No. 10-804

IN THE

Supreme Court of the United States

ALFORD JONES,

Petitioner,

v.

ALVIN KELLER, SECRETARY OF THE DEPARTMENT OF CORRECTION, AND MICHAEL CALLAHAN, ADMINISTRATOR OF RUTHERFORD CORRECTION CENTER,

Respondents.

FAYE BROWN,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF CORRECTION, ALVIN KELLER, SECRETARY OF THE DEPARTMENT OF CORRECTION, AND KENNETH ROYSTER, SUPERINTENDENT OF RALEIGH CORRECTIONAL CENTER FOR WOMEN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR *AMICI CURIAE* EQUAL JUSTICE INITIATIVE, THE LEGAL AID SOCIETY OF THE CITY OF NEW YORK, NORTH CAROLINA ADVOCATES FOR JUSTICE, PRISON LAW OFFICE, AND THE SOUTHERN CENTER FOR HUMAN RIGHTS IN SUPPORT OF PETITIONERS

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Equal Justice Initiative ("EJI")

The Legal Aid Society of the City of New York ("LASCNY")

North Carolina Advocates for Justice ("NCAJ")

Prison Law Office ("PLO")

The Southern Center for Human Rights ("SCHR")

INTEREST OF THE *AMICI CURIAE*

Amici are private, nonprofit legal advocacy organizations that, collectively, represent criminal defendants and/or prisoners in multiple states, and share a common interest in ensuring that criminal sentences are administered in accordance with prisoners' constitutional, statutory and other legal rights. EJI provides legal representation to indigent defendants and prisoners seeking relief for denial of fair and just treatment in the legal system, and also prepares reports, newsletters and manuals to assist advocates and policymakers in the critically important work of reforming the administration of criminal justice. LASCNY has provided free legal assistance to indigent persons in New York City since 1876. LASCNY's Criminal Defense Practice is the largest indigent defender service and, through its Criminal Appeals Bureau, the largest criminal appel-

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[1] The parties have consented to the filing of this brief under Supreme Court Rule 37.2, and their letters of consent have been lodged with the Clerk of the Court. Pursuant to Supreme Court Rule 37.6, *amici* state that counsel for a party did not author this brief in whole or in part and that no one other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

late practitioner in New York State, engaging in state post-conviction and federal habeas corpus practice in addition to direct appeals in the state courts. NCAJ is a volunteer professional organization of nearly 4,000 North Carolina lawyers devoted primarily to advocating and protecting the rights of the injured in civil litigation and the accused in criminal cases and ensuring the integrity of the judicial system. PLO provides free legal services to California state prisoners, engages in public advocacy regarding prison conditions, and provides technical assistance to attorneys nationwide. SCHR provides legal representation to people facing the death penalty, challenges human rights violations in prisons and jails, seeks through litigation and advocacy to improve legal representation for poor people accused of crimes, and advocates for criminal justice system reforms on behalf of those affected by the system in the Southern United States. *Amici* have each previously appeared in this Court in numerous cases as *amicus curiae*.

SUMMARY OF ARGUMENT[2]

The Court should grant certiorari for three reasons.

First, as elaborated in section I below and in the petition for certiorari, the decisions below conflict with the Due Process and Ex Post Facto precedents of this Court and other appellate courts. Those precedents make clear that while states are not obliged to offer prisoners sentence-reduction credits for "good time" and "good behavior," states must honor any such cred-

[2] In addition to the points set forth herein, *amici* adopt the statement of facts and arguments made in the petition for certiorari.

its that their laws have allowed prisoners to accrue. The decisions below permit North Carolina to violate those constitutional requirements.

Second, as elaborated in section II below, the decisions below raise fundamental questions about the protections afforded by the Due Process and Ex Post Facto Clauses and the rule of law. The North Carolina Supreme Court rightly ruled that the legal basis upon which the State had refused to apply petitioners' sentence reduction credits to reduce their sentences was "unambiguously" wrong. But, after the Governor of North Carolina strongly criticized the court and threatened to defy court orders, the court "defer[red]" to a new rationalization of the State's position which the State had not previously articulated and which neither the State nor the court attempted to relate to the text of the applicable statute and regulations. Moreover, in doing so, the court relied on reasoning that, if followed as precedent, would enable states easily and routinely to evade their constitutional obligation to honor the rights they have created, as North Carolina is doing.

Third, as elaborated in section III below, much like the federal sentence-reduction credit decision the Court examined last term in *Barber v. Thomas,* 506 U.S. ___, 130 S. Ct. 2499, 2504 (2010), the decisions below merit review because of the scope and importance of the liberty interests at stake. If allowed to stand, the decisions below would delay the unconditional release of approximately 136 prisoners for long periods—in many cases, including petitioners', for over 40 years. Doing so would violate those prisoners' constitutional rights and also undermine confidence in the integrity of widely used sentence-reduction credit programs, imperiling their benefits to prison morale, prison discipline and rehabilitation.

ARGUMENT

I. THE DECISIONS BELOW CONFLICT WITH PRECEDENTS OF THIS AND OTHER APPELLATE COURTS

The legal crux of this case is simple. It is undisputed that (1) under applicable North Carolina Department of Correction ("DOC") regulations, petitioners earned "sentence-reduction credits" for good conduct and productive work; (2) if petitioners' accrued sentence-reduction credits apply to reduce their sentences, they have fully served those sentences and were entitled to be released, without qualification, some time ago, Pet. App. 2a, 6a-7a; and (3) all prisoners serving a determinate term-of-years sentence in North Carolina are entitled to have their sentence-reduction credits applied to accelerate their unconditional release dates, *see* Pet. 21-22.

In its efforts to prevent the release of petitioners and similarly situated prisoners, the State first argued that they were not serving determinate term-of-years sentences. However, the statute governing their sentences expressly provides that, although they are nominally labeled life sentences, petitioners' sentences shall be treated as 80-year determinate term sentences. N.C. Gen. Stat. § 14-2 (1974). The North Carolina courts have thus authoritatively rejected the State's contrary arguments. *See State v. Bowden*, 668 S.E.2d 107, 109-10 (N.C. Ct. App. 2008) (a sentence governed by § 14-2 is "for all purposes" an 80-year determinate sentence), *review dismissed as improvidently granted*, 683 S.E.2d 208 (N.C. 2009); Pet. App. 4a ("this statute unambiguously defined Jones's sentence as a determinate term of imprisonment for eighty years").

In the decision below, however, the North Carolina Supreme Court then "defer[red]" to the State's position

that because petitioners' sentences were labeled "life"—even though they are determinate term-of-years sentences "for all purposes"—petitioners' sentence-reduction credits cannot be used to reduce their sentences. Pet. App. 8a. As a result, despite petitioners' earning many years of credit for good time, good work and educational achievements, which, if applied to reduce their sentences, would entitle petitioners to be released now, North Carolina has refused to release them (other than, potentially, based on a future exercise of parole discretion) until their 80-year terms expire in 2055.

The North Carolina Supreme Court upheld that position even though it recognized that "DOC's regulations provide for good time, gain time, and merit time to be credited against an inmate's sentence," Pet. App. 6a, and even though neither the State nor the court cited anything in the text or history of the applicable statutes and regulations that supports the State's position. Current regulations confirm that in North Carolina, "sentence-reduction credits" are what they appear to be: credits that apply to "reduce[] the amount of time to be served." DOC, Division of Prisons, Policy & Procedure, ch. B, § 0110(f) (2007). Nor have the regulations ever excluded prisoners with 80-year "life" sentences from receiving sentence-reduction credits or from the application of those credits to reduce sentences. Indeed, the original regulations expressly provided that sentence-reduction credits are available to "[a]ll inmates, including ... those with life terms." 5 N.C. Admin. Code 2B.0101 (1976).[3]

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[3] Despite that provision, North Carolina has had a consistent practice, albeit one not announced in regulations, of not applying

