

ALINA HABBA
United States Attorney
JOHN T. STINSON
Assistant United States Attorney
401 Market Street, 4th Floor
Camden, NJ 08101
Tel. (856) 757-5139
Email: john.stinson@usdoj.gov

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

OBINNA NWAFOR,

Petitioner,

v.

WARDEN, FCI FORT DIX,

Respondent.

HON. EDWARD S. KIEL

Civil Action No. 25-4631 (ESK)

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

ALINA HABBA
UNITED STATES ATTORNEY
Attorney for Respondent

JOHN T. STINSON
Assistant United States Attorney

PRELIMINARY STATEMENT

Petitioner Obinna Nwafor, a federal inmate at FCI Fort Dix, brings this petition for a writ of habeas corpus under 28 U.S.C. § 2241, seeking additional time credits under the First Step Act. *See* Petition for Writ of Habeas Corpus (ECF No. 1) (“Pet.”) at 3-8. In particular, Nwafor contends that the Federal Bureau of Prisons erred when it failed to grant him credit for the period between February 7, 2024 (the date of his sentencing) and May 29, 2024 (the date he arrived at his designated institution). *See id.* As set out more fully below, the Court should deny Nwafor’s petition because the BOP properly declined to grant him credit for time he spent outside federal custody prior to arriving at FCI Fort Dix.

STATEMENT OF FACTS

I. Time Credits Under the First Step Act

In 2018, Congress enacted the First Step Act to implement “comprehensive federal criminal justice reform.” *Musgrove v. Ortiz*, No. 19-5222 (NLH), 2019 WL 2240563, at *2 (D.N.J. May 24, 2019). Among its key provisions, the First Step Act sought to make recidivism-reduction programming available to federal inmates. *Id.*

To ensure the implementation of this programming, the First Step Act required “the Attorney General . . . [to] develop and release publicly on the Department of Justice website a risk and needs assessment system[,]” which the BOP would use to, among other things, “determine the recidivism risk of each prisoner as part of the intake process,” “determine the type and amount of evidence-based recidivism

reduction programming . . . appropriate for each prisoner[,] assign each prisoner to such programming . . . based on the prisoner’s specific criminogenic needs,” and “determine when to provide incentives and rewards for successful participation in evidence-based recidivism reduction programs or productive activities[.]” 18 U.S.C. § 3632(a)(1)-(6). The First Step Act also required the BOP to tailor its recidivism-reduction programming to an inmate’s “specific criminogenic needs” and “provide incentives and rewards for prisoners to participate in and complete evidence-based recidivism reduction programs[.]” 18 U.S.C. §§ 3632(a)(3), (d).

In July 2019, the BOP released its risk and needs assessment system, known as “Prisoner Assessment Tool Targeting Estimated Risk and Needs” or “PATTERN.” *DeFoggi v. United States*, No. 20-3889 (NLH), 2020 WL 2899495, at *2 n.1 (D.N.J. June 3, 2020) (citing BOP website). PATTERN “determines the recidivism risk of each inmate and assigns a recidivism risk score of minimum, low, medium, or high risk.” *Id.* (internal quotations omitted). “The system also assesses each inmate and determines, to the extent practicable, the inmate’s risk of violent or serious misconduct.” *Id.*

As an 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). The BOP assigns inmates to evidence-based recidivism reduction programs (“EBRRs”) and productive activities (or “PAs”) based on an individualized risk and needs assessment. 18 U.S.C. § 3632(a)(3); 28 C.F.R. § 523.40(b). An EBRR program is “a group or individual activity that (A) has been shown by empirical

evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism; (B) is designed to help prisoners succeed in their communities upon release from prison; and (C) may include,” but is not limited to, those involving certain types of activities. 18 U.S.C. § 3635(3); *see also* 28 C.F.R. § 523.41(a). A PA is “a group or individual activity that is designed to allow prisoners determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating[.]” 18 U.S.C. § 3635(5); *see also* 28 C.F.R. § 523.41(b).

