
**IN UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

JERAMY DAVIS,

Petitioner-Appellant

vs.

WARDEN, FCI SANDSTONE

Respondent-Appellee

*On Appeal from the United States District Court
for the District of Minnesota*

**Brief of Amici Curiae Due Process Institute and The Cato Institute in
Support of Petitioner-Appellant and Supporting Reversal**

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DISCLOSURE STATEMENT

Due Process Institute has no parent corporation, and no publicly held corporation owns 10% or more of its stock. The Cato Institute has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

INTEREST OF AMICI CURIAE¹

Due Process Institute is a nonprofit, bipartisan, public interest organization that works to honor, preserve, and restore procedural fairness in the U.S. criminal legal system. Founded in 2018, it is guided by a bipartisan Board of Directors and supported by bipartisan staff. Due Process Institute creates and supports achievable bipartisan solutions for challenging criminal legal policy concerns through advocacy, litigation, and education.

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of

¹ All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no person other than counsel for amici curiae made a monetary contribution to fund the preparation or submission of this brief. Counsel for Mr. Davis (the National Association of Criminal Defense Lawyers) previously filed a similar amicus brief in *Bonnie v. Dunbar*, 157 F.4th 610 (4th Cir. 2025).

constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement. Cato has a longstanding interest in criminal justice reforms like the First Step Act and in ensuring that federal sentencing practices comport with the law and constitutional principles.

SUMMARY OF ARGUMENT

The Bureau of Prisons (“BOP”) has improperly interpreted the First Step Act of 2018 (“FSA”) to deny thousands of prisoners credits earned through rehabilitation programs, unlawfully extending their imprisonment and frustrating Congress’s intent to reduce both federal prison costs and recidivism rates. To date, the price of this mistake easily amounts to half a billion dollars.

18 U.S.C. § 3632(d)(4)(D) states that a prisoner is ineligible for such credits if they are “serving a sentence for a conviction under any of” sixty-eight enumerated offenses. When a prisoner like Mr. Davis is serving consecutive sentences—one for a listed crime, one for an unlisted crime—BOP treats the entire combined term as ineligible. This interpretation conflicts with the Act’s history, structure, and purpose in three ways.

First, BOP’s interpretation would forfeit roughly half a billion dollars in potential savings—savings that Congress explicitly sought in passing the FSA. Sentencing Commission data reveals that BOP’s approach denies credits to at least

2,000 prisoners annually who receive mixed eligible and ineligible sentences, squandering hundreds of millions in potential cost reductions.

Second, Congress also explicitly sought to reduce recidivism in passing the FSA. Individuals released under the FSA have significantly lower rates of recidivism, both compared to all people released from BOP facilities and compared to similarly situated individuals released prior to the FSA. BOP's interpretation of the FSA thwarts congressional intent by denying recidivism-reduction programs to thousands of eligible individuals.

Third, Congress built the FSA on state models that broadly permitted credit eligibility. The legislative record shows no intent to depart from these models, as BOP's interpretation does.

Thus, section 3632(d)(4)(D) is, at minimum, ambiguous about whether “serving a sentence for a conviction” applies to entire prison terms or individual sentences. And because this ambiguity affects punishment length, the rule of lenity requires resolving it in Mr. Davis's favor.

ARGUMENT

I. The First Step Act is cost- and recidivism-reducing legislation based on state-level models.

Hailed by Congress as “the most significant criminal justice reform bill in a generation,” the First Step Act of 2018 marked a rare moment of bipartisan consensus, passing with margins of 87-12 in the Senate and 358-36 in the House.

164 Cong. Rec. S7649 (daily ed. Dec. 17, 2018) (statement of Sen. Grassley); 164 Cong. Rec. S7781 (daily ed. Dec. 18, 2018) (Senate margin); 164 Cong. Rec. H10430 (daily ed. Dec. 20, 2018) (House margin). Congress deliberately crafted the Act as a way to reduce both incarceration costs and crime rates, drawing on state-level reforms that had done the same. Texas’s reforms served as a particularly influential model, and Texas’s Senator Cornyn as a particularly decisive legislator.

A. Congress intended the FSA to save money and reduce crime.

With federal prison costs consuming nearly one-third of the Department of Justice’s budget, fiscal concerns drove support for the FSA across party lines. *See* 164 Cong. Rec. S7749 (daily ed. Dec. 18, 2018) (statement of Sen. Leahy). A House Committee Report acknowledged that “it [is] in the fiscal interest of the government to reduce recidivism,” H.R. Rep. No. 115-699, at 22, and the Committee expressed “deep[] concern[] with the increased burden to taxpayers for the burgeoning costs of inmate incarceration,” noting how these costs forced “other important Department [of Justice] priorities . . . into competition for these limited funds.” *Id.* at 23.

During floor debate, Senator Leahy similarly noted that “[b]ecause public safety dollars are finite, [the cost of housing federal offenders] strips critical resources away from law enforcement strategies that have been proven to make our

communities safer.” 164 Cong. Rec. S7749 (daily ed. Dec. 18, 2018). Senator Booker characterized such expenditures as “throwing an exorbitant amount of taxpayer dollars into the black hole of mass incarceration.” 164 Cong. Rec. S7763 (daily ed. Dec. 18, 2018). Senator Blumenthal stated that “the human and financial costs of mass incarceration simply are not worth the costs.” 164 Cong. Rec. S7744 (daily ed. Dec. 18, 2018).²

Both parties agreed on the link between high incarceration costs and high crime rates. Alongside Democrats like Sens. Leahy, Booker, and Blumenthal, Republicans like Georgia’s Representative Collins described the FSA as fundamentally “about money and morals,” explaining it as “doing good with the taxpayer dollar and also giving people a chance, from a moral perspective, to have a second chance.” 164 Cong. Rec. H10362 (daily ed. Dec. 20, 2018). Senator Grassley emphasized that the legislation was needed to “make the system work better for the taxpayers, help law enforcement fight crime, and put a stopper in the revolving prison door.” 164 Cong. Rec. S7838 (daily ed. Dec. 19, 2018). And Senator Cornyn focused on a study from the United States Sentencing Commission

² See also 164 Cong. Rec. S7743 (daily ed. Dec. 18, 2018) (statement of Sen. Durbin) (“Reduce the cost to taxpayers of the prisons, but reduce crime on the streets too. Make sure you do both.”); 164 Cong. Rec. S7774 (daily ed. Dec. 18, 2018) (statement of Sen. Cardin) (“This is intended to reduce the likelihood of reoffending, as well as to benefit victims and families and reduce costs to taxpayers.”).

that found that nearly half the people released from federal prison in 2005 had re-offended and been rearrested within the next eight years. 164 Cong. Rec. S7746 (daily ed. Dec. 18, 2018) (statement of Sen. John Cornyn).

B. Senator Cornyn, a decisive backer of the FSA, understood it as a cost- and recidivism-reducing measure based on state models.

Senator Cornyn’s views may deserve particular attention in construing the FSA’s meaning. Not only was he a sponsor of the bill that ultimately became the FSA, but his agreement was necessary to its passage. *See N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 526–27 (1982) (statements of sponsor can be “an authoritative guide to the statute’s construction”); McNollgast, *Positive Canons: The Role of Legislative Bargains in Statutory Interpretation*, 80 Geo. L.J. 705, 707 (1992) (arguing “[t]he preferences of veto players are most influential in determining policy bargains, and, therefore, their preferences must be ascertained in order to uncover the implicit agreement underlying the explicit statutory language”).

The FSA started as a prison reform bill in 2014, introduced by Senators Cornyn (Republican of Texas) and Whitehouse (Democrat of Rhode Island). 164 Cong. Rec. S7641 (daily ed. Dec. 17, 2018) (statement of Sen. Cornyn) (“[M]ore than three-quarters of the bill was based on the CORRECTIONS Act that Senator Whitehouse and I introduced in 2014, which is the prison reform component of the legislation.”). Many of the same prison reform provisions contained in that bill

ended up in the FSA, including the idea for earned time credits. CORRECTIONS Act, S. 467, 114th Cong. § 2 (2015).

Sen. Cornyn drew on Texas’s experience. As he explained, “In Texas, the initial interest in criminal justice reform was first cost-driven. In other words, people were wondering: How are we going to continue to pay for 17,000 more prison beds that we think we are going to need because of our growing population?” 164 Cong. Rec. S7746 (daily ed. Dec. 18, 2018).

