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ORIGINAL

UNITED STATES SUPREME COURT

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SUPREME COURT, U.S.

WILLIAM MAXWELL

Petitioner/Appellant/Plaintiff,

VS.

WARDEN, FCI-BEAUMONT-LOW

Respondent/Appellee/Defendant.

ON PETITION FOR CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

On Appeal from the United States District Court  
for the Eastern District of Texas, Beaumont Division  
U.S.D.C. No. 1:22-CV-40, Honorable Michael J. Truncale presiding.

PETITION FOR CERTIORARI

Respectfully submitted,

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Pro se'

## QUESTIONS PRESENTED FOR REVIEW

In 2020 Maxwell sought transfer to halfway house or home confinement under the First Step Act of 2018, 18 U.S.C. §3624(g), 18 U.S.C. §3621(b) and §3621(h), the CARES Act of 2020, 18 U.S.C. §3624(c), the Second Chance Act of 2018 reauthorized by the First Step Act of 2018, 34 U.S.C. §60541, and Compassionate Release. The Warden only addressed Maxwell's CARES Act request and denied relief. The Warden otherwise ignored all Maxwell's other explicitly pled issues. Maxwell, after exhausting his administrative remedies proceeded in Court, filing a §2241 habeas. The U.S.D.C. dismissed alleging Maxwell failed to exhaust his administrative remedies for First Step Act relief. Maxwell appealed the decision of the U.S.D.C. to the Fifth Circuit.

Sua sponte, the Fifth Circuit held, contrary to this Court's decision in Jones v. Hendrix, 216 L.Ed.2d 471, 484 (2022); and contrary to nine other Courts of Appeal -- see Woodall v. Fed. Bureau of Prisons, 432 F.3d 235, 241 (3d Cir. 2025); Jiminian v. Nash, 245 F.3d 144, 147 (2d Cir. 2001); Hernandez v. Campbell, 204 F.3d 861, 864 (9th Cir. 2000); United States v. Hutchins, 835 F.2d 185, 186 (8th Cir. 1987); Montez v. McKinna, 208 F.3d 862, 865 (10th Cir. 2000); United States v. Little, 392 F.3d 671, 678-79 (4th Cir. 2024); McCarthan v. Dir. of Goodwill Indus. - Suncoast, 851 F.3d 1076, 1092-93 (11th Cir. 2007) (en banc); United States v. Barrett, 178 F.3d 34, 50 n.10 (1st Cir. 1999); and Valona v. United States, 138 F.3d 693, 694 (7th Cir. 1998) -- that its bright-line rule adopted in Melot v. Bergomi, 970 F.3d

596, 599 (5th Cir. 2020) controlled. There the Fifth Circuit held that unless a favorable determination of the prisoner's claim would not automatically entitle him to accelerated release from his sentence, then the proper vehicle is a civil rights suit. The Fifth Circuit dismissed.

I. The question for this Court is whether disputes regarding the calculation of an inmate's earned First Step Act time credits, enabling the inmate to transfer into halfway house or home confinement earlier, similar to parole, are actionable under 28 U.S.C. §2241.

II. The question for this Court is whether, given all the obstruction of the administrative remedy process that took place in this case, under Perttu v. Richards, exhaustion of administrative remedies is interwoven into the underlying claims themselves, creating a fact issue for a jury, and whether the trial court must make that determination in the first instance.

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The Fifth Circuit, sua sponte affirmed, arguing that a 28 U.S.C. §2241 was not the proper vehicle for Maxwell to pursue his rights. William Maxwell v. Warden, FCI-Beaumont-Low, 2025 U.S. App. LEXIS 7899 (5th Cir. April 3, 2025); See Appendix 1.

Maxwell timely sought a Rehearing which was denied. Maxwell cannot locate a citation for the rehearing's denial on the data bases provided by the BOP.

The United States District Court's decision is found at William Maxwell v. Warden, FCI-Beaumont-Low, 2023 U.S. Dist. LEXIS 181596 (E.D.Tex., Oct. 6, 2023) See Appendix 2 (U.S.D.C. Final Judgment, Memorandum Order on Ruling Objectives to R&R and Magistrate's Report and Recommendation)

### JURISDICTION

Maxwell's Petition is filed within 90 days of the Fifth Circuit denial of Maxwell's timely filed Motion for Rehearing. The Fifth Circuit sua sponte dismissal was on April 13, 2025 (See Appendix 1).

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The jurisdiction of the Fifth Circuit is invoked under 28 U.S.C. §1291. The jurisdiction of the trial court is under 28 U.S.C. §2241.

## STATEMENT OF THE CASE

In 2020 Maxwell sought transfer to halfway house or home confinement under the First Step Act of 2018, 18 U.S.C. §3624(g), 18 U.S.C. §3621(b) and §3621(h), and the CARES Act of 2020, 18 U.S.C. §3624(c), and the Second Chance Act of 2018 reauthorized by the First Step Act of 2018, 34 U.S.C. §60541, as well as compassionate release. (See 23.40699.355-.356)

Maxwell explained the ongoing obstruction by the BOP of the administrative remedy process, the multiple filings required, the assistance of counsel required, the instructions of staff to inmates not to file administrative remedies but to email the warden instead, the changed responses of the BOP to Maxwell's administrative remedies requests, and the BOP's failure to address Maxwell's complaints.

