No. 23-6197

IN THE

SUPREME COURT OF THE UNITED STATES

DANIEL JOSEPH TEED — PETITIONER
(Your Name)

vs.

THOMPSON, WARDEN FCI ALLENWOOD LOW — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANIEL JOSEPH TEED, pro se
(Your Name)
FCI LORETTO
P.O. BOX 1000
(Address)

CRESSON, PA 16630
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

I. Is the ineligibility provision of 18 USC §3632(d)(4)(D) constitutional? First Step Act Time Credits have a direct and certain effect on the length of an inmate's sentence; when applied, entitle the inmate to an earlier release from custody as mandated by the statute. Contrary to accepted maxims of interpretation, the ineligibility provisions of §3632(d)(4)(D), First Step Act of 2018, Pub. L. No. 115-391, deliberately and arbitrarily exclude a class of inmates from Time Credit benefit, departing from traditional constitutional principles of substantive due process and equal protection.

II. Can the Federal Bureau of Prisons determine First Step Act Time Credit eligibility through administrative aggregation under 18 USC §3584(c)? The imposition of sentences is a function of the judicial process. The question of substance here, presents significant importance in federal law and the need to resolve the needless conflict among Circuit Courts on the issue of administrative aggregation by the Federal Bureau of Prisons' treatment of charge allocation being equally and fully allocable to each constituent offense.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

TABLE OF CONTENTS (cont.)

INDEX OF APPENDICES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (cont.)

TABLE OF AUTHORITIES (cont.)

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at 2023 U.S. App. LEXIS 18026; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[X] reported at 2023 U.S. Dist. LEXIS 18963; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the THIRD CIRCUIT COURT OF APPEALS REHEARING court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 17, 2023.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 4, 2023, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amd. V Criminal Actions - Provisions concerning - Due Process of the Law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminalcase to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. See also Appendix D.

U.S. Const., Amd. XIV

§1 [Citizens of the United States] All persons born or naturalized in the United States, and subjectto the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdictionthe equal protection of the law.

§5 [Power to enforce amendment] The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

CONSTITUTIONAL AND STATUTORY PROVIONS INVOLVED (cont.)

Public Law No. 115-391 First Step Act of 2018

Full Statutory Text in Appendix D.

18 USC §1594(c) General Provisions

(c) Whoever conspires with another to violate section 1591 [18 USC §1591] shall be fined under this title, imprisoned for any term of years or for life, or both. See also Appendix D.

18 USC §2250 Failure to register

Full Statutory Text in Appendix D.

18 USC §3146 Penalty for failure to appear

Full Statutory Text in Appendix D.

18 USC §3584(c) Multiple sentences of imprisonment

(c) Treatment of multiple sentence as aggregate. Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment. See also Appendix D.

18 USC §3621 Imprisonment of a convicted person

Full Statutory Text in Appendix D.

18 USC §3624 Release of a prisoner

(b) Credit toward service of sentence for satisfactory behavior.

(g) Prerelease custody or supervised release for risk and needs assessment system participants.

Full Statutory Text in Appendix D.

18 USC §3632 Development of risk and needs assessment system

Full Statutory Text in Appendix D.

18 USC §3635 Definitions

Full Statutory Text in Appendix D.

STATEMENT OF CASE

Teed pled guilty to conspiracy to commit sex trafficking of a minor, 18 USC §1594(c),[1] United States v. Teed, No. 2:17-CR-0129 (W.D. Pa.). The District Court sentenced Teed to 120 month sentence and 20 years supervised release on October 17, 2017. Teed failed to surrender for service, was later apprehended and charged with 18 USC §3146 and §2250 for failing to register as a sex offender, United States v. Teed, No. 2:18-CR-0036 (W.D. Pa.). Teed again pled guilty; the Court imposed two concurrent 18 month sentences for each offense, but consecutive to the previously imposed 120 month sentence. Teed was sentenced at two separate proceedings at different times for independent federal crimes. The Federal Bureau of Prisons ("BOP") aggregated all three of Teed's sentences to reflect 138 month total term of imprisonment. Teed is currently incarcerated with the BOP at the Federal Correction Institution ("FCI") Loretto, Cresson, Pennsylvania. Assuming he receives all available Good Time Credit ("GTC"), Teed's statutory release date is November 29, 2027.

