

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

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CHIDI EZEObI,

Appellant,

-v.-

WARDEN FAIRTON FCI,

Appellee.

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MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS

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**MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS**

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The petitioner, Chidi Ezeobi, who is incarcerated in a federal correctional facility, asks leave to file the attached Petition for a Writ of Certiorari to The Supreme Court of the United States of America without prepayment of costs and to proceed in forma pauperis, pursuant to Rule 39 of this Court.

The Petitioner was previously granted leave to proceed in forma pauperis in the Court of Appeal for the Third Circuit. By order of the Court of Appeals dated December 18, 2018, the undersigned was appointed as counsel for the petitioner pursuant to the Criminal Justice Act, 18 USC § 3006A, which is why no affidavit from the petitioner is attached, pursuant to Supreme Court Rule 39(1).

Dated: August 9, 2019

/s/ Mark Diamond  
Attorney for Petitioner

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

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**CHIDI EZEObI,**

**Appellant,**

**-v.-**

**WARDEN FAIRTON FCI,**

**Appellee.**

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**PETITION FOR A WRIT OF CERTIORARI**

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August 9, 2019

MARK DIAMOND  
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## **QUESTIONS PRESENTED FOR REVIEW**

1. Is Mr. Ezeobi entitled to seven months of credit toward his sentence for the time he was incarcerated in England awaiting extradition to the United States?
2. Should the case have been transferred to the sentencing court because it stated when originally sentencing Mr. Ezeobi that it assumed he would receive the seven months of credit?

## **TABLE OF CONTENTS**

	<u>Page</u>
QUESTIONS PRESENTED FOR REVIEW .....	4
TABLE OF CONTENTS .....	5
TABLE OF AUTHORITIES .....	6
OPINIONS BELOW .....	7
JURISDICTION .....	7
CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED .....	7-8
STATEMENT OF THE CASE .....	8
BACKGROUND OF THE CASE .....	8-9
REASONS FOR GRANTING THE WRIT .....	9
ARGUMENTS .....	10-21
CONCLUSION.....	21
PROOF OF SERVICE.....	22

## **APPENDIX**

<i>Order of U.S. Court of Appeals for the Third Circuit</i> .....	App. A
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## **TABLE OF AUTHORITIES**

### **Statutes And Standards**

28 USC § 2241 .....	10
18 USC § 3582(c)(2) .....	10
18 USC § 3184 .....	11
28 U.S.T. § 227, T.I.A.S. No. 8468.....	11
18 USC § 3187 .....	11
18 USC § 3585(b)(1) .....	12
18 USC § 4105(c)(1) .....	14
USSG § 5G1.3 .....	20

### **Cases**

<i>United States v. Wilson</i> , 503 U.S. 329 (1992).....	10
<i>Pizzichiello v. Dir. Fed. BOP</i> , 193 F. App'x 907 (11 <sup>th</sup> Cir. 2006) .....	14
<i>Mehta v. Wigen</i> , 597 F.App'x. 676 (3d Cir. 2015) .....	16
<i>Burke v. Lockett</i> , 499 F. App'x 613 (7 <sup>th</sup> Cir. 2013) .....	20

## **OPINIONS BELOW**

The United States Court of Appeals for the Third Circuit affirmed judgment in *Chidi Ezeobi v. Warden Fairton, FCI*, Slip Copy 2019 WL 3283220 (3d Cir.). (Appendix A)

## **JURISDICTION**

The final Order of the U.S. Court of Appeals, Third Circuit, was issued on July 22, 2019. This petition was filed within ninety days thereof. Jurisdiction in the trial court was based on 18 USC § 3231, since the appellant was charged with offenses against the laws of the United States of America. The jurisdiction of this Court is invoked under 28 USC § 1254 and Supreme Court Rule 10.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves the Fifth Amendment, which assures that no one shall be deprived of life, liberty, or property, without due process of law. The case also involves the Eighth Amendments, which provides against the infliction of cruel and unusual punishments. Finally, the case involves 28 USC § 2255 which affords habeas corpus relief to “a prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence,

or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.”

### **STATEMENT OF THE CASE**

By affirming his conviction, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power. In addition, the Third Circuit’s ruling contradicts rulings on the same issue rendered by the Supreme Court as well as its own precedent.

### **BACKGROUND OF THE CASE**

This appeal arises out of a sentence imposed by the United States District Court for the Southern District of New York under case number 1:10-CR-00669-001(DLC) on February 16, 2012. Mr. Ezeobi was convicted of one count each of conspiracy to distribute and possess with intent to distribute cocaine and conspiracy to export cocaine. The Bureau of Prisons determined that he shall not be given seven months of jail credit for the time spent awaiting deportation in Great Britain.



On March 28, 2016, Mr. Ezeobi filed his petition for a writ of habeas corpus under 28 USC § 2241 before the United States District Court for New Jersey. On April 27, 2017, the New Jersey district court denied relief under USDC 1-16-CV-01684. Mr. Ezeobi appealed the decision on May 15, 2017. The Court of Appeals for the Third Circuit affirmed on July 22, 2019.

### **REASONS FOR GRANTING THE WRIT**

1. Mr. Ezeobi is entitled to seven months of credit toward his sentence for the time he was incarcerated in England awaiting extradition to the United States. The sole basis for his incarceration was the provisional arrest warrant filed with the United Kingdom by the United States. (18 USC §§ 3585(b)(1); 4105(c)(1); *Mehta v. Wigen*, 597 F.App'x. 676 (3d Cir. 2015))

2. The New York district court calculated Mr. Ezeobi's sentence based upon assertions by the Department of Justice, and its belief, that Mr. Ezeobi would get seven months of jail credit for the time he spent awaiting extradition. If the determination that he is not entitled to the seven months is allowed to stand, the case should have been transferred to the sentencing court to modify the sentence. (*Burke v. Lockett*, 499 F. App'x 613, 615 (7<sup>th</sup> Cir. 2013); USSG § 5G1.3)

**ARGUMENT 1: THE BUREAU OF PRISONS ERRED BY NOT CREDITING MR. EZEObI WITH JAIL CREDIT FOR THE TIME HE AWAITED EXTRADITION.**

An incarcerated person is entitled to judicial review upon exhaustion of administrative remedies by filing a petition under 28 USC § 2241. (*United States v. Wilson*, 503 U.S. 329 (1992)) In 2010, Mr. Ezeobi was serving a sentence in a British prison for a drug crime he committed there. He was scheduled to be released in August, 2010, based upon his voluntary extradition to Nigeria.

In the interim, on July 29, 2010, he was indicted on four drug-related counts in the U.S. District Court for the Southern District of New York. A provisional arrest warrant was filed with the United Kingdom on August 9, 2010. Based solely upon the warrant from the United States, the British incarcerated Mr. Ezeobi when they otherwise would have released him.

After seven months of additional incarceration, Mr. Ezeobi was extradited to the United States on March 3, 2011. He was tried in the Southern District and convicted of two counts of distributing and conspiracy to distribute cocaine. On February 16, 2012, he was sentenced to 151 concurrent months in prison on each count. On November 20, 2018, his sentence was reduced retroactively to 121 concurrent months in prison because of an amendment to the sentencing guidelines, pursuant 18 USC § 3582(c)(2). (USDC SDNY 110, Order)

When sentencing Mr. Ezeobi in 2012, the Southern District court stated on the record that its sentence was based upon the Government's assertion, and its belief, that Ezeobi was entitled to seven months of jail credit for the seven months he was held in England awaiting extradition to the United States. In its order denying habeas relief, the New Jersey District Court and Government agree that Mr. Ezeobi was incarcerated in the United Kingdom for the seven months from August, 2010, to March, 2011, because of the United States provisional arrest warrant and if not for the warrant, he would have been released from prison for voluntary deportation to Nigeria. (USDC NJ 13, App. 21)

Despite this, the Bureau of Prison decided he is not entitled to the seven months of jail credit. (USDC NJ 1-2, pp. 7-17) That caused Mr. Ezeobi to file a habeas petition. [The petition was brought in New Jersey because that is where he is incarcerated.]

Extradition from the United States is governed by 18 USC § 3184 et. seq. and treaty. The United States and United Kingdom have an extradition treaty. (28 U.S.T. § 227, T.I.A.S. No. 8468)

Ordinarily, the extradition process is initiated by a formal request from the United States to the foreign country. Most treaties, including the one with Great Britain, also provide for a person's provisional arrest in urgent cases while the extradition request is perfected under 18 USC § 3187.

A provisional arrest and detention of a fugitive in advance of the presentation of formal proofs may be obtained upon the request by the United States. It “shall” be accompanied by an express statement that a warrant for the fugitive’s arrest has been issued within the jurisdiction of the authority making the request charging the fugitive with the commission of the crime for which his extradition is sought. In Mr. Ezeobi’s case, the appellee has provided no evidence in its opposition to Mr. Ezeobi’s habeas petition, or in any other document that it has filed, that “an express statement that a warrant for the fugitive’s arrest has been issued within the jurisdiction of the authority making the request charging the fugitive with the commission of the crime for which his extradition is sought,” as required under 18 USC § 3187.

Despite this, the Bureau of Prisons determined that Mr. Ezeobi is not entitled to jail credit for the seven months he was held by the United Kingdom when his freedom would otherwise have been unrestricted but for the provisional arrest warrant filed by the United States. The Bureau of Prisons held that because Mr. Ezeobi’s British sentence was reinstated, that precludes a jail time credit in the United States even though the sole the cause of his reinstatement was the United States provisional warrant. In support of its position, the BOP, and appellee in its opposition, cite 18 USC § 3585(b)(1) which states the following:

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 as a result of the offense for which the sentence was imposed that has not been credited against another sentence.

Since Mr. Ezeobi received seven months of jail credit in Britain toward his British sentence, their argument goes, he is not entitled to credit for the same time toward his United States sentence. The argument is incorrect. First, despite the Government's claim, there is no evidence in the record that he was being held on a British sentence at the time the United States requested he be held for deportation. In none of its papers opposing Mr. Ezeobi's habeas petition has the Government provided a single document from the United Kingdom stating that Mr. Ezeobi was serving a British sentence during the seven months he was incarcerated pending extradition.

