

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted November 13, 2025*

Decided November 13, 2025

*Before*MICHAEL B. BRENNAN, *Chief Judge*DIANE S. SYKES, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*

Nos. 24-3195; 25-1066; 25-1095

JOSE D. DERAS LOPEZ and
SALVADOR ALAMILLA,
*Petitioners-Appellants*Appeals from the United States District
Court for the Western District of
Wisconsin.*v.*

No. 24-cv-369-wmc

E. EMMERICH, Warden,
*Respondent-Appellee.*William M. Conley,
*Judge.***ORDER**

Jose D. Deras Lopez and Salvador Alamilla—who are both federal prisoners and noncitizens subject to final orders of removal—seek relief under 28 U.S.C. § 2241. They argue that a statute barring them, as noncitizens subject to final orders of removal, from applying earned rewards from recidivism reduction programs toward early release is

* We have agreed to decide these cases without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

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unconstitutional. The district judge dismissed their petition, concluding that the provision does not violate their rights to due process or equal protection. We affirm.

The First Step Act allows most prisoners who complete recidivism reduction programs to earn various rewards. These include: additional phone and visitation privileges, 18 U.S.C. § 3632(d)(1); transfer to a facility closer to their anticipated release location, *id.* § 3632(d)(2); other incentives that the Bureau of Prisons may implement, *id.* § 3632(d)(3); and time credits that can be applied towards early release or placement in prerelease custody, *id.* § 3632(d)(4). Noncitizen prisoners subject to a final order of removal may earn these rewards but may not apply them toward early release or placement in prerelease custody. *Id.* § 3632(d)(4)(E).

Petitioners do not dispute that they are noncitizens and that they are subject to final orders of removal. In June 2024, they filed a joint petition under 28 U.S.C. § 2241, arguing that § 3632(d)(4)(E) violates their rights to equal protection by discriminating against them based on their noncitizen status. They also contend that restricting how they use their rewards deprives them of a protected liberty interest, thereby violating their due process rights.

The district judge dismissed the petition. On the equal protection claim, the judge concluded that petitioners were not members of a suspect class and the restriction did not involve a fundamental right; thus, heightened scrutiny was not warranted. The judge then determined that Congress had a rational basis for denying time credits to prisoners who are subject to a final order of removal. As to due process, the judge ruled that petitioners did not have a constitutionally protected liberty interest in these time credits and therefore could not establish a due process violation.

Petitioners appeal, and we review the district judge's denial of their § 2241 petition de novo. *See Camacho v. English*, 872 F.3d 811, 813 (7th Cir. 2017). Petitioners first challenge the district judge's application of rational basis review instead of heightened scrutiny on their equal protection claim. But the judge correctly applied rational basis review because federal statutory distinctions between subclasses of noncitizens do not burden a suspect class. *See City of Chicago v. Shalala*, 189 F.3d 598, 603–05 (7th Cir. 1999) (relying on *Mathews v. Diaz*, 426 U.S. 67, 80–86 (1976)). In *Shalala*, the federal statute at issue broadly excluded noncitizens from receiving Social Security and food stamp benefits while exempting certain subclasses, such as asylees and refugees. *Id.* at 601–02. Section 3632(d)(4)(E) likewise distinguishes between subclasses of noncitizens: noncitizen prisoners subject to final orders of removal versus all other

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noncitizen prisoners. Because the statute does not burden a suspect class, the judge correctly considered whether there is a rational basis for the statutory distinction.[†]

The district judge correctly concluded that there is a rational basis for denying time credits under § 3632(d)(4)(E) to noncitizens subject to a final order of removal. Petitioners bear the burden of establishing that there is no “reasonably conceivable state of facts that could provide a rational basis for the classification.” *See Lopez Ramos v. Barr*, 942 F.3d 376, 381 (7th Cir. 2019) (citations omitted). But recidivism reduction programs are an investment to reduce crime and help former prisoners successfully re-enter society. Therefore, Congress had a rational basis for prioritizing the most cost-effective programs that specifically target those returning to domestic society rather than those who will be removed upon release. *See Cheng v. United States*, 132 F.4th 655, 658 (2d Cir. 2025); *see also United States v. Tamayo*, 162 F. App’x 813, 816 (10th Cir. 2006) (nonprecedential).

Petitioners also challenge the district judge’s dismissal of their due process claim. They argue that § 3632(d)(4)(C) creates a liberty interest because the statute mandates that the Bureau “shall” transfer prisoners who have earned time credits into prerelease custody or supervised release. They contend that § 3632(d)(4)(E) is unconstitutional because it prevents them from applying their rewards from recidivism reduction programs toward prerelease custody or early release, contrary to the liberty interest created by the mandatory language of § 3632(d)(4)(C).

We see no due process violation because use of the word “shall” does not create a liberty interest in this context, where the same statute limits the scope of its application. As we have explained, “due process is not violated by the fact that a statute places substantive conditions, themselves legitimate, on the availability of a particular entitlement.” *See Garcia v. INS*, 7 F.3d 1320, 1326 (7th Cir. 1993). That principle applies here: § 3632(d)(4)(E) restricts noncitizen prisoners subject to a final order of removal from using time credits for prerelease custody or early release. The statute does not

[†] Petitioners’ reliance on *Graham v. Richardson*, 403 U.S. 365 (1971), is misplaced because the states’ authority to classify by citizenship is more circumscribed than that of the federal government. *Id.* at 371–72. And that *Mathews* itself dealt with economic benefits has no bearing on the analysis. We have applied *Mathews* in a variety of other contexts. *See, e.g., Canto v. Holder*, 593 F.3d 638, 641 (7th Cir. 2010) (removability); *United States v. Montenegro*, 231 F.3d 389, 395 (7th Cir. 2000) (criminal convictions and sentencing).

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retroactively annul rewards previously earned; it prohibits a certain class of prisoners—those who are noncitizens and subject to a final order of removal—from using them toward prerelease custody and early release. Petitioners remain free to participate in recidivism reduction programs and to use earned rewards for additional phone privileges, transfers, and other Bureau programs. 18 U.S.C. §§ 3632(d)(1), (d)(2), (d)(3), (d)(4)(E).

Further, even if petitioners had a liberty interest in applying time credits toward prerelease custody or early release notwithstanding their statutory ineligibility, these interests are not absolute. Liberty interests can be taken away so long as there is constitutionally adequate process. *Carey v. Piphus*, 435 U.S. 247, 259 (1978) (“Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.”). And petitioners do not contend that they are not subject to final orders of removal, nor that the process for making that determination was constitutionally inadequate. Accordingly, they cannot prevail on this theory, and the district judge correctly dismissed their due process claim.

Last, petitioners note their constitutional challenge to § 3632(d)(4)(E) is novel, and thus the district judge erred in dismissing it at screening instead of allowing factual development. But for the reasons discussed, “it plainly appears from the petition ... that the petitioner[s] [are] not entitled to relief,” and no additional fact-finding would change that outcome, so dismissal at screening was proper. *See Sanders v. Radtke*, 48 F.4th 502, 508–09 (7th Cir. 2022) (citing *Dellenbach v. Hanks*, 76 F.3d 820, 823 (7th Cir. 1996) and *Small v. Endicott*, 998 F.2d 411, 414 (7th Cir. 1993)).

AFFIRMED