

No. 01-9809

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

FRANCISCO PACHECO-CAMACHO,

Petitioner,

v.

ROBERT A. HOOD, Warden, Federal Correctional
Institution, Sheridan, Oregon

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF AMICI CURIAE
FAMILIES AGAINST MANDATORY MINIMUMS,
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS,
AND NATIONAL ASSOCIATION OF FEDERAL DEFENDERS
IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI**

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QUESTION PRESENTED

Whether the court of appeals erred in interpreting the federal good time credit statute as allowing only 47 days of credit for each year of the “term of imprisonment” where Congress unambiguously intended 54 days of good time credit per year?

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Families Against Mandatory Minimums (FAMM), National Association of Criminal Defense Lawyers (NACDL), and National Association of Federal Defenders (NAFD) file this amicus brief pursuant to Rule 37.2(a) of the Rules of the Supreme Court of the United States in support of Francisco Pacheco-Camacho’s petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit. Both petitioner and respondent have granted amici consent to file this brief, and letters of consent have been filed with the Clerk of the Court.¹

INTERESTS OF AMICI CURIAE

Families Against Mandatory Minimums Foundation (FAMM) is a nonprofit, nonpartisan association that conducts research, promotes advocacy, and educates the public about mandatory sentencing laws. FAMM was founded in 1991 to challenge inflexible and excessive penalties required by mandatory minimum sentencing. FAMM’s 25,000 members include prisoners and their families, attorneys, judges, criminal justice experts, and concerned citizens.

FAMM is a leading advocate for sentencing justice and sentencing reform. FAMM conducts sentencing workshops for its members, publishes a newsletter, serves

¹ In accordance with Supreme Court Rule 37.6, FAMM, NACDL, and NAFD represent that no counsel for any party to this case authored this brief in whole or in part, and no person or entity, other than amici curiae, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

as a sentencing clearinghouse for the media, researches sentencing cases for pro bono litigation, litigates individual cases as amicus curiae and counsel of record, and provides input to the U.S. Sentencing Commission on Sentencing Guideline amendments and reform. FAMM does not argue that crime should go unpunished, but that the punishment should fit the crime. FAMM is deeply interested in ensuring that prisoners spend no more time incarcerated than that required by current sentencing laws and that they be accorded correctly calculated credit for good conduct during incarceration. FAMM had assumed that the Bureau of Prisons (BOP) was applying §3624(b) in accordance with Congress's express intent that prisoners receive the full 54 days of good time credit for each year of their sentence.

The National Association of Criminal Defense Lawyers (NACDL), a nonprofit corporation founded more than 40 years ago, is the only national bar association working in the interest of public and private criminal defense attorneys and their clients. The NACDL has more than 10,400 direct members, and eighty state and local affiliate organizations with 28,000 members. Membership includes private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors, and judges. The NACDL is committed to preserving justice, fairness, and due process within America's criminal justice system. This petition particularly concerns the NACDL because so many clients of NACDL members have suffered injury to their freedom interests under the BOP's application of the federal good time statute. Since enactment of the federal good time provision, NACDL member criminal defense lawyers have assumed that the BOP was applying §3624(b) as Congress intended.

The National Association of Federal Defenders (NAFD) was formed in 1995 to enhance the representation provided under the Criminal Justice Act, 18 U.S.C. § 3006A, and the Sixth Amendment of the United States Constitution. The Association is a nationwide, non-profit, volunteer organization whose membership includes attorneys and support staff of the Federal Defender Offices. One of the NAFD's missions is to file

amicus curiae briefs to ensure that the position of indigent defendants in the criminal justice system is adequately represented. Its federal public defenders also assumed that prisoners were receiving their full good credit of 54 days for each year of their sentence.

