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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARTINEZ-RODRIGUEZ, *Petitioner*, v. WARDEN, FCI FORT DIX, *Respondent*.	HON. BRIAN R. MARTINOTTI, U.S.D.J. *Civil Action No.* 25-01857

RESPONDENT'S ANSWER TO PETITION FOR A WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

Petitioner is a federal inmate confined at Federal Correctional Institution ("FCI") Fort Dix. He has filed a habeas petition under 28 U.S.C. § 2241 arguing that the Federal Bureau of Prisons ("BOP") refused to apply time credits he earned under the First Step Act due to an "illegal" final order of removal. *See* Petition for Writ of Habeas Corpus (ECF No. 1) ("Pet.") ¶ 13 (grounds for challenge). He claims that a separate federal agency, U.S. Immigration & Customs Enforcement ("ICE"), issued the final order without proper due process and he is eligible for halfway house placement under the Second Chance Act.

The Court should dismiss or deny the petition. Petitioner failed to exhaust administrative remedies before bringing suit. Moreover, despite Petitioner's claims, he is ineligible under the plain language of the First Step Act to apply time credits because he is subject to a final order of removal.

STATEMENT OF FACTS

I. Petitioner's Criminal Conviction and Removal Order

On April 4, 2018, a federal grand jury of the United States District Court for the Middle District of Florida indicted petitioner and three co-conspirators on drug trafficking charges involving a vessel subject to the jurisdiction of the United States in violation of 46 U.S.C. § 70503(a), 706506 (a) and (b), and 21 U.S.C. § 960(b)(1)(B)(II). *See United States v. Velez-Moreno et al.*, 8:18-cr-0161-T (M.D. Fla.), ECF No. 1 (indictment). In connection with those charges, the United States paroled

Petitioner into the country on April 4, 2018 solely for the purposes of the criminal prosecution. *See* Declaration of Cara Campbell ("Campbell Decl.") at Ex. 4.

On September 20, 2018, the United States District Court for the Middle District of Florida sentenced Petitioner to a 120-month term of imprisonment on the drug trafficking charges. *Id*. ¶ 5 and Ex. 1. Petitioner entered BOP custody and began serving his sentence on December 12, 2018. *Id*. At all times, Petitioner has been subject to an April 4, 2018 immigration detainer from the United States Department of Homeland Security ("DHS"), the executive department overseeing ICE. *Id*. Ex. 2. The detainer expressly stated that DHS had initiated "an investigation to determine whether [Petitioner] is subject to removal from the United States." *Id*.

Petitioner earned time credits under the First Step Act following the commencement of that credit system on December 21, 2018. *See* ECF No. 1-3 at Page 2 of 5 (FSA credit worksheet). On February 8, 2024, BOP staff reviewed Petitioner for pre-release custody placement, but concluded that he was ineligible due to his immigration detainer and public safety factor as a criminal alien releasing to immigration custody. Campbell Decl. ¶ 7 and Ex. 3.

On November 12, 2024, DHS issued a final order of removal for Petitioner. *Id*. ¶ 8 and Ex. 4; *see* ECF No. 1-3 at Page 3 of 5. As a result, BOP followed the dictates of the First Step Act and declined to apply any time credits for Petitioner. ECF No 1-3, Pages 1-2 of 5. Assuming he receives all available good conduct time, Petitioner's projected release date is December 4, 2026. Campbell Decl. ¶ 5 and Ex. 1.

II. Time Credits Under the First Step Act and Petitioner's Eligibility to Apply Time Credits

Enacted into law on December 21, 2018, the First Step Act ("FSA") directed the BOP to take specific actions regarding recidivism reduction programming and incentives. *See Musgrove v. Ortiz*, No. 19-5222 (NLH), 2019 WL 2240563, at *2 (D.N.J. May 24, 2019). To ensure the implementation of this programming, the statute mandated that "not later than 210 days after the date of enactment of this subchapter, the Attorney General, shall develop and release publicly on the Department of Justice website a risk and needs assessment system." 18 U.S.C. § 3632(a). The statute requires that this system "provide incentives and rewards for prisoners to participate in and complete evidence-based recidivism reduction programs." 18 U.S.C. § 3632(d).

