, 155 F.4th 530, 536 (6th Cir. 2025) (holding the opposite), *and Guerriero v. Miami RRM*, 2024 WL 2017730, at *3 (11th Cir. May 7, 2024) (per curiam) (same). But as discussed above, the statutory text compels the application of credits to reduce a term of supervised release. And as we now explain, the arguments that have been advanced to support a contrary approach are mistaken.

Courts holding that credits cannot be applied to reduce a term of supervised release have relied on an alternative definition of "toward," meaning "in the direction of." *See, e.g.*, *Hargrove*, 155 F.4th at 533; *Guerriero* 2024 WL 2017730, at *2. Thus, these courts conclude that "when a prisoner earns time credits 'toward' supervised release, he is moving 'in the direction' of supervised release." *Hargrove*, 155 F.4th at 534; *see Guerriero*, 2024 WL 2017730, at *3. In other words, the time credits reduce the period of time leading up to supervised release, not the period of supervised release itself.

The word "toward" has multiple definitions. But defining "toward" to mean "in the direction of" doesn't fit with the context of subparagraph

3632(d)(4)(C). Recall that credits are "applied toward time in ... supervised release." 18 U.S.C. § 3632(d)(4)(C). As discussed above (at 36-37), "applied" means "put to use," "time" means "the period during," and "in" connotes an "inclusion ... within limits." Under BOP's reading, credits are put to use in the direction of a period included within supervised release. That makes no sense. Elsewhere the Government has suggested that this definition means BOP should "apply[] time credits to reduce the time *preceding* supervised release." *Gonzalez*, 151 F.4th at 1083. But the Act speaks of "time in" supervised release, not the "time preceding" supervised release, so credits are applied to the time that is "within"—or a part of—supervised release, not the time leading up to supervised release. *See id*. If the credits were applied to the time leading up to supervised release, those credits would not be "put to use" for supervised release itself, and they certainly would not be put to use for the "period during" or "within" supervised release.

Courts adopting BOP's position also rely on subsection 3624(g). *See, e.g.*, *Hargrove*, 155 F.4th at 533-34. That provision discusses when prisoners are eligible to have their credits applied. Three of its subparagraphs—subparagraphs 3624(g)(1)(A) through (C)—set forth general eligibility requirements. A fourth—subparagraph 3624(g)(1)(D)—establishes eligibility requirements for moving prisoners into prerelease custody or supervised release, but not for ending supervised release early. Thus, the logic goes, subparagraph

3632(d)(4)(C) must be read the same way: Credits may be applied to transition prisoners from prison to prerelease custody and from prerelease custody (or prison) to supervised release, but they may not be applied to transition prisoners out of supervised release.

This logic is wrong for three reasons. First, the second sentence of subparagraph 3632(d)(4)(C) references subsection 3624(g), but the first sentence—the sentence at issue here—does not. "When Congress includes particular language in one section of a statute but omits it from a neighbor," it normally "convey[s] a difference in meaning." *Bittner v. United States*, 598 U.S. 85, 94 (2023). Second, and relatedly, subsection 3624(g) shows that when Congress wanted to speak about the time leading up to supervised release, it knew how to do so expressly. But Congress didn't do so in the provision at issue here, the first sentence of subparagraph 3632(d)(4)(C). And third, there's a reason for this difference: Subsection 3624(g) speaks of the BOP director moving an individual from prison or home confinement to supervised release. But once an individual is on supervised release, he is outside of BOP custody, so the BOP director cannot end supervised release early, meaning that there's no reason for subsection 3624(g) to speak of ending supervised release.

And it makes sense that Congress would have allowed credits to apply broadly. The First Step Act sought to "enhance public safety by improving the effectiveness and efficiency of the Federal prison system with

offender risk and needs assessment, individual risk reduction incentives and rewards, and risk and recidivism reduction." H.R. Rep. No. 115-699, at 22 (2018). The parties agree that credits can be used to move a person (1) from prison to prerelease custody and (2) from prerelease custody to supervised release. The second step is capped at 365 days of credits. 18 U.S.C. § 3624(g)(3). Under BOP's reading, a prisoner who has already earned 365 days of credit has no incentive to participate in any programming while in prerelease custody, because those credits would be worthless, even though programming and credits are available to prisoners in prerelease custody. *See* FSA Time Credits, 87 Fed. Reg. 2705, 2712 (Jan. 19, 2022). On the other hand, our reading incentivizes these individuals to participate in available programming for as long as possible, consistent with the First Step Act's aims.

