

No. 20-6666

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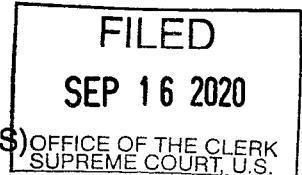
IN THE

SUPREME COURT OF THE UNITED STATES

Sebastian Leigh Eccleston — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

Tenth Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sebastian Leigh Eccleston  
(Your Name)

FCI Fort Dix P.O. Box 2000  
(Address)

Joint Base MDL, New Jersey 08640  
(City, State, Zip Code)

N/A  
(Phone Number)

## QUESTION(S) PRESENTED

In *Setser v. United States*, this Court construed the third sentence of 18 USC §3584(a) to be inapplicable in cases where a federal sentence is imposed on a defendant who is not yet serving any other undischarged term of imprisonment. 132 S.Ct. 1463, 1470 (2012). Nevertheless, when a federal judgement is silent on whether a sentence is to run concurrently with or consecutive to a yet-to-be-imposed state sentence, the Bureau of Prisons uniformly interprets the third sentence of 18 USC §3584(a) to require the federal sentence to run consecutively to the state sentence, even when the state judgement in the subsequent case orders the sentences to run concurrently.

This case presents the following question of exceptional importance to the criminal justice system:

Whether federal sentencing statutes and the Constitution require the Bureau of Prisons to execute the sentence of a federal prisoner to effectuate the subsequent judgement of the state judiciary for concurrent sentences when the federal judgement is silent on concurrency?

## **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:

## **RELATED CASES**

Setser v. United States, 132, S.Ct. 1463, 1468 n.1 (2012)  
United States v. Williams, 46 F.3d 57, 59 (10th Cir. 1995)  
Bond v. United States, 134 S.Ct. 2077 (2014)

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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**

**[X] For cases from federal courts:**

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

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[X] is unpublished.

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

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[X] 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**

**[X] For cases from federal courts:**

The date on which the United States Court of Appeals decided my case was July 1, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 30, 2020, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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

The Due Process Clause states, "No person shall be ... deprived of life, liberty, and property, without due process of law." U.S. Const. amend. V. The Full Faith and Credit Clause states, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art IV, § 1. The Full Faith and Credit Clause applies to the federal government through a statute passed by the First Congress, which states:

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. § 1738 (amended from the Act of May 26, 1790, 1 Stat. 122).

The Tenth Amendment reserves to the States authority over areas not delegated to or prohibited by the federal government: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

The federal statute on imposition of consecutive and concurrent sentences states in relevant part:

(a) Imposition of concurrent or consecutive terms. -- If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

18 U.S.C. § 3584(a).

The statute authorizing the Bureau of Prisons (BOP) to calculate pretrial custody credit against the term of imprisonment provides:

(a) Commencement of 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.

(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.

18 U.S.C. § 3585.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED  
(continued)

The BOP has statutory authority to designate the place of imprisonment:

(b) Place of imprisonment. -- The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering --

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence --
  - (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
  - (B) recommending a type of penal or correctional facility as appropriate; and
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

18 U.S.C. § 3621(b). Courts have construed § 3621(b) to permit the BOP to designate state facilities *nunc pro tunc* as the place of imprisonment for service of the federal sentence in order to achieve concurrency with a state sentence. Barden v. Keohane, 921 F.2d 476, 478 (3rd Cir. 1990). A BOP program statement adopts and implements Barden's interpretation of 18 U.S.C. § 3621(b): "State institutions will be designated for concurrent service of a federal sentence when it is consistent with the intent of the federal sentencing court or with the goals of the criminal justice system." BOP Program Statement 5160.05 at 4 (Jan. 16, 2003); see also BOP Program Statement 5880.28, 1-32A (Feb. 14, 1997) (referencing Program Statement 5160.05 in the Sentence Computation Manual).

## STATEMENT OF THE CASE

On October 29, 1996, Petitioner Sebastian Leigh Eccleston was sentenced in both Federal and State courts. Petitioner was sentenced in Federal court at 11 a.m. and in State court two hours later at 1 p.m. The Federal judgement and commitment was silent as to the yet-to-be-imposed State sentence. The State judge ordered that the State sentence was to "run concurrently with the Federal Prison Sentence Defendant is now serving."

Following the State sentencing hearing, Petitioner was not immediately returned to Federal custody, but taken back to State custody where he remained for approximately sixteen (16) years.

