

No. 25-

IN THE
Supreme Court of the United States

GREGORY ALLEN BONNIE,

Petitioner,

v.

WARDEN DUNBAR,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In Section 3632(d)(4)(D) of the First Step Act, Congress provided prisoners the ability to earn time credits for participating in certain recidivism-reduction programs. Under the Act, a prisoner is eligible to earn such credits unless the prisoner “is serving a sentence for a conviction” under specified statutes. Petitioner is serving a 120-month sentence for credit-eligible drug offenses and a separate, consecutive 24-month sentence imposed in a separate judgment for a credit-ineligible offense.

The question presented is:

Whether Section 3632(d)(4)(D) bars a prisoner from earning any First Step Act time credits while serving a credit-eligible sentence because the prisoner also has a separate, consecutive credit-ineligible sentence imposed in a separate judgment.

PARTIES TO THE PROCEEDINGS

Gregory Allen Bonnie, Petitioner here, was the
Petitioner-Appellant below.

Warden Dunbar, Respondent here, was the Re-
spondent-Appellee below.

RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit:

Bonnie v. Dunbar, No. 24-6665 (Nov. 5, 2025)

United States District Court for the District of South Carolina:

Bonnie v. Dunbar, No. 4:23-cv-01215 (Jan. 16, 2024)

Bonnie v. Dunbar, No. 4:23-cv-01215 (May 9, 2024)

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OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a–37a) is reported at 157 F.4th 610. The decision of the district court (Pet. App. 38a–67a) is unreported but available at 2024 WL 5691164. The report and recommendation of the magistrate judge (Pet. App. 68a–85a) is unreported but available at 2024 WL 5691015.

JURISDICTION

The court of appeals entered judgment on November 5, 2025. On March 10, 2026, Chief Justice Roberts extended the time to file this petition to June 4, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of 18 U.S.C. §§ 3584 and 3632 and 34 U.S.C. § 60541 are reproduced in the appendix. Pet. App. 88a–100a.

INTRODUCTION

The First Step Act gives federal prisoners a strong incentive to participate in recidivism-reduction programming. A prisoner who successfully completes qualifying programming “shall earn time credits” unless he falls within a limited statutory exception. 18 U.S.C. § 3632(d)(4)(A). The exception applies when a prisoner “is serving a sentence for a conviction” under one of several enumerated provisions of law. *Id.* § 3632(d)(4)(D).

This case concerns what that phrase means. Petitioner is serving two consecutive sentences imposed

in separate judgments. The first is a 120-month sentence for drug-trafficking offenses that are eligible for First Step Act time credits. The second is a 24-month supervised-release revocation sentence arising from a prior conviction under 18 U.S.C. § 924(c), which is not eligible for time credits. The Bureau of Prisons (“BOP”) treated those two sentences as a single aggregate term and concluded that the 24-month ineligible sentence disqualified Petitioner from earning time credits for all 144 months of custody. The district court agreed and granted summary judgment for BOP. Pet. App. 38a.

A divided Fourth Circuit affirmed. Pet. App. 2a, 18a. The court held that Section 3632(d)(4)(D) disqualifies the “*prisoner*, not a *sentence*,” and that Section 3584(c)’s administrative aggregation rule converts Petitioner’s 24-month ineligible sentence into the full 144-month aggregate term. Pet. App. 9a–12a. Judge Wynn dissented. Pet. App. 19a–37a. In his view, the statutory text answers the question: Petitioner cannot “‘serve’ a 24-month sentence for 144 months,” and Congress’s choice to tie ineligibility to the sentence being served forecloses a rule under which one short, separate sentence taints every other sentence. Pet. App. 19a, 23a.

The dissent was correct. Section 3632(d)(4)(D) asks whether the prisoner “is serving a sentence for a conviction” under an enumerated provision. That language is temporal and sentence specific. It does not ask whether the prisoner has ever received a disqualifying conviction, whether any conviction in an aggregate term is disqualifying, or whether the prisoner is serving a “term of imprisonment” that includes a disqualifying offense. Congress knew how to use those

broad formulations. Indeed, in a neighboring statutory scheme enacted by the same Congress, Congress referred to a “term of imprisonment” based on an “offense or offenses” and expressly incorporated an aggregate-term rule. 34 U.S.C. § 60541(g)(5)(D)(i). Congress did not use that language in Section 3632(d)(4)(D).

The Fourth Circuit’s contrary rule has serious and recurring consequences. Under that rule, a one- or two-month ineligible sentence for prison contraband can disqualify a prisoner from earning credits on a decade-long eligible sentence. District courts have already reached that result. *See, e.g., Monserrate v. Warden*, No. 26-cv-331, 2026 WL 852077, at *2 (M.D. Pa. Mar. 27, 2026); *Hill v. King*, No. 23-cv-1365 (KMM/JFD), 2025 WL 1020604, at *6 (D. Minn. Apr. 7, 2025). The same logic applies no matter how short the ineligible sentence, how long the eligible sentence, or how unrelated the two judgments are. That is not a natural reading of a statute designed to encourage prisoners to reduce their recidivism risk.

The Court should grant review to address the Fourth Circuit’s erroneous interpretation. The Second, Third, Fifth, Sixth, and Eighth Circuits have also construed the First Step Act in this incorrect way. *See Giovinco v. Pullen*, 118 F.4th 527, 529 (2d Cir. 2024); *Teed v. Warden Allenwood FCI Low*, No. 23-1181, 2023 WL 4556726, at *2 (3d Cir. July 17, 2023) (per curiam); *Martinez v. Rosalez*, No. 23-50406, 2024 WL 140438, at *4 (5th Cir. Jan. 12, 2024) (per curiam); *Keeling v. Lemaster*, No. 22-6126, 2023 WL 9061914, at *1 (6th Cir. Nov. 22, 2023); *Sok v. Eischen*, No. 23-1025, 2023 WL 5282709, at *1 (8th Cir. Aug. 17, 2023). Further percolation is unnecessary. Left to stand, the

lower court’s reasoning will deprive thousands of prisoners of potentially years of time credits that Congress intended them to receive. And it will embolden prosecutors to tack on minor, credit-ineligible charges to prevent prisoners from receiving credits on longer, eligible sentences.

This case is a clean vehicle to decide the question. The issue was dispositive below. The Fourth Circuit majority and dissent addressed the statutory text, structure, and consequences. No factual or procedural complication would prevent this Court from resolving the question presented. The Court should grant review and reverse.

STATEMENT

1. Congress enacted the First Step Act in 2018 to expand federal rehabilitation programming and reduce recidivism. Title I of the Act is titled “Recidivism Reduction.” First Step Act of 2018, Pub. L. No. 115-391, Title I, 132 Stat. 5194, 5195 (2018). It directs the Attorney General to develop a “risk and needs assessment system” to determine each prisoner’s recidivism risk, identify programming suited to that prisoner, and provide incentives for successful participation. 18 U.S.C. § 3632(a), (d).

The principal incentive is earned time credit. A prisoner who completes evidence-based recidivism-reduction programming or productive activities “shall earn” 10 days of time credits for every 30 days of successful participation. *Id.* § 3632(d)(4)(A)(i). Prisoners who maintain a minimum or low risk of recidivism may earn an additional five days for every 30 days of successful participation. *Id.* § 3632(d)(4)(A)(ii). Those

credits may be applied toward prerelease custody or supervised release when the prisoner satisfies the statutory requirements. *See id.* § 3624(g).

Congress made time-credit eligibility broad, but not universal. Section 3632(d)(4)(D) creates a limited exception for prisoners serving sentences for specified convictions. It provides:

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:

Id. § 3632(d)(4)(D). The statute then lists disqualifying offenses. *Id.* § 3632(d)(4)(D)(i)–(lxviii).

2. On May 27, 2021, Petitioner was sentenced to 120 months’ imprisonment for two drug-trafficking offenses. Pet. App. 4a. Those offenses are eligible for First Step Act time credits.

In connection with those proceedings, Petitioner also admitted to violating the conditions of supervised release imposed for a prior conviction under 18 U.S.C. § 924(c). Pet. App. 4a. He received a separate, consecutive 24-month revocation sentence. Pet. App. 4a. That sentence is not eligible for First Step Act time credits. *See* 18 U.S.C. § 3632(d)(4)(D)(xxii). The eligible 120-month drug sentence and the ineligible 24-month revocation sentence were imposed in separate judgments. *See* Pet. App. 40a–41a.

BOP nevertheless aggregated the two sentences and treated the ineligible revocation sentence as disqualifying Petitioner from earning time credits for the entire 144-month aggregate term. Pet. App. 2a–3a. Petitioner exhausted administrative remedies and

filed a habeas petition in the District of South Carolina. Pet. App. 5a.

3. The magistrate judge recommended granting BOP's motion for summary judgment. Pet. App. 85a. The recommendation relied on 18 U.S.C. § 3584(c), which states that multiple terms of imprisonment ordered to run consecutively or concurrently "shall be treated for administrative purposes as a single, aggregate term of imprisonment." Pet. App. 78a, 80a.

The district court adopted the recommendation and granted summary judgment against Petitioner. Pet. App. 67a. The court concluded that "it is reasonable for the BOP to apply the aggregation rule to 18 U.S.C. § 3632(d)(4)(D) and conclude that if one of the aggregated convictions precludes the inmate from earning time credits, the entire aggregated sentence has the same effect." Pet. App. 57a.

A divided panel of the Fourth Circuit affirmed. Pet. App. 2a, 18a. The majority noted that Section 3632(d)(4)(D) disqualifies a "*prisoner*, not a *sentence*," from receiving time credits. Pet. App. 9a. The court reasoned that the ineligibility provision identifies prisoners whose offenses show a high risk of recidivism and that Congress meant to exclude those prisoners categorically. Pet. App. 8a, 9a, 15a–16a. The court also relied on Section 3584(c), reasoning that once BOP aggregated Petitioner's sentences for administrative purposes, Petitioner's Section 924(c) conviction was "defined by § 3584(c) to be his aggregate 144-month sentence." Pet. App. 15a.

Judge Wynn dissented. He began with what he described as the "obvious" point that Petitioner could not "serve' a 24-month sentence for 144 months." Pet. App. 19a. Judge Wynn emphasized that BOP itself

had acknowledged in parallel litigation that “the most natural reading of § 3632(d)(4)(D), standing alone, might render ineligible only the individual sentence applicable to the ineligible offense.” Pet. App. 24a (quoting *Giovinco*, 118 F.4th at 530). And he explained that Congress’s choice to use “sentence” in Section 3632(d)(4)(D), while using broader aggregate-term language elsewhere, demonstrated that the ineligibility provision applies only to the sentence for the disqualifying conviction. Pet. App. 32a–33a.

Judge Wynn also warned that the majority’s rule produces “absurd” results. Pet. App. 35a. In Petitioner’s case, a 24-month ineligible sentence eliminates time-credit eligibility for a separate 120-month eligible sentence. *Id.* In other cases, the same rule could permit a short ineligible sentence to nullify time-credit eligibility for a much longer eligible sentence. Pet. App. 36a. Judge Wynn concluded that it was “inconceivable that the Congress which drafted the First Step Act—legislation designed to encourage rehabilitation—intended its core incentive to be so easily nullified.” *Id.*

REASONS FOR GRANTING THE WRIT

The decision below is wrong, the issue is important, and the case is a clean vehicle. The Fourth Circuit converted a sentence-specific limitation into a prisoner-wide bar. That reading conflicts with the text Congress enacted, disregards the statutory distinction between a “sentence” and an aggregate “term of imprisonment,” undermines the structure of the First Step Act, and produces consequences Congress could not have intended. The question has already

recurred in courts across the country and affects thousands of prisoners. This Court’s review is warranted.

A. The Decision Below Is Wrong.

The Fourth Circuit’s interpretation fails at every step. Section 3632(d)(4)(D) speaks in sentence-specific terms. Section 3584(c) does not rewrite that language. And the structure of the First Step Act refutes the majority’s premise that Congress used the time-credit ineligibility provision as a proxy for fixed recidivism risk.

1. Section 3632(d)(4)(D) Disqualifies the Sentence Being Served, Not Every Sentence in an Aggregate Term.

Statutory interpretation begins with the text. *Republic of Sudan v. Harrison*, 587 U.S. 1, 8 (2019).

The relevant text states that “[a] prisoner is ineligible to receive time credits” if the prisoner “is serving a sentence for a conviction” under an enumerated provision. 18 U.S.C. § 3632(d)(4)(D).

That language has a straightforward meaning. A prisoner is ineligible while serving the sentence for the disqualifying conviction. It does not say that a prisoner is ineligible if he has ever been convicted of a disqualifying offense. It does not say that a prisoner is ineligible if any part of an aggregate term includes a disqualifying conviction. And it does not say that one ineligible sentence renders every separate eligible sentence ineligible.

The statute’s use of the singular phrase “a sentence for a conviction” reinforces that reading. *Id.* Congress tied ineligibility to a particular sentence for

a particular conviction. *Cf. United States v. Hayes*, 555 U.S. 415, 421–22 (2009) (use of the singular “element” “suggests that Congress intended to describe only one required element” and had Congress intended otherwise “it likely would have used the plural ‘elements’ as it had done in other offense-defining provisions”). The Fourth Circuit’s reading requires treating “a sentence for a conviction” as an aggregate term for multiple convictions. That is not the language Congress used.

The phrase “is serving” points in the same direction. As Judge Wynn explained, the statute uses the present progressive tense, which describes an action occurring now. Pet. App. 25a. The statute therefore asks what sentence the prisoner is serving at the relevant time. A prisoner serving consecutive sentences does not serve the same 24-month sentence for 144 months. Pet. App. 24a–25a. The temporal condition disappears when the disqualifying sentence ends.

If Congress had wanted a prisoner-wide bar, it knew how to create one. Congress could have made prisoners ineligible if they were “convicted of” any disqualifying offense. It could have referred to a “term of imprisonment” based on one or more disqualifying offenses. It did neither. Instead, Congress focused on whether the prisoner “is serving a sentence for a conviction” under one of the listed provisions. 18 U.S.C. § 3632(d)(4)(D).

That choice matters. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457–58 (2022). In the First Step Act, Congress elsewhere used the phrase “term of imprisonment.” *See* 18 U.S.C. § 3635(4) (defining “prisoner” as a person “sentenced to a term of imprisonment pursuant to a conviction for a Federal criminal offense”).

And in the Second Chance Act, including in a provision amended by the same Congress in 2018, Congress used language that expressly accounts for multiple offenses and aggregate terms. *See* 34 U.S.C. § 60541(g)(5)(C), (D). Section 60541(g)(5)(C) defines “term of imprisonment” to include “multiple terms of imprisonment ordered to run consecutively or concurrently, which shall be treated as a single, aggregate term of imprisonment for purposes of this section.” Section 60541(g)(5)(D), as amended by the First Step Act, then defines an eligible terminally ill offender by reference to a “term of imprisonment based on conviction for an offense or offenses that do not include” certain excluded offenses.

Those provisions show that Congress knew how to make eligibility turn on an aggregate term that includes any disqualifying offense. The same Congress did not use that language in Section 3632(d)(4)(D). The omission is dispositive. *See Dep’t of Homeland Sec. v. MacLean*, 574 U.S. 383, 391 (2015).

2. Section 3584(c) Does Not Rewrite Section 3632(d)(4)(D).

The Fourth Circuit’s contrary reading rests principally on Section 3584(c). That provision states that multiple terms of imprisonment ordered to run consecutively or concurrently “shall be treated for administrative purposes as a single, aggregate term of imprisonment.” 18 U.S.C. § 3584(c).

Section 3584(c) does not answer the question here. It is an administrative rule governing how BOP manages multiple terms of imprisonment. It does not say that every statutory consequence attached to one

sentence applies to every other sentence. Nor does it authorize BOP to replace the words “a sentence for a conviction” in Section 3632(d)(4)(D) with “a single, aggregate term of imprisonment.”

The distinction between “sentence” and “term of imprisonment” is central. Section 3584(c) aggregates “terms of imprisonment,” not “sentences.” Congress used the word “sentence” in Section 3632(d)(4)(D), and that word refers to the punishment imposed for a conviction. The Fourth Circuit’s reading erases that difference. It treats an aggregate term of imprisonment as though it were itself the “sentence for a conviction” under Section 3632(d)(4)(D). But Petitioner’s Section 924(c)-based revocation sentence is 24 months, not 144 months. Pet. App. 19a–20a.

The Seventh Circuit’s treatment of related First Step Act resentencing issues confirms why automatic aggregation is not the end of the inquiry. In *United States v. Curtis*, the court considered whether a district court could reduce sentences for both covered and non-covered offenses under the First Step Act. 66 F.4th 690, 693 (7th Cir. 2023). The court acknowledged the general rule that multiple terms of imprisonment may be treated as a single aggregate term, but it did not stop there. *Id.* at 694. It instead asked whether the sentences were interdependent—whether they were grouped, whether the sentencing court imposed a global package, and whether the sentences were related to each other. *Id.* The point is not that *Curtis* controls this case; it does not. The point is that federal law does not require courts to treat aggregation for administrative purposes as a command to disregard distinct sentences imposed for distinct convictions.

The same distinction matters here. Petitioner’s eligible drug sentence and ineligible revocation sentence were imposed in separate judgments. Pet. App. 65a. They are consecutive. Pet. App. 71a. Nothing in Section 3584(c) converts the shorter ineligible sentence into the longer eligible one.

3. The First Step Act’s Structure Refutes the Fourth Circuit’s Recidivism-Risk Rationale.

The Fourth Circuit reasoned that Section 3632(d)(4)(D) identifies prisoners with elevated recidivism risk and therefore disqualifies them as persons, not sentence by sentence. Pet. App. 8a, 16a. That rationale cannot be reconciled with the Act’s structure.

First, recidivism risk does not determine whether a prisoner may earn time credits. Prisoners at every risk level may earn credits. 18 U.S.C. § 3632(d)(4)(A). Low- and minimum-risk prisoners may earn credits at a higher rate, *id.* § 3632(d)(4)(A)(ii), but high-risk prisoners are not excluded from earning them. The statute uses risk level to calibrate incentives; it does not treat high risk as a categorical bar.