In none of its opposition papers has the Government provided a single document from the United Kingdom stating that it was refusing to honor the United States provisional arrest warrant or that he was held for the seven months in question for any reason other than that warrant. Nor is there any evidence in the record that Mr. Ezeobi was incarcerated on a British sentence during the seven months in question and not for extradition. For this reason alone, the District Court and Bureau of Prisons erred when they held that the sole basis for Mr. Ezeobi's seven months of incarceration was a British sentence and that precluded credit toward his United States sentence under 18 USC § 3585.

The second reason that Mr. Ezeobi should receive seven months of jail credit toward his United States sentence is that 18 USC § 3585(b)(1) which prevents double jail time credit, applies strictly to multiple sentences imposed within the United States. It is inapplicable where the jail credit sought is from a foreign sentence. Mr. Ezeobi was not the subject of multiple sentence imposed within the United States.

The theory behind 18 USC § 3585(b)(1) is that procedural and substantive laws, standards and burdens of proof, and constitutional rights vary among countries, including the laws of due process and equal protection. For example, the United States affords codified constitutional guarantees to due process whereas the United Kingdom does not have a codified constitution and its Bill of Rights does not include an equivalent guarantee of due process. 18 USC § 3585(b)(1) applies strictly to sentences imposed within the United States. Ezeobi's British sentence, assuming *arguendo* that he was serving one, is immaterial to the issue of jail time credit in the United States.

Mr. Ezeobi's third argument is that 18 USC § 4105(c)(1) provides that persons transferred from foreign prisons shall transfer with credit earned in serving a foreign sentence. (see also, *Pizzichiello v. Dir. Fed. BOP*, 193 F. App'x 907, 909 (11<sup>th</sup> Cir. 2006) 18 USC § 4105(c)(1) states the following in relevant part:

The transferred offender shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer.

For this additional reason, the Bureau of Prisons erred when it declined to grant Mr. Ezeobi seven months of jail credit for the time he was incarcerated in the United Kingdom awaiting extradition.

The final reason that Mr. Ezeobi is entitled to seven months of credit is because the provisional arrest warrant issued by the United States was the sole cause of his seven months of incarceration. The United Kingdom had already terminated Mr. Ezeobi's sentence for voluntary deportation to Nigeria when it received the United States provisional arrest warrant. But for the arrest warrant, Mr. Ezeobi would not have been incarcerated. The Government and District Court both agree that this is true. The District Court held, "At petitioner's sentencing, the Government represented that petitioner's voluntary deportation from the U.K. to Nigeria was stopped due to the U.S. federal indictment.... The sentencing court summarized the facts, stating that petitioner had qualified for early deportation to Nigeria, but was not permitted by British authorities to take advantage of this early deportation program due to the indictment in the United States. The Government and the defense agreed with the Court's summary." (USDC NJ 13, App. 20-21)

Mr. Ezeobi's freedom would not have been curtailed but for the United States provisional arrest warrant. There is no indication in the record that the

British had any other reason to revoke its early termination of his sentence. 18 USC § 3582(b)(1) provides that, “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 as a result of the offense for which the sentence was imposed and that has not been credited against another sentence.” The sole basis for the seven months that Ezeobi was “credited” in the United Kingdom was the American indictment, not the United Kingdom sentence, because the United Kingdom sentence had already been terminated by the time the United States sought his detainer.

But for the United States provisional arrest warrant, Ezeobi would have been a free man. (*Mehta v. Wigen*, 597 F.App’x. 676 (3d Cir. 2015)) The time during which he was not a free man and in official detention solely because of the United States provisional hold should have been credited to his then-pending United States offense. For all these reasons, the Court of Appeals should have credited Mr. Ezeobi with the seven months of jail credit that the Bureau of Prisons disallowed.



**ARGUMENT 2: THE CASE SHOULD HAVE BEEN TRANSFERRED TO THE SOUTHERN DISTRICT OF NEW YORK.**

Assuming arguendo that Mr. Ezeobi is not to be credited seven months by the Bureau of Prison, the case should have been transferred by the Court of Appeals back to the sentencing U.S. District Court in New York.

In 2012, the U.S. District Court for the Southern District of New York sentenced Mr. Ezeobi to 151 months in prison. This sentence, the court said at the time of sentencing and in its written Judgment, was determined and calculated based upon its belief that Mr. Ezeobi was entitled to seven months of jail credit for the seven months that he was held in prison in England because of a request by the United States that his freedom be restricted. The court's belief was justified by the record agreement of the defendant and Government that Mr. Ezeobi was entitled to seven months of credit for time served since the sole cause of his seven months of incarceration in England was the United States provisional arrest warrant. (USDC SDNY 67; USDC NJ 13)

Put another way, the sentencing court fashioned its sentence based upon its goal that Mr. Ezeobi be incarcerated seven fewer months than the final sentence it imposed. Had it known that seven months would not be credited to Mr. Ezeobi, his sentence would have been seven months shorter.

