No. 20-1556

In the Supreme Court of the United States

DAWN HERNDON, PETITIONER

v.

JUDY R. UPTON, WARDEN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's habeas petition, which challenged the implementation of her sentence and sought as the sole remedy an early release from her term of imprisonment, is moot because petitioner has now been released from prison.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 985 F.3d 443. The order of the district court (Pet. App. 15a-18a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 13, 2021. The petition for a writ of certiorari was filed on May 5, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Florida, petitioner was convicted on five counts of bank fraud, in violation of 18 U.S.C. 1344. Judgment 1. She was sentenced to 60 months of imprisonment, to be followed by three years of supervised release. Judgment 3. Petitioner filed a motion to vacate, set aside, or correct her sentence

under 28 U.S.C. 2255. Pet. App. 3a. The district court denied the motion, and the court of appeals dismissed petitioner's appeal as untimely. *Ibid.*; see 733 Fed. Appx. 1008. Petitioner then filed a petition for a writ of habeas corpus under 28 U.S.C. 2241 in the United States District Court for the Northern District of Texas. Pet. App. 3a-4a. After petitioner's release from prison, the district court dismissed the petition as moot. *Id.* at 15a-18a. The court of appeals affirmed. *Id.* at 1a-11a.

1. Between 2007 and 2010, petitioner, who operated a real estate title company, stole money from a company escrow account containing the proceeds of real estate transactions, and used the funds to gamble and to pay off personal and business expenses. Presentence Investigation Report (PSR) ¶¶ 7-14. In 2012, petitioner pleaded guilty in the Southern District of Florida to five counts of bank fraud, in violation of 18 U.S.C. 1344. Pet. App. 2a. Before sentencing, petitioner was diagnosed with cancer. *Ibid.* Petitioner asked the district court to release her to home confinement so that she could receive medical treatment, and to delay any period of incarceration. 12-cr-80172 D. Ct. Doc. 19, at 5 (Mar. 22, 2017).

Petitioner was sentenced on March 25, 2013. Sentencing Tr. 1. The district court informed the parties that petitioner's "medical circumstances" led it to "agree with the delayed surrender and the house arrest, and as a result of that [petitioner] should receive some credit from the prison sentence because of the period of home confinement." *Id.* at 16. And after calculating an advisory sentencing range of 78 to 97 months of imprisonment, the court imposed only 60 months of imprisonment, 18 months below the bottom of that range. *Ibid.*;

see PSR ¶ 62. The court explained that "one reason for that" was that the court would "allow voluntary surrender one year hence," on March 24, 2014. Sentencing Tr. 17. And the court emphasized that the "total sentence [of] 60 months' imprisonment * * * does give credit for the time she's going to spend in home confinement while on bond awaiting reporting for sentence." *Id.* at 18. The district court granted several extensions of petitioner's surrender date, and she was ultimately taken into custody on April 6, 2015. Pet. App. 2a.

2. In 2017, petitioner filed a pro se motion asking the district court to amend its judgment. 12-cr-80172 D. Ct. Doc. 40 (Mar. 14, 2017). Petitioner contended that by stating that her 60-month sentence gave "credit" for the time she would spend in home confinement, the district court intended the 60-month period to commence on March 25, 2013, the date that she was sentenced, and not April 6, 2015, the date she began her term of imprisonment. *Id.* at 1-2 (citation omitted). The district court denied the motion and the court of appeals dismissed petitioner's subsequent appeal as untimely. See Pet. App. 3a; 733 Fed. Appx. at 1009.

Petitioner separately filed a pro se motion to vacate, set aside, or correct her sentence under 28 U.S.C. 2255. 17-cv-80501 D. Ct. Doc. 1 (Apr. 24, 2017). As relevant here, petitioner contended that her sentence was void because the district court lacked authority to grant her credit for time served in home confinement. *Id.* at 1, 3; see 733 Fed. Appx. at 1008. The court dismissed the Section 2255 motion, stating that sentencing-credit issues should be raised in a petition for habeas corpus under Section 2241 that is filed in the district in which the inmate is confined. 17-cv-80501 D. Ct. Doc. 9, at 1 (May 24, 2017).

Petitioner filed a motion for reconsideration, again asserting that her "sentence is void." 17-cv-80501 D. Ct. Doc. 14, at 2 (June 12, 2017). The district court denied that motion. 17-cv-80501 D. Ct. Doc. 16 (June 21, 2017). After reviewing the transcript of petitioner's sentencing hearing, the district court explained that it had "reduced the period of imprisonment from the guidelines range to a lesser amount based on the period of future house arrest"; that "in fashioning a sentence of 60 months' imprisonment, [the court had] considered [the] surrender date and the fact that [petitioner] would spend approximately one year on home confinement"; and that "[t]he sentence imposed was not 60 months' imprisonment minus any time spent on home confinement." *Id.* at 2. And the court determined that petitioner's "misinterpretation of her sentence does not make her sentence or judgment in her criminal case void." *Ibid.* The court of appeals declined to issue petitioner a certificate of appealability. Pet. App. 3a.

3. On February 12, 2018, petitioner, represented by counsel, filed a petition for a writ of habeas corpus under Section 2241 in the United States District Court for the Northern District of Texas, the district court for the district in which she was confined. Pet. App. 3a-4a; 18-cv-120 D. Ct. Doc. 1 (Feb. 12, 2018) (2241 Pet.). Petitioner contended that she should have received credit for the time she spent in home confinement, and that her release date should be no later than March 24, 2018—60 months from the date of her sentencing in March 2013. 2241 Pet. 2-3; see Pet. App. 4a. Petitioner asked the court to "grant a writ of habeas corpus ordering the defendant to release [her] from custody." 2241 Pet. 4.

On July 19, 2019, while petitioner's habeas petition was pending, she was released from prison. Pet. App. 4a. Her three-year term of supervised release began that same day. *Ibid.* The district court thereafter dismissed petitioner's habeas petition as moot because she was no longer imprisoned. *Id.* at 4a, 15a-18a. The court observed that the fact that petitioner "is now serving a term of supervised release does not change the fact that her challenge to the calculation of her term of imprisonment is now moot." *Id.* at 17a.

5. The court of appeals affirmed. Pet. App. 1a-11a. The court agreed with the district court that petitioner's "release mooted her § 2241 petition" because "there was no longer a live case or controversy for which any relief could be granted." *Id.* at 5a. The court of appeals explained that petitioner "had already received the sole relief sought in her petition: release from confinement." *Ibid.* The court observed that petitioner's Section "2241 petition did not seek any corresponding modification of her term of supervised release." *Id.* at 6a. And the court recognized that under this Court's decision in *United States* v. *Johnson*, 529 U.S. 53 (2000), "[e]ven if [petitioner] served a longer custodial sentence than she was supposed to, she [would not be] entitled to '"automatic credit" [against her supervised-release term] as a means of compensation.'" Pet. App. 6a (citation omitted).

The court of appeals rejected petitioner's argument "that her appeal is not moot because her term of supervised release can still be modified or terminated by the sentencing court." Pet. App. 6a. The court observed that because "only the sentencing court has authority to modify the terms of a prisoner's supervised release," the district court in the Northern District of Texas,

where the Section 2241 petition was filed, "cannot offer [petitioner] any further relief." *Id.* at 8a. And the court of appeals explained that its prior decision in *Johnson* v. *Pettiford*, 442 F.3d 917 (5th Cir. 2006) (per curiam), stood only for the proposition that "an appeal of a district court's order is not mooted by a prisoner's release from custody so long as *that* court has authority to modify an ongoing term of supervised release." Pet. App. 9a (emphasis added).

The court of appeals also rejected petitioner's suggestion that it could, "'after on-the-merits adjudication of [her] petition, transfer this case' to the sentencing court in the Southern District of Florida." Pet. App. 10a. The court of appeals determined that such an "'adjudication'" would be akin to an improper "'advisory opinion[],'" as it would produce only a "declaration that an *out-of-circuit* sentencing court could consider under *its* authority whether to modify [petitioner's] term of supervised release." *Ibid.* (citation omitted). The court of appeals explained that even if "a favorable decision in this case might serve as a useful precedent for" petitioner in a subsequent proceeding, that "cannot save this case from mootness." *Ibid.* (quoting *United States* v. *Juvenile Male*, 564 U.S. 932, 937 (2011) (per curiam)).

Judge Oldham concurred, agreeing that the case is moot and suggesting that "in an appropriate case, [the] en banc court should overrule *Johnson v. Pettiford*." Pet. App. 12a; see *id.* at 12a-14a. Judge Oldham observed that the panel in *Pettiford* had relied on "the *possibility* that the district court may alter [a former prisoner's] period of supervised release," *id.* at 12a (citation omitted), but that "mootness is a function of a party's requested relief—not the theoretical possibility that a party *could* request or receive something," *ibid.* (citing

New York State Rifle & Pistol Association, Inc. v. *City of New York*, 140 S. Ct. 1525, 1526 (2020) (per curiam)).

ARGUMENT

Petitioner renews her contention (Pet. 25-33) that her habeas challenge to her completed term of imprisonment is not moot. That contention lacks merit. The court of appeals correctly determined that because petitioner's Section 2241 petition challenged only her term of imprisonment, and sought as a remedy only a release from imprisonment, her release from prison rendered the petition moot. And any variance in the circuits' approaches to that situation will have little practical effect, because any prisoner seeking a modification to a term of supervised release—including petitioner herself—can seek full relief simply by filing a motion in the sentencing court under 18 U.S.C. 3583(e). Moreover, this case would be a poor vehicle in which to resolve any conflict in the circuits as to the appropriate disposition of a habeas petition challenging a since-completed prison term because petitioner would not be entitled to relief even if her petition were not moot. Further review is unwarranted.

1. The court of appeals correctly determined that petitioner's challenge to her completed sentence is moot. "It has long been settled that a federal court has no authority 'to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" *Church of Scientology* v. *United States*, 506 U.S. 9, 12 (1992) (quoting *Mills* v. *Green*, 159 U.S. 651, 653 (1895)). Thus, "[t]o qualify as a case fit for federal-court adjudication, 'an actual controversy must be extant at all stages of review.'" *Arizonans for Official*

English v. *Arizona*, 520 U.S. 43, 67 (1997) (citation omitted).

A defendant's postconviction challenge to a conviction generally will satisfy that requirement even after completion of the term of imprisonment, because a criminal conviction typically has "continuing collateral consequences." *Spencer* v. *Kemna*, 523 U.S. 1, 8, 12 (1998). "But when a defendant challenges only an expired *sentence*, no such presumption applies." *United States* v. *Juvenile Male*, 564 U.S. 932, 936 (2011) (per curiam). In that circumstance, "the defendant must bear the burden of identifying some ongoing 'collateral consequence' that is 'traceable' to the challenged portion of the sentence and 'likely to be redressed by a favorable judicial decision.'" *Ibid.* (brackets and citation omitted); see *Spencer*, 523 U.S. at 7-8, 12. Otherwise, the appeal is moot. See *Lane* v. *Williams*, 455 U.S. 624, 631 (1982) ("Since respondents elected only to attack their sentences, and since those sentences expired during the course of these proceedings, this case is moot.").

Petitioner's Section 2241 petition here challenges only her sentence of imprisonment. And when petitioner was released from the custody of the Bureau of Prisons (BOP), she effectively obtained all the relief she had sought in her petition—namely, an order requiring the warden "to release [her] from custody." 2241 Pet. 4. The district court could not have granted petitioner any more effectual relief on her habeas petition than BOP's own release order did, because a subsequent court order could not have resulted in any earlier release from imprisonment. See *Lane*, 455 U.S. at 633 (holding that a prisoner seeking "'immediate release'" from custody had, once he was released, "obtained all the relief that [he] sought."). Petitioner's completion of

her term of imprisonment thus renders her Section 2241 petition moot. See *id.* at 631 ("Since respondents elected only to attack their sentences, and since those sentences expired during the course of these proceedings, this case is moot."); see also *New York State Rifle & Pistol Association* v. *City of New York*, 140 S. Ct. 1525, 1526 (2020) (per curiam) (finding mootness when amendment to the challenged statute and rule provided "the precise relief that petitioners requested in the prayer for relief in their complaint").

