No. 25-5930

In the Supreme Court of the United States

WILLIAM MAXWELL, PETITIONER

v.

SANDRA DINIS, WARDEN

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

JOINT APPENDIX

MASHA G. HANSFORD
DAVIS POLK & WARDWELL LLP
1050 17th Street, N.W.
Washington, DC 20036
(202) 962-7067
mhansford@davispolk.com

Counsel of Record
for Petitioner

D. JOHN SAUER
Solicitor General
DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(202) 514-2214
SupremeCtBriefs@usdoj.gov

Counsel of Record
for Respondent

BRIAN W. BARNES
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, DC 20036
(202) 220-9623
bbarnes@cooperkirk.com

Court-Appointed Amicus
Curiae in Support of the
Judgment Below

PETITION FOR A WRIT OF CERTIORARI FILED: AUGUST 20, 2025
CERTIORARI GRANTED: JUNE 1, 2026

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

No. 1:22-cv-40

WILLIAM MAXWELL,

v.

WARDEN, FCI BEAUMONT LOW.

Filed: February 7, 2022

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

Personal Information

1. (a) Your full name: William T. Maxwell

   (b) Other names you have used: N/a

2. Place of confinement: FCI-Beaumont-Low

   (a) Name of institution: _____

   (b) Address: P.O. Box 26020
   Beaumont, Texas 77720

   (c) Your identification number: 71944-279

3. Are you currently being held on orders by

☒ Federal authorities ☐ State authorities

☐ Other – explain

_____

4. Are you currently:

☐ A pretrial detainee (waiting for trial on criminal charges)

☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

☐ If you are currently serving a sentence, provide:

(a) Name and location of court that sentenced you: United States District Court - District of New Jersey, Camden

(b) Docket number of criminal case: U.S. v. Scarfo, et al. 11240-RBK

(c) Date of sentencing: 7/30/15

☐ Being held on an immigration charge

☐ Other (explain)

Decision or Action You Are Challenging

5. What are you challenging in this petition:

☒ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

☐ Pretrial detention

☐ Immigration detention

☐ Detainer

☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

☐ Disciplinary proceedings

☐ Other *(explain)*_____

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

(a) Name and location of the agency or court: BOP-FCI-Beaumont-Low // Warden or

(b) Docket number, case number, or opinion number: Admin. R. No. 104 383-A2

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*: Failure of BOP/WARDEN to properly consider 18 U.S.C. §3621(b) factors for transfer to RRC prior to end of sentence, failure to properly apply First Step Act Time Credits, improper agency interpretation of FSA, failure to use §3621 factors under CARES

(d) Date of the decision or action: _____

Your Earlier Challenges of the Decision or Action

7. First appeal

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

☒ Yes ☐ No Exhausted all administrative remedies see Exhibits

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Exhausted BOP Administrative Remedies, BP-8; BP-9; BP-10; BP-11

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: 104 8383-A2

(4) Result: Partially affirmed Warden's Response

(5) Date of result: 5-24-21 – Delivered 6/22/21

(6) Issues raised: Failure to apply §3621(b) factors (see memo in support); failure to apply FSA correctly; failure to apply CARES Act Correctly, improper interpretation of FSA Failure to act in good faith and denial of substantive due process under the CARES Act; §3621(b). See Memo in support.

(b) If you answered "No," explain why you did not appeal: N/A

8. **Second appeal**

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

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Exhausted BOP Administrative Remedies see memo in support and exhibits attached.

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: Admin R. No. 104 8383-A2

(4) Result: Partially affirmed warden

(5) Date of result: 5-24-21 – Delivered 6/22/21

(6) Issues raised: Failure to apply §3621(b) factors (see memo in support); failure to apply FSA correctly; failure to apply CARES Act correctly; improper interpretation of FSA; failure to act in good faith and denial of substantive due process under the CARES Act; §3621(b) See Memo in support and Exhibits attached.

(b) If you answered "No," please explain why you did not file a second appeal: N/A

9. Third appeal

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

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Exhausted BOP Administrative Remedies see memo in support and exhibits attached.

