

# **SAMPLE 2241 PETITION**

## **I. PRELIMINARY STATEMENT**

**1.1** The petitioner is a federal prisoner at INSTITUTION whose statutory and due process rights are being violated by the Bureau of Prisons' misinterpretation of 18 U.S.C. §3624(b), which deprives him of eligibility for the 54 days of good time credit for each year of his term of imprisonment to which he is statutorily entitled.

## **II. JURISDICTION**

**2.1** This Court has jurisdiction over this action pursuant to 28 U.S.C. §2241 because the petitioner's term in federal custody is being determined in violation of the Constitution and laws of the United States.

**2.2** The petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. §1331 in that the action arises out of the Constitution and laws of the United States and seeks corrective action by officers and employees of the United States in their official capacity.

**2.3** The petitioner also invokes the jurisdiction of this Court pursuant to 28 U.S.C. §1343(4) in that the petitioner seeks to redress deprivation of rights guaranteed by both the Constitution and federal statutes.

## **III. PARTIES**

**3.1** The petitioner is presently confined at INSTITUTION pursuant to the judgment of the United States District Court for the District of STATE.

**3.2** WARDEN is the Warden of INSTITUTION and, through the Bureau of Prisons, an agency of the United States Department of Justice, is responsible for the petitioner's custody and calculation of his term of confinement.

#### **IV. STATEMENT OF FACTS**

**4.1** On DATE OF SENTENCING, the Honorable JUDGE, District Court Judge for the District of STATE, sentenced the petitioner to a term of imprisonment of TERM, upon his conviction of violation of OFFENSE in *United States v. NAME*, No.CR CASE NUMBER.

**4.2** Mr. NAME has been in custody in connection with this offense since DATE OF INCARCERATION.

**4.3** 18 U.S.C. §3624(b) provides that “a prisoner who is serving a term of imprisonment of more than 1 year . . . may receive credit toward the service of the prisoner’s sentence . . . of up to 54 days at the end of each year of the prisoners term of imprisonment.”

**4.4** Under BOP policy, the maximum allowable good time credit that can be awarded to a prisoner sentenced to a year and a day is approximately 47 days because the BOP bases its calculations on the actual time in prison rather than the sentence imposed as set out in Program Statement 5880.28 (June 20, 1997).

**4.5** The BOP has calculated Mr. NAME’s sentence according to Program Statement 5880.28 to reflect a potential award of NUMBER days of good time credit, and projected his release date as PROJECTED RELEASE DATE.

**4.6** Were Mr. NAME granted relief he would be entitled to earn NUMBER days of good time credit as provided for in 18 U.S.C. §3624(b), rather than the NUMBER days provided for under BOP policy.

#### **V. STATEMENT OF LAW**

**5.1** Mr. NAME, having been sentenced to a term of imprisonment of one year and a day, is entitled under 18 U.S.C. §3624(b) to earn 54 days of good time credit.

**5.2** Mr. NAME is statutorily entitled to earn 54 days of credit for each year of his

term of imprisonment because the plain language of the statute provides that “a prisoner who is serving a term of imprisonment of more than 1 year . . . may receive credit toward the service of the prisoner’s sentence . . . of up to 54 days at the end of each year of the prisoners term of imprisonment.” 18 U.S.C. §3624(b).

**5.3** The BOP’s interpretation is contrary to the unambiguous intent of Congress that prisoners are eligible to earn 54 days for each year of the term of imprisonment. *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984). *United States v. LaBonte*, 520 U.S. 751, 762 n.6 (1997).

**5.4** Even if the statute were ambiguous, the BOP’s interpretation is not entitled to deference because the rule of lenity must be used in construing an ambiguous penal statute. *Bifulco v. United States*, 447 U.S. 381, 387 (1980).

**5.5** The conduct of the respondent and his agents in promulgating a policy denying Mr. NAME eligibility for to earn the statutory maximum credit of 54 – and barring good time of no more than 47 days – days deprives him of rights conferred by 18 U.S.C. §3624(b), as well as the Equal Protection and Due Process Clauses of the Fifth Amendment.

Wherefore, the petitioner respectfully requests that this Court:

- 1) Grant the writ of habeas corpus; and
- 2) Order that the Bureau of Prisons to recalculate Mr. NAME’s projected release date reflecting that he is eligible to earn 54 days of good time credit for each year of his term of imprisonment.

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.