

1 **II. DISCUSSION**

2 Respondents contend the Court should dismiss the petition. By way of
3 background, Respondents offer the following summary of the relevant provisions of the FSA:

4 On December 21, 2018, Congress enacted the FSA to prescribe
5 criminal justice reform. *See* Pub. L. No. 115-391, 132 Stat. 5194. The U.S.
6 Department of Justice, under BOP [Bureau of Prisons], was permitted 210
7 days to develop and then publicly release a risk and needs assessment
8 system to assess inmates’ risk of recidivism. *See* 18 U.S.C. § 3632(a).
9 BOP timely published its risk and needs assessment system on July 19,
10 2019; BOP timely implemented and completed initial intake risk and
11 needs assessment for each inmate before January 15, 2020. Pursuant to 18
12 U.S.C. § 3621(h)(1)(A), BOP assigns inmates to appropriate evidence-
13 based recidivism reduction programs based on that determination.

14 Against this background, as a matter of law, BOP has two years to
15 “phase-in” programming and provide “evidenced-based recidivism
16 reduction programs and productive activities for all prisoners. . . .” *Id.* §
17 3621(h)(2)(A-B). Under FSA, federal inmates, such as Petitioner, who
18 qualify and who “successfully complete evidence-based recidivism
19 reduction programming or productive activities, shall earn time credits.”
20 *Id.* § 3632(d)(4)(A). These credits can accrue at the rate of “10 days of
21 time credits for every 30 days of successful participation in evidence-
22 based recidivism programming or productive activities.” *Id.* §
23 3632(d)(4)(A)(i). Some federal inmates who are scored at a low or
24 minimum risk of recidivating, and who have not increased this risk over a
25 period of two consecutive assessments, will earn an additional 5 days of
26 time credits for every 30 days of successfully [sic] participation. *Id.* §
27 3632(d)(4)(A)(ii). The award of any credits is *not retroactive* to any
28 programs successfully completed “prior to the date of enactment of this
subchapter.” *Id.* § 3632(d)(4)(B).

ECF No. 6, pg. 3-4.

19 Respondents contend that the petition should be dismissed because Petitioner has
20 failed to exhaust administrative remedies before filing this action. Respondents also argue that
21 Petitioner fails to state a claim upon which relief can be granted because the Bureau of Prisons
22 (BOP) has sole discretion to place an inmate in end-of-sentence transition programs. For the
23 reasons addressed below, this Court finds these arguments persuasive.

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1 **A. Exhaustion of Administrative Remedies**

2 Respondents contend the Court should dismiss the case because Petitioner failed to
3 exhaust administrative remedies. Petitioner concedes that has not yet sought administrative relief
4 from the BOP. See ECF No. 8, 2. Petitioner argues in response that he need not exhaust
5 administrative remedies in this case, citing to Coleman v. U.S. Parole Comm'n, 644 Fed. Appx.
6 159, 162 (3d Cir. 2016), and Fraley v. U.S. Bureau of Prisons, 1 F.3d 924 (9th Cir. 1991). The
7 Court does not agree.

8 These cases excused petitioners from exhausting administrative remedies only
9 when it was clear that no further administrative action would yield any results. Furthermore, in
10 Fraley the petitioner did attempt pursue remedies before being denied relief based on official
11 agency policy, rendering further administrative proceedings futile. Fraley, 1 F.3d at 925. In this
12 case, especially now that the phase-in period to begin granting earned-time credit has expired, it is
13 entirely plausible that administrative remedies may result in the reward of good-time credit.
14 Therefore, Colman and Fraley are distinguishable on, thus, not persuasive in this case.

15 Petitioner also cites to Goodman v. Ortiz, 2020 U.S. Dist. LEXIS 153874 (D.N.J.
16 2020), which declined to dismiss another habeas corpus petition on the issue of earned-time
17 credits for failure to exhaust. This holding, however, was based on the premise that the petitioner
18 in Goodman was presenting a question of pure statutory interpretation, see id. at *6, and this
19 Court notes that Goodman has been questioned by other courts in this circuit, see e.g., Phares v.
20 Bradley, 2021 U.S. Dist. LEXIS 156881, *24-25 (C.D. Cal. 2021) (declining to waive exhaustion
21 because factual claims existed that required a record to resolve); Lister v. Gatt, U.S. Dist. LEXIS
22 181277, *6 (C.D. Cal. 2021) (declining to waive exhaustion due to factual questions and bypass
23 of agency's chance at providing remedy); Esqueda-Cortez v. Thompson, 2022 U.S. Dist. LEXIS
24 63680, *7 (E.D. Cal. 2022) (declining to waive exhaustion due to factual questions).

25 Here, as in the cases above, Petitioner contends that he has participated in at least
26 some programming that should count towards earned-time credits and that he has not been
27 awarded those credits. See ECF No. 8, 4. Whether Petitioner has participated in any activities
28 which could entitle him to earned-time credit, and whether those credits should have already been

1 calculated and applied, are exactly the types of factual questions that extend beyond statutory
2 construction and require a developed record for this Court to consider. Additionally, if Petitioner
3 is now entitled to earned-time credits, Respondent should be given an opportunity to resolve the
4 issue for the sake of executive branch administrative independence and judicial branch efficiency.

5 The Court thus finds that relief under 28 U.S.C. § 2241 is not appropriate at this
6 time because Petitioner has not exhausted administrative remedies which might result in
7 resolution of this case without Court intervention.

8 **B. Failure to State a Claim**

9 At footnote one of the motion to dismiss, Respondents argue Petitioner fails to
10 state a claim upon which relief can be granted because Petitioner seeks to compel a discretionary
11 act. According to Respondent:

12 This Court lacks jurisdiction to review BOP discretionary,
13 individualized, decisions concerning release to home confinement and
14 application of time credits. As a matter of law, 34 U.S.C. § 60541(g)
15 grants to *the Attorney General* the discretion to release certain prisoners to
16 serve the latter part of their sentence on home confinement. For
17 implementation, the Attorney General's BOP must make unique, agency
18 specific, determinations. Indeed, for any decision regarding First Step Act
19 sentence end-phase programing (home detention), the Attorney General,
20 via BOP, must make *inter alia* determinations regarding costs, savings,
21 and further find that the offender, if eligible, does not pose a risk of
22 engaging in future criminal conduct or is otherwise a danger. As the
23 statute makes clear, the "Attorney General" is granted the discretion and
24 "may release" some eligible offenders. The "failure to receive relief that is
25 purely discretionary in nature does not amount to a deprivation of a liberty
26 interest." *See Mejia Rodriguez v. Reno*, 178 F.3d 1139, 1146 (11th Cir.
27 1999) (*citing Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 465
28 (1981)).

ECF No. 6, pgs. 4-5, n.1.

22 The Court also finds this argument persuasive. Here, the FSA provides a
23 mechanism for the BOP to exercise its discretion concerning credits and early release. And as
24 Respondents note, the denial of early release in the exercise of the BOP's discretion would not
25 give rise to the deprivation of a liberty interest such as would support Petitioner's claim.
26 Petitioner does not state a claim upon which relief can be granted under 28 U.S.C. § 2241.

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III. CONCLUSION

Based on the foregoing, the undersigned recommends that Respondents' motion to dismiss, ECF No. 6, be granted.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: July 29, 2022



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE