APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACOB MATHIAS RUBINSTEIN,

Petitioner,

v.

CASE NO. 2:24-CV-11746
HON. BRANDY R. MCMILLION

ERIC RARDIN,

Respondent,
_____/

OPINION AND ORDER SUMMARILY DENYING THE PETITION FOR WRIT OF HABEAS CORPUS BROUGHT PURSUANT TO 28 U.S.C. § 2241 AND GRANTING PETITIONER LEAVE TO APPEAL *IN FORMA PAUPERIS*

Jacob Mathias Rubinstein ("Petitioner"), currently incarcerated at the Federal Correctional Institution in Milan, Michigan ("FCI Milan"), filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF NO. 1. In his *pro se* application, Petitioner claims that the Bureau of Prisons ("BOP") wrongfully denied him credit against his federal sentence for the time that he was subject to home confinement after being granted pre-trial release. For the reasons stated below, the petition for writ of habeas corpus is **SUMMARILY DENIED WITH PREJUDICE**; and the Court **GRANTS** Petitioner leave to appeal this decision *in forma pauperis*, as an appeal would be taken in good faith.

I.

In late August 2021, Petitioner was indicted on child pornography charges in the United States District Court for the District of Maryland. ECF No. 1, PageID.11. On September 2, 2021, he made his initial appearance, was arraigned, and placed on home confinement pursuant to 18 U.S.C. § 3142(c). *Id.* On March 22, 2022, Petitioner pleaded guilty to one count of distribution of child pornography; and on August 4, 2022, the Court sentenced him to 84 months in prison. *Id.* at PageID.12. He self-surrendered to FCI Milan on November 4, 2022 – 427 days after being placed on home confinement. *Id.*

Petitioner requested the BOP to grant him sentencing credit for the time that he spent in home confinement while on pre-trial release (427 days). *Id.* at PageID.10. The BOP has denied his request, citing to the Supreme Court case of *Reno v. Koray*, 515 U.S. 50 (1995). *Id.* Petitioner in his habeas application acknowledges the Supreme Court's holding in *Reno* but argues that the case was wrongly decided. Petitioner asks this Court to overrule *Reno* and order the BOP to credit him for the 427 days he spent in home confinement prior to reporting to FCI Milan.

II.

A petition for a writ of habeas corpus must set forth facts that give rise to a cause of action under federal law or it may summarily be dismissed. *See Perez v.*

Hemingway, 157 F. Supp. 2d 790, 796 (E.D. Mich. 2001). Federal courts are authorized to dismiss any habeas petition that appears legally insufficient on its face. *McFarland v. Scott,* 512 U.S. 849, 856 (1994). A federal district court is also authorized to summarily dismiss a habeas corpus petition if it plainly appears from the face of the petition, or the exhibits that are attached to it, that the petitioner is not entitled to federal habeas relief. *See Carson v. Burke,* 178 F. 3d 434, 436 (6th Cir. 1999); Rules Governing § 2254 Cases, Rule 4, 28 U.S.C. foll. § 2254.

A federal court is not required to return a habeas petition to state court when the petition is frivolous, or obviously lacks merit, or where the necessary facts can be determined from the petition itself without consideration of a return by the state. *Allen v. Perini,* 424 F. 3d 134, 141 (6th Cir. 1970). Courts have used Rule 4 of the habeas corpus rules to summarily dismiss facially insufficient habeas petitions brought under § 2241. *See e.g. Perez,* 157 F. Supp. 2d at 796 (additional citations omitted). Because the instant petition is facially insufficient to grant habeas relief, the petition is subject to summary dismissal. *Id.*

III.

The U.S. Attorney General (through the BOP), not a federal court, has the authority to compute sentencing credits for the time that a defendant spends in detention prior to sentencing. *United States v. Wilson,* 503 U.S. 329, 335 (1992); *McClain v. Bureau of Prisons,* 9 F.3d 503, 505 (6th Cir. 1993). However, a federal

district court may grant a prisoner claiming the miscalculation of sentencing credits relief under § 2241. *McClain,* 9 F.3d at 505; *United States v. Dowell,* 16 F. App'x 415, 420 (6th Cir. 2001). A petition for writ of habeas corpus filed by a federal inmate under 28 U.S.C. § 2241 is proper where the inmate is challenging the way his or her sentence is being executed. *Capaldi v. Pontesso,* 135 F.3d 1122, 1123 (6th Cir. 1998).

18 U.S.C. § 3585 states in pertinent part:

> (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.

In *Reno v. Koray,* 515 U.S. 50 (1995), the U.S. Supreme Court held that the time spent by a federal prisoner at a community treatment center run by the Volunteers of America while "released" on bail pursuant to the Bail Reform Act was not "official detention" within the meaning of § 3585(b). *Id.* at 65. Therefore, the prisoner was not entitled to sentencing credit for the time spent in the community

treatment center. *Id.* The Court found that a federal prisoner is entitled to sentencing credit only for time spent under control of the Bureau of Prisons or the Attorney General pursuant to a court detention order. *Id.* at 56. It is inappropriate to give a federal prisoner credit for time served even with restrictions placed upon the prisoner's liberty as a condition of his release on bail. *Id.* The Supreme Court reasoned that "a defendant suffers 'detention' only when committed to the custody of the Attorney General; a defendant admitted to bail on restrictive conditions . . . is 'released.'" *Id.* at 57.

Prior to the U.S. Supreme Court's holding in *Koray,* the Sixth Circuit held that a defendant's release on bail subject to restrictive conditions does not rise to the level of "official detention" within the meaning of § 3585(b) to allow sentencing credit. *See U.S. v. Becak*, 954 F.2d 386, 387-88 (6th Cir. 1992) (defendant released pretrial and ordered to reside at his mother's home, maintain employment, and have a curfew did not equate to "official detention" to warrant credit towards his prison sentence). The *Becak* decision was cited with approval by the Supreme Court in *Koray.* 515 U.S. at 57. Other Sixth Circuit cases have rejected similar requests for sentencing credit based upon restrictive bail conditions. *See e.g., U.S. v. Franklin,* 64 F. App'x 965, 968 (6th Cir. 2003) (defendant was not entitled to credit for time he spent in halfway house of charitable, religious organization, even though defendant's liberty was restricted); *Logan v. Hemingway,* 63 F. App'x 236, 237-38

(6th Cir. 2003) (prisoner not entitled to sentencing credit under § 3585(b) for seventy-four days spent in a hospital following his arrest).

Here, Petitioner is seeking credit for the 427 days he spent in home confinement, arguing that his pretrial confinement equates to "official detention" because his actions were limited more than they have been since he has been in custody at FCI Milan. ECF No. 1 at PageID.12. However, Petitioner acknowledges the Supreme Court's holding in *Reno* and its applicability to his pretrial home confinement; but he argues that the Supreme Court's decision is erroneous and should be overturned by this Court. *Id.* at PageID.19-20.

If a precedent of the Supreme Court has direct application in a case, a lower court is bound to follow the case which directly controls, leaving to the Supreme Court the prerogative of overruling its own decisions. *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (internal citations omitted). "This is true even if the lower court thinks the precedent is in tension with 'some other line of decisions.'" *Id.* Although the Supreme Court has the power to reconsider its precedents, a district court does not. *Alley v. Bell*, 101 F. Supp. 2d 588, 673 (W.D. Tenn. 2000). The job of lower court judges is to apply existing Supreme Court precedent unless it is expressly overruled by the Supreme Court. *Meriwether v. Hartop*, 992 F.3d 492, 506 (6th Cir. 2021).

