

APPENDIX TABLE OF CONTENTS

SECOND CIRCUIT’S OPINION	1a
ORDER DENYING PETITION FOR REHEARING	54a
DISTRICT COURT’S MEMORANDUM AND ORDER	55a

**United States Court of Appeals
for the Second Circuit**

August Term 2025

Argued: November 25, 2025 Decided: March 26, 2026

No. 25-149

RAUL RIVERA-PEREZ,

Petitioner-Appellee,

— v. —

RICK STOVER, WARDEN,

*Respondent-Appellant.**

Before: JACOBS, BIANCO, AND NATHAN, *Circuit Judges.*

Respondent-Appellant Rick Stover, the Warden of the Federal Correctional Institution in Danbury, Connecticut, appeals from a judgment of the United States District Court for the District of Connecticut (Stefan R. Underhill, *Judge*), entered on November 19, 2024, granting Petitioner-Appellee Raul Rivera-Perez’s *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Rivera-Perez’s petition alleged that the Bureau of Prisons miscalculated the time credits he had earned under the First Step Act (“FSA”), 18 U.S.C. § 3632(d)(4)(C), and thereby

* The Clerk of Court is directed to amend the caption as set forth above.

illegally prevented his transfer from prison to prerelease custody. However, after Rivera-Perez filed the petition, he was transferred from prison into a residential reentry center (“RRC”), a form of prerelease custody, and Stover argued that the petition was moot. The district court then *sua sponte* construed the petition as seeking to apply Rivera-Perez’s remaining FSA time credits to reduce the length of his term of supervised release, and granted the petition, concluding that the FSA enables—and, in fact, *requires*—application of earned-time credits to reduce a prisoner’s term of supervised release pursuant to Section 3632(d)(4)(C).

On appeal, Stover argues that FSA time credits allow a prisoner to begin prerelease custody or supervised release early, but cannot be used to reduce a prisoner’s term of supervised release. Therefore, according to Stover, once Rivera-Perez was transferred to prerelease custody, his case became moot.

We conclude that Section 3632(d)(4)(C) does not allow earned-time credits to be used to reduce a prisoner’s term of supervised release. As such, Rivera-Perez’s petition became moot once he was transferred to an RRC. Accordingly, we **VACATE** the judgment of the district court and **REMAND** with instructions to dismiss this case as moot.

Judge Jacobs concurs in a separate opinion.

Judge Nathan dissents in a separate opinion.

J. BRIAN MESKILL, (Sandra S. Glover, *on the brief*),
Assistant United States Attorneys, for Marc H.
Silverman, Acting United States Attorney for the
District of Connecticut, New Haven, Connecticut,
for Respondent-Appellant.

CHARLES F. WILLSON, Assistant Federal Defender,
for Terence S. Ward, Federal Defender, District of
Connecticut, Hartford, Connecticut, *for Petitioner-
Appellee*.

JOSEPH F. BIANCO, *Circuit Judge*:

Respondent-Appellant Rick Stover, the Warden of the Federal Correctional Institution in Danbury, Connecticut (“FCI Danbury”), appeals from a judgment of the United States District Court for the District of Connecticut (Stefan R. Underhill, *Judge*), entered on November 19, 2024, granting Petitioner-Appellee Raul Rivera-Perez’s *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Rivera-Perez’s petition alleged that the Bureau of Prisons (“BOP”) miscalculated the time credits he had earned under the First Step Act (“FSA”), 18 U.S.C. § 3632(d)(4)(C), and thereby illegally prevented his transfer from prison to prerelease custody. However, after Rivera-Perez filed the petition, he was transferred from prison into a residential reentry center (“RRC”), a form of prerelease custody,¹ and Stover argued that the petition was moot. The district court then *sua sponte* construed the petition as seeking to apply Rivera-Perez’s remaining FSA time credits to reduce the length of his term of supervised release, and granted the petition, concluding that the FSA enables—and, in fact, *requires*—

¹ “Prerelease custody” includes placement in home confinement or an RRC. *See* 18 U.S.C. § 3624(g)(2). Prerelease custody is part of a prisoner’s term of imprisonment because, “[w]hile assigned to [home confinement or] an RRC, inmates remain in BOP custody.” *United States v. Rasheed*, 981 F.3d 187, 190 (2d Cir. 2020).

application of earned-time credits to reduce a prisoner's term of supervised release pursuant to Section 3632(d)(4)(C).

On appeal, Stover argues that FSA time credits allow a prisoner to begin prerelease custody or supervised release early, but cannot be used to reduce a prisoner's term of supervised release. Therefore, according to Stover, once Rivera-Perez was transferred to prerelease custody, his case became moot.

We conclude that Section 3632(d)(4)(C) does not allow earned-time credits to be used to reduce a prisoner's term of supervised release. As such, Rivera-Perez's petition became moot once he was transferred to an RRC. Accordingly, we **VACATE** the judgment of the district court and **REMAND** with instructions to dismiss this case as moot.

BACKGROUND

I. The First Step Act

The First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018), directed the BOP to develop a "risk and needs assessment system" to, *inter alia*, "provide incentives and rewards for successful participation in evidence-based recidivism reduction programs or productive activities." 18 U.S.C. § 3632(a)(6). To do so, the FSA created a system of "time credits" which allows certain prisoners to earn ten

days of time credits for every thirty days of successful participation in recidivism reduction programming or certain productive activities. *Id.* § 3632(d)(4)(A)(i).² The application of earned-time credits is governed by Section 3632(d)(4)(C), which reads as follows:

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

Id. § 3632(d)(4)(C).

II. Facts and Procedural History

In 2001, Rivera-Perez was sentenced in the District of Puerto Rico to life imprisonment, to be followed by a five-year term of supervised release, for conspiring to distribute cocaine, in violation of 21 U.S.C. §§ 846, 841(a)(1). The district court later reduced that sentence to 360 months' imprisonment, but

² Prisoners who the BOP determines “to be at a minimum or low risk for recidivating” and who “ha[ve] not increased their risk of recidivism” in their last two assessments “earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.” 18 U.S.C. § 3632(d)(4)(A)(ii).

retained the five-year term of supervised release.

On October 13, 2023, while Rivera-Perez was serving his sentence of imprisonment at FCI Danbury, he filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241, which challenged the execution of his sentence. In particular, Rivera-Perez asserted that the BOP “failed to properly calculate [his] earned First Step Act time credits” and has “refused to release [him] on home confinement although he is eligible.” App’x at 11. Accordingly, the petition sought “immediate release to home confinement.” *Id.* at 18.

By the time Rivera-Perez filed his habeas petition, he had accrued over 700 credits under the FSA. The BOP applied 365 of those credits to advance the date on which Rivera-Perez would start supervised release, but the remaining 415 credits were “unused,” *i.e.*, not being applied for Rivera-Perez’s benefit. According to Stover, some of the unused credits could have been used to place Rivera-Perez in prerelease custody earlier, but there was no bedspace available in an RRC until January 2024. On January 17, 2024, Rivera-Perez was transferred to an RRC, and Stover then moved to dismiss the petition, arguing that it was moot because Rivera-Perez had received the relief that his petition sought.

Ten months after Stover moved to dismiss, the district court entered a text-

only order which acknowledged that Rivera-Perez’s request for release to prerelease custody was moot. However, “[l]iberally constru[ing]” Rivera-Perez’s petition, the district court informed the parties that it “read[] the habeas petition . . . as raising the issue [of] whether Rivera-Perez’s unused FSA time credits should be applied to reduce his term of supervised release.” *Rivera-Perez v. Stover*, No. 23-cv-1348, (D. Conn. Oct. 17, 2024), Dkt. No. 16.

Over Stover’s objection, the district court granted the petition (so construed). *See generally Rivera-Perez v. Stover*, 757 F. Supp. 3d 204 (D. Conn. 2024). The district court held that “[b]ased on the plain language of the statute, read in context . . . FSA credits *can*—and in fact *must*, according to the mandatory language of section 3632(d)(4)(C)—be applied to reduce a term of supervised release.” *Id.* at 214 (emphasis in original). The district court thus directed the BOP “to calculate the number of Rivera-Perez’s unused FSA time credits and inform the U.S. Probation Office for the Middle District of North Carolina of that calculation so that it can apply those credits toward Rivera-Perez’s term of supervised release.”³ *Id.* at 215. Stover timely appealed from the district court’s judgment. Between entry of the

³ By the time of the district court’s order, Rivera-Perez resided at an RRC in the Middle District of North Carolina. *See Rivera-Perez*, 757 F. Supp. 3d at 209 & n.6.

district court’s judgment, and Stover filing the notice of appeal, Rivera-Perez was released from the RRC (and thus released from the custody of the BOP) and began his term of supervised release. See BOP Inmate Locator, <https://www.bop.gov/inmateloc/> [<https://perma.cc/FVJ8-4DAN>] (last visited Mar. 19, 2026) (indicating that Rivera-Perez is not in BOP custody as of December 3, 2024).

DISCUSSION

I. Standard of Review

Habeas petitions filed under 28 U.S.C. § 2241—like Rivera-Perez’s—“challenge[] the *execution* of a federal prisoner’s sentence, including such matters as the administration of parole, computation of a prisoner’s sentence by prison officials, prison disciplinary actions, prison transfers, type of detention[,] and prison conditions.” *Jiminian v. Nash*, 245 F.3d 144, 146 (2d Cir. 2001) (emphasis in original). We review a district court’s grant or denial of a Section 2241 petition *de novo*. *Jordan v. Lamanna*, 33 F.4th 144, 150 (2d Cir. 2022). In addition, our review of statutory interpretation questions is *de novo*. See *United States v. Holloway*, 956 F.3d 660, 664 (2d Cir. 2020).

II. Mootness

A federal court’s jurisdiction is limited to “actual cases or controversies.”

Simon v. E. Kentucky Welfare Rts. Org., 426 U.S. 26, 37 (1976). The case-or-controversy requirement “manifests in three distinct legal inquiries: standing, mootness, and ripeness.” *Klein ex rel. Qlik Techs., Inc. v. Qlik Techs., Inc.*, 906 F.3d 215, 221 (2d Cir. 2018). At issue here is mootness. Under the mootness doctrine, “[i]f an intervening circumstance deprives the plaintiff [or petitioner] of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot.” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (internal quotation marks and citation omitted).

Stover argues that Rivera-Perez’s petition was mooted the moment he was transferred to prerelease custody. According to Stover, because the BOP had already applied twelve-months’ worth of FSA time credits to move up the start of Rivera-Perez’s term of supervised release, and because the FSA does not authorize use of earned-time credits to reduce a term of supervised release, Rivera-Perez had received all of the benefits he could have received from his petition prior to entry of the district court’s judgment granting his petition. Rivera-Perez counters that the case was not moot because, as the district court held, FSA time credits can be applied to reduce the amount of time he will spend on supervised release and, therefore, his transfer to prerelease custody did not give him the complete relief

that is required to moot his case.

The mootness determination therefore depends entirely on a question of statutory interpretation that presents an issue of first impression in this court: Can time credits earned under the FSA be used to reduce a federal inmate's term of supervised release? As set forth below, we conclude that the answer is no.

III. Whether FSA Time Credits Can Reduce a Term of Supervised Release

"When interpreting a statute, we begin with the plain language of the statute, giving the statutory terms their ordinary or natural meaning." *Spadaro v. U.S. Customs & Border Prot.*, 978 F.3d 34, 46 (2d Cir. 2020) (internal quotation marks and citation omitted). Thus, we must examine the two critical sentences of Section 3632(d)(4)(C): "Time credits earned . . . by prisoners . . . 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).

The district court's analysis focused on the word "toward" in the first sentence. Looking at the word's ordinary meaning, the district court concluded that

[a]pplying credits toward something ordinarily means reducing that

thing. For example, applying a store credit toward the cost of an item means that the cost of that item is reduced by the amount of the credit. Similarly, applying a credit toward one's account balance means that the balance will be reduced by the amount of the credit.

Rivera-Perez, 757 F. Supp. 3d at 211–12. Under this reading, when time credits are “applied toward time in . . . supervised release,” 18 U.S.C. § 3632(d)(4)(C), they reduce the amount of time a prisoner must spend in supervised release. *Rivera-Perez*, 757 F. Supp. 3d at 212.

Rivera-Perez agrees with, and urges us to adopt, this reading. In support, he points to a dictionary definition defining “toward” as “with a view to obtaining or having” or “as a help or contribution to.”⁴ See Appellee’s Br. at 9 (quoting *Toward*, DICTIONARY.COM, <https://www.dictionary.com/browse/toward> [<https://perma.cc/3ZAX-6W4Z>] (last visited Mar. 19, 2026)); see also *Toward*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 2417 (2002) (providing many definitions of “toward,” including “for the partial payment of”).

⁴ Although dictionary definitions are one source of evidence as to plain meaning and “bear consideration,” they are not necessarily dispositive of the meaning of “toward” in Section 3632(d)(4)(C). *Yates v. United States*, 574 U.S. 528, 538 (2015); see also *In re Soussis*, 136 F.4th 415, 427 (2d Cir. 2025) (“Plain meaning is informed by, but does not depend solely on, dictionary definitions.”).

However, Stover points to other dictionary definitions that support his proposed interpretation of the statutory provision. For example, Black’s Law Dictionary defines “toward” as “in the direction of; on a course or line leading to (some place or something).” *Toward*, BLACK’S LAW DICTIONARY (12th ed. 2024). Under this reading, when time credits are “applied toward time in . . . supervised release,” 18 U.S.C. § 3632(d)(4)(C), they move the prisoner “in the direction of” starting their term of supervised release.

At least when viewed in isolation, we think that both readings of the phrase “applied toward time in . . . supervised release” are plausible, thereby rendering the phrase ambiguous. See *In re Med Diversified, Inc.*, 461 F.3d 251, 255 (2d Cir. 2006) (explaining that when a statutory phrase is “reasonably susceptible” to two readings, it is ambiguous). However, we cannot read the statutory phrase in isolation because “it is a cardinal rule of statutory construction that statutory language must be read in context since a phrase gathers meaning from the words around it.” *L.S. v. Webloyalty.com, Inc.*, 954 F.3d 110, 115 (2d Cir. 2020) (internal quotation marks and citation omitted); see also *Yates*, 574 U.S. at 537 (“Ordinarily, a word’s usage accords with its dictionary definition. In law as in life, however, the same words, placed in different contexts, sometimes mean different things.”);

Soussis, 136 F.4th at 427 (“[T]o ascertain a text’s plain meaning, we draw on the specific context in which that language is used, and the broader context of the statute as a whole.” (internal quotation marks and citation omitted)). As the Supreme Court has emphasized, we must read statutory phrases in context because “[o]ur duty, after all, is to construe statutes, not isolated provisions.” *King v. Burwell*, 576 U.S. 473, 486 (2015) (internal quotation marks and citation omitted).

Here, the context of the phrase “applied toward time in . . . supervised release” resolves the ambiguity in favor of Stover’s reading of the statute. Recall that the contested phrase immediately precedes the following sentence: “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). We conclude that this second sentence confirms Stover’s reading of the statute because it unquestionably contemplates a transfer from prison to prerelease custody or supervised release, not a reduction of time spent in prerelease custody or a term of supervised release.

As an initial matter, the plain text of the second sentence does not refer to *reducing* a term of prerelease custody or supervised release, and instead only refers to *transferring* “eligible prisoners” into one of those statuses. See 18 U.S.C.

§ 3632(d)(4)(C). Furthermore, the definition of “eligible prisoners” suggests that only those in prison (who have completed programs or productive activities) are eligible for such a transfer. *See id.* § 3624(g)(1)(A) (defining an eligible prisoner as “a prisoner . . . who . . . has earned time credits under the risk and needs assessment system”); *see also id.* § 3635(4) (defining prisoner as a “person who has been sentenced to a term of imprisonment pursuant to a conviction for a Federal criminal offense, or a person in the custody of the Bureau of Prisons”); *id.* § 3635(3)(B) (defining the relevant “evidence-based recidivism reduction programs” as those that “help prisoners succeed in their communities upon release from prison”).

Moreover, the second sentence conditions transfer on eligibility “as determined under section 3624(g).” *Id.* § 3632(d)(4)(C). We must therefore look to the meaning of Section 3624(g) because “[a] court must . . . interpret [a] statute as a symmetrical and coherent regulatory scheme[] and fit, if possible, all parts into an harmonious whole.” *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (internal quotation marks and citations omitted). Section 3624(g)(3) explicitly provides that a “transfer” to supervised release “based on the application of time credits under section 3632” (the contested provision containing

“toward”) is a transfer “to begin [a] term of supervised release *at an earlier date*.” 18 U.S.C. § 3624(g)(3) (emphasis added). Section 3624(g)(3) thus makes clear that the “transfer” referenced in Section 3632(d)(4)(C) is a transfer to supervised release at an earlier date, *i.e.*, a transfer that accelerates the start of supervised release or a transfer that moves the prisoner “toward” supervised release. Similarly, Section 3624(g)(1)(A) defines an “[e]ligible prisoner[]” as, *inter alia*, someone who has earned time credits “in an amount that is equal to the remainder of the prisoner’s imposed term of imprisonment.” This provision confirms that those who are eligible for a “transfer” pursuant to the second sentence of Section 3632(d)(4)(C) are individuals who are still serving a term of imprisonment, not those already on supervised release.⁵

Accordingly, we conclude that the second sentence of Section 3632(d)(4)(C) clearly addresses an early transfer from imprisonment to the start of prerelease

⁵ Indeed, another related provision in the same section provides additional contextual support for Stover’s reading of Section 3632(d)(4)(C). Section 3632(a) directs the Attorney General to develop the risk and needs assessment system (of which time credits are a part) which “shall be used to,” *inter alia*, “determine when a prisoner is ready to *transfer* into prerelease custody or supervised release in accordance with section 3624.” 18 U.S.C. § 3632(a)(7) (emphasis added). Therefore, according to the text that Congress enacted, the entire risk and needs assessment system is designed to facilitate a *transfer* into prerelease custody or supervised release, not a *reduction* of those terms.

custody or supervised release, not a reduction in those terms. Moreover, reading the first sentence in context—that is, in light of the second sentence—the best reading of the contested provision is that, when time credits are “applied toward time in . . . supervised release[,]” they bring the beginning of the term of supervised release closer in time. Those credits do not partially fulfill (and thus shorten) an individual’s time in supervised release.

Our interpretation of the statute is in accord with the majority of circuits that have addressed this issue in both published and unpublished opinions. For example, in *Hargrove v. Healy*, 155 F.4th 530 (6th Cir. 2025), the Sixth Circuit held that “First Step Act time credits under § 3632(d)(4)(C) can be used to reduce a prison term but not a supervised-release term.” *Id.* at 536. Critical to the court’s analysis was the context of the contested provision. *See id.* at 533–34. In particular, the court noted that, by tying eligibility for transfer to Section 3624(g)—which allows a prisoner to “begin [his] term of supervised release at an earlier date” once he “has earned time credits . . . in an amount that is equal to the remainder of [his] term of imprisonment”—the statute “makes clear that when a prisoner earns time credits ‘toward’ supervised release, he is moving ‘in the direction’ of supervised release; the credits are not in partial fulfillment of his supervised-release term.” *Id.*

at 534 (quoting 18 U.S.C. § 3624(g)(1)(A)).

Similarly, in *Guerriero v. Miami RRM*, No. 24-10337, 2024 WL 2017730 (11th Cir. May 7, 2024) (per curiam), the Eleventh Circuit recognized that the effect of the first sentence in Section 3632(d)(4)(C), “read in isolation,” is unclear. *Id.* at *2. However, when read in the context of “the entirety of the relevant statutory language”—including the second sentence of Section 3632(d)(4)(C) and the provision it references, Section 3624(g)—the court concluded “that Congress intended the time credits to be used to reduce incarceration time so as to accelerate the beginning of prerelease custody or supervised release.” *Id.* at *3. The Fourth and Fifth Circuits have reached the same conclusion in unpublished opinions. *See United States v. Malik*, No. 24-7073, 2025 WL 973003, at *1 (4th Cir. Apr. 1, 2025) (per curiam) (“Time credits earned under the FSA 2018 are to be applied to reduce an incarcerated person’s prison term, not the person’s term of supervised release.”);⁶ *Stinson v. Martinez*, No. 24-30793, 2025 WL 2017872, at *1 (5th Cir. July 18, 2025) (per curiam) (“[Earned-time credits] may only be applied towards an early start of

⁶ A published opinion from the Fourth Circuit has also reached the same conclusion in *dicta*. *See Valladares v. Ray*, 130 F.4th 74, 79 (4th Cir. 2025) (stating that “[u]nder the FSA, . . . time credits can be applied toward earlier placement in pre-release custody or supervised release”).

supervised release or early transfer to pre-release custody.”).

The only circuit court that has concluded otherwise is the Ninth Circuit, which held that “the FSA’s time credits may be used to reduce the length of time that a prisoner must spend while on supervised release.” *Gonzalez v. Herrera*, 151 F.4th 1076, 1089 (9th Cir. 2025). However, we find the reasoning of both the district court and the Ninth Circuit, which Rivera-Perez asks us to adopt, to be unpersuasive. According to the district court, “the first sentence allows credits to be applied to reduce a term of (*i.e.*, ‘time in’) prerelease custody or supervised release, and the second sentence allows the BOP to apply credits to transfer an inmate to prerelease custody or to supervised [release] at an earlier date.” *Rivera-Perez*, 757 F. Supp. 3d at 212; *see also* Appellee’s Br. at 11 (asking us to adopt this interpretation). The dissent also adopts that approach. *See post* at 7–8. Similarly, the Ninth Circuit has held that the first sentence of Section 3632(d)(4)(C) “declares that earned time credits shall reduce time in prerelease custody or supervised release, separate and apart from imprisonment” and the second sentence “directs the BOP to put the prisoner on prerelease custody or place him on supervised release (cashing in earned time credits to do so) when a prisoner becomes eligible.” *Gonzalez*, 151 F.4th at 1085 (internal quotation marks and citation omitted). Thus,

under this approach, the first sentence enables a reduction of a prisoner’s term of prerelease custody or supervised release.

In order for us to adopt this interpretation, however, we would have to accept a series of implausible assumptions about Congress’s intent. *First*, the heading of 18 U.S.C. § 3632(d)(4)(C)—“[a]pplication of time credits toward prerelease custody or supervised release”—“does not imply that it is outlining *two* situations when time credits can be applied—it implies only one.” *Hargrove*, 155 F.4th at 535 (emphasis in original); *see also Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (looking to the heading of a section to resolve doubt about the meaning of a statute).⁷ If we were to adopt the district court’s interpretation, we would necessarily need to conclude that Congress enacted the first sentence to direct one process (a reduction of a term of prerelease custody or supervised release by an unnamed entity without specifying how) and then that same Congress abruptly changed tack to give the BOP instructions about how to carry out a completely

⁷ Although the dissent suggests that our analysis relies “largely” on the heading and notes that “the heading of a subsection cannot override the plain words of a statute,” *post* at 8 (internal quotation marks and citation omitted), the heading is the beginning rather than the end of our analysis and, as set forth *infra*, the narrowness of the heading is completely consistent with our analysis of the statutory text.

different process (early transfer of eligible prisoners based on earned credits) in the second sentence. We can discern no reason why Congress would have created such an incongruous framework; rather, we conclude it is much more likely that Congress intended the two sentences under the same heading to address the same process—a transfer to prerelease custody or supervised release at an earlier date.⁸

Second, the second sentence of Section 3632(d)(4)(C) directs the BOP to follow the detailed processes and requirements of Section 3624(g) before transferring a prisoner to supervised release. For example, under Section 3624(g), a prisoner is eligible for transfer to supervised release only if “the prisoner has been determined [by the BOP] under [the risk and needs assessment system] to be a minimum or low risk to recidivate pursuant to the last reassessment of the