In accordance with this provision, BOP has developed the Prisoner Assessment Tool Targeting Estimated Risk and Needs (also known as "PATTERN") to assess the risks and needs of inmates and provide incentives for successfully participating in recidivism reduction programs. *See DeFoggi v. United States*, No. 20-3889 (NLH), 2020 WL 2899495, at *2 n.1 (D.N.J. June 3, 2020). PATTERN "determines the recidivism risk of each inmate and assigns a recidivism risk score of minimum, low, medium, or high risk." *See id.* (internal quotation marks omitted). "The system also assesses each inmate and determines, to the extent practicable, the inmate's risk of violent or serious misconduct." *Id.*

As one incentive for successfully participating in recidivism-reduction programming, the First Step Act allows inmates to earn time credits. *See* 18 U.S.C.

§ 3632(d)(4)(A). Time credits earned under the statute can be applied toward prerelease custody (*i.e.*, transfer to a residential reentry center or home confinement) or early transfer to supervised release (*i.e.*, early satisfaction of the inmate's term of imprisonment) under 18 U.S.C. § 3624(g). *See* 18 U.S.C. § 3632(d)(4)(C).

When it enacted the First Step Act's system for time credits, Congress also explicitly barred certain inmates from earning or applying time credits. *See* 18 U.S.C. § 3632(d)(4)(D)-(E). Relevant to this case, the statute provides that "a prisoner is ineligible to apply time credits . . . . if the prisoner is the subject of a final order of removal under any provision of the immigration laws (as such term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(17)))." 18 U.S.C. § 3632(d)(4)(E)(i). *See also* 28 C.F.R. § 523.44(a)(2) ("For any inmate eligible to earn FSA Time Credits under this subpart who is . . . [s]ubject to a final order of removal under immigration laws as defined in 8 U.S.C. § 1101(a)(17) (see 18 U.S.C. 3632(d)(4)(E)), the Bureau may not apply FSA Time Credits toward prerelease custody or early transfer to supervised release"); BOP Prog. St. 5410.01, *First Step Act of 2018 – Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4)*, available at https://www.bop.gov/policy/progstat/5410.01_cn2.pdf at 13, 17.

On November 25, 2020, BOP issued a Notice of Proposed Rulemaking seeking to implement and clarify certain provisions of the FSA, including those related to FSA time credits.[1]

[1] Federal Register, *FSA Time Credits*, https://www.federalregister.gov/documents/2020/11/25/2020-25597/fsa-time-credits (last visited Sept. 8, 2025).

On January 19, 2022, after a period for public comment, BOP published its final rule regarding these provisions (the "Final Rule").[2] As implemented under the Final Rule, and consistent with the statute, inmates rated at a low or minimum risk of recidivism will earn 15 days of credits for every 30 days they successfully participate in programming, and individuals rated at a medium or high risk of recidivism will earn 10 days of credits for every 30 days that they successfully participate in programming. *See* 28 C.F.R. § 523.42(c)(1)-(2); *see also* 18 U.S.C. § 3632(d)(4)(A).

On February 6, 2023, the BOP issued a Change Notice making several changes to Program Statement 5410.01 regarding the First Step Act. *See* Change Notice, dated February 6, 2023, https://www.bop.gov/policy/progstat/5410.01_cn.pdf at 2. In the Change Notice, BOP explicitly removed any references to detainers rendering inmates ineligible to apply time credits towards early transfer to supervised release. *See id.*

On March 10, 2023, BOP issued a second Change Notice making additional changes to Program Statement 5410.01. *See* Change Notice, dated March 10, 2023, https://www.bop.gov/policy/progstat/5410.01_cn2.pdf at 1 (last visited Sept. 8, 2025). Neither the February 2023 Change Notice nor the March 2023 Change Notice changed the prohibition on inmates with final orders of removal applying FSA time credits toward prerelease custody or early transfer to supervised release. *See* Change

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[2] The regulation, 87 Fed. Reg. 2705, is codified at 28 C.F.R. § 523.40 *et seq.* (Subpart E5401 - First Step Act Time Credits).

