No. 26-396

IN THE

Supreme Court of the United States

RAUL RIVERA-PEREZ,

Petitioner,

v.

CARYN FLOWERS, WARDEN,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*[*]

Founded in 1958, the National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. It has a nationwide membership of many thousands of direct members, up to 40,000 with affiliate members. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL files numerous *amicus* briefs each year in this Court and other federal and state courts in cases presenting issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system. NACDL attorneys frequently represent defendants both earning and redeeming First Step Act time credits.

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[*] Pursuant to this Court's Rule 37.2, *amicus* gave notice to counsel for petitioner and respondent of its intent to file this brief at least 10 days prior to the due date. Pursuant to this Court's Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the brief's preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to the brief's preparation or submission.

SUMMARY OF ARGUMENT

The First Step Act of 2018 was "the most significant criminal justice reform bill in a generation." 164 Cong. Rec. S7649 (daily ed. Dec. 17, 2018) (statement of Sen. Grassley). As part of the Act's reforms, Congress sought to encourage incarcerated people's efforts at rehabilitation by rewarding those efforts with the measurable, predictable reduction of time spent under restrictive federal control. To that end, the Act created "time credits" that individuals may earn by participating in rehabilitative programming. The Act directed that those credits "shall be applied toward time in prerelease custody or supervised release." 18 U.S.C. § 3632(d)(4)(C). The question presented in this case, concerning the proper interpretation of that directive, carries significant real-world consequences for the administration of federal sentencing nationwide.

Over a strong dissent, the Second Circuit below—joining the Sixth Circuit, as well as the Fourth and Eleventh Circuits in unpublished decisions—construed the relevant statutory provision, Section 3632(d)(4)(C), to allow time credits to be used only to accelerate release *from prison*. Under this view, individuals may not apply time credits to shorten their supervised release or prerelease custody. That narrow interpretation contradicts the statute's plain text, which speaks expressly in terms of "time in" supervised release and prerelease custody. Nor can it be reconciled with the structure or purposes of the First Step Act.

The Ninth Circuit and many district courts around the country, by contrast, have correctly interpreted Section 3632(d)(4)(C) to give full effect to Congress's statutory directive and stated aims. Those

courts interpret Section 3632(d)(4)(C) to permit time credits to accelerate release from prison *and* to shorten prerelease custody and supervised release. That reading ensures that rehabilitation efforts produce real reductions in the duration of federal restrictions on individuals' liberty through the end of their sentences, thereby preserving the incentive structure Congress created.

This Court should grant review and reject the Second Circuit's cramped interpretation of Section 3632(d)(4)(C). Proper application of that provision is exceptionally important to incarcerated and recently incarcerated individuals. Most federal sentences do not end at the prison gates. Instead, the overwhelming majority involve prerelease custody, supervised release, or both—periods that follow time in prison and continue to impose concrete constraints on liberty. During these phases, individuals remain subject to federal control over basic aspects of their daily life and face the ongoing risk of reincarceration for violations of release conditions.

Applying Section 3632(d)(4)(C) to shorten the duration of these ongoing restraints for individuals who have earned time credits accords with the Act's purposes. The Act was designed to better balance public safety with liberty, including by aligning punishment more closely with rehabilitation and ensuring that demonstrable rehabilitative success yields predictable, sentence-wide benefits. Tens of thousands of individuals across the country have already relied upon the statutory promise of time credits in deciding whether to participate in Bureau of Prisons programming. Interpreting Section 3632(d)(4)(C) to exclude prerelease custody and supervised release undermines Con-

gress's chosen mechanism for translating rehabilitative effort into the earlier restoration of liberty and weakens the incentives on which that system depends.

The panel's erroneous interpretation also undercuts another of the Act's aims: reducing the public costs of mass incarceration and supervision. By decreasing incentives to participate in rehabilitative programming and by prolonging periods of prerelease custody and supervised release, the approach adopted below increases correctional expenditures *directly* through longer federal supervision. It also increases costs *indirectly*. Participation in prison programming is strongly associated with reduced recidivism; by diminishing the practical value of such programming and making participation less attractive, the Second Circuit's approach will lead to more reoffenses—and thus more public money spent on prosecution, incarceration, and supervision. Increased crime will also cause broader social costs, including to victims, communities, and local economies. These effects invert Congress's design, which sought to *reduce* recidivism and public spending.

This Court's intervention is necessary to vindicate the Act's design and purpose, resolve an entrenched conflict in the lower courts, and ensure the uniform application of federal sentencing law nationwide. The petition should be granted.

ARGUMENT

I. THIS CASE PRESENTS AN EXCEPTIONALLY IMPORTANT ISSUE THAT AFFECTS THE LIVES OF TENS OF THOUSANDS OF INCARCERATED OR RECENTLY INCARCERATED PEOPLE.

For most people in federal prison, supervision does not end when they exit the prison gates. Congress instead structured sentencing as a continuum of restraint: sentences begin in prison and then very often continue through prerelease custody, supervised release, or both. During these latter phases, individuals are subject to significant federal control over their daily lives. The government decides where people may live, work, and travel; how they interact with family and community; and whether they face reincarceration through revocation of release. *See* Off. of the Gen. Couns., U.S. Sent'g Comm'n ("U.S.S.C."), *Primer: Supervised Release* ("*Primer*") 5–13 (2021), https://tinyurl.com/yxrcfspz. Because prerelease custody and supervised release are common components of federal sentences, the interpretation of Section 3632(d)(4)(C)—and, in particular, whether time credits may shorten those phases—directly affects the lived reality of federal punishment for a large portion of the incarcerated or recently incarcerated population.

Prerelease custody, as its name suggests, is a form of federal custody. Following confinement in prison, individuals may be placed in prerelease custody, such as home confinement or a halfway house. 18 U.S.C. § 3624(c)(1)–(2). During this period, individuals are formally "in [Federal Bureau of Prisons] custody" until "finally released." U.S.S.C., *First Step Act: Earned Time Credits* ("*Earned Time Credits*") (Mar. 2026), https://perma.cc/N5ZQ-99R5; 18 U.S.C. § 3624(c)(3)

("prerelease custody"). Those in prerelease custody are subject to rules and restrictions that, in important respects, resemble those governing their time in prison—including, for those on home confinement, 24-hour monitoring and strict limits on movement. *See* 18 U.S.C. § 3624(g)(2)(A)(i)(I)–(II). In 2024, more than 11,000 people passed through this phase before entering supervised release. *See Earned Time Credits*, *supra*.

Congress specifically linked prerelease custody to the First Step Act's time-credit system. Under Section 3624(c), the Bureau of Prisons may place a person in prerelease custody for no more than twelve months and only to the extent practicable. 18 U.S.C. § 3624(c)(1). The First Step Act lifts that limit for people who have "earned time credits" and directs the Bureau to transfer eligible individuals into prerelease custody. *Id.* §§ 3624(g)(1)(A), (10), 3632(d)(4)(C). It would make little sense for Congress to tie prerelease custody to time credits in that way, yet let the credits people continue to earn there go unused.

Supervised release, the most common mode of federal control after incarceration, likewise imposes substantial restraints on liberty. Over eighty percent of people sentenced to federal prison are also sentenced to a term of supervised release. U.S.S.C., *QuickFacts: Supervised Release* (2026), https://tinyurl.com/2pysz3mu. Courts impose supervised release at sentencing when required by statute or as a matter of judicial discretion, considering the same sentencing factors that govern imprisonment when setting the length and conditions of supervised release. *Primer* at 2–3 (citing 18 U.S.C. § 3553(a)). Those conditions curtail the daily liberties of people on supervised release and can include mandatory

drug testing, regular searches, work and residence requirements, and myriad other intrusive demands. U.S.S.G. § 5D1.3.

The defining feature of supervised release is the ever-present threat of revocation. Any violation of a release condition may result in reincarceration. *Primer* at 15–19. Supervised release, while formally noncustodial, thus commonly results in a custodial sentence upon revocation. Courts need not credit time previously served on supervision when imposing a revocation prison term, 18 U.S.C. § 3583(e)(3), and revocation sentences "generally should" be served consecutively to any other term of imprisonment, U.S.S.G. § 7C1.4. Because revocation results in imprisonment, the imposition and enforcement of supervised-release conditions trigger significant constitutional and statutory protections. *Primer* at 8–9, 15–16. By law, for instance, conditions must involve "no greater deprivation of liberty than is reasonably necessary." 18 U.S.C. § 3583(d)(2).

