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Attorney for Petitioners

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

DARREN BOTTINELLI,
PAMELA MARIE MC GOWAN,
TIMOTHY LASHAWN ALLEN,
RICARDO CESAR RAMIREZ,
JUAN JESUS BORREGO,
MICHAEL EUGENE DAVIS,
MARSHALL ALLEN STUCKY,
YENI NIEBLAS-ESCARREGA,
MARK NUTTER, and
ALEX DURAND WILLIAMS-DAVIS,

Case No. 3:19-cv-256 YY

PETITION FOR WRIT OF HABEAS
CORPUS

(EXPEDITED CONSIDERATION AND
CLASS CERTIFICATION
REQUESTED)

Petitioners,

v.

JOSIAS SALAZAR, Warden, Federal
Correctional Institution, Sheridan, and

WILLIAM BROWN, Bureau Of
Prisons Community Corrections
Manager,

Respondents.

Preliminary Statement

On December 21, 2018, President Trump, with strong bipartisan support, signed the First Step Act that, among its many remedial provisions, clarified that the 54 days of good time credits authorized by 18 U.S.C. § 3624(b) should be calculated against the term of imprisonment imposed, not the actual time served, which provided all federal prisoners with sentences of more than a year and less than life with an additional seven days of good time credit for each year of their sentences. Despite the mathematical nature of the correction, the amendment to § 3624(b) has been treated by the Bureau of Prisons as having a delayed effective date by up to 210 days based on a contingency unrelated to good time credits. The contingency calls for an elaborate “needs and risk assessment” system that is relevant to the earned credit for earlier transfer to community corrections or release but that is irrelevant to the credits for good behavior already earned. This class action habeas corpus petition seeks to efficiently litigate the immediate effectiveness of the good time credit change given the large numbers of federal prisoners facing irreparable harm from relatively small time losses.

Parties

- 1.1 The petitioners are currently federal prisoners in the custody of the Bureau of Prisons at locations including the Federal Correctional Institution (FCI) at Sheridan, Oregon, and the Northwest Regional Reentry Center (NRRC) in Portland, Oregon.
- 1.2 Respondent Josias Salazar is the Warden of FCI Sheridan, which is within the District of Oregon and the jurisdiction of this Court, and is named in his official capacity.
- 1.3 Respondent William Brown is the Community Corrections Manager for the Bureau of Prisons in Seattle, Washington, and controls prerelease custody for federal prisoners in the District of Oregon, and is named in his official capacity.

1.4 Respondents, through the Bureau of Prisons, an agency of the United States Department of Justice, are responsible for the petitioners' custody and administration of their terms of incarceration, including computation of good time credits pursuant to 18 U.S.C. § 3624(b).

Jurisdiction

2.1 This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241 and, for prisoners sentenced in the District of Oregon, 28 U.S.C. § 2255, because the petitioners' terms in federal custody are being executed in a manner that exceeds the lawful sentence and violates of the Constitution and laws of the United States.

2.2 This Court also has jurisdiction over this action pursuant to the constitutional writ of habeas corpus and the Court's ancillary jurisdiction over management of its proceedings, vindication of its authority, and effectuation of its decrees. *Boumediene v. Bush*, 553 U.S. 723, 729 (2008); *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 379-80 (1994).

2.3 The petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1331 because the action arises out of the Constitution and laws of the United States and seeks corrective action by officers and employees of the United States in their official capacity.

2.4 The petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1343(a)(4) because the petitioners seek to redress deprivation of rights guaranteed by both the Constitution and federal statutes.

Statement of Facts

3.1 On December 14, 2016, Darren Bottinelli received a sentence to a term of imprisonment of 46 months upon conviction for theft in *United States v. Bottinelli*, 3:16-CR-00094-1-JO

(Or.), that he is serving in community corrections in Oregon with a projected release date of July 17, 2019.

- 3.2 On October 5, 2011, Pamela Marie Mc Gowan, received a sentence to a term of imprisonment of 120 months upon conviction for armed bank robbery and related crimes in *United States v. Mc Gowan*, 3:10-cr-00487-BR-2 (Or.), that she is serving in community corrections in Oregon with a projected release date of July 28, 2019.
- 3.3 On December 8, 2017, Timothy Lashawn Allen received a sentence to a term of imprisonment of 24 months upon conviction for conspiracy to distribute methamphetamine in *United States v. Allen*, 3:16-cr-00407-HZ-3 (Or.), that he is serving in community corrections in Oregon with a projected release date of April 9, 2019.
- 3.4 On January 28, 2014, Ricardo Cesar Ramirez received a sentence to a term of imprisonment of 95 months upon conviction for distribution of methamphetamine in *United States v. Ramirez*, 3:12-cr-00622-KI-1 (Or.), that he is serving in community corrections in Oregon with a projected release date of May 9, 2019.
- 3.5 On March 22, 2017, Juan Jesus Borrego received a sentence to a term of imprisonment of 37 months upon conviction for felon in possession of a firearm in *United States v. Borrego*, 3:16-cr-00401-HZ-1 (Or.), that he is serving in community corrections in Oregon with a projected release date of April 2, 2019.
- 3.6 On June 27, 2011, Michael Eugene Davis received a sentence to a term of imprisonment of 144 months upon conviction for possession with intent to distribute in *United States v. Davis*, 3:09-CR-00467-MO (Or.), that he is serving at FCI Sheridan with a projected release date of March 27, 2020.