Notice, dated February 6, 2023, https://www.bop.gov/policy/progstat/5410.01_cn.pdf at 1-3 (last visited Sept. 8, 2025); Change Notice, dated March 10, 2023 https://www.bop.gov/policy/progstat/5410.01_cn2.pdf at 1 (last visited Sept. 8, 2025).

Further, BOP Program Statement 7310.04 addresses "Community Corrections Center (CCC) Utilization and Transfer Procedure."[3] It references 18 U.S.C. §§ 3621(b) and 3624(c). PS 7310.04 at 3-4. BOP Program Statement 5410.01 regarding the First Step Act expressly references Program Statement 7310.04 regarding RRC placement as part of its guidance regarding the use of First Step Act credits.[4] Program Statement 7310.04 observes that "[o]ne reason for referring an inmate to a [RRC] is to increase public protection by aiding the transition of the offender into the community." Among other things, Program Statement 7310.04 established BOP policy regarding RRC "Criteria and Referral Guidelines" (*id.* at 7-10) and "Limitations of Eligibility for All [RRC] Referrals" (*id.* at 10-11). This Program Statement has not changed in relevant part since 1998, and it has been BOP policy in general that inmates in certain categories "shall not ordinarily participate in [RRC] programs" because of public safety concerns, the needs of the inmate, or other reasons of inmate management or agency policy. *Id.* Among limitations on eligibility listed in the Program Statement are inmates "who are assigned a 'Deportable Alien' Public Safety Factor" (¶ 10(b)) or "with unresolved pending charges, or detainers, which will

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[3] *See* https://www.bop.gov/policy/progstat/7310_004.pdf (last visited Sept. 8, 2025). BOP now refers to CCCs as RRCs.

[4] *See* https://www.bop.gov/policy/progstat/5410.01_cn2.pdf (last visited Sept. 8, 2025).

likely lead to arrest, conviction, or confinement" (¶ 10(f)). In addition to protecting public safety, these exclusions, in BOP's view, reflect the fact that an inmate facing immigration detention or removal is not preparing to "transition . . . into the community." Consistent with this view, the Third Circuit has recognized that policy exclusions concerning deportable aliens do not violate the constitution. *Builes v. Warden*, 712 F. App'x 132, 134 (3d Cir. 2017).

III. Petitioner's Failure to Exhaust Administrative Remedies

BOP has established a four-step process for federal inmates to exhaust administrative remedies. *See* 28 C.F.R. § 542.10, *et seq*. To comply with this process, an inmate generally must first attempt to informally resolve his dispute with prison staff. *See* § 542.13. If these efforts fail, the inmate must then submit a BP-9 administrative remedy request to the warden of his institution within twenty days of the event or decision underlying the request. *See* § 542.14(a), (c). If the administrative remedy request is denied, the inmate must then file a BP-10 appeal with the appropriate Regional Director within twenty days of the date of the warden's response. *See* § 542.15(a). If the Regional Director denies the appeal, the inmate must then appeal that decision by filing a BP-11 appeal with the BOP's Central Office, General Counsel, within thirty days from the date of the Regional Director's response. *See id.*

According to BOP records, Petitioner has not filed any administrative remedies concerning earned time credits under the First Step Act. *See* Declaration of Corrie Dobovich ("Dobovich Decl.") ¶ 6, Ex. 1 (Administrative Remedy Generalized

Retrieval) at 1. Indeed, Petitioner's only administrative grievance concerned a Disciplinary Hearing Officer sanction from 2021. *Id.* at Ex. 1.

ARGUMENT

I. Petitioner Failed to Exhaust Administrative Remedies

The Court should dismiss the petition because Petitioner did not exhaust administrative remedies regarding the claims in the petition.

