

1 Petitioner spent in state custody prior to the imposition of the federal
2 sentence. Specifically, Petitioner contends that his federal sentence
3 should be credited for the time he spent in Florida state custody, from
4 July 11, 1996 through July 15, 1997. (See Petition at 3; Memorandum of
5 Law with Points and Authorities ["Memorandum"] at 2-9, Attachments A, B
6 and C). On April 28, 2015, Respondent filed an Answer to the Petition
7 ("Answer"). (Docket Entry No. 7). On March 21, 2014, Petitioner filed
8 an "Opposition to Respondents Answer Brief" ("Reply"). (Docket Entry No.
9 11). For the reasons stated below, the Petition is DENIED and this
10 action is DISMISSED with prejudice.

11 12 **II. BACKGROUND**

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14 On May 12, 1994, following convictions in the Circuit Court of
15 Miami-Dade Florida in four separate matters, Petitioner was sentenced to
16 state prison for concurrent terms of 5 years (case no. 13-9307579), 27
17 years (case no. 13-9307754), 20 years (case no. 13-9307754), and 20
18 years (case no. 13-9309242). (See Memorandum, Exhibit C at 1; Answer,
19 Declaration of Angelicia M. Holland ("Holland Decl.") ¶ 4).

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21 On August 24, 1994, Petitioner was transferred from Miami-Dade Jail
22 to the Florida Department of Corrections, South Florida Reception Center
23 to begin serving the above-referenced sentence. (See Memorandum,
24 Exhibit C at 2; Holland Decl. ¶ 5).

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26 On July 11, 1996, the United States Marshals Service in
27 Tallahassee, Florida lodged a detainer against Petitioner, to allow for
28 Petitioner to stand trial in the United States District Court for the

1 Western District of North Carolina on the charge of conspiracy to
2 possess with intent to distribute cocaine and cocaine base. (See
3 Memorandum, Exhibit C at 2; Holland Decl. ¶ 6).
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5 On July 12, 1996, pursuant to a federal Writ of Habeas Corpus Ad
6 Prosequendum, Petitioner was transferred from the Florida Department of
7 Corrections to federal custody in order to participate in proceedings in
8 the United States District Court for the Western District of North
9 Carolina. (See Memorandum, Exhibit C at 2; Holland Decl. ¶ 7).
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11 On May 15, 1997, following Petitioner's conviction (pursuant to a
12 guilty plea) for one count of conspiracy to possess with intent to
13 distribute cocaine and cocaine base in the United States District Court
14 for the Western District of North Carolina (United States of America v.
15 Paul Pedro Glanton, Case No. 3:95-CR-07-01), Petitioner received a
16 sentence of 262 months, which was to run concurrently with the sentences
17 imposed in the Florida state court. (See Holland Decl. ¶ 7, Exhibit
18 "A").
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20 On July 8, 1997, the United States Marshals Service lodged a
21 detainer with the Florida Department of Corrections to ensure that at
22 the completion of his state sentence Petitioner would be transferred to
23 federal custody in order to complete his federal sentence. (See
24 Memorandum, Exhibit C at 2; Holland Decl. ¶ 9).
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26 On July 15, 1997, the United States Marshals Service returned
27 Petitioner to the Florida Department of Corrections. (See Memorandum,
28 Exhibit C at 2; Holland Decl. ¶ 8).

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2 18 U.S.C. § 3585(b) provides that:

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4 A defendant shall be given credit toward the service of a term
5 of imprisonment for any time he has spent in official
6 detention prior to the date the sentence commences--(1) as a
7 result of the offense for which the sentence was imposed; or
8 (2) as a result of any other charge for which the defendant
9 was arrested after the commission of the offense for which the
10 sentence was imposed; that has not been credited against
11 another sentence (emphasis added).

12
13 Here, the Bureau of Prisons properly denied Petitioner credit,
14 against his federal sentence, for the time from July 11, 1996 through
15 May 14, 1997. Petitioner is not entitled to credit prior to the
16 imposition of his federal sentence (May 15, 1997).¹ See Schleining v.
17 Thomas, 642 F.3d 1242, 1247-49 (9th Cir. 2011) (the prisoner's "federal
18 sentence does not begin under 18 U.S.C. § 3585 until he has been
19 sentenced in federal court"). Moreover, Petitioner is not entitled to
20 credit for this time period because he received credit for that time
21 against his state sentence. See United States v. Wilson, 503 U.S. 329,
22 337 (1992) ("[C]ongress made clear [in 18 U.S.C. section 3585(b)] that
23 a defendant could not receive double credit for his detention time");

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26 ¹ In his Reply, Petitioner contends that "he should at least be
27 credited with time credited from the date of his admission of guilt."
28 (see Reply at 6). However, 18 U.S.C. § 3585(b) makes it clear that for
purposes of receiving credit, the relevant date is the date the sentence
was imposed. In any event, Petitioner does not allege, and the Court is
unable to determine from the record, the date on which Petitioner
admitted guilt in the federal case.

1 accord Moore v. Milusnic, 2014 WL 4407577, *5 (C.D. Cal. Sept. 18,
2 2014); Smith v. Williams, 2014 WL 3055900, *4 (C.D. Cal. July 3, 2014);
3 see also Ruggiano v. Reish, 307 F.3d 121, 125 n.1 (3rd Cir. 2002) ("A
4 prisoner detained pursuant to a writ *ad prosequendum* is considered to
5 remain in the primary custody of the first jurisdiction unless and until
6 the first jurisdiction relinquishes jurisdiction over the person. The
7 receiving sovereign - in this case, the federal government - is
8 therefore, considered simply to be 'borrowing' the prisoner from the
9 sending sovereign for the purposes of indicting, arraigning, trying, and
10 sentencing him. . . . For the purposes of computing [the petitioner's]
11 sentence, therefore, the time spent in federal custody pursuant to a
12 writ *ad prosequendum* is credited toward his state sentence, not his
13 federal sentence."), superseded on other grounds by U.S.S.G. § 5G1.3
14 comment n. 3(E) (2003); Thomas v. Brewer, 932 F.2d 1361, 1366-67 (9th
15 Cir. 1991) (holding that the state retains primary custody over a state
16 prisoner transferred to federal custody pursuant to a writ of habeas
17 corpus *ad prosequendum*).²

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25 ² Petitioner argues that the Florida Department of Corrections
26 did not credit his state sentence from July 11, 1996 through July 15,
27 1997. (See Memorandum at 6-7, citing to Exhibit C at 5). However, that
28 page does not indicate that Petitioner did not receive state sentence
credit for that period. (See Memorandum, Exhibit C at 5). Moreover,
the Court has not been able to locate any record contradicting the
implied assertion that Petitioner received state sentence credit for
that period (see Holland Decl. ¶¶ 8, 10, Exhibit "B").]]

1 IV. ORDER

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3 For the reasons discussed above, IT IS ORDERED that the Petition is
4 denied and this action is dismissed with prejudice.

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6 Dated: June 2, 2015.

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8 _____ /s/
9 ALKA SAGAR
10 UNITED STATES MAGISTRATE JUDGE
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