These ongoing restrictive features distinguish prerelease custody and supervised release from the "collateral consequences" of a conviction "upon reentering society." U.S. Comm'n on C.R., *Collateral Consequences* 1 (2019), https://tinyurl.com/3v93pb5z. Prerelease custody and supervised release are integral components of a federal sentence, enforced through federal authority, backed by the continuing possibility of incarceration, and characterized by constant monitoring and control over the person. The duration of these phases determines how long individuals remain subject to federal punishment in a concrete and coercive sense.

Because prerelease custody and supervised release are commonplace, the proper interpretation of

Section 3632(d)(4)(C) has far-reaching practical consequences. It determines whether time credits may affect only the initial term of imprisonment or also the later phases of a federal sentence during which liberty remains substantially constrained. That exceptionally important issue—which will alter the duration of federal custody and control for tens of thousands of persons—warrants this Court's review.

II. CONGRESS DESIGNED THE FIRST STEP ACT TO BETTER PROMOTE LIBERTY, INCLUDING BY REWARDING REHABILITATION WITH EARLIER RELEASE FROM FEDERAL CONTROL.

Congress enacted the First Step Act to reform a federal sentencing regime that imposes prolonged restraints on liberty extending well beyond the prison term itself. That regime drew widespread criticism for producing unduly harsh sentences and excessive, often counterproductive, federal control, even for people convicted of nonviolent offenses. *See Hewitt v. United States*, 606 U.S. 419, 435–36 (2025) (plurality opinion). The "bipartisan" coalition that enacted the legislation was explicitly focused on enhancing "liberty," proportionality, and rehabilitation in the criminal-justice system. 164 Cong. Rec. H10363 (daily ed. Dec. 20, 2018) (statement of Rep. Jeffries); *see* 164 Cong. Rec. S7764 (daily ed. Dec. 18, 2018) (statement of Sen. Booker); *United States v. Mitchell*, 38 F.4th 382, 384 (3d Cir. 2022) ("In 2018, the President signed the First Step Act, bipartisan legislation implementing long-sought-after criminal-justice reform.").

Consistent with those goals, Congress made a structural choice in the Act to formalize how rehabilitative success would lead to increased liberty. Rather than relying solely on discretionary sentence reductions or ad hoc release decisions, Congress created the

time-credits system to shorten the period during which the federal government restrains an individual's liberty based on demonstrated rehabilitation. The foundation of that regime is a comprehensive "risk and needs assessment" framework for incarcerated individuals to enhance rehabilitation and public safety through "evidence-based" programming targeting recidivism risks. H.R. Rep. No. 115-699, at 22 (2018). Congress required the Bureau of Prisons to implement an ongoing assessment system throughout the federal prisons that identifies each incarcerated person's "criminogenic needs," assigns them "evidence-based" programming to address their specific needs, and "reassess[es]" individuals' risk of recidivism at regular intervals. 18 U.S.C. § 3632(a). Legislators described this framework as the "basis" of the Act's "recidivism reduction program," 164 Cong. Rec. at H10361 (statement of Rep. Goodlatte), which is intended to inform release decisions and reentry timing, *see* H.R. Rep. No. 115-699, at 22.

The tangible consequences of this rehabilitative framework come in the form of time credits. Individuals earn credits through successful completion of qualifying programs and productive activities, with enhanced accrual for individuals who are assessed at minimum or low risk of recidivism and whose risk has not increased. 18 U.S.C. § 3632(d)(4)(A). As Congress explained, time credits operate as "rewards" for participation in programming. H.R. Rep. No. 115-699, at 28. Statements by legislators confirm that Congress intended credits to function as meaningful incentives tied directly to sentence length. 164 Cong. Rec. at S7745 (statement of Sen. Blumenthal).

Congress made an equally deliberate choice about where time credits would operate. Rather than limiting credits to moving people out of prison sooner, Congress directed—in Section 3632(d)(4)(C)'s first sentence—that time credits "shall be applied toward time in prerelease custody or supervised release." 18 U.S.C. § 3632(d)(4)(C). In doing so, Congress recognized that these phases impose meaningful restraints on liberty. With the exception of individuals convicted of certain enumerated offenses, *id.* § 3632(d)(4)(D), all other individuals are eligible to earn credits. For those who earn them, time credits would lose much of their intended value if they served only to move people out of prison sooner while leaving untouched the later phases of federal control that Congress expressly identified in the Act.