Maxwell concludes (23-40699.356):

In any event, Maxwell relies on his BP-8, BP-9, BP-10 arguments and counsel's arguments previously made and adopt them herein and attach them hereto. Maxwell expressly objects under the Administration Procedures Act (APA), to any new arguments being asserted by the BOP, as a basis for denial of RRC/Home Confinement that was not asserted in the original response to counsel. Maxwell expressly objects to the unknown basis used by the Regional Office to deny my request (refusal to deliver a written denial pursuant to C.F.R. Rules under the Due Process Clause of the U.S. Constitution. Maxwell expressly objects to the continued unjustified extensions sought by the South Central Office purposefully thwarting the Administrative Remedy process. Maxwell expressly asserts Waiver (on all grounds not raised originally with counsel). Maxwell expressly asserts [the affirmative defense of] admission. The BOP, throughout the process, has made multiple admissions and Maxwell expressly does not waive those BOP admissions.

Maxwell reasserts his rights for substantive due process relief previously raised in his BP-8, BP-9, BP-10, and by counsel. Those include relief under 18 U.S.C. §3621; §3624; 34 U.S.C. §60541; and the modifications made thereto under the CARES Act of 2020 and the First Step Act of 2018 and the Second Chance Act of 2018 (reauthorized and modified by the First Step Act of 2018).

(Emphasis in the original)

Nevertheless of the above, Maxwell had to file yet another Central Office Administrative Remedy complaining of the BOP's obstruction of the administrative remedy process. (See 23-40699.351)

The BOP's failure to respond is found, documented by Maxwell's Unit Manger, at (23-40699.354 and 23-40699.357)

The BOP's response from the Central Office (23-40699.353) notes as the subject matter "Elderly Offender Home Detention Program" and notes the missing Regional Office filing. Of course, Maxwell did not raise "Elderly Offenders" in his Central Office filing.

The BOP's Central Office response (23-40699.350) addresses solely the CARES Act, not the First Step Act (FSA), nor 18 U.S.C. §3621, or any other reason raised by Maxwell in his Central Office Filing.

The Warden's response to Counsel addresses only COVID-19 and the CARES Act. (23-40699.345-.346)

Counsel's correspondence (in addition to the FSA relief sought by Maxwell) with the Warden addresses the BOP's authority to place inmates on home confinement or halfway house under the CARES Act or under 18 U.S.C. §3621. ("Additionally, this request for transfer specifically encompasses Title

18 U.S.C. Sections 3621(h) (First Step Act implementation) and 3624(c), the CARES Act 12003(b)(2). Concurrent herewith a petition for compassionate release is being drafted for my client. Please advise whether you are opposed to a petition being filed with the sentencing court for release for compassionate release.”) (23-40699.324-.329)(23-40699.329). The Warden’s response to counsel does not address relief under 18 U.S.C. §3621; §3621(b)(1)-(5) substantive due process transfers prior to the end of sentence (see Wedelstedt, infra); §3621(h) First Step Act implementation and transfer to home confinement or compassionate release. (Also modified under the First Step Act. See 18 U.S.C. §3582(c)(1) modified by Pub.L. 115-391, title VI, 3603(b), Dec. 21, 2018, 132 Stat 5239 also known as “The First Step Act”.)

The Regional Office’s untimely response (23-40699.336) only addresses COVID-19 and the CARES Act.

Maxwell notified the Warden that he did not address in his response to counsel compassionate release or 18 U.S.C. §3621(b)(1)-(5). (23-40699.294)

Warden responded only to CARES Act. (23-40699.291-.292)

The problem is not with Maxwell’s administrative remedy requests, or counsel’s requests to the Warden. The problem lies with the gross ineptitude of the BOP regarding the scope of the First Step Act -- a statute that the BOP is charged with implementing.

After exhausting his administrative remedies Maxwell filed his 28 U.S.C. §2241 seeking transfer to Home Confinement or

Halfway House under multiple statutes. (23-40699.7-.17 and his memorandum in support 23-40699.19-.66)

Maxwell raised the BOP's failure to apply 18 U.S.C. §3621(b) factors; failure to apply FSA correctly; failure to apply CARES Act correctly. (23-40699.7-.17)

As part of Maxwell's memorandum in support, he attached his affidavit stating "I have repeatedly contacted the warden regarding the First Step Act, the CARES Act, the statute [sic] §3621 and §3624, via email as instructed by Unit Team Staff, all to no avail, as staff at FCI-Beaumont-Low substantively do not respond to email (thereby thwarting the administrative remedies [process] (informal settlement))." (23-40699.65)

The Warden filed a Motion for Summary Judgment. (23-40699.252-.410)<sup>EN1</sup> In the Summary Judgment the Warden argued that Maxwell exhausted his administrative remedies as to the CARES Act (which is not appealed herewith) but did not exhaust his administrative remedies as to the First Step Act. (23-40699.252-.410) (despite the fact that both FSA and CARES Act administrative remedies are in the same document) (23-40699.355-.356)

In support of the Warden's Motion for Summary Judgment (M4SJ) the Warden attached the declaration of Thornton. (23-40699.269-.271)

The sole basis for the Warden's allegations that Maxwell failed to exhaust his administrative remedies is the facially false statement of Thornton. First, Thornton states (23-40699.270) at ¶5 "The subject of the administrative remedy was

'Compassionate Release[, ] COVID/Halfway House Placement." ...  
"See Attachment 2." (Initially, compassionate release is FSA  
modification. See supra.)