Before a federal inmate can seek habeas relief in district court pursuant to 28 U.S.C. § 2241, he must first exhaust his administrative remedies. *See Vasquez v. Strada*, 684 F.3d 431, 433 (3d Cir. 2012); *Moscato v. Fed. Bureau of Prisons*, 98 F.3d 757, 760-62 (3d Cir. 1996). As the Supreme Court has recognized, the exhaustion requirement serves several critical interests:

> First, exhaustion protects administrative agency authority. Exhaustion gives an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court, and it discourages disregard of the agency's procedures.
>
> Second, exhaustion promotes efficiency. Claims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court. In some cases, claims are settled at the administrative level, and in others, the proceedings before the agency convince the losing party not to pursue the matter in federal court. And even where a controversy survives administrative review, exhaustion of the administrative procedure may produce a useful record for subsequent judicial consideration.

Woodford v. Ngo, 548 U.S. 81, 88-89 (2006) (internal citations and quotation marks omitted).

Courts within this Circuit therefore require an inmate to exhaust administrative remedies because exhaustion promotes these important interests. *See*

Arias v. U.S. Parole Comm'n, 648 F.2d 196, 199 (3d Cir. 1981) (noting that Third Circuit has "adhered to the exhaustion doctrine for several reasons: (1) judicial review may be facilitated by allowing the appropriate agency to develop a factual record and apply its expertise, (2) judicial time may be conserved because the agency might grant the relief sought, and (3) administrative autonomy requires that an agency be given an opportunity to correct its own errors") (citation omitted); *see also Briley v. Warden Fort Dix FCI*, 703 F. App'x 69, 71 (3d Cir. 2017). Although *Woodford* concerned the exhaustion requirement imposed by the Prison Litigation Reform Act, the purposes of exhaustion identified by the Court – protecting agency authority and promoting efficiency – apply equally to habeas petitions. *See Woodford*, 548 U.S. at 93 ("In practical terms, the law of habeas, like administrative law, requires proper exhaustion[.]"); *Arias*, 648 F.2d at 199.

Although courts may excuse the exhaustion requirement for habeas petitions under limited circumstances, such as when exhaustion would be futile, *see, e.g., Gambino v. Morris*, 134 F.3d 156, 171 (3d Cir. 1998), courts in this District routinely enforce the requirement where, as here, there is no compelling justification to excuse the petitioner's failure to exhaust. *See, e.g., Velez v. Zickefoose*, No. 10-3992 (NLH), 2010 WL 5186158, at *3 (D.N.J. Dec. 15, 2010) ("it has been long established that an inmate's unjustified failure to pursue administrative remedies results in procedural default warranting decline of judicial review"); *Brown v. Grondolsky*, No. 09-3290 (RMB), 2009 WL 2778437, at *1-2 (D.N.J. Aug. 31, 2009) (exhaustion requirement "is

diligently enforced by the federal courts" and futility exception applies only in "narrowly-defined circumstances") (citation omitted).

Here, the Court should dismiss habeas relief because Petitioner concedes, and BOP records confirm, that he did not file any administrative remedies concerning FSA credits before bringing suit. *See* Pet. at 2; Dobovich Decl. ¶ 7, Ex. 1 (Administrative Remedy Generalized Retrieval). Petitioner's failure to complete the administrative remedy process before filing this petition bars him from obtaining habeas relief. *See, e.g., Rivera-Villa v. Warden, FCI Ft. Dix,* No. 23-21573 (KMW), 2023 WL 7648011, at *2 (D.N.J. Nov. 9, 2023) (dismissing petition that raised First Step Act credits claim for failure to exhaust where petitioner admitted he did not complete grievance process before filing habeas petition).

Petitioner attempts to evade this requirement, arguing that BOP staff failed to provide the proper forms—but there is no record to substantiate this allegation. Further, he argues that administrative remedies would prove "futile," but he offers no explanation for why beyond insisting that he raises statutory interpretation issues. *See* ECF No. 1-1 at 2-3.