Second, Congress treated recidivism risk as dynamic. The risk and needs assessment system must ensure that “all prisoners at each risk level have a meaningful opportunity to reduce their classification during the period of incarceration.” *Id.* § 3632(a)(5)(A). Risk reassessments must account for dynamic factors, including “indicators of progress” and participation in programming. *Id.* § 3632(a)(4), (d)(5). The time-credit system is designed to encourage prisoners to participate in programming so that

they reduce their risk. A rule that permanently disables a prisoner from earning credits for an eligible sentence because of a separate ineligible sentence works against that design.

Third, Congress did not equate offense of conviction with fixed recidivism risk. Section 3632 requires an individualized assessment system. *Id.* § 3632(a). The crime of conviction is not the sole measure of risk, and the Independent Review Committee has reported “no significant difference in the collective recidivism-risk profiles of BOP’s [credit]-eligible and [credit]-ineligible inmate populations.” James M. Byrne et al., *Independent Review Committee Report Pursuant to the Requirements of Title I Section 107(g) of the First Step Act (FSA) of 2018 (P.L. 115-391)*, United States Committee on the Judiciary (Dec. 21, 2020), at 2, <https://perma.cc/3SGR-QZTP>. The Fourth Circuit’s contrary premise—that a disqualifying conviction necessarily predicts an elevated recidivism risk for all time and all sentences—does not reflect the system Congress created.

B. The Question Is Important and Recurring.

The question presented has substantial practical consequences. Under the Fourth Circuit’s rule, one short ineligible sentence can nullify time-credit eligibility for a much longer eligible sentence. That result affects not only Petitioner but also prisoners across the federal system.

Petitioner’s case illustrates the problem. A 24-month ineligible revocation sentence—imposed in a separate judgment—renders him unable to earn credits on a 120-month eligible drug sentence. The consequence may be years of additional custody. Petitioner

alleged below that BOP’s rule could cost him up to 1800 days, or nearly five years, of time credits. Petition for Writ of Habeas Corpus, *Bonnie v. Dunbar*, No. 4:23-cv-01215-DCN (D.S.C. 2023), Dkt. No. 1, at 5 (noting that Bonnie could earn 15 days a month of time credit for his 120-month sentence).

Other cases show that Petitioner’s situation is not unusual. In *Monserate*, a prisoner serving a 170-month credit-eligible drug sentence received a one-month consecutive sentence for contraband. 2026 WL 852077, at *2. The district court held that the one-month ineligible sentence disqualified the entire 171-month term. *Id.* In *Hill*, a two-month ineligible sentence disqualified a 132-month sentence. 2025 WL 1020604, at *6. District courts have reached similar results when the ineligible sentence made up a small fraction of the total term. *See Fletcher v. Acting Warden of FCI-Marion*, No. 25-cv-560-JPG, 2025 WL 2687007 (S.D. Ill. Sept. 19, 2025); *Tinlin v. Hudson*, No. CV-24-00425-TUC-JCH (MSA), 2025 WL 1898207, at *1 (D. Ariz. July 9, 2025), *report and recommendation adopted*, 2025 WL 2468802 (D. Ariz. Aug. 27, 2025).

Nothing in the Fourth Circuit’s reasoning supplies a limiting principle. If a one-month sentence can disqualify a 170-month sentence, a one-day sentence can disqualify a decades-long sentence. Judge Wynn was right to describe that consequence as “troubling” and “so illogical that it strains credulity to suggest Congress intended it.” Pet. App. 35a–36a.

The rule below also creates a risk of sentence manipulation. If any ineligible sentence bars credits on all eligible sentences, then the addition of a short ineligible count can eliminate a major statutory benefit.

Judge Wynn warned of that risk, Pet. App. 36a, and the concern is not theoretical. In *United States v. James*, 151 F.4th 28, 40–43 (2d Cir. 2025), the Second Circuit reversed a judgment that included an additional conviction designed solely to eliminate First Step Act time credits, explaining that such an approach would “contravene Congress’s intent to allow a prisoner to earn a reduction in the time to be served.”

The issue is also nationally recurring. According to the U.S. Sentencing Commission data cited below, at least 2,274 people in 2023 received sentences combining credit-eligible and credit-ineligible crimes. See U.S. Sentencing Comm’n, SPSS Datafile for Fiscal Year 2023, <https://www.ussc.gov/research/datafiles/commission-datafiles> (last visited June 4, 2026). Preventing those prisoners from earning and applying credits on eligible sentences means additional prison time and substantial incarceration costs. The amici below estimated that if those 2,274 prisoners earned credits toward earlier release, the savings from 2023 alone would exceed \$97 million. Br. of Amici Curiae Due Process Institute and National Association of Criminal Defense Lawyers in Support of Petitioner-Appellant at 17–18, *Bonnie v. Dunbar*, No. 24-6665, Dkt. No 27-1.

The absence of a developed circuit split should not deter review. Multiple courts of appeals have already adopted BOP’s categorical aggregation position. See, e.g., *Giovinco*, 118 F.4th 527. The Fourth Circuit has now done so in a published, divided opinion. Further percolation is unlikely to produce a better vehicle. BOP’s nationwide position is fixed, prisoners lose credits while litigation proceeds, and the issue is purely statutory.

This Court often grants review when a recurring federal question has produced one-sided lower-court entrenchment that is wrong and consequential. This case warrants that treatment.

C. This Case Is an Ideal Vehicle.

This case cleanly presents the question whether a separate, consecutive ineligible sentence prevents a prisoner from earning First Step Act time credits while serving an eligible sentence.

The issue was preserved and dispositive below. The district court granted summary judgment on the ground that Petitioner's ineligible sentence disqualified the entire aggregate term. Pet. App. 65a–66a. The Fourth Circuit affirmed on the same basis. Pet. App. 18a. The majority addressed the statutory text, Section 3584(c), and the asserted relationship between offense-based ineligibility and recidivism risk. Pet. App. 7a–16a. The dissent addressed the same questions and explained why the majority's reading was inconsistent with the text, structure, and consequences of the Act. Pet. App. 19a–37a.

No factual dispute or alternative ground would prevent this Court from deciding the question presented. Petitioner's two sentences were imposed in separate judgments. Pet. App. 65a. One sentence is credit-eligible; the other is not. Pet. App. 2a. BOP denied credits because it treated the ineligible sentence as disqualifying the full aggregate term. Pet. App. 2a–3a. If this Court holds that Section 3632(d)(4)(D) disqualifies only the sentence for the ineligible conviction, the judgment below must be reversed. *Id.*

This case is also a particularly useful vehicle because Petitioner's separate judgments present the question in its cleanest form. The Court need not decide how Section 3632(d)(4)(D) applies to a single judgment imposing an integrated sentencing package, grouped counts, or concurrent sentences for related offenses. It need decide only whether a separate, consecutive ineligible sentence imposed in a separate judgment bars credits while the prisoner is serving a separate eligible sentence. The statutory text answers that question no.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT,
FILED NOVEMBER 5, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6665

GREGORY ALLEN BONNIE,

Petitioner-Appellant,

v.

WARDEN DUNBAR,

Respondent-Appellee.

DUE PROCESS INSTITUTE; NATIONAL
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS,

Amici Supporting Appellant.

Appeal from the United States District Court for
the District of South Carolina, at Florence. David C.
Norton, District Judge. (4:23-cv-01215-DCN)

Argued: September 10, 2025
Decided: November 5, 2025

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Before NIEMEYER, WYNN, and QUATTLEBAUM,
Circuit Judges.

Affirmed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Quattlebaum joined. Judge Wynn wrote a dissenting opinion.

NIEMEYER, Circuit Judge:

To promote the release of prisoners who possess a reduced risk of recidivism and thus reduce the federal prison population, Congress enacted Title I of the First Step Act of 2018 (“FSA”), which incentivizes qualified federal prisoners to participate in and complete “recidivism reduction programs or productive activities” and thereby earn various benefits, including generous jail-time credits. 18 U.S.C. § 3632. The FSA, however, denies the particular benefit of jail-time credits to any prisoner “serving a sentence for a conviction under” 68 specified laws, including 18 U.S.C. § 924(c), which punishes “possession or use of a firearm during and in relation to any crime of violence or drug trafficking crime.” *Id.* § 3632(d)(4)(D)(xxii); *id.* § 924(c).

Gregory Bonnie is serving a 144-month sentence in a federal prison camp in South Carolina, 120 months of which is attributable to convictions for drug trafficking offenses, which are not disqualifying crimes for FSA time credits, and 24 months of which is attributable to a conviction under § 924(c), which is a disqualifying crime. The Bureau of Prisons (“BOP”) denied Bonnie’s request for FSA time credits as to his 120-month sentence,

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treating his multiple prison terms “as a single, aggregate term of imprisonment,” as required by 18 U.S.C. § 3584(c), and finding him ineligible because that aggregate sentence includes imprisonment for violating § 924(c).

In his petition for a writ of habeas corpus under 28 U.S.C. § 2241, Bonnie challenged the BOP’s decision, arguing that he is eligible to earn FSA time credits during his service of the 120-month component of his sentence attributable to his convictions for drug trafficking, even though he acknowledges that he cannot earn FSA time credits during his service of the 24-month component attributable to his § 924(c) conviction. The district court denied his petition, concluding that Bonnie’s position is not supported by the texts of the FSA and § 3584(c), and Bonnie appealed.

Because Bonnie’s multiple-term sentence includes a sentence for a disqualifying conviction and is, by reason of § 3584(c), to be treated as a single aggregate sentence, we conclude that Bonnie is ineligible for FSA time credits. We therefore affirm.

I

After Bonnie pleaded guilty in 2005 to drug trafficking, in violation of 21 U.S.C. §§ 841 and 846, and possession of a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c), the district court sentenced him on November 5, 2005, to 120 months’ imprisonment for his drug trafficking conviction and a consecutive 60 months’ imprisonment for his § 924(c)

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conviction, for a total of 180 months' imprisonment. The court also required him to serve eight years of supervised release—an eight-year term for his drug trafficking conviction and a concurrent five-year term for his § 924(c) conviction.

Bonnie was released from prison in June 2017 and then began serving his terms of supervised release.

While on supervised release, however, Bonnie again engaged in drug trafficking, and he pleaded guilty to two drug trafficking crimes, as well as to violating the conditions of his supervised release. On May 27, 2021, the district court sentenced him to 120 months' imprisonment for his new drug trafficking convictions, revoked his November 5, 2005 terms of supervised release, and sentenced him on the revocation to a consecutive term of 24 months' imprisonment, for a total of 144 months' imprisonment. The court committed him to the custody of the BOP, which assigned him to serve his sentence at the Satellite Prison Camp at FCI Williamsburg in Salters, South Carolina.

Several months later, while serving his sentence, Bonnie requested that the BOP classify him as eligible to receive FSA time credits with respect to the 120-month portion of his sentence, at the same time recognizing that the 24-month portion of his sentence for violating supervised release on his 2005 convictions, including one under § 924(c), made him ineligible for FSA time credits when serving that sentence. The BOP denied Bonnie's request, noting that "[m]ultiple terms of imprisonment

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ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment,” which, because he was sentenced in connection with his violation of § 924(c), required that Bonnie’s 144-month sentence be treated as ineligible for FSA time credits. Bonnie thereafter exhausted his administrative remedies.

Bonnie filed this petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the district court, and the respondent Warden R.S. Dunbar filed a motion for summary judgment, seeking dismissal of the petition. In a thorough 25-page opinion, the district court granted Warden Dunbar’s motion and denied Bonnie’s petition. The court identified the relevant question as whether the “24-month § 924(c) revocation sentence tainted the separately imposed 120-month drug sentence such that Mr. Bonnie is ineligible to earn FSA time credits for the entire 144-month sentence.” After conducting an analysis of 18 U.S.C. §§ 3623(d)(4)(D) and 3584(c), the district court concluded:

In sum, the court finds that the plain text and statutory context of the FSA indicate Congress’s intention that an inmate convicted of multiple offenses, at least one of which is ineligible to earn time credits under the FSA, is ineligible to earn time credits under the FSA because the BOP is statutorily mandated to aggregate the sentence.

The court added, “Bonnie has offered no statute or caselaw to support a contrary interpretation,” and it

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cited numerous decisions nationwide that have uniformly rejected Bonnie's interpretation.

From the district court's judgment dated May 10, 2024, Bonnie filed this appeal.

II

Bonnie contends that, while he is concededly ineligible for FSA time credits when serving his 24-month revocation sentence for violating § 924(c), he is nonetheless eligible for the credits when serving his consecutive 120-month sentence for drug trafficking. As he argues:

While Mr. Bonnie "is serving" the § 924(c) revocation sentence, he is ineligible to earn time credits under the plain language of the FSA. But after completion of that sentence, he will no longer be "serving a sentence" for an ineligible conviction.

He asserts that the statutory text is clear, directing the "BOP to calculate credits on any permitted sentence, and *consecutive sentences are different sentences*." (Emphasis added). Thus, he argues that § 3632(d)(4)(D) disqualifies "a sentence" and that the components of a multiple-term sentence are to be treated distinctly, each as "a sentence." He therefore concludes that the district court erred in disqualifying him from FSA time credits during his entire 144-month sentence. To make that argument, he relies mainly on the portion of the FSA's text referring to a *single* disqualifying sentence—"if a prisoner is serving

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a sentence for *a* conviction,” 18 U.S.C. § 3632(d)(4)(D) (emphasis added)—which, he argues, requires that each sentence be assessed and applied separately.

Bonnie’s argument presents a question of statutory interpretation, which we review de novo. *See Rosemond v. Hudgins*, 92 F.4th 518, 523 (4th Cir. 2024); *United States v. Thomas*, 32 F.4th 420, 423 (4th Cir. 2022). And in construing a statute, we read it in the context of its overall statutory scheme. *See West Virginia v. EPA*, 597 U.S. 697, 721, 142 S.Ct. 2587, 213 L.Ed.2d 896 (2022). Thus, our focus is “to construe statutes, not isolated provisions.” *King v. Burwell*, 576 U.S. 473, 486, 135 S.Ct. 2480, 192 L.Ed.2d 483 (2015) (cleaned up). With these principles in hand, we turn to the FSA.

Title I of the First Step Act of 2018, entitled “Recidivism Reduction,” requires the Attorney General to develop a “risk and needs assessment system” to be used by the BOP (1) to determine each federal prisoner’s “recidivism risk” and “risk of violent or serious misconduct”; (2) to assign the prisoner to “appropriate evidence-based recidivism reduction programs or productive activities”; and (3) to assess “when a prisoner is ready to transfer into prerelease custody or supervised release.” 18 U.S.C. § 3632(a). And as an incentive to induce prisoners to participate in and complete the programs, the FSA authorizes the BOP to grant numerous benefits, including, among others, phone privileges, additional visitation time, and, as relevant here, “time credits” to reduce prison time. *Id.* § 3632(d). The FSA time credits, which are awarded in addition to good time credits earned pursuant to § 3624, are generous,

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giving prisoners “10 days of time credits for every 30 days of successful participation” in the programs and an “additional 5 days of time credits for every 30 days of successful participation” for prisoners assessed to be “at a minimum or low risk for recidivating.” *Id.* § 3632(d)(4)(A).

The FSA is thus designed to identify prisoners with a lower risk of recidivating and to reward them with time credits for completing programming, and also to identify prisoners with a higher risk, who are not similarly rewarded. In line with these purposes, the FSA categorically disqualifies any prisoner from receiving time credits if the prisoner is serving a sentence for a conviction on any of 68 disqualifying crimes, including, as relevant to this appeal, a § 924(c) conviction. 18 U.S.C. § 3632(d)(4)(D)(xxii). Specifically, § 3632(d)(4)(D) provides: “A *prisoner is ineligible* to receive time credits . . . *if the prisoner* is serving a sentence for a conviction under . . . § 924(c).” *Id.* (emphasis added).

Bonnie parses the language of § 3632(d)(4)(D) to argue that his disqualification is limited to *the time* he is serving his disqualifying sentence and that he should receive FSA time credits when serving time for his non-disqualifying sentence. He reasons that the disqualifying language is linked to “a sentence” for a particular disqualifying crime, allowing him to earn credits for service of “a sentence” on any non-disqualifying crimes. He reasons further that the “a sentence” language limits the disqualification *to the time* while he is serving the disqualifying sentence. As he summarizes, “The FSA’s text is clear. It directs BOP to calculate credits on any permitted sentence, and

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consecutive sentences are different sentences.” Thus, he claims that while he “is serving” the § 924(c) revocation sentence, he is ineligible to earn time credits under the plain language of the FSA. But after the completion of that sentence, he will no longer be “serving a sentence for an ineligible conviction.” (Internal quotation marks omitted).

At the outset, we note that the provision categorically disqualifies *a prisoner*, not *a sentence*, from receiving FSA time credits, defining such prisoner as one who is serving a sentence for a disqualifying crime. The text provides that the “*prisoner is ineligible* to receive time credits under this paragraph if the prisoner is serving a sentence for a conviction under [§ 924(c)].” 18 U.S.C. § 3632(d)(4)(D). Thus, when the only sentence that a prisoner is serving is for conviction of a disqualifying crime, he is categorically ineligible to receive FSA time credits because Congress has determined that the conduct underlying the crime predicts a high risk of recidivism.

Bonnie does not disagree with this understanding. Rather, he focuses on when a prisoner is serving multiple terms of imprisonment, whether consecutive or concurrent, and argues that each sentence must be treated separately. He thus reasons that he can receive FSA time credits *when* he is serving the sentence for the drug trafficking crime, even as he agrees that he cannot receive such credits when serving the sentence for the § 924(c) conviction. This argument, however, overlooks 18 U.S.C. § 3584(c), which precludes treating multiple-term sentences separately for administrative purposes. That

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statute, enacted as part of the Sentencing Reform Act of 1984, provides:

Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes *as a single, aggregate term of imprisonment*.

18 U.S.C. § 3584(c) (emphasis added). Both the BOP and the district court relied on the mandate in that provision to reject Bonnie’s argument that his sentences should be assessed individually. They concluded that because § 3584(c) requires that the BOP treat Bonnie’s multiple sentences as components of a single aggregate sentence, his 144-month sentence, which, in part, is for a conviction under § 924(c), disqualified Bonnie. We agree, as the language of § 3584(c) is clear.

Bonnie does not argue otherwise. Rather, he argues that § 3584(c) does not apply *at all* because it is only applicable for “*administrative purposes*,” and, as he argues, the BOP is not acting for administrative purposes in awarding FSA time credits. He maintains that discretion is necessary for “administrative purposes” and explains that the award of credits does not include a “broad delegation to the BOP to manage prisoners’ sentences” so as to give it discretion. In this regard, he points to the FSA’s mandatory language that the Attorney General *must* create the system for assessing prisoners, that the BOP *must* assign prisoners to programs, and that the BOP *must* grant FSA time credits for prisoners participating in and completing the programs.

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This, however, reads “administrative purposes” far too narrowly. “Administration” does not define only acts of discretion. Rather, it can cover any acts that execute Congress’s will. After a court imposes a sentence, it must commit the defendant “to the custody of the Bureau of Prisons until the expiration of the term imposed.” 18 U.S.C. § 3621(a). And the BOP is then charged with selecting the place to incarcerate the defendant and carrying out the incarceration and supervising it, which includes detaining him, providing treatments for various conditions, providing programs, giving access to medical care as needed, and, of course, implementing the risk and needs assessment system. *See id.* § 3621(b), (e), (f), (h), (i). While all these requirements for implementing the sentence and supervising custody of the prisoner are mandatory, they also involve judgment and decisionmaking to give effect to the court’s sentence. But, regardless of the level of discretion involved, all are administrative functions. Indeed, what the BOP does goes to the very heart of what is administrative—“to manage or supervise the execution, use, or conduct of” something, here, a sentence. “Administrate, administer,” *Merriam-Webster’s Collegiate Dictionary* 16 (11th ed. 2020); *see also United States v. Wilson*, 503 U.S. 329, 335, 112 S.Ct. 1351, 117 L.Ed.2d 593 (1992) (noting that the BOP is tasked with “the responsibility for *administering* the sentence[s]” of federal offenders (emphasis added)). And indeed, the *Wilson* Court held that the BOP determines good time credits as an administrative matter:

Because the offender has a right to certain jail-time credit . . . and because the district court

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cannot determine the amount of the credit at sentencing, the [BOP] has no choice but to make the determination *as an administrative matter* when imprisoning the defendant.

Id. (emphasis added); *see also United States v. LaBonte*, 520 U.S. 751, 758 n.4, 117 S.Ct. 1673, 137 L.Ed.2d 1001 (1997). Finally, we note that § 3632, which includes the BOP’s management of the FSA time credits, is contained in Title 18, Chapter 229 of the United States Code, which is denominated “Postsentence Administration.” *See INS v. Nat’l Ctr. for Immigrants’ Rights, Inc.*, 502 U.S. 183, 189, 112 S.Ct. 551, 116 L.Ed.2d 546 (1991) (recognizing that “the title of a statute or section can aid in” textual interpretation); *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 337 (4th Cir. 2012) (same).

We have no difficulty in concluding that the BOP’s implementation of the FSA time credits system is “administrative,” as used in § 3584(c), and therefore that that provision applies to Title I of the FSA.

Bonnie also argues that § 3584(c) should not apply to FSA time credits because Congress did not explicitly quote the § 3584(c) language in the FSA while it did so in the Second Chance Act of 2007, which authorizes a home detention pilot program. He reasons that because Congress chose to include such language in the Second Chance Act, its omission from the FSA indicates Congress’s intent that § 3584(c) not apply to the FSA. Thus, under Bonnie’s reading, § 3584(c) should be ignored

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unless it is explicitly quoted in a statute to which it would otherwise apply, rendering § 3584(c) useless.

More indicative, however, is that a comparison of the FSA's recidivism reduction programs to the Second Chance Act of 2007's home detention pilot program is quite inapt. The Second Chance Act does not include a jail-time credit program based on a prisoner's conduct, as does the FSA. Indeed, sentences are not assessed and reduced with time credits under the Second Chance Act, and the purpose and implementation of the home detention program are not the same. Rather, it is a compassionate response program in which elderly or terminally ill prisoners may be transferred to home confinement to complete their sentences. *See* 34 U.S.C. § 60541(g).

Moreover, the original text of the Second Chance Act was drafted at a different time—in 2007—by a different Congress with different considerations in mind. And its disqualifying language is of a different style. For instance, the Second Chance Act applies to “*an offender . . . who is serving a term of imprisonment that is not life imprisonment based on conviction for an offense or offenses that do not include any crime of violence . . . , sex offense . . . , or [other designated offenses].*” 34 U.S.C. § 60541(g)(5)(A)(ii) (emphasis added). On the other hand, the FSA, which was drafted in 2018, provides that a “prisoner,” not an “offender,” is “ineligible if the *prisoner is serving* a sentence for a conviction under any of the following provisions of law,” not for “offense or offenses.” 18 U.S.C. § 3632(d)(4)(D) (emphasis added). And while the Second Chance Act explicitly provides that multiple terms

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of imprisonment are to be treated as a single aggregate term, quoting the exact language of § 3584(c), *see* 34 U.S.C. § 60541(g)(5)(C), it does so in light of the fact that § 3584(c), as a regulation relating to sentences, might not otherwise be applicable because the Second Chance Act does not assess or change *sentences*. Rather, it leaves the offender's sentence in place and only authorizes a different location to serve it. The FSA, on the other hand, does change sentences, and therefore § 3584(c)'s regulation of sentences for administrative purposes would clearly apply.

Finally, even were we to take both the Second Chance Act and the FSA to be comparable, the fact that Congress chose in 2007 to quote § 3584(c) within the provisions of the Second Chance Act and did not do so in 2018 in the FSA cannot fairly lead to the conclusion that Congress therefore intended that § 3584(c) not apply to the FSA, when its terms are clearly applicable.

Making a similar argument, Bonnie contends that the BOP's treatment of sentences under a 1976 bilateral treaty with Mexico "is instructive." The Treaty on the Execution of Penal Sentences provides for the transfer of Mexican nationals serving certain sentences in the United States to serve out their sentences in Mexico, and vice versa. *See* U.S.-Mex., Nov. 25, 1976, 28 U.S.T. 7399, art. I. The Treaty, however, does not apply to any "offense under the immigration or the purely military laws of a party." *Id.* art. II(4). In implementing the Treaty when multiple offenses are involved, the BOP lets a Mexican national serve the sentence for an immigration violation in the United States and then transfers the Mexican national to

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Mexico to fulfill the remainder of his sentences. *See* BOP Program Statement 5140.42 (April 10, 2015). This practice simply implements the terms of the Treaty, however, and is hardly relevant to a program for awarding good time or FSA time credits, where the BOP is administering the sentence and to which § 3584(c)'s aggregation provision is clearly applicable. Moreover, apart from the disqualified offenses, the BOP does indeed aggregate sentences in implementing the Treaty, as required by the implementing statute. *See* 18 U.S.C. § 4105(c)(4). That hardly helps Bonnie's argument that the BOP should not treat multiple sentences as a single aggregate sentence under § 3584(c).

In short, we conclude that § 3584(c) applies when construing § 3632 and thus directs the BOP to treat multiple sentences as a single aggregate sentence for administrative purposes, including the computation of FSA time credits. Bonnie is thus "serving a sentence" in connection with his § 924(c) conviction, defined by § 3584(c) to be his aggregate 144-month sentence. As such, he is ineligible for FSA time credits under § 3632(d)(4)(D).

Our interpretation of § 3632(d)(4)(D) also conforms, we believe, to the overall purpose of Title I of the FSA, which is designed to identify certain prisoners for early release—prisoners whom Congress has determined to be at low risk for recidivism and violence—and to provide them benefits, while detaining high-risk prisoners based on their elevated threat to recidivate. In distinguishing prisoners who are serving sentences for convictions of crimes predicting a high risk of recidivism from prisoners who are serving sentences for convictions of crimes not

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predicting a high risk of recidivism, the statute lists 68 crimes, any one of which, Congress has found, disqualifies the prisoner. Because recidivism is predicted by the nature of the crime, the conduct inherent in the crime is critical to the FSA's operation. Thus, in a case where the defendant has been convicted of a multi-term sentence, if the defendant is incarcerated for conduct disqualifying him for FSA credits, whether supporting his entire sentence or only a part, that conduct predicts, as Congress has determined, that he has a high risk of recidivism and therefore is disqualified from receiving FSA time credits. And that high risk is not eliminated by the fact that the prisoner also committed a nondisqualifying crime. In short, the fact that the prisoner committed a disqualifying crime predicts a high risk of recidivism, which is the whole underlying basis for the FSA's denial of FSA time credits.

Bonnie nonetheless urges us to apply the rule of lenity against BOP's aggregation of his sentences. But that rule does not fit here. It only applies when courts "can make no more than a guess as to what Congress intended" and there is a "grievous ambiguity or uncertainty in the statute." *Muscarello v. United States*, 524 U.S. 125, 138-39, 118 S.Ct. 1911, 141 L.Ed.2d 111 (1998) (cleaned up). And we conclude that there is no such degree of doubt. Section 3632(d)(4)(D) disqualifies *any prisoner* who is serving a sentence for a conviction under § 924(c), and for determining whether Bonnie's multiple-term sentence is such a disqualifying sentence, § 3584(c) directs the BOP to treat such a multiple-term sentence "as a single, aggregate term of imprisonment." And we also conclude that there is

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no grievous ambiguity or uncertainty that would render the rule of lenity applicable.

Finally, we note that every court that has considered the issue has reached the conclusion that we reach here today. *See Giovinco v. Pullen*, 118 F.4th 527, 529 (2d Cir. 2024) (holding that inmate serving concurrent sentences for eligible and ineligible offenses was ineligible for FSA time credits); *Teed v. Warden Allenwood FCI Low*, No. 23-1181, 2023 WL 4556726, at *2 (3d Cir. July 17, 2023) (per curiam) (holding that BOP properly aggregated multiple sentences for the administrative purpose of determining an inmate's FSA eligibility and term of imprisonment); *Martinez v. Rosalez*, No. 23-50406, 2024 WL 140438, at *4 (5th Cir. Jan. 12, 2024) (per curiam) (holding that inmate transferred under bilateral treaty with Mexico was ineligible for FSA credit, where one of his multiple sentences was ineligible under the FSA); *Keeling v. Lemaster*, No. 22-6126, 2023 WL 9061914, at *1 (6th Cir. Nov. 22, 2023) (holding that prisoner's § 924(c) conviction rendered him ineligible for his aggregate sentence); *Sok v. Eischen*, No. 23-1025, 2023 WL 5282709, at *1 (8th Cir. Aug. 17, 2023) (per curiam) (holding that BOP properly aggregated multiple sentences under § 3584(c) for the purpose of calculating FSA time credits). Were we to accept Bonnie's interpretation, we would thus create an unfortunate circuit split.

* * *

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Because Bonnie is serving a revocation sentence for a conviction under 18 U.S.C. § 924(c) as a component of his single, aggregate 144-month sentence, he is ineligible for FSA time credits under 18 U.S.C. § 3632(d)(4)(D)(xxii). We therefore affirm the district court's judgment denying Bonnie's petition for a writ of habeas corpus.

AFFIRMED

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WYNN, Circuit Judge, dissenting:

Can a prisoner “serve” a 24-month sentence for 144 months? Of course not. The proposition refutes itself. That obvious “no” answer should resolve this case. Yet to the extent inventive judicial minds might conjure some uncertainty, Congress wisely anticipated that far-fetched possibility. The text and purpose of the First Step Act—to enact criminal justice reform, particularly by incentivizing prisoners to participate in recidivism reduction programs—makes clear that Gregory Bonnie is entitled to accrue First Step Act time credits for the eligible portion of his sentence.

I.

In 2004, Bonnie pleaded guilty to a drug-distribution-conspiracy offense under 21 U.S.C. § 841 and a related firearms-possession offense under 18 U.S.C. § 924(c). In 2005, he received a 120-month sentence on the drug conviction and a consecutive 60-month sentence on the firearms conviction, along with a total eight-year term of supervised release. He earned good-time credits while serving his sentences, which allowed him to be released on supervision in June 2017.

In January 2019, Bonnie was again indicted on drug-related charges. He pleaded guilty to two of the charges and, in April 2021, was sentenced to the mandatory minimum of 120 months on both, with the sentences to run concurrently. That same month, the district court revoked Bonnie’s supervised release for his 2005 convictions

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in light of the new criminal charges and imposed two revocation sentences of 24 months each, to be served concurrently with each other but consecutively to the 2021 drug sentences. He is currently in prison serving these 2021 sentences. With good-time credits, Bonnie's anticipated release date falls in January 2029.

The question posed by this case is whether Bonnie is eligible to potentially be released even sooner by taking advantage of an additional category of "time credits" available under the First Step Act of 2018.¹ The district court concluded that he is not. Our review is de novo. *Valladares v. Ray*, 130 F.4th 74, 80 (4th Cir. 2025).

II.

"The First Step Act established a system of mandatory time credits for incarcerated individuals who participate in recidivism reduction programming, with limited exceptions." *Id.* at 77. These "time credits can be applied toward earlier placement in pre-release custody or supervised release." *Id.* at 79 (citing 18 U.S.C. § 3632(d)(4)(C)). Specifically, the First Step Act states that "[a] prisoner, except for an ineligible prisoner under [§ 3632(d)(4)(D)], who successfully completes evidence-based recidivism reduction programming or productive

1. It is undisputed that a prisoner can earn both First Step Act time credits and good-time credits. *See* 18 U.S.C. § 3632(d)(6) ("The incentives described in this subsection [including First Step Act time credits] shall be in addition to any other rewards or incentives for which a prisoner may be eligible."); *id.* § 3624(b) (describing good-time credits).

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activities, shall earn time credits” as prescribed in the statute. 18 U.S.C. § 3632(d)(4)(A). Section § 3632(d)(4)(D) clarifies that “[a] prisoner is ineligible to receive time credits . . . if the prisoner is serving a sentence for a conviction under any of the following provisions of law,” including, as relevant here, § 924(c). *Id.* § 3632(d)(4)(D), (d)(4)(D)(xxii).

It is undisputed in this case that Bonnie’s 24-month revocation sentence is ineligible under § 3632(d)(4)(D) because the underlying 2005 case included a § 924(c) conviction. It is also undisputed that his 120-month 2021 drug sentence would not, on its own, be ineligible. The question is whether one ineligible conviction “taints” the total effective sentence, such that Bonnie cannot earn First Step Act time credits during *any* of the 144 months he is currently serving. The district court joined a significant number of other courts in concluding that it does.²

2. *E.g., Giovinco v. Pullen*, 118 F.4th 527, 529 (2d Cir. 2024), *cert. denied*, ___ U.S. ___, 145 S. Ct. 1947, 221 L.Ed.2d 678 (2025); *Colotti v. Peters*, No. 25-1191, 2025 WL 1321386, at *2 (3d Cir. May 7, 2025) (per curiam); *McNeill v. Ramos*, No. 23-6488, 2023 WL 6442551, at *1 (4th Cir. Oct. 3, 2023) (per curiam); *Martinez v. Rosalez*, No. 23-50406, 2024 WL 140438, at *3 (5th Cir. Jan. 12, 2024); *Oiler v. LeMaster*, No. 24-5033, 2025 WL 1864875, at *1 (6th Cir. Jan. 10, 2025) (per curiam); *Sok v. Eischen*, No. 23-1025, 2023 WL 5282709, at *1 (8th Cir. Aug. 17, 2023) (per curiam). *But cf. Hill v. King*, No. 23-CV-1365, 2024 WL 5690795, at *1 (D. Minn. Oct. 7, 2024) (accepting the petitioner’s argument), *report and recommendation rejected*, No. 23-CV-1365, 2025 WL 1020604, at *4, *6 (D. Minn. Apr. 7, 2025) (stating that if the court “were writing on a truly blank slate, it would likely accept the [magistrate

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With great respect for my colleagues on this panel and elsewhere on the bench, I cannot agree. In my view, the text of the statute favors Bonnie’s interpretation. So I would reverse and remand with instructions to grant Bonnie’s habeas petition and order the Warden to allow Bonnie to earn First Step Act time credits while he is serving the eligible 120-month portion of his total effective sentence.

A.

“When conducting statutory analysis, we must first determine whether the meaning of the statute is ascertainable through the text alone. The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole. Employing various grammatical and structural canons of statutory interpretation helps guide our reading of the text. Our inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.” *Valladares*, 130 F.4th at 80-81 (citations and internal quotation marks omitted).

As noted, the First Step Act provides that “[a] prisoner, except for an ineligible prisoner under [§ 3632(d)(4)(D)], who successfully completes evidence-based recidivism

judge]’s recommended disposition and grant [the] petition,” but that it felt constrained by circuit precedent and “the weight of the case law” to conclude otherwise); *Grigsby v. Gutierrez*, No. 22-16180, 2023 WL 8711819, at *1 & n.2 (9th Cir. Dec. 18, 2023) (per curiam) (declining to resolve the question).

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reduction programming or productive activities, shall earn time credits.” 18 U.S.C. § 3632(d)(4)(A). But, per § 3632(d)(4)(D), “[a] prisoner is ineligible to receive [such] time credits . . . if the prisoner is serving a sentence for a conviction under any of the [enumerated] provisions of law.”

My colleagues make much of the fact that § 3632(d)(4)(D) speaks of “ineligible prisoners,” asserting that “the provision categorically disqualifies *a prisoner*, not *a sentence*.” Maj. Op. at 9. For support, they explain that “[t]he text provides that the ‘*prisoner is ineligible* to receive time credits under this paragraph if the prisoner is serving a sentence for a conviction under [§ 924(c)].” Maj. Op. at 9 (citing 18 U.S.C. § 3632(d)(4)(D)). Of course, the emphasis in that quotation of the statutory language is the majority’s, not the statute’s. Indeed, the definition of an ineligible prisoner focuses on whether he “is serving a sentence for a[n ineligible] conviction,” pointing us right back to the question of what sentence is being served. 18 U.S.C. § 3632(d)(4)(D). Simply declaring that the statute “categorically disqualifies *a prisoner*” does not make it so. Maj. Op. at 9.

And if, under the majority’s view, a prisoner as an individual is categorically disqualified from earning time credits, does that categorical disqualification persist in perpetuity? Surely a prisoner who serves a sentence for a disqualifying crime is not disqualified from earning First Step Act credits for any future criminal sentences for the rest of his life; rather, he is disqualified if he “is serving” that sentence.