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: Admin R. No. 104 8383-A2

(4) Result: Partially affirmed warden. But changed BOP policy

(5) Date of result: 5-24-21 – Delivered 6/22/21

(6) Issues raised: Failure to apply §3621(b) factors (see memo in support); failure to apply FSA correctly; failure to apply CARES Act correctly; improper interpretation of FSA; failure to act in good faith and denial of substantive

due process under the CARES Act; §3621(b) See Memo in support and Exhibits attached.

(b) If you answered "No," please explain why you did not file a third appeal: N/A

10. Motion under 28 U.S.C. § 2255

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

☐ Yes ☒ No

If "Yes," answer the following:

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

☐ Yes ☐ No N/A

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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

☐ Yes ☒ No N/A

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes ☒ No

If "Yes," provide:

(a) Date you were taken into immigration custody: N/A

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

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

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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

☐ Yes ☐ No

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. Other appeals

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

☐ Yes ☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: N/A

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

(c) Date of filing: _____

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

_____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution,

laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground:

GROUND ONE

The BOP may, upon request, transfer a inmate to CCC (halfway house) at any time during the prisoner's incarceration under both Title 18 U.S.C. §§ 3621(b) and § 3624(c) during the CARES Act application or to home confinement.

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

The BOP does not consider inmates in good faith for transfer to home confinement or halfway house using the §3621(b) factors either during their sentence or at the end of their sentence or under the CARES Act. (See Memo in support)

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

☒ Yes ☐ No

GROUND TWO

The BOP must in good faith perform an individualized analysis of Maxwell's request for transfer and not rely on percentage of sentence served under both 18 U.S.C. §§ 3621(b); 3624(c) analysis.

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

Prior to and during the CARES Act enactment the BOP is using a percentage of the sentence served as a determining factor on whether to transfer a inmate to halfway house or home confinement and not relying on the 3621(b) factors. (See Memo in

support).

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

☒ Yes ☐ No

GROUND THREE

The BOP must not treat Maxwell differently from high economic or status individuals (Michael Cohen, Paul Manafort) (See Memo in Support)

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

Both Paul Manafort and Michael Cohen had similar convictions to Maxwell, served less than 50% of their sentences, and were transferred to home confinement/halfway house. The § 3621(b) factor analysis is being preformed differently for high economic and status individuals. (See Memo in Support)

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

☒ Yes ☐ No

GROUND FOUR

The BOP must consider, under the First Step Act transferring Maxwell to the Houston RRC for his participation in productive activities and programming his entire time in prison considering his BRAVO score and PATTERN Scores under the § 3621(b) factors.

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

The CARES Act, First Step Act, and § 3621(b) pro-

vide for Maxwell to transfer to RRC or home confinement under the § 3621(b) factors prior to the end of his sentence. The CARES Act, lifted the restrictions (time period) during which an inmate must be considered for transfer to RRC/home confinement). Additionally, the First Step Act provides for the earning of time credits to be spent at RRC/home confinement. The BOP use of a percentage of sentence as a basis to determine an inmates transfer to RRC or home confinement violates the statutes. (See Memo in support).

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

☒ Yes ☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: On January 13, 2022, the BOP published a new rule regarding the First Step Act, reversing its prior proposed rule (posted for comment in 2020). However, this rule still violates the canons of statutory construction and supplants the mandatory language of "shall" with the permissive language of "may" in violation of the plain and unambiguous language of the statute.

GROUND FIVE

The Safer Detention Act provides for judicial review of the BOP's denial of transfer to RRC or home confinement. Because it is anticipated that the Safer Detention Act will be passed and codified during the pendency of this § 2241 Maxwell briefs The Safer Detention Act in the alternative.

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

The Safer Detention Act has passed out of committee with bipartisan support and expressly allows for judicial review of the BOP's decisions and denials of transfer to halfway house/home confinement, not merely review of the process (substantive due process). In that it would be judicially economical and that the administrative remedies are exhausted, on its final passage, Maxwell seeks to brief the issue in the Safer Detention Act as it pertains to § 3621(b) factors, the CARES Act, the First Step Act and those factors and applications under § 3621(b) factors.

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

☒ Yes ☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: See Response to Ground Four. (See Memo attached)

GROUND SIX

Maxwell seeks declaratory and injunctive relief declaring that the BOP's use of a percentage of an inmates sentence is not an appropriate factor in determining an inmate's transfer to halfway house or home confinement (During the CARES ACT); that the multiple memos issued by the BOP violate § 3621(b).

