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Recent Developments: *Reno v. Koray*: Time Confined in a Treatment Center as a Condition of Release on Bail Does Not Qualify for Credit against Time Served under 18 U.S.C. § 3585(b)

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Reno v. Koray:

**TIME CONFINED IN
A TREATMENT
CENTER AS A
CONDITION OF
RELEASE ON BAIL
DOES NOT QUALIFY
FOR CREDIT
AGAINST TIME
SERVED UNDER
18 U.S.C. § 3585(b).**

Section 3585(b) of Title 18 of the United States Code provides that sentence credit should be given for time served in official detention prior to sentencing. In *Reno v. Koray*, 115 S. Ct. 2021 (1995), the United States Supreme Court determined that credit for time served shall not extend to time detained at a treatment center while released on bail prior to sentencing.

After pleading guilty to laundering money, Ziya Koray (“Koray”) was ordered released on bail pending sentencing. As a condition of release, the United States District Court for the District of Maryland required that Koray be confined to a community treatment center until sentencing. Koray was not allowed to leave the treatment center for any reason unless accompanied by a Government special agent. Koray remained confined to the treatment center for approximately 150 days, after which time he was sentenced to forty-one months at Allenwood Federal Prison in Pennsylvania.

The Bureau of Prisons (“BOP”) denied Koray’s request for credit toward his sentence for the time spent at the treatment center. A petition to the United States District Court for the Middle District of Pennsylvania for credit was also denied. The Court of Appeals for the Third Circuit, however, determined that official detention under section 3585(b) should include jail-type confinement. The court reversed and remand-

ed for a determination of whether Koray’s confinement at the treatment center was, in fact, jail-type.

The Government’s petition for certiorari was granted by the United States Supreme Court to determine whether time confined to a treatment center while released on bail qualifies as “official detention” under section 3585(b); thus, entitling a defendant to sentence credit for time confined. The Court held that it does not.

In reaching its decision, the Court conducted a four-part analysis of section 3585(b): (1) the plain meaning of the statute; (2) the statute in conjunction with the Bail Reform Act of 1984; (3) the context and history of the statute in conjunction with related sentencing provisions; and (4) the statute as defined by BOP internal guidelines.

Koray argued that a plain meaning interpretation of official detention should be applied. *Koray*, 115 S. Ct. at 2027. A plain meaning interpretation would include both detained confinement and situations where equally restrictive conditions are placed on released confinement. *Id.* Although Koray was released on bail, his detainment at the treatment center was subject to restraints which were significantly similar to those imposed on a detained defendant assigned to a treatment center as part of his sentence. Koray was subject to random breath and urine tests, his access to visitors was limit-

ed, he had to account for his presence five times a day, and he was not allowed to leave the treatment center unless accompanied by a Special Agent.

The Court acknowledged that Koray's plain meaning definition of official detention is plausible when viewed in isolation. However, a "fundamental principle of statutory construction . . . [is] that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Id.* at 2025 (quoting *Deal v. United States*, 113 S. Ct. 1993, 1996 (1993)). Therefore, section 3585(b) must be interpreted in conjunction with the Bail Reform Act of 1984, enacted in the same statute as the Sentencing Reform Act of 1984 (of which section 3585 is a part), and which authorizes federal courts to restrain the liberty of a defendant. *Id.*

The Court noted that the Bail Reform Act provided a court with two options for treatment of defendants awaiting sentencing--release on bail or detention without bail. A court releasing a defendant on bail may impose a variety of restrictive conditions on a defendant's release, including residence in a community treatment center. *Id.* A court detaining a defendant issues a detention order which commits the defendant to the custody of the Attorney General for confinement in a correctional facility. *Id.*

Based on this analysis,

the Court determined that a defendant is considered detained only when committed to the custody of the Attorney General, and a defendant given bail with restrictive conditions, like Koray, is considered released. *Id.* Emphasis is thereby placed on the identity of the defendant's custodian. Thus, Koray was not officially detained within the meaning of the Bail Reform Act because he was not in the custody of and subject to the BOP's control. *Id.* at 2028.

The Court next sought to interpret section 3585(b) in conjunction with the history and context of this section and related sentencing statutes. *Id.* at 2026. In 1984, section 3585(b) replaced section 3568. Section 3585(b) replaced section 3568's term "in custody" with the term "official detention." *Id.* Historically, section 3568 was interpreted uniformly to preclude sentence credit for restrictions placed on a defendant's liberty as a condition of release on bail. *Id.* Therefore, the Court interpreted Congress' intent in amending the language of section 3585(b) as merely an attempt to conform its language to that of related sentencing statutes and the Bail Reform Act. *Id.*

Section 3585(a) dictates that a sentence begin when the defendant arrives at an official detention facility. Comparing the language of related sentencing statutes, the Court noted that section 3621 of Title 18 submits a sentenced defendant to the custody of the BOP, and

vests in the BOP the authority to designate which penal or correctional facility a defendant will reside in. *Id.* at 2025-26. Further, section 3622 of Title 18 grants the BOP authority to allow a prisoner to be released to participate in an educational program while in official detention, and to allow work release of a prisoner while in official detention. *Id.* at 2026.

Based on this analysis, the Court determined that an official detention facility is a correctional facility designated by the BOP (as provided for in section 3621), and that official detention should have the same meaning in section 3585(b) as in related sentencing statutes. *Id.* Thus, Koray was not officially detained, as defined by the history and context of section 3585(b) when compared to related sentencing statutes.

Finally, the Court found persuasive a Bureau of Prisons Program Statement which clearly interpreted the meaning and intent of section 3585(b). The Statement asserted that "[t]ime spent in residence in a community corrections center . . . as a result of a condition of bail or bond . . . is not creditable as pre-sentence time." *Id.* at 2027 n.4 (quoting U.S. Dept. of Justice, Bureau of Prisons Program Statement No. 5880.28(c) (July 19, 1994)) (emphasis added). The Statement also asserted that highly restrictive confinement as a condition of bail is not considered time served in official detention. *Id.* Thus, Koray was not officially de-

tained, as defined by BOP internal guidelines.

In her concurring opinion, Justice Ginsburg pointed out an interesting ramification of this statutory interpretation. A due process defense may emerge for a defendant who did not elect bail with the understanding that time released to a treatment center, as opposed to detained to a treatment center or jail, would preclude sentence credit. Strategically, criminal defendants may be wise to

request that the court deny bail and hold them in custody if their release on bail would be subject to restraints (i.e., confinement to a treatment center) which do not materially differ from those imposed on a detained defendant.

In *Reno v. Koray*, the Court recognized that restraints imposed on a released defendant may not materially differ from those imposed on a detained defendant. However, adopting the Third Circuit's test

of jail-type confinement would place an onerous burden on the fact-finder and, more importantly, create a potential for disparity in treatment of defendants. Determination of whether a defendant will receive credit for time served must, therefore, turn on whether the defendant enjoyed a released or detained status.

-Cynthia L. Maskol

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