Notably Attachment 2 to Thornton's Declaration is not Maxwell's Administrative Remedy Filings, but rather computer screen(s) documenting the BOP's entry of Maxwell's Administrative remedy requests. On 23-40699.287 the first highlighted section administrative remedy noted requests for compassionate release ("Comp Rel"); COVID; Halfway House Placement. "Halfway house placement" includes: 18 U.S.C. §3621(b)(1)-(5) "substantive due process" application prior to prerelease transfer under 18 U.S.C. §3624(c), see Wedelstedt, infra; 18 U.S.C. §3624(c)(2) under the CARES Act; 18 U.S.C. §3621(h) First Step Act implementation; 18 U.S.C. §3624(g)(2) and (3) First Step act application. On 23-40699.287 the second highlighted section notes Home Confinement but does not mention COVID, CARES Act, FSA, or compassionate release. "Home Confinement" includes: 18 U.S.C. §3621(h) First Step Act implementation; 18 U.S.C. §3624(g)(2) and (3) First Step act application and the Second Chance Act integration, see 34 U.S.C. §60541(a)(2)(A) (defining incentives), 18 U.S.C. §3632(d)(6) (FSA time credits are in addition to other incentives). On 23-40699.288 the third highlighted section notes Home Confinement but does not mention COVID, CARES Act, FSA individually, or compassionate release. On 23-40699.288 the fourth highlighted section does not mention COVID, CARES Act, FSA individually, or compassionate release

but does mention home confinement. On 23-40699.289, the highlighted section for the first time states "appeals denial of home confinement via CARES Act" (but nothing else).

So in fact Maxwell's request for home confinement (FSA) under a plethora of statutes are noted and not until the Central Office denial does the BOP add that the denial was based on the CARES Act.

The BOP's written denial of the Administrative remedy corresponding to 23-40699.289 is found at 23-40699.350, and ignores every relief sought by Maxwell except the CARES Act.

The corresponding Administrative remedy filed by Maxwell is found at (23-40699.351-.352) (23-40699.355-.356). As Maxwell makes abundantly clear in his administrative remedy request, he is "reassert[ing] his rights for substantive due process relief previously raised... These include relief under 18 U.S.C. §3621; §3624; 34 U.S.C. §60541; The First Step Act of 2018 and the Second Chance Act of 2018 (reauthorized and modified by the First Step Act of 2018). (Emphasis in original) (23-40699.356) This of course includes FSA under 18 U.S.C. §3621(h); FSA under 18 U.S.C. §3624(g)(2) and (3); Second Chance Act modifying the FSA at 34 U.S.C. §60541(a)(2)(A) and 18 U.S.C. §3632(d)(6).

Despite the fact that Maxwell expressly asserts relief under the First Step Act and provides the statute and section numbers, Thornton falsely states in his declaration (23-40699.271):

The records appear to indicate inmate Maxwell has exhausted his administrative remedies in regards to his request for home confinement placement under the CARES Act. However, there are no records to indicate inmate Maxwell exhausted, or ever attempted to exhaust, any of his other claims regarding the First Step Act (FSA)... [including] his transfer to halfway house as a result of successful participation [in FSA programming and productive activities]. See generally Attachments 2-5.

(emphasis added)

This statement is categorically false. More egregious is the fact, as Maxwell has documented above, that all the evidence of Thornton perjurious statements are contained in his own attached documents (Attachments 2-5, 23-40699.272-.366). Judicial notice requested. Maxwell requests a ruling on this judicial notice.

In response to the Warden's M4SJ (23-40699.848-.1115) **EN2** Maxwell establishes the M4SJ standard (evidence viewed from non-movant's perspective, the insufficiency of the Thornton declaration, Maxwell's affirmative defenses of waiver, admission and estoppel (23-40699.887)); Maxwell pointed out the facially false Thornton declaration (23-40699.888-.891); Maxwell pointed out the insufficiency of the Thornton declaration itself (the declaration is equivocal) (23-40699.890-.891); Maxwell pointed out the numerous errors in the Warden's documents (23-40699.891-.894); Maxwell attached his own declaration controverting Thornton (23-40699.915-.917) (23-40699.970-.992) with 27 exhibits attached. Maxwell averred under oath, with supporting documents, that he exhausted his administrative remedies. (23-40699.991-.992)

In response Maxwell explains his exhaustion of the First Step Act remedy. He explains his presence with Unit Manager Rivera when Rivera called the complex counsel, Ms. Hauck, and Ms. Hauck told Rivera (phone was on speaker) that he (Unit Manager Rivera) was working "too hard" for the inmates as "we were not doing CARES Act and First Step Act" here.

Maxwell expressly noted his Administrative Remedy filing that lists First Step Act by name and statute numbers. (23-40699.992) See also (23-40699.355-.356) noted (in the trial court) in the declaration as PageID# 350-351).

