No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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RUDY P.H. SABLAN, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Justice Act

QUESTION PRESENTED

1. Whether Title 18 or the Sentencing Guidelines restrict application of good time credits for an undischarged term of imprisonment in state or local custody when the same underlying offense conduct applies to a concurrent federal sentence.

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Petitioner Rudy P.H. Sablan respectfully prays that a writ of certiorari issue to review the United States Court of Appeals for the Ninth Circuit's decision affirming his sentence upon revocation of supervision.

OPINION BELOW

Appendix "A" contains the October 14, 2025 contains the memorandum decision in United States v. Sablan, No. 24-5761. Appendix "B" contains the January 9, 2026 denial of the petition for rehearing.

PARTIES TO THE PROCEEDING

Petitioner Sablan and the United States are the only parties to the proceeding. (Rule 14.1(b)).

JURISDICTION

The date of the judgment to be reviewed is October 14, 2025. The date of the order respecting rehearing was January 9, 2026. (Rule 14.1(e). This Court has jurisdiction under 28 U.S.C. § 1254, the District Court under 18 U.S.C. § 3231 and the Circuit Court under 28 U.S.C. § 1291.

STATEMENT OF THE CASE

On March 4, 2014, petitioner plead guilty to a two-count information alleging possession of a stolen firearm, in violation of 18 U.S.C. §§ 922(j), 924(a)(2) (Count One) and possession of methamphetamine, in violation of 21 U.S.C. § 844(a) (Count Two). (CR 672, 860; ER-119-120, 211; PSR-12).[1]

On November 24, 2014, the district court sentenced petitioner to a term of ten years on Count One and one year on Count Two, to be served consecutively, with credit for time served. Upon release from imprisonment, petitioner was placed on three years supervision on Count One and one year on Count Two, to be served concurrently. (CR 854; ER-63-68, 227).

On September 9, 2024, supervision was revoked and petitioner received three months imprisonment and two years of supervision. On September 23, 2024, petitioner noticed his appeal of that sentence. (CR 1235, 1240; ER-12, 136, 263).

[1] "CR" refers to the clerk's record in the district court. "AOB" refers to petitioner's opening brief in the circuit court. "Reply" refers to petitioner's reply brief in the circuit court. "ER" refers to petitioner's Excerpts of Record filed in the circuit court. "PSR" refers to the sealed excerpts of record in the circuit court. "SER" refers to the government's Supplemental Excerpt of Record in the circuit court. "Mem." refers to the circuit court's memorandum decision. "App." refers to the two appendices to this petition.

On October 14, 2025, in an unpublished memorandum decision, the United States Court of Appeals for the Ninth Circuit affirmed petitioner's sentence. (App. "A"). On January 9, 2026, the Ninth Circuit denied a petition for rehearing and suggestion for rehearing en banc. (App. "B").

STATEMENT OF FACTS

On October 26, 2011, petitioner was arrested on a case filed in the Superior Court for the Territory of Guam alleging drug conspiracy and assault. On February 15, 2012, petitioner was indicted for the same conspiracy in the United States District Court for the District of Guam. On March 4, 2014, petitioner plead guilty to a two-count information in the federal case. On July 15, 2014, he plead guilty to two counts in the Guam Superior Court case and sentenced to three years imprisonment to run concurrently with the sentence in the federal case. On November 24, 2014, the United States District Court judge sentenced petitioner to eleven years imprisonment, a three-year term of supervision and restitution to the assault victim. In finding the allegations in the Guam Superior Court case to be relevant conduct in the federal case, the district court judge adopted a stipulation of the parties to award full credit for the time served in territorial (local) custody. (AOB at 4-5; ER-81).

On October 13, 2021, without assistance from the Federal Bureau of Prisons (BOP), the district court filed an Amended Judgment, reducing the original

sentence by 881 days. Prior to that, the BOP had found that petitioner was only deserving of "prior credit time" of 100 days.[2] (AOB at 5-6).

In conformity with the amended judgment, petitioner was released for having over-served his original sentence. The 881 day calculation made by the U.S. Probation Officer (USPO) was based on a finding that petitioner entered pretrial custody beginning on February 15, 2012, the date the federal indictment was filed. That calculation was flawed because petitioner was entitled to credit from the time he first entered local custody on October 27, 2011. As a result, instead of 881 days, he was entitled to credit of 991 days. Id.