FAMM, NACDL, and NAFD have expertise in the criminal law field that may assist the Court in this case. FAMM has extensive experience with federal sentencing law from a variety of perspectives - prisoner, lawyer, and public. The criminal defense lawyers of the NACDL and NAFD are called upon daily to advise clients as to potential courses of action. Amici FAMM, NACDL, and NAFD have strong interests in seeing that the federal good time statute is interpreted and applied as Congress intended and as the lawyers, clients and judges have always assumed it was being applied. Amici respectfully urge the Court to grant this petition for certiorari because the issues presented directly impact on the liberty interest of millions of prisoners in the federal system.

SUMMARY OF THE ARGUMENT

The federal good time statute, 18 U.S.C. §3624(b), provides 54 days of good time credit for each year of a prisoner's "term of imprisonment." Contrary to the ruling of the court of appeals' decision below, principles of statutory construction and the legislative history render "term of imprisonment" unambiguous. The phrase "term of imprisonment" means the sentence imposed, as it does in other sections of the statute and throughout the criminal provisions in the United States Code. Congress has made statements revealing its unmistakable intent that good time credits be easily determined and result in prisoners in good standing serving 85% of their sentence. Those involved in the criminal justice system -- lawyers, judges, legislators -- have always assumed that the federal good time provision had its ordinary and plain meaning, allowing 54 days of good time credit for each year of the sentence imposed and release after serving 85% of the sentence. The BOP's methodology -- with its complex eight steps leading to a prisoner receiving 47 days for each year of the sentence imposed and release after serving 87.2% of the sentence -- cannot be supported. The court of appeals erred in deferring to the BOP's distorted view of the clear language and intent of Congress.

This Court has recognized that any undeserved and unwarranted time spent in prison has constitutional implications. See *Glover v. United States*, 531 U.S. 198 (2001). It is corrosive to the rule of law and abhorrent to basic precepts of justice to imprison individuals for longer than mandated by the applicable laws. Yet because of the BOP's calculation of federal good time credits, more than 100,000 federal prisoners will be spending days, weeks, and even months in prison beyond the period required by law. The scope and human cost of the unlawful deprivation of liberty resulting from the BOP's flawed interpretation of the federal good time law is truly staggering.

The issues presented in this petition require immediate resolution. Every day that passes affects the freedom of thousands of federal prisoners. Amici FAMM, NACDL and NADF respectfully urge this Court to step in and resolve the issues presented in favor of petitioner, in order to enforce Congress's express intention and preserve the integrity of the criminal justice system.

REASONS FOR GRANTING THE WRIT

I. THE FEDERAL GOOD TIME STATUTE UNAMBIGUOUSLY STATED CONGRESS' INTENT THAT PRISONERS RECEIVE 54 DAYS OF GOOD TIME CREDIT FOR EACH YEAR OF THEIR SENTENCE AND THEREFORE SERVE 85% OF THE SENTENCE IMPOSED

As part of passing the Comprehensive Crime Control Act of 1984, Congress aimed to simplify the rules relating to the service of sentences. Congress wanted to avoid "the complexity of current law" relating to good time credits and sought to impose a system where such good time credits were "easily determined." Senate Report 98-225, *reprinted in* 1984 U.S.C.C.A.N. at 23329-30.² The provision for federal good time statute enacted to accomplish this goal is found at 18 U.S.C. § 3624(b):

(b) Credit toward service of sentence for satisfactory behaviour.-

- (1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the term served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of their term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. . .

Congress clearly intended good time credits to be predictable and easily calculated. It chose 54 days per year to ensure that it was transparent that prisoners receiving good time credit

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"The prisoner, the public, and the corrections officials will be certain at all times how long the prison term will be." Senate Report No. 98-225, *reprinted in* 1984 U.S.C.C.A.N. at 3239. In rejecting the need for the Parole Commission, the Senate Committee expressed the intent that "Prison sentences imposed will represent the actual time to be served and the prisoners and the public will know when offenders will be released from prison." *Id.* Congress clearly intended 54 days a year to be a uniform, easily calculable rate, in contrast to the BOP's regulation which involves a complex, eight-step calculation that leads to credit of only 47 days per year.

