



1 injunction compelling the BOP to calculate and apply his earned time credits. (Doc. No. 8 at 7).

2 In response, Respondent filed a Motion to Dismiss with Appendix on July 17, 2023.  
3 (Doc. No. 11, 11-1). Respondent argues the Court lacks jurisdiction to consider the Petition  
4 because Petitioner’s transfer from FCI Mendota custody to commence his term of supervised  
5 release moots the Petition; and in the alternative, dismissal is mandatory because Petitioner did  
6 not exhaust his administrative remedies. (Doc. No. 11 at 2-5). Petitioner did not file a response  
7 to the motion, nor request an extension of time to respond, and the time for doing so has expired.  
8 (See Doc. No. 9 at ¶ 4, advising Petitioner that he has twenty-one (21) days to file a response if  
9 Respondent files a motion to dismiss). For the reasons set forth more fully herein, the Court  
10 grants Respondent’s Motion to Dismiss.

## 11 I. BACKGROUND

### 12 A. Procedural History

13 In 2019, Petitioner pled guilty in the Northern District of Texas for conspiracy to possess  
14 with intent to distribute cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(C); and he  
15 was sentenced to serve an term of 78 months of federal incarceration. See *United States v.*  
16 *Gutierrez et al.*, 3:18-cr-00519-N-4, Crim. Doc. Nos. 262, 357, 448 (N.D. Tx.).<sup>2</sup> At the time  
17 Petitioner commenced this action, he was incarcerated in FCI Mendota. After Petitioner filed the  
18 operative Petition demanding a recalculation of his earned time credit under the First Step Act,  
19 BOP completed an FSA review of Petitioner’s sentence and released him from BOP custody on  
20 May 2, 2023. (Doc. No. 11-1 at 3).

### 21 B. The First Step Act

22 The First Step Act (“FSA”), enacted December 21, 2018, provided for considerable  
23 changes to the federal criminal code, including several prison and sentencing reforms. First Step  
24 Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018). One such reform under the First Time  
25 Act entailed the implementation of Federal Time Credits (“FTCs”). 18 U.S.C. § 3632(d)(4)(A).  
26 Essentially, an inmate “who successfully completed evidence-based recidivism reduction

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28 <sup>2</sup> The undersigned cites to the record in Petitioner’s underlying NDTX criminal cases as “Crim. Doc. No.  
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1 programming or productive activities” “shall earn 10 days of time credits for every 30 days of  
2 successful participation.” *Id.* These FTCs earned by eligible inmates are “applied toward time in  
3 prerelease custody or supervised release.” *Id.*

4 Additionally, the FSA authorized the BOP to use a risk and needs assessment system,  
5 “PATTERN,” and designate a prisoner with a minimum, low, medium, or high-risk score. *United*  
6 *States v. DeCaro*, No. 2022 WL 4395905, at \*1 n.1 (E.D. Mo. Aug. 23, 2022). Inmates who  
7 receive a minimum or low-risk score over two consecutive assessments earn an additional five  
8 days of time credits for every 30 days of successful participation in evidence-based recidivism  
9 reduction programming (EBRR programming) or productive activities (PAs). 18 U.S.C. §  
10 3632(d)(4)(A)(ii); *Orihuela v. Engleman*, 2022 WL 18106676, at \*1 (C.D. Ca. Nov. 3, 2022) (“A  
11 prisoner’s PATTERN score may affect the rate at which he earns FTC for his participation in  
12 EBRRs and Pas.”).

13 Inmates may begin earning FTCs once their term begins, but an inmate cannot earn FTCs  
14 for programming or activities in which he or she participated in prior to the enactment of the FSA  
15 on December 21, 2018. 28 C.F.R. § 523.42. An inmate can earn retroactive application of FTCs  
16 for EBRR programming or PAs in which he or she participated in from December 21, 2018, to  
17 January 13, 2022. *Id.*

## 18 **II. APPLICABLE LAW AND ANALYSIS**

19 Under Rule 4, if a petition is not dismissed at screening, the judge “must order the  
20 respondent to file an answer, motion, or other response” to the petition. R. Governing 2254 Cases  
21 4. The Advisory Committee Notes to Rule 4 state that “the judge may want to authorize the  
22 respondent to make a motion to dismiss based upon information furnished by respondent.” A  
23 motion to dismiss a petition for writ of habeas corpus is construed as a request for the court to  
24 dismiss under Rule 4 of the Rules Governing Section 2254 Cases. *O’Bremski v. Maass*, 915 F.2d  
25 418, 420 (9th Cir. 1990). Under Rule 4, a district court must dismiss a habeas petition if it  
26 “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d  
27 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

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1           **A. Mootness**

2           Under Article III, Section II of the Constitution, a federal court’s jurisdiction is limited to  
3 adjudication of “live” cases and controversies. *See Hollingsworth v. Perry*, 570 U.S. 693, 705  
4 (2013) (“Article III demands that an actual controversy persist throughout all stages of  
5 litigation.”) (internal quotation marks omitted); *see also Arizonans for Official English v.*  
6 *Arizona*, 520 U.S. 43, 67 (1997) (Article III’s “cases” and “controversies” limitation requires that  
7 “an actual controversy . . . be extant at all stages of review, not merely at the time the complaint is  
8 filed,”) (internal quotation marks omitted). Federal courts consider various doctrines, including  
9 “standing,” “ripeness,” and “mootness” to ascertain whether a meets the “case and controversy”  
10 requirement. *See Poe v. Ullman*, 367 U.S. 497, 502-505 (1961). To maintain a claim, a litigant  
11 must continue to have a personal stake in all stages of the judicial proceeding. *Abdala v. INS*, 488  
12 F.3d 1061, 1063 (9th Cir. 2007) (internal citation omitted). A case must be dismissed if it  
13 becomes moot at any stage. *See City of Mesquite v. Aladdin’s Castle*, 455 U.S. 283, 288 (1982).  
14 Absent collateral consequences, a “habeas petition does not continue to present a live controversy  
15 once the petitioner is released from custody.” *Abdala*, 488 F.3d at 1064; *see also Kelley v.*  
16 *Brewer*, 2023 WL 2992823, at \*3 (E.D. Cal. Apr. 18, 2023) (“there is nothing capable of being  
17 redressed by a favorable judicial decision because the BOP has already calculated his FSA credits  
18 and released [the petitioner]. In other words, petitioner’s case is moot absent demonstrable  
19 collateral consequences arising from BOP’s calculation of his FSA credits.”); *Fower v. Birkholz*,  
20 2023 WL 3828775, at \*1 (C.D. Cal. May 4, 2023) (“Petition is moot because Petitioner obtained  
21 the relief he sought in the Petition – release from BOP custody after the application of his FSA  
22 credits.”).

23           Here, Petitioner was awarded FTC’s and is no longer is in BOP custody. Thus, the  
24 operative Petition is moot. Because the Petition is moot, the Court lacks jurisdiction to consider  
25 any claims raised in the Petition.

26           Accordingly, it is **ORDERED**:

- 27           1. Respondent’s Motion to Dismiss (Doc. No. 11) is **GRANTED**.  
28           2. The First Amended Petition for Writ of Habeas Corpus (Doc. No. 8) is **DISMISSED**

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as moot.

3. The Clerk of Court is directed to terminate any pending motions and close this case.

Dated: October 18, 2023

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE