

20-6801

No. _____

IN THE

JAN 07 2021

SUPREME COURT OF THE UNITED STATES

Mauro C. Palacio

— PETITIONER

(Your Name)

vs.

B. Sullivan

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Mauro C. Palacio # 2271249

(Your Name)

Ramsey Coster, 1100 Fm 655 Rd

(Address)

Roshamon, TX 77583

(City, State, Zip Code)

none

(Phone Number)

QUESTION(S) PRESENTED

- one -

Did the appeal's court conflicting decision also
conflicts with other appeals courts on the same
matter?

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

- ☐ U.S. v. Palacio, No. A:03-CR-302-01, U.S. District Court for the Western District of Texas. Judgment entered Feb 2, 2005.
- ☐ Palacio v. Sullivan, No. 5:19-HC-2064, U.S. District Court for the Eastern District of N.C. Judgment entered Nov 14, 2019.
- ☐ Palacio v. Sullivan, No. 19-7800, U.S. Court of Appeals for the Fourth Circuit. Judgment entered Nov 17, 2020.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	9
REASONS FOR GRANTING THE WRIT	13
CONCLUSION.....	19

INDEX TO APPENDICES

APPENDIX A	Court of Appeals opinion
APPENDIX B	District Court's opinion
APPENDIX C	Court of Appeals Rehearing en banc denial
APPENDIX D	District Court's Docket sheet
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Dawson v. Scott, 50 F. 3d 884 (11th cir. 1995)	18
Gunderson v. Hood, 268 F. 3d 1149 (9th cir. 2001)	19
Jason v. Van Curen, 454 U.S. 14 (1981)	17
Kasay v. United States, 62 F. 3d 192 (7th cir. 1995)	14
Maleng v. Cook, 490 U.S. 488 (1988)	14
Matus-Lera v. United States, 287 F. 3d 758 (9th cir. 2002)	14, 19
Mujahid v. Daniels, 43 F. 3d 1991 (9th cir. 2005)	17
Rumsfeld v. Padilla, 124 S.Ct. 2711 (2004)	18
United States v. Allen, 434 F. 3d 1166 (9th cir. 2006)	16
United States v. Brown, 117 F. 3d 471 (11th cir. 1997)	14
United States v. Cooper, 498 F. 3d 1156 (10th cir 2007)	16

STATUTES AND RULES

18 U.S.C. Section 2422	9
18 U.S.C. Section 3553	4
18 U.S.C. Section 3583	3, 4, 15, 17
18 U.S.C. Section 3561	4
18 U.S.C. Section 3624	5
28 U.S.C. Section 1254	2
28 U.S.C. Section 2241	7, 10, 11
28 U.S.C. Section 2243	8

OTHER

U.S. Const. art III, section 2, cl 1	3, 18
Pub. L. No 115-391, sec. 102(b), 132 Stat. 5194, 5210	10
Texas Penal code Sec. 33.021	11

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

United States v. Eske, 925 F.2d 205 (7th cir. 1991)	16, 17
United States v. Essig, 10 F.3d 968 (3d cir 1993)	14
United States v. Gonzalez, 250 F.3d 923 (5th cir. 2001)	16
United States v. Johnson, 529 U.S. 53 (2000)	13, 14
United States v. Lares-meraz, 452 F.3d 352 (5th cir. 2006)	15
United States v. Maken, 510 F.3d 654 (6th cir. 2007)	16
United States v. Pregent, 190 F.3d 279 (4th cir. 1999)	14
United States v. Prochner, 417 F.3d 54 (1st cir. 2005)	15

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 4, 2020.

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

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 17, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

U.S. Const. Art III, Section 2, Cl. 1

The Judicial power shall extend to all cases in the United States, and Treaties made, of which shall be made, under their authority; To all cases affecting Ambassadors, other public ministers and consuls; - to all cases of admiralty and maritime jurisdiction; - to controversies between two or more states, between citizens of the same state claiming lands under the Grants of different states, and between a state, or the Citizens thereof, and foreign states, citizens or subjects. - "To controversies to which the United States shall be a party".

18 U.S.C. Sec. 3583. Inclusion of a Term of supervised release after imprisonment

● (a) In general - The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement

that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

(e) modification of conditions or revocation;

The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)

(D), (a)(4), (a)(5), (a)(6), and (a)(7)-

(1) Terminate a term of supervised release and discharge the defendant release at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by

the conduct of the defendant released and the interest of Justice.

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of Probation and the provisions applicable to the initial setting of the terms and conditions of Post-release Supervision.

18 U.S.C. SEC. 3624. Release of a Prisoner

(b) Credit toward service of sentence for satisfactory behavior. -

(1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year

other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, of up to 54 days for each year of the prisoner's sentence imposed by the court, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. Sub-
ject to Paragraph (2), if the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's sentence or shall receive such lesser credit as the Bureau determines to be appropriate. In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent

degree. Credit has not been earned may not later be granted. Subject to paragraph (2), credit on the first day of the last year of the term of imprisonment.

(2) Notwithstanding any other law, credit awarded under this subsection after the date of enactment of the Prison Litigation Reform Act shall vest on the date the prisoner is released from custody.

28 U.S.C. sec. 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any Justice thereof, the district courts and any Circuit Judge within the respective jurisdictions. The order of a circuit judge shall be entered in the record of the district court of the district wherein the restraint complained of is had.

(c) The writ of habeas corpus shall not extend to a prisoner unless —

(3) He is in custody in violation of the Constitution

or laws or treaties of the United States.

28 U.S.C. Sec. 2243. Issuance of writ; return; hearing; decision

A court, Justice or Judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

STATEMENT OF THE CASE

on or about November 18, 2003 Mauro C. Palacio was charged with enticement, a violation of 18 U.S.C. Sec.

2422 (b). He pled not guilty to the indictment and a jury found him guilty of the charged offense on January 29, 2005, the same day, the district court sentenced him to 120 month imprisonment followed by a 10 year term of supervised release, and a \$100 assessment fee.

Palacio was released from prison on July 18, 2016 and began serving his 10 year supervised release.

on August 3rd 2017 a probation warrant was returned executed based on Palacio's non-compliance with the terms and conditions of his supervised release.

The district court without objection by Palacio's counsel admitted the sworn complaint and arrest warrant on September 29, 2017 and found by preponderance of the evidence that he had violated the terms of his supervised release, same day, the district court set aside

the sentence imposed on January 28, 2005 and re-sentenced him to a 24 month term of imprisonment to be followed by a 10 year term of supervised release.

A couple months later, the U.S. Marshals delivered him to the Bureau of Prisons for the service of his sentence. On December 21, 2018, The First Step Act was enacted and increased the maximum allowable good conduct time from 47 to 54 days per year. see First Step

Act of 2018, Pub. L. No. 115-391, sec. 102(b), 132 Stat. 5194, 5210.

Palacio filed a petition for writ of habeas corpus see (2241) on February 28, 2019 alleging that he remained in Bureau of Prisons custody beyond completion of his sentence. see Appendix B (Dkt No 1)

Palacio was released from a North Carolina Bureau of Prisons installation on April 19, 2019 and was arrested at the gate as a Texas fugitive felon.

Palacio was extradited, and on May 22, 2019 the Hamilton County, Texas court convicted him for computer crimes in violation of Texas Penal Code, sec.

33.021 to five years imprisonment ① the Texas Department of Criminal Justice - ID and \$4,000 in fines.

The district court dismissed Palacio's petition sec. 2241 on November 14, 2019, concluding that he was not entitled

to additional good conduct time credits ② the time he filed his petition, and, also, he failed to establish

the in custody violation pursuant to 28 U.S.C. sec. 2241

(a)(C)(3). See Appendix B, Page 3.

Palacio timely appealed on December 3, 2019 the district court's decision. See Appendix D (Dkt. No. 15).

on August 4, 2020 the appeals court concluded that Palacio's release from prison rendered his claim moot.

See Appendix A, Page 3.

Palacio pursued a rehearing, but the appeals court

denied a rehearing and a rehearing en banc, both were
denied on November 17, 2020. see **Appendix C.**

REASONS FOR GRANTING THE PETITION

- one -

The appeal's court decision is controversial to its own and other courts of appeals on the same important matter.

Mauro C. Palacio has completed one hundred and forty four month term of federal imprisonment and he is serving a 10 year term of supervised release at the time of his appeal.

In the other hand, the U.S. court of appeals for the Fourth circuit asserts that because Palacio is no longer incarcerated, his appeal is moot, as his supervised release fulfills rehabilitative ends, assistance and transition into society only.

The appeals court relies on United States v. Johnson, 529 U.S. 53 (2000), to support its position.

It is true that a prisoner who wrongfully serves excess prison time is not entitled to an automatic

reduction in his term of supervised release. Id. (260),

however, it was recognized in the same case that, to remedy the iniquity of an excess prison term, a sentencing court may modify or (in some circumstances) terminate the defendant's supervised release obligations if these obligations no longer appear warranted. Id.