Petitioner contends (Pet. 25) that her habeas petition is not moot on the theory that "if she prevails in this habeas case, a court may terminate or reduce her term of supervised release, thereby providing relief available under 18 U.S.C. § 3583(e)." That contention is unsound. Section 3583 gives the sentencing court discretion to modify supervised-release terms, or terminate supervised release after a year or more. 18 U.S.C. 3583(e)(1) and (2). And as petitioner observes (Pet. 10-11), this Court's decision in *United States* v. *Johnson*, 529 U.S. 53 (2000), indicates that the sentencing court could, "as it sees fit," consider excess imprisonment in deciding whether to do so. *Id.* at 60. But that does not suggest that a judgment in *this* case could redress petitioner's alleged injuries.

Petitioner did not seek a modification of her term of supervised release in her habeas petition; indeed, she does not contend that such relief would even be available in a petition under Section 2241. Cf. *Johnson*, 529 U.S. at 58-60. Accordingly, any adjudication of the question whether she served excess time in prison would not result in a judgment that would itself provide any meaningful relief. As this Court has explained, "a federal court has no authority * * * 'to declare principles

or rules of law which cannot affect the matter in issue *in the case before it*.'" *Church of Scientology*, 506 U.S. at 12 (emphasis added; citation omitted). What petitioner therefore seeks in her habeas petition is effectively an advisory opinion, in the apparent hope that its persuasive power will sway the sentencing court to grant her relief in a separate, subsequent proceeding. See Pet. App. 10a. And providing such an opinion is not consonant with the proper role of Article III courts. Cf. *Franklin* v. *Massachusetts*, 505 U.S. 788, 825 (1992) (Scalia, J., concurring in part and concurring in the judgment) ("Redressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of [its] opinion.").

Furthermore, as the Third Circuit has explained, "[t]he possibility that the sentencing court will use its discretion to modify the length of [a defendant's] term of supervised release * * * is so speculative" that it does not suffice to present a live case or controversy. *Burkey* v. *Marberry*, 556 F.3d 142, 149, cert. denied, 558 U.S. 969 (2009); see also *Rhodes* v. *Judiscak*, 676 F.3d 931, 934-935 (10th Cir.) (adopting *Burkey*'s reasoning), cert. denied, 567 U.S. 935 (2012). Incarceration and supervised release are not "interchangeable," and so "excess prison time" does not "offset and reduce terms of supervised release." *Johnson*, 529 U.S. at 59. "Supervised release fulfills rehabilitative ends, distinct from those served by incarceration"; it is "intended * * * to assist individuals in their transition to community life," and its "objectives * * * would be unfulfilled if excess prison time were to offset and reduce terms of supervised release." *Ibid.* The sentencing court would likely recognize that reality, especially given that it has already

thrice rejected petitioner's claim that she served excess prison time in the first place. See pp. 3-4, *supra*.

Petitioner's reliance (Pet. 26-27, 31) on this Court's decision in *Chafin* v. *Chafin*, 568 U.S. 165 (2013), is misplaced. There, the district court ordered the return of a child to her mother in Scotland under a treaty on international child abduction and its implementing legislation. *Id.* at 170-171. After the child was returned to Scotland, the mother argued that father's appeal of the return order was moot on the theory that the district court "lack[ed] the authority to issue a re-return order." *Id.* at 174. This Court rejected that argument, observing that U.S. "courts continue[d] to have personal jurisdiction over [the mother], [could] command her to take action even outside the United States, and [could] back up any such command with sanctions." *Id.* at 174-175. Here, in contrast, "neither [the court of appeals] nor the district court below has authority" to issue a binding order with respect to supervised release—nor has petitioner even asked for such an order. Pet. App. 10a.

2. Petitioner asserts (Pet. 12-21) that the courts of appeals are divided on the question whether a Section 2241 habeas petition challenging only the term of imprisonment is moot when the prisoner is released from imprisonment but remains on supervised release. But petitioner overstates the extent of any disagreement and the issue is of little practical significance.

The decision below is the only court of appeals decision identified by petitioner that squarely addresses the question presented in the circumstance where a habeas petition is filed outside the circuit of conviction. The First, Third, Sixth, and Tenth Circuits would likely agree with the result here. Those courts have each determined that a habeas petition challenging a term of

imprisonment is categorically moot once the petitioner has been released from imprisonment. See *Francis* v. *Maloney*, 798 F.3d 33 (1st Cir. 2015); *Burkey*, *supra* (3d Cir.); *Demis* v. *Sniezek*, 558 F.3d 508 (6th Cir. 2009); *Rhodes*, *supra* (10th Cir.).

The Second, Seventh, and Ninth Circuits have found habeas petitions challenging expired terms of imprisonment not to be moot, as has the Eleventh Circuit in an unpublished decision. See *Levine* v. *Apker*, 455 F.3d 71 (2d Cir. 2006); *Pope* v. *Perdue*, 889 F.3d 410 (7th Cir. 2018); *Mujahid* v. *Daniels*, 413 F.3d 991 (9th Cir. 2005), cert. denied, 547 U.S. 1149 (2006); *Mitchell* v. *Middlebrooks*, 287 Fed. Appx. 772 (11th Cir. 2008) (per curiam).* But those allegedly conflicting decisions explicitly or implicitly place the burden of proving mootness on the government, instead of on the habeas petitioner. See *Pope*, 889 F.3d at 414; *Levine*, 455 F.3d at 77; *Mujahid*, 413 F.3d at 994; *Mitchell*, 287 Fed. Appx. at 773; but see *Juvenile Male*, 564 U.S. at 936 (explaining that "the defendant must bear the burden" of establishing

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* Petitioner cites (Pet. 15-16) published decisions from the Fourth and D.C. Circuits, but those cases differ from this one because they involved not habeas petitions under Section 2241, but instead proceedings in the sentencing court itself. See *United States* v. *Ketter*, 908 F.3d 61 (4th Cir. 2018) (appeal from resentencing following the grant of a motion under 28 U.S.C. 2255); *United States* v. *Epps*, 707 F.3d 337 (D.C. Cir. 2013) (appeal from denial of a motion for reduction of sentence under 18 U.S.C. 3582(c)(2)). And although petitioner cites (Pet. 16) allegedly conflicting unpublished decisions from the Fourth Circuit involving Section 2241 habeas petitions, compare, *e.g.*, *Palacio* v. *Sullivan*, 814 Fed. Appx. 774, 775 (2020) (per curiam), cert. denied, 141 S. Ct. 1433 (2021), with *Kornegay* v. *Warden*, 748 Fed. Appx. 513, 514 n.* (2019) (per curiam), an internal circuit conflict arising in non-precedential dispositions would not warrant this Court's review, see *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

that a challenge to an expired sentence is not moot). They also have relied on the mere "'possibility' that the sentencing court would use its discretion to reduce a term of supervised release under" Section 3583. *Mujahid*, 413 F.3d at 995 (citation omitted); but see *Spencer*, 523 U.S. at 14 (rejecting the argument that a habeas petition was not moot based on only "a possibility rather than a certainty or even a probability" of a collateral consequence); Pet. App. 13a (Oldham, J., concurring).

More important, in the allegedly conflicting published decisions involving Section 2241 petitions that petitioner cites (Pet. 12-16), the petitioner filed the habeas petition in the district or circuit of conviction. See *Levine*, 455 F.3d at 73; *Pope*, 889 F.3d at 413; *Mujahid*, 413 F.3d at 994. In such cases, either the district court (by virtue of also being the sentencing court) has the authority to modify the defendant's term of supervised release under Section 3583, or the circuit court might, after ruling on the merits of the habeas petition, order the case transferred to the sentencing court, which would have such authority and be bound by any such circuit decision. See *Pope*, 889 F.3d at 415; *Mujahid*, 413 F.3d at 995 n.3.