The sentencing court subsequently granted Mr. Ezeobi's 18 USC § 3582 petition and retroactively reduced his sentence from 151 months to 121 months.

But the reduction was not for the seven months he served in England pending extradition. It was for an amendment to the Guidelines that reduced the sentence range for certain drug convictions unrelated to the issue now on appeal. (USDC SDNY 110, Order) The sentencing court did not hold that its reduced sentence of 121 months of incarceration was in lieu of, or meant to include the seven months of jail credit it originally afforded Mr. Ezeobi. (USDC SDNY 109, Order)

At Mr. Ezeobi's original sentencing, the following colloquy took place:

DEFENSE COUNSEL: That gets me to the last point. Mr. Ezeobi was to be released and was determined to be eligible for the early release program in the U.K. He had a plane ticket for August 16 of 2010 to go back to Nigeria. He was on a Virgin Atlantic flight at 10:30 at night. He agreed to be deported to the country of his citizenship. He has dual citizenship in the U.S. and U.K., and Mr. Ezeobi was told after they determined he was eligible to go home and he was being released, yes, his sentence was supposed to initially run until May of 2011, but because he was eligible for the early release program because he agreed to deportation back to Nigeria, the U.K. had determined he could leave in August of 2010, completing his sentence.

Within a day or two before he was supposed to get on the flight back to Nigeria, the U.S. authorities contacted the U.K., said we want you to hold him because we have a charge here in the United States. So he was not allowed to leave because of the indictment here.

Over the next few months, he was visited by people in the embassy, the U.S. embassy in the U.K. They were trying to understand what the charge was here in the United States. He would have been able to go home but for the U.S. calling about this charge. It took some months to understand what was going on with the U.S. He had to get court-appointed counsel in the U.K., and Mr. Ezeobi said I didn't do anything that has me

concerned about the U.S. and I will go back. I'm not going to fight this, I'm not going to require that they extradite me, and he did. So he had completed his term of imprisonment. He could have stayed and fought it out and still would have been in jail for months, but he didn't do that." (USDC SDNY 67, App. 51-52)

THE COURT: With respect to the last issue I think that's been raised before me and that is whether or not any sentence I impose should attempt to give the defendant credit for seven months, which is the period between August of 2010 and March of 2011, I think the facts as now agreed to by the parties are as follows, but I want to make sure that this is right. I think it is agreed that the British sentence would have ended in May of 2011. The defendant, however, qualified for an early release program on that British sentence which would have permitted him to return to Nigeria in August of 2010. He was not returned to Nigeria, however, because of the government's extradition request, and he was ultimately transported to the United States in March of 2011. Piecing together what I've heard from the government in its sentencing submission and what defense counsel has said, those are, as I understand it, the undisputed facts.

Is that right, from the government's point of view, Mr. Stansbury?

MR. STANSBURY: Your Honor, if I can just correct a couple of things.

Since we submitted our submissions, we've also spoken to some representatives at OIA who were able to flesh out some of this as well. There was no extradition request, just to be clear. The Court's correct that Mr. Ezeobi's term was set to expire in May 2011 in London and that he did qualify for early release to go to Nigeria. I do not know that the date was August 2010. It may have been later in 2010. I don't think that's material, but I don't know that exact date.

We did approach the U.K. authorities in August 2010, and, as a result, Mr. Ezeobi, they put a hold on his deportation to

Nigeria. As a result, he was placed back in the detention essentially to serve out the rest of his term until May 2011. Subsequently we learned that he would voluntarily come to the United States so there was no extradition request, and he did so in March 2011.

THE COURT: Thank you. So let me then restate what I understand to be the undisputed facts. The defendant's British sentence was to end in May of 2011. He qualified, however, for the early release program and expected to be released to Nigeria, deported to Nigeria, on August 16, 2010. During August, however, the U.S. authorities were in touch with the British authorities. He was not permitted by British authorities to return to Nigeria and ultimately he agreed to come to the United States voluntarily to face charges here, and he was transported to the United States in March of 2011 pursuant to his agreement.

Does the government agree that that accurately states the facts?

MR. STANSBURY: We do, your Honor.

THE COURT: Ms. Glavin.

MS. GLAVIN: Yes, your Honor.

THE COURT: Thank you. (USDC SDNY 67)

The district court's statements at sentencing, including its statement, "With respect to the last issue I think that's been raised before me and that is whether or not any sentence I impose should attempt to give the defendant credit for seven months ...." demonstrates its intent to impose a sentence that included seven months of jail time credit, and that had it know the seven months would not be credited it would have imposed a lower sentence. The sentencing court's written

Judgment makes the same point in stating, “The Defendant receive seven (7) months, 8/2010 thru 3/2011, of credit for the time he was held in the UK pursuant to the request of the U.S. Government pending transfer to the US for prosecution.” (USDC SDNY 63)

The New York district court has the authority to reduce a sentence on account of time spent awaiting extradition. (see, *Burke v. Lockett*, 499 F. App’x 613, 615 (7<sup>th</sup> Cir. 2013); USSG § 5G1.3) The amount of adjustment that the sentencing court would have made had it known that the BOP would not grant Ezeobi seven months of credit under § 3585(b) cannot be determined on hindsight.

In conclusion, the Bureau of Prisons has determined that Mr. Ezeobi is not entitled to the seven months of jail time credit that the sentencing court believed he was entitled to. Since this was not the intent of the sentencing court or the Government, the case should have been transferred to the district court. The Court of Appeals’ decision not to do so unnecessarily delays the sentence and relief that was envisioned by the sentencing court.

### **CONCLUSION**

FOR THESE REASONS, the petitioner respectfully asks this Court to issue a *writ of certiorari* to review the Court of Appeals for the Third Circuit’s decision to affirm the district court’s denial of his habeas petition, and for such further relief as this Court deems proper.

Respectfully submitted,

/s/ Mark Diamond

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**CHIDI EZEObI,**

**Appellant,**

**-v.-**

**WARDEN FAIRTON FCI,**

**Appellee.**

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**PROOF OF SERVICE**

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Mark Diamond swears that on August 9, 2019, pursuant to Supreme Court Rules 29.3 and 29.4, I served the attached Motion for Leave to Proceed In Forma Pauperis and Petition for a Writ of Certiorari on every person or his counsel who is required to be served by first-class mail through the U.S. Postal Service. The following were served:

- (1) Ms. Anne Taylor, Office of the U.S. Attorney, 401 Market Street, 4<sup>th</sup> floor, Camden, NJ 08101
- (2) Mr. Chidi Ezeobi, 64805-054, FCI Fairton, Box 420, Fairton NJ 08320.
- (3) Hon. Noel Francisco, Solicitor General, Department of Justice, 950 Pennsylvania Ave. N.W., Washington, DC 20530

/s/ Mark Diamond  
Attorney for petitioner

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 17-2103

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CHIDI EZEObI,  
Appellant

v.

WARDEN FAIRTON FCI

---

On Appeal from the United States District Court  
for the District of New Jersey  
No. 1:16-cv-01684  
District Judge: Hon. Renee M. Bumb

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Submitted Under Third Circuit L.A.R. 34.1(a)  
July 2, 2019

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Before: McKEE, PORTER, and RENDELL,  
*Circuit Judges.*

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JUDGMENT

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This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted on July 2, 2019. On consideration whereof, it is hereby ORDERED and ADJUDGED by this Court that the order of the District Court entered on April 27, 2017, is hereby AFFIRMED. All of the above in accordance with the Opinion of this Court. No costs shall be taxed.



ATTEST:

s/ Patricia S. Dodszeit  
Clerk

Dated: July 22, 2019

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 17-2103

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CHIDI EZEObI,  
Appellant

v.

WARDEN FAIRTON FCI

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On Appeal from the United States District Court  
for the District of New Jersey

No. 1:16-cv-01684

District Judge: Hon. Renee M. Bumb

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Submitted Under Third Circuit L.A.R. 34.1(a)  
July 2, 2019

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Before: McKEE, PORTER, and RENDELL,  
*Circuit Judges.*

(Filed: July 22, 2019)

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OPINION\*

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PORTER, *Circuit Judge*.

Chidi Ezeobi claims that he was entitled to prior custody credit under 18 U.S.C. § 3585(b) for the seven months he spent incarcerated in the United Kingdom pending deportation back to the United States to answer charges here. Though it appears that the original sentencing court agreed with him, the Bureau of Prisons (“BOP”) did not and withheld the credit. Addressing Ezeobi’s subsequently filed petition for a writ of habeas corpus, the District Court agreed with the BOP. For the reasons discussed below, we will affirm the District Court’s denial of Ezeobi’s habeas petition.

## I

In July 2010, Ezeobi was indicted in the Southern District of New York (“SDNY”) on four charges of conspiracy to distribute and conspiracy to export controlled substances in violation of 21 U.S.C. §§ 841, 846, and 963. But Ezeobi was not in the SDNY at the time of his indictment. He was serving an unrelated sentence in the U.K. On August 9, 2010, the U.S. Government requested that the U.K. issue a provisional arrest warrant for Ezeobi, but the U.K. declined because he was already serving a domestic sentence.

That was bad news for Ezeobi. Though not scheduled for release from the U.K. until May 2011, Ezeobi had qualified for early deportation to Nigeria. He was set to be voluntarily deported later that August. But once the indictment issued, he was no longer eligible for the early deportation program and was placed back in custody to serve out the remainder of his term. All told, he would remain incarcerated for seven more months until, on March 3, 2011, Ezeobi was deported back to the U.S.

Later that year, Ezeobi was convicted of conspiracy to distribute and conspiracy to export cocaine. He was sentenced to 151 months' imprisonment followed by a period of supervised release. But because of a retroactive change to the Sentencing Guidelines, his sentence was later reduced to 121 months.

When pronouncing Ezeobi's sentence, the original sentencing court in the SDNY noted that the BOP should be aware that Ezeobi "was held in the U.K. pursuant to a request of the government from August of 2010." App. 63–64. And in its written order, it recommended that Ezeobi receive "seven (7) months, 8/2010 thru 3/2011, of credit for the time he was held in the UK pursuant to the request of the U.S. Government pending transfer to the US for prosecution." App. 32. Yet, while the BOP credited Ezeobi with the time he had spent in custody since returning to the U.S., it did not credit him with the seven months spent in the U.K. while awaiting deportation. Instead, the BOP concluded that Ezeobi was incarcerated in the U.K., pending deportation, on his foreign conviction and was not entitled to credit for that time.

Ezeobi petitioned for a writ of habeas corpus under 28 U.S.C. § 2241 in the U.S. District Court for the District of New Jersey, alleging that the BOP violated his rights when it denied the prior custody credit that the SDNY sentencing court had recommended. The District Court denied the petition and Ezeobi timely appealed.

## II

Petitions for writs of habeas corpus raise federal questions, giving the District Court jurisdiction under 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253 over Ezeobi's appeal from the District Court's order denying his habeas

petition. In reviewing the denial of a petition for a writ of habeas corpus brought under 28 U.S.C. § 2241, we “exercise plenary review over the district court’s legal conclusions and apply a clearly erroneous standard to its factual findings.” *Cradle v. United States ex rel. Miner*, 290 F.3d 536, 538 (3d Cir. 2002).

### III

The Attorney General, through the BOP, is responsible for administering federal prison sentences, including calculating the time a federal prisoner must serve. *United States v. Wilson*, 503 U.S. 329, 335 (1992). By statute, federal prisoners are generally entitled to credit against their sentences for time spent incarcerated for the offense for which they were imprisoned, or on other arrests “after the commission of the offense for which the sentence was imposed.” 18 U.S.C. § 3585(b). But this prior custody credit may be granted only if it “has not been credited against another sentence.” *Id.*

Ezeobi claims that he was entitled to prior custody credit for the seven months he spent incarcerated in the U.K. pending deportation back to the U.S. But the District Court found that during those seven months, Ezeobi “was in custody of the U.K. for service of a sentence imposed by the U.K. before his federal indictment,” App. 24, and that Ezeobi “received credit against his U.K. sentence for that time in custody,” App. 25. Factual findings are clearly erroneous only “where [they] are unsupported by substantial evidence, lack adequate evidentiary support in the record, are against the clear weight of the evidence or where the district court has misapprehended the weight of the evidence.” *Interfaith Cmty. Org. v. Honeywell Int’l, Inc.*, 726 F.3d 403, 416 (3d Cir. 2013). Here, the

District Court's factual findings are supported by evidence that is both adequate and substantial,<sup>1</sup> and which the Court properly weighed, so we will uphold them.

Because Ezeobi received credit against his U.K. sentence for the time he spent incarcerated in the U.K., the BOP did not err when it refused to give Ezeobi prior custody credit for those seven months. Consequently, the District Court did not err when it denied his petition for a writ of habeas corpus.

Even so, it appears that the original sentencing court mistakenly thought that Ezeobi would be given credit for that time and imposed a sentence that reflected its assumption. Of course, the sentencing court does not determine prior custody credit. *Wilson*, 503 U.S. at 333–34. But Ezeobi claims that, had the sentencing court known that he would not receive credit for the months he spent in the U.K. pending deportation, it may have imposed a different sentence. In the alternative, then, Ezeobi asks us to remand this case to the original sentencing court to reconsider his sentence. But that court, in the SDNY, does not fall within our jurisdiction.

Thankfully for Ezeobi, there is an avenue by which he may make his case before the original sentencing court. Under 28 U.S.C. § 2255(a),

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<sup>1</sup> See Declaration of Bryan Erickson, SA 41–47 (affidavit stating that (1) Ezeobi was serving a foreign sentence in the U.K. when the indictment issued in the SDNY; (2) the U.K. refused the U.S.'s request for a provisional warrant because Ezeobi was already serving a sentence in the U.K.; and (3) Ezeobi was deported to the U.S. in March 2011, before his U.K. sentence expired in May 2011); SA 72 (file memo explaining that all of Ezeobi's time incarcerated in the U.K. was credited toward his U.K. sentence; he "was not extradited, he was deported and was never in extradition custody subject to the provisional arrest warrant of the United States"); SA 70 (internal email confirming the same).

[a] prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence is ... otherwise subject to collateral attack, *may move the court which imposed the sentence* to vacate, set aside or correct the sentence.

(emphasis added). In *In re Dorsainvil*, we explained that Section 2255 was enacted “to allow for collateral review of the sentences of federal prisoners in the trial court,” rather than the district court in which the prisoner is confined. 119 F.3d 245, 249 (3d Cir. 1997). And in *Gomori v. Arnold*, we recognized that “a challenge to the sentence as imposed must be made under 28 U.S.C. § 2255.” 533 F.2d 871, 875 (3d Cir. 1976). If Ezeobi wishes to further pursue his collateral challenges to his sentence, the proper vehicle is a petition filed in the SDNY under Section 2255.

