

APPENDIX A

(I) - JUDGEMENT OF DISTRICT COURT

(II) - MAGISTRATE'S REPORT AND RECOMMENDATION

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

ZACHARY ANDREW STINSON
REG. # 77604-061

DOCKET NO. 2:23-cv-0751
SECTION P

VERSUS

JUDGE JAMES D. CAIN, JR.

FELIPE MARTINEZ, JR.


MAGISTRATE JUDGE LEBLANC

JUDGMENT

For the reasons stated in the Report and Recommendation of the Magistrate Judge previously filed herein, and after an independent review of the record, determining that the findings are correct under the applicable law, and considering the objections to the Report and Recommendation in the record;

IT IS ORDERED, ADJUDGED AND DECREED that all pending motions be **DENIED** and that the petition be **DENIED** and **DISMISSED WITH PREJUDICE**.¹

THUS DONE AND SIGNED in chambers this 3rd day of December, 2024.



JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE

¹ The magistrate judge recommended that the matter be dismissed without prejudice. Because the petitioner's challenge was considered on the merits, however, the undersigned finds that a dismissal with prejudice is proper. Petitioner is free to raise objections to future FSA computations after exhaustion of his administrative remedies but is barred from reasserting the arguments resolved through this case.

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REPORT AND RECOMMENDATION

Before the court is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 by pro se petitioner Zachary Andrew Stinson on June 5, 2023. Doc. 1. Stinson is an inmate in the custody of the Bureau of Prisons (“BOP”), currently incarcerated at the Federal Correctional Institute at Oakdale, Louisiana (“FCIO”). The Warden filed a response/Motion to Dismiss the Petition on October 4, 2023. Doc. 6. Petitioner filed a reply to the Warden’s response on October 19, 2023. Doc. 7. On September 11, 2024, Petitioner filed a Motion to Supplement the Record (doc. 15), which has been granted (doc. 20) following the Warden’s response to the motion (doc. 17) and Petitioner’s reply to the response (doc. 18). The matter is now ripe for review.

This matter has been referred to the undersigned for review, report, and recommendation in accordance with 28 U.S.C. § 636 and the standing orders of this court. For the reasons stated below, **IT IS RECOMMENDED** that the instant petition be **DENIED** and **DISMISSED**.

**I.
BACKGROUND**

Zachary Andrew Stinson was sentenced in the Southern District of Ohio on December 18, 2019. Doc. 1, p. 1. He is serving a 132-month sentence for violation of 18 U.S.C. § 2423(b), Transportation of Minors – Travel with Intent to Engage in Illicit Sexual Conduct. *See* doc. 6, att. 2, p. 2, Declaration of Tamala Robinson, Att. 1, Public Information. Through the instant petition

he asks this Court to direct the BOP to recalculate his FSA Time credits to include the period between December 18, 2019, and November 5, 2020, at the “proper” rate of 15 days for every 30 days of participation. Doc. 1, p. 7.

While other issues are raised and addressed throughout the briefs filed, the Petitioner’s final filing, his Reply to the Respondent’s Response to his Motion to Supplement, establishes that the only claim remaining before the Court is that the BOP has improperly denied Petitioner credits for the period between December 18, 2019, and November 5, 2020. Doc. 18, p. 3.

II. LAW & ANALYSIS

A § 2241 petition on behalf of a sentenced prisoner “attacks the manner in which a sentence is carried out or the prison authorities’ determination of its duration.” *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000). To prevail, a § 2241 petitioner must show that he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).

A. Exhaustion

Under 18 U.S.C. § 3585(b), the authority to grant or deny sentencing credit is specifically reserved to the United States Attorney General and delegated to the BOP. *United States v. Wilson*, 112 S.Ct. 1351, 1353–54 (1992). A district court may review a challenge to the BOP’s refusal to grant credit for time served or make a nunc pro tunc designation through a § 2241 petition, but only after the BOP has made a final decision on same. *See Pierce v. Holder*, 614 F.3d 158, 160 (5th Cir. 2010).

