

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Abramian v. Taylor

Abramian · No. 1:24-cv-1207-SAB-HC · Decided June 10, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends granting the respondent’s motion to dismiss and dismissing Arno Abramian’s first amended habeas petition under 28 U.S.C. § 2241. The court concludes that Abramian is ineligible to apply First Step Act earned time credits because he is subject to a final order of removal, and excuses administrative exhaustion as futile.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 10, 2025
DOCKET	1:24-cv-1207-SAB-HC
DISPOSITION	other
PROCEDURAL POSTURE	A federal prisoner proceeding pro se under 28 U.S.C. § 2241 challenged the Bureau of Prisons' anticipated refusal to apply First Step Act earned time credits. Respondent moved to dismiss for lack of standing, failure to state a claim, and failure to exhaust administrative remedies. The magistrate judge recommended granting the motion and dismissing the first amended petition.
STANDARD OF REVIEW	The findings and recommendation were subject to review by the assigned district judge under 28 U.S.C. § 636(b)(1)(C). The court applied the prudential exhaustion standard for § 2241 petitions and statutory interpretation of the First Step Act.
PRECEDENTIAL VALUE	Nonprecedential magistrate judge findings and recommendation; subject to district judge review and possible adoption.
PARTIES	Arno Abramian v. Taylor, et al.

TOPICS

federal habeas corpus

immigration

statutory interpretation

motions to dismiss

post-conviction relief

PRACTICE AREAS

Federal habeas corpus

Immigration law

Prisoner litigation

Statutory interpretation

QUESTIONS PRESENTED

1. Whether a federal prisoner who is the subject of a final order of removal is ineligible to apply First Step Act earned time credits under 18 U.S.C. § 3632(d)(4)(E)(i).
2. Whether the court should excuse exhaustion of administrative remedies for a § 2241 petition when pursuing those remedies would be futile.
3. Whether the existence of a final order of removal depends on whether the order can presently be effectuated.

HOLDINGS

1. A prisoner who is the subject of a final order of removal under the immigration laws is ineligible to apply First Step Act earned time credits toward prerelease custody or supervised release under 18 U.S.C. § 3632(d)(4)(E)(i).
2. Whether a removal order can presently be effectuated is distinct from whether the prisoner is the subject of a final order of removal under 18 U.S.C. § 3632(d)(4)(E)(i).
3. Exhaustion of administrative remedies should be excused because pursuing administrative remedies would be futile where Respondent had determined that Abramian was jurisdictionally and statutorily barred from receiving First Step Act earned time credits.

KEY QUOTATIONS

“Whether the February 18, 2005 removal order can be effectuated is a distinct question from whether Petitioner “is the subject of a final order of removal under any provision of the immigration laws” under the statute.” (at 3-4)

FACTUAL BACKGROUND

Abramian, a federal prisoner, sought application of First Step Act earned time credits toward prerelease custody or supervised release. The record included a February 18, 2005 immigration-judge order directing his removal to Iran and denying deferral or withholding of removal. Although Abramian argued that the removal order could not presently be effectuated because Iran lacked diplomatic relations or a repatriation agreement with the United States, the court concluded that he remained the subject of a final order of removal.

PROCEDURAL HISTORY

Abramian filed a first amended § 2241 petition seeking prospective intervention requiring the Bureau of Prisons to apply First Step Act earned time credits when he became eligible. Respondent moved to dismiss, and the court ordered production of Abramian's purported final order of removal. After reviewing the sealed removal order and

Abramian's addendum, the magistrate judge recommended dismissal and directed random assignment to a district judge for review under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Bottinelli v. Salazar, 929 F.3d 1196, 1197-98 (9th Cir. 2019)
- Ward v. Chavez, 678 F.3d 1042, 1045 (9th Cir. 2012)
- United States v. Keller, 2 F.4th 1278, 1282 (9th Cir. 2021)
- Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004)
- Montes v. Thornburgh, 919 F.2d 531, 537 (9th Cir. 1990)
- Nasrallah v. Barr, 590 U.S. 573, 579 (2020)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 ARNO ABRAMIAN, Case No. 1:24-cv-1207-SAB-HC 12 Petitioner,
FINDINGS AND RECOMMENDATION RECOMMENDING RESPONDENT’S 13 v. MOTION
TO DISMISS BE GRANTED AND FIRST AMENDED PETITION FOR WRIT 14 TAYLOR, et
al., OF HABEAS CORPUS BE DISMISSED 15 Respondents. (ECF Nos. 4, 11) 16 ORDER
DIRECTING CLERK OF COURT TO RANDOMLY ASSIGN DISTRICT 17 JUDGE 18 19
Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus 20
pursuant to 28 U.S.C. § 2241.

