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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

|   |   |                             |
|---|---|-----------------------------|
| <b>KAREL OMAR AGUILAR-ESTRADA,</b>        | : | No. 1:25-CV-00429           |
| <b>Petitioner</b>                         | : |                             |
|   | : | <b>(Judge Wilson)</b>       |
| <b>v.</b>                                 | : |                             |
|   | : |                             |
| <b>ICE/ERO WILLIAMSPORT SUB</b>           | : |                             |
| <b>OFFICE<sup>1</sup>, <i>et al.</i>,</b> | : |                             |
| <b>Respondent</b>                         | : | <b>Filed Electronically</b> |

**RESPONSE TO THE  
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Karel Omar Aguilar-Estrada, a federal inmate, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 alleging that his time credits under the First Step Act of 2018 (FSA) have been improperly revoked. (Doc. 1, Pet. at 7.) Specifically, Aguilar-Estrada alleges that his FSA time credits were improperly denied based on a final order of deportation that he has appealed to the Third Circuit. (*Id.*) Aguilar-Estrada claims the order is not “final” until his appeal has

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<sup>1</sup> Pursuant to the Order to Show Cause (Doc. 7), the Warden of FCI-Allenwood Low is the only appropriate Respondent to this petition and will accordingly be substituted as the sole Respondent in this matter.

concluded. (*Id.*)

The Court should dismiss the petition, because Aguilar-Estrada did not exhaust his administrative remedies. Alternatively, the Court should deny the petition because it is without merit as Aguilar-Estrada is ineligible to have his FSA time credits applied.

## **I. Procedural History**

Aguilar-Estrada filed this Petition on March 7, 2025. (Doc. 1, Pet.) On April 30, 2025, this Court ordered Respondent to respond to the Petition within 21 days. (Doc. 7, Order ¶ 4.) This Response is filed in accordance with that Court Order.

## **II. Factual Background**

### **A. Aguilar-Estrada's Criminal Conviction and Sentence**

Aguilar-Estrada is serving a 42-month term of imprisonment imposed by the United States District Court for the Western District of Kentucky for Attempt and Conspiracy to Possess with Intent to Distribute Cocaine 21 U.S.C. § 846, 21 U.S.C. § 841 (A)(1), and 21 U.S.C. § 841 (B)(1)(B). (Ex. 1, Declaration of Jennifer Knepper ¶ 3; Attach. A, Public Information Inmate Data, at 2.) He is currently incarcerated at the Federal Correctional Institution Allenwood – Low, in White Deer,

Pennsylvania (FCI Allenwood), and his current projected release date via Good Conduct Time (GCT) is December 25, 2025. (*Id.* at 1.)

**B. Aguilar-Estrada's Administrative Remedies**

Aguilar-Estrada filed six administrative remedies while incarcerated in the Bureau of Prisons (BOP). (Ex. 1, Knepper Decl., ¶ 5, Attach. B Administrative Remedy Generalized Retrieval.) His administrative filings concern a Unit Disciplinary Committee appeal and a request for halfway house placement. (*Id.*)

**C. Aguilar-Estrada's Immigration Status**

On September 10, 2024, the immigration judge ordered the removal of Aguilar-Estrada. (Ex. 1, Knepper Decl., ¶ 8, Attach. D, Automated Case Information, A-Number: 209-282-683, at 1-2.) On January 30, 2025, the Board of Immigration Appeals (BIA) dismissed Aguilar-Estrada's appeal. (*Id.*, Attach. D at 2.) There are no further hearings scheduled for this case. (*Id.*, Attach. D at 1.) On February 24, 2025, the Department of Homeland Security issued an Immigration Detainer-Notice of Action to FCI Allenwood Low, advising that a final order of removal was entered. (*Id.* ¶ 7, Attach. C, Immigration Detainer-Notice of Action, at 1, 4.) The Notice also indicates that Aguilar-Estrada is scheduled for release from

BOP custody on December 25, 2025, and that DHS will contact the BOP “no later than 60 days prior to release.” (*Id.*, Attach. C at 4.)

### **III. Questions Presented**

- A. Should the Court dismiss the Petition because Aguilar-Estrada failed to exhaust his administrative remedies?**
- B. Alternatively, should the Court deny the Petition because Aguilar-Estrada’s claims are without merit?**

**Suggested answers:** In the affirmative.

### **IV. Argument**

- A. The Court should deny the Petition because Aguilar-Estrada failed to exhaust his administrative remedies.**

The Prison Litigation Reform Act (“PLRA”) provides that “[n]o action shall be brought with respect to prison conditions ... by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). This statute makes exhaustion a precondition to a federal prisoner filing any civil suit about “prison life.” *Porter v. Nussle*, 534 U.S. 516, 532 (2002); *see also Nyhuis v. Reno*, 204 F.3d 65, 78 (3d Cir. 2000) (holding that “no action shall be brought in federal court until such administrative remedies as are available have been exhausted.”).