Maxwell also noted the BOP's confession that Maxwell has a liberty interest in his earned FSA Time Credits. (23-40699.934) (23-40699.870-.871) Fed. Reg./Vol. 87, No 12/Wed. Jan. 19, 2022 p.2016 ("Given the liberty issues implicated by the prompt implementation of this program and this rule, the Bureau is prepared to begin implementation immediately...")<sup>EN3</sup>

Maxwell also pointed out that Congress used the mandatory "shall" on 112 separate occasions in the FSA, (See 23-40699.867-.871) thereby removing discretion from the BOP regarding implementation of the FSA.

The magistrate recommended that the M4SJ be granted on the sole issue of failure to exhaust FSA claims and parroted Thornton's facially false declaration. (23-40699.1152-.1158) (23-40699.1156) ("Respondent provides Petitioner's grievance records and the declaration of Justin Thornton interpreting those records. Exhibit A, Attachments 2-5. A review of the competent summary judgment evidence reveals that to be the

case... There are no records that indicate Petition exhausted, let alone attempted to exhaust, any claims relating to the First Step Act..."") Sadly, this is also an incorrect claim.

The District Court, in overruling Maxwell's timely filed and detailed objections to Magistrate's R & R (23-40699/1164-.1175), parroted the false Thornton statement. (23-40699.1203-.1206) A third incorrect claim based on Thornton's perjurious declaration.

The District Court issued a final judgment. (23-40699.1207)

Maxwell timely appealed. (23-40699.1208-.1209)

The Court found Maxwell indigent. (23-40699.1228-.1229)

On appeal Maxwell raised three issues. First, whether Maxwell exhausted his administrative remedies regarding First Step Act. Second, whether exhaustion of administrative remedies is required under 28 C.F.R. §542.14(d)(5) and Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994) where, as here, exhaustion is not required pursuant to the Code of Federal Regulations and where the available remedy is wholly inappropriate to the relief sought. (Arguing in the alternative.) And, three, whether a fact issue existed to preclude summary judgment. See Maxwell's opening brief at the Fifth Circuit.

The Warden filed a "letter opening brief" urging that the district court's ruling was correct.

The Fifth Circuit, sua sponte, affirmed, holding that under Melot v Bergami, 970 F.3d 596, 599 (5th Cir. 2020) "The 'bright-line rule' our court has adopted is that if a favorable

determination of the prisoner's claim would not automatically entitle him to accelerated release, then the proper vehicle is a civil rights suit." See Maxwell v. Warden, FCI-Beaumont-Low, 2025 U.S. App. LEXIS 7899 (5th Cir. April 3, 2025) (Appendix 1)

This petition for certiorari follows.

#### ARGUMENT

- I. The Fifth Circuit Court of Appeals has decided the scope of 28 U.S.C. §2241 in Maxwell's case, in a way, that conflicts with this Court in Jones v. Hendrix, 216 L.Ed.2d 471, 484 (2022) and the Third Circuit in Woodall v. Fed. Bureau of Prisons, 432 F.3d 235, 241 (3d Cir. 2025); the Second Circuit in Jiminian v. Nash, 245 F.3d 144, 147 (2d Cir. 2001); c.f. Chambers v. United States, 106 F.3d 472, 474-475 (2d Cir. 1997); the Ninth Circuit in Hernandez v. Campbell, 204 F.3d 861, 864 (9th Cir. 2000); the Eighth Circuit in United States v. Hutchins, 835 F.2d 185, 186 (8th Cir. 1987); the Tenth Circuit in Montez v. McKinna, 208 F.3d 862, 865 (10th Cir. 2000); the Fourth Circuit in United States v. Little, 392 F.3d 671, 678-79 (4th Cir. 2024); the Eleventh Circuit in McCarthan v. Dir. of Goodwill Indus. - Suncoast, 851 F.3d 1076, 1092-93 (11th Cir. 2007) (*en banc*); the First Circuit in United States v. Barrett, 178 F.3d 34, 50 n.10 (1st Cir. 1999); and the Seventh Circuit in Valona v. United States, 138 F.3d 693, 694 (7th Cir. 1998). Because the Fifth Circuit's "bright-line rule" conflicts with the holdings of this Court and the holdings of nine other circuits, as well as disenfranchises thousands of inmates housed in Texas, Louisiana, and Mississippi from any relief when the Bureau of Prisons miscalculates their sentences based on errors in parole calculations, First Step Act calculations or other placement errors, certiorari is warranted and correction needed.

In Jones v. Hendrix, this Court explains that 28 U.S.C. §2241 habeas corpus petitions are the vehicle to challenge "the place or manner" in which he is detained, or denied "parole or good-time credits" or "that an administrative sanction affecting the conditions of his detention is illegal." 216 L.Ed.2d 471, 484 (2022) (internal citations omitted); see also United States v. Addonizo, 442 U.S. 178, 186-87 (1979)

(§2241 appropriate to challenge complaints about "good time" and "parole"); Jennings v. Rodriguez, 200 L.Ed.2d 122, 173 (2018) (prisoner on parole is still in custody) (citing Maleng v. Cook, 490 U.S. 488, 491 (1989) (prisoner released from prison, but on parole still "in custody" for purpose of §2241); c.f. Lopez v. Terrell, 654 F.3d 176, 180 (2d Cir. 2011); Mujahid v. Daniels, 413 F.3d 991, 994 (9th Cir. 2005); Watkins v. Garrett, 476 Fed. App'x 430, 431 (5th Cir. 2012) (citing Maleng v. Cook, 490 U.S. at 491) (per curium) (unpublished).