⁸ We are thus unpersuaded by the Ninth Circuit’s focus on the dictionary definitions of “credit,” “earn,” “time,” and “apply.” *See Gonzalez*, 151 F.4th at 1082. Rather than quibbling with the dictionary definitions themselves, we think that giving dispositive weight to the dictionary definition of those words is insufficiently attentive to the critical phrase’s context: its placement in a two-sentence subsection that we think is most naturally read as addressing one situation, rather than two. A narrow focus on defining words in the first sentence (to the exclusion of the context supplied by the second) disregards “[o]ur duty . . . to construe statutes, not isolated provisions.” *King*, 576 U.S. at 486 (internal quotations marks and citation omitted); *see Gonzalez*, 151 F.4th at 1083–84 (looking to the context of the second sentence of § 3632(d)(4)(C) only “[o]ut of respect for the split in authority” and after already concluding that the first sentence can reduce the length of a term of supervised release).

prisoner.” 18 U.S.C. § 3624(g)(1)(D)(ii). Section 3624(g)(3) also caps how early a prisoner can be transferred to supervised release to twelve months, regardless of the number of credits the prisoner has accrued. *See id.* § 3624(g)(3). However, under the district court’s reading, none of those processes and requirements apply to a reduction in a term of supervised release pursuant to the first sentence. For example, under the district court’s reading, as long as a prisoner who earned credits is not serving a sentence for certain enumerated crimes listed under Section 3632(d)(4)(D), they would be eligible for a reduction of their time on supervised release, even if the BOP had explicitly found that they presented a high risk of recidivism.⁹ Indeed, because the twelve-month limit provided for by Section 3624(g)(4) would be—under the district court’s reading—inapplicable to

⁹ The Ninth Circuit suggests that “[t]here is no boogie man here” because, “[t]o start, prisoners convicted of many of the most serious crimes are statutorily excluded from earning FSA time credits.” *Gonzalez*, 151 F.4th at 1089 (citing 18 U.S.C. § 3632(d)(4)(D)). However, we note that, notwithstanding the exclusion of prisoners serving sentences for many serious crimes enumerated under Section 3632(d)(4)(D), prisoners who remain eligible to receive time credits are those serving sentences for convictions for numerous other serious crimes, including, *inter alia*, the following: (1) certain narcotics trafficking offenses, in violation of 21 U.S.C. §§ 841, 846; (2) robbery or extortion, in violation 18 U.S.C. § 1951; (3) racketeering, in violation of 18 U.S.C. § 1962; (4) violent crimes in aid of racketeering, in violation of 18 U.S.C. § 1959; (5) firearms trafficking, in violation of 18 U.S.C. § 922(a); (6) possession of a firearm, after having been convicted of a felony, in violation of 18 U.S.C. § 922(g); (7) money laundering, in violation of 18 U.S.C. §§ 1956–57; and (8) fraud offenses, in violation of 18 U.S.C. §§ 1341, 1343, and 1344.

reductions via the first sentence, a prisoner that has been found to present a high risk of recidivism could potentially have their entire term of supervised release wiped out. Moreover, this concern would be particularly acute as to prisoners serving lengthy sentences, who—by definition—have more time to accrue time credits.¹⁰ We conclude that it is implausible that Congress would have placed careful limitations on early transfers to prerelease custody or supervised release, but then would wholly omit them if it intended to allow reductions of those terms.¹¹

¹⁰ For instance, the district court’s reading of the statute would allow an individual convicted of participating in a large narcotics operation, involving hundreds of kilograms of cocaine, and whom BOP determined should not be allowed to use his FSA time credits to be released early from prison because his recidivism risk level was not minimal or low, to still use those earned-time credits to substantially reduce (or even potentially eliminate entirely) his term of supervised release once he completes his prison term.

¹¹ Any suggestion that the minimum or low-risk limitation under Section 3624(g)(1)(B) could also be applied by BOP in determining whether there should be a reduction to the term of supervised release has no basis in the statutory text. In particular, the first sentence of Section 3632(d)(4)(C)—the purported source of authority to reduce a term of supervised release—does not cross-reference Section 3624(g), the source of the minimum or low-risk level limitation. In addition, although Section 3624(g)(1)(B) defines an “eligible prisoner” as one who presents a “minimum or low recidivism risk,” 18 U.S.C. § 3624(g)(1)(B), the first sentence of Section 3632(d)(4)(C) does not reference “eligible prisoner[s].” Instead, it states time credits “earned . . . by prisoners . . . shall be applied,” and only the second sentence mandates “transfer [of] *eligible* prisoners,” *id.* § 3632(d)(4)(C) (emphasis added). Accordingly, if we were to accept that the first

Third, the first sentence of Section 3632(d)(4)(C) does not specify what agency “shall appl[y]” earned-time credits “toward time in . . . supervised release,” or how that should be done. Both the district court and the Ninth Circuit recognized that this first sentence uses the “passive voice” and does not specify the agency responsible for effectuating a reduction of a supervised-release term that the first sentence supposedly requires. *See Rivera-Perez*, 757 F. Supp. 3d at 213; *Gonzalez*, 151 F.4th at 1085. Instead of considering whether such an omission rendered their interpretation incongruous with the statutory plan, they simply noted that, because the BOP is no longer responsible for an individual once they are on supervised release, it makes sense that Congress would not mention the BOP in the sentence that allows for a termination of supervised release. *See Rivera-Perez*, 757 F. Supp. 3d at 213; *Gonzalez*, 151 F.4th at 1085. That response, however,

sentence of Section 3632(d)(4)(C) provides authority for a court to reduce a term of supervised release, the guardrails contained in Section 3624(g) would simply not apply. In short, our reading of the statute does not “disagree[] with the policy chosen by Congress,” *Gonzalez*, 151 F.4th at 1090; rather, our highlighting of the incongruous limitations on the first and second sentences of Section 3632(d)(4)(C) (under the district court’s and the Ninth Circuit’s interpretations) provides compelling evidence as to why that understanding of Congress’s intent is wrong, *see Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.”).

does not address the real problem: that is, if the first sentence of Section 3632(d)(4)(C) can reduce a term of supervised release, the statute gives no indication of the agency responsible for applying the credits.¹² We again conclude that it is implausible that Congress intended to create a mechanism to reduce terms of supervised release without specifying the agency responsible for doing so—particularly where the following sentence specifically tasks the BOP with effectuating transfers. *See King*, 576 U.S. at 497 (emphasizing that “Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions” (internal quotation marks and citation omitted)).

Fourth, the district court’s and the dissent’s reading of Section 3632(d)(4)(C),

¹² Rather than meaningfully grappling with this issue, the district court here forged ahead and ordered the BOP to “calculate the number of Rivera-Perez’s unused FSA time credits and inform the U.S. Probation Office for the Middle District of North Carolina of that calculation so that it can apply those credits toward Rivera-Perez’s term of supervised release.” *Rivera-Perez*, 757 F. Supp. 3d at 215. The dissent endorses this approach. *See post* at 11 (“BOP can communicate the individual’s remaining FSA credits to Probation, who will then take account of those credits when calculating the appropriate end date of supervised release.”). In doing so, the district court effectively inserted words into the statute, creating a process for implementing its interpretation of the FSA, contrary to the principles governing statutory interpretation. *See Romag Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212, 215 (2020) (cautioning courts to avoid the “temptation” to “read into statutes words that aren’t there”). We also note that the unusual nature of the remedy granted by the district court—directing the BOP to contact a non-party—highlights the implausibility of the interpretation requiring such a remedy.

with its emphasis on the phrase “toward time in,” implies that time credits can also be applied to reduce the amount of time a prisoner spends in prerelease custody. *See* 18 U.S.C. § 3632(d)(4)(C) (time credits “shall be applied toward time in prerelease custody”). However, rewarding prisoners who participate in recidivism reduction programs by reducing the amount of time that a prisoner spends in prerelease custody defies logic and common sense because prisoners (presumably) want *more* time in prerelease custody (rather than prison), not less. In contrast, if “toward time in prerelease custody” means starting prerelease custody at an earlier date, the productive incentives that Congress sought to create are present.¹³ Furthermore, because “toward” is a preposition that has one

¹³ Indeed, focusing on prerelease custody highlights an additional reason to favor Stover’s reading of the FSA. The version of the FSA that first passed the House of Representatives authorized application of earned-time credits only “toward time in pre-release custody[,]” with no mention of supervised release. H.R. 5682, 115 Cong. (2018) (“Time credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities and who have been determined to be at minimum risk or low risk for recidivating . . . shall be applied toward time in pre-release custody. The Director of the Bureau of Prisons shall transfer prisoners described in this subparagraph into prerelease custody . . .”). Again, as noted *supra*, interpreting “toward time in pre-release custody” under this version of the statute as *reducing* the time a prisoner spends in prerelease custody would make no sense because that would increase the amount of time an individual spends in prison, contrary to the plain purpose of the bill. The final version of the FSA added “or supervised release” to the first sentence, *see* FSA § 101, 132 Stat. at 5198, but we do not think adding “or supervised release” somehow transformed the meaning of “applied toward time in.”

compound object (time in prerelease custody *or* supervised release), it is natural that it would mean the same for both. *See Helix Energy Sols. Grp., Inc. v. Hewitt*, 598 U.S. 39, 57 (2023) (explaining that, where a provision applies to two scenarios, it “must mean the same thing in either context”).

Fifth, the district court’s reading would allow reductions in terms of supervised release without any involvement of the court. That framework runs counter to 18 U.S.C. § 3583(e)(1), which allows a *court* (not an unspecified entity) to terminate a term of supervised release, but only after considering certain enumerated Section 3553(a) factors, and only after one year of time served on supervised release. In contrast, under the district court’s reading, the FSA created a mechanism to reduce (or even terminate) a term of supervised release by an unnamed entity, with no required consideration of the factors listed in Section 3583(e), and with no requirement that the prisoner serve at least twelve months of the term. We yet again find it highly unlikely that Congress effected such a consequential change in sentencing law through the “use[] [of the] passive voice” here. *Rivera-Perez*, 757 F. Supp. 3d at 213.

Given these substantial problems with the district court’s interpretation of Section 3632(d)(4)(C), when considered in the context of the entire statute and

other statutory provisions that are implicated by such an interpretation, we conclude that the more logical and harmonizing reading of that provision is that the first sentence “outlines what the time-credit system is (a way to move toward prerelease custody or supervised release) and the second sentence outlines how it works (through BOP transfer [of eligible prisoners] as determined by § 3624(g)).”¹⁴ *Hargrove*, 155 F.4th at 535. Under this interpretation of Section 3632(d)(4)(C), FSA credits cannot be used to reduce a term of supervised release.

The dissent contends that “much of the majority’s concern with Rivera-Perez’s reading of the statute springs not from the statutory text, but from perceived negative policy consequences.” *Post* at 10. But we discuss the consequences of the dissent’s approach mainly to highlight why its incongruous reading of the statutory text is implausible, and to perform our obligation to “interpret the statute as a symmetrical and coherent regulatory scheme and fit, if possible, all parts into an harmonious whole.” *Brown & Williamson Tobacco Corp.*,

¹⁴ Because our reading gives each sentence independent meaning, we disagree with the district court, *Rivera-Perez*, 757 F. Supp. 3d at 212, the Ninth Circuit, *Gonzalez*, 151 F.4th at 1085, and the dissent, *post* at 7, that our reading renders the second sentence superfluous. See *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 635–36 (2012) (discussing the canon against surplusage).

529 U.S. at 133 (internal quotation marks and citations omitted). In any event, it is not a policy argument to demonstrate that the dissent's reading is unworkable. It is implausible *from a textual standpoint* that Congress would, *inter alia*, have detailed processes and requirements for BOP to perform before allowing an early transfer of a prisoner to supervised release, yet delineate no process or requirements under the same statute for prisoners to obtain a reduction in their supervised release term (which the dissent supposes would be done) by an unidentified entity. *See King*, 576 U.S. at 494–95 (rejecting an interpretation of a statute where “[i]t is implausible that Congress meant the Act to operate in this manner”).

