No. 24-7509

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

*

JACOB MATHIAS RUBINSTEIN,
Petitioner,
VS.
ERIC RARDIN, Warden,
Respondent.

*

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

*

PETITION FOR WRIT OF CERTIORARI

*

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QUESTIONS PRESENTED FOR REVIEW

1. Does "official detention" under 18 U.S.C. §3585(b) include, in addition to "detention" under 18 U.S.C. §3142(e), restrictive forms of "release" under 18 U.S.C. §3142(c) when those restrictions place the defendant under a third party "custodian," limit 100% of his movement, restrict him from even basic individual liberty, and make him liable for escape under 18 U.S.C. §751, in light of the facts that the title of 18 U.S.C. §3585(b) is "Credit for prior custody,", 18 U.S.C. §3142(c)(1)(B)(i) and (xiii) require defendants to remain in and return to "custody," and 18 U.S.C. §751 penalizes escape from any "custody"?

2. Was Reno v. Koray wrongly decided because it did not consider the above facts of law and, instead, relied only on the title of 18 U.S.C. §3142(e), "Detention," to serve as the definition for "official detention" in 18 U.S.C. §3585(b)?

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I. OPINIONS BELOW

The original judgement denying Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Michigan was entered on July 15, 2024, and is attached hereto as Appendix A.

The original judgement denying Petition for Writ of Habeas Corpus was appealed to the United States Court of Appeals for the Sixth Circuit, which affirmedthe denial of the district court. That judgement was entered on April 11, 2025, and is attached hereto as Appendix B.

Both orders were based on the binding precedent of Reno v. Koray, 515 US 50, 1995. The Eastern District of Michigan, however, implied in its opinion that it might have found in favor of the petitioner had they not been bound by Reno v. Koray.

II. JURISDICTIONAL STATEMENT

The judgement of the United States Court of Appeals for the Sixth Circuit was entered on April 11, 2025. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

III. CONSTITUTIOUNAL AND STATUTORY PROVISIONS INVOLVED

1. The statute involved and under review is Title 18, United States Code section 3585(b) which states in relevant part:

"(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."

2. The statute under which Petitioner sought habeas corpus relief was Title 28, United States Code, section 2241 which states in relevant part:

"(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions."

3. The precedential opinion under review is Reno v. Koray (515 US 50, see Appendix C) which held that a "Federal prisoner ordered confined to community treatment center or 'halfway house,' to await sentencing held not in 'official detention' for purposes of receiving sentence credit under Sentencing Reform Act of 1984 (18 U.S.C. §3585(b))."

IV. STATEMENT OF THE CASE

Now comes JACOB MATHIAS RUBINSTEIN, pro se petitioner and inmate confined to an institution, to petition the honorable Justices of the Supreme Court of the United States to issue a writ of certiorari, on appeal from the United States Court of Appeals for the Sixth Circuit.

The petitioner has attacked the calculation of his sentence of imprisonment by seeking a petition of writ of habeas corpus. However, his petition was denied due to the precedential holdings by the United States Supreme Court in Reno v. Koray (515 US 50, 1995, enclosed at Appendix C). The petitioner now prays that this Court will GRANT certiorari and review the facts of law presented herein, answer YES to the questions presented, OVERTURN Reno v. Koray, and REVERSE the judgement of the Sixth Circuit Court of Appeals that they may thereby order the Bureau of Prisons (BOP) to correct the calculation of his sentence.

RELEVANT BACKGROUND

On September 2, 2021, petitioner Rubinstein was arraigned on multiple charges related to child pornography. He pled not guilty and was placed on home confinement by court order, pursuant to 18 U.S.C. §3142(c). Per that order, Mr. Rubinstein was "released" to the "custody" of his father, who was then designated a "third party custodian" and thereby was responsible to report any violations of his confinement to U.S. Pretrial Services. He was fitted with a GPS ankle monitor and confined to his father's residence 24 hours per day, seven days per week. He was not afforded an opportunity to offer evidence or testimony that this restriction was greater than necessary to meet the purposes of section 3142, i.e. to ensure his appearance in court and the safety of the community. Only by his attorney pleading with the court did they agree to permit Mr. Rubinstein to leave the premises for very limited purposes. Those included only court appearances and related purposes (e.g. to meet with his attorney), medical/mental health treatment, and to visit his

children in the presence of their mother at their residence, only. He was required to travel at his own expense to meet with U.S. Pretrial Services weekly in Philadelphia, Pennsylvania. His father's residence was subject to random searches by U.S. Pretrial Services. All travel for those purposes had to be scheduled and approved in advance by U.S. Pretrial Services. He was not permitted to work, to attend religious services, to attend to any personal needs such as going to the bank or post office, nor was he even permitted to go to the grocery store, get a haircut, or take a walk. These conditions were more severe than most convicted felons who are serving their sentences on Home Detention (see 18 U.S.C. §5F1.2, defendants are permitted to participate in gainful employment, community service, religious services, etc.).

On March 22, 2022, Mr. Rubinstein appeared in Federal court in Baltimore, Maryland and pled guilty to one count of distribution of child pornography. On August 4, 2022 he was sentenced to 84 months imprisonment. He self-surrendered at the Milan Federal Correctional Institute (FCI Milan) on November 4, 2022, 427 days after being placed on home confinement. All travel to those court appearances and to FCI Milan was coordinated with andapproved in advance by U.S. Pretrial Services.

Now incarcerated at FCI Milan, petitioner Rubinstein has more individual liberty than when on pretrial home confinement. As stated, he was not permitted to work, attend religious services, attend to personal needs such as groceries, haircut, or even to take a walk. Now within the prison confines he works every day, attends weekly religious services, purchases groceries at the Commissary, goes to the barber shop for a haircut, and participates in a wide variety of recreation programs and facilities to exercise, attend classes, play sports, participate in hobbycraft, etc. In fundamental ways, Mr. Rubinstein is less confined in prison than he was in his father's house, yet he is barred from sentence credit for that confinement. It is precisely this anomolous and absurd result that the petitioner, Mr. Rubinstein, requests this court to correct.

V. REASONS FOR GRANTING THE WRIT

THE SUPREME COURT OPINION IN RENO V. KORAY CONFLICTS WITH THE LAW AND MUST BE OVERTURNED

The petitioner does not make this assertion lightly and fully acknowledges the doctrine of stare decisis. That said, "an important factor in determining whether a precedent should be overturned is the quality of its reasoning." (see Janus v. AFSCME, 138 S. Ct. 2448, 2478 (2018)). With all due respect to the esteemed Justices of the Supreme Court, the petitioner asserts and here will show that the quality of their reasoning in Reno v. Koray was lacking.

This case hinges on the definition of "official detention" in 18 U.S.C. §3585(b). "A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." (Perrin v. United States, 444 US 37, 42 (1979)). "The ordinary meaning of the language must be presumed to be intended, unless it would manifestly defeat the object of the provisions." (Minor v. The Mechanics Bank of America, 7 Led 47 (1818)). Judge Heaney, in his dissent to Moreland v. United States, cites a dictionary definition for "official" as "prescribed or recognized as authorized" and "detention" as "[a] period of temporary custody prior to disposition by a court." (968 F.2d 655, 8th Cir. 1992, at 664). More directly, Judge Posner, in his opinion in Ramsey v. Brennan, stated, "to a normal English speaker, even to a legal English speaker, being forced to live in a halfway house is to be held 'in custody'". (878 F.2d 995, 7th Cir. 1989, at 996). We also refer to Justice Stevens's dissent in Reno v. Koray where he asserted that "a person who is locked up for 24 hours a day, seven days a week, pursuant to a court order, is in 'official detention' [and] both the text and the purpose of §3585(b) clearly contemplate that." (515 US 50, at 66). But, perhaps the most relevant and clear interpretation comes from the majority opinion in that case, where they interpreted "official detention" in §3585(b) to mean "presentence restraints on liberty." (id. at 56). Thus, by the ordinary meaning of the statute, according to the Justices' own words, petitioner Rubinstein's court-ordered confinement to his father's residence 24 hours a day for 427 days qualifies for credit under §3585(b).