Under the First Step Act, eligible inmates earn 10 days of time credits for every 30 days of successful participation in EBRR programs and PAs.¹ 18 U.S.C. § 3632(d)(4)(A)(i); 28 C.F.R. § 523.42(c)(2); *see generally* BOP Prog. St. 5401.01, First Step Act of 2018 – Time Credits: Procedures for Implementation of 18 U.S.C. § 3632(d)(4), https://www.bop.gov/policy/progstat/5410.01_cn2.pdf. Eligible inmates determined by BOP to have “a minimum or low risk for recidivating, who, over 2 consecutive assessments, ha[ve] not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.” 18 U.S.C. § 3632(d)(4)(A)(ii); 28 C.F.R. § 523.42(c)(2). The BOP can apply time credits earned

¹ Under the relevant regulations, a “day” does not mean the inmate must participate in eight hours of programming to get credit. *See* 87 Fed. Reg. at 2706. Rather, a day means a calendar day on which the inmate is participating in whatever assigned programming takes place on that date. *See id.*; *Mark v. Birkholz*, No. 21-1418, 2022 WL 11321123, at *2 (D. Minn. Aug. 4, 2022). This reflects a change from an earlier proposed rule, made in response to extensive public feedback through the comment period. *See* 87 Fed. Reg. at 2706.

by an inmate under the First Step Act toward either 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).

An eligible inmate may earn time credits “for programming and activities in which he or she participated from December 21, 2018, until January 14, 2020.” 28 C.F.R. § 523.42(b)(2); *see also* 28 C.F.R. § 523.42(b)(1) (noting that inmates “cannot earn FSA Time Credits for programming or activities in which he or she participated before December 21, 2018, the date of enactment of the First Step Act”). On or after January 15, 2020, an eligible inmate may earn time credits “if he or she is successfully participating in EBRR programs or PAs that [BOP] has recommended based on the inmate's individualized risk and needs assessment[.]” 28 C.F.R. § 523.42(b)(3).

For consistency purposes and to eliminate discrepancies based on the exact timing of an inmate's First Step Act Assessment within the first 28 days of their sentence, BOP allows inmates to begin earning credits immediately upon arrival to their designated institution, provided they are otherwise “successfully participating” in EBRR programs or PAs. *See* Declaration of Alisha Gallagher (“Gallagher Decl.”) ¶ 6; 28 C.F.R. § 523.42(a) (“An eligible inmate begins earning FSA Time Credits after the inmate's term of imprisonment commences (the date the inmate arrives or voluntarily surrenders at the designated Bureau facility where the sentence will be served)”). The BOP reassesses inmates for both risk and needs at regularly scheduled program reviews throughout the remainder of their incarceration, and unit team recommendations for appropriate EBRR programs and PAs change accordingly. *See* Gallagher Decl. ¶ 6.

Even if an inmate is eligible to earn time credits, there are situations in which an inmate is unable or unwilling to participate in EBRR programs or PAs, and therefore cannot earn FTCs. *See id.* ¶ 7; BOP Prog. St. 5401.01 at 11. These circumstances include, but are not limited to, the following:

- Placement in Disciplinary Segregation status.
- Designation status outside the institution (e.g., an outside medical trip or escorted trip, in-transit or at an in-transit facility, a furlough for the full day, etc.);
- Placement in the custody of another jurisdiction (e.g., on state or federal writ, transfer to state custody for service of sentence, transfer to another federal agency, etc.);
- Placement in mental health/psychiatric holds;
- Detention as a material witness or for civil contempt;
- Placement in civil commitment; or
- “Opting out” (choosing not to participate in the EBRR programs or PAs that the Bureau has recommended based on the inmate’s individualized risk and needs assessment).

BOP Prog. St. 5410.01 at 11; *see* Gallagher Decl. ¶ 7; 28 C.F.R. § 523.41(c)(4)(i)-(v).

II. Calculation of Nwafor’s Sentence and First Step Act Time Credits

On September 25, 2023, Nwafor appeared before a judge in the Eastern District of Virginia and pled guilty to one count of theft of government property, in violation of 18 U.S.C. § 641. *See United States v. Nwafor*, No. 4:23-cr-21 (E.D. Va.), ECF No. 61 (Minute Entry), 63 (Plea Agreement). On February 7, 2024, the court sentenced Nwafor to 42 months in prison and three years of supervised release. *See United States v. Nwafor*, No. 4:23-cr-21 (E.D. Va.), ECF No. 81 (Minute Entry), 84 (Judgment); Gallagher Decl., Ex. 1 (Public Information Inmate Data) at 002.

The BOP has determined that Nwafor is eligible to earn time credits under the First Step Act and has applied 135 days of time credits toward his early transfer to

supervised release. *See* Gallagher Decl. ¶ 8; Ex. 1 (Public Information Inmate Data) at 002; Ex. 2 (FSA Time Credit Assessment) at 1. As a result, the BOP has updated Nwafor's release date from May 15, 2026, via good conduct time ("GCT REL") release, to December 31, 2025, via First Step Act release ("FSA REL"). *See* Gallagher Decl. ¶ 9; Ex. 3 (Public Information Inmate Data) at 002; Ex. 2 (FSA Time Credit Assessment) at 3.

Nwafor's FSA Time Credit Assessment Report reflects that as of June 8, 2025, he has accrued 350 programming days, and the BOP has disallowed 25 programming days. *See* Gallagher Decl. ¶ 10; Ex. 2 (FSA Time Credit Assessment) at 1.

Nwafor challenges the BOP's decision not to award him credits starting on February 7, 2024, the date of his federal sentence. *See* Pet. at 1. Nwafor began accruing FSA time credits on May 19, 2025, the date he arrived at FCI For Dix, his designated institution. *See* Gallagher Decl. ¶ 11; Ex. 2 (FSA Time Credit Assessment) at 1, Ex. 4 (Inmate History, Admissions/Releases) at 1. Prior to this date, Nwafor was in the custody of the United States Marshal Service (the "USMS") in transit to his designated BOP facility, as follows:

- From February 7, 2024, until May 8, 2024, Nwafor was housed at Northern Neck Regional Jail, a regional jail that is not a BOP facility. *See* Gallagher Decl. ¶ 11, Ex. 5 (USM 129 Report) at 3; Northern Neck Regional Jail History Page, <http://www.nnrij.state.va.us/about/history.html>
- From May 8, 2024, until May 16, 2024, Nwafor was housed in holdover status at FCI Petersburg. *See* Gallagher Decl. ¶ 11, Ex. 4 (Inmate History, Admissions/Releases) at 1.

- From May 16, 2024, until May 29, 2024, Nwafor was housed in holdover status as at FCI Lewisburg. Gallagher Decl. ¶ 11, Ex. 4 (Inmate History, Admissions/Releases) at 1.

According to BOP records, Nwafor did not participate in any educational programming from February 7, 2024, to May 29, 2024. *See* Gallagher Decl. ¶ 12; Ex. 6 (Education Transcript) at 1.

ARGUMENT

I. The BOP Has Properly Calculated Nwafor's Time Credits under the First Step Act

Nwafor argues that the BOP failed to award him time credits for period between February 7, 2020 (the date of his sentencing) and May 29, 2024 (the date he arrived at his designated institution). The Court should reject his claims because the BOP correctly denied him credit for this period, consistent with the plain language and structure of the First Step Act.

Pursuant to 28 C.F.R. § 523.42(a), “[a]n eligible inmate begins earning FSA Time Credits after the inmate’s term of imprisonment commences (the date the inmate arrives or voluntarily surrenders at the designated Bureau facility where the sentence will be served).” *See also* BOP Prog. St. 5410.01 at 9-10. Accordingly, the BOP began to award Nwafor time credits on May 29, 2024, the date he arrived at his designated institution, FCI Fort Dix. *See* Gallagher Decl. ¶ 11.

Nwafor challenges this interpretation, arguing that § 543.42(a) and Program Statement 5410.01 contradict the First Step Act, which – he claims – requires the BOP to start awarding time credits when an inmate is “received in custody awaiting transportation to the designated facility” – in his case, May 29, 2024. The Court should

reject Nwafor's contentions, as they contradict the plain language and structure of the First Step Act.

Under the First Step Act, an eligible inmate earns either 10 or 15 days of time credits for every 30 days of successful participation in EBRR programs and PAs. 18 U.S.C. § 3632(d)(4)(A)(i)-(ii). The statute further provides that an inmate cannot earn credits for EBRR program he successfully completed either (1) prior to its enactment (that is, December 21, 2018); or (2) "during official detention prior to the date that the prisoner's sentence commences under section 3585(a)." 18 U.S.C. § 3632(d)(4)(B)(i)-(ii). Section 3585(a), in turn, states that a sentence of imprisonment "commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served." 18 U.S.C. § 3585(a). For the purposes of 18 U.S.C. § 3585(a), an inmate detained his during criminal proceedings begins his term of imprisonment on the day the court sentences him. Therefore, read in conjunction with § 3632(d)(4)(B)(ii), the First Step Act prohibits an inmate from earning credits for any time prior to the date of his sentencing.

Nwafor argues that the First Step Act requires the BOP to award credit when an inmate is "received in custody awaiting transportation to the designated facility" under § 3585(c). Although some district court cases have reached this conclusion, *see, e.g., Heath v. Knight*, No. 22-7270 (RMB), 2024 WL 5198863, at *4 (D.N.J. Dec. 23, 2024),² the Court should decline to adopt their reasoning, and should instead hold

² Other decisions that have reached similar conclusions include: *Sharma v. Peters*, No. 24-158, 2024 WL 4668135, at *7 (M.D. Ala. Nov. 4, 2024); *Tantuwaya v.*

that the BOP properly started to award Nwafor time credits when he reached his designated facility. *See Freeman v. Thompson*, No. 25-cv-1261 (MAS), 2025 WL 1793663, at *2 (D.N.J. June 30, 2025) (“Petitioner did not complete the other prerequisites until his arrival at FCI Coleman and, thus, was not eligible to earn credits under the Act before that point. His habeas petition must therefore fail.”); *Stevens v. Jacquez*, No. 23-1482, 2024 WL 3200546, at *5 (D. Or. June 25, 2024) (holding that the language in § 3632(d)(4)(B)(ii) precluding an inmate from earning term credits before his sentence commences “does not necessarily mean that [the inmate] actually earns or is entitled to an award of FSA time credit as of that date”); *Harper v. FCI Waseca*, No. 23-2502, 2024 WL 3164981, at *5-6 & n.8 (D. Minn. May 28, 2024) (“[T]he relevant statutes do not require that a prisoner begin earning [FSA time credits] right away. Indeed, if anything, 18 U.S.C. § 3632(d)(4)’s references to ‘successful completion’ and ‘successful participation’ in relevant programs and activities suggests that risk-assessment tools have to take place before a prisoner can