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

The BOP both before and during the CARES ACT

used a percentage of the sentence served to determine who transferred to home confinement or halfway house in violation of § 3621(b). This violates the precedent in all the circuits to address it, violates the clear and unambiguous language of the statute, and violates Maxwell's substantive due process rights, and further violates § 3621(b) requirement that all inmates be treated the same regardless of economic or status of individuals; further Maxwell is being treated differently from other inmates (his brother)

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

☒ Yes ☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: See Response to Ground Four. (See Memo in support)

Request for Relief

15. State exactly what you want the court to do: Maxwell seeks substantive due process regarding the processing of his application to transfer to halfway house and home confinement under the CARES ACT, § 3621(b); the First Step Act; and seeks declaratory relief regarding the proper interpretation of the First Step Act, and injunctive relief prohibiting the BOP from using a percentage of sentence as a basis to deny an inmates transfer to halfway house or home confinement (During the CARES ACT); and that the BOP must follow the § 3621(b) factors in determining inmate transfers.

Declaration Under Penalty of Perjury

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

Feb. 1, 2022 [handwritten signature]

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

Date: 1-27-2022 [handwritten signature]

EXCERPT OF ATTACHMENT TO MOTION TO DISMISS OR SUMMARY JUDGMENT
BP-11 REASON FOR APPEAL

U.S. Department of Justice
Central Office Administrative Remedy Appeal

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-DIR-9 and BP-DIR-10, including any attachments must be submitted with this appeal.

William, Maxwell	71-944-279	T/A	FCC-BMT-LOW
Last name, first, middle initial	Reg. No.	Unit	Institution

Part A—REASON FOR APPEAL

I wish to appeal Remedy ID-1048383-R1. On January 7, 2021, the first time Unit Mgr. D. Gladney was available after the holidays (Unit Mgr. Gladney was absent on vacation from December 21 [approximately] until January 5, 2021), I received the two documents attached as Exhibits to this BP-11. They are "Extension for Time for Response—Administrative Remedy" and "Administrative Remedy Generalized Retrieval". Unit Mgr. Gladney writes (on the documents) "Inmate Maxwell did not receive any response by December 25, 2020, but his admin remedy was denied on December 23, 2020." And separately, on the other document, Gladney writes, "No response was received by this date." Both remarks of Unit Mgr. Gladney are on the exhibits, which are dated January 7, 2021, attached hereto. The South Central Office has consistently and unlawfully obstructed the administrative remedy process. As proscribed in 28 C.F.R. §§ 542.10, 542.13(b), 542.14, 542.18, each level of the Administrative

Remedy process (BP-8, BP-9, BP-10, BP-11, etc.) has a prescribed time frame within which the BOP must respond to Administrative Remedies. Frivolous basis for denials are not appropriate. Here, the Regional Office (for the second time) has not responded. Due to the COVID-19 pandemic FCI-Beaumont-Low has violated all semblance of the Administrative Remedy protocols (implicating the Due Process Clause). The FCI-Beaumont-Low administration, during the summer of 2020, refused to accept a BP-9 (Case Mgr. McCowan instructed Unit TA "to send electronic cop-outs to the Warden, not BP-9"); the South Central Regional Office refused to accept the Administrative Remedy appeal (BP-10) without the BP-9 response that the Warden refused to provide, attached. Maxwell filed multiple written requests (electronically) and through outside counsel, and on paper (BOP forms) with the Warden but received no response (to the Administrative Remedy—but Maxwell did receive a response that was belatedly tendered to counsel). All of these documents were sent to the South Central Regional Office. See attached BP-8 (with attachments); BP-9 (with attachments); multiple BP-10s (with attachments) appended hereto. In a last good faith attempt. Maxwell asked for a copy of the missing BP-9 response prior to Maxwell's second resubmittal to the South Central Regional Office (this farce of an Administrative REmedy taking months). FCI-Beaumont-Low administration did not comply. Instead, the Administration issued a new and different (original sent to counsel months previously) BP-9 response that was nonsensical. For example, the Warden opined that Maxwell was not a high risk for COVID-19 (Maxwell is 61 years old with mild to severe Asthma). The Warden (on April 10, 2020) had previously given Maxwell a written warning that Maxwell was high risk of severe illness or death. (That document was provided in my attachments

to the BP-8, BP-9, BP-10, but apparently no one bothers to read any of the evidence that we are forced to attach under the Administrative Remedy paradigm.)

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 Administrative 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 the 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 Regional Office, purposefully thwarting the Administrative Remedy process. Maxwell expressly asserts Waiver (on all grounds not raised originally with counsel). Maxwell expressly asserts admission. The BOP, throughout the process, has made multiple admissions and Maxwell expressly does not waive these BOP admissions.

Maxwell reasserts his rights for substantive due process relief previously raised in his BP-8, BP-9, BP-10, and by counsel. These 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). For these reasons I appeal Remedy ID 1048383-R1.

1/15/2021 [handwritten signature]
Date William Maxwell

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

No. 1:22-cv-40

WILLIAM MAXWELL,

v.

WARDEN, FCI BEAUMONT LOW

Filed: February 13, 2023

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, William Maxwell, an inmate currently confined at FCI Beaumont Low, proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The above-styled action was referred to the magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Procedural Background

Petitioner is currently serving a 240-month term of imprisonment for racketeering conspiracy and related offenses, including securities fraud, wire fraud, money laundering, obstruction of justice, and the sale or transfer of

firearms and ammunition to a prohibited person. *United States v. Maxwell*, 1:11-CR-00740(03) (D.N.J.). Petitioner filed the above-referenced § 2241 petition on February 7, 2022, arguing the following points of error:

1. The BOP does not consider inmates in good faith for transfer to home confinement or halfway house using the § 3621(b) factors either during their sentence or at the end of their sentence or under the CARES Act;
2. Prior to and during the CARES Act enactment the BOP is using a percentage of the sentence served as a determining factor on whether to transfer a [sic] inmate to halfway house or home confinement and not relying on the §3621(b) factors;
3. The 3621(b) factor analysis is being preformed [sic] differently for high economic and status individuals;
4. The CARES Act, First Step Act, and § 3621(b) provide for Maxwell to transfer to RRC or home confinement under the § 3621(b) factors prior to the end of his sentence. The CARES Act, lifted the restrictions (time period) during which an inmate must be considered for transfer to RRC/home confinement. Additionally, the First Step Act provides for the earning of time credits to be spent at RRC/home confinement. The BOP use of a percentage of sentence as a basis to determine an inmates transfer to RRC or home confinement violates the statutes;
5. The Safer Detention act has passed out of committee with bi-partisan support and expressly allows for judicial review of the BOP's decisions and denials of transfer to halfway house/home confinement, not merely review of the process (substantive due process). In that it would be judicially economical and that the administrative remedies are exhausted, on its final passage, Maxwell seeks to

brief the issue in the Safer Detention Act as it pertain to § 3621(b) factors, the CARES Act, the First Step Act and those factors and applications under the § 3621(b) factors; and

6. The BOP both before and during the CARES Act used a percentage of the sentence served to determine who transferred to home confinement or halfway house in violation of § 3621(b). This violates the precedent in all the circuits to address it, violates the clear and unambiguous language of the statute, and violates Maxwell's substantive due process rights, and further violates the § 3621(b) requirement that all inmates be treated the same regardless of economic or status of individual; further Maxwell is being treated differently from other inmates.

Petition (doc. #1). For relief, Petitioner seeks (1) substantive due process regarding the processing of his application to transfer to a halfway house and home confinement under the CARES Act, § 3621(b), the First Step Act, (2) declaratory relief regarding the proper interpretation of the First Step Act, (3) injunctive relief prohibiting the BOP from using a percentage of his sentence as a basis to deny an inmate transfer to a halfway house or home confinement under the CARES Act, and (4) an order directing the BOP to follow the § 3621(b) factors in determining inmate transfers. *Id.*

Respondent was ordered to show cause on March 9, 2022, and filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment on May 17, 2022 (doc. #8). Respondent argues Petitioner failed to exhaust his administrative remedies with respect to all his claims, except for those regarding the denial of his request for priority transfer to home confinement under the CARES Act. As to the latter, Respondent argues Petitioner has not suffered a due process violation. Id.