Ordinarily, exhaustion will be excused only if administrative remedies were unavailable to a prisoner. *See Booth v. Churner*, 532 U.S. 731, 737-38 (2001). Remedies may be unavailable if: (1) despite promises, officials fail to follow through on providing requested relief; (2) an administrative scheme is so opaque as to render it incapable of use; or (3) prison administrators thwart inmates from taking advantage of a grievance process through misrepresentation or intimidation. *Ross v. Blake*, 578 U.S. 632, 644 (2016).

A habeas petition under 28 U.S.C. § 2241 that does not challenge prison conditions, but instead solely the calculation of a sentence, is governed by the principles of prudential exhaustion. *See Barksdale v. Sing Sing*, 645 F. App'x 107, 109 (3d Cir. 2016). Unlike a statutorily-mandated exhaustion requirement, “[a] prudential exhaustion requirement is generally judicially created, aimed at respecting agency autonomy by allowing it to correct its own errors.” *Wilson v. MVM, Inc.*, 475 F.3d 166, 174 (3d Cir. 2007). Accordingly, “prudential exhaustion can be bypassed under certain circumstances, including...futility.” *Id.*; *see also Rose v. Lundy*, 455 U.S. 509, 516 n. 7 (1982); *Gambino v. Morris*, 134 F.3d 156, 171 (3d Cir. 1998). However, “to invoke the futility

exception to exhaustion, a party must ‘provide a clear and positive showing’ of futility.” *Wilson*, 475 F.3d at 175 (quoting *D’Amico v. CBS Corp.*, 297 F.3d 287, 293 (3d Cir. 2002)). In other words, failure to exhaust will only be excused in “narrow” circumstances. *Id.*

The BOP has established an administrative remedy procedure with respect to inmate complaints, found at 28 C.F.R. § 542.10, *et seq.* Typically, an inmate must initially attempt to resolve his issue informally by submitting a request to staff, known as a BP-8. *See* 28 C.F.R. § 542.13(a). If a request cannot be informally resolved, the initial step of the formal administrative remedy process is generally submission of a written Administrative Remedy Request form (“BP-9”) to the Warden’s Office within 20 calendar days. *See* 28 C.F.R. § 542.14(a). If an inmate is dissatisfied with the Warden’s response, he may file a BP-10 with the Regional Director within 20 calendar days of the date the Warden signed the response. *See* 28 C.F.R. § 542.15(a). If dissatisfied with the Regional Director’s response, the inmate may then appeal to the General Counsel in BOP’s Central Office via a BP-11, which is the final administrative appeal. *Id.* An inmate has not exhausted his administrative remedies until the complaint has been denied on the

merits by the BOP's Central Office prior to filing suit. *See Woodford*, 548 U.S. at 90-91; *see also* 28 C.F.R. §§ 542.10-542.19.

Aguilar-Estrada failed to properly exhaust his administrative remedies. A review of Aguilar-Estrada's administrative remedy generalized retrieval reflects that, as of February 18, 2025, he has filed six administrative remedies while in BOP custody. (Ex. 1 ¶ 5; Attach. B.) His filings have concerned a Unit Disciplinary Committee appeal and a request for halfway house placement. (*Id.*) He has not filed a remedy concerning his eligibility for FSA credits. (*Id.*) Accordingly, Aguilar-Estrada failed to properly exhaust the claims presented in his habeas petition. *See Woodford*, 548 U.S. at 90-91.

Furthermore, Aguilar-Estrada fails to provide any evidence, let alone the requisite "clear and positive showing" for the futility exception. He presents no facts from which the Court could conclude exhaustion would be futile. Additionally, he does not identify any BOP actions that would clearly and unambiguously violate statutory or constitutional rights or allege any facts that would permit the Court to find exhaustion of his administrative remedies would subject him to irreparable harm. *See Guzman v. Spaulding*, No. 3:21-cv-1577, 2021 WL 6134457, at \*2

(M.D. Pa. Dec. 29, 2021). Because Aguilar-Estrada has not demonstrated in any way that exhaustion would be futile, his petition must be dismissed. *See Hernandez v. Warden FPC-Lewisburg*, No. 1:21-cv-599, 2022 WL 452408, at \*2 (M.D. Pa. Feb. 14, 2022).

**B. Aguilar-Estrada is ineligible to have FSA Time Credits applied.**

The First Step Act of 2018 (FSA) provides eligible inmates the opportunity to earn 10 or 15 days of time credits for every 30 days of successful participation in Evidence Based Recidivism Reduction Programs (EBRR programs) and Productive Activities (PAs). 18 U.S.C. § 3632(d)(4)(A) (Pub. L. No. 115-391, 132 Stat. 5194 (2018)). The earned credits, known as FSA Time Credits, can be applied toward earlier placement in pre-release custody, such as Residential Reentry Centers (RRCs) and home confinement, or toward a term of supervised release. 18 U.S.C. § 3632(d)(4)(C).

