

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Andrew James Johnston v. Mark Gutierrez

Johnston · No. CV-24-00005-TUC-SHR · Decided March 16, 2026

SUMMARY

The United States District Court for the District of Arizona adopts a magistrate judge’s Report and Recommendation and dismisses Andrew James Johnston’s 28 U.S.C. § 2241 petition with prejudice. The court rejects Johnston’s challenges to the Bureau of Prisons’ PATTERN recidivism assessment and the application of First Step Act time credits, concluding that his bank-robbery convictions were properly treated as crimes of violence and that the asserted claims did not warrant relief. The court also denies as moot his renewed motion for preliminary injunctive relief and denies his motion to strike the Report and Recommendation.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | United States District Court for the District of Arizona                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| JURISDICTION       | United States District Court for the District of Arizona                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED            | March 16, 2026                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DOCKET             | CV-24-00005-TUC-SHR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| DISPOSITION        | dismissed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE | Petitioner sought habeas relief under 28 U.S.C. § 2241 concerning the Bureau of Prisons' PATTERN recidivism assessment and application of First Step Act time credits. The district court reviewed a magistrate judge's report and recommendation de novo where specific objections were made, adopted the recommendation, dismissed the petition with prejudice, denied a renewed motion for preliminary injunctive relief as moot, and denied a motion to strike the report and recommendation with prejudice. |
| STANDARD OF REVIEW | The district court reviews those portions of a magistrate judge's report and recommendation to which specific written objections are made de novo. Repeated or generalized objections are reviewed for clear error or have the same effect as a failure to object. The district court may accept, reject, or modify the recommendation in whole or in part under 28 U.S.C. § 636(b)(1).                                                                                                                          |
| PRECEDENTIAL VALUE | unknown                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## TOPICS

federal habeas corpus

post-conviction relief

judicial review of agency action

administrative procedure act

injunctions

## PRACTICE AREAS

federal habeas corpus

administrative law

prisoner litigation

statutory interpretation

## QUESTIONS PRESENTED

1. Whether the magistrate judge's report and recommendation should be adopted after review of Johnston's objections.
2. Whether the court could review the BOP's discretionary PATTERN recidivism-risk classification and related determination concerning application of First Step Act time credits under the habeas and administrative-law theories asserted by Johnston.
3. Whether Johnston's bank-robbery conviction was properly categorized as a crime of violence for purposes of the PATTERN assessment.
4. Whether the First Step Act's provisions concerning earned time credits created a liberty interest or required the BOP to apply Johnston's credits in a particular manner.
5. Whether the magistrate judge acted within his jurisdiction in issuing recommendations concerning the petition and renewed motion for injunctive relief.

## HOLDINGS

1. The district court properly reviewed the challenged portions of the report and recommendation, found no clear error or merit in Johnston's objections, and adopted the report and recommendation.
2. Johnston failed to establish a violation of federal law warranting habeas relief, and judicial review of the BOP's discretionary recidivism-risk score was unavailable on the claim presented.
3. Johnston's convictions for bank robbery by intimidation were properly categorized as crimes of violence for purposes of the challenged PATTERN classification.
4. Johnston had no liberty interest or enforceable right to require that his earned First Step Act time credits be applied in a specific manner toward early release.
5. The magistrate judge acted within his statutory jurisdiction in issuing a report and recommendation concerning the petition and the renewed motion for injunctive relief.

## KEY QUOTATIONS

*"It does not overturn the holding in Reeb that judicial review of the BOP's discretionary decisions regarding recidivism risk scores is unavailable."* (Section IV)

*"IT IS FURTHER ORDERED the Petition (Doc. 1) is DISMISSED WITH PREJUDICE."* (Conclusion)

*“IT IS FURTHER ORDERED the Renewed Motion for Preliminary Injunctive Relief (Doc. 29) is DENIED AS MOOT.” (Conclusion)*

## FACTUAL BACKGROUND

Johnston is serving a 151-month federal sentence for attempted bank robbery under 18 U.S.C. § 2113(a), and he was designated a career offender based on two prior bank-robbery convictions. The Bureau of Prisons classified him as a medium recidivism risk under PATTERN because the assessment included his offense as an instant violent offense. As a result, the BOP determined that he was not eligible to have earned First Step Act time credits applied toward prerelease custody or supervised release. Johnston argued that PATTERN improperly defined violence and that the statutory language governing time credits created an entitlement to their application.

## PROCEDURAL HISTORY

Johnston, serving a 151-month federal sentence for attempted bank robbery, filed a § 2241 petition challenging the use of his conviction in the PATTERN risk assessment and the resulting denial of eligibility to apply earned First Step Act time credits toward prerelease custody or supervised release. The magistrate judge recommended denial and dismissal of the petition and denial or mootness of the renewed motion for injunctive relief. Johnston objected and later moved to strike the report and recommendation. The district court conducted de novo review of the objections, adopted the report and recommendation, dismissed the petition with prejudice, denied the renewed motion as moot, denied the motion to strike with prejudice, and ordered the case closed.

## DISPOSITION

dismissed

## CASES CITED

- United States v. Johnston, 814 F. App'x 142, 147 (7th Cir. 2020)
- Preiser v. Rodriguez, 411 U.S. 474, 498 (1973)
- United States v. Taylor, 596 U.S. 845 (2022)
- Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 413 (2024)
- Neal v. United States, 516 U.S. 284 (1996)
- Reeb v. Thomas, 636 F.3d 1224, 1227 (9th Cir. 2011)
- Tennigkeit v. Taylor, No. 24-6322, 2025 WL 618740, at \*1 (9th Cir. Feb. 26, 2025)
- Thomas v. Arn, 474 U.S. 140, 149 (1985)
- United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)
- Betancourt v. Ace Ins. Co. of P.R., 313 F. Supp. 2d 32, 34 (D.P.R. 2004)
- Camardo v. Gen. Motors Hourly-Rate Emps. Pension Plan, 806 F. Supp. 380, 382 (W.D.N.Y. 1992)
- Tinlin v. Hudson, No. CV-24-00425-TUC-JCH, 2025 WL 2468802, at \*1 (D. Ariz. Aug. 7, 2025)
- Curtis v. Shinn, No. CV-19-04374-PHX-DGC-JZB, 2021 WL 4596465, at \*5 (D. Ariz. Oct. 6, 2021)

- United States v. Ramos, 65 F.4th 427, 433-34 (9th Cir. 2023)
- Warling v. Ryan, No. CV 12-01396-PHX-DGC, 2013 WL 5276367, at \*2 (D. Ariz. Sept. 19, 2013)
- Eagleman v. Shinn, No. CV-18-2708-PHX-RM (DTF), 2019 WL 7019414, at \*5 (D. Ariz. Dec. 20, 2019)
- United States v. Baldon, 956 F.3d 1115, 1121 (9th Cir. 2020)
- Whitlow v. United States, 2016 U.S. App. LEXIS 24192, at n.19 (9th Cir. 2016)
- Davis v. Crabtree, 109 F.3d 566, 568-70 (9th Cir. 1997)
- Pelullo v. Warden, FCC Coleman, 2024 U.S. Dist. LEXIS 143499, at \*8-9 (M.D. Fla. 2024)
- Reynaga v. Cammisa, 971 F.2d 414, 417 (9th Cir. 1992)

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-district-of-arizona/2026/andrew-james-johnston-v-mark-gutierrez-tkcz0z20>