would serve exactly 85% of their sentence.³ It also chose language -- “term of imprisonment” -- that it had consistently used to indicate the sentence imposed. The result was unambiguous -- Congress, along with the lawyers and judges in the criminal justice system, believed that the 1984 Act provided that a prisoner would receive 54 days credit for each satisfactorily performed year of their sentence and therefore be released upon serving 85% of the sentence imposed. Accordingly, the court of appeals below erred in upholding a Bureau of Prisons interpretation that would grant only 47 days of good time credit for each year of the sentence (and therefore mandate a prisoner serve 87.2% of the sentence), and this Court should review this insupportable decision.

A. The Ninth Circuit’s opinion is premised on its view that the phrase “term of imprisonment” in the federal good time provision was ambiguous. *Pacheco-Camacho*, 272 F.3d at 1269-70. Based on this purported ambiguity, the court of appeals defers to the methodology of the BOP as a “permissible construction” under *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). Yet, there is nothing ambiguous about “term of imprisonment.” As demonstrated by petitioner, the Comprehensive Crime Control Act of 1984 contains dozens of references to “term of imprisonment” and the phrase is always used to mean the sentence imposed by the judge. *Petition for Certiorari*, at 8-9. The earlier parole statutes, as well as the statutes authorizing the sentencing guidelines, also were consistent in using “term of imprisonment” to mean the entire sentence imposed. *Id.* at 9. Furthermore, there is no

³ The 54 days in the statute calculates to almost exactly 15% of a full year ($15/365 = 0.148$), and translates to serving a minimum of 311 days a year, or 85% of the sentence imposed. By contrast, the BOP uses a complex eight-step calculation, based on time actually served after subtracting good time credit from the sentence imposed, to reduce the good time credit by seven days a year, resulting in 47 days of credit a year, or 318 days served. The BOP calculation translates to serving a minimum of just over 87% of the term of imprisonment.

dispute that the opening sentence of the section in question, Section 3624(b), plainly uses “term of imprisonment” to refer to the sentence imposed. *Id.*

The court of appeals presents no instances in the 1984 Act or in any other criminal statute where “term of imprisonment” is used to mean anything other than the sentence imposed by the judge. There is no explanation as to why the circuit court believes this phrase ambiguous or why the phrase should not be interpreted consistently in the same subparagraph.⁴ In fact, the circuit court should have proceeded no further than the first stage of the *Chevron* analysis since Congress was neither silent nor ambiguous in providing that federal good time credits should be 54 days for each year of the sentence.

B. Not surprisingly, the authors of the federal good time provision also did not believe there was ambiguity as to how these credits should be determined. Rather than require a complex eight-step calculation, Congress understood the provision to allow 54 days of good time credit for each year of the sentence, or 15% of the total sentence. As Senator Joseph Biden stated on the floor of the Senate:

I was the co-author of that bill. In the federal courts, if a judge says you are going to go to prison for 10 years, you know that you are going to go to prison for at least 85% of that time - 8.5 years, which is what the law mandates. You can get up to 1.5 years in good time credits, but that is all.

⁴ The Ninth Circuit erred in disregarding this Court’s statutory construction precedent in *Sullivan v Stroop*, which sets forth the principle of intrastatutory consistency. 496 U.S. 478, 484 (1990). Under *Sullivan*, “term of imprisonment” in §3624(b) should be interpreted in a way consistent with, first, §3624(a)’s express definition of “term of imprisonment” as sentence imposed and, second, that “term of imprisonment” when introducing the requirement that the term of imprisonment be greater than one year and less than life before a prisoner initially becomes eligible for good time credits in the first part of §3624(b) means sentenced imposed (agreed on by both the 9th Circuit and the BOP).

And we abolished parole. So you know you'll be in prison for at least 8.5 years.

141 Cong. Rec. S2348-01 (February 9, 1996).

In 1994, Congress took up the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 20102, 108 Stat. 1818 (codified as amended at 42 U.S.C. § 13704 (2002)). This Act mandated that a State, in order to be eligible for a “Truth in Sentencing Incentive Grant,” had to require persons convicted of violent crimes to “serve not less than 85 percent of the sentence imposed.” This 85% standard reflected Congress belief that this was the amount it had mandated in the federal good time law. *See also* 140 Cong. Rec. S12,349 (1994) (“So my Republican friends in a compromise we reached on the Senate floor back in November - - seems like 100 years ago -- said no State can get any prison money unless they keep their people in jail for 85 percent of the time just like we do at the Federal level in a law written by yours truly and several others.”) (statement of Sen. Biden).⁵

It would be a surprise to Senator Biden and Congress that the BOP had an interpretation and formula of the federal good time provision that required a prisoner to serve 87.2% of his sentence. They would also be surprised that Congress' use of 54 days (15% of the year) and its desire for simple, predictable calculations had been translated by BOP into a complex formula resulting in having a prisoner serve 8.69 years in prison on a 10 year sentence. The BOP's interpretation of this provision is contrary to the clear Congressional intent and should be reversed.

⁵ In this 1994 Act, Congress used the language “sentence imposed” in the same location as it used “term of imprisonment” in 18 U.S.C. §3624(b), and explicitly calculated time served as the 85% of the “sentence imposed” that remains after deducting the time not served because of statutory good time credits. This calculation is the same as that in §3624(b) that is rejected by the BOP's regulation.

II. LAWYERS AND JUDGES HAVE ALWAYS UNDERSTOOD THE FEDERAL GOOD TIME STATUTE TO PROVIDE THAT PRISONERS SHOULD RECEIVE 54 DAYS OF GOOD TIME CREDIT FOR EACH YEAR OF THEIR SENTENCE AND THEREFORE SERVE 85% OF THEIR SENTENCE

Amici and their members are on the front lines of the criminal justice system. The lawyers of the NACDL and NAFD advise clients on a daily basis about their sentences, and specifically how much time they will actually have to serve. FAMM is in constant contact with prisoners, lawyers, and the public addressing sentencing issues and lengths of actual imprisonment. The members of amici all have always understood the federal good time statute to be unambiguous, with the 54 days being based on each year of the sentence imposed and requiring that prisoners serve exactly 85% of their sentence.

There has never been any thought among those working with the clients and courts that prisoners actually will be serving not 85% but actually 87.2% of their sentence. At all levels of those operating in the field, the federal good time provision was seen as unambiguous in allowing good time credits equal to 54 days or 15% of the sentence imposed. Thus, when considering state sentencing reform, the District of Columbia Advisory Commission on Sentencing based its recommendations on the premise that the “good time credit be calculated pursuant to section 3624 of title 18 of the United States Code (no more than 15%).” *Background*, District of Columbia Advisory Commission on Sentencing, 1 of 4, at <http://www.dcacs.com/background.html>. The D.C. Commission, along with everyone else, assumed that the 54 days a year in §3624(b) meant 15% of the sentence imposed, for an 85% minimum. Similarly, the training from the Public Defender Service to its members on the District of Columbia Sentencing Act was that “Federal good time law applies (must serve at least 85% of any prison term, can earn up to 54 days per year of institutional good time credit).” Laura E. Hankins & Robert L. Wilkins, *Sentencing Reform Amendment Act of 2000: Training Materials*, Public Defender Service of the District of Columbia, 2, PDF version available at <http://www.lawbbs.net/gideon/sra2000.htm>.

The view that federal good time credit meant prisoners served 85% of their sentence was widespread. As U.S. Attorney for the Northern District of Alabama Mike Whisonant noted about the federal provisions: “Under the new law, you serve approximately 85 percent of your sentence. . . You’re eligible for 15 percent of your time off on good time. And that’s only after the first year.” Robert DeWitt, *J.C. Pate freed on ‘extra good time,’* Tuscaloosaneews.com, April 3, 2002, at <http://www.tuscaloosaneews.com/news/stories>. In connection with passage of his state’s own good time credit legislation, Alaska State Senator Dave Donley made similar observations: “Federal statutes require inmates to serve at least 85% of the sentence imposed. The Federal government has asked all states to adopt its 85% sentencing standard.” *Senate Judiciary Passes Measure to Reduce ‘Good Time’ Sentence Reductions*, Alaska State Legislature: News from the Senate Majority at <http://www.akrepublicans.org/prdonley102231999.htm>. Thus, the law understood by most practitioners is that the 54 days is based on the sentence imposed and therefore involves serving 85% of the sentence.⁶

III. EVEN ONE UNDESERVED DAY IN PRISON VIOLATES THE CONSTITUTION

⁶ “Q: Is there federal parole? How many days of ‘good time served’ credit can you get in federal prison?” “A: The maximum allowable good time is 54 days per year. This means that federal prisoners now serve 85 percent of their sentences.” Contributing lawyers, *FAQ: Federal Crimes*, Prairielaw on lawyers.com, at <http://www.prairielaw.com/articles/article.asp?channelID=8&articleID=1633>.

It is undisputed that the BOP's methodology results in seven days less of good time credit on each year of a prisoner's sentence. The consequences are, therefore, dramatic for the individual prisoner. *See* Petition for Certiorari, Appendix I. On a ten year sentence, the impact is 70 additional days in prison under the BOP's calculations. For a prisoner serving a 25 years in prison, the BOP's methodology would require him to serve an additional six months in prison.⁷

This Court has recognized that each day in prison is a deprivation of liberty interest with constitutional implications. In the recent case of *Glover v. United States*, 531 U.S. 198, 203 (2001), this Court rejected the concept that short periods of unlawful incarceration were tolerable under the Constitution:

Authority does not suggest that minimal amount of additional time in prison cannot constitute prejudice. Quite to the contrary, our jurisprudence suggests that any amount of actual jail time has Sixth Amendment significance.

Glover, 531 U.S. at 203. As the Court has noted, "the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or 'petty' matter and may well result in quite serious repercussions. . . . " *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (quoting *Baldwin v. New York*, 399 U.S. 66, 73 (1970)). To allow a prisoner to serve time in prison -- even if measured in days -- longer than required by statute is an anathema to the rule of law and cannot be justified.⁸

IV. THIS BOP'S ERRONEOUS METHODOLOGY RESULTS IN MILLIONS OF PRISONERS SPENDING NUMEROUS DAYS IN PRISON UNLAWFULLY AND REQUIRES REVIEW BY THIS COURT.

⁷ In the case of Pecheco-Camacho. although he has been released from prison, this case is not moot because the term of the petitioner's supervised release may be modified or terminated to provide at least a partial equitable remedy for any over-service of custody. *See, e.g., Gunderson v. Hood*, 268 F.3d 1149 (9th Cir. 2001) and *United States v. Johnson*, 529 U.S. 53 (2000).

⁸ "[J]ustice consists not only of convicting the guilty, but also of assigning them a lawful and just punishment." *United States v. Tayman*, 885 F.Supp. 832 , 844 (E.D. Va. 1995).

This case does not involve only one additional day in prison, or even the seven additional days in prison served by petitioner here. Instead, the issue raised by this petition impacts virtually all of the more than 130,000 prisoners currently serving guideline sentences in the federal system. For the average prisoner, the BOP's methodology results in more than two additional months in prison. Thus, the liberty interest at stake is enormous. Because of the very real and human impact of the issue posed by this petition, review by this Court is appropriate and necessary.

CONCLUSION

For all of the foregoing reasons, FAMM, NACDL, and NAFD, as amici curiae, respectfully submit that the petition for writ of certiorari should be granted.

Respectfully submitted,

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