

Good Time, Bureau of Prisons Style

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The Supreme Court issued its opinion in [Barber v. Thomas](#) on Monday, upholding the manner in which the Federal Bureau of Prisons (BOP) calculates “good time credits” under [18 U.S.C. § 3624\(b\)](#). That law says that a prisoner who is serving a term of imprisonment of more than 1 year can receive up to 54 days of credit for good behavior at the end of each year of his or her term, plus prorated credit for the last year of the term. BOP applies that law in a way that grants well-behaved inmates 54 days for each year served, plus whatever credit the inmate has time to earn in the last year of confinement before release. In its opinion, the Court uses “some elementary algebra” to illustrate how a perfectly-behaved inmate with a 10-year sentence can, under the BOP’s approach, earn up to 470 days of good time credit. That’s 54 days for each of the first 8 years ($8 \times 54 = 432$), plus 38 days in Year 9, which is the most the inmate could earn in that ninth year before the actual time served plus good time credit earned equals 10 years, necessitating the inmate’s release. $432 + 38 = 470$. No credit is earned in Year 10 because the inmate gets released part-way through Year 9.

The petitioners, a group of federal prisoners, didn’t read the statute that way. Instead, they favored an approach in which an inmate sentenced to a 10-year term of imprisonment could earn up to 540 days of credit—that’s 54 days for every year of the sentence imposed. To hold otherwise, the inmates argued, would require “term of imprisonment” to be read to mean two different things in different parts of the same statute: the *sentence imposed* in one instance and the *time actually served* in another.

The Court sided with BOP. Writing for a 6–3 majority, Justice Breyer said that 18 U.S.C. § 3624 sets up a system of “retrospective award” based on an inmate’s actual behavior each year, not a “prospective entitlement” based on the length of sentence imposed. The inmates’ approach would “allow[] a prisoner to earn credit for both the portion of his sentence that he serves and the portion of his sentence that he offsets with earned good time credit”—and that would be inconsistent with the statute’s language and purpose. The Court was unpersuaded by the inmates’ appeal to legislative history and principles of lenity (the idea that statutory ambiguities should be construed in a criminal defendant’s favor). Although not a model of clarity, the statute does not, the Court said, suffer from an ambiguity sufficiently “grievous” for the rule of lenity to kick in. Indeed, the language and purpose of Section 3624 were even clear enough that there was no need to apply the administrative-law rule of deference to an agency’s interpretation of an ambiguous statute (the so-called *Chevron* doctrine, ably summed up in the opening sentences of [this essay](#)). The Court concluded that BOP is just implementing the statute in accordance with its clear-enough language and purpose. No ambiguity, no *Chevron* analysis required.

Barber had the potential to be a blockbuster—at least in terms of impact. If the Court had sided with the inmates, many thousands of federal prisoners would have been entitled to up to seven more days of good time credit each year. And seven days per inmate per year adds up when you’re talking about over [210,000](#) federal inmates. See slip op. at 1 (Kennedy, J., dissenting) (“[I]f the only way to call attention to the human implications of this case is to speak in terms of economics, then it should be noted that the Court’s interpretation comes at a cost to the taxpayers of untold millions of dollars.”)

The case has no *direct* bearing on North Carolina law. (Our readers who are federal practitioners should, however, note its holding when advising clients of their earliest possible release date. Just divide the number of days in a

sentence by 1.148 and you'll get the minimum number of days the inmate must serve. Slip op. at 18. It works out to a roughly 12.9% sentence reduction.) It's hard, though, for me to read a case from the Supreme Court of the United States dealing with good time credit and *not* think of the good time calculation matter [pending before our own high court](#). Remember those [80-year life sentences](#) from the 1970s? It will be interesting to see whether and how principles of lenity and deference to agency interpretation come into play in that case. I'll let you know when it's decided.