21 I. 22 BACKGROUND 23 In the First Amended Petition (“FAP”), Petitioner requests this Court
“to intervene in 24 advance” and direct the Federal Bureau of Prisons (“BOP”) to apply
Petitioner’s First Step Act 25 (“FSA”) Earned Time Credits (“FTCs” or “ETCs”) when eligible.
(ECF No. 4 at 1.1) On January 26 17, 2025, Respondent filed a motion to dismiss the petition on
the following grounds: (1) lack of 27 constitutional standing and failure to state a claim because
Petitioner is the subject of a final 1 order of removal; and (2) failure to exhaust administrative
remedies.

(ECF No. 11.) On April 22, 2 2025, the Court ordered Respondent to file a copy of Petitioner’s
purported final order of 3 removal. (ECF No. 12.) On May 12, 2025, the final order of removal
was filed under seal. (ECF 4 No. 19.)

On May 19, 2025, Petitioner filed an addendum to the petition. (ECF No. 20.) 5 II. 6 DISCUSSION 7 A. First Step Act and Earned Time Credits 8 “On December 21, 2018, the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 9 was enacted.

The Act implemented a number of prison and sentencing reforms.” Bottinelli v. 10 Salazar, 929 F.3d 1196, 1197 (9th Cir. 2019). With respect to earned time credit, the Ninth 11 Circuit has described the First Step Act’s amendments as follows: 12 [P]aragraph 102(b)(1) amends [18 U.S.C.] § 3624 by adding subsection (g), which is relevant to the Act’s creation of an earned time credit system.² [132 13 Stat.] at 5210-13.

The Act requires that, within 210 days of its enactment, the Attorney General establish a “risk and needs assessment system” to, broadly 14 speaking, review each prisoner’s recidivism risk level, award earned time credit as an incentive for participation in recidivism reduction programming, and 15 “determine when a prisoner is ready to transfer into prerelease custody or supervised release in accordance with section 3624.” § 101(a), 132 Stat. at 5196– 16 97.

Section 3624(g) details the criteria for when a prisoner becomes eligible, considering earned time credit, for transfer to prerelease custody or supervised 17 release. § 102(b), 132 Stat. at 5210–13. 18 Bottinelli, 929 F.3d at 1197–98 (footnote in original). 19 Section 3632(d)(4)(A) provides that “[a] prisoner, except for an ineligible prisoner under 20 subparagraph (D), who successfully completes evidence-based recidivism reduction 21 programming or productive activities, shall earn time credits[.]” 18 U.S.C. § 3632(d)(4)(A).

22 “Time credits earned under this paragraph by prisoners who successfully participate in 23 recidivism reduction programs or productive activities shall be applied toward time in prerelease 24 custody or supervised release.

The Director of the Bureau of Prisons shall transfer eligible 25 prisoners, as determined under section 3624(g), into prerelease custody or supervised release.” 26 18 U.S.C. § 3632(d)(4)(C). 27 2 In contrast to good time credit, earned time credit is awarded for “successfully complet[ing] evidence-based 1 However, subparagraph (E) provides: 2 (E) Deportable prisoners ineligible to apply time credits.-- 3 (i) In general.--A prisoner is ineligible to apply time credits under subparagraph (C) if the prisoner is the subject of a final order of removal 4 under any provision of the immigration laws (as such term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 5 1101(a)(17))).

6 (ii) Proceedings.--The Attorney General, in consultation with the Secretary of Homeland Security, shall ensure that any alien described in section 212 or 237 7 of the Immigration and Nationality Act (8 U.S.C. 1182, 1227) who seeks to earn time credits are subject to proceedings described in section 238(a) of that 8 Act (8 U.S.C. 1228(a)) at a date as early as practicable during the prisoner’s incarceration.

9 10 18 U.S.C. § 3632(d)(4)(E). 11 B. Exhaustion 12 “As a prudential matter, courts require that habeas petitioners exhaust all available 13 judicial and administrative remedies before seeking relief under § 2241.” *Ward v. Chavez*, 678 14 F.3d 1042, 1045 (9th Cir. 2012) (citations omitted).