Birkholz, No. 24-2891, 2024 WL 4805423, at *2 (C.D. Cal. Oct. 10, 2024), *R&R adopted*, 2024 WL 4803522, at *1 (C.D. Cal. Nov. 15, 2024); *Eytcheson v. Caternolo*, No. 24-558, 2024 WL 3969227, at *2-3 (W.D. Wash. July 26, 2024), *R&R adopted in part*, 2024 WL 3965611 (W.D. Wash. Aug. 28, 2024); *Borker v. Bowers*, No. 24-10045, 2024 WL 2186742, at *2 (D. Mass. May 15, 2024); *Jobin v. Warden, FCI-Mendota*, No. 23-1700, 2024 WL 1367902, at *4 (E.D. Cal. Apr. 1, 2024), *R&R adopted*, 2024 WL 2786898 (E.D. Cal. May 30, 2024); *Patel v. Barron*, No. 23-937, 2023 WL 6319416, at *4-5 (W.D. Wash. Sept. 5, 2023), *R&R adopted*, 2023 WL 6311281 (W.D. Wash. Sept. 28, 2023); *Huihui v. Derr*, No. 22-541, 2023 WL 4086073, at *4-5 (D. Haw. June 20, 2023); *Komando v. Warden*, No. 22-425, 2023 WL 4101540, at *4 (D.N.H. Mar. 16, 2023), *R&R adopted*, 2023 WL 4101457 (D.N.H. Apr. 23, 2023); *Umejesi v. Warden*, No. 22-251, 2023 WL 4101471, at *4 (D.N.H. Mar. 16, 2023), *R&R adopted*, 2023 WL 4101455 (D.N.H. Mar. 30, 2023); *Yufenyuy v. Warden, FCI Berlin*, 659 F. Supp. 3d 213, 217 (D.N.H. 2023).

earn [FSA time credits].”), *R&R adopted*, 2024 WL 3163730 (D. Minn. June 25, 2024). Judge Shipp’s decision in *Freeman* is particularly instructive here in that the inmate was sentenced on September 24, 2020 and did not arrive at his designated BOP facility until February 24, 2021—five months later. 2025 WL 1793663, at *1. Like the Petitioner here, Freeman was in USMS custody the whole time and was not able to receive a PATTERN review or attend programming. *Id.* at *1-2. Judge Shipp held that to qualify for First Step Act programming, an inmate must meet all of the requirements and the act of receiving a sentence alone is not sufficient to start accrual. *Id.* at *2. The same analysis applies here.

The Supreme Court’s recent decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), does not undermine BOP’s interpretation of the First Step Act. In *Loper Bright*, the Supreme Court held that courts cannot defer to agency interpretations of statutes, but are to “interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences.” *Id.* at 2268. The BOP’s interpretation of the First Step Act is consistent with traditional tools of statutory construction.

Each “statute still has a best meaning, necessarily discernible by a court deploying its full interpretive toolkit.” *Id.* at 2271. The traditional tools of statutory construction look at “the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir. 2001) (quotation omitted). It is a “fundamental canon of statutory construction that the words of a statute must be read in their context and

with a view to their place in the overall statutory scheme.” *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quotation marks and citation omitted). Further, “one of the most basic interpretive canons [is] that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. U.S.*, 556 U.S. 303, 314 (2009) (quotation marks and citation omitted).

Although *Loper Bright* does not permit a court to defer to an agency’s statutory interpretation, the Supreme Court noted that the agency’s regulation may still have “the power to persuade[.]” *Loper Bright*, 144 S. Ct. at 2259 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). “[I]nterpretations and opinions of the relevant agency, made in pursuance of official duty and based upon specialized experience, constituted a body of experience and informed judgment to which courts and litigants could properly resort for guidance, even on legal questions.” *Id.* (cleaned up) (quoting *Skidmore*, 323 U.S. at 139-40). “The weight of such a judgment in a particular case . . . would depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Id.* (quoting *Skidmore*, 323 U.S. at 140).