This Court is not at liberty to reconsider the Supreme Court's decision in *Reno.* Consequently, the Court finds that BOP properly calculated Petitioner's sentence and he is not entitled to credit against his federal sentence for the time spent in home confinement while on pre-trial release.

IV.

As *Reno v. Koray,* 515 U.S. 50 (1995) is still binding Supreme Court precedent, Petitioner's request for credit for time spent in pretrial home confinement is denied. Therefore, the Court will **SUMMARILY DENY** the Petition for a Writ of Habeas Corpus Under 28 U.S.C. §2241.

Accordingly, **IT IS ORDERED**:

(1) The Petition for Writ of Habeas Corpus brought pursuant to 28 U.S.C. § 2241 is **SUMMARILY DENIED WITH PREJUDICE.**

(2) A certificate of appealability is not needed to appeal the denial of a habeas petition filed under § 2241, *Witham v. United States,* 355 F. 3d 501, 504 (6th Cir. 2004). Petitioner need not apply for a certificate with this Court or with the Sixth Circuit before filing an appeal from the denial of his habeas petition.

(3) Petitioner is **GRANTED** leave to appeal *in forma pauperis* because any appeal would be taken in good faith. *See Foster v. Ludwick,* 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002).

THIS IS A FINAL ORDER THAT CLOSES THE CASE.

IT IS SO ORDERED.

s/Brandy R. McMillion
HON. BRANDY R. MCMILLION
U.S. DISTRICT JUDGE

Dated: July 15, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACOB MATHIAS RUBINSTEIN,

Petitioner,

v.

CASE NO. 2:24-CV-11746
HON. BRANDY R. MCMILLION

ERIC RARDIN,

Respondent,
_____/

JUDGMENT

For the reasons stated in the Opinion and Order Summarily Denying the Petition for Writ of Habeas Corpus Brought Pursuant to 28 U.S.C. § 2241 and Granting Petitioner Leave to Appeal *in Forma Pauperis* (ECF No. 4), entered on July 15, 2024, the Petition for Writ of Habeas Corpus is **DENIED**. Petitioner is **GRANTED** Leave to Appeal *in Forma Pauperis*.

IT IS ORDERED AND ADJUDGED that this cause of action is **DISMISSED**.

KINIKIA ESSIX
CLERK OF COURT

By: s/L. Hosking
Deputy Clerk

APPENDIX B

NOT RECOMMENDED FOR PUBLICATION

No. 24-1637

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 11, 2025
KELLY L. STEPHENS, Clerk

JACOB MATHIAS RUBINSTEIN, Petitioner-Appellant, v. ERIC RARDIN, Warden, Respondent-Appellee.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ORDER

Before: KETHLEDGE, BUSH, and LARSEN, Circuit Judges.

Jacob Mathias Rubinstein, a pro se federal prisoner, appeals the district court's summary denial of his petition for a writ of habeas corpus brought under 28 U.S.C. § 2241. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the following reasons, we affirm the judgment of the district court.

In August 2021, Rubinstein was indicted on multiple child pornography charges in the United States District Court for the District of Maryland, and at his initial appearance the district court placed him on home confinement under 18 U.S.C. § 3142(c). Rubinstein pleaded guilty to one count of distribution of child pornography on March 22, 2022, and on August 4, 2022, the district court sentenced him to 84 months' imprisonment. Rubinstein surrendered to the federal correctional institution in Milan, Michigan on November 4, 2022, after spending a total of 427 days on home confinement.

Rubinstein unsuccessfully sought sentencing credit through the Bureau of Prisons (BOP) for the 427 days he spent on home confinement. Rubenstein then petitioned the district court for

habeas relief under § 2241, arguing that he should be given sentencing credit under 18 U.S.C. § 3585 for those 427 days. The district court summarily dismissed the petition, concluding that binding Supreme Court precedent established in *Reno v. Koray*, 515 U.S. 50 (1995), prohibited giving sentencing credit to defendants released on pre-sentence bail even when subject to "restrictive conditions."

In this timely appeal, Rubenstein reasserts his argument that he should receive sentencing credit for the time he spent on home confinement. He acknowledges that *Koray* bars him from relief but asserts that that case was wrongly decided and should be overturned. The government opposes the petition and argues that, under *Koray*, Rubenstein is not entitled to relief.

We review the denial of a § 2241 petition de novo. *Bannerman v. Snyder*, 325 F.3d 722, 723 (6th Cir. 2003). Under 18 U.S.C. § 3585(b)(1), "[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." In *Koray*, the Supreme Court held that the time a defendant is released on bail pre-sentence to a community treatment center does not count toward the credit given for "official detention" under the statute because a "defendant who is 'released' is not in BOP's custody." 515 U.S. at 63. "[C]redit for time spent in 'official detention' under § 3585(b)"—which "refer[s] to a correctional facility designated by the Bureau [of Prisons] for the service of federal sentences"—is "available only to those defendants who were detained in a 'penal or correctional facility,' [18 U.S.C.] § 3612(b)." *Id.* at 58. Rubinstein's pre-trial home confinement falls squarely within the confines of *Koray*, and we are bound to follow the Supreme Court's precedent. *See Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023); *Meriwether v. Hartop*, 992 F.3d 492, 506 (6th Cir. 2021).

Accordingly, we **AFFIRM** the judgment of the district court.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1637

JACOB MATHIAS RUBINSTEIN,

Petitioner-Appellant,

v.

ERIC RARDIN, Warden,

Respondent-Appellee.

Before: KETHLEDGE, BUSH, and LARSEN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

APPENDIX C

115 SCT 2021, 132 LED2D 46, 515 US 50 RENO v KORAY

JANET RENO, Attorney General, et al., Petitioners

vs.

ZIYA K. KORAY

515 US 50, 132 L Ed 2d 46, 115 SCT 2021

[No. 94-790]

Argued April 24, 1995.

Decided June 5, 1995.

DECISION

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 USCS § 3585(b)).

SUMMARY

In the United States District Court for the District of Maryland, an accused pleaded guilty to a charge of laundering monetary instruments. A "release order" was entered pursuant to a provision of the Bail Reform Act of 1984, 18 USCS § 3142(c), ordering the accused released on bail pending sentencing, but requiring that he be confined to a community treatment center, or "halfway house," without authorization to leave for any reason unless accompanied by a government agent. Upon sentencing, the Bureau of Prisons refused the accused's request that the time spent in the treatment center be credited toward his sentence. The accused, after exhausting his administrative remedies, filed a petition for habeas corpus, seeking credit under a provision of the Sentencing Reform Act of 1984, 18 USCS § 3585(b), for the time spent in the treatment center. The United States District Court for the Middle District of Pennsylvania denied the petition, finding that the accused's stay at the treatment center did not constitute "official detention" within the meaning of § 3585(b). The United States Court of Appeals for the Third

Circuit reversed-holding that "official detention" for purposes of credit under § 3585(b) included time spent under conditions of jail-type confinement-and remanded for a determination whether the accused was in such confinement at the treatment center (21 F.3d 558).