The Supreme Court cases, supra, are in harmony with nine circuits. See Woodall, supra, (we hold that §2241 allows a federal prisoner to challenge the "execution" of his sentence in habeas); Jiminian, supra, ("A motion pursuant to §2241 generally challenges the execution of a federal prisoner's sentence, including such matters as the administration of parole, computation of a prisoner's sentence by prison officials, prison disciplinary actions, prison transfers, type of detention and prison conditions.") 245 F.3d 144, 147 (2d Cir. 1997) (emphasis added) (internal citations omitted); Hernandez v. Campbell, (motions contesting the "manner, location, or conditions of a sentence's execution" must be brought, pursuant to §2241) 204 F.3d 861, 864 (9th Cir. 2000) (emphasis added); Wedelstedt v. Wiley, 477 F.3d 1160, 1163-64 (10th Cir. 2007) (§2241 petition is the proper vehicle to challenge decisions regarding RRC (halfway house)); Levine v. Apker, 455 F.3d 71, 78 (2d Cir. 2006) ("We find that a habeas petition under 28 U.S.C. §2241 was the proper vehicle to challenge confinement in a federal correctional center rather

than a CCC [halfway house - now titled RRC -- Residential Reentry Center]."); Elwood v. Jeter, 386 F.3d 842, 844 (8th Cir. 2004) (§2241 proper jurisdiction vehicle to challenge decisions regarding RRC).

In Woodall, the Third Circuit agreed with the decisions by the Second, Sixth, Ninth, and Tenth Circuits that the BOP's refusal to transfer a prisoner to prerelease custody was a cognizable challenge to the execution of the petitioner's sentence. Woodall, 432 F.3d at 241-44; c.f. Jiminian, supra; Hernandez v. Campbell, supra; United States v. Jalili, 925 F.2d 889, 893 (9th Cir. 1991) (an attack upon the execution of a sentence is properly cognizable in a 28 U.S.C. §2241 habeas petition. Citing United States v. Hutchins, 835 F.2d 185, 186 (8th Cir. 1987)); Montez v. McKinna, 208 F.3d 862, 865 (10th Cir. 2000) (a claim focusing on where an inmates sentence will be served, seems to fit better under the rubric of §2241); United States v. Little, 392 F.3d 671, 678-79 (4th Cir. 2004) (we have previously noted that challenges to the execution of an inmates sentence are properly brought under 28 U.S.C. §2241); McCarthan v. Dir. of Goodwill Indus. - Suncoast, 851 F.3d 1076, 1092-93 (11th Cir. 2017) (en banc) (§2241 is the appropriate vehicle for a federal prisoner "to challenge the execution of his sentence, such as the deprivation of good-time credits[.]") Further, "a §2241 petition is ... an appropriate vehicle to challenge placement decisions by the BOP." Jones v. Zenk, 495 F.Supp.2d 1289, 1296 (N.D. Ga. 2007) (challenging the BOP's failure to place inmate in an RRC prior to the last 10% of their sentence); United

States v. Barrett, 178 F.3d 34, 50 n.10 (1st Cir. 1999) (§2241 petition correct vehicle to attack execution of sentence); c.f. Valona v. United States, 138 F.3d 693, 694 (7th Cir. 1998).

The First Step Act provided for inmates to earn FSA Time Credits to be spent either in RRC or in home confinement. See 18 U.S.C. §3632(d)(4)(A) ("In general, a prisoner ... 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 ... to be at a minimum or low risk ... 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.") (emphasis added)

The Congress left no discretion for the BOP but to follow these directives. See 18 U.S.C. §3632(d)(4)(C) ("... 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... shall transfer eligible prisoners, as determined under section 3624(g) [18 U.S.C. §3624(g)] into prerelease custody or supervised release." (emphasis added)

Significantly here, during the relevant time frame, 18 U.S.C. §3624 [including §3624(g)] and 18 U.S.C. §3621 [including §3621(h)] determined the BOP's implementation and application of the FSA earned time credits. EN4

Additionally post Wedelstedt, supra, in every circuit to address the issue, 18 U.S.C. §3621(b)(1)-(5), the BOP was permitted to consider inmates for transfer to RRC prior to the final portion of their sentence under 18 U.S.C. §3621(b)(1)-(5). In Wedelstedt the Court distinguished RRC/home confinement transfer under 18 U.S.C. §3621(b)(1)-(5) from pre-release transfer under 18 U.S.C. §3624(c). See Wedelstedt, 477 F.3d 1160 (generally).

Additionally, under the First Step Act, consideration for RRC/home confinement transfer under the Second Chance Act, incorporated the provisions of 18 U.S.C. §3621(b)(1)-(5). See 18 U.S.C. §3624(c)(6).