The Texas reforms proved successful. Using recidivism reduction programs similar to those Sen. Cornyn included in his bill, Texas “reduced [its] incarceration rate and [its] crime rate by double digits at the same time.” *Id.*

Sen. Cornyn’s prison reform bill went nowhere until 2018, when a version passed the House. FIRST STEP Act, H.R. 5682, 115th Cong. Passage in the Senate was stalled by the Democratic opposition, which refused to pass a prison reform bill without including sentencing reforms as well. Ames Grawert & Tim Lau, *How the FIRST STEP Act Became Law—and What Happens Next*, Brennan Center for Justice (Jan. 4, 2019), available at <https://bit.ly/2Z8aPsn>. As time ran out on the legislative year, Sen. Cornyn agreed to a compromise that saved the bill and led to its passage. 164 Cong. Rec. S7737 (daily ed. Dec. 18, 2018) (statement of Sen. McConnell) (“Particular credit for this [advancing the First Step Act]

belongs to Senator Cornyn.”); *see also* Grawert & Lau, *How the FIRST STEP Act Became Law*.

The First Step Act passed both Houses of Congress by overwhelming margins. It was “not just bipartisan,” but “nearly nonpartisan.” 164 Cong. Rec. S7749 (daily ed. Dec. 18, 2018) (statement of Sen. Leahy); *see id.* at S7742 (statement of Sen. Durbin) (“I can’t remember another bill that has had this kind of support, left and right, liberal, conservative, Republican, Democrat.”). In the Senate, the bill was introduced in virtually its current form on December 13, 2018, and passed five days later. *See id.* at S7781 (daily ed. Dec. 18, 2018). Two days after that, the House passed the bill. 164 Cong. Rec. H10430 (daily ed. Dec. 20, 2018).

President Trump signed the First Step Act into law on December 21, 2018, describing it as “an incredible moment” for “criminal justice reform.” *Remarks by President Trump at Signing Ceremony for S. 756, the “First Step Act of 2018” and H.R. 6964, the “Juvenile Justice Reform Act of 2018,”* 2018 WL 6715859, at *16, White House (Dec. 21, 2018). Members of Congress recognized the Act as “one of the most historic changes in criminal justice legislation in our history.” 164 Cong. Rec. S7646 (daily ed. Dec. 17, 2018) (statement of Sen. Durbin).

C. The FSA is based on state models.

With the FSA, Sen. Cornyn and other legislators sought to replicate successful state-level reforms that had reduced costs, lowered incarceration rates, and improved public safety. Sen. Cornyn’s home state of Texas proved particularly influential. As he explained, Texas’s experience began with a fiscal crisis. 164 Cong. Rec. S7746 (daily ed. Dec. 18, 2018). Using recidivism reduction programs similar to those mandated by the FSA, Texas “reduced [its] incarceration rate and [its] crime rate by double digits at the same time.” *Id.* Senator Durbin highlighted this success: “[Y]ou may be shocked to think that Texas would be a leader in this, but they have been, and they have seen a reduction in the incidence of crime and a reduction in the incidence of incarceration—things we like to see happen. Reduce the cost to taxpayers of the prisons, but reduce crime on the streets too.” 164 Cong. Rec. S7743.

Similar successes in other states provided Congress with concrete evidence that such reforms work. Representative Collins cited his own experience in Georgia. “This is also sort of special from my perspective as well, for in my home State of Georgia, Governor Nathan Deal, a former distinguished Member of this body, went home and began spearheading criminal justice reform legislation that has made Georgia safer while saving taxpayer dollars.” 164 Cong. Rec. H10362 (daily ed. Dec. 20, 2018). Senator Cardin pointed to Maryland’s Justice Reinvestment Act, which “seeks to reduce Maryland’s prison population and use

the savings to provide for more effective treatment to offenders before, during, and after incarceration.” 164 Cong. Rec. S7774 (daily ed. Dec. 18, 2018). Many other legislators similarly lauded the states’ experience with the FSA’s reforms. 164 Cong. Rec. S7649 (daily ed. Dec. 17, 2018) (statement of Sen. Grassley) (“We have evidence from the States of Texas, Georgia, Mississippi, and many others.”); 164 Cong. Rec. S7749 (daily ed. Dec. 18, 2018) (statement of Sen. Leahy) (“By taking steps to responsibly reduce our prison population, we can save both money and reduce crime. That is a lesson states across the country have already learned.”).

Thus, confronting unsustainable prison costs, Congress looked to proven state models to reduce recidivism—particularly Texas’s successful reforms—and crafted legislation that earned nearly unanimous support. Congress intended the FSA to achieve meaningful cost reductions through the same mechanisms that had proven successful at the state level.