The State, and the North Carolina Supreme Court, have simply failed to apply the law as written. That failure violates both the Due Process Clause and the Ex Post Facto Clause under this Court's precedent. Since there is no federal constitutional right to sentence-reduction credits, North Carolina could have prevented petitioners' release in various ways—by providing in the 1974 legislation governing petitioners' sentences that sentence-reduction credits (which had been in general use in North Carolina since at least 1955) could not be used to reduce them; by making those sentences indeterminate;[4] or by stating an exception in its sentence-reduction credit regulations. But instead, North Carolina enacted and maintained unambiguous statutory and regulatory provisions indicating that if prisoners such as petitioners met the behavioral, work and educational criteria set by the State, they would earn a right

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sentence-reduction credits to determine unconditional release dates for prisoners serving *indeterminate* life sentences. That practice has a logical basis: in mathematical terms, an indeterminate life sentence is infinite from the prisoner's standpoint, and infinity minus, say, 20 years of sentence-reduction credits is still infinity. *See, e.g., Parker v. Percy*, 314 N.W.2d 166, 168 (Wis. Ct. App. 1981) (under Wisconsin law, "lifers have no right to credit against their sentences for good time or industrial good time. A life sentence has no date or maximum period from which it is possible to deduct credits for good time or industrial good time."). But that logic does not extend to petitioners' 80-year sentences. The State can calculate—and has calculated—precise release dates based on the application of the sentence-reduction credits petitioners have earned to reduce the 80-year term.

[4] In *Hendrix v. Duckworth*, 442 N.E.2d 1058, 1059-60 (Ind. 1983), for example, the Indiana Supreme Court held that prisoners serving sentences that were both indeterminate and expressly excluded from reduction by sentence-reduction credits by legislation had no constitutional right to have their sentences reduced.

to early release. Having done so, North Carolina is required by the Due Process and Ex Post Facto Clauses to honor sentence-reduction credits earned under existing law. *See, e.g., Wolff v. McDonnell*, 418 U.S. 539 (1974); *Lynce v. Mathis*, 519 U.S. 443 (1997); *Weaver v. Graham*, 450 U.S. 24 (1981). The North Carolina Supreme Court's contrary decision conflicts with both this Court's precedent and the precedents of other appellate courts. *See, e.g., Sec'y, Dep't of Public Safety & Correctional Serv. v. Demby*, 890 A.2d 310 (Md. 2006); *Johnson v. State*, 472 A.2d 1311, 1312-15 (Del. 1983).

II. THE DECISIONS BELOW RAISE FUNDAMENTAL QUESTIONS ABOUT THE PROTECTIONS AFFORDED BY THE DUE PROCESS AND EX POST FACTO CLAUSES AND THE RULE OF LAW

The political climate, the identity of political actors, and other circumstances change over time. Since the 1970s, when petitioners were sentenced, sentencing has been a particularly volatile area, with substantial movement in North Carolina (and elsewhere) towards mandatory minimum sentencing and in favor of "truth-in-sentencing" and "structured sentencing" reforms that limit the availability of sentence reductions. *See, e.g.*, N.C. Gen. Stat. §§ 15A-1340.1 *et seq.* (1981) (repealed); 1979 N.C. Session Laws, ch. 760, § 2 (North Carolina's 1981 Fair Sentencing Act); N.C. Gen. Stat. § 148-13(c)(d) (1981) (repealed) (the first North Carolina legislation to exclude (prospectively only) certain classes of inmates from eligibility for sentence-reduction credits); N.C. Gen. Stat. §§ 15A-1340.10 *et seq.*; 1993 N.C. Session Laws, ch. 538, § 1 (North Carolina's Structured Sentencing Act); DOC, Division of Prisons Policy and Procedure, ch. B, §§ 0111(d), 0112(c)

(1994) (prospectively restricting availability of sentence reduction credits).

In such circumstances, our Constitution generally allows state legislatures and, with respect to regulations, state executives to change the law going forward —as North Carolina did in its 1981 and 1994 reforms, each of which addresses future sentences only. *See, e.g., State v. Ahearn*, 300 S.E.2d 689 (N.C. 1983) (Fair Sentencing Act was not retroactive). But the rule of law requires, and the Due Process and Ex Post Facto Clauses mandate, that the laws already on the books be applied to determine the adverse consequences of pre-amendment conduct, and the courts are charged with enforcing those guarantees.

These principles were compromised in the decisions below. Confronted with an authoritative ruling in *Bowden* that the 1974 statute governing petitioners' sentences provided for determinate sentences, not indeterminate life sentences, North Carolina officials in 2009 resolved to keep petitioners and over 100 similarly situated prisoners incarcerated as if the 1974 statute had provided for life imprisonment. After State officials harshly criticized the courts for the ruling on the 1974 statute, the North Carolina Supreme Court then "defer[red]" (Pet. App. 8a) to the State's position, based on reasoning that has no basis in the text of any applicable state statute or regulation, and that would deprive the Due Process and Ex Post Facto Clauses of much of their force.

The State claims that it had interpreted N.C. Gen. Stat. 14-2 (1974), the provision governing petitioners' sentences, as providing for an indeterminate life sentence, *see* Pet. App. 4a—although the State has never published that alleged interpretation in a regulation

and had never otherwise publicly stated that position until the mid-2000s. In *Bowden*, and in the decision below, the North Carolina courts held, to the contrary, that the statute "unambiguously" (Pet. App. 4a) and "for all purposes" (*Bowden*, 668 S.E.2d at 109) provides for an 80-year determinate sentence.

Both during and immediately after the *Bowden* case, State officials clearly understood, and clearly communicated to the courts and the public, what was at stake. Because North Carolina has consistently allowed prisoners serving determinate sentences to accelerate their unqualified release dates by earning sentence-reduction credits, the construction—now adopted by the North Carolina Supreme Court—of N.C. Gen. Stat. 14-2 (1974) as providing for a determinate term of years would mean that, having earned many years of sentence-reduction credits, petitioners would be entitled to be released now. The State demonstrated that understanding in several ways.

First, the State unsuccessfully opposed Bowden's claim that N.C. Gen. Stat. § 14-2 provides for a determinate sentence on the basis that granting that claim would mean early unconditional release for prisoners sentenced under § 14-2. In petitioning the North Carolina Supreme Court for discretionary review of the interlocutory order in Bowden's favor, the State (i) acknowledged that Bowden's claim was that he "was entitled to unconditional release from prison because he had fully served his entire life sentence" 30 years after it was imposed, given sentence-reduction credits, State's Petition for Discretionary Review, *State v. Bowden*, No. 514P08 (N.C. Sup. Ct. Nov. 20, 2008), at 2; *see also id.* at 3; (ii) acknowledged that the Court of Appeals' holding was that a § 14-2 prisoner has a "statutory right to have his sentence treated as an

eighty-year sentence for all purposes, including determination of an unconditional release date," *id.*; and (iii) acknowledged that the Court of Appeals' decision holds that [all § 14-2] prisoners "are entitled to unconditional release from prison," *id.* at 6; *see also id.* at 7. The State relied on N.C. Gen. Stat. § 7A-31(c), which authorizes interlocutory review only when "failure to certify would cause a delay in final adjudication which would probably result in substantial harm;" the interim "substantial harm" with which it was concerned was the *Bowden* decision compelling the immediate release of prisoners based on their sentence-reduction credits.