Finally, a few words about the FSA's purpose. As we have explained, “[i]n providing for time credits, Congress clearly aimed to offer ‘an incentive for prisoners to attend the recidivism reduction programs Congress was devising, and the obvious incentive was that the time credits would reduce a prisoner’s incarceration time.’” *United States v. James*, 151 F.4th 28, 41–42 (2d Cir. 2025) (quoting *Guerriero*, 2024 WL 2017730, at *3)). Rivera-Perez contends that “[a] system that encourages rehabilitation with concrete rewards, *i.e.*, earning credits, should likewise facilitate application of those rewards,” and that our reading of the statute would reduce the incentive for prisoners to participate in these

programs. Appellee's Br. at 16. Similarly, the Ninth Circuit has highlighted the concern that, unless time credits can be used to reduce a term of supervised release, "any credits earned in excess of 365 days are worthless because they may only be applied to end custody one year early." *Gonzalez*, 151 F.4th at 1088.

On our reading, however, excess credits are by no means wasted. Individuals who complete recidivism reduction programming have presumably obtained useful benefits: vocational training, substance abuse treatment, academic coursework, training in life skills, etc. *See* 28 C.F.R. § 523.41(a); *see also* FEDERAL BUREAU OF PRISONS, FIRST STEP ACT APPROVED PROGRAMS GUIDE (Sep. 2023) https://www.bop.gov/inmates/fsa/docs/fsa_guide_eng_2023.pdf [<https://perma.cc/VH52-E4NR>] (providing a list of over fifty approved evidence-based recidivism reduction programs and productive activities including "anger management," "cognitive processing therapy," and "money smart for adults"). A prisoner with excess unused credits has benefited from those credits in much the same way a college student who completes more coursework than is necessary to graduate has still obtained a benefit: an education. Moreover, prisoners can benefit from taking courses or participating in productive activities in more immediately concrete ways too. For example, prisoners can receive phone or video conferencing

privileges, additional time for visitation at the prison, transfer to a BOP facility closer to the prisoner's release residence, increased commissary spending limits and product offerings, extended opportunities to access email, or consideration of transfer to preferred housing units. *See* 18 U.S.C. § 3632(d)(1)–(3). Individuals can also cite the coursework and productive activities they completed when making an application to the district judge for early termination of their term of supervised release, and the district judge is free to consider them. *See* 18 U.S.C. § 3583(e).

Meanwhile, Rivera-Perez's reading—which could allow for wholesale elimination of supervised release for certain prisoners—does not necessarily serve the FSA's goal of facilitating rehabilitation because supervised release itself “fulfills rehabilitative ends,” *United States v. Johnson*, 529 U.S. 53, 59 (2000), and “facilitate[s] a transition to community life,” *Mont v. United States*, 587 U.S. 514, 523 (2019) (internal quotation marks and citation omitted). Accordingly, in our view, interpreting the FSA to allow prisoners to use time credits to begin a term of supervised release up to twelve months early (but not to reduce the term of supervised release itself) fully accords with the FSA's goal of reducing recidivism.

* * *

In sum, we hold that when FSA time credits are “applied toward time in . . .

supervised release” pursuant to 18 U.S.C. § 3632(d)(4)(C), they reduce a prisoner’s time in incarceration by starting a term of supervised release early. They do not reduce a post-incarceration term of supervised release.

IV. Rivera-Perez’s Case

Based upon our interpretation of the statute, Rivera-Perez’s case was moot before the district court entered judgment on November 19, 2024. He was transferred from prison to an RRC on January 24, 2024, and the maximum twelve-months’ worth of credits were applied to accelerate the beginning of his term of supervised release. A ruling in his favor could not give him any more than that because Section 3632(d)(4)(C) cannot reduce his term of supervised release. It was therefore “impossible for a court to grant any effectual relief whatever to the prevailing party,” and the case was moot before the district court entered judgment. *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012) (internal quotation marks and citation omitted).

CONCLUSION

For the foregoing reasons, we **VACATE** the judgment of the district court and **REMAND** with instructions to dismiss this case as moot.

DENNIS JACOBS, *Circuit Judge*, concurring:

I concur entirely in the reasoning of the Court. I write separately to underline two points: (1) the one-word ambiguity in the statute is dispelled by designation of the Bureau of Prisons as the implementing authority; and (2) there is no such thing as wasted or unused time credits.

I.

As explained in the Opinion of the Court, the first sentence of 18 U.S.C. § 3632(d)(4)(C) contains an ambiguity that is sorted out in the second.

The application of time credits “toward time in prerelease custody or supervised release” is ambiguous because “toward,” like “to,” is a protean word and, as used here, it can mean either to *approach* or to *abate*: either to shorten the time toward the beginning of a period or to shorten the time of the period itself. The second sentence resolves the ambiguity: “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). The ambiguity is resolved by placing implementation in the hands of the Bureau of Prisons, which can do only what it can do. The BOP can reduce the time toward prerelease custody, *id.* §§ 3624(g)(1), 3624(g)(10), and it can reduce the time

toward supervised release (by shortening a term of imprisonment for up to 12 months), *id.* § 3624(g)(3). The BOP can also abate a term of prerelease custody. *Id.* §§ 3624(c)(1), 3624(g)(1). But the BOP most assuredly has no power to shorten the time imposed by a judge for supervised release. Designation of the BOP to implement Section 3632(d)(4)(C) definitionally limits that process to the power that the Bureau of Prisons can exert.

Supervised release is a sentence imposed by a court, never by the BOP. It is administered by Probation, not the BOP. *See id.* § 3624(e) (providing that “supervised release commences on the day the person is released from imprisonment” to “the supervision of a probation officer”). And determining the length of a term of supervised release requires, *inter alia*, considering the factors in 18 U.S.C. § 3553(a), which courts apply, and which the Bureau of Prisons does not. *See id.* § 3583(c).

The district court’s order acknowledges this disconnect between means and ends. That is why the court had to order implementation by an extra-statutory contraption, directing the BOP to “calculate the number of Rivera-Perez’s unused FSA time credits and inform the U.S. Probation Office for the Middle District of North Carolina of that calculation so that it can apply those

credits toward Rivera-Perez's term of supervised release." *Rivera-Perez v. Stover*, 757 F. Supp. 3d 204, 215 (D. Conn. 2024). The power that the BOP lacks is thus assigned to somebody else – Probation (in another district) – which, not incidentally, also lacks the judicial power that alone can shorten a court-ordered term of supervised release. Courts can indeed reduce (or eliminate) a term of supervised release, but only after considering the Section 3553(a) factors and only after the defendant has spent at least one year on supervised release. 18 U.S.C. § 3583(e)(1). It is telling that the district court's circuitous remedy is found nowhere in the statute.

II.

The overarching error of the district court is to treat time credit as if it was (in the district court's inapt example) a store credit – which is lost unless it is applied. That error drives the felt need to find a use for credits that the district court deemed wasted otherwise. But a time credit is a benefit in itself.

It must be supposed that persons in prison benefit from drug treatment, counseling in anger management, cognitive behavioral treatment, mentoring, trauma counseling, and vocational training. *See* 28 C.F.R. § 523.41(a). Such self-help measures are often undertaken by people who are at liberty. So time credits

are not wasted if they exceed the number used to advance the date of prerelease custody or supervised release, or to advance the length of time in prerelease custody. Credits remain useful for what lies beyond custody: life outside prison. The idea that time credits can be a waste or surplusage is a misunderstanding of the whole system.

ALISON J. NATHAN, *Circuit Judge*, dissenting:

The provision at issue allows federal prisoners to apply “[t]ime credits . . . toward time in prerelease custody or supervised release.” 18 U.S.C. § 3632(d)(4)(C). The majority concludes that credits under this provision do not apply to reduce “time in prerelease custody or supervised release,” *id.*, but instead apply to reduce the one thing the provision does not say: time in prison. Because all the textual clues lead me to believe that the statute means what it says—prisoners may apply their First Step Act (FSA) credits to shorten their “time in prerelease custody or supervised release”—I would hold that Rivera-Perez’s habeas petition is not moot because he may use his remaining FSA credits toward his term of supervised release.

Begin where the majority and I agree: The ambiguity of the word “toward” in isolation. Petitioner Rivera-Perez contends that “toward” as used here means “[i]n furtherance or partial fulfillment of.” AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2018). Adopting his definition, the statute would read: “Time credits . . . shall be applied [in partial fulfillment of] time in prerelease custody or supervised release.” That is a natural reading of the text; it allows an individual to essentially “cash in” his FSA credits to shorten time spent in

prerelease custody or supervised release. On the other hand, Warden Stover argues that “toward” in this context means “[i]n the direction of,” *Toward*, BLACK’S LAW DICTIONARY (11th ed. 2019), such that “credits . . . shall be applied [in the direction of] time in prerelease custody or supervised release.” That definition of “toward” contemplates prisoners applying credits to accelerate the start date of their prerelease custody or supervised release—put differently, to leave prison earlier—and while that reading is less natural, it is at least plausible.¹ “When words have several plausible definitions, context differentiates among them.” *United States v. Hansen*, 599 U.S. 762, 775 (2023). I thus begin with the closest context clues, which are the neighboring words in the first sentence of the statute. *See id.* at 776 (“[A] word capable of many meanings is refined by its neighbors[.]”).

The words surrounding “toward” favor Rivera-Perez’s reading of the statute. The first sentence, in full, reads: “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

¹ That this understanding is less natural is made apparent by the concurrence: In order to make Stover’s proposed reading of “toward” sensible, the concurrence must use the word itself in its definition. *See ante* at 1 (the word toward “can mean either to approach or to abate: either to shorten the time *toward* the beginning of a period or to shorten the time of the period itself”) (emphasis altered).

custody or supervised release.” 18 U.S.C. § 3632(d)(4)(C). The most conspicuous clue in that sentence is “time in.” Congress could have omitted “time in” and simply wrote that FSA credits apply “toward” supervised release. Stover appears to overlook “time in” altogether; his interpretation would remain the same regardless of its existence. But Congress indicated that credits specifically apply toward the *time in* supervised release. Giving credence to that choice, FSA credits appear to apply to the time one spends *during* supervised release, not, as Stover argues, to the time one spends in prison *before* reaching supervised release. *See Gonzalez v. Herrera*, 151 F.4th 1076, 1083 (9th Cir. 2025) (the statute “does not mention the period of time preceding supervised release, it identifies only time *in* prerelease custody or supervised release.” (quotation marks omitted)).² If Congress intended for FSA credits to shorten time in prison only, identifying the

² The majority claims that Stover’s interpretation of the statute aligns with most circuits to consider the issue. But only two circuits have published opinions addressing this question of statutory interpretation: the Ninth Circuit and the Sixth Circuit (over dissent). *See Gonzalez*, 151 F.4th 1076; *Hargrove v. Healy*, 155 F.4th 530 (6th Cir. 2025). Those circuits came to opposite conclusions. The majority’s citations to cases from the Eleventh, Fourth, and Fifth Circuits are unavailing—all are unpublished, non-precedential dispositions, and two of those cases addressed the issue in single paragraphs devoid of analysis. *See Guerriero v. Miami RRM*, No. 24-10337, 2024 WL 2017730 (11th Cir. May 7, 2024) (per curiam); *United States v. Malik*, No. 24-7073, 2025 WL 973003 (4th Cir. Apr. 1, 2025) (per curiam); *Stinson v. Martinez*, No. 24-30793, 2025 WL 2017872 (5th Cir. July 18, 2025) (per curiam).

object of those credits as “time in prerelease custody or supervised release” is an odd way to do so.

Indeed, Stover’s understanding of the statute is further undercut by the words Congress chose *not* to use. At least twice before enacting the FSA, Congress created crediting schemes that expressly allow for the use of credits to shorten time spent in prison. *See* 18 U.S.C. § 3624(b)(1) (“[A] prisoner who is serving a term of imprisonment of more than 1 year . . . may receive credit toward the service of the prisoner’s sentence[.]”); *id.* § 3585(b) (“A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences[.]”). There, Congress made it clear to what end credits apply: “the service of the prisoner’s sentence” or his “term of imprisonment.” It is telling, then, that Congress took a different tack here: FSA credits apply “toward time in” supervised release. *Id.* § 3632(d)(4)(C). “That Congress used different language in these two provisions strongly suggests that it meant for them to work differently.” *Stanley v. City of Sanford*, 606 U.S. 46, 53 (2025).

