

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Julio Gutierrez-Jaramillo — PETITIONER
(Your Name)

vs.

Warden, FCI Gilmer — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Julio Gutierrez-Jaramillo
(Your Name)

FCI Gilmer/P.O. Box 6000
(Address)

Glenville, WV 26351
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

- I. Whether prior credit for time held in foreign detention can only be given by the Federal Bureau of Prisons and to do so by the district court at sentencing is contrary to this Court's opinion in United States v. Wilson, 503 U.S. 329 (1992)

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

- ☐ reported at unknown; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 15, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner was denied due process of law as provided by the Fifth Amendment to the Constitution by the District Court failing to order prior credit as required by 18 U.S.C § 3583(b) and Bureau of Prison Program Statement 5880.30(a).

STATEMENT OF THE CASE

Petitioner was arrested in Peru based on a warrant of the United States. He was held in a Peruvian Prison serving a 15 year sentence for Peru. The United States requested extradition upon of completing the Peruvian sentence. On or about OCTOBER 4, 2002, Petitioner was granted parole on his Peruvian sentence and the United States asked that Petitioner be held for several days until the United States could implement the extradition. Petitioner was not extradited to the United States until December 12, 2012 and was given no prior credit for the 87 months he did while awaiting extradition.

Petitioner was eventually sentenced and given a downward departure of the Sentencing Guidelines for the totality of the circumstances in Peru but not based solely on the issue of prior credit. It is Petitioner's position that he was never given credit for prior custody because the district court did not have the authority to give prior credit based on this Court's opinion in United States v. Wilson, 503 U.S. 329 (1992). In Wilson, this court opined that only the Federal Bureau of Prisons has the authority to give prior credit under 18 U.S.C. § 3585(b).

Petitioner sought that he be given prior credit in the amount of 87 months.

REASONS FOR GRANTING THE PETITION

The issue in this case is fairly straightforward, Petitioner was arrested in Peru based on a United States drug trafficking. Upon arrest he was also charged with drug trafficking in Peru. During that time the United States requested extradition of Petitioner. Petitioner was held in Peru beginning in 1995. Up and until October 4, 2002, Petitioner was serving his Peruvian sentence, but was granted parole on that date. The United States immediately requested Petitioner be held for several days until the United States could extradite him. It was 87 months later when United States actually extradited Petitioner, on December 23, 2009. Petitioner has never been given credit for the 87 months he was held at the behest of the United States.

At sentencing the District Court gave Petitioner a downward departure based on "the totality of his circumstances in Peru, which included his inhumane living conditions, not specifically the extradition debacle.

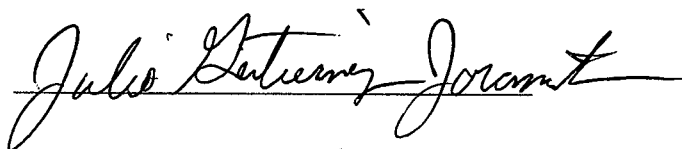
The issue here is the Government claims because Petitioner was given a downward departure he had already been given credit for the 87 months he has received no credit for. The facts are that, but for not the United States request Petitioner be held he would have been released from the Peruvian prison on October 4, 2002.

Based on this Court's decision in United States v. Wilson, 503 U.S. 329 (1992) only the Bureau of Prisons has the authority to issue prior credit. Surely the district court was aware of its authority, and any downward departure was not meant to cure this travesty of justice, where a person is held in a foreign court at the behest of the United States and not given credit for 87 months. Bureau of Prisons Program Statement 5880.30(a) and 18 U.S.C. § 3585(b) requires the BOP give Petitioner said credit. This Court has spoken in Wilson that the district court does not have authority.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: June 11, 2018