Nwafor (and the cases he relies on) claim that the First Step Act unambiguously requires the BOP to award credits when an inmate’s sentence commences, because § 3632(d)(4)(A) says eligible prisoners “who successfully completes evidence-based recidivism reduction programming or productive activities,

shall earn time credits” according to the schedule it sets out. *See, e.g., Patel*, 2023 WL 6311281, at *4; *Yufenyuy*, 659 F. Supp. 3d at 218 (D.N.H. 2023); *Huihui*, 2023 WL 4086073, at *5. These cases note that § 3632(d)(4)(B) bars a prisoner from earning credits in two circumstances (before the enactment of the statute and before a sentence commences under § 3585(b)) and point out that a sentence commences “when a prisoner is received in custody awaiting transportation to” his designated facility. *See, e.g., Patel*, 2023 WL 6311281, at *4. But these cases err by leaping from these two provisions to the conclusion that the First Step Act requires the BOP to award time credits when a sentence commences.

The language in § 3632(d)(4)(A) only addresses the rate at which inmates earn time credits, not the moment at which inmates become eligible to earn them. Likewise, the language in § 3632(d)(4)(B)(ii) only describes what BOP *cannot* do (i.e., award credit for programming prior to the date an inmate’s sentence commences under § 3585) – it does not dictate what BOP *must* do. Congress could have easily stated that an inmate begins earning time credits on the day his sentence commences under § 3585. However, Congress did not do that. Instead, Congress created a floor – a detained inmate cannot begin earning time credits before the day of his sentencing. It does not then follow that an inmate automatically begins receiving credit upon that date. *See Stevens*, 2024 WL 3200546, at *4 (holding that the prohibition against awarding credit before a sentence commences in § 3632(d)(4)(B)(ii) “does not necessarily mean that an AIC actually earns or is entitled to an award of FSA time credit as of that date”). In other words, section 3632(d)(4)(B)(ii) is a prohibition but

not a mandate — it states only that an inmate “may *not*” earn credits for programming before sentencing. By its plain terms, the prohibition does not create any affirmative entitlement for an inmate to begin earning time credits as soon as the inmate’s “sentence commences under section 3585(a).”

Nwafor’s interpretation also overlooks a key part of the First Step Act’s provisions. As noted above, the FSA explicitly conditions an inmate’s ability to earn time credits on successfully completing EBRRs or PAs related to his needs. *See* 18 U.S.C. § 3632(d)(4)(A)(i); *Freeman*, 2025 WL 1793663, at *2 (“[I]t is clear that credits under the Act are only available for those who successfully participate “in evidence-based recidivism reduction programming” or recognized “productive activities.” 18 U.S.C. § 3632.”). It also requires the BOP to create an assessment system that evaluates the risk and needs of each federal prisoner, determines the recidivism risk for each prisoner, and classifies each prisoner as either minimum, low, medium, or high risk of recidivism. 18 U.S.C. §§ 3631, 3632(a). To satisfy that requirement, the BOP developed the PATTERN scoring system. This is a process that necessarily takes place within the prison setting and is not performed by a judge at sentencing. *See* 18 U.S.C. § 3632(a)(1) (the BOP will ‘determine the risk of recidivism of each prisoner as part of the intake process’); *Freeman*, 2025 WL 1793663, at *1 (“Under the Act, the BOP was required to enact a system through which it provides inmates with individualized risk and needs assessments that would permit the BOP to determine the type and amount of recidivism reduction activities appropriate for each inmate.”). Simply put, if an inmate can only successfully complete a program or activity the BOP

assigned him based on a needs assessment, then an inmate cannot show that he is entitled to time credits *before* he is assigned to and begins programming or activities. And because an inmate does not undergo a needs assessment until he arrives at his designated institution, he cannot earn credits during the period between his sentence and the date of his arrival. It would be anomalous to read the First Step Act to require the BOP to give inmates time credits for participation in evidence-based recidivism reduction programs *before* the BOP has a chance to evaluate the inmates and assign them to these programs.