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Before the Second Circuit, the Bureau of Prisons (“BOP”) “acknowledge[d] that the most natural reading of § 3632(d)(4)(D), standing alone, might render ineligible only the individual sentence applicable to the ineligible offense.” *Giovinco v. Pullen*, 118 F.4th 527, 530 (2d Cir. 2024), *cert. denied*, ___ U.S. ___, 145 S. Ct. 1947, 221 L.Ed.2d 678 (2025). I agree: to state the obvious, a prisoner is only “serving” a sentence for as long as the sentence may be served. Bonnie, therefore, will only “serve” his revocation sentence for 24 months; for the other 120 months of his total effective sentence, he will not be “serving a sentence for a conviction under” an ineligible statute.

The Warden argues, however, that the First Step Act was enacted against the background of another statute, 18 U.S.C. § 3584, which was enacted in 1984. Specifically, § 3584(c) states that “[m]ultiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.” So, the Warden reasons, the BOP must treat Bonnie’s consecutive sentences “as a single, aggregate term of imprisonment”—and thus Bonnie is “serving a sentence” for an ineligible conviction under the First Step Act for the entire 144 months. Courts have generally adopted this view in rejecting similar challenges brought by other prisoners.

That position, however, runs headlong into basic logic. A prisoner who receives both a 24-month sentence and a 120-month sentence (whether consecutively or concurrently) is not *serving* the 24-month sentence for

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the entirety of the period of imprisonment,³ regardless of whether the sentences are “aggregate[d]” “for administrative purposes.” 18 U.S.C. § 3584(c). This is most apparent with a consecutive sentence like Bonnie’s: even if the 24-month sentence is broken up into pieces throughout the aggregate 144-month sentence, at any given moment, Bonnie can legally only be serving one or the other. But this logic holds true for a concurrent sentence, too, because—to state the obvious—24 is less than 120. So, again, even if the 24 months are spread throughout the 120-month aggregate sentence, at any given moment of the concurrent sentences, the prisoner is either serving both sentences (which he could only do for 24 months total) or only the remaining 96 months of the longer sentence. How a sentence is treated for administrative purposes might alter *when* a prisoner is serving one portion of his sentence or another, but it does not change the fundamental fact that, on each specific day, he is either serving a particular

3. To be sure, the Dictionary Act provides that, “[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise[,] . . . words used in the present tense include the future as well as the present.” 1 U.S.C. § 1. So, although § 3632(d)(4)(D) refers to a prisoner who “is serving a sentence for” an ineligible conviction—using a form of the present tense—that reference might be read to include a prisoner who *will* serve a sentence for an ineligible conviction, such that if he has even one day left of the ineligible sentence, he is ineligible. I am persuaded, however, that this is a situation where “context indicates otherwise.” For one thing, the statute does not use the simple present tense, but instead uses the present progressive tense, indicating an action that is occurring *now*. And I think context otherwise supports that reading for all the reasons explained in this dissent.

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sentence, or he is not. Put simply, it is impossible to “serve” a 24-month sentence for 144 months.

The majority rejects Bonnie’s argument that § 3584(c) applies only for “administrative purposes” and that awarding FSA time credits does not fall within that category. Maj. Op. at 10. It explains that the BOP is tasked with “selecting the place to incarcerate the defendant and carrying out the incarceration and supervising it,” tasks which are comprised of “administrative functions.” Maj. Op. at 10-11. But even if we accept that premise for the moment, why should that mean that the eligibility provision in § 3632—enacted years later, in the context of a major recidivism-reduction effort by Congress—could not specify that sentences should be viewed differently to effectuate the goals of that program? Particularly when that result seems the most natural from the text of the statute, I am not convinced that we should reject that straightforward reading in favor of applying a more general preexisting provision. *Cf. D.B. v. Cardall*, 826 F.3d 721, 735-36 (4th Cir. 2016) (explaining the canon of statutory construction providing that the specific terms of a statute defeat the general, absent indications of contrary legislative intent).

Further, the Warden has not disputed Bonnie’s assertion—supported by a citation to a BOP record—that BOP has the ability to “parse” prisoners’ sentences, and related “period[s] of ineligibility and eligibility,” “down to the day.” J.A. 144; *see* J.A. 145. And notably, First Step Act time credits are earned based on days of participation in applicable programming. *See* 18 U.S.C. § 3632(d)(4)(A)

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(providing that “[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,” and that certain low-risk offenders “shall earn an additional 5 days of time credits for every 30 days of successful participation” in such programming); *Gonzalez v. Herrera*, 151 F.4th 1076, 1082 (9th Cir. 2025) (“[E]arned time credits are an amount placed at a prisoner’s disposal—a store of value (measured in days) that incarcerated individuals receive as a return for their participation in qualified programs.”). There is thus no apparent reason why BOP could not designate periods as eligible or ineligible for purposes of First Step Act time credits, and then apply days of successful participation in relevant programming toward the 30-day requirement during eligible periods.

B.

In addition to the basic logic of what it means to serve a sentence, the statutory structure and the use of different language in another section of the First Step Act persuade me that Bonnie has the stronger textual argument.

The structure of the statute supports reading it to favor greater eligibility. “The First Step Act of 2018 may be the most significant criminal justice reform bill in a generation.” *Pulsifer v. United States*, 601 U.S. 124, 155, 144 S.Ct. 718, 218 L.Ed.2d 77 (2024) (Gorsuch, J., dissenting) (cleaned up) (quoting Brief for Sen. Richard J. Durbin et al. as *Amici Curiae* at 9, *Terry v. United States*, 593 U.S. 486, 141 S.Ct. 1858, 210 L.Ed.2d 108

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(2021)); *accord Gonzalez*, 151 F.4th at 1078 (describing the First Step Act as a “transformative law with far-reaching implications that have yet to all be realized”). As relevant to this case, the First Step Act created “a system to incentivize incarcerated individuals to complete programs intended to reduce their risk of recidivism,” with a variety of incentives, including “the big one—time credits.” *Gonzalez*, 151 F.4th at 1078-79.

Specifically, Title I of the First Step Act, which includes § 3632, is labeled “Recidivism Reduction.” First Step Act of 2018, Pub. L. No. 115-391, § 101, 132 Stat. 5194, 5195. Section 3632 itself is labeled “[d]evelopment of risk and needs assessment system” and requires the development of such a system to, among other things, “determine the recidivism risk of each prisoner.” 18 U.S.C. § 3632(a)(1). It also mandates that this system “provide incentives and rewards for prisoners to participate in and complete evidence-based recidivism reduction programs,” including the time credits at issue here. *Id.* § 3632(d).

Given the goal of reducing recidivism and incentivizing participation in recidivism reduction programs, the structure of the statute supports reading it to favor greater eligibility. *See Gonzalez*, 151 F.4th at 1088 (noting that, in light of the time-credits provision’s purpose, “time credits should maintain utility as an incentive for prisoners to continue programming, thereby reducing recidivism and the cost of managing the nation’s incarcerated and supervised population,” but that the BOP’s “interpretation allows for earned time credits to lose their worth as an incentive”).

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We held as much in our recent decision in *Valladares v. Ray*. Rejecting an overly stringent BOP interpretation of the time-credits provision, we explained that “Congress passed the First Step Act to reform our criminal legal system and expand opportunities for those who are incarcerated. But instead of granting [the petitioner] the opportunities for which he was eligible, BOP adopted an untenable interpretation of the statute to bar [him], and others similarly situated, from earning time credits for participation in recidivism reduction programming. In contravention of Congress’ command, BOP’s interpretation strips defendants of the incentive to participate in these programs to better themselves and attain the skills they need to be productive members of society. That contradicts the text of the First Step Act.” *Valladares*, 130 F.4th at 85; *see also Gonzalez*, 151 F.4th at 1078 (rejecting yet another harsh BOP interpretation of the time-credits provision).

The same is true here: the full context of the First Step Act emphasizes leniency, and the structure of the particular section at issue emphasizes reducing recidivism. The Warden’s stingy interpretation of the time-credits provision undermines both statutory goals.

“The interpretive canon that Congress acts intentionally when it omits language included elsewhere” also strongly supports Bonnie’s interpretation in this case. *Dep’t of Homeland Sec. v. MacLean*, 574 U.S. 383, 392, 135 S.Ct. 913, 190 L.Ed.2d 771 (2015). The First Step Act modified a preexisting home-detention program to include “eligible terminally ill offenders,” which it defined in 34 U.S.C. § 60541(g)(5)(D) as “an offender in the custody of

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the [BOP] who . . . is serving a term of imprisonment based on conviction *for an offense or offenses that do not include*” certain enumerated crimes. First Step Act, § 603, 132 Stat. at 5238-39 (codified at 34 U.S.C. § 60541(g)(1)(A), (5)(D)) (emphasis added). This definition explicitly removes from eligibility someone with multiple offenses if even *one* of them is disqualifying. Thus, the same Congress that enacted the First Step Act time-credits program knew how to limit eligibility in a program if a prisoner had *any* disqualifying convictions—but chose not to use the same language in § 3632(d)(4)(D).⁴ Because “Congress knows how to write a law” limiting eligibility if a prisoner has *any* disqualifying convictions—after all, “it did so with [§ 60541(g)(5)(D)]”—“Congress’s choice of words” in § 3632(d)(4)(D) “necessarily indicates that earned time credits” are to be understood differently. *Gonzalez*, 151 F.4th at 1084 (applying this rule in a different context); *accord Valladares*, 130 F.4th at 83 (“Where ‘Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.’” (quoting *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452, 122 S.Ct. 941, 151 L.Ed.2d 908 (2002))).

And it bears noting that, although the majority opinion correctly states that the Second Chance Act was enacted in 2007, Maj. Op. at 12, including the eligibility provision for elderly offenders, the eligibility provision disqualifying

4. Notably, this highly compelling difference in language does not appear to have been discussed in any other case considering the question before us, limiting those cases’ persuasive force.

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certain terminally ill offenders from taking advantage of the home-detention program was added through the First Step Act of 2018—that is, the same law that created the recidivism reduction program at issue here. So the same Congress that excluded from the home-detention program a terminally ill offender who “is serving a term of imprisonment based on conviction for an offense or offenses that *do not include*” certain enumerated crimes, 34 U.S.C. § 60541(g)(5)(D) (emphasis added), chose to exclude from the recidivism-reduction credits program a prisoner who “*is serving a sentence for a conviction under*” enumerated laws, 18 U.S.C. § 3632(d)(4)(D) (emphasis added).

Moreover, the First Step Act’s divergent definitions in § 60541(g)(5)(D) and § 3632(d)(4)(D) were enacted against the backdrop of a preexisting definition in § 60541(g)(5)(C). That provision explicitly defines “term of imprisonment” as used in that section using the same definition as § 3584(c), stating that it “includes multiple terms of imprisonment ordered to run consecutively or concurrently, which shall be treated as a single, aggregate term of imprisonment for purposes of [§ 60541].” 34 U.S.C. § 60541(g)(5)(C). If, as the Warden argued below, “[t]here was no reason for Congress to say anything within [§ 3632(d)(4)(D)] about how consecutive sentences were to be regarded by the BOP, because Congress had already said everything it needed to say within § 3584(c),” then the same would presumably be true for § 60541(g)(5)(C), and the definition provided in that statute was superfluous. J.A. 258 (quoting *Walton v. Fikes*, No. 22-CV-1998 (JWB/TNL), 2023 WL 6283298, at *2 (D. Minn. Aug. 10, 2023),

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report and recommendation adopted, No. CV 22-1998 (JWB/TNL), 2023 WL 6282897 (D. Minn. Sept. 26, 2023)). Because “a competing interpretation would avoid superfluity,” “[t]he canon against surplusage” may “be meaningful” here. *Bufkin v. Collins*, 604 U.S. 369, 387, 145 S.Ct. 728, 221 L.Ed.2d 192 (2025).

My colleagues urge that Congress included § 60541(g)(5)(C) to make explicit that multiple terms of imprisonment are to be treated as a single aggregate term there, reasoning that § 3584(c) might not otherwise apply to the home-detention program: “the Second Chance Act does not assess or change *sentences*,” the majority explains, but rather “authorizes a different location to serve” a sentence. Maj. Op. at 13. So, the logic goes, there is no superfluity even without accepting Bonnie’s interpretation of the statute. That distinction is irrelevant. The crux of the matter is that both programs look at crimes of conviction to determine eligibility. While one program explicitly makes an ineligible conviction a total disqualifier, the other program does not. So even if that interpretive distinction were compelling, it could not overcome the fact that the First Step Act Congress enacted two different eligibility provisions with divergent language excluding different individuals from taking advantage of statutory benefits. We must not assume that Congress did so haphazardly.

The distinction between § 60541(g)(5)(D) and § 3632(d)(4)(D) is further strengthened by Congress’ use of different terminology. In enacting the First Step Act, Congress used “term of imprisonment” in the

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definition of “prisoner” (“a person who has been sentenced to a term of imprisonment pursuant to a conviction for a Federal criminal offense,” 18 U.S.C. § 3635(4)) as well as in § 60541(g)(5)(D) (“[a prisoner who] is serving a term of imprisonment based on conviction for an offense or offenses that do not include [certain offenses]”). But it used “sentence” in the time-credit provision in § 3632(d)(4)(D) (“the prisoner is serving a sentence for a conviction under [certain offenses]”). As Bonnie argues, this suggests that “Congress expressly distinguished between ‘a sentence’ for a particular conviction and the overall ‘term of imprisonment.’” Opening Br. at 17.

True, the Second Circuit correctly pointed out that Congress itself used the terms interchangeably in 1984 when it enacted § 3584(c), noting that “[t]he heading of § 3584 is ‘Multiple sentences of imprisonment’ and the caption of § 3584(c) is ‘Treatment of multiple sentence as an aggregate’ while § 3584(c) itself refers to ‘terms of imprisonment.’” *Giovinco*, 118 F.4th at 532 n.2. And “[t]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.” *Yates v. United States*, 574 U.S. 528, 540, 135 S.Ct. 1074, 191 L.Ed.2d 64 (2015) (quoting *Almendarez-Torres v. United States*, 523 U.S. 224, 234, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998)).

Still, it is notable that these terms appear to be used differently across different sections of the First Step Act of 2018, which of course was enacted decades later by a different Congress. Typically, where a statute “has used one term in one place, and a materially different term

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in another, the presumption is that the different term denotes a different idea.” *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457-58, 142 S.Ct. 1783, 213 L.Ed.2d 27 (2022) (quoting A. Scalia & B. Garner, *Reading Law* 170 (2012)). So the fact that § 3584(c) used the terms interchangeably does not mean that the First Step Act—enacted 34 years later—also did.

Finally, the Second Circuit focused on the aggregation provision and “precedent holding that the aggregation provision applies to other sentencing credit programs”—specifically, “time-served credits (§ 3585), good-time credits (§ 3624), and residential drug-abuse program credits (§ 3621).” *Giovinco*, 118 F.4th at 531-32. However, those other programs are inapposite. Time-served credits are available to all prisoners, so there is no need to evaluate the impact of different components of the sentence. 18 U.S.C. § 3585(b). Good-time credits are available to all prisoners serving “a term of imprisonment of more than 1 year” unless their sentence is life, so aggregating sentences actually benefits prisoners. *Id.* § 3624(b)(1).

Further, that provision explicitly uses the phrase “term of imprisonment,” like the aggregation provision, and explicitly falls under BOP’s administrative control. *Id.* (“[Credits are] subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations.”). And the residential drug-abuse program uses discretionary language (the period of custody “may be reduced by the [BOP]”) that leaves eligibility

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determinations to BOP. *Id.* § 3621(e)(2)(B). Thus, none of the case law interpreting any of those provisions is relevant to the question at hand.

At bottom, Bonnie’s view of the statute is much more persuasive. The statutory emphasis on promoting rehabilitation, the use of different language in the terminally-ill-offender provision, and the basic logic of what it means to “serve a sentence” counsel in favor of agreeing with Bonnie that he will only “serve” the ineligible sentence for 24 months out of the aggregate 144 months.

C.

While the text and structure of the relevant statutory provisions compel the conclusion that Bonnie’s interpretation is the sound one, it bears noting the peculiar—if not outright absurd—consequences that flow from the majority’s reading. Under that interpretation, Bonnie would be barred from earning First Step Act credits for his otherwise-eligible 120-month sentence, while serving a mere 24-month ineligible revocation term. This disparity is so illogical that it strains credulity to suggest Congress intended it.

And Bonnie’s case is hardly the outer limit of the absurdity: another court recently found that a 2-month sentence for possession of a contraband cell phone in prison disqualified an individual from earning First Step Act credits for the entirety of his separate 132-month sentence for drug conspiracy. *See Hill v. King*, No.

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23-CV-1365, 2025 WL 1020604, at *6 (D. Minn. Apr. 7, 2025). So, a minor two-month offense rendered ineligible a sentence *sixty-six times longer*—precisely the kind of irrational result Congress could not have intended.

Those examples are troubling enough. But the majority’s interpretation threatens consequences still more untenable. Consider a case in which an individual is sentenced to decades in prison for an eligible offense, and only days for an ineligible one.

Worse still, the majority invites manipulation that undermines the very purpose of the First Step Act recidivism reduction program. One district court, for example, recently increased the sentence it imposed to account for potential reductions in prison time served due to earned First Step Act credits—which the Second Circuit rejected as a stand-alone sentence justification. *United States v. James*, 151 F.4th 28, 40-43 (2d Cir. 2025). Now, the majority opens the door to similar gamesmanship by prosecutors, who may pursue minor ineligible charges to preclude defendants from obtaining recidivism reduction credits for substantial portions of their sentences. It is inconceivable that the Congress which drafted the First Step Act—legislation designed to encourage rehabilitation—intended its core incentive to be so easily nullified.

*Appendix A***III.**

Great respect is due to the many judges—including my distinguished friends in the majority—who have confronted this question and reached a different conclusion. But to be sure, many of those judges did not have the benefit of counseled briefing for the petitioner, and many considered the question under the now-displaced regime of *Chevron* deference.

In that pre-*Loper Bright* world, courts often yielded to agency interpretations that strayed from statutory text. But when viewed anew—free of such deference and guided by the words Congress actually enacted—the statute admits to one sensible reading: Bonnie’s interpretation best accords with the text, structure, and purpose of the First Step Act.

For that reason, and with due respect to my colleagues, this opinion must part company with the majority. I dissent.

**APPENDIX B — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT
OF SOUTH CAROLINA, FLORENCE DIVISION,
FILED MAY 9, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

No. 4:23-cv-01215-DCN

GREGORY ALLEN BONNIE,

Plaintiff,

v.