In 2019, the BOP determined Teed was ineligible for First Step Act ("FSA") Time Credits because the aggregate term of imprisonment included his §2250 conviction, treating the entire term as equally and fully allocable to each constituent offense,

---

[1] The statutory text for this statute and all other statutes identified in this Petition are located in Appendix D.

despite the 120 month sentence of conviction or 87% of his term of imprisonment is FSA Time Credit eligible under the statute mandate. In 2022, Teed filed a habeas petition under 28 USC §2241, Teed v. Thompson, Warden FCI Allenwood Low, No. 1:22-CV-01568, U.S. Dist. Lexis 18963 (M.D. Pa. February 3, 2023); 2022 U.S. Dist. Lexis 231928 (M.D. Pa. November 28, 2022), challenging the BOP's determination, asserting the FSA provides no authority to redefine FSA Time Credit eligibility. The District Court denied his petition, Appendix B. Teed filed a timely appeal; the Third Circuit Court of Appeals exercised proper jurisdiction, reviewing Teed's petiton de novo and his denial for reconsideration. The panel affirmed the District Court's ruling, Teed v Thompson, Warden FCI Allenwood Low, No. 23-1181, 2023 U.S. App. Lexis 18020 (3rd Cir. 2023), Appendix A. Teed filed a Petition for Rehearing and Rehearing En Banc which was subsequently denied on October 4, 2023, Appendix C. Teed files this Petition for Wtit of Certiorari.

Relevant Framework

The First Step Act ("FSA") provides comprehensive criminal justice reform (Pub. L. No. 115-391, 132 Stat. 5194 (2018)) (amending 18 USC §3621 et seq.). Appendix D. The FSA improves criminal justice outcomes by reducing recidivism, reducing the federal prison poulation and creating mechanisms to maintain public safety. The FSA required the Attorney General to develop a "risk and needs assessment system" to measure individualized recidivism risk and identify specific needs of federal prisoners,

known as the Prisoner Assessment Tool Targeting Estimated Risk and Need ("PATTERN") System,[2] created pursuant to 18 USC §3632. Appendix D. The PATTERN System assesses an inmate's individualized risk and identifies specific criminogenic needs providing appropriate Evidence-Based Recidivism Reduction ("EBRR")[3] programming and Productive Activities ("PA"s).[4] 18 USC §3632(d)(4)(A).

The FSA mandates the Federal Bureau of Prisons ("BOP") to

---

[2] The PATTERN System is used for: (1) determining an inmate's risk; (2) assessing an inmate's risk of violent or serious misconduct; (3) determining the type and amount of evidence-based recidivism reduction programming appropriate for each inmate; (4) periodically assessing an inmate's recidivism risk; (5) reassigning an inmate to appropriate evidence-based recidivism reduction programs and productive activities; (6) determining when to provide incentives and rewards for successful participation in evidence-based recidivism reduction programming and productive activities; (7) determining when an inmate is ready to transfer to pre-release custody or supervised release; and (8) determining the appropriate use of audio technology for program course materials with an understanding of dyslexia. See id. §3632

[3] The term "evidence-based recidivism reduction program" means either group or individual activity that --

> (A) has shown by empirical evidence to reduce recidivism or is based on research indicating that is likely to be effective in reducing recidivism;
>
> (B) is designed to help prisoners succeed in their communities upon release from prison ... . 18 USC §3635(3). See also Appendix D.

[4] The term "productive activity" means either a group or individual activity that is designed to allow prisoner determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating, and may include delivery of the programs described in paragraph (1) to other prisoners. 18 USC §3635(6). See also Appendix D.

offer incarcerated persons the opportunity to earn time credits for participation in EBRR programs and PAs, those time credits are applied toward an earlier release to pre-release custody or transfer to supervised release. FSA Time Credits are governed by §3624(g),[5] also see 18 USC §3632(d)(4)(C); Appendix D. The FSA delineates multiple eligibility criteria, including an extensive list of specific convictions that render a prisoner ineligible to earn time credits. 18 USC §3632(d)(4)(D); Appendix D.

---

[5] 18 USC §3624 Release of a prisoner

(g) Pre-release custody or supervised release for risk and needs assessment system participants.

(1) Eligible prisoners. This subsection applies in the case of a prisoner (as such term is defined in section 3635 [18 USC §3635]) who ... .;

18 USC §3624(g)(1)-(11). See Appendix for full statutory text.

REASONS FOR GRANTING THE PETITION

I. STATUTORILY MANDATED FSA TIME CREDITS ARE LIBERTY INTERESTS THAT ARE CONSTITUTIONALLY PROTECTED

The enactment of the First Step Act statutorily-created a constitutionally protected liberty interest in time credits toward early release. Congress explicitly used mandatory language requiring specific substantive predicates, thus creating the liberty interestin an accelerated release from custody. 18 USC §3632. The mandatory language protects and vests a liberty interest protected through the Due Process Clause of the U.S. Constitution Amd. V and Amd. XIV §1 and §5; Appendix D. A liberty interest arises from either the Due Process Clause or statute, Hewitt v. Helms, 459 U.S. 460, 466 (1988).

The Supreme Court in Wolff v. McDonnell, 418 U.S. 359 (1974), held a person's liberty is equally protected by the due process clause when the liberty interest is a statutory creation of the state. Wolff distinguished that the liberty interest identified did not originate in the Constitution, but was created by the law. Further, Wolff held that the deprivation of a liberty interest cannot occur with even the minimal safeguards afforded by prisoners by the Due Process Clause. To be sure, a statutory provision can create a liberty interest in time credits that shorten a prison sentence. See Sandin v. Conner, 515 U.S. 472, 477-78 (1995). Governmental decisions resulting in the loss of an important liberty interest violates due process if the decision is not supported with "some basis in fact."

Superintendent v. Hill, 472 U.S. 445, 454 (1985). The FSA Time Credits are a protected liberty interest that are substantially burdened by the ineligibility provisions of 18 USC §3632(d)(4)(D), see Appendix D.

As a federal inmate, Teed possesses a protected liberty interest in FSA Time Credits. The ineligibility provisions in subparagraph (D) create an invasion of that protected liberty interest, thus unconstitutional, deliberately depriving him the expectation of the credit benefit toward an accelerated release. A denial of opportunity for an earlier release is an encroachment of due process and an aggrandization of his criminal conviction.

In analogous cases, liberty interests were created through the use of mandatory language in a parole statute, see Board of Pardons v. Allen,482 U.S. 369, 377 (1987); Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 463 (1989), "specified [that] substantive predicates" and "explicitly mandatory language" creates a liberty interest; and Olim v. Wakinekona, 461 U.S. 238, 243 (1983), held that a statute that place substantive limitations on "official discretion" creates a liberty interest. The FSA uses "explicitly mandatory language" delineating eligibility and application of FSA Time Credits establishes specific predicates that limits BOP discretionary authority.

The FSA's early release requirement is mandatory and a non-discretionary duty, where the BOP "shall" apply the prisoner's FSA Time Credits and "shall" transfer the prisoner to one of

the two forms of pre-release custody or supervised release. See §3624(g). Had Congress intended the BOP discretion over FSA Time Credit eligibility, it would have specified that authority to do so.

The FSA's eligibility is mandated in §3632 and §3624(g), unlike the discretionary nature of the early release in §3621(e).[6] The FSA's mandatory language in §3632(d)(4)(C) states "time credits earned ... shall be applied toward time in pre-release custody or transfer to supervised release," thus creating the same type of liberty interest discussed in Allen, Thompson, and Olim. Thus, Teed's liberty interest must be preserved in this instant case. Nothing in §3632 permits the BOP to determine eligibility.

Denying access to a statutorily-created liberty interest without individualized determinations has been declared a violation of due process. The FSA advances a legitimate government interest in reducing recidivism and successfully reintergrating offenders back into society, the exclusion provisions of §3632(d)(4)(D)

---

[6] 18 USC §3621 Imprisonment of a convicted person
(e) Substance Abuse Treatment.
(2) Incentive for prisoner's successful completion of treatment program.
(B) Period of Custody. The period of a prisoner convicted of a non-violent offense remains in custody after successfuly completing a treatment program may be reduced by the Bureau of Prisons, but such a reduction may not be more than one year from the term the prisioner must otherwise serve. See Appendix D for full statutory text.

do not advance that same interest. The establishment of eligibility based on specific offense convictions delivers an EBRR system that is arbitrary. The guarantee of substantive due process protects against government power arbitrarily and oppressively exercised. Daniels v. Williams, 474 U.S. 374 (1986). While due process protection in the substantive sense limits what government may do in both legislative, see Griswold v. Connecticut, 381 U.S. 479 (1965), and its executive capacities, see also Rochin v. Calfornia, 342 U.S. 165 (1952), criteria to identify what is fatally arbitrary differs depending on whether its legislative or a specific act of a governmental officer that is at issue. "[T]he touchstone of due process is protection of the individual against arbitrary action of the government." Wolff, 418 U.S. 519.

A. 18 USC §3632(d)(4)(D) is Based Upon False Premises Thus Unconstitutional

The legislative history of the First Step Act reveals conflicting purposes in the ability to earn Time Credits with the exclusion by category. Congress created the FSA Time Credits to encourage inmates to participate in EBRR programs identified through the individualized risk and needs assessments. 18 USC §3632(d). However, there is an exclusion provision; this categorical exclusion creates a "second class" which this Court held unconstitutional in Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974). In the FSA, the Congressional exclusionary intent is clearly demonstrated in remarks by Senator T. Cotton

(R. AR), National Review, "Fix the First Step Act and Keep Violent Criminals Behind Bars" (Dec. 17, 2018 available at www.cotton.senate.gov) who stated, "... One of the best predictors of committing a crime in the future is having committed a crime in the past." The statement expresses clear intent that thos on the list of exclusions are not worthy of, and are not capable of rehabilitation; therefore should not be permitted to earn the same incentives as those prisoners who are not on the list, thus incapable of reducing recidivism.

Further, Senator Cotton's comments were heard and adopted in both chambers of Congress, as illustrated in the Senate Judiciary Committee's announcement that the exclusion was placed in the First Step Act "to address concerns by certain parties" [like Senator Cotton] (available at www.judiciary.senate.gov). In this Revised Summary, it is clearly evident that the exclusion provision was placed as a political appeasement to the assertions that those convicted of a listed offense should not be incentivized in an equal manner as they are not redeemable as a category; a premise which is demonstratably false. The use of the categorical exclusions and ignoring empirical evidence is exactly what the Court declared to be a violation of due process under the "irrebuttable presumtion doctrine." Senator Cotton's assertions simply contravene the government data.

The premise that certain irredeemable categories of prisoners is demonstratably as in Teed's own evidence-based PATTERN Score, id. Teed, 2022 U.S. Dist. Lexis 231928. The PATTERN Tool has

been determined to be "effective at distinguishing recidivists and non-recidivists" according to the Department of Justice's "First Step Act Annual Report, April 2023." Teed's PATTERN Score illustrates that if he were to receive the same individual evaluation as other "eligible" prisoners, he would be earning the full 15 days for every 30 days toward an earlier release. Since the System's inception, the BOP has assessed Teed as a minimum liklihood of reoffending under their "evidence-based" PATTERN System. This irrebuttable presumption underlying the exclusions violates the original letter and spirit of "due process of the law" in both the Fifth and Fourteenth Amendment. See Appendix D. Thus, the list of exclusions found in subsection (D) are unconstitutional, compromising the Due Process and Equal Protection Clauses.

The false presumption here is that any and all persons convicted of any of the disqualifying offenses will equate to the worst offenders. This presents an unequal application and an issue of irrebuttable presumption. Further, many of the crimes excluded categorically have lower recidivism rates than those who are not excluded. Comparing recidivism rates among various categories listed in the Department of Justice's "First Step Act Annual Report, April 2023" Data Summary Tables excerpt included in Appendix E, depicts recidivism rates by broad category. Drug crimes, constitutes the majority of prisoners, have a recidivism rate of 12.8%. However, Fraud crimes have a recidivism rate of only 3.9%, and have been excluded by the statute from earning

the Time Credits, see §3632(d)(4)(D)(xxiii). Appendix E further illustrates that the longest sentences do not have a substantially different rate of recidivism. Among various length of sentences, there is only an average recidivism difference of 2.9%. It is unreasonable to say longer sentences deter future crimes - a "false presumption."

B. Irrebuttable Presumptions are Unconstitutional When Based Upon a False Premise

Court precedent invalidates many forms of irrebuttable presumptions in statutes and policies that deny persons important interests emanated from a series of Court decisions. Bell v. Burson, 402 U.S. 535 (1971); Stanley v. Illinois, 405 U.S. 645 (1972); Vlandis v. Kline, 412 U.S. 441 (1973); United States Department of Agriculture v. Murry, 413 U.S. 508 (1973); Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974). Each of these cases involved a statute containing rules that denied a benefit or placed a burden on all individuals possessing certain characteristics. The characteristic is the basic fact from which a presumed fact "is not necessarily or universally true in fact," Vlandis, 412 U.S. at 452, then a statute's irrebuttable presumption denies due process of the law. The very name suggests both an analysis grounded on formal logic and an examination of proper application supporting the "irrebuttable presumption doctrine" plays a role when private interests are important and government interests are based on false premises; "convenience alone is insufficient to make valid what otherwise is a violation of due

process law," LaFleur, 414 U.S. at 647.

The reason that is an unconstitutional practice is there is no resonable opportunity to demonstrate that the premise is false as applied to any idividual as opposed to the category which is denied the benefit in question; in this instance, access to the liberty interest granted by application of FSA Time Credits. See Allen, 482 U.S. 369, Thompson, 490 U.S. 238; Olim, 461 U.S. 238.