But as the court of appeals observed (Pet. App. 9a), that is not the situation here, where petitioner was sentenced in the Southern District of Florida but sought a judicial opinion in his habeas case from the Northern District of Texas and the Fifth Circuit. Courts facing and expressly focusing on that two-circuit circumstance may well view the distinction as outcome-determinative. For example, the court of appeals explained that its decision in this case was consistent with its prior decision in *Johnson* v. *Pettiford*, 442 F.3d 917 (5th Cir. 2006) (per curiam)—which concluded that a habeas petition

challenging a sentence was *not* moot following the petitioner's release from imprisonment—precisely because it focused, as the prior decision had not, on the different circuits of conviction and confinement. See Pet. App. 8a-10a. Petitioner does not identify any other court of appeals decision that has directly addressed that issue in a case involving different circuits of conviction and confinement. Those courts might, if squarely confronted with the question, resolve it in the same manner as the court below. At a minimum, that circumstance makes this case a poor vehicle in which to address any broader disagreement.

Furthermore, any disagreement here is of limited practical importance. Petitioner's assertions (Pet. 22-25) of exceptional importance presuppose that many former prisoners will have claims like hers, but she presents little evidence to support that premise. And as petitioner recognizes (Pet. 25), no matter what happens in this case, she can seek a reduction or modification of her supervised-release term only by subsequently filing in the sentencing court a motion under Section 3583(e). And in that proceeding, she can argue for a reduction or termination of her term of supervised release on the theory that she served an overlength term of imprisonment. See *Johnson*, 529 U.S. at 60. That is equally true of all defendants in petitioner's position.

The only difference between the circuits will be that some former prisoners will file their Section 3583 motions armed with a habeas court's opinion addressing alleged errors in their now-completed terms of imprisonment, whereas others will have to raise their arguments for adjudication in the sentencing court in the first instance. That difference is not significant enough to warrant this Court's review, given that an out-of-circuit

habeas court's opinion generally would neither bind nor meaningfully constrain the discretion of the sentencing court in deciding whether to modify or terminate a term of supervised release, as explained above. For that reason, regardless of a circuit's view on mootness, judicial economy would counsel in favor of encouraging the defendant to litigate those issues directly in the sentencing court—which, as this case exemplifies, will also have a better perspective on the initial sentencing order, see pp. 3-4, *supra*—rather than to draw out the habeas proceedings by involving a new court with no familiarity with the case.

3. In addition to its unique circumstances, this case would be a poor vehicle in which to address any circuit disagreement because petitioner would not be entitled to relief even if her habeas petition were not moot. Petitioner contends that her 60-month term of imprisonment should have run from the date on which she was sentenced in March 2013, rather than from the date on which she entered prison in April 2015. See Pet. App. 4a. Petitioner does not argue that the sentencing court was legally precluded from requiring the 60-month term of imprisonment to run from the date she entered prison. Instead, her contention relies on the premise that when the sentencing court orally pronounced that it was giving her "credit" for her initial period of home confinement, *id.* at 3a, it in fact intended her 60-month sentence to run from the date of sentencing, cf. *Bartone* v. *United States*, 375 U.S. 52, 53 (1963) (per curiam).

The record refutes that premise. The sentencing court determined that petitioner's advisory guidelines range was 78 to 97 months of imprisonment, and then stated that she should "receive some credit from the prison sentence because of the period of home con-

finement." Sentencing Tr. 16. The court therefore imposed a below-guidelines sentence of 60 months of imprisonment on the understanding that petitioner would spend at least a year in home confinement—a period the court itself later extended to more than two years, at petitioner's request—before BOP would take her into custody. *Ibid.* And the court made clear that imposing a sentence substantially below the bottom of the advisory range was the means it chose to "give credit for the time [petitioner was] going to spend in home confinement while on bond awaiting reporting for sentence." *Ibid.*

As the sentencing court later confirmed, "[t]he sentence [that it] imposed was not 60 months' imprisonment *minus* any time spent on home confinement." 17-cv-80501 D. Ct. Doc. 16, at 2 (emphasis added). Rather, the 60-month sentence *already* reflected a reduction to account for the time that petitioner would spend in home confinement. See *ibid.* ("[I]n fashioning a sentence of 60 months' imprisonment, [the court] considered the surrender date and the fact that [petitioner] would spend approximately one year on home confinement."). Petitioner's claim that she served a sentence greater than that originally imposed by the sentencing court is therefore incorrect, and further review of the question presented would not ultimately benefit her.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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