II. The history, purpose, and structure of the FSA render section 3632(d)(4)(D) ambiguous.

BOP’s interpretation of § 3632(d)(4)(D) would forfeit \$480 million in potential savings. The state models Congress used as templates uniformly allow broader credit eligibility than BOP’s interpretation allows. And Congress consistently limited BOP’s authority throughout the Act. BOP’s interpretation thus conflicts with the Act’s fiscal purpose, its precedents, and its structural design, creating significant doubt about § 3632(d)(4)(D)’s intended scope.

A. BOP's interpretation costs millions more.

Sentencing Commission data reveal the costs of BOP's interpretation. In 2024 alone, the latest year for which Sentencing Commission data is available, at least 2,041 people received sentences combining credit-eligible and credit-ineligible crimes—individuals in Mr. Davis's position.³ See U.S. Sentencing Comm'n, SPSS Datafile For Fiscal Year 2024, available at <https://www.ussc.gov/research/datafiles/commission-datafiles>. Their average term of imprisonment is 13 years, representing \$1.25 billion in incarceration costs.⁴ BOP's interpretation would deny earned time credits to all of them.

If, on the other hand, these prisoners earned maximum credits toward early supervised release, the savings would exceed \$96 million—from just one year's sentences. For convictions since 2019, potential savings reach \$627 million (see Figure 1).⁵ And these figures significantly undercount the total cost, as they

³ 2,560 people were convicted of crimes under 18 U.S.C. § 924(c), which is credit-ineligible under the FSA. 18 U.S.C. § 3632(d)(4)(D)(xxii). Terms of imprisonment under section 924(c) must run consecutive to punishments for other crimes. 18 U.S.C. § 924(c) (punishment for “use or carr[y]” of a firearm is “in addition to the punishment provided for” other crimes). 2,041 of the original 2,560 were also convicted of another, credit-eligible crime and sentenced to both terms of imprisonment and supervised release.

⁴ In 2024, the average annual cost of incarceration for one person was \$47,162. See *Annual Determination of Average Cost of Incarceration Fee*, 90 Fed. Reg. 58059 (Dec. 15, 2025).

⁵ The BOP's rule for earned time credits applies to credits earned since December 21, 2018. 28 C.F.R. § 523.42(b)(2). These numbers also include other

exclude the sentences of non-citizens and consecutive sentences from separate proceedings (where, for example, the credit-ineligible and credit-eligible convictions were the subject of two proceedings with distinct case numbers). The savings anticipated by the FSA through 2024 is easily over half a billion dollars.