Nor are Maxwell's FSA complaints some single isolated circumstance. During the time frame of Maxwell's filing the BOP had not given FSA time credits to more than 60,000 inmates. See Attachment 2, to Maxwell's Amended Summary Judgment Response, Michael E. Horowitz, Office of Inspector General, "Impact of the failure ... on the Federal Bureau of Prisons' Implementation of the First Step Act ..." (23-40699.939-.950) (23-40699.944)

I.G. Horowitz writes:

The FSA provides that BOP inmates who "successfully complete [EBRR programs] or productive activities, shall earn time credits." Since January 15, 2020, federal inmates have been able to earn time credits under the FSA (see text box). However, we found that the BOP had not applied such statutorily earned time credits to any of the approximately 60,000 eligible inmates who may have completed EBRR programs or productive activities. We are concerned that the delay in applying earned time credits may negatively affect inmates who have earned a reduction in their sentence or an earlier placement in the community.  
(23-40699.944)

Maxwell, of course, is one of those 60,000 inmates prejudiced by the BOP's inaction.

The Administrative Remedy paradigm is found at 28 C.F.R. §542.13-.18. Title 28 C.F.R. §542.14(c)(2) provides:

The inmate shall place a single complaint or a reasonable number of closely related issues on the form. If the inmate includes on a single form multiple unrelated issues, the submission shall be rejected and returned without response, and the inmate shall be advised to use a separate form for each unrelated issue...

Id. (23-40699.275) (emphasis added)

This did not happen. (See 23-40699.287-.289) (23-40699.286-.287; 23-40699.350) (23-40699.892) Not once. Not only that, Maxwell complained of the BOP losing his filings (23-40699.293); not addressing his complaints (23-40699.892); not responding to his administration remedies which addressed the CARES Act, Second Chance Act, and First Step Act all contained therein (23-40699.892) (23-40699.356).

Maxwell in detail addressed exhaustion (23-40699.888-.907), especially in view of the "specificity of notice" standard applicable to the BOP which only requires that prison officials be alerted to the problem. See Williams v. Beard, 482 F.3d 637, 640 (3d Cir. 2007) ("alert[is] prison officials to a problem") "That grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought." Griffin v. Arpaio, 557 F.3d 1117 (9th Cir. 2009) (quoting Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002) (emphasis added)) There is no binding precedent that "requires a heightened specificity standard" for administrative filings. Cordero v. FNU Ricknauer, 2014 U.S. Dist. LEXIS 129822 \*14 (D.N.J.

Sept. 17, 2014); Yousef v. Reno, 254 F.3d 1214, 1222 n.3 (10th Cir. 2001) (“[T]he instructions do not indicate the specificity with which a pro se’ applicant must describe his or her grievances...”) And finally, this Court holds “the primary purpose of a grievance is to alert prison officials to a problem...” Jones v. Bock, 549 U.S. 109, 127 S.Ct. 910, 166 L.Ed.2d 798 (2007) (quoting Johnson v. Johnson, 385 F.3d 503, 522 (5th Cir. 2004)).

Maxwell’s request was to be transferred to home confinement. The multiple vehicles by which to address this request are either the FSA individually, 18 U.S.C. §3621(b)(1)-(5), Second Chance Act, the CARES Act, or compassionate release (which is also First Step Act relief).

Maxwell, given the “specificity” standards, alerted the prison that he was seeking RRC and home confinement (25-40699.355-.356) (23-40699.287-.289). The statutes that provide such relief are 18 U.S.C. §3621(b)(1)-(5); §3621(h); 18 U.S.C. §3624(c)(1) and (2); §3624(g) 34 U.S.C. §60541(a)(2)(A) (which defines RRC as an incentive) and is therefore in addition to FSA Time Credits, 18 U.S.C. §3632(d)(6); compassionate release (also FSA modified), and the time frame limitations and bed space restrictions are non-issues under 18 U.S.C. §3624(g)(10) and (11). Maxwell advised the Warden and BOP, sufficiently and clearly (complaint and statute[s] at issue) enough to exhaust his administrative remedies, alternatively to create a fact issue precluding summary judgment.<sup>EN5</sup> It is axiomatic that

Maxwell (the plaintiff) controls his pleadings, and his pleadings are liberally construed under Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652, 654 (1972) (per curiam) ("Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by the petitioner ... are sufficient to call for the opportunity to offer supporting evidence. We cannot say under the allegations ... it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'.") (internal citations omitted)

Finally, Summary Judgment was not proper under 28 C.F.R. §542.14(d)(5) and Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994). Part and parcel of Maxwell's arguments for the district court to determine was that 18 U.S.C. §3632(d)(4)(B) was being interpreted incorrectly by the BOP (23-40699.900-.907). This is not a decision made by the Warden, but a decision made at the Central Office. Title 28 C.F.R. §542.14(d)(5) provides:

- d. Exceptions to Initial filing at Institute
  - (5) Other requests for formal review of decisions not originating from the Warden. Other than the exceptions listed above, formal administrative remedy requests regarding initial decisions that did not originate with the Warden, or his/her staff, may be initially filed with the Bureau Office which made the original decision, and appealed directly to the General Counsel.