3. Alternatively, even if the statute did not mandate applying credits to reduce a period of supervised release, a court would nonetheless have discretion to reduce Stark's term of supervised release. As explained (at 16-34), BOP was required to provide Stark with credits and did not, so it violated Stark's right to the credits he was entitled to under the First Step Act. The only remaining question is whether once Stark is on supervised release, he will have a remedy to redress that violation. If he does not, Stark would be unable to use credits that he was unlawfully denied simply because BOP's day of reckoning came, through no fault of Stark's, while Stark was on supervised release and not earlier.

This is a habeas case, and "habeas corpus is, at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Congress directed courts to "dispose of" habeas petitions brought under Section 2241 "as law and justice require." 28 U.S.C. § 2243. Thus, the court has discretion to "fashion relief in such a way as to compensate [a petitioner] for the particular harm he has suffered." *Burkett v. Fulcomer*, 951 F.2d 1431, 1447 (3d Cir. 1991).

Here, even if the statute does not require credits to be applied to a term of supervised release, that does not end the inquiry. That's because when BOP improperly denies a petitioner credits, a court retains the equitable discretion to determine that a reduction of the supervised release term is an appropriate remedy. The First Step Act does not bar that remedy, and thus it does not divest a court of that discretion. Because courts retain this equitable discretion to determine a proper remedy, the case is not moot.

Conclusion

This Court should reverse and instruct the district court to direct BOP to recalculate and award the credits that Stark has earned.

Respectfully submitted,

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December 3, 2025

Certificate of Compliance

In accordance with Federal Rule of Appellate Procedure 32(g), I certify that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) and Circuit Rule 32(c) because it contains 10,056 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2016, set in Century Schoolbook in 14-point type.

/s/ Becca Steinberg

Becca Steinberg

Attached Appendix

Certificate of Compliance with Circuit Rule 30

In accordance with Circuit Rule 30(d), I certify that this appendix contains all of the materials required by Circuit Rule 30(a) and that the separately submitted appendix contains all of the materials required by Circuit Rule 30(b).

/s/ Becca Steinberg

Becca Steinberg

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

IVAN J. STARK, JR., Petitioner,	)	
v.	)	No. 24 CV 50236 Judge Iain D. Johnston
WARDEN BRIAN LAMMER, Respondent.	)	

MEMORANDUM OPINION AND ORDER

Petitioner Ivan Stark is a prisoner who, at the time he filed this case, was at FCI Thomson. Before the Court is his petition filed under 28 U.S.C. § 2241 challenging the Bureau of Prisons' computation of his sentence, specifically its calculation of First Step Act time credits towards his remaining sentence. For the following reasons, Mr. Stark's petition is denied.

Mr. Stark was arrested on November 27, 2018, and ultimately pleaded guilty to counts of bank fraud and aggravated identity theft. On July 30, 2020, he was sentenced to 96 months for the bank fraud and 24 months for the identify theft, with the sentences to run consecutively. His anticipated release date is January 24, 2026. *See* https://www.bop.gov/inmateloc/ (last visited August 14, 2025).

Mr. Stark argues that the Bureau of Prisons has not properly awarded him credits towards his sentence for recidivism reduction programming he has completed. Under the First Step Act of 2018, a prisoner may earn credits towards his or her sentence for successful participation in "evidence-based recidivism reduction programming or productive activities," 10 days for every 30 days of programming, plus an additional 5 days for every 30 days of programming for prisoners with a minimum or low risk for recidivating and who have not increased their risk level for 2 consecutive assessments. *See* 18 U.S.C. § 3632(d)(4)(A). The statute directs the Attorney General to "develop" a "risk and needs assessment system" that implements the First Step Act of 2018, including determining "when to provide incentives and rewards for successful participation in evidence-based recidivism reduction programs or productive activities." *Id*. at § 3632(a)(6). The risk and needs assessment system is set out in 28 C.F.R. § 532.42, entitled "Earning First Step Act Time Credits." Under § 532.42(b)(3), "[a]n eligible inmate . . . may earn FSA Time Credit if he or she *is successfully participating* in EBRR [Evidence-Based Recidivism Reduction] programs or PAs [Productive Activities] that the Bureau has recommended based on the inmate's individualized risk and needs assessment." (emphasis added). The risk and needs assessments are completed "[a]fter the inmate's arrival to their designated facility for service of their sentence and during the initial admission and orientation phase." Bureau of Prisons Program Statement 5410.01 ¶ 5.

In his petition, Mr. Stark alleges four ways in which the Bureau of Prisons has failed to properly calculate his FSA credits: (1) he should have been earning credits from the day of his

arrest, November 27, 2018, or at least since the First Step Act of 2018 was implement on December 18, 2018; (2) he was denied credits while temporarily placed at the MCC in Chicago; (3) he was denied the extra 5 days of credit for every 30 days in the program after his recidivism risk dropped to low; and (4) courts should afford no deference to the Bureau of Prison's Program Statement 5410.01, citing in support *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

First, Mr. Stark contends that the Bureau of Prisons erred by failing to award him FSA credits for his time in pretrial custody, as well as the nearly year he spent at state and private-run facilities in Missouri, Oklahoma, and Mississippi, while en route to his designated facility, FCI Pollock, where he arrived on July 1, 2021. In support he notes that while at those non-BOP facilities he engaged in activities similar to the recidivism reduction programming activities in which inmates engage to earn FSA credits, for instance work "as an orderly, shower orderly, meal tray distributors, and various psychology and religious programs." Petition [1] at 3-4. However, under 28 C.F.R. § 532.42, an inmate earns FSA credits only when "he or she is successfully participating in EBRR programs or PAs that the Bureau has recommended based on the inmate's individualized risk and needs assessment." And the individualized risk and needs assessment occurs "[a]fter the inmate's arrival to their designated facility." Bureau of Prisons Program Statement 5410.01 ¶ 5. It is undisputed that Mr. Stark arrived at his designated facility on July 1, 2021. He nevertheless contends that it is unfair to deny him credits from earlier because it was not his fault he spent nearly a year en route to his designated facility, and that during that year he was participating in programs similar to EBRR and PA programs. But under the relevant regulations, inmates earn FSA credits only for participating in programs "recommended based on the inmate's individualized risk and needs assessment," 28 C.F.R. § 532.42(b)(3), and because his individualized assessment had not yet occurred, those programs could not have been recommended based on an individualized assessment.

Mr. Stark also relies on the decision in *Myrick v. Ma'At*, No. 22 CV 5346, 2023 U.S. Dist. LEXIS 12746 (W.D. La. July 14, 2023), in which he contends the court held that an inmate begins earning FSA credits from the day they are taken into custody. In *Myrick*, an inmate brought a petition under 28 U.S.C. § 2241 arguing that the Bureau of Prisons failed to apply all 735 of his FSA credits towards his projected release date. But a magistrate judge concluded in a Report and Recommendation that the First Step Act allows no more than 365 credits to be applied towards the inmate's projected release date. *See Myrick v. Ma'At*, No. 22 CV 5346, 2023 U.S. Dist. LEXIS 123098, at *3 (W.D. La. June 8, 2023). The district judge accepted the magistrate judge's conclusion and dismissed the petition. *See Myrick*, 2023 U.S. Dist. LEXIS 12746, at *1. Although the magistrate judge noted that the petitioner "was taken into federal custody on December 21, 2018, and he has been eligible to earn credits ever since," *Myrick*, 2023 U.S. Dist. LEXIS 123098, at *2, the focus of the case was on how many credits an inmate can apply toward his or her sentence, not on when an inmate begins accruing those credits, and the magistrate judge's language does not stand for the proposition that every inmate begin accruing FSA credits their first day in federal custody.

Next, Mr. Stark contends that he was wrongly denied credits that should have accumulated during the 31 days he spent temporarily housed at the MCC in Chicago, while en route to his new designated facility, FCI Thomson. But under 28 U.S.C. § 523.41, an "eligible

inmate must be 'successfully participating' in EBRR Programs or PAs to earn FSA Time Credits," and an inmate "will generally not be considered to be 'successfully participating' in EBRR Programs or PAs in situations including, but not limited to . . . [d]esignation status outside the institution." 28 C.F.R. § 523.41(c)(1) and (4)(ii). Designation status outside the institution includes time spent "in-transit or at an in-transit facility." Bureau of Prisons Program Statement 5410.01 ¶ 5. Because Mr. Stark was in-transit, he was unable to successfully participate in programming during his time at the MCC in Chicago and so earned no FSA credits.

