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FSA/SCA "STACKING" CONFUSION CONTINUES TO DELAY RELEASE DATES; SUPREME COURT ASKED TO RESOLVE COMPASSIONATE RELEASE SPLIT AND CARDONA HABEAS LIMITS; 922(g) CIRCUIT SPLIT WIDENS; THIRD CIRCUIT VACATES CONVICTION OVER COUNSEL'S SENTENCE MISCALCULATION; ZIELINSKI DISTRICT JUDGE DOUBLES DOWN AFTER A UNANIMOUS SUPREME COURT LOSS.

By Derek Gilna, JD, Director of Research

Case managers in many institutions remain genuinely confused about how to properly process prisoner release dates. DOJ attorneys representing the Bureau in federal court frequently sidestep current BOP policy allowing the "stacking" of credits under both the First Step Act (FSA) and Second Chance Act (SCA). Government lawyers keep citing SCA language limiting halfway house and home confinement placement to 10% of a sentence, when nothing in the FSA caps home confinement eligibility. For now, most individuals eligible for home confinement will still pass through a halfway house first, if only briefly, so US Probation can properly process the transfer. We can assist with all of these issues.

We continue to urge the Administration to consider releasing non-violent, often elderly prisoners with serious health problems directly to home confinement under close monitoring by US Probation. The President should partner with restorative justice experts and private industry to build new halfway houses offering real job training, placement, and medical care, rather than simply more permissive versions of a carceral setting. UNICOR should be closed and replaced with paid apprentice programs addressing the shortage of skilled labor in trades, manufacturing, and agriculture. And the plain corruption at institutions like Carswell, Waseca, and Butner needs to be rooted out. One source at Carswell put it bluntly: "I KNOW for a fact invoices exist that show purchase orders from inmate budget used for staff. There needs to be a full audit of the food service here. We have had a few food service administrators removed from the job because of embezzling of funds. I have been here (many) years." A full, independent audit is long overdue.

The BOP did not create this mess alone. The federal criminal justice system's current reckoning has been building since the 1980s, when Congress created the United States Sentencing Commission, an unaccountable agency that steadily ratcheted up penalties. That miscalculation is largely responsible for the federal prison population ballooning from roughly 40,000 to well over 225,000. In response, the President fired the failed BOP director, reduced Central Office staff, offered early retirement to employees who wanted out, and stripped the correctional officers' union of much of its power to block needed reforms. It is the kind of decisive, business-minded approach we would like to see extended agency-wide: remove incompetent, abusive, and corrupt staff; prioritize the budget around food, shelter, medical care, and education; and professionalize the workforce with real training pipelines rather than a few weeks of orientation. Recruiting from junior college criminal justice programs, and incentivizing psychology and medical graduates to serve in BOP facilities, would go a long way toward fixing the chronic staffing crisis.

There is possible good news on compassionate release. A new filing at the US Supreme Court seeks to resolve a circuit split over whether First Step Act sentencing reductions may be considered when a prisoner tries to show threshold eligibility under 18 U.S.C. § 3582(c)(1)(A). The Brief of Former BOP Employees in *Carter v. US*, No. 24-860, argues the question is "exceptionally important" because aging, unhealthy inmates "consume a disproportionate share of BOP's scarce resources," with cascading effects on operations and the safety of staff and inmates alike. The brief notes prisoners serving "unusually long sentences," with a "gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed," are especially likely to grow elderly, unhealthy, or disabled while still incarcerated. We believe this reasoning can be used now in individual compassionate release motions, while *Carter* works its way through the Court.

Readers should understand why *Concepcion v. United States*, 597 U.S. 481, does not by itself control the current split. *Concepcion* addressed a different FSA provision, where the government had already conceded eligibility, and the only dispute was what information a court could consider in modifying an already-authorized sentence. The current cases differ because they concern whether a prisoner is eligible for compassionate release at all, a question Congress "expressly cabined" by requiring courts to find "extraordinary and compelling" reasons before granting any reduction. This matters for anyone modeling a compassionate release strategy on *Concepcion*; it simply does not apply to the threshold eligibility fight.

Meanwhile, the long-criticized Third Circuit decision in *Cardona v. Bledsoe*, 681 F.3d 533 (3d Cir. 2012), which sharply limited the scope of relief available in § 2241 habeas petitions, was effectively sidestepped in *Khaled Al Haj v. Allenwood*, No. 24-cv-1193 (M.D. Pa. Apr. 15, 2025). There, the district court declined to follow *Cardona*'s flawed reasoning, and instead granted the habeas petition, ordering BOP to conduct an individualized assessment of whether the petitioner is entitled to have FSA time credits applied toward prerelease custody. This is significant for anyone whose institution has relied on *Cardona* to deny a properly briefed 2241 petition.