Second, days after the North Carolina Supreme Court let the Court of Appeals' decision stand in *Bowden*, (i) the Governor issued press releases stating that "[t]he court's decision . . . will force the early release of murderers and rapists serving life sentences," Press Release, *Gov. Perdue Appalled at Ruling that Cuts Short Life Sentences* (Oct. 15, 2009), *available at* http://www.governor.state.nc.us/NewsItems/PressReleaseDetail.aspx?newsItemID=720, that "20 violent offenders ... will be released on Oct. 29 [the day the court's mandate would issue] and dozens more ... will be released in the next few years because of the court's ruling," *id.*, and that *Bowden* "meant offenders serving life in prison would be released after a mere 35 years," Press Release, *Statement from the Governor Regarding Prisoner Release* (Oct. 22, 2009), *available at* http://www.governor.state.nc.us/NewsItems/PressRelease Detail.aspx?newsItemID=727; (ii) the State published information on the 20 prisoners it said would be released on October 29, 2009 pursuant to *Bowden*, including petitioners Jones and Brown, http://www.governor.state.nc.us/NewsItems/UploadedFiles/7d5ae259-4b37-438d-b4d5-b7328f2e24ea.pdf; and (iii) the

State's appellate counsel in *Bowden* sent a letter to the editor of a North Carolina newspaper, complaining that the courts in *Bowden* failed to "show[] concern for public safety" and stating that "[t]he effect of the appellate court decisions in the *Bowden* case is that offenders found unsuitable for parole will be released from prison with no supervision whatsoever," E. Parsons, *Power pre-empted*, NEWS & OBSERVER (Oct. 23, 2009), *available at* http://www.newsobserver.com/opinion/letters/v-print/story/153788.html.

The State's position soon shifted, however, from resignation to defiance. Stating that "life should mean life"—contradicting the courts' authoritative reading of § 14-2 in *Bowden*—the Governor's October 22, 2009 press release called the prisoners' release after 35 years (in other words, at the end of their 80-year sentences as reduced by sentence-reduction credits) "unacceptable," and vowed that "offenders will not be turned loose." Press Release, *Statement from the Governor Regarding Prisoner Release* (Oct. 22, 2009), *available at* http://www.governor.state.nc.us/NewsItems/PressReleaseDetail.aspx?newsItemID=727. On the same day, the Governor reportedly "joked with reporters about the possibility of being found in contempt of court. 'If I go to jail, are you going to visit me? Somebody told me that they were going to bring me cookies.'" WRAL.com, *Perdue has no plans to release inmates* (Oct. 22, 2009), *available at* http://www.wral.com/news/state/story/6261276/.

At that point, the State's position became a commitment—not to release the § 14-2 prisoners—in search of a rationale. The State first suggested that § 14-2 prisoners were ineligible to earn "day-for-day" sentence-reduction credits (for any purpose), and that previous State executive officials had erred in awarding

such credits. *See* Press Release, *Statement from the Governor Regarding Prisoner Release* (Oct. 22, 2009). The State subsequently abandoned that position, which was not supported by any statute or regulation. Later, the State switched to its current position, which is equally unsupported: that credits earned by § 14-2 prisoners apply "only for purposes of earning a more favorable custody grade, for becoming eligible for parole or when the Governor commutes a prisoner's sentence." Press Release, *State Implements Plan to Comply with State v. Bowden Ruling, Calculates Inmate Release Dates* (Nov. 19, 2009), *available at* http://www.governor.state.nc.us/NewsItems/PressReleaseDetail.aspx?newsItemID=790.

The North Carolina Supreme Court's response in the decisions below brings to mind the maxim, "hard cases make bad law." The legal analysis of these cases is not complex. *See* section I, above. But they may have been hard cases for the North Carolina Supreme Court because (1) applying the law correctly would mean effectively ordering the unconditional release of over 100 prisoners, some of whom would likely be incarcerated longer had post-1970s North Carolina law governed their sentences; and (2) the North Carolina Supreme Court was being vehemently attacked in the media as soft on crime and dismissive of public safety by its fellow North Carolina elected officials.[5] Regrettably, the majority of the North Carolina Supreme Court chose to "defer" (Pet. App. 8a) to the State's unprincipled position. As the dissent remarked, "[t]oday's decision condones spontaneous rule-making by the

[5] The Justices of the North Carolina Supreme Court are elected.

DOC that targets individuals retroactively, thereby abdicating this Court's role as a protector of Constitutional liberty rights." Pet. App. 31a (Timmons-Goodson, J., dissenting). In reaching that result, the North Carolina Supreme Court relied on a scattershot array of rationales that have no basis in law.

