

No. 25-818

In the
Supreme Court of the United States

TERRELL ANTHONY HARGROVE,

Petitioner,

v.

IAN HEALY, WARDEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The government’s half-hearted opposition confirms that this case is a straightforward grant. The government acknowledges the “circuit conflict on the question presented.” BIO13. And it offers no reason to think the conflict will resolve itself, given the Ninth Circuit’s recent unanimous decision finding “little difficulty” concluding that Congress “clear[ly] ... intended for the [First Step Act’s] earned time credits to reduce a prisoner’s supervised release.” *Gonzalez v. Herrera*, 151 F.4th 1076, 1081 (9th Cir. 2025). Nor can the conflict plausibly be described as “shallow,” BIO13, after the Second Circuit just days ago adopted the government’s flawed interpretation—over a powerful dissent by Judge Nathan—creating a direct conflict between the nation’s two largest judicial circuits, *Rivera-Perez v. Stover*, — F.4th —, 2026 WL 828530, at *5-6 (2d Cir. 2026). The arguments on both sides have been fully ventilated; all that remains is for this Court to resolve the conflict and ensure nationwide uniformity of federal law.

Unable to deny the conflict, the government tries to downplay its importance. BIO14. But “[s]plits in authority are seldom so stark and consequential.” *Gonzalez*, 151 F.4th at 1081. As a broad coalition of amici explain, this “exceptionally important” issue “will alter the duration of federal custody and control for tens of thousands of persons.” Cato Inst., Nat’l Ass’n of Crim. Def. Laws., Rutherford Inst. & Law Enf’t Action P’ship Br. (“Amici Br.”) 6-9. And the sheer number of district court decisions—at least 30 over the past 5 years—demonstrates that this issue is frequently recurring.

The government also incants the rote objection—rejected by this Court many times—that this case is an “unsuitable vehicle” because the government believes it will prevail on remand, even if this Court answers the question presented in petitioner’s favor. BIO 9-10, 14-15. But that belief is no barrier to this Court’s resolution of a threshold question dividing the circuits. And the government’s objection rings particularly hollow here, where the statutory ineligibility argument it raises is hotly disputed in the lower courts. *See, e.g., Bonnie v. Dunbar*, 157 F.4th 610, 621 (4th Cir. 2025) (Wynn, J., dissenting), *cert. pet. pending*, No. 25A985 (U.S. Mar. 10, 2026). The government’s prediction of its own victory on a subsequent, distinct legal question is not a valid “vehicle” objection.

Most of the government’s response is devoted to the merits. But as the Ninth Circuit, Judge Moore, and Judge Nathan have explained, the government’s reading defies “basic principles of statutory construction.” Pet.App.15a (Moore, J., dissenting). The government all but ignores the key statutory language—“toward *time in*”—in favor of convoluted arguments based on statutory structure and misdirected policy appeals. Regardless, the government’s focus on the merits only underscores that this question warrants plenary review. If the government is wrong, the majority of courts across the country are needlessly delaying individuals’ completion of supervised release and nullifying time credits duly earned pursuant to programs that Congress mandated. And if the government is right, then the Ninth Circuit and numerous district courts are applying a rule that “make[s] little sense.” BIO12. Either way, the fundamental liberty interests of tens

of thousands of prisoners each year turn on geographic happenstance, and the government will be forced to operate two distinct time-credit systems in different parts of the country. The Court's review of this important question is inevitable, and there is no reason to delay it. The petition should be granted.

ARGUMENT

I. The Acknowledged Circuit Conflict Warrants This Court's Intervention

The circuits are in open conflict on the question presented, and the government offers no sound reason to let that conflict continue.

1. The government concedes that the decision below is “contrary” to the Ninth Circuit’s decision on identical facts. BIO13. After the government’s response, a divided panel of the Second Circuit joined the Sixth Circuit and expressly rejected “the reasoning of ... the Ninth Circuit.” *Rivera-Perez v. Stover*, — F.4th —, 2026 WL 828530, at *5-6 (2d Cir. 2026). The government also agrees that the Fourth and Eleventh Circuits have diverged from the Ninth Circuit in unpublished decisions on the same question. BIO13. District courts are likewise divided, *id.* at n.3; Pet.18-19, and have recognized the “split in authority,” *Jefferson v. Chisolm*, No. 25-cv-53, 2026 WL 706980, at *3 (S.D. Ga. Feb. 17, 2026); Pet.16.

2. The government downplays the conflict as “shallow.” BIO13. This objection was weak from the start, and the Second Circuit’s decision fatally undermines it. This Court routinely grants certiorari to resolve splits between the Ninth Circuit, the country’s largest circuit, and one or more circuits on an issue of federal statutory interpretation. *See* Pet.20.