To the extent that Petitioner later argues exhaustion would cause unfair delays, that presents no basis for him to skip the administrative remedy process. "[D]istrict courts within the Third Circuit have repeatedly rejected the argument that an inmate can be excused from the exhaustion requirement simply because his projected release date is approaching, and he may not complete his administrative appeal before the release date." *Rodriguez v. Sage*, No. 22-2053, 2023 WL 2309781,

at *2 (M.D. Pa. Mar. 1, 2023)*; see also Bortolotti v. Knight*, No. 22-6137 (CPO), 2022 WL 17959577, at *3 (D.N.J. Dec. 27, 2022). Moreover, the weight of authority in this district supports dismissal of Petitioner's petition for failure to exhaust. *See, e.g., Garcia v. Thompson,* No. 24-08411 (ESK), 2025 WL 66024, at *2 (D.N.J. Jan. 10, 2025); *Duyzings v. Warden, FCI Fort Dix*, No. 23-21574 (RMB), 2024 WL 1406647, at *2 (D.N.J. Apr. 2, 2024); *Rivas-Rivas v. Warden, FCI Ft. Dix, No.* 23-20784 (KMW), 2024 WL 912517, at *2 (D.N.J. Mar. 4, 2024); *Desposito v. Warden, FCI Fort Dix*, No. 22-5828 (RMB), 2023 WL 6307443, at *4 (D.N.J. Sept. 28, 2023); *Bortolotti,* 2022 WL 17959577, at *4 (D.N.J. Dec. 27, 2022); *McTier v. Ortiz*, No. 20-16555 (NLH), 2021 WL 4490231, at *3 (D.N.J. Sept. 30, 2021).

The decision in *Bortolotti* is particularly instructive. In that case, the petitioner challenged the BOP's calculation of time credits under the First Step Act and argued that the Court should excuse his failure to exhaust because the process "could take months to complete" and requiring him to go through that process would "subject him to irreparable harm." *Id.* at *2 (quotation marks omitted). The Court declined to excuse Bortolotti's failure to exhaust, noting that "[c]ourts have rejected these time restriction arguments because they allow prisoners to engage in the self-serving strategy of waiting until it is too late to engage in the administrative remedy process, and then argue that there is insufficient time for those remedies to run their course." *Id.* (citing *Ortiz v. Zickefoose*, No. 10-6767 (NLH), 2011 WL 6140741, at *4 (D.N.J. Dec. 8, 2011); *Velez*, 2010 WL 5186158 at *3-4. The Court's analysis in *Bortolotti* is persuasive and provides strong support for a similar result here. In sum,

because "requiring Petitioner to exhaust his administrative remedies would promote the goals of exhaustion, and . . . exhaustion is not futile in this case," the Court should find that his failure to exhaust precludes him from obtaining relief. *Id.*

II. Petitioner Is Statutorily Ineligible to Apply FSA Time Credits Because He Is Subject to a Final Order of Removal

The Court should deny habeas relief because Petitioner is subject to a final order of removal and is, therefore, ineligible for the application of FSA time credits. *See* 18 U.S.C. § 3632(d)(4)(E)(i).

The First Step Act expressly and unambiguously states that "[a] prisoner is ineligible to apply time credits . . . if the prisoner is the subject of a final order of removal under any provision of the immigration laws[.]" *See id.* Here, DHS has served Petitioner with a Notice and Order of Expedited Removal. *See* Campbell Decl., Ex. 4. Because the First Step Act bars inmates with final orders of removal from applying time credits toward prerelease custody or supervised release, Petitioner cannot succeed on his First Step Act claim in this petition. *See, e.g.*, *Valadez De La Cruz v. Thompson,* No. 24-5635 (KMW), 2024 WL 4635263, at *2 (D.N.J. Oct. 30, 2024) (denying § 2241 petition because reinstated order of removal precluded petitioner from applying FSA credits); *Sanchez-Leyva v. Warden, FCI Ft. Dix*, No. 24-6118 (KMW), 2024 WL 4249544, at *2 (D.N.J. Sept. 20, 2024) (same); *Escolastico v. Warden of FCI Ft. Dix*, No. 23-3608 (KMW), 2024 WL 1739751, at *1 (D.N.J. Apr. 22, 2024) (same); *Cazarez v. Warden*, FCI Ft. Dix, No. 23-4457 (KMW), 2023 WL 5623035, at *2 (D.N.J. Aug. 31, 2023) (same).

Petitioner attempts to evade this straightforward outcome, arguing that the "Notice and Order" at issue is not a final order of removal. ECF No. 1-1 at Page 5 of 8. He also argues that "the procedure used by ICE is improper under these circumstances." *Id*. at Page 6 of 8.