A key component of the FSA involves the development of “a risk and needs assessment system” (the system) BOP can use to evaluate individual inmates’ unique profiles. The DOJ released the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) on July 19, 2019. On January 13, 2022, DOJ announced that BOP had



finalized the FSA Time Credit rule and transmitted it to the Federal Register for publication. The regulation, 87 Fed. Reg. 2705, is codified at 28 C.F.R. § 523.40 et. seq. (Subpart E—First Step Act Time Credits). This final rule codifies BOP's procedures regarding implementation of the specific FSA provisions, including those related to the earning and application of FSA Time Credits.<sup>2</sup>

Per BOP Program Statement 5410.01, *First Step Act of 2018 – Time Credits: Procedures for Implementation* of 18 U.S.C. § 3632(d)(4), and 28 C.F.R. § 523.42 (outlining the earning of First Step Act Time Credits), eligible inmates with all PATTERN risk scores may earn FSA Time Credits, but only those inmates with Low and Minimum PATTERN scores are able to have the FSA time credits applied, or they must petition to have the credits otherwise applied.

Inmates are not absolutely entitled to earn and have FSA time credits applied. Congress completely precluded inmates from earning time credits if they were serving sentences for one of many enumerated

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<sup>2</sup> 28 C.F.R. § 523.40(a) provides: “The purpose of this subpart is to describe procedures for the earning and application of Time Credits as authorized by 18 U.S.C. 3632(d)(4) and Section 101 of the First Step Act of 2018 (Pub. L. 115–391, December 21, 2018, 132 Stat. 5194) (FSA), hereinafter referred to as ‘FSA Time Credits’ or ‘Time Credits.’”

crimes. 18 U.S.C. § 3632(d)(4)(D). Additionally, inmates may be ineligible to apply FSA time credits for several reasons, of particular note in this case, an inmate subject to a final order of deportation is ineligible to have FSA time credits applied:

(E) DEPORTABLE PRISONERS INELIGIBLE TO APPLY TIME CREDITS—

(i) In General — A prisoner is ineligible to apply time credits under subparagraph (C) if the prisoner is 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).

In the Petition, Aguilar-Estrada avers that he has been ordered removed from the United States. (Doc. 1 at 4.) Aguilar-Estrada was issued a decision by an immigration judge on September 10, 2024, denying his application for asylum and ordering him removed to Cuba where he is a Citizen. (Ex. 1Knepper Decl., ¶¶ 7, 8, Attachs. C and D.) Aguilar-Estrada filed with the Board of Immigration Appeals, and his appeal was denied on January 30, 2025. (*Id.*, Attach. D.) As a result, Aguilar-Estrada is properly excluded from FSA Time Credit eligibility pursuant to 18 U.S.C. § 3632(d)(4)(E). An order of removal made by an

immigration judge becomes administratively final upon dismissal of an appeal by the Board of Immigration Appeals. *See* 8 C.F.R. 1241.1(a).

Pursuant to 18 U.S.C. § 3632(d)(4)(E)(i), a prisoner “is ineligible to apply time credits[to reduce his sentence] if the prisoner is the subject of a final order of removal under any provision of the immigration laws.” This statutory language is plain and compulsory: inmates subject to a final order of removal may not apply earned time credits to their sentence. *See Daniel v. Thompson*, No. 23-cv-1663, 2024 WL 973981 at \*2 (M.D. Pa. Feb. 20, 2024); *Omar v. Arviza*, No. 23-cv-1774, 2024 WL 973984 at \*2 (M.D. Pa. Feb. 20, 2024); *Batista v. Thompson*, No. 23-cv-657, 2023 WL 4482550 at \*2 (M.D. Pa. June 8, 2023).

Aguilar-Estrada argues that because he has an appeal pending with the Third Circuit Court of Appeals, his order is not technically final, and he should be afforded his earned time credits. Contrary to his argument, an order of removal becomes final upon dismissal of an appeal by the Board of Immigration Appeals. 8 C.F.R. § 1241.1(a). Notwithstanding whether Aguilar-Estrada continues to dispute the appropriateness of the order, it is clear he is subject to a final order of removal and therefore ineligible for the application of earned time

credits. *See Cabrera-Huato v. USP Lompoc Warden*, No. 2:24-CV-02892-SSS-JC, 2024 WL 3467801, at \*2 (C.D. Cal. June 5, 2024), *report and recommendation adopted sub nom. Cabrera-Huato v. Doerer*, No. 2:24-CV-02892-SSS-JC, 2024 WL 3835049 (C.D. Cal. Aug. 9, 2024).

Aguilar-Estrada is properly deemed ineligible to have his FSA Time Credits applied due to the final order of removal issued by an immigration judge, his petition is without merit and must be dismissed.

## **V. Conclusion**

The Court should dismiss Aguilar-Estrada's Petition because he failed to exhaust his administrative remedies. Alternatively, he is ineligible to have his FSA time credits applied due to a final order of removal, and his Petition should be dismissed.

Respectfully submitted,

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Date: May 16, 2025

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**CERTIFICATE OF SERVICE BY MAIL**

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on May 16, 2025, she served a copy of the attached

**RESPONSE TO THE  
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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Scranton, Pennsylvania.

**Addressee:**

Karel Omar Aguilar-Estrada  
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P.O. Box 1000  
White Deer, PA 17887

/s/Maureen Yeager  
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