On certiorari, the United States Supreme Court reversed and remanded for further proceedings. In an opinion by Rehnquist, Ch. J., joined by<*pg. 47> O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer, JJ., it was held that the accused was not entitled to credit against his sentence of imprisonment for the time spent at the treatment center, as that time was not "official detention" within the meaning of § 3585(b), because (1) construing § 3585(b) in conjunction with the Bail Reform Act leads to the conclusion that a defendant suffers "detention" only when committed to the custody of the Attorney General, while a defendant admitted to bail on restrictive conditions is "released," (2) other related sentencing provisions confirm the interpretation that credit under § 3585(b) for time spent in "official detention" is available only to those defendants whose presentence detention was in a penal or correctional facility and who were subject to the control of the Bureau of Prisons, (3) the context of § 3585(b) strongly suggests that the period of presentence detention must be equivalent to the imprisonment itself, (4) nothing suggests that Congress, when it reworded the credit statute, replacing the term "custody" with "official detention," disagreed with the prior rule of Courts of Appeals that denied credit to defendants who had been released on bail, (5) a Bureau of Prisons internal guideline requires credit for time spent under a detention order, but not for time spent under a release order, (6) a reading of § 3585(b) under which the phrase "official detention" includes the restrictive conditions of the accused's confinement is not the only plausible interpretation of the language, (7) the fact that a defendant "released" to a community treatment center may be subject to restraints which do not materially differ from those imposed on a "detained" defendant committed to the custody of the Attorney General and then assigned to a treatment center does not undercut the distinction that, unlike defendants released on bail, defendants who are detained always remain subject to the control of the Bureau of Prisons, and (8) to adopt an alternative construction allowing credit where a defendant is subject to "jail-type confinement" would require a fact-intensive inquiry into the circumstances of confinement, while the construction adopted by the Supreme Court provides both the government and defendants with clear notice of the consequences of a Bail Reform Act "release" or "detention" order.

Ginsburg, J., concurred, pointing out that (1) the accused did not argue that he elected bail without comprehension that time in the treatment center would yield no credit against his sentence, and (2) the Supreme Court thus did not foreclose the possibility that due process calls for notice and a comprehension check, to assure that a defendant who pleads guilty understands the consequences of the plea.

Stevens, J., dissented, expressing the view that the Supreme Court's decision leads to

anomalous results, and that both the text and the purpose of § 3585(b) contemplate that a person who is confined for 24 hours a day, seven days a week, pursuant to a court order, is in "official detention" within the meaning of § 3585(b).

RESEARCH REFERENCES

21 Am Jur 2d, Criminal Law § 549

9 Federal Procedure, L Ed, Criminal Procedure §§ 22:1434, 22:1902, 22:1904

7A Federal Procedural Forms, L Ed, Criminal Procedure § 20:1042

18 USCS § 3585(b)

L Ed Digest, Criminal Law § 84

L Ed Index, Credit for Time Served

ALR Index, Credit for Time Served

ANNOTATION REFERENCES

Supreme Court's views as to the "rule of lenity" in the construction of criminal statutes. 62 L Ed 2d 827.

When is federal prisoner entitled, under 18 USCS § 3568, to credit for time spent in state custody "in connection with" offense or acts for which federal sentence was imposed. 47 ALR Fed 755.

Defendant's right to credit for time spent in halfway house, rehabilitation center, or similar restrictive environment as a condition of pretrial release. 29 ALR4th 240.<***pg. 48**>

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Criminal Law § 84 - credit for presentence time served - official detention - confinement in community treatment center

1a, 1b, 1c, 1d, 1e, 1f, 1g. A federal criminal defendant who-pursuant to a provision of the Bail Reform Act of 1984, 18 USCS § 3142(c)-is released on bail to await sentence but is ordered confined to a community treatment center, or "halfway house," is not in "official detention" under 18 USCS § 3585(b) and, therefore, is not entitled to credit under that provision against his

eventual prison sentence for the time spent in the treatment center, because (1) construing § 3585(b) in conjunction with the Bail Reform Act-as must be done because the Bail Reform Act is the body of law that authorizes federal courts to place presentence restraints on a defendant's liberty, and because the Bail Reform Act was enacted in the same statute as § 3585(b)-leads to the conclusion that a defendant suffers "detention" only when committed to the custody of the Attorney General, while a defendant admitted to bail on restrictive conditions is "released," (2) other related sentencing provisions confirm the interpretation that credit under § 3585(b) for time spent in "official detention" is available only to those defendants who were detained in a penal or correctional facility and were subject to the control of the Bureau of Prisons, (3) the context of § 3585(b) strongly suggests that the period of presentence detention must be equivalent to the imprisonment itself, (4) nothing suggests that Congress, when it reworded the credit statute, replacing the term "custody" with "official detention," disagreed with the prior rule of Federal Courts of Appeals that denied credit to defendants who had been released on bail, (5) a Bureau of Prisons internal guideline requires credit for time spent under a detention order, but not for time spent under a release order, (6) a reading of § 3585(b) under which the phrase "official detention" would include the restrictive conditions of confinement to a community treatment center is not the only plausible interpretation of the language, (7) the fact that a defendant "released" to a community treatment center may be subject to restraints which do not materially differ from those imposed on a "detained" defendant committed to the custody of the Attorney General and then assigned to a treatment center does not undercut the distinction that, unlike defendants released on bail, defendants who are detained always remain subject to the control of the Bureau of Prisons, and (8) to adopt an alternative construction allowing credit where a defendant is subject to "jail-type confinement" would require a fact-intensive inquiry into the circumstances of confinement, while the construction that confinement to a treatment center is not "detention" provides both the government and defendants with clear notice of the consequences of a Bail Reform Act "release" or "detention" order. (Stevens, J., dissented from this holding.)

Statutes § 113 - consideration of context

2. It is a fundamental principle of statutory construction that the <***pg. 49***> meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.

Administrative Law § 276 - judicial review - construction of statute

3. An administrative agency's internal guideline interpreting a statute which the agency is charged with administering-although not subject to the rigors of the Administrative Procedure Act, including public notice and comment-is still entitled to some judicial deference where the guideline is a permissible construction of the statute.

Statutes § 188 - rule of lenity - absence of ambiguity

4. A criminal statute is not ambiguous for purposes of application of the rule of lenity merely because there is a division of judicial authority over its proper construction; the rule of lenity applies only if, after seizing everything from which aid can be derived, the United States Supreme Court can make no more than a guess as to what Congress intended.<*pg. 50>

SYLLABUS

Under 18 USC § 3585(b) [18 USCS § 3585(b)], a defendant generally must "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." Before respondent's federal sentence commenced, he was "released" on bail pursuant to the Bail Reform Act of 1984 and ordered confined to a community treatment center. After his prison sentence began, the Bureau of Prisons (BOP) relied on its established policy in refusing to credit toward his sentence the time he had spent at the treatment center. He exhausted his administrative remedies and then filed a federal habeas corpus petition. A District Court denied his petition on the ground that his stay at the center was not "official detention" under § 3585(b). In reversing, the Court of Appeals declined to defer to BOP's view that time spent under highly restrictive conditions while "released" on bail is not "official detention" because a "released" defendant is not subject to BOP's control. It reasoned instead that "official detention" includes time spent under conditions of "jail-type confinement."

Held:

The time respondent spent at the treatment center while "released" on bail was not "official detention" within the meaning of § 3585(b).

(a) Viewed in isolation, the phrase "official detention" could either refer, as the Government contends, to a court order detaining a defendant and committing him to the custody of the Attorney General for confinement, or, as respondent argues, to the restrictive conditions of his release on bail under an "official" order that significantly curtailed his liberty. Examination of the phrase in light of the context in which it is used, however, reveals that the Government's interpretation is correct.

(b) The "official detention" language must be construed in conjunction with the Bail Reform Act of 1984, since § 3585(b) provides credit only for presentence restraints on liberty and since it is the Bail Reform Act that authorizes federal courts to place such restraints on a defendant's liberty. That Act provides a court with only two choices: It may either "release" a defendant on bail, 18 USC § 3142(c) [18 USCS § 3142(c)], or order him "detained" without bail, § 3142(e). A defendant suffers "detention" only when committed to the Attorney General's custody, §

3142(i)(2); a defendant admitted to bail, even on restrictive conditions, as respondent was, see § 3142(c), is "released."

(c) Section 3585(a) and related sentencing provisions confirm the view that § 3585(b) is available only to those defendants who were detained in a penal or correctional facility and subject to BOP's control. The context and history of § 3585(b) also support this reading. The provision reduces a defendant's "imprisonment" by the amount of time spent in "official detention" before his sentence, strongly suggesting that the presentence "detention" period must be equivalent to the "imprisonment" itself. And nothing suggests that when Congress replaced § 3568 with § 3585(b), it substituted the phrase "official detention" for "in custody" because it disagreed with the Courts of Appeals' uniform rule that § 3568 denied credit to defendants released on bail. To the contrary, <*pg. 51> Congress presumably made the change to conform the credit statute to the nomenclature used in related sentencing provisions and in the Bail Reform Act of 1984.

(d) In an internal guideline, BOP likewise has interpreted the phrase "official detention" to require credit only for a defendant's time spent under a § 3142 "detention order." This is the most natural reading of the phrase, and the internal guideline of the agency charged with administering the credit statute is entitled to some deference where it is a permissible construction of the statute.

(e) In contrast, respondent's reading of "official detention" is plausible only if the phrase is read in isolation. But even then, it is not the only plausible interpretation. Respondent correctly notes that a defendant "released" to a treatment center could be subject to restraints that do not materially differ from those imposed on a "detained" defendant who is assigned to a treatment center as part of his sentence. However, that fact does not undercut the important distinction between all defendants "detained" and all defendants "released" on bail: The former always remain completely subject to BOP's control. The Court of Appeals' alternative construction would require a fact-intensive inquiry into the circumstances of confinement in each case to determine whether a defendant "released" on bail was subjected to "jail-type confinement." On the other hand, the Government's construction provides both it and a defendant with clear notice of the consequences of a "release" or "detention" order. Finally, the rule of lenity does not apply here. A statute is not "ambiguous" for purposes of the rule merely because there is a division of judicial authority over its proper construction. Rather, the rule applies only if, after seizing everything from which aid can be derived, this Court can make no more than a guess as to what Congress intended. That is not this case.

21 F.3d 558, reversed and remanded.

Rehnquist, C. J., delivered the opinion of the Court, in which O'Connor, Scalia, Kennedy,

Souter, Thomas, Ginsburg, and Breyer, JJ., joined. Ginsburg, J., filed a concurring opinion. Stevens, J., filed a dissenting opinion.

APPEARANCES OF COUNSEL ARGUING CASE

Miguel A. Estrada argued the cause for petitioners.

Irwin Rochman argued the cause for respondent.

Summaries of Briefs; Names of Participating Attorneys, p 1044, infra.

OPINION

[515 US 52]

Chief Justice *Rehnquist* delivered the opinion of the Court.

[1a] Title 18 USC § 3585(b) [18 USCS § 3585(b)] provides that a defendant generally must "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." Before the commencement of respondent's federal sentence, a Federal Magistrate Judge "released" him on bail pursuant to the Bail Reform Act of 1984 and ordered him confined to a community treatment center. The question presented is whether respondent was in "official detention," and thus entitled to a sentence credit under § 3585(b), during the time he spent at the treatment center. We hold that he was not.

On April 23, 1991, respondent Ziya Koray was arrested for laundering monetary instruments in violation of 18 USC § 1956(a)(1) [18 USCS § 1956(a)(1)]. On June 18, 1991, he **<*pg. 52>** pleaded guilty to that charge in the United States District Court for the District of Maryland. One week later, on June 25, 1991, a Federal Mgistrate Judge entered a "release order" pursuant to 18 USC § 3142(c) [18 USCS § 3142(c)], ordering respondent released on bail, pending sentencing, into the custody of the Pretrial Services

[515 US 53]

Agency. The order required that he be "confined to [the] premises" of a Volunteers of America community treatment center without "authoriz[ation] to leave for any reason unless accompanied" by a Government special agent. On October 22, 1991, the District Court sentenced

respondent to 41 months' imprisonment. Respondent remained at the Volunteers of America facility until November 25, 1991, the day he reported to the Allenwood Federal Prison Camp to serve his sentence.

Respondent requested the Bureau of Prisons (BOP or Bureau) to credit toward his sentence of imprisonment the approximately 150 days he spent at the Volunteers of America community treatment center between June 25 and November 25, 1991. Relying on its established policy, BOP refused to grant the requested credit. After exhausting his administrative remedies, respondent filed a petition for habeas corpus in the United States District Court for the Middle District of Pennsylvania seeking credit under 18 USC § 3585 [18 USCS § 3585] for the time he spent at the community treatment center. The District Court denied the petition, finding that respondent's stay at the center did not constitute "official detention" within the meaning of 18 USC § 3585(b) [18 USCS § 3585(b)].

The Court of Appeals for the Third Circuit reversed. 21 F.3d 558 (1994). It acknowledged that the overwhelming majority of the Courts of Appeals "have concluded that section 3585 . . . does not require the Bureau to credit presentenced defendants whose bail conditions allowed them to be confined outside of Bureau of Prison[s] facilities." Id., at 561. The court declined, however, to defer to the Bureau's view-that time spent under highly restrictive conditions while "released" on bail is not " 'official detention' " under § 3585(b) because a " 'released' " defendant is not subject to the Bureau's control. Id., at 562-565. Instead, the court reasoned that § 3585(b)'s " 'official detention' " language need not be read "as if it provided 'official detention by the Attorney General or the Bureau of Prisons,' " since "there is nothing

[515 US 54]

in the statute which requires or suggests that a defendant must be under the detention of the Bureau," and since "[a] court may 'detain' a person as 'official[ly]' as the Attorney General." Id., at 563-564. Concluding that " 'official detention' for purposes of credit under 18 USC § 3585 [18 USCS § 3585] includes time spent under conditions of jail-type confinement," id., at 567, the Court of Appeals remanded the case for a determination whether respondent was in "jail-type confinement" during his stay at the Volunteers of America community treatment center.

We granted the Government's petition for certiorari to resolve a conflict among the Courts of Appeals on the question whether a federal prisoner is entitled to credit against his sentence under § 3585(b) for time when he was "released" on bail pursuant to the Bail Reform Act of **<*pg. 53>** 1984.[1] 513 US 1106, 130 L Ed 2d 779, 115 S Ct 787 (1995). We now reverse.