Pursuant to long-established Fifth Circuit law, “federal prisoners must exhaust ‘administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241.’” *Mayberry v. Pettiford*, 74 F. App’x. 299, 299 (5th Cir. 2003) (per curiam) (quoting *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994)). *See also Rourke v. Thompson*, 11 F.3d 47, 49 (5th Cir. 1993);

United States v. Gabor, 905 F.2d 76, 78 n.2 (5th Cir. 1990). Proper exhaustion is required, meaning that the inmate must not only pursue all available avenues of relief but must also comply with all administrative deadlines and procedural rules. *See Woodford v. Ngo*, 548 U.S. 81, 90–91(2006) (the Court held that proper exhaustion is mandatory under the Prisoner Litigation Reform Act (“PLRA”)). Because exhaustion is an affirmative defense, the party moving for summary judgment has the burden to demonstrate that the inmate failed to exhaust available administrative remedies. *See Stout v. North-Williams*, 476 F. App’x 763, 765 (5th Cir. 2012)(citing *Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir. 2010)). The Fifth Circuit has held that summary judgment, not Rule 12(b), is the proper procedure for raising failure to exhaust as a defense when courts rule on exhaustion on the basis of evidence beyond the pleadings. *See Dillon*, 596 F.3d at 271.

Petitioner was required to exhaust administrative remedies prior to filing his habeas appeal unless extraordinary circumstance exist to prove the process is futile. *See Mayberry v. Pettiford*, 74 F. App’x. 299, 299; *Montoya v. Fleming*, 121 F. App’x 35, 36 (5th Cir. 2005), *Anderson v. Fleming*, 79 F. App’x 4 (5th Cir. 2003). The Petitioner bears the burden of showing the futility of exhaustion. *Fuller v. Rich*, 11 F.3d at 62.

The BOP has established an administrative remedy procedure through which an inmate can seek review of a complaint regarding any aspect of his imprisonment. See 28 C.F.R. §§ 542.10 through 542.19. Before initiating the administrative remedy process, an inmate must first attempt to resolve his complaint informally. 28 C.F.R. § 542.13. “The deadline for completion of informal resolution and submission of a formal written Administrative Remedy Request, on the appropriate form (BP-9), is 20 calendar days following the date on which the basis for the Request occurred.” 28 C.F.R. § 542.14(a).

records which indicate that the BP-11 was rejected with the Codes RAP and RSA, which means Petitioner would have been provided a rejection notice, with the following messages:

YOU DID NOT PROVIDE A COPY OF THE ATTACHMENT(S) TO YOUR REGIONAL APPEAL. YOU MAY RESUBMIT YOUR APPEAL IN PROPER FORM WITHIN 15 DAYS OF THE DATE OF THIS REJECTION NOTICE.

See Robinson Decl., Att. 4, TRM 1301.02, Part 2, Section E, page e-4.

Petitioner adamantly contends that he did not receive notice that the BP-11 was rejected. Doc. 7, p. 2. While the Respondent provides the entry of a rejection via the SENTRY computer system, Stinson notes that inmates do not receive their notifications electronically; rather, they wait for the paper notification to be given to them at the institution and are required to sign a log of delivery. *Id.* He points out that the Respondent provides no evidence that any delivery or attempted delivery was made and in further support, he notes that the log maintained at the unit establishes that while he signed for his BP-9 and BP-10 rejections, he never signed for the alleged BP-11 rejection notice. *Id.*

Based on the facts before it, the Court does not believe that Stinson abandoned the administrative remedy process and will address his claim that the BOP has improperly denied him time credits for the period between December 18, 2019, and November 5, 2020, on the merits.

B. First Step Act

a. Accruing Time Credits

The First Step Act (FSA) authorizes the BOP to grant Federal Time Credits (FTC or “FSA Time Credits”) to eligible inmates. *See* 18 U.S.C. § 3624(g). “An eligible inmate... may earn FSA Time Credits for programming and activities in which he or she participated from December 21, 2018, until January 14, 2020,” and “may earn FSA Time Credit if he or she is successfully participating in [Evidence-based Recidivism Reduction (EBRR)] programs or [Productive

BOP to utilize either or both of these types of pre-release custody, it does not define when one should be used rather than the other. Instead, this is left to the discretion of the BOP. Notably, a transfer to prerelease custody does not terminate an inmate's confinement. Instead, this is merely a transfer to a lower level of confinement, as generally authorized by 18 U.S.C. § 3621(b) ("The Bureau of Prisons shall designate the place of the prisoner's imprisonment..."). Ultimately, he must continue his pre-release custody until his sentence is satisfied.