The other words neighboring “toward” in the first sentence also cut in favor of Rivera-Perez’s position. The provision speaks of credits “earned” under the

FSA that “shall be applied” toward time in supervised release. Both of those choices suggest a system by which FSA credits are “earned” and then “spent” (via application) to offset the total time spent in supervised release, not to bring the beginning of that time closer. In the good-time credit context, in which prisoners earn credits for good behavior while incarcerated, *see* 18 U.S.C. § 3624(b)(1), courts have long adopted this common-sense understanding of “earning” and “spending” credits to shorten time incarcerated. There, we say that the use of credits “toward the service of the prisoner’s sentence,” *id.*, means that prisoners may essentially cash in those credits to shorten the duration of their sentence, not to bring the end of their incarceration closer. *See, e.g., Barber v. Thomas*, 560 U.S. 474, 478, 483 (2010) (describing good-time credits as an “offset[]” to and “credit against” a sentence); *see also Hargrove v. Healy*, 155 F.4th 530, 539 (6th Cir. 2025) (Moore, J., dissenting) (“[C]ourts, most notably the Supreme Court, have interpreted the word ‘toward’ in the sentencing-credit context to mean that the credit should *reduce* or count *against* the prisoner’s sentence.”).

There is no reason why FSA credits applied “toward” time in supervised release would not work the same way. And considering the word’s ordinary usage, that reading makes sense. One applies store credit *toward* the cost of an

item “in partial fulfillment” of its cost, not to bring its cost closer. And one applies earned-time credits *toward* time in supervised release in the same way: “in partial fulfillment” of that time, not to bring that time closer. Considered in context with the rest of the sentence in which we find it, I would conclude that the only reasonable understanding of the word “toward” is that proposed by Rivera-Perez.

Turn now to the second sentence of the provision: “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). The majority believes “this second sentence confirms Stover’s reading of the statute” because it cross-references Section 3624(g), which itself allows prisoners to apply FSA credits to shorten their time in prison. *Ante* at 13. In my view, however, that is precisely why Stover’s interpretation is wrong. “[W]e must normally seek to construe Congress’s work so that effect is given to all provisions[.]” *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 698–99 (2022) (quotation marks omitted). But under Stover’s interpretation, our statute and the cross-referenced Section 3624(g) both allow for the same act: the application of FSA credits to leave prison earlier.

When Congress created the FSA credit system in Section 3632, it also added the cross-referenced provision, Section 3624(g). *See* Pub. L. No. 115-391, 132 Stat. 5194 (2018). One section of that added provision reads: “If the sentencing court included as a part of the prisoner’s sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment . . . the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632.” 18 U.S.C. § 3624(g)(3). That provision plainly allows prisoners to “spend” their FSA credits to reduce their time spent incarcerated (or, as the statute puts it, “to begin any such term of supervised release at an earlier date”). According to the majority, that is also what our statute does. But it is hard to imagine that Congress created two different mechanisms—enacted at the same time—to allow the same use of credits. Indeed, “the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.” *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

There is a more harmonious way to fit these two provisions together. I would read the first and second sentences of our statute to address two different situations in which FSA credits apply. The first sentence allows prisoners to apply

FSA credits “toward time in prerelease custody or supervised release,” thereby reducing time spent on those statuses, while the second sentence allows “eligible prisoners” to apply FSA credits to transfer early from prison “into prerelease custody or supervised release” in accordance with Section 3624(g), thereby reducing time spent in prison. This reading avoids surplusage between our statute and Section 3624(g) and, sensibly, allows prisoners to “spend” their FSA credits at every step in the carceral process.³

The majority disagrees with this reading of Section 3632(d)(4)(C) largely because of its heading: “Application of time credits toward prerelease custody or supervised release.” On the majority’s telling, this heading outlines only one situation in which FSA credits apply, and thus it concludes that Congress did not intend the first and second sentences of our statute to direct different uses of credits. *See ante* at 19–20. Setting aside that the heading of a subsection cannot “override the plain words of a statute,” *Dubin v. United States*, 599 U.S. 110, 121

³ The majority claims that adopting Rivera-Perez’s reading would allow prisoners to reduce time spent in prerelease custody in favor of *more* time in prison—which “defies logic and common sense because prisoners (presumably) want *more* time in prerelease custody (rather than prison), not less.” *Ante* at 25. I agree with that conclusion; it would be irrational for the statute to allow prisoners to spend FSA credits to sit in prison longer. But that is not what Rivera-Perez’s interpretation does. Instead, it allows prisoners to “spend” credits to reduce their time spent in prerelease custody in favor of *more* time spent on supervised release, a less restrictive step in the carceral process.

(2023) (quotation marks omitted), Congress often uses concise, yet imperfect headings when drafting statutes—in fact, it did so in the very same section of the FSA. Consider 18 U.S.C. § 3632(b), entitled “[a]ssignment of evidence-based recidivism reduction programs.” A reader of that heading might reasonably conclude that its text applies only to the “[a]ssignment of evidence-based recidivism reduction programs.” *Id.* Read further, however, and the text of that statute clearly governs the assignment of *both* “evidence-based recidivism reduction programming *and* productive activities,” *id.* (emphasis added), which are two distinct types of courses for which prisoners may earn FSA credits, *see id.* §§ 3635(3), (5). Relying on Section 3632(b)’s heading to narrow its application to only “evidence-based recidivism reduction programs” would be inappropriate. *See U.S. ex rel. Thistlethwaite v. Dowty Woodville Polymer, Ltd.*, 110 F.3d 861, 866 (2d Cir. 1997) (“Headings and titles are not meant to take the place of the detailed provisions of the statutory text[.]” (cleaned up)). So too here. Narrowing the reach of our statute based on its heading would not comport with its text.

The majority raises just one more textual argument against Rivera-Perez’s interpretation, relying now on a general directive to the Attorney General to promulgate a “risk and needs assessment system” in accordance with the FSA. *See*

ante at 15 n.5 (citing 18 U.S.C. § 3632(a)). That section, 3632(a), contemplates the BOP using that “risk and needs assessment system” to “determine when a prisoner is ready to transfer into prerelease custody or supervised release in accordance with section 3624.” 18 U.S.C. § 3632(a)(7). The majority claims that this language indicates Congress’s intent to allow *only* early transfers into supervised release. But the language of Section 3632(a)(7) is entirely consistent with Rivera-Perez’s reading of the statute. That is because the subsection speaks of “transfer[s] into . . . supervised release *in accordance with section 3624*,” *id.* (emphasis added), and Section 3624, unsurprisingly, allows the use of FSA credits to transfer early into supervised release, *see id.* § 3624(g)(3). If anything, Congress’s wording in Section 3632(a)(7) reaffirms that Section 3624 is designed to allow the use of credits to shorten a term of imprisonment (via an early transfer), while the first sentence of our statute is designed to provide for a different use of credits.

Beyond those two points, much of the majority’s concern with Rivera-Perez’s reading of the statute springs not from the statutory text, but from perceived negative policy consequences. First, the majority has safety concerns; it fears that long-term prisoners with more time to earn FSA credits will eventually be able to wipe out large chunks (or even all) of their terms of supervised release.

The majority also has administrability concerns, worrying that district courts will be left to craft “unusual . . . remed[ies]” in order to effectuate the application of FSA credits to terms of supervised release. *Ante* at 24 n.12.

There are simple answers to both concerns. Take administrability first. In my view, the use of FSA credits to shorten a term of supervised release can follow the well-trodden path of the good-time credit system. There, prisoners who have earned credits for good behavior may put them “toward the service of [their] sentence.” 18 U.S.C. § 3624(b)(1). But that crediting process has never involved the courts. Instead, the Bureau of Prisons (BOP) merely recalculates the end date of the prisoner’s sentence based on an application of his good-time credits. The FSA crediting system can operate in much the same way. When an individual transitions from prison onto supervised release, he is “released by the [BOP] to the supervision of a probation officer[.]” *Id.* § 3624(e). During that transition, BOP can communicate the individual’s remaining FSA credits to Probation, who will then take account of those credits when calculating the appropriate end date of supervised release. This administration fits neatly into the way federal crediting systems have long operated—no specific textual direction or unusual remedy needed.

As to the majority's concern that dangerous prisoners will use FSA credits to greatly reduce their terms of supervised release, that fear is largely unfounded. Indeed, Congress created the FSA crediting scheme with safety nets designed to guard against that precise issue; it is not our place to question their efficacy. First, the FSA excludes many individuals convicted of the most serious crimes from earning credits at all. *See* 18 U.S.C. § 3632(d)(4)(D); *see also* 164 Cong. Rec. S7642 (Dec. 17, 2018) (statement of Sen. Cornyn) (the FSA "specifically lists 48 offenses that disqualify offenders from earning time credits," a list created with "the most modern social science evaluation tools to find out who is at low risk of reoffending"). That list of excluded convictions includes dozens of violent offenses, from homicide and sexual abuse to the use of a firearm during any crime of violence or drug trafficking crime.⁴ *See* 18 U.S.C. § 3632(d)(4)(D). Next, for those prisoners who are not immediately disqualified from earning credits, Congress

⁴ The majority appears unconvinced that this list of excluded offenses is comprehensive enough to stop dangerous individuals from benefitting from FSA credits. It gives the example of "an individual convicted of participating in a large narcotics operation, involving hundreds of kilograms of cocaine," who is not eligible to use his FSA credits for early transfer out of prison, and who therefore may "use those earned-time credits to substantially reduce (or even potentially eliminate entirely) his term of supervised release." *Ante* 22 n.10. But that situation is exceedingly unlikely: Such an offender would also have a mandatory minimum 5-year term of supervised release, requiring nearly 2,000 FSA credits to eliminate entirely. *See* 21 U.S.C. § 841(b)(1)(A).

created other safeguards. For instance, the number of credits a prisoner can earn varies based on his BOP-designated risk of recidivism, *id.* § 3632(d)(4)(A); BOP may take away credits for bad behavior in prison, *id.* § 3632(e); and BOP’s “decision to award earned time credit is discretionary” in the first place because “[s]uccessful completion’ of qualifying programs is ‘determin[ed] by [BOP] staff,’” *United States v. James*, 151 F.4th 28, 42 (2d Cir. 2025) (quoting 28 C.F.R. § 523.41(c)(2)). All of these guardrails are designed to ensure that only prisoners who are prepared to safely return to their communities may accumulate FSA credits.

The majority also expresses concern that Congress delineated eligibility requirements for individuals using credits to transfer early out of prison, *see* 18 U.S.C. § 3624(g), but did not do so for those using credits to transfer early out of supervised release. That is true: Section 3624(g) does require, for example, a prisoner to demonstrate a “low risk to recidivate” before he is eligible to leave prison early; Congress did not impose such a requirement on early transferees out of supervised release. *Id.* § 3624(g)(1)(D)(ii). But that difference is unsurprising. It makes sense that Congress would impose strict requirements on individuals leaving prison early but not impose those same requirements on individuals like

Rivera-Perez, who are already back in their communities and simply using their credits to shorten time spent on supervised release. This disparity in eligibility requirements does not persuade me that Congress meant something different when it wrote that prisoners may apply credits “toward time in . . . supervised release.” *Id.* § 3632(d)(4)(C).

But regardless of my judgment on the matter, the majority’s safety concerns have a more fundamental problem: They run headlong into *Congress’s* judgment. Under the FSA, prisoners earn credits for participation in evidence-based recidivism reduction programs—programs that are “designed to help prisoners succeed in their communities upon release from prison”—and for productive activities, “designed to allow prisoners . . . to remain productive and thereby maintain a minimum or low risk of recidivating[.]” 18 U.S.C. §§ 3635(3)(B), (5). “Research shows that such programs hold significant promise to reduce recidivism and improve individual outcomes following release,” which serves “the fiscal interest of the government to reduce recidivism” and “the public safety interest as well.” H.R. Rep. No. 115-699, at 22 (2018). It is clear, then, that Congress structured this system based on one core belief: Prisoners who complete more programs (and thus earn more FSA credits) present empirically lower risks of

recidivism upon their return, saving the Government money and keeping communities safer. That is why FSA credits may be redeemed for benefits at all. At bottom, the majority's concerns about the potential consequences of individuals using FSA credits to shorten (even greatly) their terms of supervised release fights that judgment, or at least ignores it. But it is not our job to consider the value of these recidivism-reducing programs or to decide whether they really *do* make communities safer. *Cf. Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 90 (2017) (“[R]easonable people can disagree with how Congress balanced the various social costs and benefits in this area,” but “these are matters for Congress, not this Court, to resolve”).

