

No.

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM A. WHITE, PETITIONER

v.

WARDEN OF FEDERAL CORRECTIONAL INSTITUTION - CUMBERLAND,
RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

JAMES WYDA
Federal Public Defender

CLAIRE MADILL
*Assistant Federal Public Defender
Counsel of Record*

6411 Ivy Lane, Suite 710
Greenbelt, MD 20700
(301) 344-0600 (tel.)
(301) 344-0019 (fax)

James_Wyda@fd.org
Claire_Madill@fd.org

Counsel for Petitioner

QUESTION PRESENTED

This Court has long recognized that individuals can have property or liberty interest, protected by the Fifth and Fourteenth Amendment Due Process Clauses, that is created by statute. For example, although there is no inherent due process right to early release from prison, the procedural component of the Due Process Clauses protects prisoners' statutory rights to good-time credits. *Wolff v. McDonnell*, 418 U.S. 539 (1974). To determine whether a statute creates a protected liberty interest, this Court asks whether the law "contain[s] language mandating release under certain circumstances." *Board of Pardons v. Allen*, 482 U.S. 369, 372 (1987). In this case, the Fourth Circuit Court of Appeals held that, although the First Step Act contains mandatory language requiring the earning of time credits for qualifying individuals, federal prisoners do not have had statutorily created protected liberty interest in those time credits because they are "contingent" upon "conditions." The question presented is:

Whether the First Step Act creates a legitimate right or expectation in earning time credits for qualifying federal prisoners that can give rise to a liberty interest protected by the Fifth Amendment Due Process Clause?

PARTIES TO THE PROCEEDING

The parties to the proceeding before the Court are as follows:

Petitioner (the petitioner-appellant) below is William White.

Respondent (appellee below) is the Warden of the Federal Correctional Institution, Cumberland.

RELATED PROCEEDINGS

This case arises from these proceedings:

White v. Warden, Federal Correctional Institution – Cumberland, No. DKC-22-2371, 2023 WL 4867562 (D. Maryland July 31, 2023).

White v. Warden of Federal Correctional Institution – Cumberland, 164 F.4th 326 (4th Cir. 2026) (Case No. 23-7116).

White v. Warden of Federal Correctional Institution – Cumberland, No. 23-7116, 2026 WL 1091654 (4th Cir. 22, 2026).

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PETITION FOR A WRIT OF CERTIORARI

William White respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The decision of United States Court of Appeals for the Fourth Circuit has been reported as *White v. Warden of Federal Correctional Institution – Cumberland*, 164 F.4th 326 (4th Cir. 2026). It is reprinted in the appendix. App.3. The decision denying the petition for rehearing/rehearing en banc is unpublished but is

available at *White v. Warden of Federal Correctional Institution – Cumberland*, No. 23-7116, 2026 WL 1091654 (4th Cir. 22, 2026), and is also reprinted in the appendix. App.55. The district court’s decision is also unpublished, but is available at *White v. Warden, Federal Correctional Institution – Cumberland*, No. DKC-22-2371, 2023 WL 4867562 (D. Maryland July 31, 2023) and reprinted in the appendix. App.34.

JURISDICTION

The Fourth Circuit entered judgment on January 13, 2026 (App.3) and denied a timely rehearing petition on April 22, 2026 (App.55). On July 16, 2026, the Chief Justice extended the time to file this petition until August 20, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment provides: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall

be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

The First Step Act states, *inter alia*:

“A prisoner, except for an ineligible prisoner under subparagraph (D), who successfully completes evidence-based recidivism reduction programming or productive activities, shall earn time credits[.]” 18 U.S.C. § 3632(d)(4)(A)(1).

“Time credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities shall be applied toward time in prerelease custody or supervised release. The Director of the Bureau of Prisons shall transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release.” 18 U.S.C. § 3632(d)(4)(C).

“Requirement to provide programs to all prisoners; priority.-- The Director of the Bureau of Prisons shall provide all prisoners with the opportunity to actively participate in evidence-based recidivism reduction programs or productive activities, according to

their specific criminogenic needs, throughout their entire term of incarceration.” 18 U.S.C. § 3621(h)(6).

INTRODUCTION

This Court should grant this petition to resolve a circuit split regarding the legal standard for determining whether an individual has a liberty interest, protected by the Due Process Clause, in some statutory benefit, like parole or time credits.

The first step in any case claiming a violation of the Due Process Clause is to identify the liberty interest protected by the Clause. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972). Sometimes, a state or federal government can create such a liberty interest via a statute or regulations where one would not otherwise exist. To determine whether this has happened (*i.e.*, whether a law has created a liberty interest), a court must look at the language of the law to ascertain whether it creates a “justifiable expectation” in some right, privilege, or outcome. *Vitek v. Jones*, 445 U.S. 480, 489 (1980). Where the law “plac[es] substantive limitations on official discretion,” usually “by mandating the outcome to be reached upon a finding that the relevant criteria have been met,” a liberty interest arises. *Kentucky v. Dep’t of Corrections v. Thompson*, 490 U.S. 454, 462 (1989)

(citations omitted).¹ Applying this test, this Court has held that prisoners have protected liberty interests in good-time credits,² parole,³ preparole,⁴ avoiding supermax prison,⁵ and avoiding transfer to a mental institution.⁶ When a liberty interest exists, basic procedural due process protections, like notice and a right to a hearing, attach. *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972).

A split exists about whether a protected liberty interest can arise from a statute where the relevant law uses mandatory language and limits official discretion, but also places “conditions” or “contingencies” on the statutory benefit. Several circuits have held that a liberty interest exists, as long as the statute uses

¹ Prisoners must make an additional showing, not relevant to this petition, to prevail on a claim that they have a protected liberty interest. Specifically, prisoners must show not only that a statutory right has been created, but also that the right affects the duration of their sentence or that deprivation of it constitutes an “atypical and significant hardship.” *Sandin v. Conner*, 515 U.S. 472, 484, 487 (1995). As explained *infra*, because the Fourth Circuit concluded that the First Step Act did not create any right or expectation in the first place, it did not reach this second step.

² *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).

³ *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1 (1979); *Morrissey v. Brewer*, 408 U.S. 471 (1972).

⁴ *Young v. Harper*, 520 U.S. 143 (1997).

⁵ *Wilkinson v. Austin*, 545 U.S. 209 (2005).

⁶ *Vitek*, 445 U.S. 480.

mandatory language, even if the benefit will be awarded only when conditions are met. *E.g.*, *Jackson v. Carlson*, 707 F.2d 943, 946-47 (7th Cir. 1983). On the other hand, several circuits—including the Fourth Circuit in this case—have held that a liberty interest cannot arise, even if a statute uses mandatory, discretion-limiting language, if the benefit is “conditional” or “contingent.” *E.g.*, App.16-17.

It is important to resolve this split, especially in light of the First Step Act’s (FSA) creation of a new time credit scheme that could implicate the Due Process Clause. The FSA is a relatively new law—it was enacted in 2018, but the time credit scheme was not fully rolled out until years later. *See* 18 U.S.C. § 3632(a); 18 U.S.C. § 3621(h)(1)-(3). The FSA mandates that qualifying prisoners earn and benefit from a new form of time credits, stating that prisoners “*shall* earn time credits” that “*shall* be applied toward” early release. 18 U.S.C. § 3632(d)(4)(A), (C) (emphases added). Under this Court’s precedent, that language should be enough to create a legitimate expectation that could give rise to a protected liberty interest. *E.g.*, *Board of Pardons v. Allen*, 482 U.S. 369, 377-78 (1987). But several courts have now held that, notwithstanding

the mandatory language of the FSA, federal prisoners do not have a liberty interest in FSA time credits because they must meet certain qualifications (or “conditions”) before those credits are awarded or applied. This has drastic consequences for federal inmates, as it limits their options for seeking redress when the Bureau of Prisons (BOP) wrongfully withholds credits and, as a result, keeps them incarcerated for longer than authorized by statute. And a method of redress, like procedural due process, is especially important given that statistics show that the BOP is failing to properly apply FSA time credits in 70.8% of cases. U.S. Gov’t Accountability Off., GAO-26-107268, Federal Prisons: Improvements Needed to the System Used to Assess and Mitigate Incarcerated People’s Recidivism Risk (2026).

This case is an ideal vehicle to resolve this question. The due process question was squarely presented and litigated below on a motion to dismiss. Both the appellate and district courts addressed it. App.16-17, 52-54. And, since the Fourth Circuit did not address the second prong of the two-part test for ascertaining whether a liberty interest exists, *see supra* n.1, this Court only need to answer the first: whether the FSA uses the type of language that

gives rise to a legitimate expectation in FSA time credits for qualifying individuals. It need not ultimately conclude whether federal prisoners have a protected liberty interest in credits.

For these reasons, this Court should grant certiorari in this case.

STATEMENT OF THE CASE

This case deals with what procedural protections should apply before the Bureau of Prisons (BOP) deprives a prisoner of First Step Act (FSA) time credits to which he is statutorily entitled.

A. Statutory Background

Enacted in 2018, the First Step Act (FSA) is “the most significant criminal justice reform bill in a generation.” 164 Cong. Rec. S7649 (daily ed. Dec. 17, 2018) (statement of Sen. Chuck Grassley). As President Trump stated when signing it into law, the statute had “incredible bipartisan support.” Remarks by President Trump at Signing Ceremony for S. 756, the “First Step Act of 2018” and H.R. 6964, the “Juvenile Justice Reform Act of 2018,” 2018 WL 6715859, at *2, White House (Dec. 21, 2018). “The act was the culmination of several years of congressional debate about what Congress might do to reduce the size of the federal prison population while also creating mechanisms to maintain public safety.” Nathan James, Cong. Rsch. Serv., R45558, The First Step Act of 2018: An Overview 1 (2019), <https://sgp.fas.org/crs/misc/R45558.pdf>.

To achieve these dual goals of reducing the prison population

and increasing public safety, the FSA, among other things, created a new time credit for federal prisoners. 18 U.S.C. § 3632(d)(4). Qualifying prisoners⁷ earn credits at a rate of 10 or 15 days per “every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.” 18 U.S.C. § 3632(d)(4)(A). Once an individual earns sufficient credits and meets a certain low-risk-of-reoffending threshold, he is released from a BOP prison and placed in the community, either on supervision, in home confinement, or in a halfway house. 18 U.S.C. § 3632(d)(4)(C); 18 U.S.C. § 3624(g).⁸

The awarding and application of FSA time credits is “mandatory.” *Valladares v. Ray*, 130 F.4th 74, 77, 79 (4th Cir. 2025); *see also Benson v. Edgefield*, 174 F.4th 348, 357 (4th Cir.

⁷ All federal prisoners earn time credits unless they are a noncitizen with a final order of removal or were convicted of a disqualifying offense. 18 U.S.C. § 3632(d)(4)(D).

⁸ The FSA requires that credits “be applied toward time in prerelease custody or supervised release.” 18 U.S.C. § 3632(d)(4)(C). “Prerelease custody” refers to home confinement or a “residential reentry center,” also known as a halfway house. 18 U.S.C. § 3624(g)(2); *see Rodriguez v. Smith*, 541 F.3d 1180, 1181 n.1 (9th Cir. 2008) (“[T]he parties both agree that RRCs were formally referred to as Community Correction Centers (CCCs) and are commonly known as ‘halfway houses[.]’”).

2026); *Gonzalez v. Herrera*, 151 F.4th 1076, 1080 (9th Cir. 2025). The statute states that qualifying prisoners “*shall* earn time credits” for participation in qualifying programming and that those credits “*shall* be applied toward” early release. 18 U.S.C. § 3632(d)(4)(A), (C) (emphases added). It also states that the BOP “shall provide all prisoners with the opportunity to actively participate in evidence-based recidivism reduction programs or productive activities”—and thus earn time credits—“throughout their entire term of incarceration.” 18 U.S.C. § 3621(h)(6). The statute contains two—and only two—time-based exceptions. A prisoner earns credits throughout their entire term of incarceration, except for the time periods before their sentence “commences” (as statutorily defined) and before the enactment of the statute. 18 U.S.C. § 3632(d)(4)(B); *see also Miles v. Bower*, 173 F.4th 372, 375, 382 (1st Cir. 2026); *Benson*, 174 F.4th at 356-57.

A few additional prerequisites exist before credits that are earned can be applied to accelerate an individual’s early release. Once an individual earns an amount of FSA time credits equal to the remainder of their sentence, they must be released to supervision, home confinement, or a halfway house, as long as they

have been assessed to be a “low” or “minimum” risk of reoffending. 18 U.S.C. § 3624(g)(1).

According to a 2026 report from the Government Accountability Office, the BOP timely applied FSA time credits in only 29.2% of cases, and 53.7% of prisoners never had any credits of the credits they earned applied. U.S. Gov’t Accountability Off., GAO-26-107268, Federal Prisons: Improvements Needed to the System Used to Assess and Mitigate Incarcerated People’s Recidivism Risk (2026).

B. Constitutional Background

This case involves the procedural protections attendant to the Due Process Clauses.

Obviously, under the Fifth and Fourteenth Amendment Due Process Clauses, individuals may not be deprived of life, liberty, or property without due process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). In order to state a due process claim, a plaintiff must identify a “liberty interest” protected by the Due Process Clause. *Sandin v. Conner*, 515 U.S. 472, 477 (1995); *see also Roth*, 408 U.S. at 569. (This test applies to any plaintiff, prisoner or otherwise. *Roth*, 408 U.S. at 569-72.)

A liberty interest can arise in two different ways. It might be protected inherently by the Due Process Clause. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). But state and federal governments can also create a right protected by the due process clauses via positive law, like statutes. *Id.*; see also *Smith v. Org. of Foster Fams. for Equal. and Reform*, 431 U.S. 816, 845 (1977) (“[T]he Court has recognized that liberty interests may in some cases arise from positive-law sources.” (citing *Wolff*, 418 U.S. at 557)). For example, although this Court has held that there is no inherent right to parole under the Due Process Clause, if the state or federal government grants that right, then “due process protections attach to the decision to revoke parole.” *Vitek*, 445 U.S. at 488 (citing *Morrissey*, 408 U.S. 471). Similarly, this Court has held that while “the Constitution itself does not guarantee good-time credit for satisfactory behavior while in prison,” where the government “has not only provided a statutory right to good time but also specifies that it is to be forfeited only” under specified circumstances (like “serious misbehavior”), the Constitution prohibits the denial or removal of good-time credits without affording procedural due process. *Wolff*, 418 U.S. at 557.

To analyze whether a statute has created a liberty interest, a court must start with the “threshold question,” *Wilkinson*, 545 U.S. at 221: whether there is language that “creates a protectible expectation” in some privilege or right. *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 11 (1979); *see also Vitek*, 445 U.S. at 489. In the context of incarcerated folks, “[u]nilateral expectations and hopes for early release do not” create a liberty interest. *Montgomery v. Anderson*, 262 F.3d 641, 644 (7th Cir. 2001) (citing *Thompson*, 490 U.S. 454 & *Allen*, 482 U.S. 369). But, where the government “gives prisoners more than a subjective hope of receiving . . . credit,” then the Due Process Clause is triggered. *Id.* at 645; *see also Thompson*, 490 U.S. at 463; *Vitek*, 445 U.S. at 490-91.

This Court has consistently articulated the legal test for ascertaining whether the government has created a legitimate expectation. Where a statute uses mandatory language and limits the government’s discretion to withhold some right or benefit, this prong is satisfied. *Thompson*, 490 U.S. at 463. For example, this Court held that Montana law had created a protected liberty interest in parole because “the Montana statute, like the Nebraska

statute [found to create a protected liberty interest in *Greenholtz*], uses mandatory language ('shall') to 'creat[e] a presumption that parole release will be granted' when the designated findings are made." *Allen*, 482 U.S. at 377 (quoting *Greenholtz*, 442 U.S. at 12). In contrast, where a statute uses discretionary language to talk about a privilege or right, a liberty interest does not arise. For example, this Court held that Kentucky inmates did not have a liberty interest in visitation privileges where the regulations governing the right to visitation "lack[ed] the requisite relevant mandatory language." *Thompson*, 490 U.S. at 464.

This Court has also made clear that the existence of "conditions" or "contingencies" attached to a statutory right does not necessarily remove it from the ambit of the Due Process Clauses' protection. For example, in *Allen*, this Court held that a "protectable liberty interest [was] created by Montana statute requiring that a prisoner 'shall' be released *when certain conditions are met*." *Green v. McCall*, 822 F.2d 284, 289 (2d Cir. 1987) (emphasis added) (citing *Allen*, 482 U.S. 369); *see also Allen*, 482 U.S. at 374. Similarly, this Court concluded that Oklahoma inmates had a protected liberty interest in the "preparole," even

though to qualify for preparole, inmates had to satisfy certain conditions, including that they had shown good behavior in prison and had either have served 15% of their sentence or be within 1 year of their parole consideration date or projected release date. *Young v. Harper*, 520 U.S. 143, 144-45 (1997); *see also* 57 Okl. St. Ann. § 365 (1990). In *Greenholtz*, this Court held that Nebraska prisoners had a protected liberty interest in parole, even though the statute mandated release only if the board of parole did not make specified findings. 442 U.S. at 11; *see also Anthony v. Wilkinson*, 637 F.2d 1130, 1143 (7th Cir. 1980) (noting that *Greenholtz* involved “a loss of . . . contingent liberty interests”).

In the context of prisoners (as opposed to other plaintiffs), this Court has added an additional prong to the legal standard for determining whether a statutorily created liberty interest exists. Even where a statute uses mandatory language creating some sort of legitimate expectation in a benefit, a liberty interest exists only if the right is of a sufficient “nature” to trigger due process protection. *Sandin*, 515 U.S. at 481-82. This prong can be satisfied by showing *either* (a) that the government’s actions affected the duration of the sentence *or* (b) that the statute or regulation “imposes atypical and

significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 484, 486-87.

C. Factual Background

Petitioner William White is serving a federal prison sentence. App.4. He qualifies to earn FSA time credit acts and, has in fact, earned many. App.4, 6. But the BOP refused to provide him credit for two periods of time: when he was Special Housing Unit (SHU) due to insufficient bed space and for the time he was in a BOP transfer center because he was being moved. App.4-5, 22-23, 35-36.

D. Procedural History

Mr. White filed a 28 U.S.C. § 2241 petition challenging the denial of FSA time credits for the time he spent in the SHU and in the transfer center. App.6, 34. He argued that the denial of credits was both contrary to the text of the FSA and violated his procedural due process rights because he was not provided, *inter alia*, with notice, an explanation for the denial, or an opportunity to contest it. App.4, 6, 36, 49. While Mr. White’s petition was pending, the BOP reversed its position as to the time Mr. White spent in the SHU and awarded him credits for that time. App.24, 38, 49. But it still

refused to provide him with credits for the time he spent in the transfer center. App.49.

The district denied Mr. White's petition. App.54. As to the due process question, the district court concluded that Mr. White did not have a protected liberty interest in FSA time credits for two reasons. App.54. First, the district court reasoned there was no liberty interest because FSA time credits are "contingent," *i.e.*, that prisoners must meet certain threshold requirements before their credits can be applied to early release. App.53. Second, the district court concluded that no liberty interest existed because FSA time credits could be applied "toward time in prerelease custody or supervised release" and, according to the district court, "[p]rerelease custody, however, is just another form of BOP custody, *see* 18 U.S.C. § 3624(g)(2)[.]" App.53 (quoting *Fiorito v. Fikes*, Case No. 22-CV-0749, 2022 WL 16699472, *5 (D. Minn. Nov. 3, 2022)).

A divided panel of the Fourth Circuit affirmed. App.3. As to the due process question,⁹ the panel majority concluded that "a

⁹ Over Judge King's vehement dissent, the panel majority concluded that Mr. White was not statutorily entitled to FSA time credits because he failed to show that he actually participated in qualifying programming. App.16. As Judge King explained in his

prisoner claiming rights to FSA time credits cannot show that he has a statutory entitlement to those credits.” App.16. In the majority’s view, “[a]lthough awarding FSA time credits is mandatory *if* the prisoner qualifies for and earns them,” the fact that there were conditions precedent to the application of credits “indicate[s] that the prisoner cannot legitimately expect that he has a *right* to them.” App.16. Per the majority: “Because the earning and application of FSA time credits are contingent upon numerous conditions both within and outside of a prisoner’s control, the FSA does not create a statutory entitlement to those credits.” App.17.¹⁰ In reaching this conclusion, the Fourth Circuit did not apply (or even really cite) this Court’s precedent on state-created liberty interests. App.15-18.

Mr. White filed a petition for rehearing and rehearing en banc.

dissent, and Mr. White bolstered in his petition for rehearing/rehearing en banc, the evidence indicated that Mr. White *did* participate in qualifying programming and, in any event, he would have been granted credits regardless under prevailing BOP policy had the panel reversed. App.29-33, 60-62. If Mr. White was given the procedural due process protections he requested, like a hearing and opportunity to contest the denial of FSA time credits, he could have made these points to the BOP.

¹⁰ Because BOP’s actions violated the statute, Judge King’s dissent found it unnecessary to review the due process claim. App.19 n.1.

See App.55. Among other arguments, Mr. White pointed out that the panel's "conditional" reasoning on the due process claim conflicted with decisions from this Court and other circuit courts of appeal. The once-again-divided panel issued an unpublished opinion denying Mr. White's petition. App.55. The panel did not address Mr. White's conflict argument. App.56-58.

REASONS FOR GRANTING THE PETITION

I. Courts are split on the legal standard that applies when determining whether a statute has created a right potentially protected by the Due Process Clause.

The circuit courts are split on whether the conditional or contingent nature of a statutory privilege exempts the statute from the Due Process Clauses' procedural protections. On the one hand, the First, Second, and Seventh Circuits have recognized that a statutorily created liberty interest can arise from rights that are only awarded when certain conditions are met. On the other hand, the Fourth, Seventh, and Tenth Circuits have held otherwise, concluding that a liberty interest cannot arise where the statute conditions the obtaining of a right on certain contingencies.¹¹ District courts have also split on this question.

Many circuit courts have followed this Court's clear holdings that a liberty interest can be created by statute, even where the right at issue is "conditional." For example, in holding that federal inmates have a liberty interest in good-time credits, the Seventh Circuit made clear that the "conditional" nature of a statutory

¹¹ Obviously, this indicates that the Seventh Circuit appears to have an intra-circuit conflict on this issue, thus further illustrating the confusion in the lower courts.

benefit does not remove it from Due Process Clause protection: “[I]f the government creates . . . a firm expectation that if the prisoner **complies with specified conditions** he will automatically earn the credits and be released earlier—a deprivation of that right is a deprivation of liberty.” *Jackson*, 707 F.2d at 947 (emphasis added); see also *Grennier v. Frank*, 453 F.3d 442, 444 (7th Cir. 2006) (“It takes mandatory language (and thus an entitlement *contingent* on facts that could be established at a hearing) to create a liberty or property interest in an opportunity to be released on parole.” (emphasis added)). Similarly, the First Circuit found a protected liberty interest in prisoners’ early release to electronic monitoring, even though “eligibility criteria” (*i.e.*, conditions) existed for the program. *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 870, 890 (1st Cir. 2010). And the Second Circuit held that a federal prisoner had a protected liberty interest in parole release, even though parole could be rescinded under certain “conditions.” *Drayton v. McCall*, 584 F.2d 1208, 1214-15 (2d Cir. 1978); see also *Green*, 822 F.2d at 289 (recognizing that a liberty interest is created where a “statute requir[es] that a prisoner ‘shall’ be released when certain conditions are met” (citing *Allen*, 482 U.S. 369)).

But, as this issue has reared its head again in light of the newly created FSA time credits, other circuit courts have suddenly shifted and started applying a different test. Instead of simply asking whether the language of the relevant statute uses mandatory language that limits official discretion, courts are now asking whether the right is “unconditional.” For example, in this case, the Fourth Circuit recognized that the FSA used mandatory language with respect to its time credits. App.16 (“[A]warding FSA time credits is mandatory if the prisoner qualifies for and earns them[.] (emphasis omitted)); *see also Valladares* 130 F.4th at 77 (“The First Step Act established a system of mandatory time credits for incarcerated individuals who participate in recidivism reduction programming, with limited exceptions.”). Under this Court’s prior precedent, that should have ended the matter, and the court of appeals should have proceeded to the second step of the due-process test (related to the nature of the right). But, instead, the Fourth Circuit changed the legal standard for the first step of the liberty interest test for prisoners. It was not enough for the statute to use mandatory language; rather, a prisoner had to also show that the privilege was not “contingent upon numerous conditions.”

App.16-17.