The distinct commands found in the first and second sentences of Section 3632(d)(4)(C) make clear that Congress had no such intent. Section 3632(d)(4)(C)'s second sentence directs the Bureau of Prisons to transfer "eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release"; Section 3624(g), in turn, provides for early transfer based on time credits. 18 U.S.C. §§ 3624(g)(3), 3632(d)(4)(C). The second sentence's transfer mechanism also carries its own distinct eligibility rule: a person generally may use credits to leave prison early only after being assessed as "a minimum or low risk to recidivate." *Id.* § 3624(g)(1)(D). Reading the first sentence to authorize only that same early transfer would make it redundant and undermine the second sentence's eligibility requirements. *See* Pet. App. 36a–37a (Nathan, J., dissenting).

The second sentence's rule thus governs whether a person may leave prison ahead of schedule, and Congress reasonably did not extend it to people already living in the community, who are governed by the first sentence of Section 3632(d)(4)(C). *See* Pet. App. 42a (Nathan, J., dissenting) (explaining that "[i]t makes sense that Congress would impose strict requirements on individuals leaving prison early" but not on those "already back in their communities"). Other safeguards apply to everyone who earns credits. People assessed at higher risk earn credits more slowly, and the Bureau of Prisons may reduce the credits of anyone who violates prison or program rules. 18 U.S.C. § 3632(d)(4)(A), (e). Courts also retain their authority to modify the conditions of supervised release and to revoke it after a violation. *Id.* § 3583(e)(2)–(3).

Time credits now operate at scale, and prison officials structure programming, placement, and release planning around their expected effect, which likewise drives incarcerated people's decisions to participate in prison programming. More than 18,000 people were released from Bureau of Prisons custody in 2024 after applying time credits, with an average of about twelve months of credits earned. *Earned Time Credits*, *supra*. And the Department of Justice reported that, as of January 2024, 32,508 individuals in secure custody were expected to receive an earlier release date or transfer to prerelease custody through time credits. U.S. Dep't of Just., *First Step Act Annual Report* 20 (2024), https://tinyurl.com/yebwh4sb. Interpreting Section 3632(d)(4)(C) to deny effect to those credits during prerelease custody or supervised release disrupts the statutory bargain on which participation decisions have been—and continue to be—based.

Time credits also fit naturally within the broader statutory framework governing supervised release, which is designed to promote "liberty." 18 U.S.C. § 3583(d)(2). Courts have long had discretionary authority to shorten supervised-release terms for high-performing individuals. *Id.* § 3583(e). The Act's program-based, mandatory credit system advances the same principle in a more predictable and uniform manner, ensuring that supervised release involves "no greater deprivation of liberty than is reasonably necessary." *Id.* § 3583(d)(2). Whereas the old system depended on case-specific judicial discretion, the new one ensures predictable, earned reductions—including during supervised release—tied to rehabilitation.

Those reductions would also be simple to administer. The Bureau of Prisons already applies good-time credits to calculate release dates without involving the sentencing court. 18 U.S.C. § 3624(b)(1). When it releases a person to the supervision of a probation officer, the Bureau could likewise report that person's remaining time credits, and the probation office could account for them in calculating when supervision ends. *See id.* § 3624(e); Pet. App. 40a (Nathan, J., dissenting).

In short, allowing individuals to earn greater liberty was at the heart of the First Step Act's design. Interpreting time credits to apply only to accelerate release from incarceration, but not to shorten other liberty-restricting phases of federal supervision, cannot be squared with that congressional plan.

III. THE DECISION BELOW UNDERMINES THE PURPOSES OF THE FIRST STEP ACT.

The Second Circuit's reading undermines the aims of the First Step Act. It reduces incentives to

earn time credits, creates unwarranted federal sentencing disparities, and increases federal spending on incarceration and supervision.

