

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
MISSISSIPPI, NORTHERN DIVISION

Armando Duarte Herrera v. Warden Unknown Childress

Herrera · No. 3:25-CV-829-DPJ-ASH · Decided May 14, 2026

SUMMARY

The United States District Court for the Southern District of Mississippi denied Armando Duarte Herrera’s 28 U.S.C. § 2241 habeas petition challenging the Bureau of Prisons’ denial of First Step Act time credits. The court adopted the magistrate judge’s Report and Recommendation, concluding that Herrera was ineligible for the credits because an immigration judge had entered a final order of removal against him.

CASE DETAILS

COURT	United States District Court for the Southern District of Mississippi, Northern Division
WRITING FOR THE COURT	Daniel P. Jordan III
JURISDICTION	United States District Court for the Southern District of Mississippi, Northern Division
DECIDED	May 14, 2026
DOCKET	3:25-CV-829-DPJ-ASH
DISPOSITION	denied
PROCEDURAL POSTURE	Petitioner sought habeas relief under 28 U.S.C. § 2241 from the Bureau of Prisons' denial of First Step Act time credits. The matter was referred to a magistrate judge, who recommended denial. The district court reviewed and adopted the unopposed Report and Recommendation.
STANDARD OF REVIEW	When no timely objection is filed to a magistrate judge's report and recommendation, the district court reviews the record for clear error on its face.
PRECEDENTIAL VALUE	Unpublished district court order; limited persuasive value
PARTIES	Armando Duarte Herrera v. Warden Unknown Childress

TOPICS

federal habeas corpus

post-conviction relief

removal proceedings

civil procedure

PRACTICE AREAS

Federal habeas corpus

Post-conviction relief

Federal sentencing

Immigration consequences of criminal custody

QUESTIONS PRESENTED

1. Whether a prisoner subject to a final order of removal is eligible to apply First Step Act time credits toward his sentence.
2. Whether the district court should adopt the magistrate judge's Report and Recommendation when the petitioner filed no timely objection and the record showed no clear error.

HOLDINGS

1. A prisoner subject to a final order of removal is ineligible to apply First Step Act time credits toward his sentence under 18 U.S.C. § 3632(d)(4)(E).
2. When no timely objection is filed, the district court may accept a magistrate judge's recommendation after satisfying itself that there is no clear error on the face of the record.

KEY QUOTATIONS

“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”

“IT IS ORDERED that the unopposed Report and Recommendation [12] of United States Magistrate Judge Andrew S. Harris is adopted as the finding and holding of this Court. The petition is denied.”

FACTUAL BACKGROUND

Herrera sought credit under the First Step Act for time earned through evidence-based recidivism reduction programming or productive activities. An immigration judge ordered him removed to Mexico on April 25, 2023. Because he was subject to a final order of removal, the court determined that he was statutorily ineligible to apply First Step Act credits toward his sentence.

PROCEDURAL HISTORY

Herrera filed a § 2241 petition challenging the denial of First Step Act credits. Magistrate Judge Andrew S. Harris recommended denial because Herrera was subject to a final order of removal and therefore ineligible for the credits. Herrera filed no timely objection, and the district court found no clear error, adopted the recommendation, and denied the petition.

DISPOSITION

denied

CASES CITED

- Vargas v. Rivers, No. 24-10703, 2025 WL 1380067, at *1 (5th Cir. May 13, 2025)
- Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1420 (5th Cir. 1996) (en banc)
- Alexander v. Verizon Wireless Servs., L.L.C., 875 F.3d 243, 248 (5th Cir. 2017)

OPINION

Herrera

PER CURIAM.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

NORTHERN DIVISION

ARMANDO DUARTE HERRERA PETITIONER

V. CIVIL ACTION NO. 3:25-CV-829-DPJ-ASH

WARDEN UNKNOWN CHILDRESS RESPONDENT

ORDER

This habeas petition under 28 U.S.C. § 2241 is before the Court on the Report and Recommendation [12] of United States Magistrate Judge Andrew S. Harris. Armando Duarte Herrera challenges the Bureau of Prisons' denial of credit he says he earned under the First Step Act (FSA). Pet. [1] at 1. The FSA "awards time credits to inmates 'who successfully complete[] evidence-based recidivism reduction programming or productive activities.'" Vargas v. Rivers, No. 24-10703, 2025 WL 1380067, at *1 (5th Cir. May 13, 2025) (quoting 18 U.S.C. § 3632(d)(4)(A)) (alteration in Vargas). But, as pointed out by Judge Harris, prisoners that are subject to a final order of removal are ineligible. R&R [12] at 2 (citing 18 U.S.C. § 3632(d)(4)(E)). And on April 25, 2023, an immigration judge ordered Duarte Herrera removed to Mexico. Id.; see Immigration Order [10-3] at 3–4; Landers Decl. [10-1] at 2. As such, he is ineligible to apply FSA credits toward his sentence, and Judge Harris recommended the petition be denied. R&R [12] at 2–3. Duarte Herrera did not file an objection, and the time to do so has passed. "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b) advisory committee's note (1983), quoted in Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1420 (5th Cir. 1996) (en banc), superseded on other grounds by 28 U.S.C. § 636(b)(1) as noted in Alexander v. Verizon Wireless Servs., L.L.C., 875 F.3d 243, 248 (5th Cir. 2017). Finding no clear error, the Court accepts the well-reasoned recommendation of Judge Harris. IT IS ORDERED that the unopposed Report and Recommendation [12] of United States Magistrate Judge Andrew S. Harris is adopted as the finding and holding of this Court. The petition is denied. A separate judgment will be entered as required by Federal Rule of Civil Procedure 58. SO ORDERED AND ADJUDGED this the 14th day of May, 2026. s/ Daniel P. Jordan III

UNITED STATES DISTRICT JUDGE

