

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the
Central District of California



Avetis Akmakchyan

FEE PAID

Petitioner

v.

Warden, FCI Lompoc

Case No.

2:25-CV-08127-HDV-PVC

25-cv-

(Supplied by Clerk of Court)

Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Avetis Akmakchyan
(b) Other names you have used: _____
2. Place of confinement:
(a) Name of institution: FCI Lompoc
(b) Address: 3901 Klein Blvc
Lompoc, CA 93436
(c) Your identification number: [REDACTED]
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: USDC CD CA @ LA
(b) Docket number of criminal case: 17-cr-243
(c) Date of sentencing: 03/01/2022
☐ Being held on an immigration charge
☐ Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:
☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

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- ☐ Pretrial detention
☐ Immigration detention
☐ Detainer
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
☐ Disciplinary proceedings
☒ Other (explain): BOP's failure to award sentence credits under the First Step Act and removing credits already vested based upon an immigration detainer that is null and void.

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: FCI Lompoc, Lompoc, CA

(b) Docket number, case number, or opinion number:

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

See above.

(d) Date of the decision or action:

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not appeal: BOP is purposely violating the FSA of 2018.

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☐ No

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(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

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If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes

☒ No

If "Yes," provide:

(a) Date you were taken into immigration custody: _____

(b) Date of the removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☐ No

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If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☐ No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes

☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

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Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: The Warden and FBOP have failed to timely apply Petitioner's Sentence Credits mandated by the First Step Act of 2018

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

See attached memorandum.

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

GROUND TWO: The Warden and FBOP are obligated to immediately place Petitioner in Halfway House or Home Confinement

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

See attached memorandum

(b) Did you present Ground Two in all appeals that were available to you?

☒ Yes

☐ No

GROUND THREE: FBOP is not empowered to honor a detainer unless it is signed by a judge and not an ICE agent.

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

See attached memorandum

(b) Did you present Ground Three in all appeals that were available to you?

☒ Yes

☐ No

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GROUND FOUR:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: grant this petitioner for habeas corpus, appoint counsel to represent Petitioner in all subsequent proceedings, and all other relief this Honorable Judge deems just.

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

8-13-25

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 08/13/2025


Signature of Petitioner

Signature of Attorney or other authorized person, if any

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES**

AVETIS AKMAKCHYAN,	)	
	)	
Petitioner	)	
	)	
vs.	)	25-cv-
	)	
	)	
WARDEN, FCI LOMPOC II, in his	)	
official capacity,	)	
	)	
Respondent	)	

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241

COMES NOW, your Petitioner in the instant case, pro se, who respectfully files this Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. Section 2241, and in support thereof, states as follows:

PROCEDURAL HISTORY OF THE CASE

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241 because Petitioner seeks relief from being held in custody in violation of the Eighth Amendment to the U.S. Constitution. In addition, the Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 1331 (federal question) in that the Petitioner's claims arise under the federal statute providing for habeas corpus, 28 U.S.C. § 2241, and under Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause), as Petitioner is held in violation of the Eighth Amendment to the U.S. Constitution.

PROCEDURAL HISTORY

Petitioner did not file his administrative remedies with the institution, since Petitioner is alleging defendant's violation of a statute, and any further attempt to convince defendant to follow the law through the administrative remedy process would be fruitless. Petitioner argues that with the proper application of all sentence credits that Petitioner is past the correct "out" date, and is eligible for immediate release based upon the clear language of the First Step Act and Second Chance Act, rendering his remaining in custody illegal. The BOP website currently lists Petitioner's "out" date (incorrectly) as 09/18/2027.

Petitioner, who entered the country legally as a citizen of the old Soviet Union, has been present in the country almost thirty years, and is married to a lawful US resident. Petitioner was advised by prison officials that they would not apply any accrued First Step Act (FSA) FTC sentence credits and that it was clear that the Federal Bureau of Prisons (BOP) had failed and would continue to fail to properly calculate and apply sentence credits. (Petitioner has to date accumulated at least 2000 days of FTC credits, (in addition to the one-year reduction in his sentence), not including any Second Chance Act placement that Petitioner should have already received, and is eligible for immediate placement in a halfway house/home confinement. (See attached exhibits, incorporated herein and made a part hereof.) To date, Petitioner is unaware of whether or not the Warden or Federal Bureau of Prisons have begun the review process of referring him for possible halfway house/home confinement, under the Second Chance Act (SCA).

ARGUMENTS

I. THE WARDEN AND THE FEDERAL BUREAU OF PRISONS HAVE FAILED TO TIMELY APPLY ALL SENTENCE CREDITS MANDATED BY THE FIRST STEP ACT OF 2018

Under the First Step Act, (FSA), Time Credits "shall" be applied when incarcerated people earn them. The FSA makes this clear two separate times. First, in 18 U.S.C. § 3632(d)(4)(A), the FSA states that "[a] prisoner... who successfully completes evidence-based recidivism reduction programming or productive activities, **shall** earn time credits " Second, in 18 U.S.C. § 3632(d)(4)(C), the FSA states that "[t]ime credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities **shall** be applied toward time in prerelease custody or supervised release" and that "[t]he Director of the Bureau of Prisons **shall** transfer eligible prisoners . . . into prerelease custody (emphasis added.)" Petitioner is clearly eligible for FSA credits and attaches hereto evidence thereof. Based upon the clear language of the First step Act, and the BOP's own policy (see attached), Petitioner is not disqualified from receiving FTC (or FSA) credits.

As one federal judge explained in a 2021 case of O'Bryan v. Cox, 20-7582, (D of NJ , 8-25-2020), "[m]andatory words such as 'shall ' impose a duty and permissive words such as 'may ' grant discretion " Because Congress was clear in using the mandatory word "shall" in these instances, that court concluded, "no deference is to be accorded to the BOP position that it need do nothing with accrued time credits under the FSA until January 15, 2022." As the O'Bryan court noted, this is the only interpretation permitted by the "shall" heavy statute.

Petitioner, a federal inmate at FCI Lompoc II, alleges that the Federal Bureau of

Prisons ("BOP") has failed to properly apply all "Earned Time" credits for "Evidence-Based Recidivism Reduction Training" under the First Step Act, 18 U.S.C. § 3632(d)(4)(A), a recently enacted statute aimed at assisting prisoners' reintegration into society. Petitioner contends that the BOP should have given credit for participation in various training programs, as well as prison employment, reducing Petitioner's custodial sentence by one year, with the balance of accrued FSA credits applied to any halfway house or home confinement. Petitioner further alleges that if those accrued sentence credits were applied pursuant to the clear language of FSA, he would already be eligible for release.

II. THE FIRST STEP ACT OFFERS PRISONERS THE OPPORTUNITY TO EARN CREDIT TOWARD THEIR SENTENCE.

As noted in Goodman v. Ortiz, 20-7582, (D. NJ , 2020), Under the Act, the BOP created a risk and needs assessment system, titled "Prisoner Assessment Tool Targeting Estimated Risk and Need s" ("PATTERN, ") in compliance with the First Step Act , 18 U.S.C. § 3632(a). The First Step Act required the BOP, among other things, to "determine the type and amount of evidence-based recidivism reduction programming that is appropriate for each prisoner and assign each prisoner to such programming accordingly .. ." 18 U.S.C.A . § 3632(a)(3). Pursuant to 18 U .S.C. § 3632(d)(4), prisoners shall earn time credits for participation in such programs:

(4) Time credits.-

(A) In general.--A prisoner, except for an ineligible prisoner under subparagraph

(D), who successfully completes evidence-based recidivism reduction programming or productive activities, shall earn time credits as follows:

(i) A prisoner shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.

(ii) A prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over 2 consecutive assessments, has not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence based recidivism reduction programming or productive activities.

(B) Availability.--A prisoner may not earn time credits under this paragraph for an evidence-based recidivism reduction program that the prisoner successfully completed-

(i) prior to the date of enactment of this subchapter; or

(ii) during official detention prior to the date that the prisoner's sentence commences under section 3585(a).

Petitioner has maintained a MINIMUM PATTERN score, has a flawless institutional record and camp status, and is, therefore eligible to receive the maximum amount of sentence credits, twelve (12) months.

III. THE FIRST STEP PATTERN PROGRAM

"The First Step Act, Pub. L. No. 115-015, 132 Stat. 015 (2018), signed into law on December 21, 2018, provides comprehensive federal criminal justice reform by, inter alia, creating a new risk and needs assessment system to provide appropriate programming for prisoners " Musprove v. Ortiz, No . CV 19-5222 (NU-I), 2019 WL 2240563, at ""2 (D.N.J. May 24, 2019). The First Step Act added the following relevant subsections to 18 U.S.C. § 3621:

(h) Implementation of risk and needs assessment system. -

(1) In general. --Not later than 180 days after the Attorney General completes and releases the risk and needs assessment system [release occurred on July 19, 2019] (referred to in this subsection as the "System") developed under subchapter D, the Director of the Bureau of Prisons shall, in accordance with that subchapter-

(A) implement and complete the initial intake risk and needs assessment for each prisoner (including for each prisoner who was a prisoner prior to the effective date of this subsection), regardless of the prisoner's length of imposed term of imprisonment, and begin to assign prisoners to appropriate evidence-based recidivism reduction programs.