A. The Interpretation Adopted Below Reduces Incentives To Rehabilitate And Produces Sentencing Disparities.

The First Step Act promises predictable rewards for successful participation in rehabilitation programming. 18 U.S.C. § 3632(d). The basis for the Act's time-credit regime is the commonsense premise that incarcerated people are more likely to engage in evidence-based programs when doing so results in concrete, time-based reductions in federal control. *See* 164 Cong. Rec. at S7769 (statement of Sen. Portman). As the dissenting judge recognized below, the First Step Act is "intended to incentivize as much engagement in recidivism-reducing programs as possible." Pet. App. 43a (Nathan, J., dissenting); *see Hargrove v. Healy*, 155 F.4th 530, 543 (6th Cir. 2025) (Moore, J., dissenting) (explaining that the Act "streamlines the rehabilitative process" by "incentivizing prisoners to engage in programming while incarcerated"), *cert. denied*, No. 25-818 (U.S. Apr. 20, 2026). And when credits "reduce time in imprisonment, in prerelease custody, or in supervised release, their incentive value is maximized." *Gonzalez v. Herrera*, 151 F.4th 1076, 1088 (9th Cir. 2025). Applying time credits to all phases of a federal sentence thus supports the "incentive[]" structure Congress created. H.R. Rep. No. 115-699, at 22.

The Second Circuit's interpretation, on the other hand, substantially weakens that structure. Under the majority's reading, time credits cease to have practical value once they can no longer further shorten the term of imprisonment. That approach "encourages

prisoners to participate only to the extent that their credits can apply toward early release from prison." Pet. App. 44a (Nathan, J., dissenting); *see Hargrove*, 155 F.4th at 542 (Moore, J., dissenting) (explaining that this approach "perversely encourages prisoners to participate in as little programming as is necessary to achieve early release, but no more than that"). If additional programming no longer shortens any phase of a sentence, people in custody lose the incentive Congress created to keep participating.

That disincentive is compounded by the fact that individuals continue to earn credits after they leave secure custody. The Act provides that "prisoner[s]" may earn time credits from rehabilitative programming, 18 U.S.C. § 3632(d)(4)(A), and "prisoner" is defined to include any person "in the custody of the Bureau of Prisons," including at least those in prerelease custody, *id.* § 3635(4). The Bureau of Prisons agrees. After notice and comment, it concluded that "inmates in prerelease custody—whether in a residential reentry center (RRC) or on home confinement—are eligible to earn FSA Time Credits." *FSA Time Credits*, 87 Fed. Reg. 2705, 2712 (Jan. 19, 2022) (codified at 28 C.F.R. pts. 523, 541).

If individuals are *earning* credits in prerelease custody, they should be able to *apply* those credits to the remainder of their sentence. Other courts have recognized the value of allowing new credits to be earned after incarceration. The Ninth Circuit, for example, noted that one defendant "continued his FSA-eligible programming" during "home confinement" and, "having earned time credits along the way, he sought to use those credits for early reentry into society." *Gonzalez*, 151 F.4th at 1079. But under the Sec-

ond Circuit's reading, once a person reaches prerelease custody, any unused credits—whether earned there or in prison—have nowhere to go. In petitioner's own case, 415 of the more than 700 credits he earned went "unused." Pet. App. 6a.

Those unused credits were the reward Congress chose to drive participation in programming. The court below discounted their loss, reasoning that excess credits are "by no means wasted" because programming confers benefits of its own. Pet. App. 25a–26a; *see id.* at 31a (Jacobs, J., concurring). But Congress created time credits precisely because those benefits, available long before the First Step Act, had not drawn enough incarcerated people into programs. *See id.* at 44a (Nathan, J., dissenting) ("If Congress believed that those valuable byproducts were enough to incentivize participation, there would be no reason to create FSA credits at all."). To encourage participation, Congress placed no limit on the total credits a person may accumulate and directed that those credits "*shall* be applied." 18 U.S.C. § 3632(d)(4)(A), (C) (emphasis added).

The privileges that participation in programming also confers, such as added phone time and higher commissary limits, Pet. App. 26a (citing 18 U.S.C. § 3632(d)(1)–(3)), do not make up for the loss of unused credits. Those privileges matter little to the thousands of people in halfway houses and home confinement who keep earning credits but cannot use them. The court below also noted that a person on supervised release may cite completed programming when seeking early termination, Pet. App. 26a, yet early termination is available only after a year of supervision and only at a judge's discretion, 18 U.S.C. § 3583(e)(1); *see* Pet. App. 23a. The Second Circuit's

decision thus replaces a reward Congress mandated with one a district court may withhold.