As the *Stevens* court held:

Petitioner's argument [that the BOP should award credits as soon as an inmate is sentenced] ignores the FSA requirement that an [inmate] be assessed for the risk of recidivism “as part of the intake process.” *Id.* §§ 3621(h)(1)(A), 3632(a)(1) (the BOP must “determine the risk of recidivism of each prisoner as part of the intake process”). BOP must then “determine the type and amount of [EBRR] programming that is appropriate” for each [inmate] and “assign” appropriate EBRR programming and PAs based on its assessment of the [inmate’s] “specific criminogenic needs.” *Id.* § 3632(a)(3); *see also id.* § 3621(h)(1)(A). BOP must also try to “tailor the programs to the specific criminogenic needs of each prisoner so as to most effectively lower each prisoner's risk of recidivism.” *Id.* § 3632(b)(2). As a practical matter, BOP cannot complete a comprehensive risk and needs assessment on the day of sentencing.

Stevens, 2024 WL 3200546, at *4; *see also Freeman*, 2025 WL 1793663, at *1 (“The credits available under the statute are an incentive for completing activities that the BOP determines through its assessment will address an individual prisoner’s criminogenic needs and therefore reduce his risk of recidivism upon release.”).

Moreover, it is reasonable for the BOP to start awarding credit on the date an inmate arrives at his designated institution because the risk and needs assessment takes place on arrival at the designated facility. It is likewise reasonable for the BOP

to have the needs assessment take place at the designated facility because it is “the institution where a prisoner is presumably going to stay long-term.” *Harper*, 2024 WL 3164981, at *5.

This makes even more sense considering the logistics of federal detention. Before an inmate arrives at the BOP-designated facility, he is likely to spend time in state or local jails, for which BOP lacks any funding or information about recidivism-reduction programming (let alone whether a given inmate has successfully participated in whatever programming the jail offered). See <https://www.usmarshals.gov/what-we-do/prisoners> (“Seventy-five percent of the prisoners in U.S. Marshals custody are detained in state, local and private facilities; the remainder are housed in Federal Bureau of Prisons facilities.”).³ Accordingly, the BOP has little to no information about inmates housed in state or private facilities and has no authority to direct state or private facilities, which contract with the USMS, to do anything related to the First Step Act. Further, it is not feasible to have a BOP staff member travel to these facilities and perform risk/needs assessments (assuming the facilities would even allow this) pursuant to the First Step Act. Even if the BOP had the staff to dedicate to this task – which it does not – it could not feasibly perform assessments for each sentenced inmate held at a non-BOP facility prior to arrival at their designated facility. In short, the BOP cannot undertake the

³ Nwafor’s time in custody bears this out, as he spent three of the four months between February 7, 2024 and May 29, 2024 in a regional jail rather than a BOP facility. See Gallagher Decl. ¶ 11, Ex. 5 (USM 129 Report) at 3-4.

uniform risk and needs assessment process required by the First Step Act at non-BOP facilities.

Read as a whole, the First Step Act contemplates that its provisions will apply to inmates in BOP custody. Indeed, much of the statute is nonsensical if applied to inmates outside BOP custody and before those inmates receive a risk and needs assessment. For example, the statute provides that “[t]he Attorney General shall carry out this subsection in consultation with the Director of the Bureau of Prisons,” and repeatedly refers to the obligations imposed on the BOP to carry out its provisions. 18 U.S.C. § 3631(a); *see also, e.g.*, 18 U.S.C. § 3632(d)(3) (“*The Director of the Bureau of Prisons shall develop additional policies to provide appropriate incentives . . .*”) (emphasis added); 18 U.S.C. § 3632(d)(4)(C) (“*The Director of the Bureau of Prisons shall transfer eligible prisoners . . .*”) (emphasis added).

Notably, Congress makes no mention of the USMS and/or non-federal detention facilities carrying out FSA provisions. The statute’s explicit focus on the BOP’s obligations undercuts any interpretation that would allow inmates outside of BOP custody to earn credits in the days right after sentencing before the BOP can assess them or assign them to assigned to recidivism programming the agency has approved. In sum, the idea that an inmate should receive time credits immediately upon sentencing when they are not yet in BOP custody or in a designated BOP facility is inconsistent with the entire statutory scheme requiring completion of EBRs and PAs administered and provided by the BOP. And this reasoning violates established

rules pertaining to statutory construction because it renders large portions of the FSA “superfluous, void, or insignificant.” *Corley*, 556 U.S. at 314.