The First Step Act provision prohibiting inmates with removal orders from applying time credits applies to any inmate who "is the subject of a final order of removal under any provision of the immigration laws (as such term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(17)))." 18 U.S.C. § 3632(d)(4)(E)(i). That provision, in turn, broadly defines "[t]he term 'immigration laws' [to] include[] this chapter [Title 8] and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens." 8 U.S.C. § 1101(a)(17).

Within the wide landscape of immigration laws, an individual can have a final order of removal in a number of ways. For instance, an immigration judge can order a noncitizen removed in removal proceedings under INA § 240, 8 U.S.C. § 1229a, and the order can become final in any of the ways set out in 8 C.F.R. § 1241.1 and 8 C.F.R. § 1003.39. Pertinent here, "[i]f an immigration officer determines that an alien . . . who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates[.]" 8 U.S.C. § 1225(b)(1)(A)(i).

First, "a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal" and collateral review is sharply limited. *See* 8 U.S.C. § 1225(b)(1)(C)-(D). Petitioner cannot challenge his final order here using a § 2241 petition directed at a BOP warden. *See Bueno v. Thompson*, No. 24-912 (CPO), 2025 WL 1904394, at *5 (D.N.J. July 10, 2025) ("'[T]he "REAL ID Act stripped district courts of jurisdiction over § 2241 petitions challenging removal orders.'") (quoting *Revan v. Warden, Essex Cnty. Corr. Facility*, 822 F. App'x 156, 157 (3d Cir. 2020)).[5]

Second, Petitioner was paroled into the United States solely to face federal criminal charges, and DHS issued an immigration detainer before he was even sentenced. DHS then issued a Notice and Order of Expedited Removal. *See* Campbell Decl., Ex. 4. That final order references 8 U.S.C. § 1225(b)(1) as authority, establishing unequivocally that Petitioner is subject to a final order and stripping the Court of jurisdiction to examine the validity of the final order on a collateral basis. *Bueno*, 2025 WL 1904394, at *5; *see Garcia v. Thompson*, No. 24-08411-ESK, 2025 WL 66024, at *3 (D.N.J. Jan. 10, 2025) ("The plain text of the Act prohibits the Bureau from applying good conduct credits to petitioner's sentence."). BOP cannot apply any First Step Act credits he previously earned toward early transfer to supervised release or to early transfer to pre-release custody at a halfway house.

[5] While Petitioner's "due process" claim remains vague, it appears to be directed at ICE, not BOP. ICE is not before the Court, and Petitioner cannot add them as a respondent because ICE is not Petitioner's current custodian and because Petitioner may not challenge his final order using § 2241.

III. Petitioner Is Not Eligible for a Halfway House Placement Because of His Immigration Detainer

To the extent Petitioner argues that the Second Chance Act independently guarantees him a halfway house placement, he is incorrect as a matter of law. BOP conducted the individualized review of Petitioner's eligibility for RRC placement and determined that such a placement would not be appropriate because of his immigration detainer. Inmate assignments to residential re-entry centers are governed by 18 U.S.C. § 3624(c), as amended by the Second Chance Act of 2007, Pub. L. No. 110-199, April 9, 2008. Pursuant to this statute:

> (1) IN GENERAL.—The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.
>
> (2) HOME CONFINEMENT AUTHORITY.—The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. . . .
>
> . . . .
>
> (4) NO LIMITATIONS.—Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.

§ 3624(c)(1), (c)(2) & (c)(4). The statute directed BOP to issue new regulations designed to ensure that RRC assignments are "(A) conducted in a manner consistent with section 3621(b) of this title; (B) determined on an individual basis; and (C) of

sufficient duration to provide the greatest likelihood of successful reintegration into the community." § 3624(c)(6)(A)-(C).

On April 14, 2008, between the effective date of the Second Chance Act and October 21, 2008 (the date that interim rules were published), BOP issued a guidance memorandum specifically informing staff of changes to the RRC-assignment process enacted by the Second Chance Act.[6] Those statutory changes affected BOP's RRC placement procedures as follows: (1) pre-release RRC placements were increased to a maximum of 12 months; (2) RRC placement determinations were to be made on an individualized basis using criteria set forth at 18 U.S.C. § 3621(b); and (3) sentencing court orders, recommendations, or requests directing an inmate's placement in an RRC were not binding.