First, under the guise of "defer[ence]" to the State's "interpretation" of its sentence-reduction credit regulations, Pet. App. 8a, the North Carolina Supreme Court accepted the *result* demanded by the State without any examination of whether the State's newly minted litigating position had any basis in the text and history of the relevant laws. It appears that the State's assertion to which the court "defer[red]" was this:

> The Department of Correction has never used good time, gain time or merit time credits in the calculation of unconditional release dates for inmates who received sentences of life imprisonment.

Pet. App. 7a (quoting the DOC). The court noted that DOC had internally recorded a release date of "Life," with no determinate term, for petitioners. *Id.*

The State's past practice under statutes that provided (or that the State believed provided) for *indeterminate* life sentences cannot be considered an "interpretation"—much less, a defensible one—of the law applicable to the 80-year *determinate* sentences provided for by § 14-2. Nor can the State's belief that petitioners were not entitled to early unconditional release because they were subject to indeterminate sentences be due any deference, given that its legal premise—that they were subject to indeterminate sentences—has been definitively rejected by the North Carolina Supreme Court. Nor is the State's unannounced "in-

terpretation" supported by any citations or reasoning. Nothing in the text or history of the relevant statute and regulations suggests that a determinate term-of-years sentence is ineligible for sentence-reduction in the form of early unconditional release merely because it is nominally labeled "life."

Second, the North Carolina Supreme Court dismissed as "limited," and purported to re-weigh, petitioners' "interest" in the lawful termination of their sentences. Pet. App. 11a. Citing this Court's Due Process precedents, the North Carolina Supreme Court held that:

> Jones's liberty interest in good time, gain time and merit time is limited. Thus, his liberty interest, if any, in having these credits used for the purpose of calculating his date of unconditional release is *de minimis*, particularly when contrasted with the State's compelling interest in keeping inmates incarcerated until they can be released with safety to themselves and to the public.

Id. Such judicial re-weighing is entirely misconceived. If the State had never created a right for petitioners to have their sentence-reduction credits used to calculate their unconditional release dates, petitioners would have no interest to weigh, and no Due Process issue would arise. Given, however, that State law gave them that right, neither the State nor the courts are entitled to cancel earned sentence-reduction credits and effectively double the sentence based on public safety concerns that already were taken into account by the 1974 legislation and regulations governing petitioners' sentences. Once an inmate has served his sentence, as defined by law (including laws reducing his initial sen-

tence based on sentence-reduction credits), there is no room for the executive or the courts in effect to re-sentence him to further preventive detention based on an *ad hoc* interest-weighing analysis.

Finally, the North Carolina Supreme Court stated that:

> [a]ssuming without deciding that DOC's procedures for determining parole adequately protect an inmate's due process rights to consideration for parole, those procedures are also adequate to preserve [petitioners'] constitutional rights while still permitting the State to withhold application of [petitioners'] good time, gain time, and merit time to the calculation of a date for [their] unconditional release.

Pet. App. 11a-12a. This is plainly wrong. No procedure, however impeccable, used to inform the exercise of parole discretion, can protect, or substitute for, an accrued entitlement to unconditional release pursuant to the distinct and independent sentence-reduction credit regime.

Each of these erroneous rationales has grave implications for constitutional rights beyond the scope of this case. First, if a state's executive's assertions that it misunderstood the law enacted 35 years earlier and assumed it meant something else merited "defer[ence]" to what the state now wishes the law was, ignorance of the law would become not merely an excuse, but a reason to continue to incarcerate prisoners who have already earned their release. This Court has addressed in prior Due Process cases other efforts of states to "interpret" state laws contrary to their plain meaning, and has made clear that a failure to follow existing law is not reduced to a question of state law by labeling it "in-

terpretation." *See, e.g., Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964) ("an unforeseeable and unsupported state-court decision on a question of state [law] does not constitute an adequate ground to preclude this Court's review of a federal question"); *accord Douglas v. Buder*, 412 U.S. 430, 432 (1973) (same).

Second, if a prisoner's accrued right to unconditional release will not be enforced when a court considers a state's interests in public protection more weighty, determinate sentencing will lose all meaning and be replaced by *ad hoc* preventive detention.

Third, if a procedurally fair exercise of discretion on a different legal issue is deemed sufficient to substitute for an accrued right, the right will cease to be a right at all.

In sum, accepting the North Carolina Supreme Court's reasoning as precedent would deprive the Due Process and Ex Post Facto Clauses of much of their force. Alternatively, viewing the North Carolina Supreme Court's reasoning as rationalizations without significance for other cases would raise grave concerns about the independence of the judiciary in these and similarly politically charged cases. On either view, it is important that this Court act.

III. THE DECISIONS BELOW ARE LIKELY TO DEPRIVE OVER 100 PRISONERS OF MANY YEARS OF FREEDOM EACH, AND, MORE BROADLY, TO UNDERMINE CONFIDENCE IN SENTENCE-REDUCTION CREDIT PROGRAMS

The North Carolina Supreme Court's erroneous decision also raises broad and serious practical concerns. Last Term, because "the interests of a large number of federal prisoners" were involved, *Barber v. Thomas*, 506 U.S. ___, 130 S. Ct. 2499, 2504 (2010), this

Court granted certiorari to review a relatively narrow, technical, non-constitutional issue regarding one facet of sentence-reduction credits—good time credits under 18 U.S.C. § 3624(b)(1)—in the federal system. *Barber* involved no circuit split or conflict with this Court's precedent, but each of the two petitioners had "several months of additional prison time" at stake, *see Barber*, 130 S. Ct. at 2504. Although it implicates a smaller number of prisoners, this case presents even more compelling grounds for certiorari, both because it will determine whether petitioners and more than 100 others in North Carolina each face as much as *40 extra years* in prison, and because it raises grave constitutional issues and threatens to impair public confidence in the integrity of sentence-reduction credit programs.

For petitioner Jones, this Court's decision will determine whether he will be released immediately and unconditionally, having completed his sentence, as reduced by his sentence-reduction credits, in February 2006, or whether his sentence will continue through February 2055 (when he would be 100 years old). *See* Pet. App. 162a. For petitioner Brown, the corresponding dates are early 2009 versus August 2055 (when she would be 101 years old). *See* Pet. App. 169a-170a. Jones and Brown are not alone: a total of 136 prisoners in North Carolina are currently incarcerated based on 1970s convictions pursuant to the 80-year "life" sentencing provision, N.C. Gen. Stat. § 14-2 (1974). Most of those prisoners have earned years of sentence-reduction credit; for many, including petitioners, 40 or more years of their lives may be at stake.

More broadly, if allowed to stand, the decision below threatens to erode confidence in the systems of sentence-reduction credits that are widely used not only in North Carolina but in almost all federal and state juris-

dictions.[6] While members of the Court disagreed as to the correct interpretation of the federal statute at issue in *Barber*, there can be no disputing Justice Kennedy's statement that a failure to enforce sentence-reduction credits in accordance with the law under which they have been earned "will be devastating to the prisoners who have behaved the best and will undermine the purpose of the statute." *Barber*, 506 U.S. at ___, 130 S. Ct. at 2512 (Kennedy, J. dissenting). Prisoners in all jurisdictions can be expected to "turn[] to the statute books to figure out when to expect [their] freedom," *id.* at 2514, and to moderate their conduct in order to expedite their freedom when the statute books and regulations indicate that they can earn early release. Unless corrected by this Court, North Carolina's very public breaking of the social compact represented by its sentence-reduction regulations is apt to engender cynicism and harm prison morale and discipline.

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[6] "[M]ost states allow for good time, at least for most offenders." N. Demleitner, *Good Conduct Time: How Much and For Whom? The Unprincipled Approach of the Model Penal Code: Sentencing*, 61 Fla. L. Rev. 777, 783 (2009). Moreover, "[i]n both federal and state systems, most inmates are awarded the entire available amount of good time." *Id.*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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