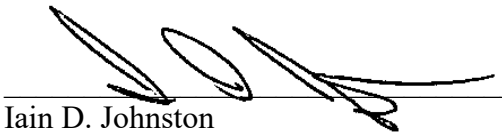
Next in his petition, Mr. Stark contends that the Bureau of Prisons neglected to award him the additional 5 days of credit for every 30 days in the program beginning in May 2022, when he contends his recidivism risk dropped from medium to low. But according to his own exhibit 14, his recidivism risk dropped to low in January 2023, not May 2022. Petition [1], Ex. 14. Under 18 U.S.C. § 3632(d)(4)(A), a prisoner begins earning the additional 5 days of credit not only if they are at a minimum or low risk of recidivism, but also if at the same time their risk level has not increased for two consecutive assessment. According to a Bureau of Prisons record attached to the government's response brief, Mr. Stark did not achieve that status until January 2024, when he was both at a low risk of recidivism *and* his risk level had not increased for two consecutive assessments. Declaration of Vannapha Voxgxay [16] at 14. At that point, he began earning credits at the 15-day rate. Mr. Stark did not file a reply brief and therefore has not challenged the accuracy of that Bureau of Prisons record. Accordingly, he has established no error in the rate at which the Bureau of Prisons calculated his credits.

Finally, Mr. Stark contends that the Bureau of Prisons' calculations of his FSA credits are improper because they are based on its own internal policies, rather than under the Fair Step Act of 2018 itself. In support he argues that the Bureau of Prisons "has hid behind the *Chevron* clause for forty years," and he anticipates the U.S. Supreme Court's upending of *Chevron* in *Loper Bright Enterprises v. Raimondo*. Mr. Stark anticipated correctly that in *Loper Bright* the Supreme Court would overrule *Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), which had long afforded deference to agency interpretations of ambiguous statutes they administer. *See Loper Bright*, 603 U.S. at 412. But agencies' interpretations of their own regulations, as opposed to their interpretations of statutes they administer, have long been afforded deference not under *Chevon*, but rather under *Auer v. Robbins*, 519 U.S. 452 (1997), and *Auer* is unaffected by *Loper Bright*. *See United States v. Poore*, No. 22-3154, 2025 U.S. App. LEXIS 9941, at *7 (7th Cir. Apr. 25, 2025) ("the Supreme Court in *Loper Bright* did not purport to overrule or even modify *Auer*."). Accordingly, the Bureau of Prisons' promulgation of Program Statement 5410.01 is unaffected by *Loper Bright*.

CONCLUSION

For the reasons given, Mr. Stark's petition [1] is denied. Mr. Stark is advised that this is a final decision ending his case in this Court. If he wants to appeal, he must file a notice of appeal with this Court within 30 days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). Mr. Cruz need not bring a motion to reconsider this Court's ruling to preserve his appellate rights. However, if he wishes the Court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within 28 days of the entry of this judgment. *See* Fed. R. Civ. P. 59(e). A timely Rule 59(e) motion suspends the

deadline for filing an appeal until the Rule 59(e) motion is ruled upon. *See* Fed. R. App. P. 4(a)(4)(A)(iv). A Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). A Rule 60(b) motion suspends the deadline for filing an appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. *See* Fed. R. App. P. 4(a)(4)(A)(vi). The time to file a Rule 59(e) or 60(b) motion cannot be extended. *See* Fed. R. Civ. P. 6(b)(2).

Date: August 14, 2025 By: 

Iain D. Johnston
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Ivan J. Stark, Jr.,

Petitioner(s),

v.

Brian Lammer,

Respondent(s).

Case No. 24-cv-50236
Judge Iain D. Johnston

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☐ in favor of defendant(s)
and against plaintiff(s)

.

Defendant(s) shall recover costs from plaintiff(s).

☒ other: Judgment entered in favor of Respondent and against Petitioner. Case closed.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Iain D. Johnston on a motion a petition of habeas corpus under 28 U.S.C. § 2241.

Date: 8/14/2025

Thomas G. Bruton, Clerk of Court

\s\Y. Pedroza, Deputy Clerk