On July 1, 2024, the USPO moved to revoke petitioner's supervision based upon positive drug screens for the presence of methamphetamine. On September 9, 2024, petitioner requested that the over-served period of 111 days be applied to the revocation sentence under 18 U.S.C. § 3585(b). The district court denied the request, sentencing petitioner to three months in jail, credit for time served of three days, and a new two-year term of supervision. (AOB at 6-7; Mem. at 2; ER-19; SER-6).

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[2] In July 2021, defense counsel wrote to the BOP at three addresses, including the warden's office at FCI Herlong where petitioner was housed, requesting additional credits. Thirty days elapsed with no response from the BOP and the Amended Judgment was filed without further guidance from either the Attorney General or the BOP. (AOB at 6).

REASONS FOR GRANTING THE PETITION

1. The District Court Erred in Failing to Credit Time Previously Served to the Sentence Upon Revocation

The district court believed that it lacked authority to credit petitioner for overserved time on the original sentence. In affirming the revocation sentence, the circuit court agreed with the lower court by declining to consider that the previously overserved period of confinement was either a factor in the guideline computation or should be credited before the final pronouncement of sentence. The panel otherwise found the revocation sentence to be reasonable because it fell below the applicable guideline range. (Mem. at 3).

Guideline Section 5G1.3(b) provides that (1) the court *shall* adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court finds that such period of imprisonment will not be credited to the federal sentence by the BOP; and (2) the sentence for the offense which serves as the basis for the revocation offense was imposed to run concurrently to the remainder of the undischarged term of imprisonment. U.S.S.G. § 5G1.3(b) (2014). (emphasis added). The unaccounted for time previously served should have been credited either toward the newly imposed period of confinement or to the new two-year term of supervision.

While the BOP was tasked with determining good time credits, its failure to do so placed the burden on the district court to make the findings. Compare United States v. Johnson, 529 U.S. 53, 60 (2000) ("The trial court, as it sees fit, may modify

the individual's supervised release conditions, [18 U.S.C.] § 3583(e)(2) . . . ."). The BOP was apparently unaware of the existence of the local case and its application to the sentence. The district court's failure to identify the local case in the Judgment (J&C) may have accounted for BOP's failure to accurately compute the good time credits. There is no dispute that petitioner was deserving of full credit.[3] (ER-4-11, 64).

Had the BOP known of the existence of the local case, petitioner would have likely received full credit for the custodial time imposed at the revocation hearing, and part of the term to be served under supervision. See BOP Program Statement § 5880.28, Sentence Computation Manual-CCCA of 1984 (1999) at 1-14C-D ("Any prior custody time spent in official detention after the date of [the] offense that was not awarded to the original sentence or elsewhere shall be awarded to the revocation term."); see also Tablada v. Thomas, 533 F.3d 800, 806-809 (9th Cir. 2008), citing Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) (finding the BOP's methodology recited in Section 5880.28 to be "reasonable and persuasive" under Skidmore).

Petitioner's overserved time on the original sentence constituted an unlawful detention. Thus, statutory restrictions present no bar to treating the term of

[3] Relevant conduct under Section 5G1.3(b) applies in all cases, including those involving statutory minimums. United States v. Drake, 49 F.3d 1438, 1441 (9th Cir. 1995); United States v. Kiefer, 20 F.3d 874, 876 (8th Cir. 1994). Similar to binding pleas under Fed. R. Crim. P. 11(e)(1)(C), the court must provide reasons for rejecting a stipulation made by the parties on the issue of credit for time served. See United States v. Cervantes-Valencia, 322 F.3d 1060, 1062 (9th Cir. 2003) (further citation omitted).

supervision as having run during the time petitioner was imprisoned without proper authority. Reynolds v. Thomas, 603 F.3d 1144, 1149 (9th Cir. 2010), abrogated on other grounds, Setser v. United States, 566 U.S. 231, 244 (2012) (Section 5G1.3 requires the court to take into account the time already served and any new sentence imposed should run concurrently with the remaining undischarged term of imprisonment). (AOB at 13; Reply at 5).

The district court has the discretion to impose a term of imprisonment either concurrently or consecutively, taking into consideration factors enumerated in 18 U.S.C. § 3553(a). 18 U.S.C. § 3584(a)-(b). Section 5G1.3, however, is mandatory unless the district court affirmatively states its reasons for not giving full credit for time served in local custody. United States v. Armstead, 552 F.3d 769, 784-85 (9th Cir. 2008), citing United States v. Booker, 543 U.S. 220, 245 (2005) (failure to make the adjustment for the time already served is a departure from the Guidelines which constitutes plain error); see also United States v. Drake, 49 F.3d 1438, 1440 (9th Cir. 1995) (application of the Guidelines is a question for the district court, rather than BOP, to determine). (AOB at 8, 10-11).