This Report and Recommendation considers the Petition (doc. #1), the Respondent's Motion to Dismiss or, in the alternative, Motion for Summary Judgment (doc. # 8), Petitioner's Response (doc. # 18), Amended Response (doc. # 20), Respondent's Reply to Petitioner's Response (doc. #21), and Petitioner's Second Amended Response (doc. #23).

Standard of Review

Motion to Dismiss

"A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate a case." *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 494 (5th Cir. 2005) (citation and internal quotation marks omitted). "The district court 'has the power to dismiss for lack of subject matter jurisdiction on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidence in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.'" *Stiftung v. Plains Marketing, L.P.*, 603 F.3d 295, 297 (5th Cir 2010) (quoting *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981)). When considering whether subject matter jurisdiction exists, a district court is "free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has the power to hear the case." *Krim*, 402 F.3 at 494. The party seeking federal court review bears the burden of demonstrating that jurisdiction is proper. *See Stiftung*, 603 F.3d at 297.

Motion for Summary Judgment

Summary judgment is proper if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). A genuine issue exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court must examine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 251-52.

In making this determination, the court must consider the records as a whole by reviewing all pleadings, depositions, affidavits and admissions on file, and drawing all justifiable inferences in favor of the party opposing the motion. *Caboni v. Gen. Motors Corp.*, 278 F.3d 448, 451 (5th Cir. 2002). The court may not weigh the evidence or evaluate the credibility of witnesses. *Id.* Furthermore, affidavits or declarations "must be made on personal knowledge, [shall] set out facts that would be admissible in evidence, and [shall] show that the affiant or declarant is competent to testify to the matters stated." FED. R. CIV P. 56(c)(4); *see also Cormier v. Pennzoil Exploration & Prod. Co.*, 969 F.2d 1559, 1561 (5th Cir. 1992) (per curiam) (refusing to consider affidavits that relied on hearsay statements); *Martin v. John W. Stone Oil Distrib., Inc.*, 819 F.2d 547, 549 (5th Cir. 1987) (per curiam) (stating that courts cannot consider hearsay evidence in affidavits and depositions). Unauthenticated and unverified documents do not constitute proper summary judgment evidence. *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (per curiam).

The moving party bears the initial burden of showing the absence of a genuine issue of material fact. *Colotex*

Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party demonstrates an absence of evidence supporting the nonmoving party's case, then the burden shifts to the nonmoving party to come forward with specific facts showing that a genuine issue for trial does exist. *Matsushita Elec., Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). To sustain this burden, the nonmoving party cannot rest on the mere allegations of the pleadings. FED. R. CIV P. 56(c)(1); *Anderson*, 477 U.S. at 248. "After the nonmovant has been given an opportunity to raise a genuine factual issue, if no reasonable juror could find for the nonmovant, summary judgment will be granted." *Caboni*, 278 F.3d at 451. "If reasonable minds could differ as to the import of the evidence . . . a verdict should not be directed." *Anderson*, 477 U.S. at 250-51.

Analysis

Exhaustion of Administrative Remedies

A district court has the authority to grant a writ of habeas corpus if a prisoner is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. Although the statute does not explicitly require prisoners to exhaust available administrative remedies before filing a petition, the United States Court of Appeals for the Fifth Circuit has held that prisoners must exhaust available administrative remedies before seeking relief in court. *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). In order to satisfy the exhaustion requirement, "a prisoner must complete the administrative process in accordance with applicable procedural rules . . . ." *Woodford v. Ngo*, 548 U.S 81, 90-91 (2006). As a result, inmates must exhaust their administrative remedies in a procedurally correct manner. *Dillon v. Rogers*, 596 F.3d 260, 268 (5th Cir. 2010).