Deception, in this case, is the BOP's calling card. Title 28 C.F.R. §542.14(d)(5) is the fifth subsection to paragraph "(d)". And while "(d)(5)" was added to the C.F.R. in 2010, the BOP submitted to the Court, under oath, a document dated 2014,

that excised out §542.14(d)(5) entirely. Apparently, the BOP is permitted to be deceptive with the courts with impunity. See BOP Program Statement (23-40699.271-.280) (23-40699.276) dated 1/6/2014, and with aplomb of no consequence for their falsity with the Court, section "(d)(5)" is excluded!

Maxwell complained of the deception by the BOP, regarding the omitted "(d)(5)" subparagraph. See Maxwell's opening brief at the Fifth Circuit. Whatever happened to counsel's obligation to be honest with the Court under Rule 11. See Business Guides v. Chromatic Comm., 498 U.S. 533, 540-553 (1991) (generally).

Maxwell also complained in his opening brief at the Fifth Circuit about the BOP misinterpretation of the Statute (18 U.S.C. §3632(d)(4)(B)) in its latest C.F.R (28 C.F.R. §523.42) promulgation. See Maxwell's opening brief at the Fifth Circuit and 23-40699.898-.907. Specifically, 18 U.S.C. §3632(d)(4)(B) does not include prohibition on "productive activities" (prior to Dec. 21, 2018) and the BOP added words to the rule in promulgating the C.F.R. See Attachment 1 to Maxwell's Amended Summary Judgment Response (23-40699.923-.937). In particular, despite the phrase "evidence-based recidivism reduction programming or productive activities" appearing in tandem throughout the FSA<sup>ENG</sup> it does not appear in 18 U.S.C. §3632(d)(4)(B) which reads:

- (B) Availability. A prisoner may not earn time credits under this paragraph for an evidence-based recidivism program that the prisoner successfully completed
  - (i) prior to the date of enactment of this subchapter [enacted Dec. 21, 2018]; or

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

The BOP writes phrases into the C.F.R when Congress expressly excluded them. See (23-40699.923-.937) (23-40699.936):

§523.42 Earning First Step Time Credits

(b) Dates of participation in EBRRs or PAs [Evidence-based recidivism reduction or productive activities, respectively] (1) An inmate cannot earn FSA Time Credits for programming or activities in which he or she participated before December 21, 2018 the date of enactment of the First Step Act of 2018.  
(emphasis added)

In short, the plain unambiguous language of the Statute 18 U.S.C. §3632(d)(4)(B) precludes earning FSA Time Credits for programming completed prior to December 21, 2018. That's it -- nothing else. The BOP without statutory authority, in violation of the separation of powers, takes on itself the authority to rewrite the statute in its codification of the C.F.R to add the phrase "productive activities" to this exclusion and to add programs begun but not completed prior to Dec. 21, 2018 to this exclusion. This legislative task the BOP cannot do.

This legislative adventure, in violation of the separation of powers, did not occur with the Warden or his assistants, but rather with the Central Office and therefore under 28 C.F.R. §542.14(d)(5) exhaustion prior to the Central Office was not required. Arguing in the alternative, exhaustion was complete with the filing of Maxwell's Central Office Filing. (23-40699.355-.356) (No objection, rejection, or response to this

issue ever issued by the BOP.)

II. Under Perttu v. Richards, No. 23-1324, 2025 LEXIS 2380 (June 18, 2025) where, as here, the exhaustion of administrative remedies is interwoven into the underlying claims themselves, thereby creating a fact issue, whether the case should be remanded to the trial court for trial.

After this case was decided by the Fifth Circuit, by sua sponte holding that 28 U.S.C. §2241 was not the proper vehicle to address Maxwell's claims (while Maxwell's petition for rehearing was pending) this Court decided Perttu v. Richards. In Richards<sup>EN7</sup> the Court held that "[a]n inmate has an undisputed First Amendment right to file grievances against prison officials on his own behalf." citing Herron v. Harrison, 203 F.3d 410, 415 (6th Cir. 2000). And while Richards was in the 42 U.S.C. §1983 civil-rights context the arguments are the same for 28 U.S.C. §2241 claims, regarding exhaustion.

There are three elements. The first, the right to file a grievance on one's own behalf against prison officials; the second, the BOP actions of continual delay, stripping of exhibits from Maxwell's filings, refusing to address the allegations raised in the administrative remedies, false declaration of Thorton -- are all "adverse action[s] [that are] capable of deterring a person of ordinary firmness from exercising the constitutional right in question." Hill v. Lappin, 630 F.3d 468, 472 (6th Cir. 2010). "Actual deterrence, need not be shown." Harbin-Bey v. Rutter, 420 F.3d 571, 579 (6th Cir. 2025). Citing Bell v. Johnson, 308 F.3d 594, 603 (6th Cir. 2022) "[U]nless the claimed retaliatory action is truly inconsequential, the plaintiff's claim should go to the

jury." Id.