[515 US 55]

Title 18 USC § 3585 [18 USCS § 3585] determines when a federal sentence of imprisonment commences and whether credit against that sentence must be granted for time spent in "official detention" before the sentence began. It states:

"Calculation of a term of imprisonment

"(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 USC § 3585 [18 USCS § 3585] (emphasis added).

In United States v Wilson, 503 US 329, 337, 117 L Ed 2d 593, 112 S Ct 1351 (1992), we specifically noted Congress' use of the term " 'official detention' " in § 3585(b), but we had no occasion to rule on the meaning of that term. We must do so today.[2]

[515 US 56]

[1b][2] The Government contends <***pg. 54**> that the phrase "official detention" in § 3585(b) refers to a court order detaining a defendant and committing him to the custody of the Attorney General for confinement. Respondent, on the other hand, argues that the phrase "official detention" includes the restrictive conditions of his release on bail because the Federal Magistrate's bail order was "official" and significantly curtailed his liberty. Viewing the phrase in isolation, it may be said that either reading is plausible. But it is a "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." Deal v United States, 508 US 129, 132, 124 L Ed 2d 44, 114 S Ct 1993 (1993). After examining the phrase "official detention" in this light, we believe the Government's interpretation is the correct one.

[1c] Section 3585(b) provides credit for time "spent in official detention prior to the date the sentence commences," 18 USC § 3585(b) [18 USCS § 3585(b)] (emphasis added), thus making clear that credit is awarded only for presentence restraints on liberty. Because the Bail Reform Act of 1984, 18 USC § 3141 et seq. [18 USCS §§ 3141 et seq.], is the body of law that authorizes federal courts to place presentence restraints on a defendant's liberty, see § 3142(a) (authorizing courts to impose restraints on the defendant "pending trial"); § 3143(a) (authorizing courts to impose restraints while the defendant "is waiting imposition or execution of sentence"), the "official detention" language of § 3585(b) must be construed in conjunction with that Act. This is especially so because the Bail Reform Act of 1984 was enacted in the same statute as the Sentencing Reform Act of

[515 US 57]

1984, of which § 3585 is a part.[3] See Gozlon-Peretz v United States, 498 US 395, 407-408, 112 L Ed 2d 919, 111 S Ct 840 (1991) ("It is not uncommon to refer to other, related legislative enactments when interpreting specialized statutory terms," since Congress is presumed to have "legislated with reference to" those terms).

The Bail Reform Act of 1984 provides a federal court with two choices when dealing with a criminal defendant who has been "charged with an offense" and is awaiting trial, 18 USC § 3142(a) [18 USCS § 3142(a)], or who "has been found guilty of an offense and . . . is awaiting imposition or execution of sentence," 18 USC § 3143(a)(1) (1988 ed, Supp V) [18 USCS § 3143(a)(1)]. The court may either (1) "release" the defendant on bail or (2) order him "detained" without bail. A court may "release" a defendant subject to a variety of restrictive conditions, including residence in a community treatment center. See §§ 3142(c)(1)(B)(i), (x), and (xiv). If, however, the court "finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other <*pg. 55> person and the community," § 3142(e), the court "shall order the detention of the person," ibid., by issuing a "detention order" "direct[ing] that the person be committed to the custody of the Attorney General for confinement in a corrections facility," § 3142(i)(2). Thus, under the language of the Bail Reform Act of 1984, a defendant suffers "detention" only when committed to the custody of the Attorney General; a defendant admitted to bail on restrictive conditions, as respondent was, is "released." See Dawson v Scott, 50 F.3d 884, 889-890, and nn 11-12 (CA11 1995); Moreland v United States, 968 F.2d 655, 659-660 (CA8), cert denied, 506 US 1028, 121 L Ed 2d 598, 113 S Ct 675 (1992); 968 F.2d, at 661-663

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(Loken, J., concurring); United States v Becak, 954 F.2d 386, 388 (CA6), cert denied, 504

US 945, 119 L Ed 2d 211, 112 S Ct 2286 (1992).

Section 3585(a) and related sentencing provisions confirm this interpretation. Section 3585(a) provides that a federal sentence "commences" when the defendant is received for transportation to or arrives at "the official detention facility at which the sentence is to be served." Title 18 USC § 3621 [18 USCS § 3621], in turn, provides that the sentenced defendant "shall be committed to the custody of the Bureau of Prisons," § 3621(a), which "may designate any available penal or correctional facility . . ., whether maintained by the Federal Government or otherwise . . ., that the Bureau determines to be appropriate and suitable," § 3621(b) (emphasis added). The phrase "official detention facility" in § 3585(a) therefore must refer to a correctional facility designated by the Bureau for the service of federal sentences, where the Bureau retains the discretion to "direct the transfer of a prisoner from one penal or correctional facility to another." § 3621(b).

This reading of § 3585(a) is reinforced by other provisions governing the administration of federal sentences. For example, § 3622 gives the Bureau authority to release a prisoner from the place of his imprisonment for a limited period to "participate in a training or educational program in the community while continuing in official detention at the prison facility," § 3622(b), or to "work at paid employment in the community while continuing in official detention at the penal or correctional facility," § 3622(c). Because the words "official detention" should bear the same meaning in subsections (a) and (b) of § 3585 as they do in the above related sentencing statutes, see Estate of Cowart v Nicklos Drilling Co., 505 US 469, 479, 120 L Ed 2d 379, 112 S Ct 2589 (1992) ("[T]he basic canon of statutory construction [is] that identical terms within an Act bear the same meaning"), credit for time spent in "official detention" under § 3585(b) is available only to those defendants who were detained in a "penal or correctional facility," § 3621(b), and who were subject to BOP's control.

[515 US 59]

The context and history of § 3585(b) also support this view. As for context, § 3585(b) reduces a defendant's "imprisonment" by the amount of time spent in "official detention" before his sentence, strongly suggesting that the period of pre-sentence "detention" must be equivalent to the "imprisonment" itself. It would be anomalous to interpret § 3585(b) to require sentence credit for time spent confined in a <*pg. 56> community treatment center where the defendant is not subject to BOP's control, since Congress generally views such a restriction on liberty as part of a sentence of "probation," see 18 USC §§ 3563(b)(10), (12), and (14) [18 USCS §§ 3563(b)(10), (12), and (14)], or "supervised release," see § 3583(d), rather than part of a sentence of "imprisonment." See United States v Zackular, 945 F.2d 423, 425 (CA1 1991).

With respect to history, § 3585(b)'s predecessor, 18 USC § 3568 (1982 ed) [18 USCS § 3568] (repealed), required the Attorney General to award sentence credit for "any days spent in custody in connection with the offense or acts for which sentence was imposed." 18 USC (Emphasis added). The Courts of Appeals uniformly held that the phrase "in custody" did not allow sentence credit because of restrictions placed on a defendant's liberty as a condition of release on bail. See Polakoff v United States, 489 F.2d 727, 730 (CA5 1974) (time spent on "highly restricted bond" not creditable as " 'custody' "); United States v Robles, 563 F.2d 1308, 1309 (CA9 1977) ("[T]ime spent on bail or on bond pending appeal is not time served 'in custody' "), cert denied, 435 US 925, 55 L Ed 2d 519, 98 S Ct 1491 (1978); Ortega v United States, 510 F.2d 412, 413 (CA10 1975) (" 'custody' " refers to "actual custodial incarceration," not "the time a criminal defendant is free on bond"); United States v Peterson, 507 F.2d 1191, 1192 (CADC 1974) (" 'in custody' " does "not refer to the stipulations imposed when a defendant is at large on conditional release"). In 1984, Congress enacted § 3585(b) and altered § 3568 by, inter alia, "replac[ing] the term 'custody' with the term 'official detention.' " Wilson, 503 US, at 337, 117 L Ed 2d 593, 112 S Ct 1351; see also

[515 US 60]

18 USC § 3585(b) [18 USCS § 3585(b)]. In thus rewording the credit statute, however, nothing suggests that Congress disagreed with the Courts of Appeals' rule denying credit to defendants who had been released on bail. To the contrary, Congress presumably made the change to conform the credit statute to the nomenclature used in related sentencing provisions, see 18 USC §§ 3585(a) and 3622 [18 USCS §§ 3585(a) and 3622], and in the Bail Reform Act of 1984. See Moreland, 968 F.2d, at 662, and n 5 (Loken, J., concurring).