Finally, even if the Court concludes that the First Step Act allows an inmate to earn time credits before arriving at his designated facility, it should still decline to award Nwafor credit for the period between February 7, 2024 to May 29, 2024, because he has not shown that he participated in any EBRRs or PAs during this period. *See Freeman*, 2025 WL 1793663, at *2 (“Petitioner has failed to provide any evidence that he successfully participated in such programs or activities prior to his arrival at FCI Coleman.”). Nwafor has not submitted any evidence that he participated in anti-recidivism programs before he arrived at FCI Fort Dix. By contrast, the BOP’s records reflect that he did not participate in any educational programming during this period. *See Gallagher Decl.* ¶ 12; Ex. 6 (Education Transcript) at 1. Because Nwafor cannot show that he successfully participated in EBRR or PAs during this time frame, the Court should deny his application for habeas relief. *See Freeman*, 2025 WL 1793663, at *2; *Barry v. Greene*, No. 25-408, 2025 WL 1462571, at *3 (M.D. Pa. May 21, 2025) (denying time credits because petitioner had “not shown that he participated at all in any such programs or activities from the time he was sentenced until he arrived at his designated facility”); *Akhatsegbe v. Greene*, No. 24-1871, 2025 WL 297699, at *4 (M.D. Pa. Jan. 24, 2025) (denying time credits because petitioner had “not demonstrated in his petition or any of the attachments thereto that he successfully participated in any EBRR programming or PAs” between sentencing and arrival at designated facility and

“[i]nstead, it appears that he is seeking FTCs simply because he was sentenced and in federal custody as of that date”) (quotation marks omitted); *Mercado-Rosario v. Peters*, No. 23-212, 2024 WL 5459079, at *2 (W.D. Pa. Apr. 29, 2024) (denying time credits because petitioner “neither alleged that he somehow had completed a PATTERN assessment before arriving at a BOP facility, nor that he had actually successfully completed any EBRR[]s or PAs before arriving at a BOP facility, much less that he had completed EBRR[]s ‘based on’ an assessment”); *Smith v. Stover*, No. 23-1645, 2024 WL 3279014, at *2 (D. Conn. June 20, 2024) (denying time credits for post-sentencing period because petitioner “furnishe[d] no evidence that she took part in any programming during that time period”); *Stevens*, 2024 WL 3200546, at *4 (denying time credits for post-sentencing period because petitioner “makes no showing that he successfully participated in EBRR programming to justify the FSA time credit he seeks”); *Solberg v. Eischen*, No. 23-3568, 2024 WL 3251713, at *2 (D. Minn. May 7, 2024) (“The Court finds that Solberg is not entitled to FTCs for the time spent in custody prior to his arrival at FPC Duluth because he did not participate in qualifying programming during that period”), *R&R adopted*, 2024 WL 3086630 (D. Minn. June 21, 2024); *Martinez v. Eischen*, No. 24-637, 2024 WL 2002031, at *2 (D. Minn. Mar. 20, 2024) (denying time credits for post-sentencing period because “there is no evidence in the record to suggest that Mr. Martinez participated in any FTC-qualifying programming” during that period); *R&R adopted*, 2024 WL 1598772 (D. Minn. Apr. 12, 2024). Thus, the Court should find that the BOP properly denied

Nwafor time credits for the period between February 7, 2024 and the day he reached his designated institution.

CONCLUSION

For the foregoing reasons, the Court should deny the petition in its entirety.

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Respectfully submitted,

ALINA HABBA
United States Attorney

By: s/ John T. Stison
JOHN T. STINSON
Assistant United States Attorney
Attorney for Respondent