

NONPRECEDENTIAL DISPOSITION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 July 17, 2025*

Decided July 17, 2025

Before

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 25-1204

ALEKSANDAR KAVAJA,
Petitioner-Appellant,

v.

E. EMMERICH,
Respondent-Appellee.

Appeal from the United States District
Court for the Western District of
Wisconsin.

No. 24-cv-620-wmc

William M. Conley,
Judge.

ORDER

Aleksandar Kavaja, a Montenegrin citizen, is serving 88 months' imprisonment for conspiracy to distribute five kilograms or more of cocaine while on a vessel, *see* 46 U.S.C. §§ 70503(a)(1), 70506(b), 21 U.S.C. § 960(b)(1)(B). An immigration officer

* The appellee was not served with process and is not participating in this appeal. We have agreed to decide the case without oral argument because the brief 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).

has ordered him removed from the United States upon his release from prison on September 15, 2025. Kavaja has petitioned for a writ of habeas corpus, 28 U.S.C. § 2241, asserting that he is entitled to immediate release because prison officials have wrongly denied him earned time credit under the First Step Act, 18 U.S.C. § 3632. The district court dismissed the petition, concluding that Kavaja's expedited order of removal makes him ineligible to apply his earned time credit under the Act. We affirm.

In 2021, Kavaja was convicted in the Eastern District of Pennsylvania of distributing cocaine while on a vessel. While Kavaja was serving his 88-month sentence for that crime, the Department of Homeland Security ordered him removed under 8 U.S.C. § 1225(b)(1). After an expedited removal proceeding in April 2024, an immigration officer determined that Kavaja was an immigrant without valid documentation and therefore inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I).

Five months later, while housed at FCI Oxford in Wisconsin, Kavaja petitioned for a writ of habeas corpus. He asserted that he would be entitled to immediate release if the Bureau of Prisons applied to his sentence earned time credit under the First Step Act. He attached a sentencing data sheet, showing that his release date would be October 5, 2024, if the time credit applied. Kavaja argued that the Bureau improperly refused to apply this credit toward his sentence.

The district court dismissed the petition. It concluded that the First Step Act bars application of time credit for a prisoner, like Kavaja, who is subject to a final order of removal. *See* 18 U.S.C. § 3632(d)(4)(E)(i).

On appeal, Kavaja argues that the district court incorrectly concluded that he is subject to a final order of removal and therefore ineligible to apply earned time credit. He contends that the expedited removal order is not "final" because he has applied for withholding of removal under the Convention Against Torture (CAT). Because that proceeding remains pending before the Board of Immigration Appeals, Kavaja asserts, the expedited order cannot be "final."

But we agree with the district court that Kavaja is ineligible to apply earned time credit to his sentence under the First Step Act. A prisoner cannot apply time credit if he is "the subject of a final order of removal under any provision of the immigration laws." 18 U.S.C. § 3632(d)(4)(E)(i). An order of removal is final where it "conclud[es] that the [noncitizen] is deportable or order[s] deportation." *Nasrallah v. Barr*, 590 U.S. 573, 581 (2020) (quoting 8 U.S.C. § 1101(a)(47)(A)). Here, the expedited order of removal orders

Kavaja removed from the United States, and it is not subject to administrative review. See 8 C.F.R. § 235.3(b)(2)(ii).

Relying on our decision in *F.J.A.P. v. Garland*, 94 F.4th 620 (7th Cir. 2024), Kavaja insists that the order cannot be final until his CAT proceedings have concluded. In *F.J.A.P.*, we concluded that certain orders of removal are “not final for purposes of judicial review until the agency has completed withholding proceedings.” *Id.* at 637–38.

But the Supreme Court recently rejected this holding. See *Riley v. Bondi*, No. 23-1270, 2025 WL 1758502, at *6 (U.S. June 26, 2025). In *Riley*, the Court clarified that an order denying relief under the CAT “does not affect the validity of a previously issued order of removal or render that order non-final.” *Id.*; see *Johnson v. Guzman Chavez*, 594 U.S. 523, 539 (2021) (explaining that finality of removal order does not depend on outcome of the withholding-only proceedings). Accordingly, a noncitizen’s initiation of CAT proceedings “does not render non-final an otherwise administratively final order of removal.” *Riley*, 2025 WL 1758502, at *6 (cleaned up). Indeed, “[a]n order granting CAT relief means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country.” *Nasrallah*, 590 U.S. at 582. Because Kavaja is subject to a final order of removal, he cannot apply to his sentence earned time credit under the First Step Act.

AFFIRMED