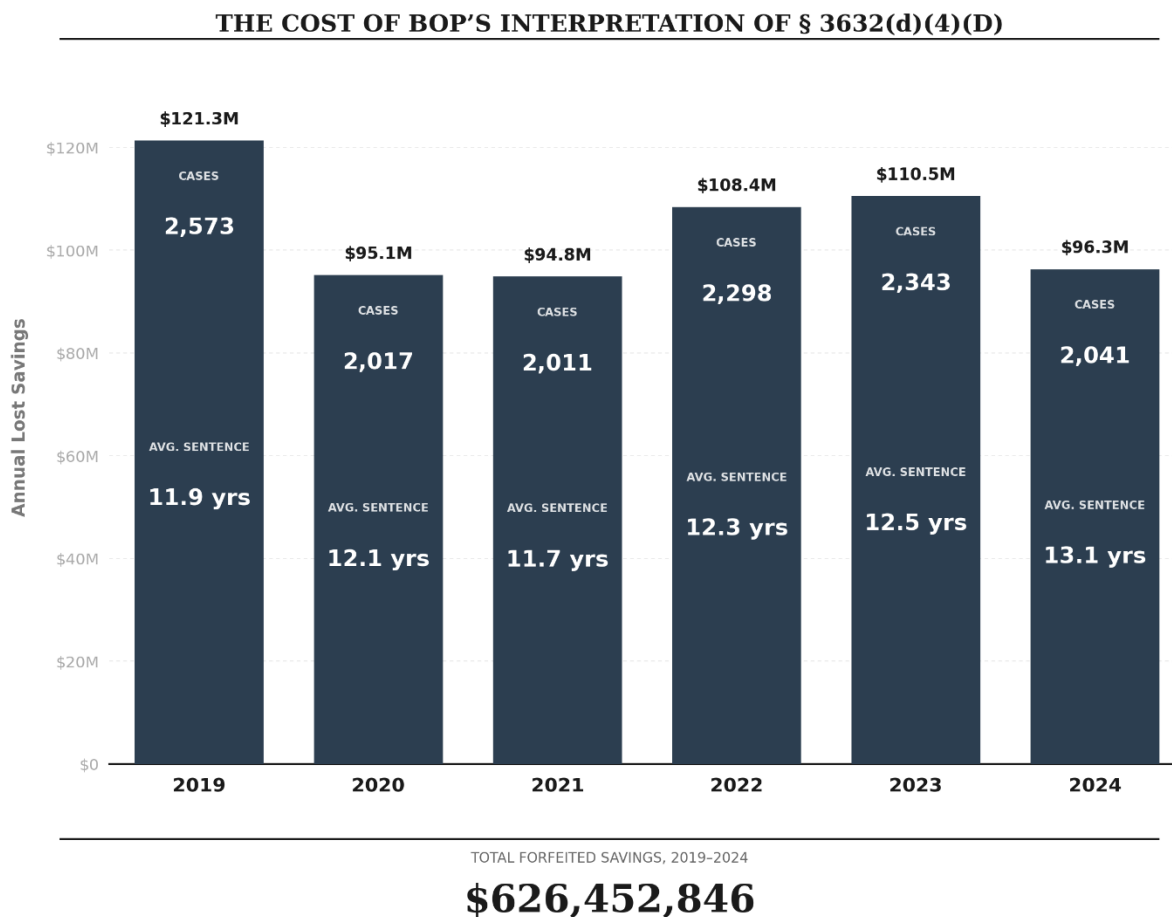


Figure 1: Annual Cost of BOP's Interpretation of § 3632(d)(4)(D).

statutes that require consecutive sentences, 18 U.S.C. §§ 929, 1028A, 1791, 3146, and 3147. The additional data was obtained from the Commission's SPSS Datafiles For Fiscal Years 2019–2023, all available at <https://www.ussc.gov/research/datafiles/commission-datafiles>.

B. BOP's interpretation raises recidivism rates.

BOP's interpretation also undermines Congress's intent to reduce recidivism. Bearing out this intent, statistics collected by BOP itself, along with the United States Office of the Attorney General, show that individuals released under the FSA have low rates of recidivism. *See* Avinash Bhati, *First Step Act: An Early Analysis of Recidivism*, Council on Crim. Just. (Dec. 2024), (hereinafter 2024 FSA Recidivism Analysis), <https://counciloncj.foleon.com/first-step-act/fsa> (noting that the BOP and USAGO statistics include both those released directly under the FSA and those who were released under a different release code but benefited from the FSA). These are lower rates than individuals who are not released under the FSA and lower rates than similarly situated individuals pre-FSA.

First, individuals released under the FSA are less likely to recidivate than similarly situated people released before the FSA. The 2024 FSA Recidivism Analysis found lower rates of recidivism among people released under the FSA “within each of the four risk levels as assessed by BOP's risk assessment tool,” PATTERN, compared with individuals with the same risk categorization released prior to the FSA (Fig. 2).

