

No. \_\_\_\_\_

18-6373

IN THE

SUPREME COURT OF THE UNITED STATES

ERWIN EUGENE SEMIEN

(Your Name)

PETITIONER

SEP 27 2018

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

vs.  
UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

ERWIN EUGENE SEMIEN

(Your Name)

F.C.I. Beaumont Low P.O. BOX 26020

(Address)

Beaumont, TEXAS 77720

(City, State, Zip Code)

N/A

(Phone Number)

## QUESTION(S) PRESENTED

Question One: Does the Federal time credit Statute 18 U.S.C. § 3585(b) use of the non-discretionary language that federal inmates "Shall be given credit" create a liberty interest in sentencing credits? And if so is this "state-created" liberty interest protected by the 5th Amendment due process clause? As this court has decided in Board of Pardons v. Allen, 482 U.S. 369, 107 S.Ct. 2415, 96 L.Ed. 2d 303 (1987) and Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 99 S.Ct. 2100, 60 L.Ed. 2d 668 (1979).

Question Two: Is the 5th Circuits holding that a person who is subject to "detention orders" [18 U.S.C. § 3142(e)] and "Sentencing orders" [18 U.S.C. § 3143(a)] is not "official detention" contrary to Supreme Court precedent and clearly established law set forth in Reno v. Koray 515 U.S. 50, 132 L.Ed. 2d. 46, 115 S.Ct. 2021 (1995).

Question Three: Does a person who was "released in error" into community and living a lawful and law-abiding life for a number of years, have a right to procedural due process established in Morrissey v. Brewer 408 U.S. at 477, 33 L.Ed. 2d. 484, 92 S.Ct. and YOUNG V. HARPER 520 U.S. 477 (1997) entitling them to "some type of hearing" before reimprisonment? The D.C. Court of appeals (see. Hurd v. Dist. of Columbia, D.C. Cir., No. 15-7153, 7/28/17) and the 5th Cir. in Semien v. United States No.17-40970 are in conflict on this issue. Which court is correct?

## 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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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 <sup>A</sup>\_\_\_\_\_ 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 United States district court appears at Appendix <sup>B</sup>\_\_\_\_\_ 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 August 10, 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: September 10, 2018, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

18 U.S.C. § 3585(b) Credit for Prior Custody: A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences-

- (1) as a result of the offense for which the sentence was imposed; or
- (2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed; that has not been credited against another sentence.

5th. Amendment: Due process clause.

## STATEMENT OF THE CASE

On December 14, 2005, the federal grand jury returned count indictment. On December 27, 2005 petitioner made an initial on the indictment by writ of habeas corpus ad prosequendum, where an order of detention was filed (docket entry No. 12 and 24). On December 20, 2006 petitioner was sentenced to 115 months imprisonment, six years supervised release, and \$400 special assessment (docket No. 148 & 149). On April 18, 2007, petitioners State parole was revoked due to federal conviction. On February 13, 2009 I was released (now known in error) from State custody, to which I stayed out a total of 5 years and 3 months (63 months). Until my re-arrest by the U.S. Marshalls on May 2, 2014.

On July 2, 2015, Petitioners sentence was reduced to 96 months based on a retroactive amendment to the sentencing guidelines (docket No. 183) Pursuant to 18 U.S.C. § 3582(c)(2).

Petitioner exhausted all administrative remedies as required by law. Warden denial July 28, 2014, Regional denial October 30, 2014, Washington denial on March 6, 2015.

Once administrative remedies were exhausted, petitioner through counsel filed a Writ of Habeas corpus (§ 2241) (cause No. 1:15-cv-257) Docket entry No. 1) which the magistrated recommended denied on March 28, 2016 (see. docket No. 8). petitioner timely objected on April 6, 2016 (see. docket No. 9 & 10) requesting "de novo" review which was denied on August 22, 2017 (docket No. 12 & 13).

Petitioner Appealed (Timely) to Court Of Appeals for the Fifth Circuit Appeal No. 17-40970. Which was denied on August 10, 2018, Petitioner rehearin EnBanc denied on September 10, 2018.

## REASONS FOR GRANTING THE PETITION

This court should grant petition due to the magnitude of the CONSTITUTIONAL issues and the impact on the amount of federal prisoners this case will affect. This court decision would put all persons convicted of a federal offense on notice that the statute 18 U.S.C. § 3585(b) creates a "liberty interest" in sentencing credits and that "liberty interest" is protected by the 5th Amendment due process clause. It would be in the interest of justice and fairness to notify the public of this State-Created CONSTITUTIONAL Right.

This Court should Grant this Petition to Put all **citizens** on notice that they have a right to **procedural due process** before being recommitted to imprisonment and are entitled to the procedural protections set forth by this court in **Morrissey v. Brewer** 408 U.S. 477, 33 L.Ed. 2d. 484, 92 S.Ct. 2593 (1972).

In the interest of Justice and fairness this Honorable Court should GRANT petition due to the impact on every future person convicted and sentenced to imprisonment for a federal offense.

RESPECTFULLY,

ERWIN EUGENE SEMIEN

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ERWIN EUGENE SEMIEN

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Date: September 24, 2018