#### IV

Under 18 U.S.C. § 3585(b), Ezeobi was not entitled to prior custody credit for the seven months he spent incarcerated in the U.K. pending deportation to the U.S. The BOP did not err when it refused to credit Ezeobi with that time and the District Court did not err when it denied Ezeobi’s habeas petition. We will affirm the District Court.

**NOT FOR PUBLICATION**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

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CHIDI EZEObI,

Petitioner,

v.

MARK KIRBY, ADMINISTRATOR,  
FCI FAIRTON,

Respondent.

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Civ. No. 16-1684(RMB)

ORDER

For the reasons set forth in the accompanying Opinion,

**IT IS** therefore on this **27th** day of **April 2017**,

**ORDERED** that the Clerk shall substitute Mark Kirby as the Respondent in this matter; and it is further

**ORDERED** that the petition for writ of habeas corpus under 28 U.S.C. § 2241 (ECF No. 1) is DENIED; and it is further

**ORDERED** that the Clerk shall serve a copy of this Order and the accompanying Opinion on Petitioner by regular U.S. mail; and it is further

**ORDERED** that the Clerk shall close this matter.

s/Renée Marie Bumb

**RENÉE MARIE BUMB**

United States District Judge



**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

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**CHIDI EZEObI,**

**Petitioner,**

**v.**

**MARK KIRBY, ADMINISTRATOR,  
FCI FAIRTON,<sup>1</sup>**

**Respondent.**

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**Civ. No. 16-1684(RMB)**

**OPINION**

This matter comes before the Court upon Petitioner Chidi Ezeobi's ("Petitioner") petition for a writ of habeas corpus under 28 U.S.C. § 2241, alleging the Bureau of Prisons ("BOP") erred in denying prior custody credit that the sentencing court recommended he receive. (Pet., ECF No. 1.) Respondent filed an Answer, opposing habeas relief. (Resp.'s Answer to Pet. For Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Answer"), ECF Nos. 9, 11, 12.) Petitioner filed a reply. (Petr's Reply to the Resp.'s Answer to Habeas Corpus Pursuant to 28 U.S.C.

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<sup>1</sup> Petitioner's immediate custodian is the proper respondent to his petition under 28 U.S.C. § 2241. See Rumsfeld v. Padilla, 542 U.S. 426, 434 (2004). The Court substitutes Mark Kirby, Administrator of FCI Fairton, as the respondent in this matter. (Answer, ECF No. 9 at 2 n. 1).

2241 ("Petr's Reply") ECF No. 10.) For the reasons discussed below, the Court denies the petition.

#### I. BACKGROUND

Petitioner is an inmate at FCI Fairton. (Pet., ECF No. 1 at 1.) On July 29, 2010, Petitioner was indicted in the United States District Court for the Southern District of New York, charged with Conspiracy to Distribute and Possess with Intent to Distribute Cocaine and Conspiracy to Export Cocaine, in violation of 21 U.S.C. §§ 841, 846, and 963. (Decl. of Bryan Erickson ("Erickson Decl.") ECF No. 12, ¶5(a); Doc. 1c., ECF No. 12 at 10.) At that time, Petitioner was serving a foreign sentence in the United Kingdom. (Erickson Decl., ECF No. 12, ¶5(b); Doc. 1d., ECF No. 12 at 19.)

On August 9, 2010, the United States requested that the United Kingdom ("U.K.") issue a provisional arrest warrant for Petitioner. (Id.) The U.K. denied the request because Petitioner was serving a domestic sentence. (Id.) Petitioner was deported to the United States on March 3, 2011, and arrested and detained by the New York City Police Department pending a transfer to federal authorities. (Erickson Decl., ECF No. 12, ¶5(d); Doc. 1f, ECF No. 12 at 38.) On the following day, Petitioner was taken into custody by officers of the Drug Enforcement Administration ("DEA"). (Erickson Decl., ECF No. 12, ¶5(e); Doc. 1g, ECF No. 12 at 40-41.)

On October 21, 2011, Petitioner was found guilty on two counts of his multiple count federal criminal Indictment in the Southern District of New York. (Erickson Decl., ECF No. 12, ¶¶4(a), 5(f)). He was sentenced on February 15, 2012, to a 151-month term of imprisonment for Conspiracy to Distribute and Possess with Intent to Distribute Cocaine and Conspiracy to Export Cocaine, in violation of 21 U.S.C. §§ 841, 846, and 963. (Erickson Decl., ECF No. 12, ¶5(g); Doc. 1h, ECF No. 12 at 43-44.) Upon imposition of the federal sentence, the sentencing court recommended that Petitioner receive seven months of prior custody credit for time served in the U.K. from August 2010 through March 2011. (Pet., ECF No. 1-2 at 2.)

At Petitioner's sentencing, the Government represented that Petitioner's voluntary deportation from the U.K. to Nigeria was stopped due to the U.S. federal indictment. (Declaration of Anne B. Taylor ("Taylor Decl."), Ex. A., ECF No. 9-6 at 4.) Petitioner was placed back in detention "to serve out the rest of his term until May 2011." (Id.) The sentencing court summarized the facts, stating that Petitioner had qualified for early deportation to Nigeria, but was not permitted by the British authorities to take advantage of this early deportation program due to the Indictment in the United States. (Id. at 4-5.) The Government and the Defense agreed with the Court's summary. (Id. at 5.)