- 3.7 On October 15, 1997, Marshall Allen Stucky received a sentence to a term of imprisonment of 180 months upon conviction for methamphetamine and firearm offenses in *United States v. Stucky*, 6:97-cr-60033-HO-1 (Or.), as well as a consecutive sentence of 60 months for conspiracy to aid an escape in *United States v. Stucky*, 6:98-cr-60035-HO-1 (Or.), that he is serving in FCI Butner Medium I with a projected release date of May 26, 2019.
- 3.8 On August 30, 2018, Yeni Guadalupe Nieblas-Escarrega received a sentence to a term of imprisonment of 37 months upon conviction for conspiracy to distribute a controlled substance in *United States v. Nieblas-Escarrega*, 3:17-cr-00183-HZ-2 (Or.), that she is serving at FCI Dublin with a projected release date of December 13, 2019.
- 3.9 On October 29, 2015, Mark Nutter received a sentence to a term of imprisonment of 60 months upon conviction for felon in possession of a firearm in *United States v. Nutter*, 2:12-cr-00294-TSZ-1 (W.D. Wa.), that he is serving in community corrections in Oregon with a projected release date of July 8, 2019.
- 3.10 On July 5, 2016, Alex Durand Williams-Davis received a sentence to a term of imprisonment of 60 months upon conviction for felon in possession of a firearm in *United States v. Williams-Davis*, 2:14-cr-04072-SRB-1 (W.D. Mo.), that he is serving in community corrections in Oregon with a projected release date of June 30, 2019.

Statutory Background

- 4.1 Prior to the First Step Act, 18 U.S.C. § 3624(b) provided that prisoners could receive “credit toward the service of the prisoner’s sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner’s term of imprisonment.”
- 4.2 Section 102(b) of the First Step Act amended 18 U.S.C. § 3624(b) as follows:

(A) in subsection (b)(1)—

(i) by striking “, beyond the time served, of up to 54 days at the end of each year of the prisoner’s term of imprisonment, beginning at the end of the first year of the term,” and inserting “of up to 54 days for each year of the prisoner’s sentence imposed by the court,”; and

(ii) by striking “credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited with in the last six weeks of the sentence” and inserting “credit for the last year of a term of imprisonment shall be credited on the first day of the last year of the term of imprisonment[.]”

§ 102(b)(1)(A), 132 Stat. at 5210.

4.3 Despite the clarification of Congress’s intent and amended statute, the BOP continues to implement the good time credits against actual time, not terms of imprisonment, thereby denying prisoners seven days of good time credits for each year of their terms of imprisonment.

4.4 The First Step Act clarifies that prisoners showing exemplary compliance with institutional rules should receive the full statutory 54 days of good time credits, rather than the 47 days presently provided, for each year of their term of imprisonment.

4.5 The legislative history of the First Step Act demonstrates Congressional intent to “clarify” that good time credits were to be calculated against the term of imprisonment, not against actual time served, thereby implementing a “fix” of the good time credit statute.

Statement of the Law

5.1 Under the rules of statutory construction, the First Step Act’s amendment to the good time credit statute became immediately effective upon enactment by the President’s signature on December 21, 2018.

- 5.2 In the alternative, if construed with a delayed effective date, the delay violates the equal protection and due process protections against arbitrary and discriminatory deprivation of liberty.
- 5.3 In the second alternative, with clarification of the meaning of the former version of the good time credit statute, the calculation under the former statute provides the additional seven days of good time credits.

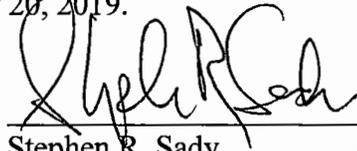
Requested Relief

Wherefore, the petitioners request that this Court:

- 1) certify the petitioners as representing the class consisting of all federal prisoners sentenced in the District of Oregon or serving sentences in the District of Oregon for whom the Bureau of Prisons has calculated a projected release date within 18 months of December 21, 2018, and who have been or are expected to be denied the benefit of the First Step Act's amendment of 18 U.S.C. § 3624(b);
- 2) require the Bureau of Prisons to provide a list of all class members with their contact information to petitioners' counsel;
- 3) grant interim relief in the form of a temporary restraining order providing conditional release on the terms provided in the supervised release conditions listed in the judgment and commitment order or accelerated transfer to community corrections;
- 4) grant the writ of habeas corpus;
- 5) require that the Bureau of Prisons recalculate the petitioners' good time credits forthwith based on the term of imprisonment as required by the amended good time credit statute;
- 6) declare that the new recalculated projected release date governs over the former computation for the purposes of determining the expiration of the term of imprisonment;
- 7) release the petitioners without delay if the recalculated release date demonstrates that the term of imprisonment has expired;
- 8) for those petitioners eligible for but not yet in community corrections, order recalculation of the transfer date based on the difference between the old and new projected release date;

- 9) for those whose sentences expired prior to release, modify the term of supervision to either begin on the correct date the sentence expired for those in community custody or adjust the date for release from the term of supervision to accomplish the same reduction in the interests of justice; and
- 10) grant such other and further relief, pursuant to 28 U.S.C. § 2243, as law and justice require.

Respectfully submitted this February 20, 2019.

A handwritten signature in black ink, appearing to read "Stephen R. Sady", written over a horizontal line.

Stephen R. Sady
Attorney for Petitioners