The Second Circuit also emphasized that supervised release itself "'fulfills rehabilitative ends,'" Pet. App. 26a–27a (quoting *United States v. Johnson*, 529 U.S. 53, 59 (2000)), and thus disputed the rehabilitative benefit of applying credits to supervised release. But supervision advances those ends only until a person no longer needs it. The Sentencing Commission now encourages courts to terminate supervision early when circumstances warrant, so that scarce resources reach those who most need it. *See* U.S.S.C., *Amendment 835 to § 5D1.4* (Nov. 2025), https://tinyurl.com/muujab2b. A person who earns time credits has already done the rehabilitative work that supervision exists to promote. *See* Pet. App. 43a (Nathan, J., dissenting) (explaining that the Act rests on the premise that "[p]risoners who complete more programs (and thus earn more FSA credits) present empirically lower risks of recidivism").

Judicial disagreement on how time credits may be used is now entrenched along geographic lines. The First Step Act was enacted in part to "address inherent disparities in our sentencing laws." 164 Cong. Rec. at H10362 (statement of Rep. Collins). Yet the Second Circuit's decision deepens a circuit split that ensures similarly situated individuals will serve meaningfully different sentences depending solely on where they are confined or reside. In the Ninth Circuit, rehabilitative effort yields reductions across the full span of federal control; in the Second, Fourth, Sixth, and Eleventh Circuits, it does not. *Compare Gonzalez*, 151 F.4th at 1089, *with* Pet. App. 27a, *Hargrove*, 155 F.4th at 536, *Guerriero v. Miami RRM*, 2024 WL 2017730, at *3 (11th Cir. May 7, 2024) (per

curiam) (unpublished), *and United States v. Malik*, 2025 WL 973003, at *1 (4th Cir. Apr. 1, 2025) (per curiam) (unpublished).

This Court has repeatedly emphasized the "need for uniformity and consistency of federal criminal law," warning against the "significant danger of inconsistent application" across jurisdictions. *Tafflin v. Levitt*, 493 U.S. 455, 464–65 (1990). The Sentencing Guidelines were originally enacted to address the "shameful" and "unjustifi[ed]" variation that resulted from the earlier, "indeterminate" system. *Mistretta v. United States*, 488 U.S. 361, 366 (1989). Such inconsistency "was a serious impediment to an evenhanded and effective operation of the criminal justice system." *Id.* Indeed, uniformity is a mandatory sentencing factor, *see* 18 U.S.C. § 3553(a)(6), whose "primary purpose" is to "reduce unwarranted sentence disparities on a *nationwide* level," *United States v. Sampson*, 898 F.3d 287, 314 (2d Cir. 2018) (internal quotation marks omitted); *see United States v. Simmons*, 501 F.3d 620, 624 (6th Cir. 2007) (collecting cases).

These principles leave no room for a sentencing regime in which the effect of congressionally mandated time credits depends on the circuit in which a person happens to be confined. But at present, the practical duration of federal sentences turns in part on geography rather than on rehabilitative effort. Leaving the decision below in place would therefore undermine both the Act's incentive structure and its commitment to national uniformity in sentencing. These failures warrant this Court's intervention.

B. The Interpretation Adopted Below Exacerbates The Fiscal Impact Of Mass Incarceration.

The decision below also frustrates another key objective of the First Step Act: mitigating the fiscal impact of mass incarceration. Congress enacted the Act against a backdrop of high incarceration costs and persistent recidivism, aiming not only to improve public safety but also to "control corrections spending." H.R. Rep. No. 115-699, at 22. The Act's time-credit system was central to that cost-saving design. By offering rewards for participation in evidence-based programming, Congress sought both to shorten expensive periods of federal control and to reduce recidivism—and thus the number of costly returns to custody.

That fiscal objective featured prominently in debates on the Act. One legislator emphasized that the Act would "save taxpayer dollars" otherwise expended on excessive punishment. 164 Cong. Rec. at H10363 (statement of Rep. Jeffries). Another observed that the status quo—a revolving door of recidivism and additional incarceration—is "costing us money." *Id.* at H10364 (statement of Rep. Jackson-Lee). Still another described the Act as "historic legislation that will . . . save taxpayer money." *Id.* at H10362 (statement of Rep. Collins).

Through the First Step Act, Congress therefore pursued what one supporter labeled a "money and morals" approach. 164 Cong. Rec. at H10362 (statement of Rep. Collins). In other words, as Congress undertook the morally necessary task of reducing needlessly long sentences and mitigating unwarranted sentencing disparities, it also sought to alleviate burdens on the public fisc by legislating new incentives

for incarcerated people to get out—and stay out—of the criminal-justice system.

Reducing recidivism was seen as a central mechanism to rein in spending. In the House, for example, Representative Collins argued that the "cycle of recidivism drains taxpayer dollars [and] strains the limited resources at the Department of Justice." 164 Cong. Rec. at H10362 (statement of Rep. Collins). The House Report thus concluded that it is in the "fiscal interest of the government to reduce recidivism." H.R. Rep. No. 115-699, at 22. Senators sounded similar themes. Senator Cornyn emphasized that recidivism "leav[es] taxpayers with the bill." 164 Cong. Rec. at S7641–42. And Senator Portman observed that when a person reoffends and returns to prison, the "taxpayer ends up picking up the tab." *Id.* at S7769.

Statistics bear out those legislators' recidivism-related concerns. According to U.S.S.C. data cited in the House Report, within eight years of release, 49.3% of people are re-arrested, 31.7% are re-convicted, and 24.7% are re-incarcerated. H.R. Rep. No. 115-699, at 22. Each arrest, prosecution, and re-imprisonment imposes significant public costs. The cost of housing a single person in federal prison can exceed $50,000 per year. *See The Public Costs of Supervision Versus Detention*, U.S. Cts. (June 5, 2025), https://tinyurl.com/3eebfvsv. Recidivism thus directly inflates public spending on the criminal-justice system.

At the same time, the empirical record demonstrates that recidivism is reducible. Participation in rehabilitative programming has been shown to dramatically lower reoffense rates. According to a Department of Justice publication, for example, people who participate in Bureau of Prisons educational programs have *43% lower odds* of returning to prison. *See*

Prison Reform: Reducing Recidivism by Strengthening the Federal Bureau of Prisons, U.S. Dep't of Just. (June 5, 2025), https://tinyurl.com/ytp8vmt2. Maximizing participation in such programs is essential to controlling long-term costs.

The interpretation of Section 3632(d)(4)(C) adopted by the majority below, however, undermines Congress's cost-saving goals in two ways. First, by refusing to let time credits shorten prerelease custody or supervised release, the decision directly increases supervision costs. That consequence alone carries significant fiscal implications. According to statistics from the Administrative Office of the U.S. Courts, supervised release costs nearly $5,000 per person each year, *see The Public Costs of Supervision Versus Detention*, *supra*, and there are more than 100,000 individuals on supervised release nationwide, *see QuickFacts*, *supra*.

Prerelease custody costs even more. Placement in a residential reentry center costs $35,663 a year per person, not far off from the price of full incarceration. *Annual Determination of Average Cost of Incarceration Fee*, 86 Fed. Reg. 49,060, 49,060 (Sept. 1, 2021); *The Public Costs of Supervision Versus Detention*, *supra*. And the number of individuals in prerelease custody is likewise substantial—residential reentry centers alone lodged about 8,500 people as of May 1, 2025. U.S. Gov't Accountability Off., GAO-26-107353, *Bureau of Prisons: Actions Needed to Better Achieve Financial and Other Benefits of Moving Individuals to Halfway Houses on Time* 6 (2026), https://tinyurl.com/4ebx7hvz. Keeping individuals in these phases longer meaningfully swells federal expenditures—particularly in cases where continued supervision is unnecessary to ensure a successful transition

to civilian life. It also ties up reentry-center beds needed by people still in prison who have earned a transfer but must wait for a placement, as petitioner's own delayed transfer shows. *See* 18 U.S.C. § 3624(g)(11); Pet. App. 6a–7a.

Second, and more broadly, by weakening the incentive structure Congress relied upon to drive participation in rehabilitative programming, the Second Circuit's approach will increase recidivism-related costs. As incentives weaken, participation will predictably decline; as participation declines, recidivism will rise; and as recidivism rises, correctional and enforcement costs will follow as a matter of course. Society at large will also bear additional "social costs of crime," whether "in the form of lower property values, reduced business investment," "lost economic opportunity," or otherwise. Council of Econ. Advisers, *Returns on Investments in Recidivism-Reducing Programs* 3 (2018), https://tinyurl.com/bm6n45uu. Hence, the decision below will aggravate, rather than mitigate, both recidivism and the long-term fiscal burden on the federal government, the States, and the public—the opposite of what Congress sought to achieve with the First Step Act.

Accordingly, the substantial fiscal consequences of an improper interpretation of Section 3632(d)(4)(C) reinforce the need for this Court's review.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted.

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