No. _____

Supreme Court of the United States

Damien Guidry,
Petitioner,
v.
United States of America,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

Petition for Writ of Certiorari

Alfred Boustany, II, La. Bar Roll No. 3329
Counsel of Record for Petitioner
Boustany Law Firm
421 West Vermilion Street
P.O. Box 4626
Lafayette, LA 70502
(337) 261-0225 (telephone)
(337) 453-4963 (fax)

QUESTION PRESENTED

I. Whether the Federal Sentencing Guidelines permit the aggregation of a prior sentence of imprisonment with a subsequent probation modification imposed in lieu of a formal revocation.

PARTIES TO THE PROCEEDING

Petitioner is Damien Guidry, who was Defendant-Appellant in the court below. Counsel for Damien Guidry is Alfred Boustany, Boustany Law Firm, PO Box 4626, Lafayette, LA 70502-4626.

Respondent is the United States of America, who was the Plaintiff-Appellee in the court below. The Respondent was represented by the U.S. Attorney's Office for the Western District of Louisiana, 800 Lafayette Street, Ste. 2200, Lafayette, LA, 70501-6832.

STATEMENT OF RELATED PROCEEDINGS

1. *United States of America v. Damien Guidry*, No. 17-00040 in the United States District Court for the Western District of Louisiana, Lake Charles Division. Mr. Guidry pled guilty on November 30, 2018 and was sentenced to 115 months on April 29, 2019.
2. *United States of America v. Damien Guidry*, No. 19-30347, Mr. Guidry appealed his sentence to the United States Court of Appeals for the Fifth Circuit and judgment was entered on June 4, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Damien Guidry seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in *United States v. Guidry*, 960 F.3d 676 (5th Cir. 2020).

OPINIONS BELOW

The opinion of the Court of Appeals is located within the Federal Reporter at *United States v. Guidry*, 960 F.3d 676 (5th Cir. 2020), and reprinted as Appendix A to this Petition. On April 29, 2019, the Western District of Louisiana sentenced Mr. Guidry to 115 months and the transcript of this hearing is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on June 4, 2020. This Honorable Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Petition involves the Federal Sentencing Guidelines that instruct district courts on computing a defendant's criminal history category and include: U.S.S.G. § 4A1.1(a); U.S.S.G. § 4A1.2(a)(1); U.S.S.G. § 4A1.2(d)(1); and U.S.S.G. § 4A1.2(k).

U.S.S.G. § 4A1.1(a) provides that, when computing the criminal history category: "Add 3 points for each prior sentence of imprisonment exceeding one year and one month."

U.S.S.G. § 4A1.2(a)(1) defines "prior sentence" as "any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense."

U.S.S.G. § 4A1.2(d)(1) provides instructions for offenses occurring prior to age 18: "If the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and one month, add 3 points under § 4A1.1(a) for each such sentence."

U.S.S.G. § 4A1.2(k) provides for instances of revocations of probation:

> (1) In the case of a prior revocation of probation, parole, supervised release, special parole, or mandatory release, add the original term of imprisonment to any term of imprisonment imposed upon revocation. The resulting total is used to compute the criminal history points for § 4A1.1(a), (b), or (c), as applicable.
>
> (2) Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the time period under which certain sentences are counted as provided in § 4A1.2(d)(2) and (e). For the purposes of determining the applicable time period, use the following: (A) in the case of an adult term of imprisonment totaling more than one year and one month, the date of last release from incarceration on such sentence (see § 4A1.2(e)(1)); (B) in the case of any other confinement sentence for an offense committed prior to the defendant's eighteenth birthday, the date of the defendant's last release from confinement on such sentence (see § 4A1.2(d)(2)(A)); and (C) in any other case, the date of the original sentence (see § 4A1.2(d)(2)(B) and (e)(2)).

STATEMENT OF THE CASE

In January of 2016, Damien Guidry arranged for an individual in California to ship 14 pounds of marijuana to Iota, Louisiana. On January 26, 2016, postal inspectors intercepted the package and law enforcement obtained a search warrant for the intended destination. After a postal inspector delivered the package, Mr. Guidry and two other individuals were observed leaving the residence with the package of marijuana in the bed of the pickup truck. Law enforcement stopped the truck, seized the marijuana, and arrested Damien Guidry on state violations of being a convicted felon in possession of a firearm and possession with intent to distribute marijuana.

Nearly one year later, on November 18, 2016, Norman Pattum was pulled over on Interstate 10 for improper use of the left-hand lane. Pattum consented to a search of the truck and law enforcement found approximately two kilograms of cocaine. The truck was registered to Damien Guidry and Pattum immediately told law enforcement that he went to Houston to purchase the cocaine for Damien Guidry. Using this information, law enforcement arrested Damien Guidry on state violations of possession with intent to distribute cocaine and being a convicted felon in possession of a firearm.

On February 9, 2017, the Government indicted Mr. Guidry on five counts which included distribution of cocaine (count one), possession with intent to distribute marijuana (count two), conspiracy to distribute and possess with intent to distribute

cocaine (count four), and two counts of being a convicted felon in possession of a firearm (counts three and five).

On November 30, 2018, Mr. Guidry pled guilty to possession with intent to distribute marijuana (count two) and conspiracy to distribute and possess with intent to distribute cocaine (count four). In exchange, the Government dismissed the remaining three counts of the indictment.

An amended Presentence Report (PSR) identified a guideline range of 100 to 125 months, based upon a total offense level of 25 and a criminal history category of V. Mr. Guidry filed objections to the PSR, and specifically objected to a three-point increase in his criminal history based upon a 1997 drug offense to which he pled no contest in 1999. For this conviction, Mr. Guidry received a five-year prison sentence, fully suspended, and was placed on three years of probation. As a condition of his probation, Mr. Guidry was ordered to serve one year in prison and received credit for the year he served in pretrial detention. In 2000, the state court found Mr. Guidry was in technical violation of the conditions of his probation because he had not maintained employment, failed to pay fines, and had not completed a substance abuse program. The state court imposed a sanction of 180 days imprisonment "in lieu of revocation."

The PSR aggregated Mr. Guidry's year in prison with the 180-day sanction he received in lieu of revocation and assigned a three-point increase in his criminal history score. Without this three-point increase, Mr. Guidry's criminal history score would be IV and his sentencing range would have been 84 to 105 months Over Mr.

Guidry's objection, the district court found no issue with the PSR's calculations. *See* Appendix B, pp. 96-100. The district court ultimately imposed a sentence of 115 months.

Mr. Guidry timely appealed his sentence to the Fifth Circuit Court of Appeals. On June 4, 2020, the Fifth Circuit affirmed Mr. Guidry's sentence. *United States v. Guidry,* 960 F.3d 676 (5th Cir. 2020); Appendix A. In a partial dissent, Judge Graves agreed that the district court erroneously enhanced Mr. Guidry's criminal history score by three points for the 1997 drug offense. *See Guidry,* 960 F.3d at 686-89; Appendix A, pp. 15-20. The dissent rejected the majority's ruling that any period of incarceration served for a single prior adjudication of guilt is automatically aggregated in calculating a criminal history score. The dissent found this logic would render superfluous the guideline's aggregation clause, which is only triggered by a formal probation revocation.

REASONS TO GRANT THIS PETITION

I. **The Fifth Circuit Court of Appeals has entered a decision that: (i) renders the guideline's specific aggregation clause superfluous; (ii) ignores the critical distinctions between modification of probation and revocation of probation; (iii) is contrary to a decision from the Ninth Circuit Court of Appeals; and (iv) fails to resolve the ambiguity in favor of Damien Guidry, as mandated by the rule of lenity.**

When Damien Guidry was 17 years old, he was arrested for possession with intent to distribute cocaine and prosecuted as an adult. He pled no contest in 1999, was sentenced to five years of imprisonment, fully suspended, and placed on three years of probation. As a condition of his probation, Mr. Guidry was ordered to serve one year in prison with credit for the year he served prior to his plea. In 2000, Mr. Guidry violated the terms of his probation and received a sanction of 180 days in prison to be served "in lieu of revocation."

At issue is whether the sentencing guidelines permit the aggregation of Mr. Guidry's 180-day penalty with his original sentence of one year for purposes of calculating his criminal history. The Fifth Circuit and the Eleventh Circuit hold that all periods of imprisonment served for a single adjudication of guilt are automatically aggregated in calculating a criminal history. In contrast, the Ninth Circuit holds that a probation revocation must occur to trigger the specific aggregation clause of the sentencing guidelines. This Honorable Court should grant certiorari to clarify this

issue and resolve the conflicting decisions on this issue from the Ninth, Fifth, and Eleventh Circuits.

i. Applicable Law

Under the sentencing guidelines, three points are added to a defendant's criminal history score for offenses committed by the defendant prior to the age of eighteen if "the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and one month." U.S.S.G. § 4A1.2(d)(1). Because Mr. Guidry's 1997 offense occurred prior to the age of 18, the addition of three points is only permissible if his sentence of imprisonment exceeded one year and one month.

'Prior sentence' is defined as "any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense." U.S.S.G. § 4A1.2(a)(1). For sentences that included suspended terms of imprisonment, the term "'sentence of imprisonment' refers only to the portion that was not suspended. U.S.S.G. § 4A1.2(b)(2).

As Damien Guidry's 1997 offense resulted in a prior sentence of one year, with the remaining four years suspended, a three-point enhancement is only possible if the 180-penalty is added to the original prior sentence of one year. The guidelines specifically provide for aggregation of terms only if a probationary sentence results in a "revocation of probation." U.S.S.G. § 4A1.2(k) (emphasis added). Upon revocation of probation, a district court must "add the original term of imprisonment to any term of imprisonment imposed upon revocation." *Id.* The "resulting total" is used to calculate the criminal history points. *Id.*

The official commentary provides that § 4A1.2(k) is triggered in cases where the original term of imprisonment imposed, if any, did not exceed one year and one month. "Rather than count the original sentence and the resentence after revocation as separate sentences, the sentence given upon revocation should be added to the original sentence of imprisonment, if any, and the total should be counted as if it were one sentence." § 4A1.2(k) at cmt n.4(d). "We are bound by the commentary when it interprets or explains a guideline unless it violates the Constitution or a federal statute or is inconsistent with or a plainly erroneous reading of that guideline." *United States v. Miro*, 29 F.3d 194, 198 (5th Cir. 1994) (*citing Stinson v. United States*, 508 U.S. 36, 42-43, 113 S. Ct. 1913, 123 L. Ed. 2d 598 (1993)).