R.S. DUNBAR, *Warden,*

Defendant.

Signed May 9, 2024

ORDER

This matter is before the court on Magistrate Judge Thomas E. Rogers, III's report and recommendation ("R&R"), ECF No. 50, that the court grant defendant R.S. Dunbar's ("Warden Dunbar") motion to dismiss or, alternatively, for summary judgment, ECF No. 20. For the reasons set forth below, the court adopts the R&R in full and grants Warden Dunbar's motion for summary judgment.

*Appendix B***I. BACKGROUND**

Petitioner Gregory Allen Bonnie (“Bonnie”) is an inmate designated by the Federal Bureau of Prisons (“BOP”) to serve his sentence at the Satellite Prison Camp adjacent to Federal Correctional Institution Williamsburg (“FCI Williamsburg”) in Salters, South Carolina.¹ He filed this petition seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241, alleging that the BOP is denying him time credits he earned under the First Step Act of 2018 (“FSA”), 18 U.S.C. § 3632(d)(4)(A), Pub. L. 115-391, 132 Stat. 5194, for his participation in Evidence-Based Recidivism Reduction (“EBRR”) programming. ECF No. 1, Pet.

The FSA governs the calculation of federal prison sentences. Eligible federal inmates may earn additional good time credits under the FSA. 18 U.S.C. § 3624(b). One way those eligible inmates may earn good time credits is through completion of EBRR programming, which allows that inmate to earn time credits to be applied toward time in pre-release custody or supervised release. *See* 18 U.S.C. § 3632(d)(4)(A). However, a prisoner is ineligible to receive time credits if the prisoner is serving a sentence for a disqualifying offense. *See* 18 U.S.C. § 3632(d)(4)(D). Relevant here, a “prisoner is ineligible to receive time credits under this paragraph if the prisoner is serving

1. The background for this case is gleaned from a combination of the initial petition for a writ of habeas corpus under 28 U.S.C. § 2241, ECF No. 1; from Warden Dunbar’s motion for summary judgment, ECF No. 16; and from the magistrate judge’s R&R, ECF No. 23.

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a sentence for a conviction” under § 924(c), “relating to unlawful possession or use of a firearm during and in relation to any crime of violence or drug trafficking crime.” 18 U.S.C. § 3632(d)(4)(D)(xxii). Bonnie is currently imprisoned after he pleaded guilty to two criminal sentences for separate offenses. He pleaded guilty to drug distribution offenses as well as possession of a firearm in violation of § 924(c) in his first offense.² *United States v. Bonnie* (“*USA v. Bonnie I*”), No. 2:04-cr-00546-DCN-1 (D.S.C. Nov. 1, 2005), ECF No. 106. For his second offense, Bonnie pleaded guilty to a conspiracy to possess and distribute illicit drugs as well as possession with intent

2. On November 10, 2005, the court entered judgment against Bonnie after he pleaded guilty to two counts of the superseding indictment in criminal case *United States v. Bonnie* (“*USA v. Bonnie I*”), No. 2:04-cr-00546-DCN-1 (D.S.C. Nov. 10, 2005), ECF No. 106. Specifically, he pleaded guilty to engaging in a conspiracy with two codefendants to manufacture, possess, and distribute methamphetamine and to possess and distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), (b)(1)(C), 846, 851. *USA v. Bonnie I*, ECF Nos. 36; 106. He also pleaded guilty to possession of firearms in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i). *USA v. Bonnie I*, ECF Nos. 36; 106. The court sentenced Bonnie to a 180-month term which consisted of 120 months for Count 1 and 60 months for Count 6, to run consecutively. *USA v. Bonnie I*, ECF No. 106. The court also stipulated that upon release from imprisonment, Bonnie was to be placed on supervised release for eight years. *Id.* On June 7, 2017, the court placed Bonnie on supervised release. *See USA v. Bonnie I*, ECF Nos. 144; 147. On May 27, 2021, the court revoked Bonnie’s supervised release and imposed a 24-month sentence for each count, to run concurrently with each other, but consecutively to the term of imprisonment imposed in the second criminal case described hereinafter. *USA v. Bonnie I*, ECF No. 166.

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to distribute heroin and methamphetamine on a specific date.³ *United States v. Bonnie*, (“*USA v. Bonnie II*”), No. 2:19-cr-0060-DCN-3 (D.S.C. May 27, 2021), ECF No. 1128. Bonnie’s conviction for violation of § 924(c) makes him ineligible for FSA time credit for EBRP programming. *See* 18 U.S.C. § 3632(d)(4)(D). The parties dispute whether that ineligibility only applies to his sentence for *USA v. Bonnie I* or to both that sentence and the sentence imposed for *USA v. Bonnie II*, which are set to run consecutively. As Bonnie’s counsel succinctly phrased it: “Does the 24-month § 924(c) revocation sentence taint the separately imposed 120-month drug sentence such that Mr. Bonnie is ineligible to earn FSA time credits for the entire 144-month sentence?” ECF No. 39 at 8.

On March 27, 2023, Bonnie filed a petition for writ of habeas corpus. ECF No. 1, Pet. Pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Civil Rule 73.02(B)(2)(c)

3. On May 27, 2021, the court entered judgment against Bonnie after he pleaded guilty to two counts of the third superseding indictment in *United States v. Bonnie* (“*USA v. Bonnie II*”), No. 2:19-cr-0060-DCN-3 (D.S.C. May 27, 2021), ECF No. 1128. Specifically, Bonnie pleaded guilty to engaging in a conspiracy with twelve codefendants to possess with intent to distribute and to distribute heroin and methamphetamine in violation of 21 U.S.C. §§ 846, 841(b)(1)(A). *USA v. Bonnie II*, ECF Nos. 463; 1128. He also pleaded guilty to possessing with intent to distribute heroin and methamphetamine on or about October 24, 2018, in violation of 21 U.S.C. § 841(b)(1)(B). *USA v. Bonnie II*, ECF Nos. 463; 1128. The court sentenced Bonnie to a 120-month term for each count, to run concurrently with each other, but consecutively with the term of imprisonment imposed in *USA v. Bonnie I*. *USA v. Bonnie II*, ECF No. 1128.

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(D.S.C.), all pretrial proceedings in this case were referred to Magistrate Judge Rogers. On May 31, 2023, Warden Dunbar filed the instant motion to dismiss or, alternatively, for summary judgment. ECF No. 20. On August 13, 2023, Bonnie responded in opposition, ECF No. 39, to which Warden Dunbar replied on August 28, 2023, ECF No. 43.⁴ On January 16, 2024, Magistrate Judge Rogers issued the R&R recommending the court grant Warden Dunbar's motion for summary judgment and dismiss the Petition. ECF No. 50, R&R. On February 14, 2024, Bonnie filed objections to the R&R. ECF No. 54, to which Warden Dunbar responded on March 12, 2024, ECF No. 58. As such, the motion is fully briefed and is ripe for review.

II. STANDARD**A. Order on R&R**

The recommendation of the magistrate judge carries no presumptive weight, and the responsibility to make a final determination rests with this court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court may “accept, reject, or modify, in whole or in part, the findings

4. In explanation for the delay between the motion and responsive briefs, the magistrate judge indicated that Bonnie's response filing deadline to the motion to dismiss was extended until fifteen days after the court determined whether to grant or deny Bonnie's motion to appoint counsel. ECF No. 21. Ultimately, Bonnie acquired legal counsel separate from that motion, and, therefore, though his original petition was filed *pro se*, Bonnie's subsequent response briefs were filed by his counsel. *See* ECF Nos. 30; 38; 39; 54.

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or recommendations made by the magistrate judge . . . or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1). The court is charged with conducting a *de novo* review of any portion of the magistrate judge’s report and recommendation to which specific, written objections are made. 28 U.S.C. § 636(b)(1). A party’s failure to object is accepted as agreement with the conclusions of the magistrate judge. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

In the absence of a timely filed, specific objection, the court reviews the report and recommendation only for clear error. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citation omitted). Furthermore, “[a] party’s general objections are not sufficient to challenge a magistrate judge’s findings.” *Greene v. Quest Diagnostics Clinical Lab’ys, Inc.*, 455 F. Supp. 2d 483, 488 (D.S.C. 2006) (citation omitted). When a party’s objections are directed to strictly legal issues “and no factual issues are challenged, *de novo* review of the record may be dispensed with.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982) (citation omitted). Analogously, *de novo* review is unnecessary when a party makes general and conclusory objections without directing the court’s attention to a specific error in a magistrate judge’s proposed findings. *Id.*

*Appendix B***B. Summary Judgment⁵**

Summary judgment shall be granted if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). “By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.* at 248. “[S]ummary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* “[A]t the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Id.* at 249. The court should view the evidence in the light most favorable to the non-moving party and draw all inferences in its favor. *Id.* at 255.

5. Warden Dunbar styled his motion as a motion to dismiss or, alternatively, as a motion for summary judgment. ECF No. 20. The magistrate judge treated it as a motion for summary judgment. R&R at 1. Neither party objects to the magistrate judge’s treatment of the motion as one for summary judgment. See ECF Nos. 54 at 5 & n.9; 58. This court likewise considers it as a motion for summary judgment.

*Appendix B***III. DISCUSSION****A. Administrative Exhaustion**

Although 28 U.S.C. § 2241 does not contain a statutory exhaustion requirement, courts have required prisoners to exhaust their administrative remedies prior to seeking habeas review under § 2241. *See Braden v. 30th Jud. Cir. Ct.*, 410 U.S. 484, 490-91 (1973) (requiring exhaustion in a § 2241 matter); *Timmis v. Johns*, 627 F.3d 525, 531 (4th Cir. 2010) (noting courts require “exhaustion of alternative remedies before a prisoner can seek federal habeas relief” (internal quotation marks and citation omitted)). Exhaustion allows prison officials to develop a factual record and provides “an opportunity to resolve disputes concerning the exercise of their responsibilities before being haled into court.” *Jones v. Bock*, 549 U.S. 199, 204 (2007).

The Attorney General, through the BOP, has responsibility for imprisoning federal offenders. *United States v. Wilson*, 503 U.S. 329, 331 (1992) (citing 18 U.S.C. § 3621(a)). This responsibility includes the calculation of an inmate’s term of imprisonment, which is recognized as an “administrative purpose” well within the BOP’s responsibilities as charged by Congress. *See id.* at 333-35. If the Attorney General, through the BOP, does not give Bonnie the sentencing credit he believes he deserves, he can seek an administrative remedy. *See* 28 C.F.R. § 542.10 (2014). If Bonnie remains unsatisfied with the result upon exhausting his administrative remedies, he may file a petition under 28 U.S.C. § 2241. *See Wilson*, 503 U.S. at 336.

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Neither party contends that Bonnie has failed to exhaust his administrative remedies, and the court likewise finds them exhausted. R&R at 3 n.2; ECF No. 54 at 4 (noting that the parties agree that Bonnie exhausted his administrative remedies with the BOP prior to filing this action). Thus, Bonnie’s § 2241 petition is properly before the court.

B. Statutory Interpretation of the FSA

The court begins with the sections of the FSA that the parties agree are unambiguous before reviewing those provisions where the parties’ interpretations diverge. Thereafter the court will “use ‘traditional tools of statutory construction’ to determine ‘whether Congress has directly spoken to the precise question at issue.’” *Julmice v. Garland*, 29 F.4th 206, 207 (4th Cir. 2022) (quoting *Prudencio v. Holder*, 669 F.3d 472, 480 (4th Cir. 2012)). “If—and only if—[the court’s] interpretive toolkit leaves [it] with a genuine ambiguity do[es it] reach the second question, which asks whether the agency’s considered views about the meaning of the statute are ‘reasonable.’” *Id.* (citing *Prudencio*, 669 F.3d at 480). The court begins with the statute.

In 2018, the FSA amended 18 U.S.C. § 3621, governing federal prison sentences, and added related provisions in §§ 3624 and 3632 concerning recidivism reduction programming and incentives. Except for inmates convicted of certain enumerated offenses, *see* 18 U.S.C. § 3632(d)(4)(D), or those with a final removal or deportation order, *id.* § 3632(d)(4)(E), all inmates became eligible to

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earn up to ten (10) days of time credits for every thirty (30) days of successfully completed BOP-approved “Evidence-Based Recidivism Reduction Programs” (“EBRR”) and “Productive Activities” (“PAS”), *see id.* § 3632(d)(4)(A)(i). Additionally, “[a] prisoner determined by the [BOP] to be at a minimum or low risk for recidivating, who, over 2 consecutive assessments, has not increased their [sic] risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in [EBRR] or [PAS].” *See id.* § 3632(d)(4)(A)(ii).

Among other incentives to encourage participation in EBRR and PAS, eligible inmates who have earned FSA time credits may apply those credits to their time in prerelease custody or supervised release. *See id.* § 3632(d)(1)-(4)(C). “Thus, FSA time credits, when applied, advance the date when the prisoner will be placed in prerelease custody (including home confinement or residential reentry facilities), or accelerate the date when the prisoner will leave BOP custody to start a term of court-imposed supervised release.” *De La Torre v. Warden, FCI McDowell*, 2024 WL 1080499, at *3 (S.D. W. Va. Feb. 5, 2024) (internal quotation marks and citations omitted), *report and recommendation adopted*, 2024 WL 1078266 (S.D. W. Va. Mar. 12, 2024); *see also* 18 U.S.C. § 3624(g)(3) (specifying that the BOP may apply up to twelve months of earned time credits to advance a date a prisoner begins to serve a term of supervised release).

To reiterate, the FSA sets out statutory criteria defining *who* is eligible to earn and apply time credits for early release from secured custody. One category of

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inmates deemed ineligible to apply FTC credits towards earlier entry to prerelease custody or supervised release are inmates convicted of certain enumerated offenses. *See* 18 U.S.C. § 3632(d)(4)(D). Specifically, “[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.” *Id.* Relevant to this motion, one subsection includes persons convicted of violating § 924(c). 18 U.S.C. § 3632(d)(4)(D)(xxii).

When Congress enacted the FSA in December 2018, it did so against the backdrop of existing statutes, including 18 U.S.C. § 3584(c).⁶ In relevant part, § 3584 provides:

(a) *Imposition of concurrent or consecutive terms.*—If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, . . .

. . . .

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

18 U.S.C. § 3584.

6. Congress enacted 18 U.S.C. § 3584 in 1984.

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This dispute centers on whether Bonnie is eligible, if at all, to receive FSA time credits under the language of the FSA. “Bonnie does not dispute that if he were serving only the 24-month revocation sentence, he would be ineligible to earn time credits against that sentence.” ECF No. 54 at 2 n.3. That is because revocation sentences are attributed to the original conviction which, here, includes a conviction for a § 924(c) offense. *Id.* However, the parties diverge as to whether his ineligible § 924(c) offense also impacts his eligible drug offense sentence that the court imposed in *USA v. Bonnie II*. Bonnie argues that the court must look to the plain text of the statute, and then to the statutory context and the statute’s purpose, which, together, lead to the unambiguous conclusion that Bonnie may receive FSA time credits for the sentence he received for *USA v. Bonnie II*. See ECF Nos. 39 at 12-22; 54 at 6-14. In contrast, the government emphasizes that 18 U.S.C. § 3632 of the FSA must be read alongside 18 U.S.C. § 3584, which, together, lead to the unambiguous conclusion that the BOP must aggregate Bonnie’s sentences and find that his § 924(c) conviction renders him ineligible for *any* FSA time credits. ECF Nos. 43 at 3-13; 58 at 1, 3-4.

Magistrate Judge Rogers ultimately recommended that the court grant Warden Dunbar’s motion for summary judgment and dismiss Bonnie’s Petition. R&R at 13-14. The R&R first summarized the relevant facts, the parties’ arguments, and the relevant legal background material to this dispute. *Id.* at 1-7. It noted that “[t]he Court which revoked Bonnie’s term of supervised release and imposed additional prison time indicated that the reinstated sentence was to run consecutively to any

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sentence then-imposed.” *Id.* at 8. Consequently, the BOP found Bonnie’s ongoing prison sentence to be related to and stemming from his underlying conviction, which included a conviction under § 924(c). *Id.* On that basis, the BOP found Bonnie ineligible to earn time credits under the FSA. *Id.* Upon review of the facts, arguments, and legal authority, the magistrate judge recommended that this court find “BOP’s interpretation of § 3632(d)(4)(D) . . . to be a mandatory interpretation based on the BOP’s other statutory obligations.” *Id.* (referencing 18 U.S.C. §§ 3632(d)(4)(D), 3584(c)). Under that interpretation, the BOP correctly found Bonnie to be ineligible to earn time credits under the FSA. *Id.* at 8-9. The magistrate judge then considered persuasive caselaw from other courts which considered similar facts and arguments. *Id.* at 9-13. He observed that those courts consistently found petitioners ineligible for time credits under the FSA. *Id.* Finally, the R&R alternatively noted that if this court were to find the statutory provisions to be ambiguous, the court should find BOP’s interpretation of the statute entitled to *Chevron* deference.⁷ *Id.* at 13. Under *Chevron*, the magistrate judge recommended that the court find the BOP’s interpretation reasonable such that the court should dismiss Bonnie’s petition. *Id.*

7. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 865 (1984). Courts defer to an agency’s reasonable interpretation of a statute when Congress has “charged [the agency] with responsibility for administering the provision.” *Id.* Bonnie notes that there is currently a pending decision from the Supreme Court which may modify *Chevron* deference. ECF No. 54 at 2-3 & n.4 (citing *Loper Bright Enters, Inc. v. Raimondo*, 45 F.4th 359, 374 (D.C. Cir. 2022), *cert. granted in part*, 143 S. Ct. 2429 (2023)).

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Bonnie objects to the recommendation. ECF No. 54. He argues that the magistrate judge made three critical errors. *Id.* at 2-3. First, the R&R ignored and failed to analyze the unambiguous meaning of the FSA as is gleaned from the plain text, statutory context, and statutory purpose of the act. *Id.* at 2, 6-12. Second, the R&R erred by alternatively finding the BOP's interpretation entitled to *Chevron* deference when the FSA is unambiguous. *Id.* at 2-3, 13-16. Third, the R&R improperly relied on a series of unpublished cases that invoked the BOP's administration of discretionary prison programs that predated the statutorily mandated FSA time credits. *Id.* at 3, 16-18. For the foregoing reasons, Bonnie urges the court to reject the R&R and deny the motion. *Id.* at 18.