This Court also often grants certiorari to resolve “lopsided” splits.¹ Whether a split is “lopsided” is relevant only if the conflict might resolve itself without the Court’s intervention. But this split is not going anywhere. The Ninth Circuit has twice held that time credits may be applied to reduce an individual’s term of supervised release. Pet.15. Most recently, it unanimously reached this conclusion with “little difficulty” based on the statute’s “plain and unambiguous” text. *Gonzalez v. Herrera*, 151 F.4th 1076, 1081, 1089 (9th Cir. 2025). Not a single judge called for en banc review, and there is no realistic prospect of the Ninth Circuit reversing course. The duration of defendants’ terms of supervised release thus turns on *where* they happen to serve their prison sentence. And the government must administer two time-credit systems to comply with courts’ divergent views of a statute designed to *reduce* sentencing disparities. Only this Court can restore uniformity.

3. Before the Second Circuit’s decision, the government sought to delay review to permit “ongoing percolation” in “the lower courts.” BIO13. But delayed review will result in prolonged division without any corresponding benefit. Several circuits have now addressed the question presented in well-reasoned opinions, and two robust dissents ensure that the key arguments have been sufficiently developed. No further percolation is needed before this Court answers this pure question of statutory interpretation.

¹ See, e.g., *United States v. Comstock*, 560 U.S. 126, 133 (2010) (2-1 split); *Santos-Zacaria v. Garland*, 598 U.S. 411, 415 nn.2-3 (2023) (9-1 and 4-2 splits); *Intel Corp. Inv. Policy Comm. v. Sulyma*, 589 U.S. 178, 183 & n.3 (2020) (6-1 split).

II. The Question Presented Is Undeniably Important And This Case Is An Excellent Vehicle To Resolve It

The government tries to cast doubt on how frequently the question presented will recur and whether it will be outcome-determinative in this case. Neither objection provides a basis to deny review.

1. The government does not dispute that the question presented is profoundly important. As amici explain, the interpretation of Section 3632(d)(4)(C) affects tens of thousands of individuals facing concrete restraints on their liberty and the “ever-present threat of revocation” while on supervised release. Amici Br.8-9; *see* Pet.20-21. The proper application of time credits thus implicates Congress’s goals of promoting rehabilitation and reducing the public expense of mass incarceration and supervision, which annually cost more than \$50,000 per inmate and \$5,000 per supervisee, respectively. Amici Br.9-12, 17-18.

2. The government does not contest that as individuals continue to earn time credits, the question presented will recur. As of 2023, more than half the federal prison population was eligible to earn time credits, with 18,000 people released after applying time credits in 2023 alone. Pet.22. This number will only continue to grow, as evidenced by the increasing number of district court decisions addressing the question presented.

The government notes that a May 2025 directive “expand[ed] the practice of ... transfer[ring] prisoners into home confinement as soon as statutorily possible.” BIO14. It speculates that implementation of this directive will make it less likely that

individuals accrue credits while awaiting transfer to a residential reentry center (“RRC”). *Id.* But reality does not bear that speculation out. As of February 2026, the Government Accountability Office observed that “challenges remain” to be addressed before BOP achieves compliance with the Act.² There is no indication that these challenges have been resolved. And even if more individuals are timely transferred to home confinement, the directive does not affect the timing of transfer for individuals eligible to serve prerelease custody only in an RRC.³ *See* Pet.23-24.

3. The government next claims that the case is an “unsuitable vehicle” because answering the question presented will not have a “practical effect” on Mr. Hargrove’s case. BIO14-15. Mr. Hargrove received two consecutive sentences under (1) 18 U.S.C. § 924(c), an offense for which a defendant is “ineligible” to earn credits, *id.* § 3632(d)(4)(D); and (2) 21 U.S.C. § 841(a)(1), for which a defendant may earn credits. The government contends that even after Mr. Hargrove completed his Section 924(c) sentence, he remained ineligible to earn time credits. BIO15.

This argument is irrelevant and incorrect. To start, it will not prevent this Court from resolving the

² U.S. Gov’t Accountability Off., GAO-26-107353, *Bureau of Prisons: Actions Needed to Better Achieve Financial & Other Benefits of Moving Individuals to Halfway Houses on Time* 21 (2026), <https://www.gao.gov/assets/gao-26-107353.pdf>.

³ The government also claims that because “nearly all” programming takes place in prison, “few prisoners” accrue time credits in prerelease custody. BIO14. Even if true, the government does not deny that inmates can—and do—earn time credits while in prerelease custody, as required by the Act. Pet.6; *see* 18 U.S.C. § 3621(h)(6).

question presented, a threshold mootness issue. Pet.App.11a. This Court routinely rejects similar arguments against certiorari based on the government's forecast that it will prevail on the merits. *See, e.g.*, Br. in Opp'n 22, *Nasrallah v. Barr*, No. 18-1432 (Sept. 9, 2019), *cert. granted*, 589 U.S. 1030 (2019). Indeed, the government can virtually always make such a claim in cases raising threshold legal or jurisdictional questions. But this Court has never recognized that as a valid bar to certiorari.

And the government's argument on remand would hardly be a slam dunk here. Only two published decisions have held that a prisoner cannot accrue time credits while serving an aggregate sentence that is based in part on an ineligible offense. BIO15. In the first, BOP "acknowledge[d] that the most natural reading of § 3632(d)(4)(D), standing alone," favored the incarcerated individual. *Giovinco v. Pullen*, 118 F.4th 527, 530 (2d Cir. 2024), *cert. denied*, 145 S. Ct. 1947 (2025). And the second drew a robust dissent. *Bonnie v. Dunbar*, 157 F.4th 610, 619 (4th Cir. 2025) (Wynn, J., dissenting), *cert. pet. pending*, No. 25A985 (U.S. Mar. 10, 2026). As that dissent explained, the eligibility inquiry turns on whether a prisoner "is serving a sentence for a[n ineligible] conviction." *Id.* at 621 (alteration in original) (citation omitted). Where, as here, a prisoner receives "consecutive sentence[s]," he "will not be 'serving a sentence for a conviction under' an ineligible statute" "for the entirety of the period of imprisonment" and can therefore earn time credits during the remainder of the period. *Id.* at 621-22; *see* Pet.10. The government's insistence that it will prevail on the merits is no basis to avoid reviewing a threshold issue that intractably divides the circuits.

III. The Sixth Circuit's Decision Is Wrong

Finally, the government's merits arguments (at 9-13) do not counsel against certiorari. No matter which side prevails, the circuit conflict must be resolved. And, ultimately, the government's arguments just highlight that the decision below is deeply flawed.

1. The government barely addresses the plain meaning of Section 3632(d)(4)(C)'s first sentence. It has no answer for petitioner's argument that, when read in context, "toward" unambiguously means to "reduce." Pet.25-27. "[M]ost conspicuous[ly]," the government's reading renders the words "time in" redundant—a problem the government does not address. *Rivera-Perez*, 2026 WL 828530, at *11 (Nathan, J., dissenting); see Pet.26-27.

The government instead looks to Section 3632(d)(4)(C)'s second sentence, arguing that credits must reduce time only "in BOP custody" because the sentence "expressly direct[s] BOP to 'transfer' eligible prisoners into prerelease custody or supervised release." BIO10. But here, too, the government's reading results in "forced redundancy." *Gonzalez*, 151 F.4th at 1085; Pet.32. According to the government, Sections 3632(d)(4)(C) and 3624(g) are "two different mechanisms—enacted at the same time—to allow the same use of credits." *Rivera-Perez*, 2026 WL 828530, at *12 (Nathan, J., dissenting). Petitioner's reading, by contrast, harmonizes the provisions: The second sentence instructs BOP to apply time credits to reduce a term of imprisonment, and the first sentence authorizes application of time credits to reduce "time in prerelease custody or supervised release." 18 U.S.C. § 3632(d)(4)(C).

The government protests that Section 3632(d)(4)(C) cannot allow time credits to reduce supervised release because its first sentence “provides no mechanism by which the [BOP] would be able to reduce a term of supervised release.” BIO10. That is no surprise: BOP does not administer supervised release. *Gonzalez*, 151 F.4th at 1085. Instead of “speaking only to the BOP,” *id.*, Congress used passive voice when authorizing application of time credits to “time in ... supervised release,” 18 U.S.C. § 3632(d)(4)(C).

The government also fails to reconcile its reading of “toward” with the same word’s meaning in other sentencing-credit provisions. Pet.27-29 (citing 18 U.S.C. §§ 3585(b), 3624(b), 4105(a)). The government contrasts these provisions “referr[ing] to ‘credit toward *the service of* a prisoner’s overall sentence or term of imprisonment” with Section 3632(d)(4)(C)’s application of credits “toward time in” supervised release, arguing that the latter uses “‘toward’ in its temporal, not compensatory, sense.” BIO12 (citations omitted). But the compensatory definition of “toward” works for both provisions. Time credits earned under the Act may be used “for the partial payment of” a “measurable duration”—namely, “time *in*” supervised release. *Gonzalez*, 151 F.4th at 1082-83 (citations omitted). The government suggests these “statutes have the same meaning no matter which definition of ‘toward’ is used”: “the credits ... bring forward in time the completed ‘service of’ the referenced sentences.” BIO13. But that argument adds words to the statute, which links “credits” to the “service of,” *i.e.*, the act of serving, a sentence—not to the “*completed* ‘service of’” a sentence. *Id.* at 12-13 (emphasis added).