The memorandum decision found that the district court lacked authority to grant petitioner credit for time served, citing United States v. Peters, 470 F.3d 907 (9th Cir. 2006). (Mem. at 3). Peters dealt with credit that the BOP, not the district court, was obligated to grant under Section 3585(b), citing United States v. Lualemaga, 280 F.3d 1260, 1265 (9th Cir. 2002). Peters, Id. at 909. This assumes the BOP will properly calculate credit in the first instance. Id.

Lualemaga is distinguishable because the state sentence under consideration there did not take place until after the federal indictment was filed. Moreover, the charges in the two cases were unrelated. As a result, Lualemaga found that the district court lacked the ability to calculate credit for time served on the state case. Id. 280 F.3d at 1262, 1265; see also Peters, 470 F.3d at 909, citing United States v. Wilson, 503 U.S. 329 (1992) ("[U]nder § 3585's statutory scheme, credits cannot be calculated until the defendant commences serving his sentence.").

Here, the district court accepted the parties calculation of credit for time served based on the undischarged portion of the sentence in the local case. The parties stipulated that petitioner receive credit for the entire time spent in local custody. While appearing to accept the stipulation, the district court never mentioned the local case in either the original judgment filed in 2014 or the judgment upon revocation. The bare bones reference to "credit for time served" in the original J&C was therefore both deficient and misleading.

By the time of the revocation hearing, the court knew that petitioner still had additional time on the books. Whatever credit was left should have been applied to the sentence at that time. See Peters, 470 F.3d at 909 n.1 ("In contrast to its lack of authority to calculate *credit* for time served, a district court does have authority to *sentence* a defendant to time served.") (further citation omitted) (emphasis in the original).

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2. Inter-Circuit Splits Support Grant of the Petition

The circuits are split concerning whether credit for undischarged terms of imprisonment is mandatory or discretionary. The Second Circuit allows for a downward adjustment so long as the total period of incarceration is equal to, or greater than, the applicable statutory minimum. United States v. Rivers, 329 F.3d 119, 122 (2nd Cir. 2003). The Third Circuit allows the court to reduce "any aspect of a defendant's [otherwise statutorily mandated] sentence, including supervised release terms." United States v. Doe, 810 F.3d 132, 143 (3rd Cir. 2015) (citation omitted). The Fourth Circuit supports the sentencing court's discretion to go below a statutory minimum based on the undischarged state sentence. United States v. Moore, 918 F.3d 368, 371-72 (4th Cir. 2019). The Fifth Circuit considers time served in state custody to be a sentencing factor. United States v. Madrid, 978 F.3d 201, 208 (5th Cir. 2020).

The Seventh Circuit holds that the BOP cannot be ordered to give credit for a concurrent undischarged state sentence but a downward adjustment under the Guidelines is permitted even when a statutory minimum applies to the federal sentence. United States v. Ross, 219 F.3d 592, 594-95 (7th Cir. 2000) (approving the position taken by the 8th and 9th Circuits in Kiefer and Drake). The Eighth and Ninth Circuits take the position that the application of Guideline Section 5G1.3(b) is mandatory unless the sentencing court makes a proper record as to why credit should not be given. United States v. Armstead, 552 F.3d 769, 784-85 (9th Cir. 2008); United States v. Kiefer, 20 F.3d 874, 876 (8th Cir. 1994).

The Tenth Circuit provides for full credit to a federal prisoner for all time spent in official state detention before the federal sentence commences. Weekes v. Fleming, 301 F.3d 1175, 1178 (10th Cir. 2002). The Eleventh Circuit held that the downward adjustment is not mandatory under Booker. United States v. Henry, 1 F.4th 1315, 1323-24 (11th Cir. 2021), but see United States v. Knight, 562 F.3d 1314, 1329 (11th Cir. 2009) (Section 5G1.3(b) mandatorily applied in view of government's concession to that effect).

CONCLUSION

For the foregoing reasons petitioner respectfully submits that the petition for writ of certiorari should be granted.

Dated: April 6, 2026

Respectfully Submitted,

/s/ Thomas P. Sleisenger
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