The BOP administrative remedy procedures, set forth in Title 28 C.F.R. §§ 542.10-542.19, provide formal review of any complaint which relates to any aspect of the inmate's confinement. Informal resolution is first attempted, and if it proves unsuccessful, then the inmate may file a formal complaint with the warden. *See* 28 C.F.R. §§ 542.13-542.14. Informal resolution is referred to as a BP-8, while the formal complaint to the warden is referred to as a BP-9. *Huff v. Neal*, 555 F. App'x 289, 293 (5th Cir. 2014). If the inmate is not satisfied with the warden's response, he may appeal the response to the regional director. 28 C.F.R. § 542.15(a). This is referred to as a BP-10. *Huff*, 555 F. App'x at 293. If the inmate is dissatisfied with the regional response, he may file a national appeal with the Office of General Counsel in Washington, D.C. 28 C.F.R. § 542.15(a). Appeal to the Office of General Counsel is the final administrative appeal within the BOP. *Id.* This final step is referred to as a BP-11. *Huff*, 555 F. App'x at 293. If an inmate does not receive a response within the time allotted for a reply, the absence of a response is considered a denial at that level. 28 C.F.R. § 542.18.

Here, Respondent argues Petitioner failed to exhaust all his claims, with the exception of his request for home confinement under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act," P.L. 116-136). 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. Through the administrative remedy process, Petitioner only challenged the denial of his request for a priority transfer to home confinement under the CARES Act. *Id.* There are no records that indicate Petitioner exhausted, let alone attempted to exhaust, any claims relating to the

First Step Act (FSA), including FSA time credits as related to his participation in productive activities, preferential housing unit, additional phone minutes, expanded commissary, or his transfer to a halfway house as a result of his successful participation in programming. *Id.* As such, these latter claims should be dismissed for failure to exhaust administrative remedies.

The Cares Act

Title 28 U.S.C. § 2241 gives the district court authority to grant a writ of habeas corpus where a prisoner "is in custody under or by color of the authority of the United States or is committed for trial before some court thereof" or "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(1) and (3). Section 2241 is the proper vehicle to attack the manner in which a sentence is being executed. *Ojo v. INS*, 106 F.3d 680, 683 (5th Cir. 1997).

The BOP has the authority to release a prisoner to home confinement for the shorter of 10% of the term of imprisonment or six months under 18 U.S.C. § 3624. The CARES Act authorized the Director of the BOP to lengthen that amount of time. *See Livas v. Myers*, 2:20-CV-422, 2020 WL 1939583, at *6 (W.D. La. Apr. 22, 2020). However, nothing in the CARES Act grants prisoners the right to serve the remainder of their sentences in home confinement, it merely lengthens the amount of time during which the BOP has the discretion to allow it. *See United States v. Williams*, 2:12-CR-539, 2020 WL 1940836, at *2 (S.D. Tex. Apr. 22, 2020); *Beaird v. Brown*, 3:07-CV-2077, 2008 WL 474119, at *3 (N.D. Tex. Feb. 21, 2008) ("There simply is no constitutional right to placement on home confinement at any time during a term of imprisonment.").

Here, the BOP considered Petitioner's request for home confinement, and using its discretion, denied it. The denial was based upon the BOP's review of the totality of circumstances related to Petitioner's conviction and incarceration. Specifically, the denials were based on the minimal amount of time Petitioner had spent at the correctional facility and the nature of his conviction. Specifically, at that time, Petitioner had spent only approximately 56-months of a 240-month imposed sentence. The BOP was within its discretion to deny Petitioner a priority placement in home confinement, and thus, Petitioner is not entitled to habeas relief.

Recommendation

This petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 should be dismissed.

Objections

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings of facts, conclusions of law and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(c).

Failure to file written objections to the proposed findings of facts, conclusions of law and recommendations contained within this report within fourteen (14) days after service shall bar an aggrieved party from the entitlement of *de novo* review by the district court of the proposed findings, conclusions and recommendations and from appellate review of factual findings and legal conclusions accepted by the district court except on grounds of plain error. *Douglass v. United Servs. Auto. Assoc'n.*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

SIGNED this the 13th day of February, 2023.

[handwritten signature]
Christine L Stetson
UNITED STATES
MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

No. 1:22-cv-40

WILLIAM MAXWELL,

v.

WARDEN, FCI BEAUMONT LOW

Filed: October 6, 2023

MEMORANDUM OPINION AND ORDER OVERRULING OBJECTIONS AND ADOPTING REPORT AND RECOMMENDATION

Petitioner, William Maxwell, an inmate currently confined at FCI Beaumont Low, proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends granting Respondent's Motion for Summary Judgment, finding Petitioner failed to exhaust administrative remedies as to any of Petitioner's claims under the First Step Act ("FSA") and finding his claims under the a

Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") for home confinement as lacking in merit [Dkt. 24].