However, because it is not a jurisdictional 15 prerequisite, exhaustion can be waived if pursuing administrative remedies would be futile. *Id.* 16 Respondent contends that the “FSA’s own exhaustion requirement under 18 U.S.C. 17 § 3582(c)(1)(A) is a claim-processing rule that does not permit a district court to excuse a 18 petitioner’s failure to exhaust administrative remedies if the failure to do so is properly raised by 19 the government,” citing to *United States v. Keller*, 2 F.4th 1278, 1282 (9th Cir. 2021).

(ECF No. 20 11 at 5.) However, 18 U.S.C. § 3582(c)(1)(A) governs compassionate release and modifications 21 of an imposed term of imprisonment, which are not at issue in the instant petition. While the 22 Court appreciates that in the “context of the prudential exhaustion of administrative remedies, the 23 issue of whether ‘relaxation of the requirement would encourage the deliberate bypass of the 24 administrative scheme’ is a key consideration,” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir.

25 2004) (quoting *Montes v. Thornburgh*, 919 F.2d 531, 537 (9th Cir. 1990)), the Court finds that 26 the exhaustion requirement should be excused in this case due to futility because Respondent has 27 determined that Petitioner is “jurisdictionally and statutorily barred from FSA ETC sentence- 1 C. Whether Petitioner is the Subject of a Final Order of Removal 2 A prisoner is ineligible to apply FTCs “if the prisoner is the subject of a final order of 3 removal under any provision of the immigration laws (as such term is defined in section 4 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))).” 18 U.S.C. 5 § 3632(d)(4)(E)(i).

Here, Respondent argues that Petitioner is ineligible to apply FTCs because 6 he is subject to a final order of removal. (ECF No. 11 at 3.) Respondent has filed a copy of a 7 February 18, 2005 order by an immigration judge ordering Petitioner removed to Iran and 8 denying deferral or withholding of removal. (ECF No. 19 at 5.) 9 Petitioner appears to argue that because Iran does not have diplomatic relations or a 10 repatriation agreement with the United States, and thus, there is no reasonable likelihood that 11 Iran will permit Petitioner’s return in the reasonably foreseeable future, Petitioner is “‘always’ in 12 removal proceeding[s] and never final.” (ECF No. 4 at 8.) “[A] ‘final order of removal’ is a final 13 order ‘concluding that the alien is deportable or ordering deportation.’” *Nasrallah v. Barr*, 590 14 U.S. 573, 579 (2020) (quoting 8 U.S.C. § 1101(a)(47)(A)).

Here, the record reflects that a final 15 order of removal exists, and Petitioner is the subject of said order.³ Whether the February 18, 16 2005 removal order can be effectuated is a distinct question from whether Petitioner “is the 17 subject of a final order of removal under any provision of the immigration laws” under the 18 statute. 18 U.S.C. § 3632(d)(4)(E)(i).

Accordingly, the Court finds that Petitioner is “the subject 19 of a final order of removal under any provision of the immigration laws” for purposes of 18 20 U.S.C. § 3632(d)(4)(E)(i), and thus, is ineligible to apply First Step Act time credits.

As 21 Petitioner cannot obtain the relief he seeks in the petition, Respondent’s motion to dismiss 22 should be granted. 23 III. 24 RECOMMENDATION 25 Based on the foregoing, the Court HEREBY RECOMMENDS that: 26 1. Respondent’s motion to dismiss (ECF No. 11) be GRANTED; and 27 3 Petitioner asserts that he was granted a deferral of removal. (ECF No. 4 at 7.)

However, the February 18, 2005 1 2. The first amended petition for writ of habeas corpus (ECF No. 4) be DISMISSED. 2 Further, the Clerk of Court is DIRECTED to randomly assign this action to a District 3 | Judge. 4 This Findings and Recommendation is submitted to the assigned United States District 5 | Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local 6 | Rules of Practice for the United States District Court, Eastern District of California.

Within 7 | THIRTY (30) days after service of the Findings and Recommendation, any party may file 8 | written objections with the Court, limited to fifteen (15) pages in length, including any 9 | exhibits. Such a document should be captioned “Objections to Magistrate Judge’s Findings and 10 | Recommendation.” Replies to the objections shall be served and filed within fourteen (14) days 11 | after service of the objections.

The assigned United States District Court Judge will then review 12 | the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that 13 | failure to file objections within the specified time may waive the right to appeal the District 14 | Court’s order. *Wilkerson _v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter _v.*

15 | *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 16 7 IT IS SO ORDERED. FA. ee 1g | Dated: _ June 10, 2025 STANLEY A. BOONE 19 United States Magistrate Judge 20 21 22 23 24 25 26 27 28