[1d][3] The Bureau, as the agency charged with administering the credit statute, see Wilson, supra, at 334-335, 117 L Ed 2d 593, 112 S Ct 1351, likewise has interpreted § 3585(b)'s "official detention" language to require credit for time spent by a defendant under a § 3142(e) "detention order," but not for time spent under a § 3142(c) "release order," no matter how restrictive the conditions.[4] As we have explained, see supra, at 56-60, 132 L Ed 2d, at 53-56, the

[515 US 61]

Bureau's interpretation is the most natural and reasonable reading of § 3585(b)'s "official <*pg. 57> detention" language. It is true that the Bureau's interpretation appears only in a "Program Statemen[t]"-an internal agency guideline-rather than in "published regulations subject to the rigors of the Administrative Procedur[e] Act, including public notice and comment." 21 F.3d, at 562. But BOP's internal agency guideline, which is akin to an "interpretive rule" that "do[es] not require notice and comment," Shalala v Guernsey Memorial Hospital, 514 US 87, 99,

131 L Ed 2d 106, 115 S Ct 1232 (1995), is still entitled to some deference, cf. Martin v Occupational Safety and Health Review Comm'n, 499 US 144, 157, 113 L Ed 2d 117, 111 S Ct 1171 (1991), since it is a "permissible construction of the statute," Chevron U. S. A. Inc. v Natural Resources Defense Council, Inc., 467 US 837, 843, 81 L Ed 2d 694, 104 S Ct 2778 (1984).

[1e] Respondent, as we have indicated, disagrees with the above interpretation of § 3585(b). He contends that the "plain meaning" of the phrase "official detention" includes the restrictive conditions of his confinement, even though he

[515 US 62]

was released on bail. This contention is a plausible one if the phrase is read in isolation: respondent was subjected to restrictive conditions when released on bail, these conditions were imposed by a court order, and his sojourn in the community treatment center therefore amounted to "official detention." But even without reference to the context of the language and the history of the statute, respondent's is not the only plausible interpretation of the language; it would be too much to say that the statute "cannot bear the interpretation adopted by" the Bureau. Sullivan v Everhart, 494 US 83, 91-92, 108 L Ed 2d 72, 110 S Ct 960 (1990). And in light of the foregoing textual and historical analysis, the initial<*pg. 58> plausibility of respondent's reading simply does not carry the day.

Respondent also argues it is improper to focus on the release/detention dichotomy of the Bail Reform Act of 1984 to construe § 3585(b)'s "official detention" language because a defendant "released" on bail may be subjected to conditions (under 18 USC § 3142(c)(1)(B)(xiv) [18 USCS § 3142(c)(1)(B)(xiv)]) that are just as onerous as those faced by "detained" defendants. In addition, he asserts that his confinement as a "released" defendant in the Volunteers of America community treatment center constituted "official detention" because "sentenced" prisoners are deemed to be in "official detention" when BOP authorizes them to serve the last part of their sentences in a community treatment center, see U.S. Dept. of Justice, Bureau of Prisons Program Statement No. 7310.02 (Oct. 19, 1993) (interpreting 18 USC § 3624(c) [18 USCS § 3624(c)] to allow BOP to place sentenced prisoners in community corrections centers, since such centers meet 18 USC § 3621(b)'s [18 USCS § 3621(b)] definition of a "penal or correctional facility"), or to serve their sentences on educational or work release, see 18 USC §§ 3622(b) and (c) [18 USCS §§ 3622(b) and (c)].

It is quite true that under the Government's theory a defendant "released" to a community treatment center could be subject to restraints which do not materially differ from those imposed on a "detained" defendant committed to the

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custody of the Attorney General, and thence assigned to a treatment center. But this fact does not undercut the remaining distinction that exists between all defendants committed to the custody of the Attorney General on the one hand, and all defendants released on bail on the other. Unlike defendants "released" on bail, defendants who are "detained" or "sentenced" always remain subject to the control of the Bureau. See Randall v Whelan, 938 F.2d 522, 525 (CA4 1991). This is an important distinction, as the identity of the custodian has both legal and practical significance. A defendant who is "released" is not in BOP's custody, and he cannot be summarily reassigned to a different place of confinement unless a judicial officer revokes his release, see 18 USC § 3148(b) [18 USCS § 3148(b)], or modifies the conditions of his release, see § 3142(c)(3). A defendant who is "detained," however, is completely subject to BOP's control. And "[t]hat single factor encompasses a wide variety of restrictions." Randall, supra, at 525. "Detained" defendants are subject to BOP's disciplinary procedures; they are subject to summary reassignment to any other penal or correctional facility within the system, cf. Meachum v Fano, 427 US 215, 224-229, 49 L Ed 2d 451, 96 S Ct 2532 (1976); and, being in the legal custody of BOP, the Bureau has full discretion to control many conditions of their confinement. See Moody v Daggett, 429 US 78, 88, n 9, 50 L Ed 2d 236, 97 S Ct 274 (1976); Bell v Wolfish, 441 US 520, 544-548, 60 L Ed 2d 447, 99 S Ct 1861 (1979).[5]

[515 US 64]

It may seem unwise policy to treat <*pg. 59> defendants differently for purposes of sentence credit under § 3585(b) when they are similarly situated in fact-the one is confined to a community treatment center after having been "detained" and committed to the Bureau's custody, while the other is "released" to such a center on bail. But the alternative construction adopted by the Court of Appeals in this case has its own grave difficulties. To determine in each case whether a defendant "released" on bail was subjected to "jail-type confinement" would require a fact-intensive inquiry into the circumstances of confinement, an inquiry based on information in the hands of private entities not available to the Bureau as a matter of right. Even were such information more readily available, it seems certain that the phrase "jail-type confinement" would remain sufficiently vague and amorphous so that much the same kind of disparity in treatment for similarly situated defendants would arise. The Government's construction of § 3585(b), on the other hand, provides both it and the defendant with clear notice of the consequences of a § 3142 "release" or "detention" order.

[1f][4] Respondent finally suggests that the rule of lenity requires adoption of the "jail-type

confinement" test for purposes of calculating credit under § 3585(b) because "there is a split of authority in the Circuits concerning the reach of 'official detention,' " Brief for Respondent 34, n 13, and because there is ambiguity as to which forms of custody fall within the meaning of " 'official detention.' " See id., at 34. Respondent misconstrues the doctrine. A statute is not " 'ambiguous'

[515 US 65]

for purposes of lenity merely because" there is "a division of judicial authority" over its proper construction. Moskal v United States, 498 US 103, 108, 112 L Ed 2d 449, 111 S Ct 461 (1990). The rule of lenity applies only if, "after seizing everything from which aid can be derived," Smith v United States, 508 US 223, 239, 122 L Ed 2d 548, 113 S Ct 1178 (1993) (internal quotation marks and brackets omitted), we can make "no more than a guess as to what Congress intended." Ladner v United States, 358 US 169, 178, 3 L Ed 2d 199, 79 S Ct 209 (1958). That is not this case.

[1g] We hold that the time respondent spent at the Volunteers of America community treatment center while "released" on bail pursuant to the Bail Reform Act of 1984 was not "official detention" within the meaning of 18 USC § 3585(b) [18 USCS § 3585(b)]. Respondent therefore was not entitled to a credit against his sentence of imprisonment. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.<***pg. 60***>

SEPARATE OPINION

Justice *Ginsburg,* concurring.

As the Government reads 18 USC § 3585(b) [18 USCS § 3585(b)], Koray gains credit against his sentence for the two months he spent in jail, but not for the five months' close confinement he encountered at the halfway house. The Court cogently explains why it adopts the Government's interpretation. I write separately to point out that Koray has not argued before us that he did not elect bail intelligently, i.e., with comprehension that time in the halfway house, unlike time in jail, would yield no credit against his eventual sentence. The Court thus does not foreclose the possibility that the fundamental fairness we describe as "due process" calls for notice and a comprehension check. Cf. Fed Rule Crim Proc 11 (setting out information a court is to convey to assure that a defendant who pleads guilty understands the consequences of the plea).

[515 US 66]

Justice *Stevens,* dissenting.

Pursuant to an order entered by a federal judicial officer, respondent was "confined to premises of [Volunteers of America (VOA)]," a private halfway house. The order of confinement-euphemistically styled a "release" order-provided that respondent "shall not be authorized to leave for any reason unless accompanied by Special Agent Dennis Bass." Brief for Respondent 3. While at VOA, respondent "had to account for his presence five times a day, he was subject to random breath and urine tests, his access to visitors was limited in both time and manner, and there was a paucity of vocational, educational, and recreational services compared to a prison facility." Koray v Sizer, 21 F.3d 558, 566 (CA3 1994). Except for one off-site medical exam, respondent remained at VOA 24 hours a day for 150 days. In my opinion, respondent's confinement was unquestionably both "official" and "detention" within the meaning of 18 USC § 3585(b) [18 USCS § 3585(b)].

Both the text and the purpose of § 3585(b) clearly contemplate 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." Such a person is surely in custody, and that custody is no less "official" for being ordered by a court rather than the Attorney General. Indeed, even the majority acknowledges the force of this plain meaning argument. Ante, at 61-62, 132 L Ed 2d, at 57-58.* Moreover, the manifest purpose of § 3585(b) is to give a convicted person credit for all time spent in official

[515 US 67]

custody as a result of the offense that gave rise to his conviction. When that confinement is in a facility that has all the restraints of a typical prison, it should not matter whether that facility is operated by a State, a county, or a private custodian pursuant to a contract with the Government.

Purporting to establish the contrary <***pg. 61***> conclusion, the Court labors to prove the rather obvious proposition that all persons in the custody of the Attorney General pursuant to a detention order issued under 18 USC § 3142 (1988 ed and Supp V) [18 USCS § 3142], as well as all persons confined in an "official detention facility" under § 3585(a), are also in "official detention" within the meaning of § 3585(b). However, proof that confinement under § 3142 or § 3585(a) constitutes official detention certainly is not proof that no other form of confinement can constitute official detention. The majority thus fails to demonstrate that respondent should not receive sentencing credit for his court-ordered full-time confinement in a jail-type facility.

Moreover, the Court's restrictive interpretation creates an anomalous result. Under the Court's view that only a person "committed to the custody of the Attorney General" can be in "official detention," § 3585(b) does not authorize any credit for time spent in state custody, "no matter how restrictive the conditions." Ante, at 60, 63-64, n 5, 132 L Ed 2d, at 56, 58-59. This conclusion is so plainly at war with common sense that even the Attorney General rejects it. See Brief for Petitioners 11 ("[T]he Bureau grants credit for time spent in state custody"); see also Reply Brief for Petitioners 7-8.

The majority attempts to escape its self-created anomaly by suggesting that it "need not and do[es] not rule" on the propriety of giving credit for confinement under state law. Ante, at 64, n 5, 132 L Ed 2d, at 59. But that contention simply collapses the majority's house of ards. For either the "text" of the Bail Reform Act limits "official detention" to custody of the Attorney General, in which case the majority adopts an interpretation that even the Attorney General rejects, or the

[515 US 68]

"text" does not limit the meaning of official detention, and then there is absolutely no reason for concluding that court-ordered 24-hour-a-day confinement is not official detention. The majority cannot have it both ways.

Given the anomalous implications of the Court's decision, one may fairly question how the majority justifies its result. It is surely not the plain language of the statute, because the majority's reading requires that a judicially mandated, 24-hour-a-day confinement in a jail-type facility is neither "official" (because it is ordered by a judge and not the Attorney General) nor "detention" (because the judicial order is labeled "release"). Nor does the majority rely on the nature of the facility itself, because the majority concedes that if the Attorney General rather than the court had confined respondent in the exact same facility, respondent's confinement would have been "official detention" under the statute. The majority purports to rely on some sort of Chevron deference, ante, at 61, 132 L Ed 2d, at 57, but it is indeed an odd sort of deference given that (as I have noted above) the majority adopts an interpretation that the Bureau of Prisons itself has rejected.

The majority suggests at one point that it relies on the history of the interpretation of the word "custody," arguing that Congress did not intend to change the settled meaning of "custody" that existed prior to the Bail Reform Act. However, not one of the cases cited by the majority, ante, at 59, 132 L Ed 2d, at <*pg. 62> 55-56, stands for the proposition that custody does not include confinement in a jail-type facility. Instead, all of those cases involved situations in which the defendant was at large. See Polakoff v United States, 489 F.2d 727, 730 (CA5 1974) (defendant faced "travel and social restrictions and was required to report weekly to a probation officer");

United States v Robles, 563 F.2d 1308, 1309 (CA9 1977) (defendant required to "obey all laws, remain within the jurisdiction unless court permission was granted to travel, obey all court orders, and keep his attorney posted as to his address and employment"); Ortega v United States, 510 F.2d 412, 413

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(CA10 1975) ("released on personal recognizance"); United States v Peterson, 507 F.2d 1191, 1192 (CADC 1974) (defendant "at large on conditional release"). Moreover, at least one Court of Appeals (albeit after the passage of the Bail Reform Act) interpreted the word "custody" under § 3568 as including "enforced residence under conditions approaching those of incarceration." Brown v Rison, 895 F.2d 533, 536 (CA9 1990). Thus, though I agree with the majority that Congress intended to incorporate the understanding of "custody" that existed under § 3568, I fail to see how that intention supports the majority's result.

Simply accepting the plain meaning of the statutory text would avoid the anomalies created by the Court's opinion, would effectuate the intent of Congress, and would provide fair treatment for defendants who will otherwise spend more time in custody than Congress has deemed necessary or appropriate. For these reasons, I agree with the persuasive opinion of the Court of Appeals and would affirm its judgment.