The BOP concluded that Petitioner was held in the U.K. pursuant to his foreign conviction and his pending deportation. (Erickson Decl., ECF No. 12, ¶¶11-14.) Petitioner's 151-month federal sentence was computed as commencing on the date of sentencing, February 15, 2012. (Id., ¶5(h); Doc. 1i, ECF No. 12 at 50-51.) Petitioner was given 349 days of prior custody credit for March 3, 2011 through February 14, 2012. (Id. at 51.) His projected release date is February 16, 2022, assuming he receives all good conduct time available to him under 18 U.S.C. § 3624(b). (Id.) Petitioner filed an administrative remedy request. (Pet., ECF No. 1-2 at 7-17.)

## II. DISCUSSION

### A. Arguments

Petitioner contends that the BOP failed to grant prior custody credit against his federal sentence for his time served in the U.K. from August 2010 to March 2011. (Pet., ECF No. 1 at 2-5.) Respondent counters that an investigation by the Bureau of Prisons revealed that Petitioner was held by the U.K. authorities pursuant to a criminal conviction in that country, not an extradition request. (ECF No. 9 at 11-12.) Therefore, Respondent concludes Petitioner is precluded from prior custody credit under 18 U.S.C. § 3585(b) because he seeks credit for time which was credited against another criminal sentence. (Id. at 13-15.) In reply, Petitioner contends the sentencing court

was aware of the pertinent facts, and its recommendation for prior custody credit complied with 18 U.S.C. § 3585(b). (Petr's Reply, ECF No. 10 at 3.)

B. Sentence Computation

"After a district court sentences a federal offender, the Attorney General, through the BOP, has the responsibility for administering the sentence." United States v. Wilson, 503 U.S. 329, 335-36 (1992). There are two determinations required in the computation of a federal sentence: (1) the date on which the federal sentence commences; and (2) whether the prisoner can receive credit for any time spent in custody prior to the commencement of the federal sentence. See Mills v. Quintana, 408 F. App'x 533, 535 (3d Cir. 2010) (citing 18 U.S.C. § 3585.) 18 U.S.C. § 3585(a) governs the sentence commencement date, and 18 U.S.C. § 3585(b) governs prior custody credit. (Id.)

1. Commencement of Federal Sentence

"A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served." 18 U.S.C. § 3585(a). "In no case can a federal sentence of imprisonment commence [in accordance with § 3585(a)] earlier than the date on which it is imposed." See Blood v. Bledsoe, 648 F.3d 203, 208 (3d Cir. 2011) (quoting BOP Program Statement

5880.28, and finding it warrants deference because it is a permissible interpretation of § 3585.) Therefore, the BOP correctly determined that Petitioner's sentence commenced on February 15, 2012, the date it was imposed.

2. Prior Custody Credit

18 U.S.C. § 3585(b), which governs prior custody credit, provides:

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.

Section 3585(b)(2) does not apply in Petitioner's situation because he was not in custody on August 9, 2010 through March 2, 2011 as the result of another charge that arose after the commission of his federal offense. During that period, Petitioner was in custody of the U.K. for service of a sentence imposed by the U.K. before his federal indictment. He voluntarily deported to the United States, arriving on March 3, 2011, prior to expiration of his U.K. sentence.

Mehta v. Wigen, 597 F. App'x 676 (3d Cir. 2015) is distinguishable from the case at bar. In Mehta, the Third Circuit held that the BOP, relying on the sentencing court's intention that Mehta not receive credit, incorrectly denied sentencing credit for time Mehta spent in custody in England pursuant to an extradition request by the United States,. Here, Petitioner was in custody in the U.K. pursuant to an unexpired U.K. sentence, there was no extradition request. The U.S. requested the U.K. issue a provisional arrest, but this was denied.

Furthermore, consistent with Mehta, it is the BOP that determines prior custody credit under § 3585(b), not the sentencing court. 597 F. App'x at 679 ("§ 3585(b) does not authorize a district court to compute the credit at sentencing" (quoting Wilson, 503 U.S. at 334). Therefore, the BOP correctly determined that it could not award double credit for the period of August 9, 2010 through March 2, 2011, because Petitioner received credit against his U.K. sentence for that time in custody. See Mills, 408 F. App'x at 536 ("[u]nder § 3585(b), time served on a federal detainer does not qualify as federal prior custody credit if that time has been credited against another sentence.") The fact that Petitioner might have been deported to Nigeria without serving his full U.K. sentence does

not detract from the conclusion that he received credit against his U.K. sentence for August 9, 2010 through March 2, 2011.

### III. CONCLUSION

For the reasons discussed above, in the accompanying Order filed herewith, the Court denies the petition for a writ of habeas corpus under 28 U.S.C. § 2241.

s/Renée Marie Bumb  
**RENÉE MARIE BUMB**  
United States District Judge

Dated: April 27, 2017