Second, assuming an inmate has a term of supervised release as part of his sentence, the BOP may apply some of his Federal Time Credits to transfer (in effect release) the inmate to begin his term of supervised release up to twelve months early:

If the sentencing court included as a part of the sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to § 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under 3632.

18 U.S.C. § 3624(g)(3); *see also* 28 C.F.R. § 523.44(d) (stating that BOP may apply FSA Time Credits toward early transfer to supervised release "no earlier than 12 months before the date that transfer to supervised release would otherwise have occurred.").

Unlike prerelease custody, a transfer to begin supervised release is in effect an early release. The BOP has exercised this discretion to apply the first 365 FSA Time Credits to early release (early transfer to supervised release). *See* Program Statement 5410.01 at 16 (for inmates meeting eligibility criteria, "up to 365 days of earned FTCs will be automatically applied to early release") (available at www.bop.gov). This maximizes the early release benefit to eligible inmates.

c. Petitioner's Time Credits

Petitioner's most recent FSA Time Credit Assessment, dated September 5, 2024, indicates that he started earning Time Credits on November 5, 2020, the date on which he arrived at his

sentence commences. Instead, it provides that a prisoner's ability to earn credits does not begin until his sentence commences. Specifically, the FSA provides:

(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).

18 U.S.C. § 3632(d)(4)(B).

Furthermore, 18 U.S.C. § 3585(a) provides that a sentence commences when “the defendant is received in custody awaiting transportation to... the official detention facility at which the sentence is to be served.” Pursuant to this section, an inmate detained under the primary jurisdiction of the federal government during criminal proceedings begins her term of imprisonment on the day the sentence is imposed. Therefore, read in conjunction with § 3632(d)(4)(B)(ii), the FSA prohibits a prisoner from earning credits for any time prior to the day he is sentenced.

However, even though Petitioner is statutorily eligible to earn time credits as of December 18, 2019, the BOP's final FSA regulations established the point when an inmate would begin earning credit, rather than defining when an inmate would not earn credits (as the statute did). Specifically, the regulation provides, “[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).” 28 C.F.R. § 523.42(a) (emphasis added). While the Respondent concedes that the regulation could admittedly be worded more artfully, none of the more than 250 public comments received by the BOP prior to publishing the final regulations suggested that this regulation ran contrary to statutory intent. Use of the word “after” as opposed to “on the date,” or similar language, demonstrates a clear

completed their PATTERN risk assessment or their needs assessments. Without the needs assessment, BOP does not know which EBRR programs or PAs are appropriate for the prisoner. While it is true that inmates may receive credit for completing programs other than those specifically recommended for them, they must simultaneously be working toward completion of their recommended programs. *See also* BOP's Response to Comments on Proposed Rule, 87 Fed. Reg. 2705, 2711 (Jan 19, 2022) ("[U]nless the inmate formally declines recommended programming addressing his or her unique needs, or is not participating in any activities, the assumption is that the eligible inmates will be earning Time Credits and fully participating in recommended programming.").

Because Petitioner did not undergo a risk and needs assessment until he arrived at his designated BOP facility, it follows that he could not have "successfully participated" in any recommended programming before that time. *See, e.g., Poff v. Carr*, No. 4:21-CV-900-P, 2022 U.S. Dist. LEXIS 105724, 2022 WL 2133871, at *5-6 (N.D. Tex. June 14, 2022) (unpublished) ("[A]ny program or activity that [petitioner] seeks FSA time credits for must be approved by the BOP and be assigned to her based on her specific criminogenic needs"); *Hare v. Ortiz*, Civ. No. 20-14093 (RMB), 2021 U.S. Dist. LEXIS 21270, 2021 WL 391280, at *9 (D.N.J. Feb. 4, 2021) (unpublished) ("Time [c]redits are earned only when an inmate successfully completes one of the BOP-approved EBRR programs or PAs related to one of the particular needs assigned to that inmate."); *Milchin v. Warden*, No. 3:22-cv-195 (KAD), 2022 U.S. Dist. LEXIS 93640, 2022 WL 1658836, at *3 (D. Conn. May 25, 2022) (unpublished) ("[A] prisoner may earn time credits only for completing programs to which he has been specifically assigned based on his particular recidivism risk.").

grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1429–30 (5th Cir. 1996).

THUS DONE AND SIGNED in chambers this 11th day of November, 2024.

A handwritten signature in black ink, appearing to read 'T. P. LeBlanc', written over a horizontal line.