When Petitioner was brought into Federal custody in March 2011, he requested nunc pro tunc credit on his Federal sentence for the time served in State prison based on the subsequent sentencing order by the State judge. The Federal Bureau of Prisons denied Petitioner this request based on Executive Branch discretion and hence, thwarting the order of the subsequent State judge's order. Petitioner's Federal sentence is now being stacked on top of the State sentence based on an Executive Branch of government thwarting a State judicial court order. This separation of powers violation is contrary to the Tenth Amendment of the United States Constitution. Under Setser's reasoning, the BOP must execute a Federal judgement and sentence consistently with a State judicial order of concurrency. The ruling in Setser, combined with established principles of federalism, undermines the Tenth Circuit's approval of the BOP practice of making concurrent-or-consecutive decisions contrary to a later-imposed State judgement.

Petitioner's Due Process rights were also violated due that he had no opportunity to represent his interests in the matter when the Federal BOP made de facto contact with his Federal judge over thirteen years after Petitioner was sentenced. Petitioner had no legal representation during these de facto communications between the Federal BOP and Petitioner's Federal judge in violation of Petitioner's Fifth and Sixth Amendment rights to the U.S. Constitution to have counsel to represent him at any sentencing hearing and with the safeguards of due process of law.

These arbitrary proceedings have resulted in a projected release date of February 2036, ten years more than what was anticipated by the sentencing courts. Petitioner's release date should reflect the intent of both sentencing courts as no court ordered consecutive sentences and Petitioner's projected release date would have been circa 2026.

## REASONS FOR GRANTING THE PETITION

The Court should GRANT certiorari or Grant, Vacate, and Remand because Executive Branch creation of de facto consecutive sentences raises important issues that frequently occur in the federal criminal justice system yet evade meaningful review (see Appendix C). Confusion regarding Federal and State concurrent sentencing frequently gives rise to errors and injustices. The present case provides the Court a clear opportunity to re-examine sentencing statutes in light of Setser and Constitutional considerations.

Prisoners are left with only one avenue of relief as seen in Appendix C.p.7-9 which are rarely granted, and therefore it is up to this Most High Court to do the heavy lifting in this matter to protect prisoner's rights to due process of law as well as the State courts' Tenth Amendment protections to be assured that State judiciary orders are meaningful and effective and not totally disregarded by the Executive Branch Federal BOP usurping the State judges' prerogative and sentencing authority.

The Court should grant certiorari to resolve the important question of whether the Bureau of Prisons acts unlawfully and unconstitutionally when it executes a federal prison sentence, silent on concurrency, to run consecutively to a later-imposed state sentence that the state judge has ordered to run concurrently. In Setser, the Court interpreted § 3584(a) as establishing presumptions that do not apply when a federal sentence is imposed on a defendant who is not yet serving an undischarged state sentence. 132 S. Ct. at 1470 ("The last two sentences of § 3584(a) say what will be assumed" in the situations described in the first sentence; that is, a federal sentence imposed after or at the same time as another sentence). Yet the BOP has continued to rely on § 3584(a) to justify its practice in exactly those circumstances where the state sentence is yet-to-be-imposed, and the Tenth Circuit has continued to approve that practice based on its pre-Setser precedent.

Following Setser, the BOP's practice of administratively creating consecutive sentences not only lacks statutory basis, it is constitutionally suspect. An executive agency's exercise of sentencing authority to create de facto consecutive sentences creates "serious separation of powers questions." United States v. Williams, 46 F.3d 57 (10th Cir. 1995); Reynolds v. Thomas, 603 F.3d 1144, 1160-61 (9th Cir. 2010) (Fletcher, J., concurring) (citing Abdul-Malik v. Hawk-Sawyer, 403 F.3d 72, 76 (2d Cir. 2005), and Fegans v. United States, 506 F.3d 1101, 1104 (8th Cir. 2007)). Additionally, this Court's long-standing comity principles require mutual respect for state sovereignty in the context of dual prosecutions. Ponzi v. Fessenden, 258 U.S. 254 (1922). Consistently with the federalism principles set forth in Bond v. United States, 134 S. Ct. 2077 (2014), this Court should hold that federal sentencing statutes do not assert federal supremacy over state sentences in these circumstances. By bringing the BOP's rules into conformance with Setser and Bond, the Court's resolution of this case would promote respect for the state judge's determination that concurrency with the federal sentence fully satisfies the state's penal interests.

The question presented is exceptionally important because the BOP systemically applies its Program Statements to create de facto consecutive sentences hundreds of times every year, resulting in centuries of additional prison time ordered by no judge. Federal prisoners do not have appointed counsel for administrative proceedings or for civil litigation in federal court, making it difficult for challenges to BOP Program Statements to be properly exhausted and presented for judicial review. This case presents the relevant issues clearly and provides one of the very few opportunities for this Court to bring federal case law into conformity with Setser's construction of § 3584(a) and a panoply of basic constitutional principles.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Sebastian Leigh Eccleston

Date: November 14<sup>th</sup>, 2020