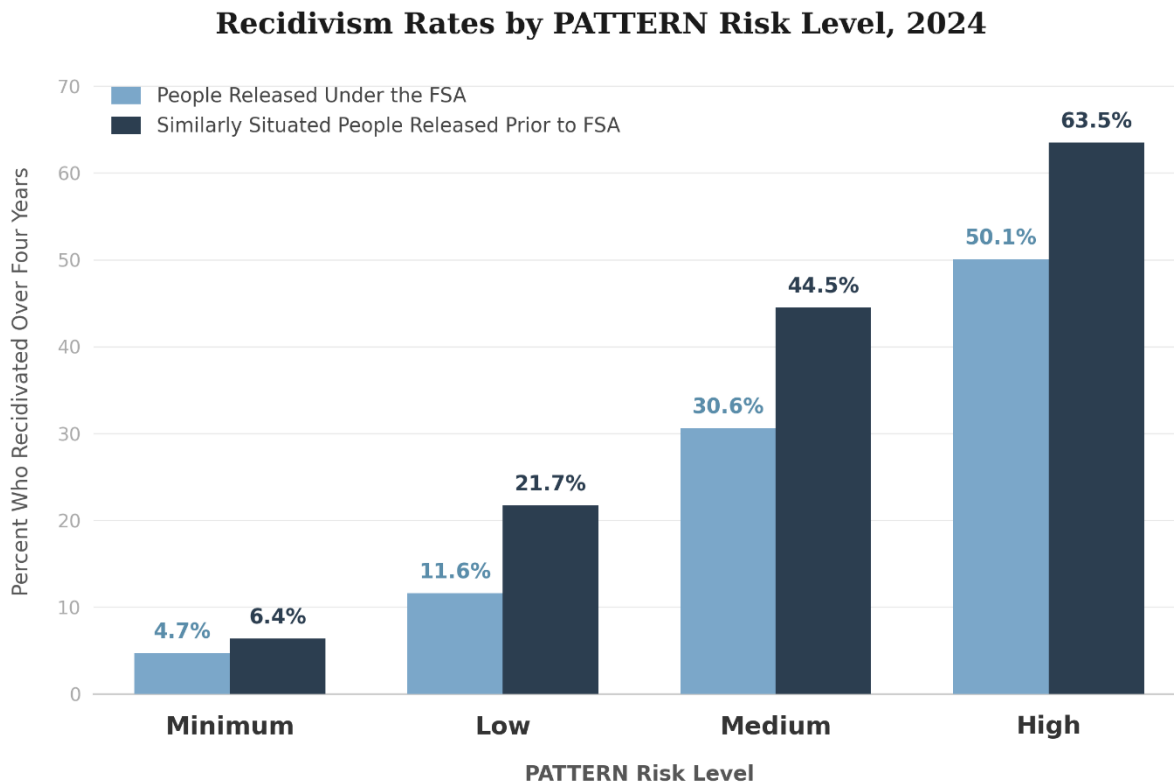


Figure 2: Recidivism Rates for Similarly Situated People Released Prior to the FSA (source: 2024 FSA Recidivism Analysis).

Likewise, similarly situated individuals (defined as falling into the same risk category and with the same time out of confinement) released before the FSA recidivated at a rate of 21.5%; the FSA cut this rate down to 9.7%. 2024 FSA Recidivism Analysis. This is a 55% reduction in the rate of recidivism.

Second, individuals released under the FSA show a significantly lower rate of recidivism compared to the rates of all other individuals released during the same period. The FSA's 2024 9.7% recidivism rate compares favorably to the

44.8% recidivism rate for all people released from BOP facilities in 2019.⁶ 2024 FSA Recidivism Analysis. A similar analysis shows that the FSA’s 2023 12.4% recidivism rate compares favorably to the 46.2% recidivism rate for all people released from BOP facilities in 2018. Avinash Bhati, *First Step Act: An Early Analysis of Recidivism*, Council on Crim. Just. (Aug. 2023), <https://counciloncj.foleon.com/first-step-act/fsa/2023-first-step-act-recidivism-analysis>. These significant differences in recidivism rates show that the FSA is working—and that BOP’s unjustifiable restrictions on credit eligibility undermine Congress’s intent to reduce recidivism.

C. State models show Congress intended broad credit eligibility.

The state models that shaped the FSA exclude few, if any, crimes from their credit-earning mechanisms, suggesting a strict construction of § 3632(d)(4)(D). As the states’ experience showed, broad applicability of these mechanisms was necessary to achieve their twin purposes of cost savings and recidivism reduction. Texas, which Senator Cornyn cited as the model for the Act, placed no limits on credit eligibility based on crimes of conviction. Georgia excluded just seven crimes, and Maryland, five. Where these states excluded crimes of conviction

⁶ Both recidivism analyses emphasize that people released under the FSA differ in important ways from all persons released from federal prisons, including in their assessed risk level and the length of time they have been out of prison.

from their credit-earning mechanisms, they did so narrowly and based on older laws that had grouped these offenses together for sentencing purposes.

In 2011, Texas passed a prison reform bill that did *not* limit prisoners' ability to earn credits through recidivism-reduction programs based on the crime of conviction. H.B. 2649, 82d Leg., R.S. (Tex. 2011). Like the FSA, Texas awarded credits based on participation in an "educational, vocational, or treatment program" or a "work program." *Id.* § 1(4)(A)–(C). Like the FSA, Texas's reform was intended to save money. John O'Brien, *Fiscal Note RE: HB2649*, Legislative Budget Board Fiscal Note, 82d Leg., R.S. (May 19, 2011), available at <https://tinyurl.com/3abbcy2p> (noting savings of nearly \$50 million). Unlike the FSA, however, Texas's credit system did not contain any carve outs.