The facial constitutionality of the exclusion provisions rest on 1) whether the premise that exclusions are based on is ture or false; and 2) whether there is a reasonable opportunity to rebut said presumptions in individual cases. Accordingly, the Court should endeavor to find the list of exclusions failing the test for facial constitution on due process and equal protection grounds, the specific list of exclusions as applied to Teed and numerous other federal inmates fails for the same reasons and in the same manner.

"[T]he Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification." Weinberger v. Salfi, 422 U.S. 749 (1975). Teed challenges the deprivation FSA Time Credits benefit based on the government's failure to rationally justify and advance a legitimate government interest in reducing recidivism by including the list of exclusions identified in §3632(d)(4)(D); the ineligibility provisions violate substantive due process by adopting arbitrary classifications

as an administrative device.

The irrebuttable presumption must be analyzed calling into question not the adequacy of the procedures, such as multiple sentence aggregation, but the classification of those ineligible. The relationship between the list of exclusions and the policy that the classification serves is inadequate. Such a statutory classification is not consistent with equal protection under the Fourteenth Amendment, U.S. Const., Amd. XIV §1, if it is rationally based and free from invidious discrimination. A classification which meets such a test is perforce consistent with the due process requirement of the Fifth Amendment, U.S. Const., Amd. V, Weinberger, 422 U.S. 749. Section §3632(d)(4)(D) is not consistent with either the Fifth or Fourteenth Amendments. See Appendix D. The exclusion provisions fail to meet a rational legislative objective, creating an invasion of a protected liberty interest and a denial of fundamental fairness and contrary to the FSA goals.

C. The FSA Evidence-Based Recidivism Reduction Program Time Credits Differ from Other Early Release Programs

The FSA, Pub. L. No. 115-391, (amending 18 USC §3621 et seq.), uses substantive predicates to improve criminal justice outcomes reducing recidivism through individualized recidivism risk assessments and assigning appropriate EBRR programs for those individualized risk and needs. 18 USC §3632. The compulsory Time Credit mandate is significantly different from the BOP discretionary early release programs examined in López v. Davis,

531 U.S. 230 (2001). The Davis Court ruled categorical denial of early release to a prisoner was within the discretion of the BOP under 18 USC §3621(e). The BOP exercises total authority and discretion in rehabilitative programs, such as the Residential Drug Abuse Program ("RDAP"), a defined sentence reducing incentive. The Davis Court further held that early release eligibility was a grant of discretion and authority to the BOP under §3621(e) to reduce sentences based on Congress' use of the permissive word "may" differering from the explicit mandatory language requiring specific substantive predicates in the FSA.

The FSA mandates incentives for prisoners to earn FSA Time Credits for EBRR programs and PAs. 18 USC §3632(d)(4)(A) and 18 USC §3621(h)(2), see Appendix D. EBRR programs are designed to help prisoners succeed in their communities upon release from prison. EBRR programs have shown by empirical evidence to reduce recidivism or based on research indicating they are likely to be effective in reducing recidivism. Id. §3635. Inmates completing EBRR programs and PAs earn FSA Time Credits that "shall" be applied toward time in pre-release custody or supervised release at an earlier date. Id. §3632(d)(4)(C). "Congress' use of verb tense is significant in construing statutes." United States v. Wilson, 503 U.S. 329, 333 (1992).

The FSA does not afford the BOP the grant of authority and discretion that it has in §3621(e) early release programs. Congress purposely did not give the BOP the authority to determine eligibility abd deliberately refrained from granting that authority. The

FSA dictates preclude language allowing the BOP to determine eligibility, limiting their scope of discretion and instructing the BOP that they "shall" apply FSA Time Credits based on successful completion of EBRR programs and individualized assessments.

REASONS FOR GRANTING THE PETITION

II. FIRST STEP ACT TIME CREDIT ELIGIBILITY IS MANDATED BY STATUTE

A. FSA Time Credit Eligibility is Offense Specific

Congress directly addressed the issue of FSA Time Credit eligibility as offense specific. The statutory dictates clearly and deliberately preclude interpretative language granting the BOP discretionary authority over FSA Time Credit eligibility. Section 3632(d)(4)(D) specifically states:

> (D) Ineligible persons. A prisoner is ineligible to receive the time credits under this paragraph if the prisoner is serving a sentence for a conviction under any of the following provisions of the law.

The FSA clearly does not permit the BOP to determine what offense constitutes FSA eligibility. The plain language of the FSA entitles Teed to earn Time Credits during his §1594(c) sentence of conviction. Provision §3632(d)(4)(D)(xxvii) is plain and its placement clearly indicates congressional intent of Teed's entitlement to FSA Time Credits.

B. Administrative Aggregation does not Permit the BOP to Redefine or Narrow FSA Time Credit Eligibility

Sentences are a function of the judicial process, imposed for specific offenses; Congress has determined, inter alia, that FSA eligibility is offense specific. The BOP aggregates multiple sentences "for administrative purposes as a single, aggregate term of imprisonment," according to their responsibility under §3584(c). Section 3584(c) merely instructs the BOP in administering

sentences. Administrative aggregation of multiple sentences is purposed for calculating time served; the FSA dictates directly affect that calculation and the prisoner's statutory release date under §3624(g).

Section 3584(c)[7] does not speak to charge allocation, nor replace the sentencing court's charge allocation as reflected in the sentencing orders. Nothing in §3584(c) suggests that the statute says anything about the relationship between the aggregate term of imprisonment and each constituent offense that produced it.

The BOP fulfills its statutory duty under §3584(c), aggregating Teed's total term of imprisonment which totals 138 months. However, the BOP's aggregation treats all Teed's sentences as a single undifferentiated term to be served and administers the term of imprisonment as equally and fully allocable for all three of his sentences when determining his FSA Time Credit eligibility. This view is certainly not supported in the language of §3584(c). The BOP's duty under §3584(c) does not replace the sentencing court's charge allocations reflected in the sentencing orders. There is no relationship between the aggregate term of imprisonment

---

[7] 18 USC 3584(c) Treatment of multiple sentence as aggregate.
Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment. See also Appendix D.

and each constituent offense that produced it. The BOP must aggregate the term of imprisonment in determining a prisoner's statutory release date under §3624(b)[8] and §3624(g), both are legislative mandated sentence reductions provided prisoners have met the criteria stipulated in the provisions of the statute. The BOP uses the aggregated term of imprisonment when determining a discretionary early sentence reduction under §3621(e). Sentencing reductions under §3621(e) while authorized by statute, are discretionary and in a sense 'administrative' in nature, the Davis Court ruled that the early release eligibility was a grant of discretion and authorization to the BOP under §3621(e). Nothing in Davis, 531 U.S. 230, supports a view that the sort of charge allocation issue here is an 'administrative' determination within the meaning of §3584(c), in fact Davis does not even mention §3584(c).

The FSA statute carries plain meaning, the duty of the BOP is to follow the mandate; it is not discretionary. The BOP has determined Teed's FSA Time Credit ineligibility based on the

---

8 18 USC §3624 Release of a prisoner
(b) Credit toward service of sentence for satisfactory behavior.
(1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year[,] other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence up to 54 days for each year of the prisoner's sentence imposed by the court, subject to the determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. Subject to paragraph (2), if the Bureau determined that during that year, the prisoner shall receive the lesser credit as the Bureau determines appropriate. In awarding credit under this section, the

aggregation as a single, undifferentiated term of imprisonment that is equally and fully allocable to each constituent offense. There is no relationship that supports the view in §3584(c) and in doing so, the BOP redefines and narrows FSA Time Credit eligibility. The BOP commits an error of law concluding that its duty under §3584(c) is to treat an aggregated term of imprisonment as fully applicable to each sentence of conviction.

C. BOP Policy Creates Unnecessary and Conflicting Split in Circuit Court of Appeals

The significant issue of substance here, is not the BOP's duty under §3584(c), but how the BOP treats that result of that duty creating serious conflicting views among the various Circuit Courts. The Third and Ninth Circuits view multiple sentence aggregation under §3584(c) as a continuous custody rationale, citing the Supreme Court's ruling ing Peyton v. Rowe, 391 U.S. 54 (1968) (holding that a prisoner incarcerated on multiple sentences is, for the puproses of determining whether he has standing relief, is in custody on all sentences). Peyton did

---

Bureau shall consider whether the prisoner , during the relevant period has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. Credit that has not been earned may not be granted. Subject to paragraph (2), for the last year or portion of s year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

(2) Notwithstanding any other law, credit awarded under this subsection after the date of the enactment of the Prison Litigation Reform Act shall vest on the date the prisoner is released from custody. See Appendix D.

not rule that an aggregated term of imprisonment is equally allocable to each count on all purposes. Moreno v. Ives, 842 Fed. Appx. 18 (9th Cir. 2020)(disent J. Collins). Nothing in Peyton supports the issue of charge allocation within the meaning of §3584(c), a statute enacted 16 years after Peyton.

The Third and Ninth Circuits reason that "[t]he BOP was permitted to aggregate [petitioner's] otherwise consecutive sentences into a single unit for purely administrative purposes, such as - at issue here - calculating GTC under §3624," id. Teed, Lexis 18963. However, this reasoning is incorrect because FSA Time Credits are distinctly different han GTCs; the District Court's ruling which the Court of Appeals affirmed fails to recognize this and the BOP's actions contravene with the dictates of §3632, "a liberty interest created by statute ... protected by due process." Wolff, 418 U.S. at 557. The Third Circuit ruling deepens the divide with the other circuits and further entrenches the circuit split on this issue. Such a reading of §3584(c) that regularly attributes each individual offense of conviction a total sentence that may exceed statutory maximums for a particular offense produces a legally flawed result that cannot be correct.

The First, Second, Seventh and Eleventh Circuits view and have ruled multiple sentence aggregation under §3584(c) is for administrative purposes, but remains "distinct terms of imprisonment," United States v. Parker, 472 Fed. App'x 417 (7th Cir. 2012). Consecutive sentences shall be aggregated by the

BOP for administrative purposes, but remains "distinct terms of imprisonment" imposed for separate convictions, Parker. The Parker Court, reasoned that where multiple independent convictions, committed at separate times and sentenced separately at different in separate proceedings remain distinct terms for separate convictions under admininstrative aggregation as in §3584(c).

The First Circuit in United States v. Vaughn, 806 F. 3d 643-644 (1st Cir. 2015) concurred with the Seventh Circuit's reasoning, pointing out that "extending §3584(c) would essentially rewrite the statute to extend aggregation to all purposes." Vaughn. Assigning portions of a total term of incarceration to specific offenses is not an "administrative purpose," it is a judicial function. Cf United States v. Llewlyn, 879 F. 3d 1291, 1295 (11th Cir. 2018) (rejecting the view that, §3584(c) replaces separate consecutive charges with aggregate terms; §3584(c) "instead refers to the Bureau of Prisons' administrative duties, such as computing inmates'credit for time served."). The clear importance of the statute is the aggregation is to be treated as a single, aggregate term for "administrative purpose[]," only such as calculating good time credits under §3624(b). The Eleventh Circuit reasoned that consecutive sentences have been aggregated by the BOP for administrative purposes, nevertheless, remain distinct terms imposed for separate convictions. A sentencing court's "judicial decisions ... do not constitute 'administrative purpose,' and to do so would essentially rewrite the statute to extend aggregation to all purposes." Llewlyn,

at 1295 (quoting Vaughn, 806 F. 3d at 644). Llewlyn clearly confirms, nothing in §3584(c) supports the charge allocation that the BOP extends through aggregation with Teed.

The Second Circuit in United States v. Martin, 974 F. 3d 124, 130 (2nd Cir. 2020), determined FSA Time Credits can be earned within an aggregated term of imprisonment as long as that particular sentence is currently being served and should be treated as separate under the FSA because the reduction in one component of the sentence can result in a credit without the need to separate it into its respective segments, resulting in an earlier release from custody. The significance of Martin is apparent, although the Court denied Martin his FSA Time Credits, the denial was based not on the aggregated term of imprisonment, but because Martin's eligible FSA sentence of conviction had already been served. Martin teaches us that FSA Time Credits can be earned on eligible sentences within an aggregated term of imprisonment as long as the sentence is still being served. The imposition of a sentence is is not an administrative purpose under §3584(c), and to construe as such warps the structure of that Chapter in the United States Code. Martin, 974 F. 3d 124.

Treating Teed's aggregated term of imprisonment as being equally and fully allocable to each constituent offense leads to a result that is absurd; where a prisoner serving a 138 a month aggregate term of imprisonment, with 120 month sentence or 87% of the term is FSA Time Credit eligible, but since a consecutive 18 month sentence or 13% of the aggregate term is ineligible,

the entire aggregate term is eligible. The FSA is a legislative mandated sentence reduction. The BOP's actions deprive Teed of FSA Time Credits, violating due process of the law. FSA Time Credits earned through EBRR programs and PAs are mandated by Congress to be applied toward an earlier release from custody. 18 USC §3624(g) and the has failed to follow the mandate.

D. BOP Policy Does Not Mirror the FSA Statute

The text of the FSA is explicitly clear and precise in subsection (D) as "serving a sentence" for one of the enumerated convictions. Teed's §1594(c) conviction is an eligible offense, clearly as serving a "sentence of conviction." The BOP details procedures for implementing the FSA Time Credits, codified in 28 CFR §523.40 et seq. (First Step Act Time Credits, 87 FR 2701-1),[9] "[] ... the inmate is serving a term of imprisonment for an offense specified in 18 USC §3632(d)(4)(D), the inmate is not eligible to earn Time Credit." 28 CFR §523.41(d)(2); see also Appendix D. The BOP has determined Teed's FSA Time Credit ineligibility by aggregating all three of his sentences, interpreting them as fully applicable throughout the aggregated term of imprisonment. The BOP's interpretation contravenes with the mandate of §3632, that "serving a sentence" of conviction, as opposed to a "term of imprisonment" clearly indicates that the BOP Policy does not mirror the statute committing an error of law in carrying out their responsibilities under the FSA mandate. The specific use of words is imperative when construing

[9] Full text of 28 CFR §523.40 et seq. is located in Appendix D.

statutes, the Court must give "effect to every clause and word of a statute," Setser v. United States, 566 U.S. 231 (2012).

CONCLUSION

The ultimate goal of incarceration is the transformation of a flawed individual who was convicted and received just punishment, into a productive contributing member of society who will not recidivate. The most important tenet of the First Step Act mandate is reducing recidivism with evidence-based recidivism reduction programs through imperatives such as "shall" and "mandate." The First Step Act statutorily-created liberty interests in the form of specific guarantees of time credits toward an earlier release from custody. The deprivation of these liberty interests, violate constitutional rights consistent with the Fifth and Fourteenth Amendments, a departure from traditional constitutional principles. The ineligibility provisions of 18 USC §3632(d)(4)(D) deliberately exclude the expectation of benefit of time credits for an earlier release. The contemporaneous construction of the ineligibility provisions present a compelling importance of fundamental rights enshrined in the Constitution.

In Teed's case, the BOP has exceeded authority and made an error of law by impermissably redefining and narrowing FSA Time Credit eligibility contrary to the statutory mandate. The BOP's application of aggregation under §3584(c) obfuscates and contravenes the pure and simple Congressional intent by treating multiple sentences as equally and fully allocable to each

constituent offense. The BOP's actions deprive Teed his liberty interest and entitlement in FSA Time Credits denying him the opportunity to earn and apply time credits explicitly mandated by Congress violating his constitutional rights.

This Petition for Writ of Certiorari should be granted.

Date: December 4, 2023

Respectfully submitted,

Daniel Joseph Teed, pro se
Reg. No. 38472-068
FCI Loretto
P.O. Box 1000
Cresson, PA 16630

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL JOSEPH TEED -- PETITIONER

VS.

THOMPSON, WARDEN FCI ALLENWOOD LOW -- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

TO THE THIRD CIRCUIT COURT OF APPEALS

CERTIFICATE OF COMPLIANCE

SUPREME COURT RULE 33.2(b)

I, Daniel Joseph Teed, pro se and unrepresented party in the above-captioned case certify that the total number of pages 31 in the PETITION FOR WRIT OF CERTIORARI to the THIRD CIRCUIT COURT OF APPEALS, including footnotes complies with the page limits of Supreme Court Rule 33.2(b). The exclusions specified in subparagraph of Rule 33.1(d) have been applied in the page limit for this document. The total word limit in this document is exempt of Rule 33.1(g).

Date: December 4, 2023

Daniel Joseph Teed, pro se

Reg. No. 38472-068

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL JOSEPH TEED, PETITIONER

VS.

THOMPSON, WARDEN FCI ALLENWOOD LOW, RESPONDENT

PROOF OF SERVICE

PETITION FOR WRIT OF CERTIORARI

I, Daniel Joseph Teed, pro se and unrepresented, do swear and declare pursuant to 28 USC §1746 as amended, under penalty of perjury that the foregoing is true and correct, that on this date December 4, 2023, as required by Spureme Court Rule 29. I have served the enclosed Petition for Writ of Certiorari to the Third Circuit Court of Appeals with accompanying Appendix on each party to the above preceeding or that party's counsel, and on every person required to be served, by depositing an envelope containg the above documents with institutional staff at the Federal Correctional Institution Loretto at Cresson, Pennsylvania. The documents were for the United States Mail properly addressed to each of them with prepaid certified first class postage.

The name of those served are as follows:

* Clerk, United States Supreme Court, 1 1st St., N.E. Washington, DC 20543
* Solicitor General of the United States, Department of Justice, 950 Pennsylvania Ave., N.W., Room 5614, Washington, DC 20530-0001

I am a federal inmate incercerated with the Federal Bureau of Prisons and unable to comply with the electronic transmission requirements of Supreme Court Rule 29.3.

Executed on December 4, 2023

Daniel Joseph Teed, pro se
Reg. No. 38472-068