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United States District Court
for the Middle District of Florida

US
v.
Amber Rewis Brucey

Case #: 2:21-cr-00074

Honorable Judge Barber

Emergency Pro Se Motion

Comes now petitioner, Amber Brucey, in a pro se petition humbly and respectfully asking this Honorable court to order the BOP to follow statute and transfer petitioner to prerelease custody as was deemed appropriate by unit team. Petitioner is requesting this motion to be heard on an emergency basis because of the time sensitive matter of this request.

Petitioner was sentenced July 13, 2022 for fraud-related charges and sentenced to 48 months imprisonment to be followed by 3 years supervised release. Petitioner self-surrendered to FPC Alderson on May 12, 2023 and is still currently housed here. Her reg # is 63267509. Petitioner has maintained prison employment as a teacher's aide since July 2023, has taken over 30 classes, reduced her recidivism score, completed non-residential drug abuse program, is a peer mentor through "women giving back", has almost completed the HVAC vocational training program (2 weeks remaining) and has maintained clear conduct for her entire incarceration (approximately 18 months) and while on pretrial for 20 months prior to incarceration. Petitioner has been a "role model" inmate and her rehabilitation and clear conduct on pretrial and during incarceration are indicative of her future law abiding behavior.

Argument

As indicated on attached FSA time credit assessment, petitioner is eligible for prerelease custody as of 10/16/24 - Her conditional transition to community placement date. Petitioner was reviewed using the 5-factor review (as indicated on attached BP-210 referral form) and unit team deemed that she needed 9 months and 40 days of reentry placement time in prerelease custody. This referral was sent 10/7/24 and should have resulted in a prerelease custody placement date of 11/27/24; however the requested date on referral (attached) is 12/27/24 (which only gives 10 days instead of 40 and was acknowledged as a clerical error by unit manager, Ms. Dillon. On 10/28/24, petitioner was told her placement date was 11/5/25. This will only give petitioner 4 months reentry time instead of the requested and needed 9 months and 40 days. Given my reentry needs 4 months is not adequate reentry time which is also evidenced by the referral requesting 9 months and 40 days by unit team where they deemed this amount of placement time in prerelease custody was necessary to provide the greatest likelihood of successful reentry. See referral. To be able to benefit from this reentry time however, an expedited review and order by this Honorable court is needed as this placement date is only 27 days away.

As many similar courts have found, prisoners do have a protected liberty interest in prerelease placement. BOP policy is contrary to the language of the statute and with the *Loper* decision overturning *Chenon*, BOP is no longer entitled to deference and policy does not carry the weight of the law. See: *Rodriguez v. Smith*, 541 F.3d. 1180, 1184-87 (9th Cir., 2008); *Wedelstedt v.*

Wilay, 477 F.3d 1160, 1166 (10th Cir., 2007); Woodall v. Fed. Bur. of Prisons, 432 F.3d 235, 250 (3d Cir., 2005); Elwood, 386 F.3d at 845-847; Levine v. Apker, 455 F.3d 71, 87 (2d Cir., 2006); Muniz v. Sabol, 517 F.3d 29, 35-38 (1st Cir., 2008); Miller v. Whithead, 527 F.3d 752, 757 (8th Cir., 2008); Rodriguez, 541 F.3d at 1186 (quoting Wedelstedt, 477 F.3d at 1165); Doe v. Federal Bur. of Prisons, 2024 WL 455309 at *1-4 (S.D.N.Y. Feb. 5, 2024); Ramirez v. Phillips, 2023 WL 8878993, at *4 (E.D. Cal., Dec. 22, 2023) (agreeing with interpretation that transfer to prerelease custody is mandatory, BOP has no discretion not to transfer); Komando v. Luna, 2023 WL 310580, at *4-8 (D.N.H., Jan. 13, 2023) (stating transfer to prerelease custody is required; rejecting the argument that the BOP had discretion); Sierra v. Jacquiez, 2022 WL 18046701, at *4 (W.D. Wash., Dec. 27, 2022) (transfer to prerelease custody required); Rodriguez v. Dennis Smith, No. 07-16014 (9th Cir., Sept. 4, 2008); Fults v. Sanders, 442 F.3d 1088, 1091 (8th Cir., 2006). Each of these courts concluded Congress' intent regarding placement and transfer is clear from the plain language of 18 USC 3621b and 3624, further determining that BOP regulations such as CFR 570.20 and 570.21 contravene the plain language of the law and violates Congress' intention regarding statutory placement.

Statute 3624g(11) states, "The Director of the Bureau of Prisons shall ensure there is sufficient prerelease custody capacity to accommodate all eligible prisoners." The language of this statute is clear and means the prerelease custody placement time must be given and lack of bed space can not be used as an excuse to reduce or limit placement. Due to bed space issues, FLM (Federal location monitoring) is available in some districts to monitor prisoners during their prerelease custody. FLM is available in petitioner's

district (Eastern District of NC) (USPO: Mike Dilda, michael_dilda@ncep.uscourts.gov; 252-414-3089). Petitioner's relocation and release plan have already been approved and Mr. Dilda has agreed to monitor Ms. Bruce on FLM if ordered. FLM was listed as a monitoring method (see referral) but BOP opted to reduce placement time by approximately 6.5 months due to lack of bed space instead of utilizing FLM. This act violates statute 3624c6c which states, "prerelease custody should be of sufficient duration to provide the greatest likelihood of successful reintegration into the community." Unit team deemed this "sufficient" placement time should be 9 months and 40 days. See *Yufenyuy v. Warden, FCI Berlin*, 659 F. Supp. 3d. US Dist. LEXIS 40186 WL 2398300 (D.N.H., March 7, 2023). In *Yufenyuy* the court ordered the BOP to transfer prisoner to prerelease custody. See also *Woodley v. Warden USP Leavenworth*, US Dist Court, District of Kansas, 2024 Dist LEXIS 87521, case no: 24-3053-JWL (D. Kansas, May 15, 2024). In *Woodley*, the judge ruled, "Respondent's excuse for delaying petitioner's transfer to an RRC is that bed space is not available in a particular RRC. No such condition concerning bed availability is included among the requirements for eligibility under section 3624g, and thus immediate placement in prerelease custody is required." The court further found, "Because the statute is clear that transfer to prerelease custody is mandatory, any contrary interpretation by the BOP would not be entitled to any deference (citing *Komando*, 2023 US Dist LEXIS 11477, 2023 WL 310580, at *7-8 and *Jones* 2022 US Dist LEXIS 185365, 2022 WL 6563744 at *9).

Conclusion

Petitioner humbly and respectfully asks this Honorable Court to review this petition on an emergency expedited basis given the time sensitive matter of her prerelease placement date should be 11/27/24 (27 days away) and for the aforementioned reasons, prayerfully asks this court to order the BOP to place her in BOP custody by 11/27/24 (the date deemed to be sufficient placement by unit team under 3u24c6c) and if the RRC does not have bedspace for this to order them to switch her monitoring to FLM.

10/31/24
Date

Respectfully Submitted,

Amber Brey
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This petition/motion was placed in the USPS inmate mail system on 10/31/24.

Amber Brey
Amber Brey
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10/31/24

Attachments

- ① BP-A0210 - Institutional Referral for CCC Placement side 1
- ② BP-A0210 - " " side 2
- ③ FSA Time credit assessment showing FSA conditional release date and conditional transition to community date.

List of Interested Parties

Judge Thomas Barber
Judge Dudek
Jim Lappan
Trent Reichling
Suzanne Nebelsky