Similarly, Georgia pursued credit-based prison reforms for fiscal reasons, as described by Rep. Collins in his support for the FSA. Georgia's credits, available to prisoners eligible for parole, excluded just seven crimes. In 2011, the legislatively created Special Council on Criminal Justice Reform for Georgians released a report noting that growth in Georgia's prison population "has come at a substantial cost to Georgia's taxpayers" and that "[t]oday the state spends more than \$1 billion annually on corrections, up from \$492 million in FY 1990." *Report of the Special Council on Criminal Justice Reform for Georgians* 2 (2011), available at <https://tinyurl.com/2e5t738e>. In a set of recommendations focused on

the effective use of “Georgia’s resources,” the report advised the implementation of expanded “Performance Incentive Credits,” which “allow offenders to earn up to 12 months of [] time off their sentence for participation in work or risk reduction.” *Id.* at 16.

Georgia’s Department of Corrections under Governor Nathan Deal responded. In November 2011, the Department released a regulation describing the “Performance Incentive Credit (PIC) Program.” Ga. Dep’t of Corr., Standard Operating Procedures: Performance Incentive Credit Program, IIB01-0021 (Nov. 1, 2011). The Program awards people serving prison sentences up to 12 months credit for participation in work programs as well as in educational, vocational, substance abuse, mental health, “cognitive behavioral,” and “sex offender psycho-educational” programs. *Id.* § VI(A)(3). The Program generally applies to all “[o]ffenders who have been sentenced to incarceration.” *Id.* § II. The only exclusions based on the crimes of conviction are seven crimes carrying mandatory prison terms. *Id.* § VI(G)(5). Moreover, the exclusions take their shape from prior legislation treating these seven crimes together for the purposes of punishment. *See* Standard Operating Procedures IIB01-0021 § VI(G)(5) (describing prisoners excluded from credit-earning as “7 deadly sin offenders”); *see also Mikell v. Brian*, 2010 WL 6797007, at *13 (S.D. Ga. Nov. 9, 2010) (describing O.C.G.A. § 17–10–6.1(a), which is “informally known as Georgia’s ‘Seven Deadly Sins’ statute”).

Thus, Georgia’s Program models a broadly applicable credit-earning mechanism with narrow exclusions for crimes previously grouped together for the purposes of sentencing. While Congress ultimately included a longer list of exclusions in the FSA than Georgia’s model contained, Georgia’s model demonstrates that such exclusions should be interpreted narrowly and against a background of sentencing-specific legislative consideration for the exclusions as a group.

Finally, in 2016, Maryland—cited by Sen. Cardin in his support of the FSA—created a system of “diminution credits” for participation in recidivism-reduction programs. Justice Reinvestment Act, 2016 Md. Laws 515 (S.B. 1005, codified at Md. Code Ann., Corr. Servs. § 3-706). The Maryland Justice Reinvestment Coordinating Council, a creature of Maryland’s legislature, noted in 2015 that “Maryland still incarcerates more than 20,000 offenders, costing Maryland taxpayers \$1.3 billion in corrections spending in FY2014.” *Final Report* 1 (Dec. 2015), available at <https://tinyurl.com/w94c2vc5>. In developing its recommendations, the Council sought to “maximize the public safety returns on Maryland’s corrections spending.” *Id.* And it advised increased diminution credits for recidivism-reduction programs because “[r]esearch demonstrates that providing incentives like earned time or diminution credits in prison can reduce recidivism and save taxpayer dollars.” *Id.* at 16. When Maryland’s lawmakers responded to

the Council’s call, all prisoners were entitled to earn these credits. 2016 Md. Laws 515 § 3-706. Indeed, these credits were subject only to a pre-existing limit on eligibility for diminution credits, comprising 5 crimes of conviction. *See* Md. Code Ann., Corr. Servs. § 3-702(a)–(b) (West 2010). As with Georgia, these exclusions reflected prior legislative consideration of them as a coherent set.

Congress explicitly relied on the Texas, Georgia, and Maryland models when drafting the First Step Act. These states had proven that broad credit eligibility could reduce costs while reducing recidivism. Where these states conditioned exclusions from credits on the crime of conviction, they did so minimally and narrowly, drawing on prior law. BOP’s interpretation follows neither of these paths.