Warden Dunbar filed a reply to Bonnie's objections.⁸ ECF No. 58. He emphasizes that Bonnie incorrectly urges that court to ignore the mandate of 18 U.S.C. § 3584(c) and its interplay with the FSA. *Id.* at 1. Moreover, Bonnie fails to address the fact that every court decision that has directly addressed this issue supports the BOP's position. *Id.* at 2. In essence, the passage of the FSA did not change that the BOP was, and is, responsible for determining sentencing credits. *Id.* at 3. Thus, the proper interpretation of the FSA with § 3584(c) indicates that Congress's silence as to how aggregated sentences would be treated under the FSA was not true silence because it reflected that § 3584(c) already existed and sufficiently answered that question. *Id.* (citing *Walton v. Fikes*, 2023

8. Warden Dunbar does not object to the magistrate judge's report and recommendation. ECF No. 58 at 5-6.

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WL 6283298, at *2 (D. Minn. Aug. 10, 2023), *report and recommendation adopted*, 2023 WL 6282897 (D. Minn. Sept. 26, 2023)). Moreover, the cases that both the R&R and Warden Dunbar rely upon did not claim there was any ambiguity in the FSA—instead, those cases relied upon the administrative function of the BOP alongside the explicit statutory language included in § 3584(c). *Id.* at 4. In any event, even if the court were to find the statute ambiguous, *Chevron* remains good law such that BOP’s reasonable interpretation of the statute should stand. *Id.* at 5-6. For these reasons, Warden Dunbar urges the court to adopt the R&R, grant the motion, and dismiss the petition. *Id.*

The court begins by looking at the text of the statute. The court then proceeds with “ ‘all the traditional tools of construction,’ emptying [its] interpretive toolbox[] by considering the ‘text, structure, history, and purpose’ of [the FSA].” *See Cela v. Garland*, 75 F.4th 355, 361 (4th Cir. 2023) (quoting *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019)). Only after emptying the legal toolkit will the court reach the second step and look towards the BOP’s interpretation. *See id.*

1. Plain Text & Statutory Context

The court starts with the relevant statutory text. First, the general provision as to FSA time credits broadly mandates access to time credits: “[a] prisoner, except for an ineligible prisoner under subparagraph (D), who successfully completes [EBRR] programming or [PAS], *shall* earn time credits.” 18 U.S.C. § 3632(d)(4)(A) (emphasis

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added). Second, the FSA defines “prisoner” as a “person who has been sentenced to a ‘term of imprisonment’ pursuant to a conviction for a Federal criminal offense, or a person in the custody of the [BOP].” 18 U.S.C. § 3635(4). Third, the subparagraph defining ineligible offenses specifies that “[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.” 18 U.S.C. § 3632(d)(4)(D).

Bonnie argues that the plain meaning of the FSA favors his interpretation. ECF No. 54 at 6-8. Bonnie highlights the distinction between a “term of imprisonment” in § 3635(4), and “serving a sentence” in § 3632(d)(4)(D). ECF Nos. 54 at 7; 39 at 14. He argues that the drafters of the FSA used different phrases to distinguish between the overall time spent in BOP custody—which Bonnie defines as “term of imprisonment”—versus the time spent in prison in connection with a particular conviction—which Bonnie defines as “serving a sentence for a conviction.” ECF Nos. 54 at 7; 39 at 14. Bonnie emphasizes that the eligibility provision included in § 3632(d)(4)(D) is unique because it “is not drawn from any other statute, and it is not repeated elsewhere in the FSA.” ECF No. 54 at 7. Bonnie interprets this language to mean that while he is not serving the § 924(c) revocation sentence, he is eligible to earn time credits under the plain language of the FSA because he is a “prisoner” who is not “ineligible” under subparagraph D during that period. *Id.*

In response, the government points to a persuasive decision where a court defined the word “sentence” as

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used in § 3632(d)(4)(D). ECF No. 58 at 4 (citing *Silva v. Warden, FCC Coleman-Low*, 2024 WL 98212, at *2 (M.D. Fla. Jan. 9, 2024)). In *Silva*, the court noted that the provision of time credits is an administrative function of the BOP. 2024 WL 98212, at *2. Therefore, since § 3632(d)(4)(D) addresses an inmate’s eligibility to earn FSA time credits, the statutory provision implicates the BOP’s administrative function, and therefore the word “sentence” included in that statutory provision “cannot be defined without reference to § 3584(c)’s aggregation mandate.” *Id.* Though § 3632 may be silent as to the definition of “sentence,” the *Silva* court’s interpretation “is the only one that harmonizes sections 3632 and 3584.” *Id.* Thus, the court found that deference to the BOP’s interpretation of “sentence” as a single, aggregated term was unnecessary where “the BOP’s interpretation is not only reasonable, but ‘required’ by § 3584.” *Id.* The court concluded by noting that “[w]hen only one interpretation is permissible, the statute is not ambiguous.” *Id.*

The difference in terms—§ 3632(d)(4)(D)’s “serving a sentence for a conviction” and § 3584(c)’s “term of imprisonment”—is a meaningless distinction. “A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.” *Perrin v. United States*, 444 U.S. 37, 42 (1979). Though the FSA includes a section devoted to definitions, the terms “term of imprisonment” and “serving a sentence for a conviction” are not included on that list. *See* 18 U.S.C. § 3635. The court therefore interprets those terms according to their ordinary, contemporary, common meaning and

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finds that “serving a sentence of conviction” and “term of imprisonment” mean the same thing: an inmate has been convicted of a criminal offense, and a court has sentenced him or her to a term of incarceration.⁹ *See Huerta v. Cordova*, 2023 WL 8627542, at *4 (N.D. Tex. Dec. 13, 2023). The court’s conclusion is bolstered by similar reasoning from persuasive authority. *See, e.g., id.* at *3-4; *Wold v. Fed. Bureau of Prisons*, 2018 WL 4906273, at *4-6 (D.S.D. Oct. 9, 2018).

Despite finding that “term of imprisonment” and “serving a sentence for a conviction” share one meaning, the court concludes that the plain text of the statutory provision remains unclear because § 3632(d)(4)(D) is silent as to the eligibility of prisoners convicted of multiple offenses—some eligible and others ineligible for time credits. *See* 18 U.S.C. § 3632(d)(4)(D). Considering this

9. For the sake of completeness, this court paraphrases and adopts those courts’ analysis. Petitioner rightly identifies that § 3584(c) speaks of aggregating “terms of imprisonment,” not “sentences.” “This [too] is a distinction without a difference. Both ‘term of imprisonment’ and ‘sentence’ are used interchangeably to refer to a period of incarceration imposed for violation of the law.” *Wold v. Fed. Bureau of Prisons*, 2018 WL 4906273, at *6 (D.S.D. Oct. 9, 2018). “Imprison” means to put in as if in prison, to confine. *See* <https://www.merriam-webster.com/dictionary/imprisonment> (last checked May 9, 2024). “Sentence” has as one of its definitions a “judgment, specifically one formally pronounced by a court or judge in a criminal proceeding and specifying the punishment to be inflicted upon the convict” and “the punishment so imposed.” *See* <https://www.merriam-webster.com/dictionary/sentence> (last checked May 9, 2024). A “sentence” specifies punishment. *Id.* Where the “sentence” includes confinement, the “sentence” includes a “term of imprisonment.”

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ambiguity, the “statutory language must be read in the context of the BOP’s statutory obligations for computing sentences.” *Huerta*, 2023 WL 8627542, at *3; *see also* *McCarthy v. Bronson*, 500 U.S. 136, 139 (1991) (“However, statutory language must always be read in its proper context.”); *South Carolina v. U.S. Army Corps of Eng’rs*, 66 F.4th 189, 196 (4th Cir. 2023) (quoting *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012)) (“Because statutory language ‘cannot be construed in a vacuum, it is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” (alterations adopted and internal quotation marks omitted)). Thus, the court considers the appropriate statutory context.

One such statutory obligation is found at 18 U.S.C. § 3584(c). That provision provides: “Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.” 18 U.S.C. § 3584(c). “Administrative purposes” includes not only the computation of sentences, but also the discretionary administrative functions such as determining a “current offense” for early release eligibility under 18 U.S.C. § 3621(e). *See Moreno v. Ives*, 842 F. App’x 18, 20-22 (9th Cir. 2020) (“Insofar as [the petitioner] argues that § 3584(c) is limited to sentence computation, no such limit exists in the language of the statute, and other courts have recognized that the statute applies to all administrative determinations made by BOP” (citation omitted)). Because the BOP is required to aggregate terms of imprisonment for administrative

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purposes, it is reasonable for the BOP to apply the aggregation rule to 18 U.S.C. § 3632(d)(4)(D) and conclude that if one of the aggregated convictions precludes the inmate from earning time credits, the entire aggregated sentence has the same effect. Bonnie has offered no statute or caselaw to support a contrary interpretation.

Instead, Bonnie argues that his interpretation of FSA time credits is correct based on the statutory context of other provisions within the FSA.¹⁰ *See* ECF Nos. 54 at 8-9; 39 at 14-15. In response, the government emphasizes that the relevant statutory context is not merely the language of the FSA but also the pre-existing statutory obligations that governed administration of prison sentences at that time.¹¹ *See* ECF No. 58 at 3. In reply, Bonnie argues

10. Namely, Bonnie contrasts the ineligibility provisions of § 3632(d)(4)(D) with the terminally ill offender ineligibility provisions that were also included in the FSA. ECF Nos. 54 at 8-9; 39 at 14-19. In relevant part, the FSA modified the previously enacted Second Chance Act of 2007's pilot program for eligible elderly and terminally ill offenders, 34 U.S.C. § 60541. Bonnie highlights that unlike the FSA time credit's exclusion provision, the terminally ill offender exclusion expressly applies to a defendant convicted of multiple offenses, so long as any one of the offenses is listed as a disqualifying offense. ECF No. 39 at 15 (citing 34 U.S.C. § 60541).

11. The government emphasizes that Bonnie misinterprets Congress's silence regarding multiple convictions and the ineligibility provision of the FSA. ECF No. 58 at 3. It highlights that "Congress's silence regarding how aggregated sentences would be treated under the FSA is not a reflection that § 3584(c) was to be ignored; instead, it was a reflection that § 3584(c) already existed, already controlled in this situation, and was already

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that § 3584 does not establish that multiple sentences, especially those imposed to run consecutively, will lose their separate character.¹² ECF No. 54 at 10-12.

The Supreme Court has directed courts to “interpret the statute as a symmetrical and coherent regulatory scheme,” and to “fit, if possible, all parts into an harmonious whole.” *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (internal quotation marks and citations omitted).

sufficient to guide the BOP.” *Id.* (citing *Walton*, 2023 WL 6283298, at *2). In other words, “[t]here was no reason for Congress to say anything within the FSA about how consecutive sentences were to be regarded by the BOP, because Congress had already said everything it needed to say within § 3584(c).” *Id.* (citing *Walton*, 2023 WL 6283298, at *2).

12. Bonnie emphasizes that to hold as much would require prisoners to serve a term of imprisonment that exceeds the statutory maximum for certain offenses like his supervised release violation. ECF No. 54 at 11. Moreover, BOP and the Parole Commission’s practice is instructive because parole is determined by the statute of conviction—not by the BOP. *Id.* While the Parole Commission has long aggregated sentences for the purposes of calculating “good time” and to set a parole eligibility date, *see* 28 C.F.R. § 2.5, that aggregation does not deprive the sentences of their distinct parole implications: the aggregation of a parolable sentence with a non-parolable sentences does not render the entire sentence non-parolable, ECF No. 54 at 11-12. Similarly, the BOP de-aggregates sentences to comply with a bilateral international treaty that allows certain types of sentences imposed in the United States on Mexican nationals to be served in Mexico. *Id.* at 12. Bonnies seeks to extend that analysis to the application of FSA time credits for prisons serving sentences for eligible and ineligible offenses. *Id.*

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“Similarly, the meaning of one statute may be affected by other Acts.” *Id.* It is therefore unsurprising that the government’s position is echoed and mirrored in many court decisions that have concluded that when Congress enacted the FSA in December 2018, it did so against the backdrop of existing statutes, including § 3584(c). *See, e.g., Satizabal v. Edge*, 2023 WL 5746932, at *1 (E.D. Ark. Sept. 6, 2023) (referencing courts’ previous incorporation of § 3584(c) in analysis of residential drug abuse program (“RDAP”) statutes); *Dahda v. Hudson*, 2023 WL 2815920, at *2 (D. Kan. Mar. 7, 2023) (“[18 U.S.C. § 3584(c)] was the existing law in 2018 when Congress passed the FSA, and thus the FSA’s eligibility requirements must be considered in light of that existing statutory scheme.”); *Giovinco v. Pullen*, 2023 WL 1928108, at *2-4 (D. Conn. Feb. 10, 2023) (“Thus, this provision must be read in the context of the BOP’s statutory obligation to aggregate concurrent and consecutive sentences for administrative purposes.”). Consequently, Bonnie’s suggestion to consider other provisions of the FSA while overlooking preexisting statutes regulating the BOP’s administration of the prison system—including widely used and understood definitions arising from those statutes—misses the mark. *See* ECF Nos. 54 at 8-9; 39 at 14-19.

Moreover, § 3584(c)’s directive to aggregate a term of imprisonment for administrative purposes should be considered alongside Congress’s broad delegation to the BOP to manage prisoner’s sentences, including the calculation of an inmate’s term of imprisonment—which implicates the eligibility provisions for time credits included in § 3632(d)(4)(D). *See, e.g., Teed v. Warden*

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Allenwood FCI Low, 2023 WL 4556726, at *2 (3d Cir. July 17, 2023) (“Calculation of an inmate’s term of imprisonment is widely recognized as an ‘administrative purpose’ well within the BOP’s responsibilities as charged by Congress.”), *cert. denied*, 144 S. Ct. 873 (2024); *Williams v. FCI Berlin*, 2023 WL 5961688, at *4 (D.N.H. Aug. 1, 2023), *report and recommendation adopted*, 2023 WL 5959740 (D.N.H. Sept. 13, 2023) (“Reasoning that the BOP’s sentence calculations and eligibility determinations are administrative functions, . . . courts have construed 18 U.S.C. § 3632(d)(4)(D) together with 18 U.S.C. § 3584(c).”). In other words, “[d]eciding whether a prisoner is ineligible to receive FSA credits is an ‘administrative’ decision.” *Frommie v. Fed. Bureau of Prisons*, 2022 WL 18399537, at *3 (D.S.D. Aug. 23, 2022), *report and recommendation adopted*, 2022 WL 18399536 (D.S.D. Nov. 30, 2022). Section 3584(c) provides that, “for administrative purposes,” “[m]ultiple terms of imprisonment ordered to run consecutively or concurrently shall be treated . . . as a single, aggregate term of imprisonment.” 18 U.S.C. § 3584(c). Consequently, “[t]he BOP’s treatment of [petitioner’s] sentences as a ‘single, aggregate term of imprisonment’ is supported by Congressional enactment.” *Frommie*, 2022 WL 18399537, at *3.

The court finds that the eligibility restrictions identified in § 3632(d)(4)(D) must be read in the context of the BOP’s preexisting statutory obligation to aggregate concurrent and consecutive sentences for administrative purposes. This harmonizes the ambiguity of the FSA not only with statutory context but also with previous Supreme Court decisions considering the BOP’s aggregation mandate. *See*

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Silva, 2024 98212, at *2; *cf. Payton v. Rowe*, 391 U.S. 54, 67 (1968) (holding that a prisoner incarcerated on multiple sentences is “in custody” for purposes of habeas relief on all sentences); *Johnson v. United States*, 529 U.S. 694, 700 (2000) (concluding that a defendant’s original sentences and a subsequent sentence he received for revocation of supervised release were both considered one sentence after aggregation).

Courts “don’t ‘resort to legislative history to cloud a statutory text that is clear.’” *South Carolina*, 66 F.4th at 197 (quoting *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994)). Upon finding that the statutory context clearly establishes that the BOP is required to administratively aggregate sentences—implicating the sentence management requirements imposed by the FSA—the court finds that the BOP’s interpretation accords with the plain language and statutory context. *See id.* Consequently, the court need not delve into the depths of the FSA’s purpose.¹³ *See id.*

13. Bonnie argues that construing § 3632(d)(4)(D) broadly alongside the aggregation mandate in § 3584(c), runs contrary to the FSA’s purpose. ECF No. 54 at 12-13 (citing *Lallave v. Martinez*, 635 F. Supp. 3d 173, 189-90 (E.D.N.Y. 2022)). That decision also notes that “courts are instructed to turn to legislative history only after ‘the plain language and canons of statutory interpretation fail to resolve statutory ambiguity.’” *Lallave*, 635 F. Supp. 3d at 189 (quoting *United States v. Dauray*, 215 F.3d 257, 264 (2d Cir. 2000)). Therefore, since the court resolves the statutory ambiguity through analysis of the plain language and canons of statutory interpretation, it need not reach Bonnie’s arguments as to the statute’s purpose.

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In sum, the court finds that the plain text and statutory context of the FSA indicate Congress’s intention that an inmate convicted of multiple offenses, at least one of which is ineligible to earn time credits under the FSA, is ineligible to earn time credits under the FSA because the BOP is statutorily mandated to aggregate the sentence.

2. Precedent

Precedent supports this conclusion. The court first notes that there is no direct binding precedent from either the Fourth Circuit or the Supreme Court on this exact question.¹⁴ The court has identified three on-point district court decisions in the Fourth Circuit that inform this analysis—each holding that a petitioner is ineligible to earn FSA time credit when serving an aggregate term

14. The parties identify that the Fourth Circuit recently issued an unpublished per curiam opinion affirming a district court’s decision that a § 2241 petitioner was ineligible for time credits where he was serving a sentence for eligible drug offenses and for an ineligible § 924(c) conviction. ECF Nos. 54 at 9 n.12; 58 at 2. That decision affirmed the district court’s analysis finding that the prisoner-petitioner was ineligible for sentencing time credits because of his § 924(c) conviction. *See McNeill v. Ramos*, 2023 WL 6442551, at *1 (4th Cir. Oct. 3, 2023). The Fourth Circuit opinion was five sentences long, only one of which related to the question of time credits. *Id.* Bonnie contends that this decision is unpersuasive and that it was made in error because it “begin[s] and end[s] [its] analysis with 18 U.S.C. § 3584(c), with no explanation of why the text of the First Step Act itself does not govern eligibility.” ECF No. 54 at 9 n.12. Nevertheless, the court finds that this short decision further supports the undersigned’s conclusion as to Bonnie’s ineligibility for time credits.