We'd also remind readers of an underused piece of regulatory history: in the Federal Register, Vol. 87, at pages 8-9 (Jan. 19, 2022); BOP responded to a comment urging that FSA Time Credits should continue accruing in an RRC or home confinement. The Bureau conceded prerelease inmates are eligible to earn FSA Time Credits under 18 U.S.C. § 3632(d)(4)(A), presumably applicable under § 3632(d)(4)(C) toward transfer to supervised release, and promised guidance "to ensure consistency in implementation." That remains a useful citation for anyone challenging how the Bureau credits time in prerelease custody. Relatedly, we continue pressing Director Marshall on how the BOP's earn-projection method squares with Marshall's prior statement that FSA credit should be calculated like Good Conduct Time, assumed to accrue for the full sentence, not on an "earn as you go" basis that excludes large blocks of custodial time. That inconsistency is compelling evidence of an accountability failure the agency has yet to answer for.

Circuits continue to differ on the scope of felon-in-possession prosecutions under § 922(g)(1) continues. In *US v. Diaz*, No. 23-50452 (5th Cir. Sept. 18, 2024), the Fifth Circuit added another wrinkle to post-Rahimi analysis, upholding § 922(g)(1) as applied to a defendant convicted of car theft, relying on Founding-era laws "authorizing severe punishments for thievery and permanent disarmament in other cases." That sits uneasily beside the Eighth Circuit's categorical rejection of Second Amendment challenges to § 922(g)(1) regardless of offense, and the Sixth Circuit's narrower approach upholding the law only "as applied to dangerous people." As a Seventh Circuit appellate judge, now-Justice Amy Coney Barrett argued non-violent felons should retain the right to lawfully possess firearms, a position that could matter if the Court takes up this conflict. A favorable resolution would be welcome news for prisoners whose sentences were enhanced by § 922(g) charges, and could reopen the door to reconsideration of § 924(c) convictions. Meanwhile, § 924(c) offenders remain statutorily barred from FSA credit, while RDAP participants are barred from the one-year credit only by Bureau rule, increasingly vulnerable after *Loper Bright*.

On the ineffective-assistance 2255-petition front, even a conservative Third Circuit panel could not look past the mis-advice given to Steven Baker before he rejected a plea offer. In *Baker v. US*, No. 23-2059 (3d Cir. July 25, 2024), the court found Baker's attorney told him he faced a consecutive 21-year term under § 924(c)'s "stacking" provision, when he actually faced a mandatory consecutive 57 years. Baker rejected the plea, was convicted at trial on additional charges, and received a 57-year sentence on the § 924(c) counts alone. The Third Circuit held that, given the enormous disparity in exposure and credible testimony he would have accepted the plea but for counsel's error, Baker demonstrated prejudice sufficient to reverse and remand. If counsel grossly miscalculated your exposure before you rejected a plea, Baker is worth citing.

We also track William Maxwell's pro se petition now before the Supreme Court, arguing the Fifth Circuit's "bright-line rule" from *Melot v. Bergami* wrongly forecloses habeas relief unless success would automatically shorten a sentence, rather than merely reduce custody level. Maxwell argues this cannot be squared with *Jones v. Hendrix*, recognizing habeas relief for a prisoner detained "in a place or manner not authorized by the sentence." Notably, the government itself has now conceded the Fifth Circuit's ruling was "inconsistent with language in ... *Jones v. Hendrix*." A 2241 petition remains the preferred vehicle in most circuits for challenging faulty FSA and SCA credit calculations, and we are watching Maxwell closely. This pro se petition has attracted some impressive amicus and pro bono assistance, and a positive outcome should encourage the BOP to reexamine its misguided sentence-credit application policy .

We also continue to follow the case of Kira Zielinski, an honorably discharged Marine Corps Captain and Naval Aviator convicted of International Parental Kidnapping after fleeing with her toddler son to protect him from alleged sexual abuse by his father. Zielinski was denied her right to present that defense to a jury because the district court in Davenport, Iowa held that "domestic violence" covers only violence against a parent, not a child. On January 12, 2026, Zielinski won a landmark victory at the US Supreme Court, which granted her petition and held she should have been permitted to present her defense to a jury; the Solicitor General itself conceded the government's error. Zielinski has already served her entire three-year sentence, yet on remand to the Southern District of Iowa, Judge Stephanie Rose has doubled down, again excluding Zielinski's witnesses, evidence, and testimony, while signing a protective order barring her from any contact with her child for as long as she keeps litigating. As the amicus brief supporting her cert petition documents, when custodial mothers allege child sexual abuse, fathers still receive custody in 68% of cases, even though only a small minority of such allegations are ultimately found malicious or false. We will continue to update readers on this case.

BOP restrictions on mass emails persist. Ensure that you never miss another newsletter by having it sent to your loved ones every Monday. Never quit, never surrender.

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