THOMAS P. LEBLANC
UNITED STATES MAGISTRATE JUDGE

APPENDIX B

I - 18 U.S.C. § 3621(h)

II - 18 U.S.C. § 3624(g)

III - 18 U.S.C. 3632(d)

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 (referred to in this subsection as the “System”) developed under subchapter D [18 USCS §§ 3631 et seq.], 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 [enacted Dec. 21, 2018]), regardless of the prisoner's length of imposed term of imprisonment, and begin to assign prisoners to appropriate evidence-based recidivism reduction programs based on that determination;

(B) begin to expand the effective evidence-based recidivism reduction programs and productive activities it offers and add any new evidence-based recidivism reduction programs and productive activities necessary to effectively implement the System; and

(C) begin to implement the other risk and needs assessment tools necessary to effectively implement the System over time, while prisoners are participating in and completing the effective evidence-based recidivism reduction programs and productive activities.

(2) Phase-in. In order to carry out paragraph (1), so that every prisoner has the opportunity to participate in and complete the type and amount of evidence-based recidivism reduction programs or productive activities they need, and be reassessed for recidivism risk as necessary to effectively implement the System, the Bureau of Prisons shall—

(A) provide such evidence-based recidivism reduction programs and productive activities for all prisoners before the date that is 2 years after the date on which the Bureau of Prisons completes a risk and needs assessment for each prisoner under paragraph (1)(A); and

(B) develop and validate the risk and needs assessment tool to be used in the reassessments of risk of recidivism, while prisoners are participating in and completing evidence-based recidivism reduction programs and productive activities.

(3) Priority during phase-in. During the 2-year period described in paragraph (2)(A), the priority for such programs and activities shall be accorded based on a prisoner's proximity to release date.

(4) Preliminary expansion of evidence-based recidivism reduction programs and authority to use incentives. Beginning on the date of enactment of this subsection [enacted Dec. 21, 2018], the Bureau of Prisons may begin to expand any evidence-based recidivism reduction programs

and productive activities that exist at a prison as of such date, and may offer to prisoners who successfully participate in such programs and activities the incentives and rewards described in subchapter D [18 USCS §§ 3631 et seq.].

(5) Recidivism reduction partnerships. In order to expand evidence-based recidivism reduction programs and productive activities, the Attorney General shall develop policies for the warden of each prison of the Bureau of Prisons to enter into partnerships, subject to the availability of appropriations, with any of the following:

(A) Nonprofit and other private organizations, including faith-based, art, and community-based organizations that will deliver recidivism reduction programming on a paid or volunteer basis.

(B) Institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that will deliver instruction on a paid or volunteer basis.

(C) Private entities that will—

(i) deliver vocational training and certifications;

(ii) provide equipment to facilitate vocational training or employment opportunities for prisoners;

(iii) employ prisoners; or

(iv) assist prisoners in prerelease custody or supervised release in finding employment.

(D) Industry-sponsored organizations that will deliver workforce development and training, on a paid or volunteer basis.

(6) Requirement to provide programs to all prisoners; priority. The Director of the Bureau of Prisons shall provide all prisoners with the opportunity to actively participate in evidence-based recidivism reduction programs or productive activities, according to their specific criminogenic needs, throughout their entire term of incarceration. Priority for participation in recidivism reduction programs shall be given to medium-risk and high-risk prisoners, with access to productive activities given to minimum-risk and low-risk prisoners.

(7) Definitions. The terms in this subsection have the meaning given those terms in section 3635 [18 USCS § 3635].

18 U.S.C. § 3624-

(g) Prerelease 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 USCS § 3635]) who—

(A) has earned time credits under the risk and needs assessment system developed under subchapter D [18 USCS §§ 3631 et seq.] (referred to in this subsection as the “System”) in an amount that is equal to the remainder of the prisoner's imposed term of imprisonment;

(B) has shown through the periodic risk reassessments a demonstrated recidivism risk reduction or has maintained a minimum or low recidivism risk, during the prisoner's term of imprisonment;

(C) has had the remainder of the prisoner's imposed term of imprisonment computed under applicable law; and

(D) (i) in the case of a prisoner being placed in prerelease custody, the prisoner—

(I) has been determined under the System to be a minimum or low risk to recidivate pursuant to the last 2 reassessments of the prisoner; or

(II) has had a petition to be transferred to prerelease custody or supervised release approved by the warden of the prison, after the warden's determination that—

(aa) the prisoner would not be a danger to society if transferred to prerelease custody or supervised release;

(bb) the prisoner has made a good faith effort to lower their recidivism risk through participation in recidivism reduction programs or productive activities; and

(cc) the prisoner is unlikely to recidivate; or

(ii) in the case of a prisoner being placed in supervised release, the prisoner has been determined under the System to be a minimum or low risk to recidivate pursuant to the last reassessment of the prisoner.

(2) Types of prerelease custody. A prisoner shall be placed in prerelease custody as follows:

(A) Home confinement.

(i) In general. A prisoner placed in prerelease custody pursuant to this subsection who is placed in home confinement shall—

(I) be subject to 24-hour electronic monitoring that enables the prompt identification of the prisoner, location, and time, in the case of any violation of subclause (II);

(II) remain in the prisoner's residence, except that the prisoner may leave the prisoner's home in order to, subject to the approval of the Director of the Bureau of Prisons—

(aa) perform a job or job-related activities, including an apprenticeship, or participate in job-seeking activities;

(bb) participate in evidence-based recidivism reduction programming or productive activities assigned by the System, or similar activities;

(cc) perform community service;

(dd) participate in crime victim restoration activities;

(ee) receive medical treatment;

(ff) attend religious activities; or

(gg) participate in other family-related activities that facilitate the prisoner's successful reentry such as a family funeral, a family wedding, or to visit a family member who is seriously ill; and

(III) comply with such other conditions as the Director determines appropriate.

(ii) Alternate means of monitoring. If the electronic monitoring of a prisoner described in clause (i)(I) is infeasible for technical or religious reasons, the Director of the Bureau of Prisons may use alternative means of monitoring a prisoner placed in home confinement that the Director determines are as effective or more effective than the electronic monitoring described in clause (i)(I).

(iii) Modifications. The Director of the Bureau of Prisons may modify the conditions described in clause (i) if the Director determines that a compelling reason exists to do

so, and that the prisoner has demonstrated exemplary compliance with such conditions.

(iv) Duration. Except as provided in paragraph (4), a prisoner who is placed in home confinement shall remain in home confinement until the prisoner has served not less than 85 percent of the prisoner's imposed term of imprisonment.

(B) Residential reentry center. A prisoner placed in prerelease custody pursuant to this subsection who is placed at a residential reentry center shall be subject to such conditions as the Director of the Bureau of Prisons determines appropriate.

(3) Supervised release. If the sentencing court included as a part of the prisoner's sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632 [18 USCS § 3632].

(4) Determination of conditions. In determining appropriate conditions for prisoners placed in prerelease custody pursuant to this subsection, the Director of the Bureau of Prisons shall, to the extent practicable, provide that increasingly less restrictive conditions shall be imposed on prisoners who demonstrate continued compliance with the conditions of such prerelease custody, so as to most effectively prepare such prisoners for reentry.

(5) Violations of conditions. If a prisoner violates a condition of the prisoner's prerelease custody, the Director of the Bureau of Prisons may impose such additional conditions on the prisoner's prerelease custody as the Director of the Bureau of Prisons determines appropriate, or revoke the prisoner's prerelease custody and require the prisoner to serve the remainder of the term of imprisonment to which the prisoner was sentenced, or any portion thereof, in prison. If the violation is nontechnical in nature, the Director of the Bureau of Prisons shall revoke the prisoner's prerelease custody.

(6) Issuance of guidelines. The Attorney General, in consultation with the Assistant Director for the Office of Probation and Pretrial Services, shall issue guidelines for use by the Bureau of Prisons in determining—

(A) the appropriate type of prerelease custody or supervised release and level of supervision for a prisoner placed on prerelease custody pursuant to this subsection; and

(B) consequences for a violation of a condition of such prerelease custody by such a prisoner, including a return to prison and a reassessment of evidence-based recidivism risk level under the System.

(7) Agreements with United States probation and pretrial services. The Director of the Bureau of Prisons shall, to the greatest extent practicable, enter into agreements with United States Probation and Pretrial Services to supervise prisoners placed in home confinement under this subsection. Such agreements shall—

(A) authorize United States Probation and Pretrial Services to exercise the authority granted to the Director pursuant to paragraphs (3) and (4); and

(B) take into account the resource requirements of United States Probation and Pretrial Services as a result of the transfer of Bureau of Prisons prisoners to prerelease custody or supervised release.

(8) Assistance. United States Probation and Pretrial Services shall, to the greatest extent practicable, offer assistance to any prisoner not under its supervision during prerelease custody under this subsection.

(9) Mentoring, reentry, and spiritual services. Any prerelease custody into which a prisoner is placed under this subsection may not include a condition prohibiting the prisoner from receiving mentoring, reentry, or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated, except that the warden of the facility at which the prisoner was incarcerated may waive the requirement under this paragraph if the warden finds that the provision of such services would pose a significant security risk to the prisoner, persons who provide such services, or any other person. The warden shall provide written notice of any such waiver to the person providing such services and to the prisoner.

(10) Time limits inapplicable. The time limits under subsections (b) and (c) shall not apply to prerelease custody under this subsection.

(11) Prerelease custody capacity. The Director of the Bureau of Prisons shall ensure there is sufficient prerelease custody capacity to accommodate all eligible prisoners.

18 U.S.C. § 3632-

(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 [enacted Dec. 21, 2018]; or

(ii) during official detention prior to the date that the prisoner's sentence commences under section 3585(a) [18 USCS § 3585(a)].

(C) Application of time credits toward prerelease custody or supervised release. Time 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. The Director of the Bureau of Prisons shall transfer eligible prisoners, as determined under section 3624(g) [18 USCS § 3624(g)], into prerelease custody or supervised release.

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

(i) Section 32 [18 USCS § 32], relating to destruction of aircraft or aircraft facilities.

(ii) Section 33 [18 USCS § 33], relating to destruction of motor vehicles or motor vehicle facilities.

(iii) Section 36 [18 USCS § 36], relating to drive-by shootings.

(iv) Section 81 [18 USCS § 81], relating to arson within special maritime and territorial jurisdiction.

(v) Section 111(b) [18 USCS § 111(b)], relating to assaulting, resisting, or impeding certain officers or employees using a deadly or dangerous weapon or inflicting bodily injury.

(vi) Paragraph (1), (7), or (8) of section 113(a) [18 USCS § 113(a)], relating to assault with intent to commit murder, assault resulting in substantial bodily injury to a spouse or intimate partner, a dating partner, or an individual who has not attained the age of 16 years, or assault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate.

(vii) Section 115 [18 USCS § 115], relating to influencing, impeding, or retaliating against a Federal official by injuring a family member, except for a threat made in violation of that section.

(viii) Section 116 [18 USCS § 116], relating to female genital mutilation.

(ix) Section 117 [18 USCS § 117], relating to domestic assault by a habitual offender.

(x) Any section of chapter 10 [18 USCS §§ 175 et seq.], relating to biological weapons.

(xi) Any section of chapter 11B [18 USCS §§ 229 et seq.], relating to chemical weapons.

(xii) Section 351 [18 USCS § 351], relating to Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault.

(xiii) Section 521 [18 USCS § 521], relating to criminal street gangs.

(xiv) Section 751 [18 USCS § 751], relating to prisoners in custody of an institution or officer.

(xv) Section 793 [18 USCS § 793], relating to gathering, transmitting, or losing defense information.

(xvi) Section 794 [18 USCS § 794], relating to gathering or delivering

defense information to aid a foreign government.

(xvii) Any section of chapter 39 [18 USCS § 831 et seq.], relating to explosives and other dangerous articles, except for section 836 [18 USCS § 836] (relating to the transportation of fireworks into a State prohibiting sale or use).

(xviii) Section 842(p) [18 USCS § 842(p)], relating to distribution of information relating to explosives, destructive devices, and weapons of mass destruction, but only if the conviction involved a weapon of mass destruction (as defined in section 2332a(c) [18 USCS § 2332a(c)]).

(xix) Subsection (f)(3), (h), or (i) of section 844 [18 USCS § 844], relating to the use of fire or an explosive.

(xx) Section 871 [18 USCS § 871], relating to threats against the President and successors to the Presidency.

(xxi) Section 879 [18 USCS § 879], relating to threats against former Presidents and certain other persons.

(xxii) Section 924(c) [18 USCS § 924(c)], relating to unlawful possession or use of a firearm during and in relation to any crime of violence or drug trafficking crime.

(xxiii) Section 1030(a)(1) [18 USCS § 1030(a)(1)], relating to fraud and related activity in connection with computers.

(xxiv) Section 1091 [18 USCS § 1091], relating to genocide.

(xxv) Any section of chapter 51 [18 USCS §§ 1111 et seq.], relating to homicide, except for section 1112 [18 USCS § 1112] (relating to manslaughter), 1113 [18 USCS § 1113] (relating to attempt to commit murder or manslaughter, but only if the conviction was for an attempt to commit manslaughter), 1115 [18 USCS § 1115] (relating to misconduct or neglect of ship officers), or 1122 [18 USCS § 1122] (relating to protection against the human immunodeficiency virus).

(xxvi) Any section of chapter 55 [18 USCS §§ 1201 et seq.], relating to kidnapping.

(xxvii) Any offense under chapter 77 [18 USCS §§ 1581 et seq.], relating to peonage, slavery, and trafficking in persons, except for sections 1593 through 1596 [18 USCS §§ 1593-1596].

(xxviii) Section 1751 [18 USCS § 1751], relating to Presidential and Presidential staff assassination, kidnapping, and assault.

(xxix) Section 1791 [18 USCS § 1791], relating to providing or possessing contraband in prison.

(xxx) Section 1792 [18 USCS § 1792], relating to mutiny and riots.

(xxxi) Section 1841(a)(2)(C) [18 USCS § 1841(a)(2)(C)], relating to intentionally killing or attempting to kill an unborn child.

(xxxii) Section 1992 [18 USCS § 1992], relating to terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.

(xxxiii) Section 2113(e) [18 USCS § 2113(e)], relating to bank robbery resulting in death.

(xxxiv) Section 2118(c) [18 USCS § 2118(c)], relating to robberies and burglaries involving controlled substances resulting in assault, putting in jeopardy the life of any person by the use of a dangerous weapon or device, or death.

(xxxv) Section 2119 [18 USCS § 2119], relating to taking a motor vehicle (commonly referred to as “carjacking”).

(xxxvi) Any section of chapter 105 [18 USCS §§ 2151 et seq.], relating to sabotage, except for section 2152 [18 USCS § 2152].

(xxxvii) Any section of chapter 109A [18 USCS §§ 2241 et seq.], relating to sexual abuse.

(xxxviii) Section 2250 [18 USCS § 2250], relating to failure to register as a sex offender.

(xxxix) Section 2251 [18 USCS § 2251], relating to the sexual exploitation of children.

(xl) Section 2251A [18 USCS § 2251A], relating to the selling or buying of children.

(xli) Section 2252 [18 USCS § 2252], relating to certain activities relating to material involving the sexual exploitation of minors.

(xlii) Section 2252A [18 USCS § 2252A], relating to certain activities involving material constituting or containing child pornography.

(xliii) Section 2260 [18 USCS § 2260], relating to the production of sexually explicit depictions of a minor for importation into the United States.

(xliv) Section 2283 [18 USCS § 2283], relating to the transportation of explosive, biological, chemical, or radioactive or nuclear materials.

(xlv) Section 2284 [18 USCS § 2284], relating to the transportation of terrorists.

(xlvi) Section 2291 [18 USCS § 2291], relating to the destruction of a vessel or maritime facility, but only if the conduct that led to the conviction involved a substantial risk of death or serious bodily injury.

(xlvii) Any section of chapter 113B [18 USCS §§ 2331 et seq.], relating to terrorism.

(xlviii) Section 2340A [18 USCS § 2340A], relating to torture.

(xlix) Section 2381 [18 USCS § 2381], relating to treason.

(l) Section 2442 [18 USCS § 2442], relating to the recruitment or use of child soldiers.

(li) An offense described in section 3559(c)(2)(F) [18 USCS § 3559(c)(2)(F)], for which the offender was sentenced to a term of imprisonment of more than 1 year, if the offender has a previous conviction, for which the offender served a term of imprisonment of more than 1 year, for a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111), voluntary manslaughter (as described in section 1112 [18 USCS § 1112]), assault with intent to commit murder (as described in section 113(a) [18 USCS § 113(a)]), aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242 [18 USCS §§ 2241, 2242]), abusive sexual contact (as described in sections 2244(a)(1) and (a)(2) [18 USCS § 2244(a)(1), (2)]), kidnapping (as described in chapter 55 [18 USCS §§ 1201 et seq.]), carjacking (as described in section 2119 [18 USCS § 2119]), arson (as described in section 844(f)(3), (h), or (i) [18 USCS § 844(f)(3), (h), or (i)]), or terrorism (as described in chapter 113B [18 USCS §§ 2331 et seq.]).