The Fourth Circuit is not alone in this conclusion. The Sixth Circuit reached the same conclusion, albeit in an unpublished case. Per the Sixth Circuit: “[B]ecause the FSA earned-time credits are conditional, they do not create a liberty interest.” *Sedlacek v. Rardin*, No. 24-1254, 2025 WL 948485, at *1 (6th Cir. 2025).¹²

And some circuit courts apparently adopted this “conditional” test even before the FSA. For example, the Tenth Circuit held that a prisoner did not have a legitimate expectation in Oklahoma early-release credits because the application of those credits was “contingent on events outside of Fancher’s, or prison officials’, control.” *Fancer v. Sirmons*, 58 F. App’x 804, 807 (10th Cir. 2003). Similarly, the Seventh Circuit held there was no protected liberty interest in a prisoner’s access to social and rehabilitative activities,

¹² The Fourth Circuit claimed that its decision accorded with the Second Circuit (App.17), but that is not true. In *Cheng v. United States*, 132 F.4th 655, 659 (2d Cir. 2025) (per curiam), the Second Circuit held that a particular inmate did not have a liberty interest in FSA time credits because the petitioner was a noncitizen with a final order of removal, a category of individuals expressly precluded by statute from the FSA’s time-credit program. Thus, Cheng could not claim a reasonable expectation of a right in such credits. In contrast, Mr. White *did* qualify for the earning of credits and, had in fact, earned many. App.4, 38.

even those activities would have resulted in good-time credits. *Higgason v. Farley*, 83 F.3d 807, 810 (7th Cir. 1996). According to the court, no liberty interest existed because “it was not inevitable that he would complete an educational program and earn good time credits”—in other words, the earning of credits was “contingent” on other factors. *Id.*

Not only are the circuit courts of appeals split, but lower courts are also confused. Some have held that federal prisoners do have a protected liberty interest in FSA time credits. *E.g.*, *Woolsey v. Warden*, No. 2:25-CV-137-WKW, 2025 WL 2598794, at *16-*17 (M.D. Ala. Sept. 8, 2025); *Adepoju v. Scales*, 782 F. Supp. 3d 306, 320-21 (E.D. Va. 2025). Others, like the district court here, have concluded the opposite. *E.g.*, App.52-54; *Fontanez v. Rardin*, No. 2:23-cv-12415, 2024 WL 1776338, *2 (E.D. Mich. Apr. 24, 2024); *Fiorito*, 2022 WL 16699472, at *5-*6. These disparate conclusions provide further evidence of the need for clarification in this area of law.

In short, this Court should grant certiorari in this case to address the lower court confusion and conflict over whether or how the “conditional” nature of a statutory entitlement impacts whether

a protected liberty interest can be created.

II. The decision below is incorrect and conflicts with this Court's precedent.

The Fourth Circuit, along with the Sixth and Seventh Circuit cases that align with it, erred in holding that an individual cannot have a legitimate expectation in a conditional right or benefit. As explained above, virtually every case where this Court has found a protected liberty interest in a statutory entitlement involved conditions. *Supra* 26-27; *Wilkinson*, 545 U.S. at 215-17; *Young*, 520 U.S. at 144-45; *Allen*, 482 U.S. at 372-74; *Vitek*, 445 U.S. at 490-91; *Greenholtz*, 442 U.S. at 11; *Wolff*, 418 U.S. at 545-53; *Morrissey*, 408 U.S. at 479-82. Indeed, good time credits—which everyone agrees *are* protected by the Due Process Clauses¹³—*are* conditional: prisoners are entitled to them, but only “subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations.” 18 U.S.C. § 3624(b)(1). In fact, to adopt the Fourth Circuit’s “conditional” test would mean, essentially, that prisoners virtually never would have statutorily created liberty

¹³ *Wolff*, 418 U.S. 539; *Jackson*, 707 F.2d at 946-47.

interest, as it is hard to imagine a statute providing for the unconditional early release of a prisoner. Instead of allowing this illusory standard to fester in lower courts, this Court should take this case to reaffirm that legal test remains what this Court already has established: “[A] State creates a protected liberty interest by placing substantive limitations on official discretion,” specifically, “by establishing substantive predicates to govern official decision-making, and, further, by mandating the outcome to be reached upon a finding that the relevant criteria have been met.” *Thompson*, 490 U.S. at 462 (citations and quotation marks omitted).

That the Fourth Circuit went astray is not surprising given the analysis it put forward. The Fourth Circuit did not apply any of this Court’s seminal due process cases, like *Thompson*, *Greenholtz*, *Wolff*, or *Sandin*. App.15-17. It did not apply the mandatory-language, discretion-limiting legal standard this Court has articulated. *Id.* And neither did the district court. App.52-54.