FOOTNOTES

[1] Compare Dawson v Scott, 50 F.3d 884, 887-888 (CA11 1995) (time spent in halfway house and safe house while released on bond not creditable toward sentence); Moreland v United States, 968 F.2d 655, 657-660 (CA8) (en banc) (time spent in halfway house while released on bond not creditable toward sentence), cert denied, 506 US 1028, 121 L Ed 2d 598, 113 S Ct 675 (1992); United States v Edwards, 960 F.2d 278, 282-283 (CA2 1992) (time spent in home confinement under electronic monitoring while released on bond not creditable toward sentence); Pinedo v United States, 955 F.2d 12, 14 (CA5 1992) (per curiam) (time spent on bail prior to trial not creditable toward sentence); United States v Becak, 954 F.2d 386, 387-388 (CA6) (time spent at mother's house under conditions of release while released on bond not creditable toward sentence), cert denied, 504 US 945, 119 L Ed 2d 211, 112 S Ct 2286 (1992); United States v Zackular, 945 F.2d 423, 425 (CA1 1991) (time spent in home confinement prior to sentencing not creditable toward sentence); United States v Insley, 927 F.2d 185, 186 (CA4 1991) (time spent in home confinement while released on appeal bond not creditable toward sentence); United States v Woods, 888 F.2d 653, 655-656 (CA10 1989) (time spent at halfway house while released on bond not creditable toward sentence), cert denied, 494 US 1006, 108 L Ed 2d 478, 110 S Ct 1301 (1990) with Mills v Taylor, 967 F.2d 1397, 1400 (CA9 1992) (time spent in community treatment center while released on bail creditable toward sentence where "conditions of release approach[ed] those of incarceration").

[2] Our task is strictly one of statutory interpretation. Respondent argued in the District Court that § 3585 violated equal protection principles by treating pretrial defendants differently than post-sentenced

defendants. App 23. The District Court rejected this argument. App to Pet for Cert A-28. Respondent waived his equal protection argument in the Third Circuit, see 21 F.3d 558, 559, n 1 (1994), and he has not renewed it here. In an amicus curiae brief filed with this Court, University of Southern California Law Center's Post-Conviction Justice Project raises a similar equal protection argument, see Brief for USC Law Center's Post-Conviction Justice Project as Amicus Curiae 20-23, but that argument is not properly before the Court. See United Parcel Service, Inc. v Mitchell, 451 US 56, 60, n 2, 67 L Ed 2d 732, 101 S Ct 1559 (1981) (noting that this Court does not decide issues raised by amici that were not decided by the court of appeals or argued by the interested party); Bell v Wolfish, 441 US 520, 531, n 13, 60 L Ed 2d 447, 99 S Ct 1861 (1979) (same).

[3] See Comprehensive Crime Control Act of 1984, Pub L 98-473, Tit II, 98 Stat 1976. The provisions of the Comprehensive Crime Control Act of 1984 relating to bail are known as the Bail Reform Act of 1984. Pub L 98-473, Tit II, ch I, 98 Stat 1976. The provisions relating to sentencing, including the credit provision of § 3585(b), are known as the Sentencing Reform Act of 1984. Pub L 98-473, Tit II, ch II, 98 Stat 1987.

[4] The Bureau's view of § 3585(b) is explained in U.S. Dept. of Justice, Bureau of Prisons Program Statement No. 5880.28(c) (July 29, 1994), which reads as follows:

"Prior Custody Time Credit. The [Sentencing Reform Act] includes a new statutory provision, 18 USC § 3585(b) [18 USCS § 3585(b)], that pertains to 'credit for prior custody' and is controlling for making time credit determinations for sentences imposed under the SRA. . . .

. . . . .

"Definitions:

. . . . .

"Official detention. 'Official detention' is defined, for purposes of this policy, as time spent under a federal detention order. This also includes time spent under a detention order when the court has recommended placement in a less secure environment or in a community based program as a condition of presentence detention. A person under these circumstances remains in 'official detention,' subject to the discretion of the Attorney General and the U.S. Marshals Service with respect to the place of detention. Those defendants placed in a program and/or residence as a condition of detention are subject to removal and return to a more secure environment at the discretion of the Attorney General and the U.S. Marshals Service, and further, remain subject to prosecution for escape from detention for any unauthorized absence from the program/residence. Such a person is not similarly situated with persons conditionally released from detention with a requirement of program participation and/or residence.

"A defendant is not eligible for any credits while released from detention. Time spent in residence in a community corrections center as a result of the Pretrial Services Act of 1982 (18 USC § 3152-3154 [18 USCS §§ 3152-3154]), or as a result of a condition of bail or bond (18 USC § 3141-3143 [18 USCS §§ 3141-3143]), is not creditable as presentence time. A condition of bail or bond which is 'highly restrictive,' and that includes 'house arrest', 'electronic monitoring' or 'home confinement'; or such as requiring the defendant to report daily to the U.S. Marshal, U.S. Probation Service, or other person; is not considered as time in official detention. Such a defendant is not subject to the discretion of the U.S. Attorney General, the Bureau of Prisons, or the U.S. Marshals Service, regarding participation,

placement, or subsequent return to a more secure environment, and therefore is not in a status which would indicate an award of credit is appropriate (see Randall v Whelan, 938 F.2d 522 (4th Cir. 1991) and U.S. v Insley, 927 F.2d 185 (4th Cir. 1991). Further, the government may not prosecute for escape in the case of an unauthorized absence in such cases, as the person has been lawfully released from 'official detention.' " (Emphasis in original.)

[5] In some cases, a defendant will be arrested, denied bail, and held in custody pursuant to state law, being turned over later to the Federal Government for prosecution. In these situations, BOP often grants credit under § 3585(b) for time spent in state custody, see, e.g., U.S. Dept. of Justice, Federal Bureau of Prisons, Operations Memorandum (Oct. 23, 1989); U.S. Dept. of Justice, Federal Bureau of Prisons, Sentence Computation Manual CCCA (1992 and Supp 1994), even though the defendant was not subject to the control of BOP. These situations obviously are not governed by reference to a § 3142 "release" or "detention" order. But because the only question before us is whether a defendant is in "official detention" under § 3585(b) during the time he is "released" on bail pursuant to the Bail Reform Act of 1984, we need not and do not rule here on the propriety of BOP's decision to grant credit under § 3585(b) to a defendant who is denied bail pursuant to state law and held in the custody of state authorities. Thus, the dissent is simply wrong when it states that we have "adopt[ed] an interpretation that the Bureau of Prisons itself has rejected" by not allowing any " 'credit for time spent in state custody.' " Post, at 67, 68, 132 L Ed 2d, at 61, 62.

* See also Koray v Sizer, 21 F.3d 558, 565 (CA3 1994) (" '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" ' "); Mills v Taylor, 967 F.2d 1397, 1401 (CA9 1992) ("[C]onfinement to a treatment center 'falls convincingly within both the plain meaning and the obvious intent' of 'official detention' "); Moreland v United States, 968 F.2d 655, 664 (CA8 1992) (Heaney, J., joined by Lay, C. J., and McMillian, R. Arnold, and Gibson, JJ., dissenting) ("ordinary definition of detention is a 'period of temporary custody prior to disposition by a court' ").