Looking to the object of the statute, the legislative history provides little insight except to grant credit where credit is due. In its current form, enacted in 1987, "Congress enlarged the class of defendants eligible to receive credit." (United States v. Wilson, 503 US 329, 337). As such, because the

prior statute (18 U.S.C. §3568, repealed and replaced by §3585(b)) was interpreted by some circuits to allow credit for presentence restraints on liberty other than incarceration (see Brown v. Rison, 895 F.2d 533, 9th Cir 1990 and Johnson v. Smith, 696 F.2d 1334, 11th Cir. 1983) it is logical that the enlarged class envisioned by Congress would include defendants like Mr. Rubinstein. This interpretation does not "manifestly defeat the object of the provision" but, rather, completely supports the object of reducing a sentence by the amount of time already spent in detention.

Of course, the ordinary meaning of the words in the statute is not the only basis for ensuring proper statutory construction. A "statute must be read as a whole...since the meaning of the statutory language, plain or not, depends on context." (King v. St. Vincent's Hospital, 502 US 215 (1991)). Reading 18 U.S.C. §3585 as a whole, we see that §3585(a) states that a sentence begins when a defendant arrives at "the official detention facility at which the sentence is to be served." It provides no elaboration. Critically, §3585(b) grants credit for any time a defendant has spent "in official detention" not in an official detention facility. "We are not at liberty to supply by construction what Congress has clearly shown its intention to omit." (Carey v. Donohue, 240 US 430, 437 (1916)). By omitting "facility" from §3585(b), Congress made clear that official detention does not solely occur in facilities so designated.

Additional context is provided by the title of §3585(b), "Credit for prior custody." "Among other things which may be considered in determining the intent of the Legislature is the title of the Act." (Church of the Holy Trinity v. United States, 143 US 457, 462 (1892)). Based on the title, we can infer that "custody" and "official detention" are synonymous. This was confirmed by a review of the legislative history in Koray v. Sizer (see 21 F.3d 559, 563) and Mills v. Taylor (see 967 F.2d 1397, 1400). As stated, the petitioner was released pursuant to 18 U.S.C. §3142(c), titled "release on conditions." Here we focus on two conditions which were imposed on him, §3142(c).(1).(B).(i) and (xiii). Condition (i) states that the defendant must remain "in the custody of a designated person..." (emphasis added). Condition (xiii) states that the defendant is to "return to custody for specified hours following release for employment, schooling, or other limited purposes" (emphasis added). "The Bail Reform Act's repeated references to 'custody' in the context of conditional release support the conclusion that some defendants who have been held in restrictive 'custody' are entitled to sentence credit." (Moreland v. United States, 932 F.2d 690, 693. 8th Cir. 1991, referring to 18 U.S.C. §3142 as "The Bail Reform Act").

There is one final element of context needed here. Broadening the lense slightly, Petitioner Rubinstein was subject to significant penalties for violating any conditions of his home confinement. See 18 U.S.C. §§3146-3148 which describe the penalties for violations of conditions of release. See also Koray v. Sizer, "failure to comply with the conditions of his release would be a felony." (21 F.3d 559, 564). Beyond this, Mr. Rubinstein was also subject to a conviction of escape under 18 U.S.C. §751 if he was ever outside the prescribed perimeter of his father's residence without permission (see United States v. Vaughn, 446 F.2d 1317, DC Cir. 1971 and United States v. Sack, 379 F.3d 1177, 10th Cir. 2004, cert. denied). Basic logic demands that one cannot escape if one is not, first, detained. This was not considered by the Koray court.

As mentioned above, in Reno v. Koray the majority identified that §3585(b) required sentence credit "only for presentence restraints on liberty." (515 US 50, 56). Relying on "related legislative enactments when interpreting specialized statutory terms" (id. at 57), they acknowledge that 18 U.S.C. §§3142 and 3143 are the statutes that empower courts with such restraints, but ignore all of the restraints available to courts except those under §3142(e). Because that statute is titled "Detention" they use that as the definition for "official detention" and assert that only that form of presentence restraint (i.e. being in the custody of the Attorney General) is creditable. As Justice Stevens stated in his dissent, "the Court labors to prove" that those incarcerated are entitled to credit, but that proof "certainly is not proof that no other form of confinement can constitute official detention. The majority thus fails to demonstrate that [defendants] should not receive sentencing credit for court-ordered full-time confinement." (id. at 67). They ignore the ordinary meaning and title of §3585(b), they ignore the restraints listed under §3142(c), and they only briefly acknowledge the analysis in Koray v. Sizer, the decision they overturned. It defies basic logic and rules of argument to refute a decision without addressing any of the reasons that decision was reached. Instead, the Court relies entirely on selective context to support their interpretation. After referencing §3142(e), they call upon 18 U.S.C. §3621 which commits sentenced defendants to "the custody of the Bureau of Prisons" (see §3621(a)). They assert that the "official detention facility" referred to in §3585(a) must be a facility under the Bureau's control. This is a reasonable conclusion, but does not support their inference that "official detention" only occurs in Bureau-controlled facilities since §3621 does not include the word "detention" anywhere in the statute, much less the term "official detention". Neither does