It is easy to trace how courts, like the one here and in *Fiorito*, arrived at this erroneous articulation of the liberty interest standard. In short, it stems from sloppy citation or selective reading of precedent. Take, for example, *Fontanez*, 2024 WL

1776338. That case cited an unpublished Sixth Circuit opinion for the proposition that “a federal prisoner does not have a constitutionally protected liberty interest in earning future sentence credits”—*i.e.*, that no liberty interest exists if the credits remain conditional. *Id.* at *2 (citing *Sotherland v. Myers*, 41 F. App’x 752, 753 (6th Cir. 2002)). *Sotherland*, in turn, cited *Abed v. Armstrong*, 209 F.3d 63 (2d Cir. 2000) for this proposition. *Sotherland*, 41 F. App’x at 753. But *Abed*, read in full, does not support this proposition. *Abed* said: “Although inmates have a liberty interest in good time credit they have already earned, no such interest has been recognized in the opportunity to earn good time credit *where, as here, prison officials have discretion to determine whether an inmate or class of inmates is eligible to earn good time credit.*” *Abed*, 209 F.3d at 66-67 (emphasis added) (citations omitted). That is merely a correct articulation of this Court’s precedent: that a prisoner cannot have a reasonable expectation in time credits if the statute gives prison officials unfettered discretion to award them. But, by dropping the second half of that sentence when citing *Abed*, cases like *Fontanez* and *Sotherland*—wrongly—morphed the test into something akin to the “conditional” test. This Court should

step in to correct this error.

III. This case presents an important question of federal law.

In addition to resolving the circuit split discussed above, the Court should grant certiorari in this case because it presents an important question of federal law. Supreme Court Rule 10(c). As this Court's recent certiorari grant in *Maxwell v. Thomas*, 25-5930, reflects, issues related to the BOP's administration of the FSA time credit system are frequently recurring. Indeed, reports indicate that the BOP frequently violates the plain text of the FSA when administering this program. See U.S. Gov't Accountability Off., GAO-26-107268, Federal Prisons: Improvements Needed to the System Used to Assess and Mitigate Incarcerated People's Recidivism Risk (2026) (noting, *inter alia*, that BOP was properly applying FSA time credits in only 29.2% of cases); 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 (2026) (noting that individuals were not being properly transferred to home confinement or a halfway house and that BOP did not even know

the “full scale of the issue” because it was not properly tracking the relevant data). Accordingly, the question of whether federal prisoners have procedural due process recourse within the BOP system itself will continue to arise and will have enormous consequences for the lives of incarcerated individuals forced to potentially serve a sentence longer than statutorily permitted.

What’s more, according to counsel’s research, this Court has not taken a case addressing how a statute creates a liberty interest for prisoners in many years. *See Dist. Atty’s Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52 (2009). Lower courts would surely benefit from additional clarification in this area of law, especially as courts continue to apply it in the FSA context.

IV. This case is an excellent vehicle.

This case provides an exceptional vehicle to review the question presented. The case squarely presents the question: Mr. White raised the due process claim both before the district court and the Fourth Circuit (App.4, 6, 36, 41), and both courts directly addressed it (App.15-17, 52-54). Because the case was decided on a motion to dismiss and the question presented involves a pure question of law (App.35), the Court will not have to wade through

any messy factual disputes to address the question. Additionally, because the Fourth Circuit Court of Appeals did not address the second element of this Court's two-prong test for determining whether a liberty interest arises from a statute for prisoners (see App.15-17), this Court need not address that element or even answer the ultimate question of whether a protected liberty interest in FSA time credits exists. Rather, it need only to address the first prong of the test (*i.e.*, whether the FSA uses the sort of mandatory, discretion-limiting language that can give rise to a protected liberty interest). If this Court answers this question in the affirmative, then it can remand for further proceedings to determine whether Mr. White satisfied the other prong of the liberty interest test and thus was in fact entitled to procedural protections before the BOP could deny him FSA time credits.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JAMES WYDA

Federal Public Defender

CLAIRE MADILL

*Assistant Federal Public Defender
Counsel of Record*

6411 Ivy Lane, Suite 710

Greenbelt, MD 20700

(301) 344-0600 (tel.)

(301) 344-0019 (fax)

James_Wyda@fd.org

Claire_Madill@fd.org

Counsel for Petitioner

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