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the records, and pleadings. Petitioner filed Objections to the Report and Recommendation of United States Magistrate Judge [Dkt. 27]. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

Petitioner first argues that the declaration provided by Respondent is inadmissible hearsay. Respondent provided the declaration of Justin Thornton ("Thornton"), the Acting Executive Assistant at FCC Beaumont, in support of its Motion for Summary Judgment. Motion for Summary Judgment, Exhibit A [Dkt. 8-1]. The Declaration states that as part of his duties as Acting Executive Assistant, Thornton was the Coordinator for the Administrative Remedy Program and had access to inmate records relating to every step of the administrative remedy program. *Id.* The statements made by Thornton in the Declaration were made on the basis of his review of the official files and records of the BOP, his own personal knowledge, or on the basis of information acquired by him through the performance of his official duties. *Id.* After summarizing the exhibits attached to the Declaration, Thornton concluded the following:

> 9. 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, nor ever attempted to exhaust, any of his other claims

> regarding the First Step Act ("FSA"), including FSA time credits as related to participation in productive activities, preferential housing units, additional phone minutes, expanded commissary, or his transfer to halfway house as a result of successful participation.

Id., pg. 4.

"An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." FED. R. CIV. P. 56(c)(4). "The substance of an affidavit must demonstrate the affiant has personal knowledge of the facts contained therein." *Wojciechowski v. Nat'l Oilwell Varco, L.P.*, 763 F. Supp. 2d 832, 846 (S.D. Tex. 2011). "[C]onclusory assertions cannot be used in an affidavit on summary judgment." *Salas v. Carpenter*, 980 F.2d 299, 305 (5th Cir. 1992). "If the affidavit fails to meet any of the procedural requirements, a motion to strike that sets forth specific objections is the proper method for the opposing party to challenge the affidavit." *Wojciechowski*, 763 F. Supp. 2d at 846. "The rule is settled that on a motion for summary judgment a court will disregard only the inadmissible portions of a challenged affidavit offered in support of or opposition to the motion and will consider the admissible portions in determining whether to grant or deny the motion." *Lee v. Nat'l Life Assurance Co. Of Can.*, 632 F.2d 524, 529 (5th Cir. 1980).

The declaration provided by Respondent meets the procedural requirements of Federal Rule of Civil Procedure 56(c)(4). The conclusion offered by Thornton is supported by the exhibits attached to the declaration. The fact that Petitioner disagrees with the conclusion does

not, by itself, make the declaration or the attached exhibits inadmissible hearsay evidence. Regardless, Petitioner's argument of hearsay is conclusory and will not be considered by this court.

Regardless, an independent review of the administrative grievances in this case, also provided by Petitioner as attachments to his original petition, reveals that Petitioner was clearly challenging the BOP's refusal to grant him his requested relief of home confinement. Original Petition, Exhibits, [Dkt. 1-1 & 1-2]. None of the grievances mention the entitlement to FSA earned time credits as authority for why Petitioner should now be placed in home confinement or a halfway house. Nor do the grievances challenge the denial of other privileges under the FSA. *Johnson v. Johnson*, 385 F.3d 503, 517 (5th Cir. 2004) (a grievance should give officials a fair opportunity to address the problem that will later form the basis of the lawsuit). In fact, Petitioner was put on notice that the BOP was construing his grievance as one only requesting home confinement in the Warden's denial of his BP-9 where he was specifically denied his request for discretionary home confinement without consideration of the time served under the CARES Act. Petitioner's later appeals still do not mention or challenge his entitlement to earned time credits under the FSA nor any other privileges under the FSA. If Petitioner seeks to have a review of his status under 18 U.S.C. § 3632(d)(4) to determine his eligibility to earn and presently apply any FSA time credits, or if Petitioner seeks to challenge the denial of any other privilege under the FSA, Petitioner is still free to file an administrative remedy making such a request. To the extent Petitioner argues the BOP obstructed his ability to exhaust his administrative remedies, this argument is belied by

the competent summary judgment evidence.[1] While there may have been some delays in consideration, the BOP fully considered Petitioner's claim regarding his request for home confinement under the CARES Act. The lack of exhaustion as to these other claims is attributable to Petitioner's failure to properly put the BOP on notice as to his alleged intent to also challenge his entitlement to FSA earned time credits or some other privileges under the FSA. This objection is overruled.