(lii) Section 57(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)), relating to the engagement or participation in the development or production of special nuclear

material.

(liii) Section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122), relating to prohibitions governing atomic weapons.

(liv) Section 101 of the Atomic Energy Act of 1954 (42 U.S.C. 2131), relating to the atomic energy license requirement.

(lv) Section 224 or 225 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275), relating to the communication or receipt of restricted data.

(lvi) Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), relating to the sabotage of nuclear facilities or fuel.

(lvii) Section 60123(b) of title 49, relating to damaging or destroying a pipeline facility, but only if the conduct which led to the conviction involved a substantial risk of death or serious bodily injury.

(lviii) Section 401(a) of the Controlled Substances Act (21 U.S.C. 841), relating to manufacturing or distributing a controlled substance in the case of a conviction for an offense described in subparagraph (A), (B), or (C) of subsection (b)(1) of that section for which death or serious bodily injury resulted from the use of such substance.

(lix) Section 276(a) of the Immigration and Nationality Act (8 U.S.C. 1326), relating to the reentry of a removed alien, but only if the alien is described in paragraph (1) or (2) of subsection (b) of that section.

(lx) Section 277 of the Immigration and Nationality Act (8 U.S.C. 1327), relating to aiding or assisting certain aliens to enter the United States.

(lxi) Section 278 of the Immigration and Nationality Act (8 U.S.C. 1328), relating to the importation of an alien into the United States for an immoral purpose.

(lxii) Any section of the Export Administration Act of 1979 (50 U.S.C. 4611 et seq.)[.]

(lxiii) Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705).

(lxiv) Section 601 of the National Security Act of 1947 (50 U.S.C. 3121), relating to the protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.

(lxv) Subparagraph (A)(i) or (B)(i) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1)(A) or (2)(A) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, dispense, or knowingly importing or exporting, a mixture or substance containing a detectable amount of heroin if the sentencing court finds that the offender was an organizer, leader, manager, or supervisor of others in the offense, as determined under the guidelines promulgated by the United States Sentencing Commission.

(lxvi) Subparagraph (A)(vi) or (B)(vi) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1)(F) or (2)(F) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, or any analogue thereof.

(lxvii) Subparagraph (A)(viii) or (B)(viii) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1)(H) or (2)(H) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, or knowingly importing or exporting, a mixture of substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, if the sentencing court finds that the offender was an organizer, leader, manager, or supervisor of others in the offense, as determined under the guidelines promulgated by the United States Sentencing Commission.

(lxviii) Subparagraph (A) or (B) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1) or (2) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, a controlled substance, or knowingly importing or exporting a controlled substance, if the sentencing court finds that—

(I) the offense involved a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, or any analogue thereof; and

(II) the offender was an organizer, leader, manager, or supervisor of others in the offense, as determined under the guidelines promulgated by the United States Sentencing Commission.

(E) Deportable prisoners ineligible to apply time credits.

(i) In general. A prisoner is ineligible to apply time credits under subparagraph (C) if the prisoner is the subject of a final order of removal under any provision of the immigration laws (as such term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))).

(ii) Proceedings. The Attorney General, in consultation with the Secretary of Homeland Security, shall ensure that any alien described in section 212 or 237 of the Immigration and Nationality Act (8 U.S.C. 1182, 1227) who seeks to earn time credits are subject to proceedings described in section 238(a) of that Act (8 U.S.C. 1228(a)) at a date as early as practicable during the prisoner's incarceration.

(5) Risk reassessments and level adjustment. A prisoner who successfully participates in evidence-based recidivism reduction programming or productive activities shall receive periodic risk reassessments not less often than annually, and a prisoner determined to be at a medium or high risk of recidivating and who has less than 5 years until his or her projected release date shall receive more frequent risk reassessments. If the reassessment shows that the prisoner's risk of recidivating or specific needs have changed, the Bureau of Prisons shall update the determination of the prisoner's risk of recidivating or information regarding the prisoner's specific needs and reassign the prisoner to appropriate evidence-based recidivism reduction programming or productive activities based on such changes.

(6) Relation to other incentive programs. The incentives described in this subsection shall be in addition to any other rewards or incentives for which a prisoner may be eligible.