In Richards' case, as in Maxwell's case (as described supra), the staff destroyed the grievances (lost them, removed exhibits filed facially false declarations, did not respond, rejected on pretextual reasons). As the Sixth Circuit noted, "[h]ere, we have more than 'potential' interference with protected speech because Perttu is alleged to have directly destroyed Richard's grievances." (internal citations omitted)

The third element, the question of causation is a fact issue to be resolved by the jury. Maben v. Thelen, 887 F.3d 252, 267 (6th Cir. 2018).

The remaining issues in Perttu v. Richards need not be addressed here, in the first instance, by this Court. Rather, on a determination that 28 U.S.C. §2241 is the proper vehicle for Maxwell's claims, the question will be for the trial court to determine whether fact issues preclude a determination by the court of the exhaustion issue in the first instance, given the obstruction of the administrative remedies documented in this case.


Under Teague v. Lane, 489 U.S. 288, 310 (1989), Perttu v. Richards is retroactive to Maxwell who is on direct appeal of his §2241 filing.

#### PRAYER

For these reasons, Maxwell prays for certiorari on the issues of whether 28 U.S.C. §2241 is the proper vehicle to resolve disputes involving the BOP's placement of inmates under 18 U.S.C. §3621(b)(1)-(5); 18 U.S.C. 3624(c);

18 U.S.C. §3624(g) (First Step Act); Second Chance Act; on occasions that are other than normal transfers between prisons, such as occurs when inmates are transferred into pre-release custody or outside of the traditional prison confinement; and whether, under Perttu v. Richards, the BOP's obstruction of the administrative remedy process, when alleged, must be addressed in the first instance by the trial court (to determine whether obstruction is interwoven with the exhaustion claims). Maxwell prays for such other and additional relief to which he may be entitled, whether in equity or in law.

Respectfully submitted,

  
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FCI-Beaumont-Low  
P.O. Box 26020  
Beaumont, Texas 77720  
Pro se'

## END NOTES

- EN1:** Warden concurrent therewith filed a 12(b)(1) and 12(b)(6) motion, which were denied by the District Court with a Mother Hubbard Clause and are not part of this appeal/certiorari petition. (23-40699.1207) (23-40699.1152-.1158) (23-40699.1203-.1206)
- EN2:** The Court struck Maxwell's three separate responses to the 12(b)(1), 12(b)(6), and M4SJ, and allowed Maxwell to file a single oversized response. (See 23-40699.2-.3)
- EN3:** "Liberty Issue" and "Liberty Interest" are used interchangeably in the case law. As Maxwell explained in his filings (See 23-40699.871-.872) See Johnson v. Knom, 477 F.3d 75, fn.8 (3d Cir. 2006) ("... claim might be brought raising a First Amendment claim and not implicate liberty issues..."); Betances, et al. v. Fischer, 2022 U.S. Dist. LEXIS 45082 \*34 (S.D. N.Y., March 14, 2022) ("... present loss of liberty issues took place..."); Secret v. Brierton, 584 F.2d 823, 829 (7th Cir. 1978) ("... deprivation of legal materials, which directly reflect on liberty issues..."); Simms v. Humphreys County Sch. Dist., et al., 1994 U.S. App. 41132, at 7 (5th Cir 1994); Cassanova v. O'Mara, 2011 U.S. Dist. LEXIS 92779, \*31 (D.N.H., July 25, 2011) ("A pretrial detainee's claim that he has been subjected to unconstitutional conditions of confinement implicates Fourteenth Amendment liberty issues.")

- EN4:** Maxwell expressly raised these statutes in his administrative remedy complaints. (See 23-40699.356)
- EN5:** Generally, whether §2241 was the proper vehicle to resolve placement issues would not require resolution of the summary judgment by this Court. However, the Fifth Circuit raises in fn.1 that Maxwell sought relief under the First Step Act's Elderly Offender Pilot Program, and while Maxwell's Unit Manager Rivera approved Maxwell under this program (23-40699.365-.366) this was not raised or argued by Maxwell.
- EN6:** Maxwell highlights this dichotomy in his briefs at 23-40699.901-.904.
- EN7:** Maxwell argues from the Sixth Circuit opinion, as the U.S. Supreme Court opinion is not available (on the 1990s protocols (disc sent out by Lexis to the prison for loading)) to inmates yet, raising its own First Amendment Claim of access to the Courts. When the BOP does not timely provide opinions of this Court to inmates to enable petitions for certiorari to be timely filed, of necessity, access to this Court regarding current matters is denied as a matter of law.

VERIFICATION

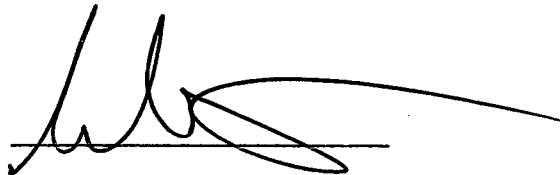
I hereby verify that the factual allegations in the PETITION FOR CERTIORARI, to which this is attached, are within my personal knowledge and are true and correct to the best of my knowledge and belief.

I additionally verify that each item attached in the appendices are true and correct copies of statutes, ordinances, rules, memoranda and reports, petitions reflected in the record.

I make this verification under penalties of perjury and pursuant to 28 U.S.C. §1746.

8/20/25

Date

A handwritten signature in black ink, appearing to read 'William Maxwell', written over a horizontal line.

William Maxwell