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of imprisonment that includes a sentence for a § 924(c) conviction. *See Mancillas v. Fed. Bureau of Prisons*, 2023 WL 5404229, at *5 (D. Md. Aug. 22, 2023); *Banks v. King*, 2023 WL 8242450, at *4 (E.D.N.C. Nov. 28, 2023); *Richardson v. Warden FCI Edgefield*, 2024 WL 1862195, at *5 (D.S.C. Feb. 8, 2024), *report and recommendation adopted*, 2024 WL 1861555 (D.S.C. Apr. 29, 2024). Nationally, three circuits have opined on this issue—the Third Circuit, the Sixth Circuit, and the Eighth Circuit—and each has held that the BOP did not err by aggregating the terms of imprisonment and finding an ineligible offense made the petitioner ineligible for FSA time credits even when that ineligible offense was imposed consecutive to other sentences. *See Teed*, 2023 WL 4556726; *Keeling v. Lemaster*, 2023 WL 9061914 (6th Cir. Nov. 22, 2023); *Sok v. Eischen*, 2023 WL 5282709 (8th Cir. Aug. 17, 2023).

Unsurprisingly, the government relies heavily on the large body of persuasive decisions which have held that the BOP has the discretion to aggregate eligible and ineligible sentences imposed by sentencing courts in its analysis of which prisoners may earn FSA time credits. ECF Nos. 20 at 6-11; 43 at 5-10; 58 at 2-4, 6. In contrast, Bonnie emphasizes that all of those decisions should be unpersuasive because they are not grounded in principles of statutory interpretation, they relied on laws which predated the FSA,¹⁵ they erroneously invoked

15. Bonnie argues that the government's reliance on caselaw that draws analogies to courts' previous incorporation of § 3584(c) to interpretation of RDAP is fundamentally flawed. *See* ECF Nos. 39 at 19-20; 54 at 16-18. Namely, the residential drug abuse

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Chevron, and often were based on petitions brought by *pro se* prisoners. *See* ECF Nos. 39 at 26-29; 54 at 3, 14, 16-18. At the end of the day, Bonnie does not identify a single case which finds in his favor on this specific issue. *See* ECF Nos. 39 at 4 n.7, 21-22, 24-29; 54 at 9 n.12, 16-18. The government highlights as much. *See* ECF No. 58 at 1 (“[Bonnie] asks this Court to find that every other court nationwide that considered this issue conducted an

program (“RDAP”) differs from the FSA because the language included in RDAP is fully discretionary:

The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a [residential substance abuse] treatment program *may* be reduced by the [BOP], but such a reduction may not be more than one year from the term the prisoner must otherwise serve.

18 U.S.C. § 3621(e)(2)(B). In contrast, the FSA provides that time credits “shall be earned,” 18 U.S.C. § 3632(d)(4)(A); and that they “shall be applied,” 18 U.S.C. § 3632(d)(4)(C). When the Supreme Court considered RDAP’s mandate, it concluded that “[w]hen an eligible prisoner successfully completes drug treatment, the [BOP] thus *has the authority, but not the duty*, both to alter the prisoner’s conditions of confinement and to reduce his term of imprisonment.” *Lopez v. Davis*, 531 U.S. 230, 241 (2001) (emphasis added). In reaching that conclusion, the Supreme Court contrasted the RDAP statute’s use of the permissive “may” with the discretion-less “shall” elsewhere in the statute. *Id.* Thus, Bonnie urges the court to find those cases incorporating § 3584(c) based on the courts’ longstanding practice of doing so in RDAP cases to be erroneous because the permissive language of the RDAP statute conflicts with the mandatory language of the FSA’s time credit eligibility provisions. ECF Nos. 39 at 19-20; 54 at 17-18.

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incorrect analysis in reaching the same result Magistrate Judge Rogers reached in his R&R.”), at 2 (“[Bonnie] cites to no case on point that supports his position.”); *see also* ECF Nos. 43 at 1.

In fact, a detailed review of court cases across the country suggests that Bonnie’s circumstances are neither novel nor unique. For example, other courts have considered whether a petitioner who violated supervised release of his or her § 924(c) conviction and further committed additional eligible drug crimes to nonetheless be ineligible for FSA time credits. *See, e.g., Dahda*, 2023 WL 2815920, at *1; *Mancillas*, 2023 WL 5404229, at *1; *Banks*, 2023 WL 8242450, at *1. Additionally, other courts have considered the eligibility of a prisoner serving a prison sentence for two separate judgments, only one of which included an ineligible offense, and found that petitioner entirely ineligible for FSA time credits. *See, e.g., Williams*, 2023 WL 5961688, at *3-4. This is consistent with caselaw where a petitioner imprisoned for an eligible offense is thereafter convicted of the ineligible offense of possession of contraband in prison—courts have found that petitioner ineligible for FSA time credits in aggregate. *See, e.g., Satizabal*, 2023 WL 5746932, at *1 (report and recommendation); *Limbrick v. Rivers*, 2023 WL 8481850, at *1-2 (N.D. Tex. Oct. 13, 2023), *report and recommendation adopted*, 2023 WL 8482886 (N.D. Tex. Dec. 7, 2023); *Ulloa v. Cruz*, 2024 WL 1117092, at *1 (M.D. Pa. Mar. 14, 2024). To be sure, Bonnie is sentenced with two separate judgments, only one of which includes an ineligible offense, but under the plain language of the statute read in its statutory context, that ineligible offense

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impacts his entire sentence such that he is ineligible for FSA time credits.¹⁶

16. The court considers whether the BOP’s interpretation of the FSA is “reasonable” if, and only if, the court’s finds that the statute is ambiguous. *See Julmice*, 29 F.4th at 207 (citing *Prudencio*, 669 F.3d at 480). Upon finding the statute unambiguous, the court need not reach the question of whether BOP’s interpretation was reasonable. *See id.* Nevertheless, the court alternatively finds that even if 18 U.S.C. § 3632(d)(4)(D) were ambiguous, the BOP’s interpretation as to that statutory gap is reasonable and entitled to deference. *See Chevron*, 467 U.S. at 843. At the first step, the court found the statute unambiguous as to a prisoner’s eligibility for FSA time credits where a prisoner has multiple offenses or multiple sentences running consecutively where some of those offenses are eligible for FSA time credits, and others are ineligible. *See Dahda*, 2023 WL 2815920, at *2. However, if the court were to reach the second step, the court would find that the administering agency—the BOP—has filled the statutory gap in a reasonable way considering Congress’s design. *See Lopez v. Davis*, 531 U.S. 230, 242 (2001).

Several courts have held that the statute is ambiguous. *See, e.g., Sok v. Eischen*, 2022 WL 17156797, at *3 (D. Minn. Oct. 26, 2022) (“The terms of § 3632(d)(4)(D) ‘do not directly answer this question’ and ‘[c]ontext does not clear things up’ which leaves the Court ‘with an ambiguous provision.’” (quoting *Voigt v. U.S. Env’t Prot. Agency*, 46 F.4th 895, 901 (8th Cir. 2022))), *report and recommendation adopted* 2022 WL 17128929 (D Minn. Nov. 22, 2022), *aff’d* 2023 WL 5282709 (8th Cir. Aug. 17, 2023); *Mancillas*, 2023 WL 5404229, at *5 (noting that ambiguity exists as what was meant by “serving a sentence” for certain convictions in the eligibility provision included at 18 U.S.C. § 2632(d)(4)(D)). Upon finding ambiguity, those courts each found the BOP’s interpretation of the statute to be reasonable, particularly considering § 3584(c)’s requirement that consecutive sentences be treated as a single, aggregate sentence for administrative purposes. *See, e.g., Dahda*, 2023 WL 2815920, at *2; *Sok*, 2022

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IV. CONCLUSION

For the foregoing reasons, the court **ADOPTS** the report and recommendation, **GRANTS** the motion for summary judgment, and **DENIES** the petition for writ of habeas.

AND IT IS SO ORDERED.

/s/ David C. Norton
DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

May 9, 2024

Charleston, South Carolina

WL 17156797, at *5. The court follows and adopts the analysis of other courts. As such, had the court found the FSA ambiguous, it would have granted the motion for summary judgment on the second step of the *Chevron* analysis.

**APPENDIX C — REPORT AND
RECOMMENDATION OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
SOUTH CAROLINA, FLORENCE DIVISION,
FILED JANUARY 16, 2024**

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

C/A No. 4:23-1215-DCN-TER

GREGORY ALLEN BONNIE,

Petitioner,

v.

WARDEN DUNBAR,

Respondent.

REPORT AND RECOMMENDATION

The Petitioner, Gregory Allen Bonnie (“Petitioner”), appearing *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241¹ on March 27, 2023. Counsel filed a notice of appearance on behalf of Petitioner on June 28, 2023. The Respondent filed a motion to dismiss or for summary judgment along with supporting

1. This habeas corpus case was automatically referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02, DSC. Because this is a dispositive motion, this report and recommendation is entered for review by the district judge.

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memorandum and exhibits. (ECF No. 20). Petitioner filed a response to the motion through counsel on August 13, 2023. (ECF No. 39). Respondent filed a reply on August 28, 2023. (ECF No. 43).

STANDARD FOR SUMMARY JUDGMENT

As previously stated, the Respondent filed a motion to dismiss, or for summary judgment. The undersigned will treat this motion as one for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

The moving party bears the burden of showing that summary judgment is proper. Summary judgment is proper if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Summary judgment is proper if the non-moving party fails to establish an essential element of any cause of action upon which the non-moving party has the burden of proof. *Celotex*, 477 U.S. 317. Once the moving party has brought into question whether there is a genuine dispute for trial on a material element of the non-moving party's claims, the non-moving party bears the burden of coming forward with specific facts which show a genuine dispute for trial. Fed.R.Civ.P. 56(e); *Matsushita Electrical Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The non-moving party must come forward with enough evidence, beyond a mere scintilla, upon which the fact finder could reasonably find for it. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). The facts and inferences to be drawn therefrom must be viewed in

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the light most favorable to the non-moving party. *Shealy v. Winston*, 929 F.2d 1009, 1011 (4th Cir. 1991). However, the non-moving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. *Barber v. Hosp. Corp. of Am.*, 977 F.2d 874-75 (4th Cir. 1992). The evidence relied on must meet “the substantive evidentiary standard of proof that would apply at a trial on the merits.” *Mitchell v. Data General Corp.*, 12 F.3d 1310, 1316 (4th Cir. 1993).

To show that a genuine dispute of material fact exists, a party may not rest upon the mere allegations or denials of his pleadings. *See Celotex*, 477 U.S. at 324 (Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves). Rather, the party must present evidence supporting his or her position through “depositions, answers to interrogatories, and admissions on file, together with . . . affidavits, if any.” *Id.* at 322; *see also Cray Communications, Inc. v. Novatel Computer Systems, Inc.*, 33 F.3d 390 (4th Cir. 1994); *Orsi v. Kickwood*, 999 F.2d 86 (4th Cir. 1993); Local Rules 7.04, 7.05, D.S.C.

DISCUSSION²**A. Background**

Petitioner is a federal inmate designated by the Bureau of Prisons (BOP) to the Satellite Prison Camp

2. Respondent submits that Petitioner has exhausted his administrative remedies with the BOP prior to filing this action.

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adjacent to FCI Williamsburg in Salters, South Carolina. Petitioner filed this action on March 27, 2023, alleging the BOP is denying him credits he earned under the First Step Act (FSA), 18 U.S.C. § 3632(d)(4)(A) for his participation in the Evidence-Based Recidivism Reduction Programming (EBRR programming). (ECF No. 1). Petitioner was sentenced in federal court in South Carolina to two sentences to run consecutively: (1) a 120-month sentence, which consists of concurrent 120-month sentences for convictions under 21 U.S.C. § 846 and 21 U.S.C. § 841; and (2) a 24-month sentence for violating a supervised release term imposed for earlier convictions for 21 U.S.C. § 846 and 18 U.S.C. § 924(c). Based on its interpretation of the relevant statutes, the BOP treats the two sentences as a single aggregate sentence for purposes of time credits under the FSA and, because the § 924(c) sentence is ineligible for FSA time credits, it found him ineligible to earn time credits during the term of the aggregate sentence. The Petitioner's projected release date *via* applied jail credits and Good Conduct Time Release is January 13, 2029. (Respondent's memorandum, ECF No. 20 at 2). As set forth in the response by counsel for Petitioner:

If Mr. Bonnie was serving only the 120-month sentence for the drug offenses, he would be eligible to earn First Step Act time credits ("FSA time credits" or "time credits") against the sentence because the underlying drug offenses are not ineligible under the FSA. Conversely, for the purpose of this motion, Mr. Bonnie does not dispute that, if he were

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serving only the 24-month revocation sentence, he would be ineligible to earn time credits against that sentence. That is because § 924(c) is an ineligible offense under the FSA and revocation sentences are attributed to the original conviction.

The dispute is this: Does the 24-month § 924(c) revocation sentence taint the separately imposed 120-month drug sentence such that Mr. Bonnie is ineligible to earn FSA time credits for the entire 144-month sentence?

(ECF No. 39 at 8).

B. Arguments

Respondent filed a motion for summary judgment arguing this action should be dismissed because the BOP determines sentence credits and Petitioner's First Step Act(FSA) credit eligibility was properly determined as ineligible due to his § 924(c) conviction. (ECF No. 20). It asserts that the aggregation of sentences is mandatory under 18 U.S.C. § 3584(c),³ thus an inmate serving a term of imprisonment which includes a sentence for a disqualifying offense, is not eligible for FSA time credits.

3. 18 USC § 3584(c) provides:

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

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Petitioner argues the BOP incorrectly interprets § 3584(c) and improperly aggregates his two sentences. He contends his consecutive sentences should be viewed separately for the purposes of FSA time credits, and he argues he cannot be “serving” a sentence for a longer period than that imposed by the sentencing court. Also, he argues the plain meaning of the FSA is that one should be eligible to earn and apply time credits when not serving a sentence for an ineligible offense.⁴

C. Analysis

Habeas corpus proceedings are the proper mechanism for a prisoner to challenge the legality or duration of his

4. Petitioner sets forth several arguments in support of his position. Petitioner points to contrasting language used in the FSA’s elderly and terminally ill offender ineligibility provisions. Specifically, Petitioner notes the elderly and terminally ill offender statute expressly provides a prisoner is ineligible, even with multiple offenses, so long as any one of the multiple offenses is a crime of violence. (ECF No. 39 at 15). Further, Petitioner argues § 3584(c), which says for administrative purposes, multiple sentences are treated as one, does not mean the prisoner is actually serving a sentence for each offense for the entire aggregate term. (ECF No. 39 at 16). Petitioner asserts § 3584(c) does not provide that multiple sentences will lose their separate character, especially those sentences that are run consecutively. (*Id.* at 17). If applying § 3584(c) to aggregate the sentence actually meant each individual sentence turns into the aggregate sentence, the result could be serving more time than the statutory max for an individual sentence. Petitioner notes the Parole Commission has aggregated sentences for calculating parole eligibility dates without the aggregation of a parolable and a nonparolable sentence rendering the entire sentence non-parolable, with each sentence maintaining its distinct parole implications. (ECF No. 39 at 18).

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custody. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). The primary means of attacking the validity of a federal conviction and sentence is through a motion pursuant to 28 U.S.C. § 2255, while a petition for habeas corpus under § 2241 is the proper method to challenge the computation or execution of a federal sentence. *See United States v. Little*, 392 F.3d 671, 678-79 (4th Cir. 2004); *Diaz v. Warden, FCI Edgefield*, 2017 WL 2985974, at *2 (D.S.C. July 13, 2017) (noting a § 2241 petition “is the proper means for a federal prisoner to challenge the BOP’s sentencing calculations”). “A motion pursuant to § 2241 generally challenges the execution of a federal prisoner’s sentence, such as parole matters, computation of sentence by prison officials, prison disciplinary actions, and prison transfers.” *Manigault v. Lamanna*, 2006 WL 1328780, at *1 (D.S.C. May 11, 2006). A petition under § 2241 must be brought against the warden of the facility where the prisoner is being held, 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 434-35 (2004).

The execution of sentences and the computation of jail time is an administrative function under the authority of the Attorney General. The Attorney General has delegated this task to the BOP, including the responsibility for computing time credits and determining a sentence termination date once a defendant actually commences serving his sentence. *See United States v. Wilson*, 503 U.S. 329, 334-35 (1992). Accordingly, the Attorney General, through the BOP, must make the initial determination of sentence credits; a district court does not have the jurisdiction to make an initial determination. *See Vazquez v. Knight*, 2021 WL 1625002, at *2 (D.S.C. Apr.

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27, 2021) citing *U.S. v. Jeter*, 161 F.3d 4, at *1 (4th Cir. 1998) (unpublished table decision); *Garcia v. Janson*, 2023 WL 3855377, at *3 (D.S.C. May 1, 2023), report and recommendation adopted, 2023 WL 3559697 (D.S.C. May 19, 2023).

The FSA governs the calculation of federal prison sentences. Section 102(b) of the FSA amended 18 U.S.C. § 3624(b), allows federal inmates to earn additional good time credits. *See* P.L. 115-391, § 102(b)(1). The FSA allows eligible inmates who successfully complete evidence-based recidivism reduction programming to earn time credits to be applied toward time in pre-release custody or supervised release. *See* 18 U.S.C. § 3632(d)(4)(A). A prisoner is ineligible to receive time credits if the prisoner is serving a sentence for a disqualifying offense. *See* 18 U.S.C. § 3632(d)(4)(D). Relevant here, a “prisoner is ineligible to receive time credits under this paragraph if the prisoner is serving a sentence for a conviction” under “Section 924(c), relating to unlawful possession or use of a firearm during and in relation to any crime of violence or drug trafficking crime.” 18 U.S.C. § 3632(d)(4)(D) (xxii). 18 U.S.C. § 3632(d)(4)(D) describes inmates that are ‘ineligible to receive time credits’ under subchapter D (the Risk and Needs Assessment System) if serving a term of imprisonment for conviction under any of the provisions listed therein. It is outside the BOP’s authority to alter the exclusions as stated in the FSA. . . . Statutory exclusions may only be amended by Congress. *See id.* at 2713. The BOP codified its procedures at 28 C.F.R. § 523.41(d), which states that “[a]ny inmate sentenced to a term of imprisonment pursuant to a conviction for a

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Federal criminal offense, or any person in the custody of the Bureau, is eligible to earn FSA time credits, subject to the exception described in paragraph (d)(2) of this section.” Section 523.41(d)(2) explains that if the “inmate is serving a term of imprisonment for an offense specified in 18 U.S.C. 3632(d)(4)(D),” which includes sentences imposed under § 924(c), “the inmate is not eligible to earn FSA time credits.” *Id.*, see also § 3632(d)(4)(D)(xxii).