The April 2008 Memorandum advised that "inmates must now be reviewed for pre-release RRC placements 17-19 months before their projected release dates[,]" and set forth the five factors under § 3621(b) that must be considered when determining RRC placement dates.[7] *See* April 2008 Memorandum at 6. The memorandum further advised that, under the Second Chance Act, staff were required to "ensure that each

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[6] *See* Mem. for Chief Exec. Officers, *Pre-Release Residential Re-Entry Center Placements Following the Second Chance Act of 2007*, at 5 (Apr. 14, 2008), https://www.bop.gov/foia/docs/secondchanceactmemosfrom2008.pdf (last visited Sept. 6, 2025) (hereinafter, the "April 2008 Memorandum"). All citations to the April 2008 Memorandum are to PDF page numbers.

[7] Those factors are: (1) the resources of the facility contemplated; (2) the nature and circumstances of the offense; (3) the history and characteristics of the prisoner; (4) any statement of the court that imposed the sentence: (a) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or (b) recommending a type of penal or correctional facility as appropriate; and (5) any pertinent policy statement issued by the U.S. Sentencing Commission. *See* § 3621(b).

pre-release RRC placement decision is 'of sufficient duration to provide the greatest likelihood of successful reintegration into the community[,]'" and that staff "*must* approach every individual inmate's assessment with the understanding that he/she is now *eligible* for a maximum of 12 months pre-release RRC placement," ignoring any other maximum timeframe that was previously in place. *Id*. at 7 (quoting § 3621(c)(6)(C) (emphasis in original)). Nonetheless, the April 2008 Memorandum cautioned that:

> While the Act makes inmates eligible for a maximum of 12 months pre-release RRC placements, Bureau experience reflects inmates' pre-release RRC needs can usually be accommodated by a placement of six months or less. Should staff determine an inmate's pre-release RRC placement may require greater than six months, the Warden must obtain the Regional Director's written concurrence before submitting the placement to the Community Corrections Manager.

Id.

On October 21, 2008, BOP published proposed rules governing RRC placement with a request for comments. *See Pre-Release Community Confinement*, 73 Fed. Reg. 62440 (October 21, 2008). Following issuance of the new regulations, BOP issued a new memorandum on November 14, 2008.[8] Like the April 2008 Memorandum, the November 2008 Memorandum requires "unusual or extraordinary circumstances justifying" placement in an RRC beyond six months, and then only with the approval of the regional director. *See id.* at 3.

[8] *See* Mem. for CEOs, *Inmate Requests for Transfer to Residential Reentry Centers* (Nov. 14, 2008), https://www.bop.gov/foia/docs/secondchanceactmemosfrom2008.pdf (last visited Sept. 6, 2025) (hereinafter, the "November 2008 Memorandum"). All citations to the November 2008 Memorandum are to PDF page numbers.

On June 24, 2010, BOP issued a third, revised guidance memorandum regarding RRC placement.[9] Directing staff "to focus on RRC placement as a mechanism to reduce recidivism," the June 2010 Memorandum advised:

> Our RRC resources are limited and must be focused on those inmates most likely to benefit from them in terms of anticipated recidivism reduction. In other words, our decisions are to be based on an assessment of the inmate's risk of recidivism and our expectation that RRC placement will reduce that risk. Our strategy is to focus on inmates who are at higher risk of recidivating and who have established a record of programming during incarceration, so that pre-release RRC placements will be as productive and successful as possible.

Id. at 1. Accordingly, the June 2010 Memorandum directed that staff should consider whether the inmate at issue was at high risk for recidivism because such inmates should be considered for longer RRC placements (at least 90 days whenever possible). *See id*. at 4. The June 2010 Memorandum also re-emphasized that each inmate must be individually assessed using the factors set forth in § 3621(b) to determine whether and for how long RRC placement would be appropriate. *See id*. at 2. In a direct change from the two prior memoranda, the June 2010 Memorandum instructed that "Regional Director approval of RRC placements longer than six months [was] no longer required." *Id*.