2. The government’s textual arguments quickly give way to assertions that Congress could not have intended to let certain defendants use time credits to reduce supervised release. But the Court’s “job” is to “apply faithfully the law Congress has written,” not to “replace the actual text with speculation.” *Perez v. Sturgis Pub. Schs.*, 598 U.S. 142, 150 (2023) (citation omitted). In any event, the government’s policy arguments are unpersuasive.

First, the government argues that “petitioner’s reading would allow medium- and high-risk offenders to use time credits to reduce their terms of supervised release.” BIO11. But the government fails to explain why this supports its interpretation. To incentivize participation in recidivism reduction programming, Congress created a system that allows all prisoners (except prisoners serving sentences for dozens of offenses deemed ineligible) to earn time credits. 18 U.S.C. § 3632(d)(4)(D). Time credits also incentivize maintenance of minimum- or low-recidivism risk assessment levels; such individuals earn “an additional 5 days of time credits for every 30 days of successful participation” in eligible programming, *id.* § 3632(d)(4)(A)(ii), and are eligible for early transfer into “prerelease custody or supervised release,” *see id.* § 3632(d)(4)(C). But even if medium- or high-risk individuals do not meet the “strict requirements” for “leaving prison early,” it does not follow that the same restrictions should prevent someone “already back in their communit[y]” from “using their credits to shorten time spent on supervised release.” *Rivera-Perez*, 2026 WL 828530, at *14 (Nathan, J., dissenting). Indeed, if medium- or high-risk individuals could *never* earn usable time credits, that would undercut the Act’s goal of “encourag[ing]

prisoners to engage in as much programming as possible.” Pet.App.25a (Moore, J., dissenting); *see* Amici Br.10-12.

Second, the government argues that under petitioner’s reading, “[t]he first sentence” of Section 3632(d)(4)(C) “does not contain the 12-month limit in Section 3624(g)(3)” and could result in elimination of terms of supervised release “*in toto*.” BIO11. This concern is overblown. The average term of supervised release is approximately four years, and the average amount of time credits earned is twelve months.⁴ And the Act already contains “guardrails” on individuals’ accumulation of credits in the form of eligibility requirements, reduced time credits for higher risk defendants, and reduction or denial of credits. *Rivera-Perez*, 2026 WL 828530, at *14 (Nathan, J., dissenting).

Third, the government contends that petitioner’s interpretation is not “sensible” because it would permit time credits to be applied to reduce time in prerelease custody—a status that “prisoners seek to maximize, not reduce.” BIO12. But it is entirely “sensible” to reduce the burdens on an overtaxed prerelease custody system and permit individuals to be released to supervised release earlier. It is also “sensible” that a defendant would prefer supervised release to more restrictive prerelease custody. “[R]easonable people can disagree with how Congress

⁴ *See* U.S. Snt’g Comm’n, QuickFacts: Supervised Release 1 (FY 2024), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Supervised_Release_FY24.pdf; U.S. Snt’g Comm’n, First Step Act Earned Time Credits 3 (Mar. 2026), https://www.ussc.gov/sites/default/files/pdf/training/first-step-act/data-snapshot_FSAETC_2026.pdf.

balanced the various social costs and benefits in this area,” but “these are matters for Congress, not this Court, to resolve.” *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 90 (2017).

3. Finally, the government’s arguments (at 10-11) regarding the Act’s purpose rely on irrelevant provisions. Section 3634(6)(A) requires the Attorney General to assess “progress made toward carrying out the purposes of this subchapter, including any savings associated with ... the transfer of prisoners into prerelease custody or supervised release.” This statement of purpose does not alter Section 3632(d)(4)(C)’s plain language. And it is easy to see why applications of time credits could generate significant savings, namely, through “the avoidance or deferral of future construction, acquisition, and operation costs.” 18 U.S.C. § 3634(6)(A).

The government’s suggestion (at 11) that Congress should have amended Section 3583(e) is equally baseless. Section 3583(e) governs court-driven modifications of supervised release terms. Just as the application of “good time” credits does not count as a modification of a term of imprisonment, *see Pepper v. United States*, 562 U.S. 476, 501 n.14 (2011), time credits under the Act do not “modify” a term of supervised release.

CONCLUSION

The petition should be granted.

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March 31, 2026