III. The rule of lenity resolves any ambiguity in favor of Mr. Davis.

The rule of lenity applies where the history, purpose, and structure of the FSA create more than “reasonable doubt” as to § 3632(d)(4)(D)’s intended meaning. *Moskal v. United States*, 498 U.S. 103, 108 (1990) (the rule of lenity applies to “situations in which a reasonable doubt persists about a statute’s intended scope even after resort to” ordinary tools of construction). First, multiple courts and judges have found § 3632(d)(4)(D) to be ambiguous. *Bonnie v. Dunbar*, 157 F.4th 610, 624 (4th Cir. 2025) (Wynn, J., dissenting) (“[T]he full context of the First Step Act emphasizes leniency, and the structure of the

particular section at issue emphasizes reducing recidivism. The Warden’s stingy interpretation of the time-credits provision undermines both statutory goals.”); *Sok v. Eischen*, 2022 WL 17156797, at *3 (D. Minn. Oct. 26, 2022) (“[T]he Court finds that the phrase ‘serving a sentence for a conviction under any of the following provisions of law,’ as used in § 3632(d)(4)(D), is ambiguous.”), *report and recommendation adopted*, 2022 WL 17128929 (D. Minn. Nov. 22, 2022), *aff’d*, 2023 WL 5282709 (8th Cir. Aug. 17, 2023); *Mancillas v. Fed. Bureau of Prisons*, 2023 WL 5404229, at *5 (D. Md. Aug. 22, 2023) (“Although it may appear straightforward at first blush, Mancillas’s Petition highlights that ambiguity exists as to what was meant by ‘serving a sentence’ for certain convictions, thus rendering an individual ineligible to earn ETCs under 18 U.S.C. § 3632(d)(4)(D).”). *But see Clinkenbeard v. Murdock*, 2025 WL 926451 (8th Cir. 2025), and *Tyler v. Garrett*, 2024 WL 5205501 (8th Cir. 2024) (both unpublished decisions resolving the ambiguity against Mr. Davis’s interpretation).

Second, the cost-saving purpose of the FSA makes it unlikely that Congress intended to leave half a billion dollars on the table by choosing BOP’s preferred interpretation. Third, BOP’s interpretation undermines the “statutory goal” of reducing recidivism. *Bonnie*, 157 F.4th at 624 (Wynn, J., dissenting). And fourth, the state models on which the FSA is based favor an interpretation of § 3632(d)(4)(D) that expands credit eligibility.

The rule of lenity is more than just a tool of statutory construction—it embodies “the instinctive distaste[] against men languishing in prison unless the lawmaker has clearly said they should.” *United States v. Bass*, 404 U.S. 336, 348 (1971) (quotation marks and citation omitted); *United States v. Parker*, 762 F.3d 801, 806 (8th Cir. 2014) (“The ‘venerable rule’ of lenity flows in large part from ‘the fundamental principle that no citizen should be . . . subjected to punishment that is not clearly prescribed,’” quoting *United States v. Santos*, 553 U.S. 507, 514 (2008)). In *United States v. Wiltberger*, for example, a sailor was charged with killing an individual on a river in China under a statute that criminalized manslaughter on the “high seas.” 18 U.S. at 76, 93 (1820) (quoting Act of Apr. 30, 1790, § 12, 1 Stat. 115). Chief Justice Marshall acknowledged that it was “almost impossible to believe” that Congress sought “to distinguish between the same offence . . . on the high seas, and on the waters of a foreign State.” *Id.* at 99. But because “probability is not a guide which a court . . . can safely take,” *id.* at 105, the Supreme Court declined to interpret the statute as encompassing the sailor’s conduct. Criminal statutes “are to be construed strictly” because of “the tenderness of the law for the rights of individuals” and “the plain principle that the power of punishment is vested in the legislative” department. *Id.* at 95.

The text of § 3632(d)(4)(D) leaves unclear whether “serving a sentence for a conviction” applies to an entire aggregated term or to each specific sentence.

When years of liberty hang on this ambiguity, the rule of lenity demands the more lenient reading.

CONCLUSION

For the reasons stated above, this Court should reverse the decision below and determine that Mr. Davis is eligible to earn time credits under the FSA.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,593 words, exclusive of the cover page, table of contents, table of authorities, certificates of counsel, signature block, and certificate of service.

/s/ Timothy W. Grinsell
Timothy W. Grinsell

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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