§3585 mention the Attorney General or the Bureau of Prisons (see Koray v. Sizer, 21 F.3d 559, 563-564, "There is nothing in the statute which requires or suggests that a defendant must be under the detention of the Bureau."). The Court continues, citing 18 U.S.C. §3622 which states that the Bureau may release certain prisoners for certain purposes while "continuing in official detention at the prison [or] correctional facility." (see 18 U.S.C. §3622(b) and (c)). Again, showing that official detention does occur at prisons and correctional facilities does not show that it occurs nowhere else. They rely on a layered confluence of terms of detention, official detention, and prison or correctional facility across these four statutes to infer that their definitions are explicitly connected. But only a slightly broader context fully illustrates how the court's logic fell short. Title 18 U.S.C. §3623, enacted as part of the same Act that included §§3141-3143, 3585, 3621, and 3622, titled "Transfer of a prisoner to State authority," states that under certain conditions a prisoner can be "transferred to an official detention facility" operated under the control of one of the states. It also does not specify a prison, penal or correctional facility, or any other type of facility. This makes clear that "official detention" is not solely within the purview of the Bureau of Prisons, the Attorney General, or, indeed, the Federal Government. Neither is it limited to particular locations or types of facilities. This is supported by the Bureau's own policy of granting credit for "qualified non-federal custody" (see BOP Policy Statement 5880.28 Ch. 1 section 3.c). Going back to §3585(b), subparagraph (2) grants credit for official detention "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." This makes clear that Congress did not limit sentence credit to a §3142(e) detention order. "It appears from a reading of the Act as a whole that Congress was employing 'detention' in its ordinary and obvious sense, rather than tacitly establishing a technical definition." (Mills v. Taylor, 967 F.2d 1397, 1400).

Therefore, as has been shown, petitioner Rubinstein's pretrial home confinement is in line with the ordinary meaning, context, purpose, and history of 18 U.S.C. §3585(b), so he is entitled to credit for that time. Further, because the majority in Reno v. Koray did not employ complete rules of statutory construction, because they were too selective in their use of context, and because they ignored analysis by the lower courts, their findings in that case were faulty and must be overturned.

VI. ARGUMENTS AMPLIFYING REASONS FOR WRIT

The implications of Koray have been profound. For thirty years, an untold number of defendants have been held in extremely restrictive conditions awaiting trial, but could not receive credit for that time because they were in custody of Pretrial Services, not the Attorney General. Given the conflicts between Reno v. Koray and the law, as detailed above, these defendants spent "more time in custody that Congress has deemed necessary or appropriate" (515 US 50, at 69). Thus their sentences were extended illegally, just like the Petitioner which is why he sought a writ of habeas corpus. This fact, alone, compels granting certiorari.

Beyond that, the Koray court disregarded the "ancient rule of statutory construction that penal statutes should be strictly construed against the government." (see United States v. Wilson, 916 F.2d 1115, 6th Cir. 1990 at 1117). They interpreted §3585(b), a law whose sole purpose is to reduce sentences due to pretrial liberty restrictions, to do just the opposite. Instead of following the clear language of the law, they created ambiguity where none existed, then reversed the rule of lenity by using that ambiguity to find in favor of incarceration. Instead of following Congress's "enlarge[ment of] the class of defendants eligible to receive credit"(US v. Wilson, 503 US 329, 337) the court shrunk it. The plain language of the statute, the context of surrounding statutes, its purpose and its history all point to the outcome that restrictions such as those imposed upon Petitioner Rubinstein are creditable toward a sentence of imprisonment.

Prior to Reno v. Koray, multiple circuits had found that confinement such as that imposed on the petitioner was creditable toward a sentence of imprisonment. They did so through similar reasoning and logic presented here. See Koray v. Sizer, 21 F.3d 559, 3rd Cir. 1994; Begay v. Knowles, 1993 U.S. App. LEXIS 6749, 9th Cir. 1993; Espinosa v. United States, 1992 U.S. App. LEXIS 32280, 9th Cir 1992; Mills v. Taylor, 967 F.2d 1397, 9th Cir. 1992; Moreland v. United States, 932 F.2d 690, 8th Cir. 1991; United States v. Fernandes, 1990 U.S. Dist. LEXIS 8962, E.D.Pa. 1990; United States v. Chalker, 915 F.2d 1254, 9th Cir. 1990; Brown v. Rison, 895 F.2d 533, 9th Cir. 1990; and Johnson v. Smith, 696 F.2d 1334, 11th Cir. 1983. Yet in Reno v. Koray, the Court provided no counter-analysis to any points raised in these cases. Instead, the Court used only select context to derive their construction of the statute (see 515 US 50, at 56-59), they made a brief presumption about Congress's intent based on this limited context (see id. at 60), and relied on a form of Chevron

deference to the BOP's policy (see Justice Stevens's dissent noting incongruities in that deference, id. at 68. See also Loper Bright Enters. v. Raimondo, 603 US 369, which overturned Chevron).

In short, Reno v. Koray was a mistake, and after thirty years, it is time to correct it.

Overturning Koray will be a welcome return to the practice of using the degree of restraint as the basis for granting credit. The majority in Koray rejected this, claiming that such would require a "fact-intensive inquiry" to implement (see 515 US 50, at 64). However, in Koray v. Sizer, the 3rd Circuit conducted a detailed review of the legislative history and BOP policy regarding sentence credit. They noted that when pretrial restrictions were similar to jail-type confinement, the practice was to grant credit, and the BOP incorporated this into their standing policy with no indication that it was adminisratively prohibitive (see 21 F.3d 559, at 567). Indeed, a simple review of the court's order of confinement, typically two to three pages, is all that is necessary.

It may be argued that although the petitioner's liberties were restricted, the degree of restraint he faced was not as great as incarceration by virtue of the fact that he was in his father's house, not an institution. This argument holds no sway, for as has already been shown, the petitioner has more liberty in prison than he did while "released" awaiting trial. The relevant factor here is the nature of his liberty restrictions, not his apparent level of comfort. During pretrial he was unable to exercise most of his basic, fundamental rights and freedoms. He is able to exercise a great many of them now in prison. To say that such impositions on someone while they are presumed innocent entitles them to no credit is "contrary to the considerations of fairness that must have underlain Congress's provision of credit for time served" (Brown v. Rison, 895 F.2d533, at 536). Referring again to Koray v. Sizer, they note several sources that recommend sentence credit for "any bail program which 'imposes substantial restrictions on the offender's freedom of activity.'" (see 21 F.3d at 565-566). Had Mr. Rubinstein been permitted to work and provide even a meager subsistence for himself and his family, he would not be raising this petition. He seeks only fair treatment in accordance with the law so that his incarceration will be as long as Congress intended, and no longer.

CONCLUSION

Title 18 U.S.C. §3585(b) allows for sentence credit for forms of detention other than incarceration under the custody of the Attorney General. The Supreme Court opinion in Reno v. Koray has been shown to be in conflict with the ordinary meaning, context, purpose, and history of that statute.

As detailed above, the petitioner's court-ordered home confinement while awaiting trial is aligned with the ordinary meaning, context, history, and purpose of §3585(b). Accordingly, he is entitled to credit for 427 days towards his sentence of imprisonment.

WHEREFORE, based upon the foregoing, JACOB MATHIAS RUBINSTEIN, pro se petitioner, respectfully requests the Honorable Justices of the United States Supreme Court to GRANT his writ of certiorari, answer YES to the questions presented, OVERTURN Reno v. Koray, and REVERSE the judgement of the Sixth Circuit Court of Appeals that they may thereby ORDER the BOP to credit his sentence with the 427 days he is due.

Date: 6/9/2025

Respectfully Submitted

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