That brings me to the purpose of the FSA. In light of Congress's clear belief that participation in these programs will reduce recidivism, it is equally clear that Congress created FSA credits to incentivize that participation. *See* H.R. Rep. No. 115-699, at 28 (the FSA “[e]stablishes incentives and rewards for prisoners to participate in programming and activities,” including “earned time credits”). Unlike the good-time credit system, which caps credit-earning at 54 per year, the FSA contains no such cap. *See* 18 U.S.C. § 3624(b)(1); *id.* § 3632(d)(4)(C). Instead, all signs point to a statutory scheme intended to incentivize as much engagement

in recidivism-reducing programs as possible. But by narrowing the situations in which individuals may apply their FSA credits, Stover's interpretation causes those credits to lose their incentivizing value. Rather than encourage engagement in as many programs as possible, Stover's reading encourages prisoners to participate only to the extent that their credits can apply toward early release from prison. But on Rivera-Perez's reading, in which FSA credits can be used at every step of the carceral process, those credits retain their maximum value as incentives. In a scheme self-consciously designed to increase "participa[tion] in programming and activities," H.R. Rep. No. 115-699, at 28, that choice makes much more sense.

The majority responds that prisoners engaged in this programming have "presumably obtained useful benefits" beyond FSA credits—things like vocational training, financial skills, and anger management. *Ante* at 29. I do not doubt that many of those who complete these programs gain valuable skills. But Congress created a scheme in which *credits* are the incentive—not vocational training, financial skills, or anger management. *See James*, 151 F.4th at 41–42. If Congress believed that those valuable byproducts were enough to incentivize participation, there would be no reason to create FSA credits at all. Instead, it created a system—built on credits—designed to drive as much engagement as possible in programs

that “help prisoners succeed in their communities upon release from prison[.]” 18 U.S.C. § 3635(3)(B). In my view, Rivera-Perez’s reading best comports with that purpose.

Finally, the majority contends that allowing the use of FSA credits to shorten a term of supervised release does not serve the FSA’s broader goal of facilitating rehabilitation, “because supervised release itself ‘fulfills rehabilitative ends[.]’” *Ante* at 30 (quoting *United States v. Johnson*, 529 U.S. 53, 59 (2000)). But that argument overlooks how the specific purpose of the FSA and the broader purposes of supervised relief are complementary. If Congress determined in enacting the FSA that high credit earners are more likely to be safe and successful upon release from prison, that judgment is entirely consistent with those high earners using their credits to finish supervised release earlier. Put differently, if a prisoner who engages in recidivism-reducing programs (and earns FSA credits for doing so) is rehabilitating, it makes perfect sense for Congress to judge that he has less need for “supervision and training programs after release.” *Johnson*, 529 U.S. at 59 (quotation marks omitted). That FSA recidivism-reducing programs and supervised release in general are designed to accomplish the same goal—“provid[ing] rehabilitation to a defendant,” *id.* (quotation marks omitted)—only

makes Rivera-Perez’s interpretation of the FSA more consistent with its purpose, not less.

Rivera-Perez’s understanding of the FSA crediting scheme thus comports with Congress’s specific purpose in the FSA, with its broader purpose in supervised release, and—most importantly—with the text it chose to write.

* * *

This provision allows federal prisoners to apply “[t]ime credits . . . toward time in prerelease custody or supervised release.” 18 U.S.C. § 3632(d)(4)(C). Both Rivera-Perez and Stover propose facially plausible readings. But the statute’s text, context, structure, and purpose all point me to Rivera-Perez’s understanding: When credits apply “toward time in” supervised release, they shorten that time.

For those reasons, I respectfully dissent.

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of May, two thousand twenty-six.

Raul Rivera-Perez,

Petitioner - Appellee,

v.

Rick. Stover, Warden,

Respondent - Appellant.

ORDER

Docket No: 25-149

Appellee Raul Rivera-Perez filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk




UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RAUL RIVERA-PEREZ,
Petitioner,

v.

RICK STOVER,
Respondent.

No. 3:23-cv-1348 (SRU)

MEMORANDUM OF DECISION

Petitioner Raul Rivera-Perez (“Rivera-Perez”) filed *pro se* a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. *See* Petition (“Pet.”), Doc. No. 1. At the time he filed, Rivera-Perez was incarcerated at Federal Correctional Institution Danbury (“FCI Danbury”). *Id.* at ¶ 2. Rivera-Perez challenges the failure of the Bureau of Prisons (“BOP”) to release him due to their miscalculation of his time credits under the First Step Act (“FSA”). *Id.* at ¶ 13. Rivera-Perez asks the Court to “[i]nstruct” the BOP to properly calculate and provide him his earned FSA time credit and “release him from [the] custody [of] the BOP on home confinement.” *Id.* at ¶ 15.

On December 15, 2023, Respondent Rick Stover—the Warden of the federal prison where Petitioner was housed—filed a response asserting that the Petition should be denied because Rivera-Perez (1) failed to exhaust his BOP administrative remedies,¹ (2) Rivera-Perez lacks a right under the FSA or the Second Chance Act (“SCA”) to request that a court order his

¹ Warden Stover later withdrew the argument that Rivera-Perez had failed to exhaust his claim. Resp’t Reply, Doc. No. 12.

transfer to home confinement, and (3) the BOP has discretion under 18 U.S.C. § 3621(b) to delay his transfer to prerelease custody.² Resp't Response, Doc. No. 9.

On January 19, 2024, Warden Stover filed a motion to dismiss and supplemental response, arguing that the Petition was now moot because (1) the BOP has transferred Rivera-Perez to prerelease custody after proper calculation and application of his FSA time credits, and (2) the Court cannot order Rivera-Perez's home confinement. Mot. to Dismiss, Doc. No. 13-1.

On October 17, 2024, I notified the parties that, liberally construing Rivera-Perez's *pro se* petition, I read it as raising the alternative argument that any remaining credits that were not applied by the BOP to transfer Rivera-Perez to prerelease custody should be applied to reduce

² Section 3621(b) provides:

The Bureau of Prisons shall designate the place of the prisoner's imprisonment, and shall, subject to bed availability, the prisoner's security designation, the prisoner's programmatic needs, the prisoner's mental and medical health needs, any request made by the prisoner related to faith-based needs, recommendations of the sentencing court, and other security concerns of the Bureau of Prisons, place the prisoner in a facility as close as practicable to the prisoner's primary residence, and to the extent practicable, in a facility within 500 driving miles of that residence. The Bureau shall, subject to consideration of the factors described in the preceding sentence and the prisoner's preference for staying at his or her current facility or being transferred, transfer prisoners to facilities that are closer to the prisoner's primary residence even if the prisoner is already in a facility within 500 driving miles of that residence. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence—
 - (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
 - (B) recommending a type of penal or correctional facility as appropriate; and
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

his time on supervised release. *See* Notice, Doc. No. 16. I gave the parties an opportunity to submit briefing in response to the question whether any remaining FSA time credits may be applied to reduce Rivera-Perez’s term of supervised release. *Id.* On November 7, 2024, Warden Stover submitted a response, arguing that the FSA does not permit application of FSA credits to shorten a term of supervised release. *See* Response to Order for Suppl. Br., Doc. No. 17.

For the following reasons, I conclude that the Petition should be **granted**, and Warden Stover’s motion to dismiss, doc. no. 13, should be **denied**.

I. LEGAL STANDARD

A federal prisoner may petition for habeas relief if he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). “A writ of habeas corpus under § 2241 is available to a federal prisoner who does not challenge the legality of his sentence, but challenges instead its execution subsequent to his conviction.” *Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 632 (2d Cir. 2001). Thus, section 2241 petitions are appropriately used to challenge conditions of confinement or sentence calculations. *See Levine v. Apker*, 455 F.3d 71, 78 (2d Cir. 2006); *Dailey v. Pullen*, No. 3:22-cv-1121 (SRU), 2023 WL 3456696, at *2 (D. Conn. May 15, 2023) (considering a challenge to FSA time credit calculation on a section 2241 petition).

Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss an action for lack of subject matter jurisdiction. Dismissal for lack of subject matter jurisdiction under Rule 12(b)(1) is appropriate “when the district court lacks the statutory or constitutional power to adjudicate” the case. *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). “In resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), a district court . . . may refer to evidence outside the pleadings.” *Id.* “A plaintiff asserting subject matter jurisdiction

has the burden of proving by a preponderance of the evidence that it exists.” *Id.* “Under Article III of the U.S. Constitution, when a case becomes moot, the federal courts lack subject matter jurisdiction over the action.” *Doyle v. Midland Credit Mgmt., Inc.*, 722 F.3d 78, 80 (2d Cir. 2013).

II. BACKGROUND

Rivera-Perez was sentenced in the United States District Court for the District of Puerto Rico to a term of life imprisonment with a five-year term of supervised release for Conspiracy to Distribute Cocaine, in violation of 21 U.S.C. §§ 846, 841(a)(1). *See* Smith Decl., Resp’t Ex. 1, Doc. No. 9-1, at ¶ 4. His term of imprisonment was later reduced to a 360-month term of imprisonment with a five-year term of supervised release. *Id.*

A. First Step Act (“FSA”)

The FSA encourages federal inmates to participate in evidence-based recidivism reduction programs (“EBRRs”) and other productive activities (“PAs”) by providing time credits to an inmate who successfully participates in such programs. *See* 18 U.S.C. § 3632(d)(4)(A); 28 C.F.R. § 523.40(b); *Dailey*, 2023 WL 3456696, at *2. An inmate’s initial risk and needs assessment is ordinarily completed within 28 days of his/her arrival at the designated facility. *See* BOP Program Statement 5410.01, CN-2, § 5.³ Inmates are reassessed at each regularly scheduled Program Review throughout the remainder of their incarceration. *See id.* Program Reviews occur approximately every 180 days unless an inmate is within one year of release, at which point those reviews occur every 90 days. *See* 28 C.F.R. § 524.11(a)(2). An inmate earns either ten or

³ Available at https://www.bop.gov/policy/progstat/5410.01_cn2.pdf. *See Giraldo v. Kessler*, 694 F.3d 161, 164 (2d Cir. 2012) (court may “take judicial notice of relevant matters of public record.”).

fifteen days of FSA time credits for every thirty days of successful participation in EBRRs or PAs. 18 U.S.C. § 3632(d)(4)(A).⁴

Under FSA regulation Section 523.41, an otherwise eligible inmate will generally not be considered to be “successfully participating” in EBRR Programs or PAs in situations including, but not limited to:

- (i) Placement in a Special Housing Unit;
- (ii) Designation status outside the institution (*e.g.*, for extended medical placement in a hospital or outside institution, an escorted trip, a furlough, etc.);
- (iii) Temporary transfer to the custody of another Federal or non-Federal government agency (*e.g.*, on state or Federal writ, transfer to state custody for service of sentence, etc.);
- (iv) Placement in mental health/psychiatric holds; or
- (v) “Opting out” (choosing not to participate in the EBRR programs or PAs that the Bureau has recommended based on the inmate's individualized risk and needs assessment).