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[9] *See* Mem. for Chief Exec. Officers, *Revised Guidance for Residential Reentry Center (RRC) Placements* (June 24, 2010), https://sentencing.net/wp-content/uploads/2017/10/Revised-Guidance-for-Residential-Reentry-Center-RRC-Placements-June-24-2010.pdf (last visited Sept. 6, 2025) (hereinafter, the "June 2010 Memorandum"). All citations to the June 2010 Memorandum are to PDF page numbers.

On May 24, 2013, BOP issued its most recent guidance memorandum concerning RRC placement.[10] The May 2013 Memorandum clarified and re-emphasized principles discussed in earlier memoranda, including: (1) the need to conduct an individualized assessment of each inmate pursuant to the 18 U.S.C. § 3621(b) factors to determine whether (and for how long) RRC placement would be appropriate; and (2) the need to focus BOP's limited RRC spaces on inmates with the greatest needs and the highest risk of recidivism. *See id*. at 1-3.

In addition to amending 18 U.S.C. § 3624, the Second Chance Act enacted 34 U.S.C. § 60541 (formerly 42 U.S.C. § 17541), which provides for the establishment of a Federal Prisoner Reentry Initiative. Under this statute,

> (a) . . . The Attorney General, in coordination with the Director of the Bureau of Prisons, shall, subject to the availability of appropriations, conduct the following activities to establish a federal prisoner reentry initiative:
>
> . . . .
>
> (2) Incentives for a prisoner who participates in reentry and skills development programs which may, at the discretion of the Director, include-(A) the maximum allowable period in a community confinement facility. . . .

§ 60541(a)(2)(A). Accordingly, pursuant to 34 U.S.C. § 60541(a)(2)(A), "one incentive for inmate participation in BOP skills development programs is consideration for the

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[10] Mem. for Reg'l Dirs., Wardens, Residential Reentry Managers, *Guidance for Home Confinement and Residential Reentry Center Placements* (May 24, 2013), https://www.bop.gov/foia/rrc_hc_guidance_memo.pdf (last visited Sept. 6, 2025) (hereinafter, the "May 2013 Memorandum").

maximum allowable placement in an RRC." *Yushuvayev v. Hollingsworth*, No. 14-cv-5851 (NLH), 2015 WL 1268200, at *4 (D.N.J. Mar. 18, 2015).

BOP Program Statement 7310.04 establishes procedural guidelines for assessing RRC placement on an individual basis. Under Program Statement 7310.04, *Community Corrections Center (CCC) Utilization and Transfer Procedures* (Dec. 16, 1998),[11] BOP considers several factors, including the resources of the contemplated facility. *See id*. at 7. However, inmates "assigned a 'Deportable Alien' Public Safety Factor," and inmates with "unresolved pending charges, or detainers, which will likely lead to arrest, conviction, or confinement[,]" "shall not ordinarily participate" in RRC programs. *Id*. at 10-11.

Here, BOP conducted the individualized review of Petitioner's eligibility for halfway house placement. Campbell Decl. ¶ 7 and Ex. 3. BOP concluded that Petitioner was not eligible for such a pre-release custody placement because of his immigration detainer. That was a permissible and appropriate decision. *See Martinez-Polanco v. Warden*, No. 24-7005 (RMB), 2025 WL 1511192, at *4 (D.N.J. May 27, 2025) ("Under BOP policy and BOP's discretion to make placement determinations under 18 U.S.C. § 3624, his immigration detainer independently barred him from prerelease custody to home confinement or a residential reentry center well before DHS served the removal order.").

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[11] *See* https://www.bop.gov/policy/progstat/7310_004.pdf (last visited Sept. 6, 2025) (hereinafter "Program Statement 7310.04" or "P.S. 7310.04"). "Community Corrections Centers" are now called Residential Reentry Centers or RRCs.

CONCLUSION

For the foregoing reasons, the Court should dismiss or deny the petition in all respects.

Dated: Camden, New Jersey
September 9, 2025

Respectfully submitted,

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