III. THE BUREAU OF PRISONS IS OBLIGATED TO IMMEDIATELY PLACE PETITIONER IN HALFWAY HOUSE OR HOME CONFINEMENT

The clear language of the SCA provides for "up to" 365 days of halfway house/home confinement, based upon five factors. After the Petitioner's institution has made their analysis of those five factors, factoring in Petitioner's long incarceration,

stellar programing, employment, and prison disciplinary record. The RRM under SCA is not invested with the authority to reduce one year to zero without explanation, and to do so is a clear and obvious abuse of administrative discretion, violative of Petitioner's rights under the SCA, the Due Process Clause of the United States Constitution, and the BOP's own policies and procedures.

Two cases that struck down the Bureau's attempts to limit FSA credits and halfway house placements are Yufenyuy v. Warden, where U.S. Magistrate Judge Andrea K. Johnstone, a federal judge in New Hampshire, ordered the BOP to apply the First Step Act time credits a federal prisoner, Austen Yufenyuy, had earned while in BOP custody from the date of sentencing, and 24-3053-JWL United States District Court, District of Kansas, Woodley v. Warden, USP Leavenworth/ In this case the judge rejected the Bureau scheme of stating that no room was available at the halfway house.

In Woodley, the court ruled as follows: "Respondent's excuse for delaying petitioner's transfer to an RRC is that bed space is not available in a particular RRC... No such condition concerning bed availability is included among the requirements for eligibility under Section 3624(g), however, and thus immediate placement in prerelease custody is nevertheless required under Section 3632(d)(4)(C). As noted above, that statute uses the mandatory 'shall' (as distinguished, for instance, from the provision in Section 3624(g)(3) that the BOP 'may' transfer a prisoner to early supervised release). Numerous courts have held that the BOP has no discretion to delay or refuse transfer of an eligible prisoner to prerelease custody, which transfer is mandatory. See, e.g., Doe v. Federal Bur. of Prisons, 2024 WL 455309, at *1-4 (S.D.N.Y. Feb. 5, 2024) (transfer to prerelease custody was required despite the prisoner's participation in the witness

protection program); Ramirez v. Phillips, 2023 WL 8878993, at *4 (E.D. Cal. Dec. 22, 2023) (agreeing with interpretation that transfer to prerelease custody is mandatory, BOP has no discretion not to transfer); Komando v. Luna, 2023 WL 310580, at *4-8 (D.N.H. Jan. 13, 2023) (transfer to prerelease custody was required despite outstanding detainer; rejecting argument that the BOP had discretion.“ Petitioner has served the proper amount of time in federal custody, and is now clearly eligible for immediate release.

IV. PETITIONER CAN ONLY BE HELD OR DEPORTED BY ORDER OF AN IMMIGRATION JUDGE, NOT AN ICE AGENT

Petitioner, as a lawful resident married to a lawful US resident, is currently in full “legal” status in the United States, has an ICE Order of Supervision with which Petitioner is in full compliance (See attached)and has a valid work permit. Petitioner has not been served with any valid order to show cause (OSC) from an immigration judge, and is entitled to a hearing before that judge as a matter of due process. Thus, the BOP is without legal authority to held Petitioner beyond the end of the sentence of confinement. Additionally, Petitioner is effectively “non-deportable,” since he is a citizen of a country that no longer exists (USSR), and in any event, the US government as a matter of policy is not deporting anyone to the USSR’s successor, Russia.

The Constitution's Suspension Clause, which protects the privilege of the habeas corpus writ, unquestionably requires some judicial intervention in deportation cases. Heikkila v. Barber, 345 U. S. 229, 235. The writ has always been available to review the legality of Executive detention, see, e. g., Felker v. Turpin, 518 U. S. 651, 663, and, until the 1952 Act, a habeas action was the sole means of challenging a deportation order's legality, see, e. g., Heikkila, 345 U. S., at 235. Habeas courts have answered questions of

law in alien suits challenging Executive interpretations of immigration law and questions of law that arose in the discretionary relief context. Pp. 305-308.

In this case, Petitioner has not been served with an Order to Show Cause (OSC). “An immigration detainer is a request from ICE that asks a federal, state or local law enforcement agency — including jails, prisons or other confinement facilities — to: Notify the requesting agency as early as possible before they release a removable noncitizen.” . By

its own policy, the BOP is without authority to deny FSA sentence credits based upon a detainer. No such determination has been made by any duly-authorized immigration court.

Since Petitioner has **not** been adjudicated a removable alien by an immigration judge (as opposed to a field agent), ICE has no authority to issue such a detainer, and the BOP is not obligated to honor same. The so-called “detainer” placed in the prison file is thus without validity and should be set aside by this Honorable court as void on its face.

Additionally, numerous cases have also stated that ICE is without authority to take individuals such as Petitioner into custody without a hearing. See Padilla v ICE, et al, 2:18-cv-928 MJP, USDC, WD of Washington at Seattle. The Ninth Circuit has held that the government may impose mandatory detention on “only those criminal aliens it takes into immigration custody promptly upon their release” from criminal custody for an offense referenced in the mandatory detention statute. Individuals in states outside California and Washington who were not “promptly” detained upon their release from relevant criminal custody are entitled to a bond hearing under the Ninth Circuit’s holding. Preap v. Johnson, 831 F.3d 1193, 1207 (9th Cir. 2016) (emphasis added).

Respondent, as the agent of the federal government, is obligated to follow federal law, and has no authority to deny Petitioner the sentence credits mandated by the First Step Act and the Second Chance Act. According to the Bureau of Prisons (BOP) Program Statements, a "detainer" refers to a hold placed on an inmate by another law enforcement agency, and the BOP policy states that a detainer generally does not affect an inmate's regular program participation unless specific circumstances related to custody or security are impacted by the detainer; this information can be found primarily within "Program Statement 5322.12: Inmate Classification and Designation." Thus, by not granting Petitioner the earned sentence credits, the BOP is clearly in violation of its own program statement.

CONCLUSION

As previously set forth, Petitioner is entitled to relief, and Defendant/Petitioner respectfully moves this Honorable Court grant this Petition for habeas corpus, appoint counsel to represent Petitioner in subsequent proceedings, and all other relief that this Honorable Court deems just.

Respectfully Submitted,

By: Avelis Dmelyan

CERTIFICATE OF SERVICE

Petitioner, does hereby certify that a true and correct copy of this Reply was duly caused to be served on all parties entitled to notice via the Prison Mailbox Rule on the 13th day of Aug, 2025, via First Class Mail.

Signed: Avelis Dmelyan

#25

FSA Time Credit Assessment

Register Number  Last Name: AKMAKCHYAN

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

--- Best Case Scenario - Conditional Pre-release Planning & Preparation Only -----

All conditional days and conditional dates below are the individual's best case scenario given the individual's FSA/FTC status and best case Second Chance Act (SCA) days as of 06-27-2025. These dates can change if there are changes to one or more of the following: the individuals FSA risk, FSA opt-in/opt-out status, or best case SCA days.

SCA DAYS ARE NOT GUARANTEED AND REQUIRE AN INDIVIDUALIZED ASSESSMENT! THEREFORE, IF A DEFAULT OF 0 DAYS IS REFLECTED, THIS DATE IS SUBJECT TO CHANGE BASED ON THE REQUIRED FIVE-FACTOR REVIEW UNDER 18 USC SEC. 3621(B). AN INDIVIDUAL WHO HAS PENDING CHARGES/DETAINEES ARE NOT ELIGIBLE FOR SCA TIME. THE FIVE-FACTOR REVIEW INVOLVES THE FOLLOWING: (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 BY 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.

Projected Release Date: 09-17-2028
Projected Release Method: GCT REL
FSA Projected Release Date: 09-18-2027
FSA Projected Release Method: FSA REL
FSA Conditional Release Date: 09-18-2027
SCA Conditional Placement Days: N/A
SCA Conditional Placement Date: N/A
FSA Conditional Placement Days: 415
FSA Conditional Placement Date: 07-30-2026
Conditional Transition To Community Date: 07-30-2026

--- SCA Ineligible -----

--- Detainers

Id	Lodged	Org Authority
001	02-07-2020	ICE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT

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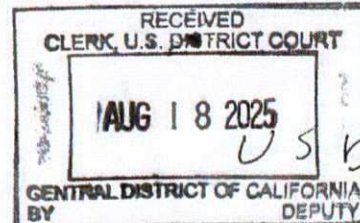
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