28 C.F.R. § 523.41(c)(4)(i)-(v).

Prisoners’ terms of imprisonment are computed under applicable law. *See* 18 U.S.C. § 3624(g)(1)(C). Inmates can benefit from time credits only if they have shown a demonstrated risk reduction or are maintaining a minimum/low risk of recidivism. *See* 18 U.S.C. § 3624(g)(1)(B).⁵ In addition, an inmate may accumulate credits every month, but in order to be “eligible” to have credits *applied*, an inmate must have “earned time credits under the risk and needs assessment system . . . in an amount that is equal to the remainder of the prisoner’s

⁴ Eligible inmates who successfully complete EBRRs and PAs earn ten days of time credits for every thirty days of successful participation pursuant to 18 U.S.C. § 3632(d)(4)(A)(i). An eligible inmate who has been determined by the BOP to be a minimum or low risk for recidivating over two consecutive assessments earns fifteen days of time credits for every thirty days of successful participation pursuant to 18 U.S.C. § 3632(d)(4)(A)(ii).

⁵ An inmate’s status under immigration laws may also have an impact his or her ability to apply FSA time credits because prisoners “subject to a final order of removal” are statutorily ineligible to apply earned time credits. 18 U.S.C. § 3632(d)(4)(E); *see Flete-Garcia v. Stover*, 2023 WL 8435854, at *2 (D. Conn. Nov. 29, 2023); *Saleen v. Pullen*, 2023 WL 3603423, at *1 (D. Conn. Apr. 12, 2023).

imposed term of imprisonment.” *See* 18 U.S.C. § 3624(g)(1)(A). “In other words, the inmate is not ‘eligible’ for application of his FSA time credits until the number of credits equals the number of days remaining in his sentence.” *Pujols v. Stover*, 2023 WL 4551423, at *1 (D. Conn. July 14, 2023).

Application of FSA time credits enables an inmate to be transferred to prerelease custody or supervised release earlier than the completion date of his sentence. *See* 18 U.S.C. §§ 3624(g)(2) and (3); 18 U.S.C. § 3632(d)(4)(C); *see also Saleen v. Pullen*, 2023 WL 3603423, at *1 (D. Conn. Apr. 12, 2023) (“Prerelease custody can be in the form of either home confinement or transfer to a residential reentry center.”). If the inmate has a term of supervised release imposed as part of their sentence, “the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months.” *See* 18 U.S.C. § 3624(g)(3) (emphasis added).

B. Second Chance Act

The Second Chance Act provides, in relevant part:

The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community.

18 U.S.C. § 3624(c)(1). Thus, the BOP has discretion to determine whether a prisoner receives prerelease custody placement and how much time the prisoner receives within the twelve-month maximum period. *See* 18 U.S.C. § 3621(b).

C. Petitioner’s Release Date

At the time this Petition was filed, the BOP had determined Rivera-Perez’s projected release date, with consideration of Petitioner’s good conduct time under 18 U.S.C. § 3624(b), as

December 3, 2025. *See* Smith Decl., Resp’t Ex. 1, Doc. No. 9-1, at ¶ 5. Rivera-Perez was eligible to earn FSA credits, and the BOP’s FSA Time Credit Assessment showed that he had earned 780 FSA credits as of December 2, 2023. *Id.* at ¶ 6; FSA Time Credit Assessment, Doc. No. 9-3.

Under 18 U.S.C. § 3624(g)(3), the BOP may apply 365 days of FSA credits to shorten Rivera-Perez’s term of imprisonment and begin his term of supervised release at an earlier date. Thus, after application of his 365 days of FSA credit, Rivera-Perez’s release date was modified to December 3, 2024. Thereafter, Rivera-Perez had 415 FSA earned but unused time credits remaining. Smith Decl., Resp’t Ex. 1, Doc. No. 9-1, at ¶¶ 8-9.

In his supplemental brief, Rivera-Perez explains that Danbury FCI staff advised that he would be released to a halfway house on January 17, 2024. Pet’r Suppl. Br., Doc. No. 7, at 2. Publicly available information shows that Petitioner has now been transferred from FCI Danbury to a residential reentry center in the Middle District of North Carolina.⁶

III. DISCUSSION

Warden Stover argues that the Petition is moot because the Court cannot afford Rivera-Perez any further relief. *See* Mot. to Dismiss, Doc. No. 13-1, at 2 (citing *Martin-Trigona v. Shiff*, 702 F.2d 380, 386 (2d Cir. 1983)) (“The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed.”). The record shows that Rivera-Perez’s FSA time credits have been credited to afford him an early transfer to prerelease custody and supervised release under 18 U.S.C. § 3624(g)(3). *See* Smith Decl., Resp’t Ex. 1, Doc No. 9-1, at ¶¶ 6-9. Petitioner acknowledges that the BOP properly credited 365 days toward his prerelease

⁶ The publicly available information of the BOP inmate locator shows that Petitioner is now located at RRM Raleigh. *See* <https://www.bop.gov/inmateloc/>. The Federal Bureau of Prisons website provides that the RRM Raleigh is the field office for management of residential reentry centers in the Mid-Atlantic region, which includes the Middle District of North Carolina. *See* <https://www.bop.gov/locations/ccm/crl/>.

custody date and an additional amount toward his transfer to prerelease custody, but he asserts that he still had remaining FSA time credit that he was not given the full benefit of. Pet'r Suppl. Br., Doc. No. 7.⁷

A. Jurisdiction

As an initial matter, I note that following his transfer to prerelease custody, Rivera-Perez has been in the custody of the BOP at the RRM Raleigh, in North Carolina. Habeas relief ordinarily can only be granted in a petitioner's "district of confinement." *Carbo v. United States*, 364 U.S. 611, 618 (1961). *See also Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004) ("District courts are limited to granting habeas relief 'within their respective jurisdictions.' 28 U.S.C. § 2241(a). We have interpreted this language to require 'nothing more than that the court issuing the writ have jurisdiction over the custodian.'") (quoting *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 495 (1973)). The district of confinement rule "serves the important purpose of preventing forum shopping by habeas petitioners." *Id.* at 447.

Accordingly, courts have held that a petitioner's post-petition transfer to an out-of-district facility "moots an action for injunctive relief against the transferring facility." *Prins v. Coughlin*, 76 F.3d 504, 506 (2d Cir. 1996) (per curiam). *See also Beagle v. Easter*, 2021 WL 1026885, at *3 (D. Conn. Mar. 17, 2021) (concluding that a petition challenging the petitioner's conditions of confinement was rendered moot in light of the petitioner's transfer to an out-of-district detention facility).

The Supreme Court and Second Circuit have been clear, though, that the district of confinement rule is "not jurisdictional in the sense of a limitation on subject-matter jurisdiction."

⁷ Petitioner claims that he had 871 days that should be credited toward his residential reentry confinement or home confinement. *Id.* at 2. But neither his nor Respondent's documentation submitted in this matter substantiates that claim.

Rumsfeld v. Padilla, 542 U.S. 426, 451 (2004) (Kennedy, J., concurring); *Skaftouros v. United States*, 667 F.3d 144, 146 n.1 (2d Cir. 2011). *See also id.* at 434 n.7 (“The word ‘jurisdiction,’ of course, is capable of different interpretations. We use it in the sense that it is used in the habeas statute, 28 U.S.C. § 2241(a), and not in the sense of subject-matter jurisdiction of the District Court.”). Whether a district court has “jurisdiction” over a section 2241 petition comes down to two questions: “who is the proper respondent to that petition? And second, does the [District Court] have jurisdiction over him or her?” *Id.* at 434. Ordinarily, the proper respondent is a petitioner’s immediate custodian, and the proper venue is the district in which the petitioner is confined. *Id.* at 435, 443. Here, Warden Stover is no longer Rivera-Perez’ immediate custodian, and Rivera-Perez is no longer confined in the District of Connecticut. But because the rules governing respondent and venue are not a limit on subject matter jurisdiction, “when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner’s release.” *Id.* at 441 (citing *Ex parte Endo*, 323 U.S. 283 (1944)).

When Rivera-Perez filed his petition, he was confined at FCI Danbury in Danbury, Connecticut. He properly named Warden Stover, the warden of FCI Danbury, as the respondent to his petition, and filed the petition in the judicial district in which FCI Danbury is located, the District of Connecticut. This Court thus initially obtained jurisdiction over the Petition, and it retains jurisdiction over the Petition even though the BOP has since transferred Rivera-Perez out of the district. The remaining question is whether there is any respondent within this Court’s jurisdiction to whom the writ may be directed. Here, unlike cases in which a petitioner challenges their conditions of confinement at a specific facility, and thus seeks injunctive relief

against their immediate custodian, Rivera-Perez seeks relief in the form of application of FSA time credits that he alleges he earned but were not properly credited against his sentence. That type of relief can be effectuated by the BOP generally, not any one warden specifically. *See* 28 C.F.R. § 0.96 (delegation of authority to the BOP to compute sentences and designate an inmate’s place of imprisonment or confinement). As he acknowledges in his briefing, Warden Stover has been sued in his official capacity, and thus the real party in interest is the BOP. The District of Connecticut has the BOP “within reach of its process,” *Ex parte Endo*, 323 U.S. at 306-07, and may therefore direct the writ to the BOP generally. *See also Mason v. Alatary*, 2023 WL 2965619, at *3 (N.D.N.Y. Apr. 17, 2023) (“Courts have found that the presence of a BOP facility within the jurisdiction, even after a petitioner was transferred to a different judicial district, was sufficient to keep the respondent ‘within reach’ and allow the original district court to maintain jurisdiction.”).

Having concluded that this Court may properly exercise its jurisdiction over Rivera-Perez’s petition despite his transfer from FCI Danbury to RRM Raleigh, I now turn to the merits of Warden Stover’s motion to dismiss.

B. Application of Time Credits

Warden Stover argues that I cannot grant any further relief because Rivera-Perez’s transfer to supervised release has been accelerated by one year, *see* 18 U.S.C. § 3624(g)(3) (“the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months”), and he has already been transferred to prerelease custody. *See* Mot. to Dismiss, Doc. No. 13-1, at 3. Warden Stover further argues that any remaining FSA time credits cannot be applied to reduce a prisoner’s term of supervised release. *See id.*; Response to Order for Suppl. Br., Doc. No. 17. The FSA provides that time

credits “shall be applied toward time in prerelease custody or supervised release.” 18 U.S.C. § 3632(d)(4)(C). Some district courts have interpreted that provision as plain language that provides for application of FSA time credits to reduce a term of supervised release, *see Dyer v. Fulgam*, 2022 WL 1598249, at *3 (E.D. Tenn. May 20, 2022) (“the unambiguous, mandatory language of the statute provides that earned-time credits may be applied to a term of supervised release”); but others have rejected that construction of section 3632(d)(4)(C), holding that the statute does not permit a prisoner to reduce the imposed length of supervised release. *See, e.g., United States v. Calabrese*, 2023 WL 1969753, at *2 (N.D. Ohio Feb. 13, 2023) (“[T]he statute provides that time credits shall be applied *toward* supervised release. Use of the word ‘toward’ means that credits can be applied to bring ‘time in prerelease custody or supervised release’ closer.”).

Relying on *Calabrese*, Warden Stover interprets the phrase “toward . . . time in supervised release” in section 3632(d)(4)(C) as only allowing the BOP to “accelerat[e] the beginning of supervised release.” Doc. No. 17, at 3. I disagree that the plain meaning of the word “toward,” as used in section 3624(d)(4)(C), is synonymous with “accelerate” or “bring closer.” Although I cannot disagree that the word “toward,” in isolation, means “in the direction of; on a course or line leading to,” *see Calabrese*, 2023 WL 1969753, at *2 (citing Black’s Law Dictionary (11th ed. 2019)), the word “toward” does not appear in isolation in section 3632(d)(4)(C). Instead, the word “toward” is used in the phrase “time credits . . . shall be applied toward.” Applying credits toward something ordinarily means reducing that thing. For example, applying a store credit toward the cost of an item means that the cost of that item is reduced by the amount of the credit. Similarly, applying a credit toward one’s account balance means that the balance will be reduced by the amount of the credit. The plain meaning of the

phrase “applied toward time in . . . supervised release” thus clearly suggests that FSA credits are to be applied to reduce a term of supervised release. Interpreting the word “toward,” in isolation, to mean anything else would go against the fundamental principle that statutory language must be read in its context. *See Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989) (“[S]tatutory language cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context.”).