To the extent Petitioner objects to the finding of the magistrate judge relating to Petitioner's request for priority placement in home confinement under the CARES Act, any such objection is overruled. The BOP was within its discretion to deny Petitioner priority placement in home confinement under the CARES Act. *See De La Cruz Jimenez v. United States*, 844 F. App'x 753, 754 (5th Cir. 2021) ("He cites no legal authority, nor are we are of any, holding that the CARES Act created an actionable right to release even for qualifying inmates or a corresponding duty of the respondents to release him."); *see also United States v. Lang*, 835 F. App'x 790, 791 n5 (5th Cir. 2021) ("Although Lang contends he meets the criteria for release to home confinement under the CARES Act, the plain language of the CARES Act does not grant a federal court the authority to make home confinement determinations.").

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[1] Petitioner argues waiver, admission and estoppel to overcome his failure to exhaust. Exceptions to the exhaustion requirement apply "only in 'extraordinary circumstances'" when administrative remedies "are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). Petitioner has failed to demonstrate extraordinary circumstances.

ORDER

Accordingly, petitioner's objections are OVERRULED. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is ADOPTED. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

SIGNED this 6th day of October, 2023.

[handwritten signature]
Michael J. Truncale
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-40699

WILLIAM MAXWELL,
PETITIONER-APPELLANT

v.

ALBERT THOMAS, III, WARDEN, FCI BEAUMONT LOW,
RESPONDENT-APPELLEE

Filed: April 3, 2025

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:22-CV-40

Before: ELROD, Chief Judge, and DAVIS and RAMIREZ, Circuit Judges.

OPINION

Per Curiam:

William Maxwell, federal prisoner #71944-279, appeals the dismissal of his 28 U.S.C. § 2241 petition for writ of habeas corpus. He argues that the district court erred in determining that he failed to exhaust administrative remedies under the First Step Act of 2018.

We have previously held that a habeas petition "is the proper vehicle to seek release from custody," while a civil rights suit under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), is the "proper vehicle to attack unconstitutional conditions of confinement and prison procedures." *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." *Id.*[1]

Here, the nature of Maxwell's requested relief is transfer to a halfway house or home confinement. Under *Melot*'s "bright-line rule," neither form of relief would entitle him to accelerated release, so the relief he seeks is properly brought in a civil rights suit. Accordingly, we need not address whether Maxwell sufficiently exhausted his administrative remedies because, even if he did, § 2241 is not the proper vehicle. *Mosley v. Reiser*, No. 22-60625, 2023 WL 3947169, at *1 (5th Cir. June 12, 2023); *Melot*, 970, F.3d at 599; *see also Scott v. Johnson*, 227 F.3d 260, 262 (5th Cir. 2000) ("[T]his Court may affirm the denial of habeas relief on any ground supported by the record.").

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[1] Shortly after we decided *Melot*, we concluded in an unpublished opinion that a writ of habeas corpus was the proper vehicle to seek at-home confinement. *Cheek v. Warden of Fed. Med. Ctr.*, 835 F. App'x 737, 739 (5th Cir. 2020). Unpublished cases are non-precedential. *See* 5th Cir. R. 47.5.4. Further, *Cheek* addressed at-home confinement under the CARES Act. *Cheek*, 835 F. App'x at 739. Maxwell initially sought relief under the CARES Act, but he has waived that issue on appeal. The relief he seeks arises under the First Step Act's Elderly Offender Pilot Program, which was at issue in *Melot*. Accordingly, we follow *Melot* under the rule of orderliness.

The judgment of the district court is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-40699

WILLIAM MAXWELL,
PETITIONER-APPELLANT

v.

ALBERT THOMAS, III, WARDEN, FCI BEAUMONT LOW,
RESPONDENT-APPELLEE

Filed: June 23, 2025

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:22-CV-40

ORDER

Before: ELROD, Chief Judge, and DAVIS and RAMIREZ, Circuit Judges.

IT IS ORDERED that the petition for rehearing is DENIED.