As previously stated, this Petition raises questions as to whether a sentence imposed following the revocation of supervised release for § 924(c) makes an inmate ineligible to earn ETCs, whether inmates are still ineligible to earn ETCs after the disqualifying sentence has been fully served, and relatedly, whether the aggregating of multiple sentences is an appropriate basis for denying an inmate the ability to earn FSA credits.

The Court which revoked Bonnie’s term of supervised release and imposed additional prison time indicated that the reinstated sentence was to run consecutively to any sentence then-imposed. 18 U.S.C. § 3584 addresses multiple sentences of imprisonment and specifically provides that “[m]ultiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.” 18 U.S.C. § 3584(c). When Bonnie’s supervised release was revoked and additional incarceration time was imposed, it was related to and stemmed from his underlying conviction, which included a conviction under § 924(c). On that basis, the BOP found him ineligible to earn ETCs under the FSA. Thus, the

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BOP treated Bonnie's new sentence, and the sentence stemming from the revocation of his supervised release for his § 924(c) conviction, as one aggregate term of imprisonment.

The BOP's interpretation of § 3632(d)(4)(D) appears to be a mandatory interpretation based on the BOP's other statutory obligations. Title 18 U.S.C. § 3584(c) provides that "[m]ultiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment."⁵ Thus, when Petitioner's supervised release was revoked and additional incarceration time was imposed, it was related to and stemmed from his underlying conviction, which included a conviction under § 924(c). Therefore, the BOP found Petitioner ineligible to earn Extra Time Credits under the FSA. A district court addressed this issue in a recent case, *Walton v. Fikes*, 2023 WL 6283298, at *1-2 (D. Minn. Aug. 10, 2023), report and recommendation adopted sub nom., 2023 WL 6282897 (D. Minn. Sept. 26, 2023), as follows:

Walton argues that only during the 60-month period when he is serving his sentence for the gun offense should he be excluded from earning time credits under the FSA. In the petition for a writ of habeas corpus now before the Court, Walton requests that the Court direct the BOP

5. Neither party has cited to any cases on point in this circuit. It appears this issue has not been addressed in the 4th Circuit. Further, that the determination of eligibility in this case is an administrative function does not appear to be disputed.

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to apply the FSA time credits that Walton believes he is rightfully owed.

Walton’s argument is not facially absurd: Most of the time he has spent and will spend in prison are wholly the result of an offense that is not excluded from eligibility under the FSA, and it is not unreasonable to think that Walton might therefore be eligible to earn FSA time credits for at least some of the period that he spends in prison. The problem for Walton is 18 U.S.C. § 3584(c), which provides that “[m]ultiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.” As far as this Court can tell, every court to consider the question—and since the time that Walton filed his habeas petition, there have been many courts that have considered the question—has concluded that the effect of § 3584(c) is to exclude prisoners in Walton’s situation from eligibility under the FSA. *See, e.g., Teed v. Warden FCI Allenwood*, No. 23-1181, 2023 WL 4556726, at *1-2 (3d Cir. July 13, 2023); *Wallace v. Knight*, No. 22-CV-6705 (KMW), 2023 WL 4954727, at *1 (D.N.J. Aug. 3, 2023); *Cortez v. Hemingway*, No. 2:22-CV-12234, 2023 WL 4274957, at *2 (E.D. Mich. June 29, 2023); *Patillar v. Goldey*, No. 22-CV-0866, 2023 WL 4307651, at *2-3 (W.D. Okla. May 26, 2023); *Rose v. Yates*, No. 2:22-CV-0214 (BSM/PSH), 2023 WL 3198298, at *2-3 (E.D.

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Ark. May 2, 2023); *Ledford v. LeMaster*, No. 23-CV-0030, 2023 WL 2905376, at *3 (E.D. Ky. Mar. 28, 2023); *Goodman v. Sage*, No. 4:22-CV-0981, 2022 WL 18028148, at *3 (M.D. Penn. Dec. 30, 2022) (noting that “[t]his argument . . . has been consistently rejected by courts within and beyond this district”); *Giovinco v. Pullen*, No. 3:22-CV-1515 (VAB), 2023 WL 1928108, at *2-3 (D. Conn. Feb. 10, 2023).

Among the first of those cases to reach that conclusion arose out of this District. *See Sok v. Eischen*, No. 22-CV-0458 (ECT/LIB), 2022 WL 17156797 (D. Minn. Oct. 26, 2022), Report and Recommendation adopted by 2022 WL 17128929 (D. Minn. Nov. 22, 2022). As explained in *Sok*, “[c]ourts have consistently held [in other contexts] that sentence calculation by the BOP and the BOP’s administration of incentives which reduce the length of a prisoner’s term of imprisonment are administrative functions of the BOP subject to § 3584(c).” *Sok*, 2022 WL 17156797, at *5 (citing cases employing similar logic to issues concerning the BOP’s administration of the Residential Drug Abuse Treatment Program). Applying the FSA to sentence calculations, explained *Sok*, is an administrative task, and the BOP is bound by § 3584(c) in applying the FSA.

...

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Because Walton’s claim challenges the administration of a sentence, the Court must look to § 3584(c) to determine how the sentence is to be treated. And under § 3584(c), consecutively imposed sentences “shall be treated for administrative purposes as a single, aggregate term of imprisonment.”

...

Walton argues that under BOP Policy Statement 5880.28, “[a]ll counts in a single [judgment and conviction] shall be served in the order imposed by the court,” and the BOP’s aggregation of his sentences is inconsistent with this policy statement. This argument fails as well. As an initial matter, even if BOP Policy Statement 5880.28 did contradict § 3584(c), it would be the statute, not the policy statement, that would control. But BOP Program Statement 5880.28 itself goes on to state that “reference to a 924/non-924 sentence, in a single [judgment and conviction], means that the counts have been aggregated into a single sentence . . . as required by 18 U.S.C. § 3584(c).” In other words, BOP Policy Statement 5880.28 covers Walton’s precise situation and explains that the sentence is to be treated as aggregated, consistent with § 3584(c).

Walton v. Fikes, 2023 WL 6283298, at *1-2.

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In another recent case, *Mancillas v. Federal Bureau of Prisons*, 2023 WL 5404229, at *5 (D. Md. Aug. 22, 2023), the Petitioner was serving a three-year term of supervised release for Possession of a Firearm During a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c) when he was charged with Conspiracy to Possess with Intent to Distribute 5 kilograms or More of Cocaine for which he was sentenced to 204 months' imprisonment. His supervised release was revoked and he was sentenced to a 24-month term of imprisonment which was ordered to run concurrently with any other sentenced. The BOP determined Mancillas was ineligible for ETCs under the FSA because of his § 924(c) conviction. Like here, Petitioner argued that his incarceration for violating his supervised release had expired and his sentence served. Mancillas argued that his sentences should be treated as distinct sentences for the purpose of eligibility for ETCs but his sentences were aggregated by the BOP precluding him from earning ETCs under FSA based on his conviction under § 924(c). The court in *Mancillas* found that "the BOP has clarified in Program Statement 5880.28, Sentence Computation Manual, that 'SRA [Sentencing Reform Act] sentences, including a term of imprisonment that results from a revocation of supervised release or probation, shall be aggregated to form a single sentence for computation purposes.'" As the Petitioner argues here, the petitioner in *Mancillas* argued there was ambiguity as to what was meant by "serving a sentence" for certain convictions. The *Mancillas* court held that if there is ambiguity, the BOP is entitled to deference in the application of FSA ETCs pursuant to *Chevron, USA, Inc. V. NRDC, Inc.*, 467 U.S. 837, 865 (1984). The court

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concluded that “. . . even when the sentence stemming from the § 924(c) conviction had been fully served day for day, it still acted as part of an aggregate sentence barring *Mancillas* from eligibility to earn ETCs. This is a permissible and reasonable construction of the statute, and thus is entitled to deference.” *Id.*⁶

The Fourth Circuit issued an unpublished decision on October 3, 2023, *McNeill v. Ramos*, No. 23-6488, 2023 WL 6442551, at *1 (4th Cir. Oct. 3, 2023)(unpublished), in which it upheld the district court’s finding that “McNeill was ineligible for sentencing time credits. *See* 18 U.S.C. § 3632(d)(4)(D)(xxii).” In the underlying case, Petitioner was serving a current sentence for possession with the intent to distribute 500 grams or more of cocaine, a quantity of cocaine base (crack), and a quantity of marijuana in violation of 21 U.S.C. § 841(a)(1), and for possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). *See McNeill v. Ramos*, No. 5:22-hc-02134-M-RJ (E.D.N.C. Apr. 12, 2023), *aff’d* by *McNeill v. Ramos*, No. 23-6488, 2023 WL 6442551, at *1 (4th Cir. Oct. 3, 2023). Although the instant Petition here

6. Other courts have found *Chevron* deference applicable to the BOP’s interpretation of this issue. *See, e.g., Goodman v. Sage*, 2022 WL 18028148, at *3; *Dahda v. Hudson*, No. 23-3008, 2023 WL 2815920, at *1 (D. Kan. Mar. 7, 2023); *see also Martinez v. Rosalez*, No. 1:22-cv-1297, 2023 WL 2904579, at *4 (W.D. Tex. Apr. 10, 2023), report and recommendation adopted, No. 1:22-cv-01297, 2023 WL 3441566 (W.D. Tex. May 12, 2023); *Giovinco v. Pullen*, No. 3:22-cv-1515, 2023 WL 1928108, at *3 (D. Conn. Feb. 10, 2023). *United States v. Bryant*, No. 3:04-CR-00047, 2023 WL 4355053, at *4 (W.D. Va. July 5, 2023).

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involves a supervised release revocation for a violation of § 924(c), it is one of McNeill's alternative arguments that is instructive. In the alternative argument, McNeill argued that even though he was serving a sentence for a conviction under § 924(c) and statutorily ineligible to receive time credits, he should receive partial FSA time credits for his consecutive drug-crime sentence. The district court found the argument was statutorily foreclosed quoting:

18 U.S.C. § 3584(c) ('multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.');

accord *Goodman*, No. 4:22-cv-00981, 2022 WL 18028148, at *3 (rejecting an argument that a § 2241 petitioner's sentences for different offenses may be bifurcated to allow receipt of partial FSA 'time credits,' because this argument 'runs counter to the plain language of 18 U.S.C. § 3584(c)');

Keeling v. LeMaster, No. 22-CV-00096-GFVT, 2022 WL 17407966, at *2 (E.D. Ky. Dec. 2, 2022) (Denying a § 2241 petition seeking FSA 'time credits' because the petitioner's aggregate sentence included a § 924(c) conviction);

Sok v. Eischen, No. 22-CV-458 (ECT/LIB), 2022 WL 17156797, at *6 (D. Minn. Oct. 26, 2022) ("Because petitioner's aggregate sentence includes a sentence predicated on a violation of 18 U.S.C. § 924(c) he is ineligible to earn time credits under the First Step Act."), report and recommendation adopted, No. 22 CR-458

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(ECT/LIB), 2022 WL 17128929 (D. Minn. Nov. 22, 2022).

Id. (ECF No. 7).⁷

Based on the mandatory statutory language under 18 U.S.C. § 3584(c), for administrative purposes, the BOP's aggregation of the consecutive sentences for the purpose of determining that Petitioner is ineligible to earn FSA time credits due to the disqualifying offense stemming from the § 924(c) conviction is proper.

Even if the court were to find ambiguity, the BOP's interpretation of the statute is entitled to *Chevron* deference. The BOP's interpretation is reasonable and Respondent's motion for summary judgment should be granted.

7. See *Teed v. Warden, Low Sec. Corr. Inst., Allenwood*, 2023 WL 1768121, at *1 (M.D. Penn. Feb. 3, 2023); *Frommie v. Fed. Bureau of Prison*, 2022 WL 18399537, at *3 (D.S.D. Aug. 23, 2022), report and recommendation adopted, 2022 WL 18399536 (D.S.D. Nov. 30, 2022); *Ledford v. Lemaster*, 2023 WL 2905376 (E.D. Ky. Mar. 28, 2023); *Patillar v. Goldey*, 2023 WL 4307651, at *2-3 (W.D. Okla. May 26, 2023), report and recommendation adopted, 2023 WL 4306702 (W.D. Okla. June 30, 2023); *Martinez v. Rosalez*, 2023 WL 2904579 (W.D. Tex., Apr. 10, 2023), report and recommendation adopted, 2023 WL 3441566 (W.D. Tex. May 12, 2023).

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CONCLUSION

Based on the above reasoning, it is RECOMMENDED that Respondent's motion for summary judgment (ECF No. 20) be GRANTED and this claim dismissed.

Respectfully submitted,

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

January 16, 2024
Florence, South Carolina

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**APPENDIX D — ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT,
FILED JANUARY 5, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6665
(4:23-cv-01215-DCN)

GREGORY ALLEN BONNIE,

Petitioner-Appellant,

v.

WARDEN DUNBAR,

Respondent-Appellee.

DUE PROCESS INSTITUTE; NATIONAL
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS,

Amici Supporting Appellant.

Filed January 5, 2026

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

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Entered at the direction of the panel: Judge Niemeyer,
Judge Wynn, and Judge Quattlebaum.

For the Court

/s/ Nwamaka Anowi, Clerk

**APPENDIX E —
STATUTORY PROVISIONS INVOLVED**

18 U.S.C. § 3632. Development of risk and needs assessment system.

Effective: December 21, 2018

* * *

(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

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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).

(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), 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, relating to destruction of aircraft or aircraft facilities.

(ii) Section 33, relating to destruction of motor vehicles or motor vehicle facilities.

(iii) Section 36, relating to drive-by shootings.

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(iv) Section 81, relating to arson within special maritime and territorial jurisdiction.

(v) Section 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), 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, 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, relating to female genital mutilation.

(ix) Section 117, relating to domestic assault by a habitual offender.

(x) Any section of chapter 10, relating to biological weapons.

(xi) Any section of chapter 11B, relating to chemical weapons.

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- (xii) Section 351, relating to Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault.
- (xiii) Section 521, relating to criminal street gangs.
- (xiv) Section 751, relating to prisoners in custody of an institution or officer.
- (xv) Section 793, relating to gathering, transmitting, or losing defense information.
- (xvi) Section 794, relating to gathering or delivering defense information to aid a foreign government.
- (xvii) Any section of chapter 39, relating to explosives and other dangerous articles, except for section 836 (relating to the transportation of fireworks into a State prohibiting sale or use).
- (xviii) Section 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)).
- (xix) Subsection (f)(3), (h), or (i) of section 844, relating to the use of fire or an explosive.
- (xx) Section 871, relating to threats against the President and successors to the Presidency.

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(xxi) Section 879, relating to threats against former Presidents and certain other persons.

(xxii) Section 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), relating to fraud and related activity in connection with computers.

(xxiv) Section 1091, relating to genocide.

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

(xxvi) Any section of chapter 55, relating to kidnapping.

(xxvii) Any offense under chapter 77, relating to peonage, slavery, and trafficking in persons, except for sections 1593 through 1596.

(xxviii) Section 1751, relating to Presidential and Presidential staff assassination, kidnapping, and assault.

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(xxix) Section 1791, relating to providing or possessing contraband in prison.

(xxx) Section 1792, relating to mutiny and riots.

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

(xxxii) Section 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), relating to bank robbery resulting in death.

(xxxiv) Section 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, relating to taking a motor vehicle (commonly referred to as “carjacking”).

(xxxvi) Any section of chapter 105, relating to sabotage, except for section 2152.

(xxxvii) Any section of chapter 109A, relating to sexual abuse.

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(xxxviii) Section 2250, relating to failure to register as a sex offender.

(xxxix) Section 2251, relating to the sexual exploitation of children.

(xl) Section 2251A, relating to the selling or buying of children.

(xli) Section 2252, relating to certain activities relating to material involving the sexual exploitation of minors.

(xlii) Section 2252A, relating to certain activities involving material constituting or containing child pornography.

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

(xliv) Section 2283, relating to the transportation of explosive, biological, chemical, or radioactive or nuclear materials.

(xlv) Section 2284, relating to the transportation of terrorists.

(xlvi) Section 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.

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(**xlvi**) Any section of chapter 113B, relating to terrorism.

(**xlvi**) Section 2340A, relating to torture.

(**xli**) Section 2381, relating to treason.

(**i**) Section 2442, relating to the recruitment or use of child soldiers.

(**ii**) An offense described in section 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), assault with intent to commit murder (as described in section 113(a)), aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242), abusive sexual contact (as described in sections 2244(a)(1) and (a)(2)), kidnapping (as described in chapter 55), carjacking (as described in section 2119), arson (as described in section 844(f)(3), (h), or (i)), or terrorism (as described in chapter 113B).

(**iii**) Section 57(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)), relating to the

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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

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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.

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(I xv) 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.

(I xvi) 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.

(I xvii) 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) the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or

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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.

(I xviii) 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;

(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.

* * *

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34 U.S.C. § 60541. Federal prisoner reentry initiative.

Effective: December 21, 2018

* * *

(5) Definitions

In this section:

* * *

(C) Term of imprisonment

The term “term of imprisonment” includes multiple terms of imprisonment ordered to run consecutively or concurrently, which shall be treated as a single, aggregate term of imprisonment for purposes of this section.

(D) Eligible terminally ill offender

The term “eligible terminally ill offender” means an offender in the custody of the Bureau of Prisons who--

(i) is serving a term of imprisonment based on conviction for an offense or offenses that do not include any crime of violence (as defined in section 16(a) of Title 18), sex offense (as defined in section 20911(5) of this title), offense described in section 2332b(g)(5)(B) of Title 18, or offense under chapter 37 of Title 18;

* * *