Warden Stover also argues that the second sentence of section 3632(d)(4)(C) “makes it clear that time credits are to be used to reduce incarceration time so as to accelerate the beginning of prerelease custody or supervised release, not reduce supervised release.” Doc. No. 17, at 3. The second sentence reads: “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). Other district courts have also looked to that second sentence of section 3632(d)(4)(C) as confirmation that the prior sentence only allows the BOP to bring closer a term of supervised release. *See, e.g., Guerriero v. Miami RRM*, 2024 WL 2017730, at *2 (11th Cir. May 7, 2024) (“[T]he second sentence clearly indicates that Congress meant that the time credits are to be used to reduce incarceration time so as to accelerate the beginning of prerelease custody or supervised release, or, as the second sentence of § 3632(d)(4)(C) says: ‘transfer eligible prisoners . . . into prelease custody or supervised release.’”). Reading the second sentence as merely confirming the meaning of the first, however, would render the second sentence entirely superfluous. *See Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837 (1988) (“As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.”).

Giving meaning to both sentences of section 3632(d)(4)(C), I conclude that the more natural reading is that the first sentence allows credits to be applied to reduce a term of (i.e., “time in”) prerelease custody or supervised release, and the second sentence allows the BOP to apply credits to transfer an inmate to prerelease custody or to supervised at an earlier date. The second sentence thus provides the mechanism to carry out the FSA’s purpose of reducing an eligible inmate’s time in incarceration. *See* 164 Cong. Rec. S7746 (daily ed. Dec. 18, 2018) (statement of Sen. Cornyn) (“[T]he incentive for prisoners is to go through the program, gain the earned credit so that they can be released.”). If it were unclear, the second sentence’s reference to section 3624(g) provides clarity on that sentence’s purpose. Section 3624(g) states that the BOP “may” transfer a prisoner “to begin any such term of supervised release at an earlier date . . . based on the application of time credits under section 3632.” 18 U.S.C. § 3624(g)(3). Supervised release begins after incarceration ends, so an early transfer to supervised release necessarily reduces an inmate’s time spent incarcerated. Thus, contrary to the *Calabrese* court’s concern that “reading ‘toward time in prerelease custody or supervised release’ to mean FSA credits shall reduce the overall terms of either prerelease custody or supervise release would write out any mechanism in the statute for FSA credits to reduce an eligible prisoner’s time in custody in prison,” 2023 WL 1969753, at *3, the second sentence of section 3632(d)(4)(C) not only provides exactly that mechanism for the BOP to reduce a term of imprisonment, but it uses mandatory language *requiring* release from prison. *See* 18 U.S.C. § 3632(d)(4)(C) (“The Director of the Bureau of Prisons *shall* transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release.”) (emphasis added).

Of course, as the Eleventh Circuit pointed out in *Guerriero*, “§ 3632(d)(4)(C) does not permit the BOP to apply a prisoner’s FSA time credits to his period of supervised release.” 2024

WL 2017730, at *1. That is only because the BOP has no role whatsoever in determining or crediting time in supervised release. Once a federal inmate is released from BOP custody to begin supervision by Probation, the BOP has no further authority over that inmate. *See* 18 U.S.C. § 3624(e) (“A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer The term of supervised release commences on the day the person is released from imprisonment.”); *see also United States v. Earl*, 729 F.3d 1064, 1068 (9th Cir. 2013) (“We therefore interpret the term ‘released’ in the context of the statute to require not only release from imprisonment, but also release from the BOP’s legal custody at the expiration of the prisoner’s prescribed sentence.”). Consistent with that reality, the first sentence of section 3632(d)(4)(C), unlike the second, is not directed at the BOP, but rather uses passive voice: “Time credits . . . *shall be applied* toward time in prerelease custody or supervised release.” 18 U.S.C. § 3632(d)(4)(C) (emphasis added).

Finally, Warden Stover argues that the FSA’s purpose of encouraging rehabilitation of offenders—both in prison, through the recidivism reduction programs that the FSA created, and after, through supervised release—would be unfulfilled if credits were used to reduce a term of supervised release, rather than a term of incarceration. *See* Doc. No. 17, at 4-5. In support, he relies on *United States v. Johnson*, 529 U.S. 53, 59 (2000), in which the Supreme Court analyzed a separate statute and explained that the “objectives of supervised release would be unfulfilled if excess prison time were to offset and reduce terms of supervised release.” But, as I just explained, the FSA provides a mechanism *both* for using credits to reduce a term of incarceration and *also* for using any remaining credits to reduce a term of supervised release. In addition, the purpose of both FSA programming and supervised release is the same: rehabilitating the offender, easing the transition to the community, and protecting the public against recidivism.

See id. It is perfectly logical that, in order to provide an incentive to prisoners to start their efforts at rehabilitation while still in prison and thus to facilitate their transition to the community, Congress would offer the potential to reduce time in prerelease custody or supervised release, programs that both serve the same goals. *See* 18 U.S.C. § 3624(g)(4) (“In determining appropriate conditions for prisoners placed in prerelease custody . . . [the BOP] shall . . . provide that increasingly less restrictive conditions shall be imposed on prisoners who demonstrate continued compliance with the conditions of such prerelease custody, so as to most effectively prepare such prisoners for reentry.”).

Notably, prisoners that the BOP determines are at a low risk of recidivism are eligible to earn additional FSA credits. *See* 18 U.S.C. § 3632(d)(4)(A)(ii) (“A prisoner determined by the [BOP] to be at a minimum or low risk for recidivating . . . shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming.”). Again, it makes sense that individuals at a lower risk of recidivating—and who thus are less in need of rehabilitation—can potentially have their time in supervised release be reduced to a greater extent. Doing so does not undermine the rehabilitative purpose of the either the FSA or supervised release, nor does it undermine the incentive structure of the FSA. Rather, it acknowledges that prisoners who rehabilitate in prison need less time to rehabilitate on supervised release. Eliminating any ability for individuals like Rivera-Perez to get the benefit of their remaining FSA credits that the BOP did not—and cannot, by virtue of the twelve-month limitation in section 3624(g)(3)—use to transfer them out of custodial imprisonment, by contrast, would certainly eliminate any incentive to participate in FSA programming once they have earned twelve months of credit.

I acknowledge that numerous out-of-circuit cases have rejected *Dyer* and held that FSA credits cannot be applied to reduce a term of supervised release. *See, e.g., United States v. Calhoun*, 2023 WL 7930053, at *2 (S.D. Miss. Nov. 16, 2023) (“*Dyer* has gained almost no traction and has been expressly rejected by nearly every court to consider it.”). “Just because nearly every court has reached the same conclusion,” however, “does not mean the construction is correct.” *Id.* at *3. Based on the plain language of the statute, read in context, I conclude that FSA credits *can*—and in fact *must*, according to the mandatory language of section 3632(d)(4)(C)—be applied to reduce a term of supervised release. *See* 18 U.S.C. § 3632(d)(4)(C) (“Time credits . . . *shall* be applied toward time in prerelease custody *or* supervised release.”) (emphasis added).

Rivera-Perez has demonstrated that he has not received the benefit of all the FSA credits that he earned. As of December 2, 2023, Rivera-Perez had earned 780 FSA credits. *See* FSA Time Credit Assessment, Doc. No. 9-3. After application of 365 days of FSA credit to accelerate the start of his term of supervised release, moving his release date to December 3, 2024, Rivera-Perez had 415 unused FSA time credits remaining. *See* Smith Decl., Resp’t Ex. 1, Doc. No. 9-1, at ¶¶ 8-9. Warden Stover represents that Rivera-Perez was transferred to prerelease custody on or about January 17, 2024. *See* Mot. to Dismiss, Doc. No. 13-1, at 1 (“[O]n or about January 17, 2024, Petitioner’s location of confinement transferred from FCI Danbury to a Dismas Charities residential reentry center.”). Even if, as it appears, the BOP applied 321 FSA credits to accelerate Rivera-Perez’s transfer to prerelease custody, he would still have 94 unused credits remaining.⁸

⁸ The BOP transferred Rivera-Perez to prerelease custody 321 days prior to his adjusted release date of December 3, 2024. But that fact does not automatically compel the conclusion that the BOP used 321 of Rivera-Perez’s FSA credits to do so. The FSA does impose an obligation on the BOP to apply time credits to accelerate an inmate’s transfer to prerelease custody. *See* 18 U.S.C. § 3632(d)(4)(C) (“The Director of the Bureau of Prisons shall transfer eligible prisoners, as

Rivera-Perez's petition is therefore not moot, and granting it will allow his remaining time credits to be applied to reduce his term of supervised release.

C. Home Confinement

Finally, I consider Rivera-Perez's specific request for an order instructing the BOP to "immediately release him . . . on home confinement." *See* Pet., Doc. No. 1, at ¶ 15. I cannot afford him that relief because the "BOP has the exclusive authority to determine the facility where an inmate will serve his sentence and to transfer the inmate from one facility to another." *Milchin v. Warden*, 2022 WL 1658836, *2 (D. Conn. May 25, 2022). Rivera-Perez is currently in prerelease custody, in the custody of the BOP at RMM Raleigh. Prerelease custody may include

determined under section 3624(g), into prerelease custody or supervised release."'). But the BOP is also under an obligation, separate from that imposed by virtue of applying earned FSA time credits, to transfer an inmate to prerelease custody, when practicable, within the last twelve months of their term of imprisonment. *See id.* § 3624(c)(1) ("The [BOP] shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.'). The BOP therefore could also have transferred Rivera-Perez to prerelease custody on January 17, 2024 pursuant to its authority under section 3624(c), in the process using *none* of Rivera-Perez's FSA credits. If that were the case, Rivera-Perez would still have 415 unused FSA time credits remaining. In either case, Rivera-Perez has demonstrated that he has some amount of unused FSA time credits remaining that should be applied to reduce his term of supervised release.

I also observe that the BOP's preexisting obligation to transfer inmates to prerelease custody reinforces my conclusion that FSA time credits should *also* be used toward reducing a term of prerelease custody or supervised release, where appropriate. The two statutory provisions just described are not entirely duplicative, because the twelve-month limitation in section 3624(c)(1) does not apply to the FSA. An inmate may spend longer than twelve months in prerelease custody via application of his FSA time credits. *See id.* § 3624(g)(10). Nonetheless, the interaction between section 3624(c) and the FSA indicates that the BOP may be in the practice of applying FSA credits to provide inmates a benefit—transfer from prison to prerelease custody in the final months of a term of imprisonment—that in many cases it is already under an obligation to provide. Allowing FSA credits to be applied toward reducing a term of prerelease custody or supervised release, by contrast, allows the BOP to use FSA credits, beyond the first 365 that are applied to accelerate release from BOP custody to supervised release, to provide an additional benefit to inmates beyond what section 3624(c) already requires.

either placement at a residential reentry center or in home confinement. *See* 18 U.S.C. § 3624(g)(2).

Any decision of the BOP relating to the place of confinement “is not reviewable by any court.” 18 U.S.C. § 3621(b); *see also id.* (“The Bureau of Prisons shall designate the place of the prisoner's imprisonment . . .” and may “direct the transfer of a prisoner from one penal or correctional facility to another.”); *Meachum v. Fano*, 427 U.S. 215, 228–29 (1976) (cautioning against “involv[ing] the judiciary in issues and discretionary decisions that are not the business of federal judges.”); *United States v. Kanagbou*, 726 Fed. App’x 21, 25 n.1 (2d Cir. 2018) (noting that “the district court does not control how the Executive Branch carries out a defendant's sentence”).

IV. CONCLUSION

For the foregoing reasons, Warden Stover’s motion to dismiss is **denied**.

Rivera-Perez’s petition for a writ of habeas corpus is **granted**. The BOP is directed to calculate the number of Rivera-Perez’s unused FSA time credits and inform the U.S. Probation Office for the Middle District of North Carolina of that calculation so that it can apply those credits toward Rivera-Perez’s term of supervised release.

The Clerk is instructed to close this case.

So ordered.

Dated at Bridgeport, Connecticut, this 18th day of November 2024.

/s/ STEFAN R. UNDERHILL
Stefan R. Underhill
United States District Judge