(260).

While serving his term of supervised release, Palacio is in custody for purposes of habeas corpus.

See Matus-Leva v. United States, 287 F.3d 758,

761 (9th cir. 2002); United States v. Pregent, 190 F.3d

279, 283 (4th cir. 1999); United States v. Brown, 117

F.3d 471, 475 (11th cir. 1997); Kusay v. United States,

62 F.3d 192, 193 (7th cir. 1995); United States v.

Essig, 10 F.3d 968, 970 n.3 (3d cir. 1993); see

also Maleng v. Cook, 490 U.S. 488, 491 (1989).

("our interpretation of the 'in custody' language has

not required that a prisoner be physically confined in order to challenge his sentence on habeas corpus.").

To the extent Palacio's appeal is not moot simply because his term of imprisonment had expired...

Palacio remains subject to a term of supervised release, an element of the overall sentence and involves some restrictions upon his liberty. Generally, a term of supervised release is not immune to modification

by the district court. A district court may have the authority to modify conditions of supervised release under 18 U.S.C. sec. 3583 (e)(2) or the authority to terminate obligations of supervised release under

18 U.S.C. sec. 3583 (e)(1), United States v. Lares-Meraz,

452 F.3d 352, 355 (5th Cir. 2006) (internal citations

omitted) (emphasis added). See also United States

v. Prochner, 417 F.3d 54, 59 n.4 (1st Cir. 2005) (holding

that defendant's appeal of his sentence was not moot

despite his release from prison, as he was serving a term of supervised release); United States v. Gonzalez, 250 F.3d 923, 928 (5th cir. 2001) ("To the contrary, supervised release, while a form of post-imprisonment supervision, is still considered to be a component of the defendant's total sentence."); United States v. Maken, 510 F.3d 654, 656 n.3 (6th cir. 2007) ("Even when an appellant has been released from custody, his case is not moot so long as the appeal 'potentially implicates' the length of the appellant's supervised release term."); United States v. Eske, 929 F.2d 205, 206 n.2 (7th cir. 1991); United States v. Allen, 434 F.3d 1166, 1170 (9th cir. 2006); and United States v. Cooper, 498 F.3d 1156, 1159-60 (10th cir. 2007) ("similarly, Mr. Cooper's challenge to the condition of supervised release is also clearly part of his 'sentence'").

A possibility that the sentencing court would use

its discretion to reduce a term of supervised release under 18 U.S.C. sec. 3583 (e)(2) is enough to prevent Palacio's petition from being moot, or the termination of obligations of supervised release under 18 U.S.C. sec. 3583 (e)(1). see Mujahid v. Daniels, 43 F.3d 1991 (9th cir 2005).

Because success for Palacio's could alter the supervised release portion of his sentence, his appeal is not moot. see Jago v. Van Curen, 454 U.S. 14, 21 n.3 (1981) (per curiam); United States v. Eske, 925 F.2d 205, 206 n.2 (7th cir. 1991).

The U.S. Court of appeals finding of mootness must be forestalled... because Palacio might still suffer 'collateral legal consequences' from a sentence already served, the main basis for a determination that collateral consequences might exist is that a recalculation of his sentence would likely merit a credit against Palacio's term of supervised release for the excess term of im-

prisonment to which Palacio was subjected.

Palacio's subjection to the terms of supervised release satisfy the ongoing consequence that is a sufficient legal interest to support Article III case of controversy requirement.

Palacio has not completed his entire sentence, because the additional 10 year supervised release, which could be affected upon re-sentencing. If he were to prevail, in crediting 84 days of additional good conduct time, he could be resentedenced to a shorter period of supervised release. Therefore, his appeal is not moot because success for [Palacio] could alter the supervised release portion of his sentence. see Dawson v. Scott, 50

F.3d 884, 886 n.2. (11th Cir 1995).

In conclusion, Palacio filed his habeas petition in the proper district court, naming the proper respondent. See

Rumsfeld v. Padilla, 124 S.Ct. 2711 (2) 2718 (2004). He

remains in "custody" for habeas purposes. Matos-Leva v.

United States, 287 F.3d 758 (2) 761 (9th cir 2002). His pe-

tition asserts an injury due to the duration of his sentence

and seeks relief through a possible reduction of his term

in custody. Gunderson v. Hood, 268 F.3d 1149 (2) 1153 (9th

cir. 2001).

CONCLUSION

Because Palacios's Appeal is not moot,

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mano C. Palacios

Date: December 30, 2020