It is undisputed that Mr. Guidry's probation for the 1997 offense was not revoked and the state court imposed the 180-day sanction "in lieu of revocation." *United States v. Guidry,* 960 F.3d 676, 684 (5th Cir. 2020); Appendix A, p. 10. However, the Fifth Circuit majority incorrectly determined that all periods of incarceration served for a single adjudication of guilt are automatically aggregated for purposes of assigning criminal history scores. This interpretation of the sentencing guidelines renders the specific aggregation clause superfluous, ignores the critical distinctions between a modification of probation and a revocation of probation, and is at odds with a persuasive decision from the Ninth Circuit Court of Appeals. Finally, if there is any ambiguity in the interpretation of the guidelines, the rule of lenity requires the discrepancy be resolved in favor of Mr. Guidry.

ii. **The Fifth Circuit majority erroneously held that any terms of imprisonment served for a single adjudication of guilt are automatically aggregated, which renders the guideline's aggregation clause superfluous.**

In upholding Mr. Guidry's sentence, the Fifth Circuit majority relied upon its prior decision of *United States v. Mendez*, 560 F. App'x 262 (5th Cir. 2014) (per curiam). In *Mendez*, the majority stated that a sentence imposed upon adjudication of guilt under U.S.S.G. § 4A1.2(A)(1) includes any later modifications to the original sentence of community supervision, "even when the revised sentence included a period of confinement." *Mendez,* 560 F. App'x at 266-267. This reading, however, ignores the more specific guideline provision that permits aggregation of terms of imprisonment only upon formal revocation. To this extent, the majority's opinion is inconsistent with traditional rules of statutory interpretation, which are utilized when interpreting sentencing guidelines. *United States v. Stanford,* 833 F.3d 500, 511 (5th Cir. 2018).

Relying on *Mendez's* interpretation of the guidelines, the majority in this case essentially disregarded § 4A1.2(k), which specifically explains aggregation is only permissive when a formal revocation of probation has occurred. Instead, the majority relies on § 4A1.2(a)(1), which is a generic provision that is silent on aggregation and merely defines a "prior sentence." *Mendez,* 560 F. App'x, at 269 (Higginbotham, J., dissenting). As noted by the dissents in both *Mendez* and this case, the majority opinions hold that "a specific provision for the aggregation of sentences if and when

probation has been revoked is of no moment." *Id. See also Guidry,* 960 F.3d at 687 (Graves, J. dissenting). The *Mendez* and *Guidry* dissents further emphasize a specific sentencing provision that "deals precisely with the situation here – where an initial term of imprisonment is followed by probation and then by imprisonment when the terms of probation are violated" and that specific provision "must be read together with the generic provision that simply defines 'prior sentence' as 'any sentence previously imposed upon adjudication of guilt.'" *Id.*

When statutes concern the same subject, relate to the same person or class of persons, or have the same object or purpose, they must be construed *in pari materia. Cheney v. State,* 755 S.W.2d 123, 126 (Tex. Crim App. 1988). A "precisely drawn, detailed statute preempts more general remedies." *Hinck v. United States,* 550 U.S. 501, 506 (2007). In fact, unless there is a "*clear* intention otherwise," the general statute does not control nor nullify the specific statute, regardless of the "priority of enactment." *Crawford Fitting Co.,* 482 U.S. 437, 445 (1987) (emphasis in original).

Despite the "longstanding" practice of construing statutory provisions *in pari materia*, the majority opinions in both *Mendez* and *Guidry* have rendered § 4A1.2(k) superfluous by reading the more general provision as controlling. Because there is a specific guideline provision that only permits aggregation of a subsequent term of imprisonment resulting from a probation revocation, Mr. Guidry's 180-day sanction imposed in lieu of revocation was improperly added to his initial term of imprisonment.

iii. The sentencing guidelines recognize the significant differences between modification of a sentence and revocation of probation by providing for aggregation only upon formal revocation.

As noted by the dissents in both *Mendez* and *Guidry*, there is a significant difference between modification of a probationary sentence and revocation of probation. Because revocation is a different procedure with strict due process requirements, the sentencing guidelines provide for aggregation of terms of imprisonment only upon revocation of a sentence. *See* U.S.S.G. § 4A1.2(k).

The Constitution requires that prior to revocation of probation or parole, there must be "(1) a formal finding that a probationer has committed a violation and (2) a determination that the violation was serious enough to warrant reimposing the probationer's original sentence." *Guidry,* 960 F.3d at 688 (Graves, J., dissenting) (citing *Morrissey v. Brewer*, 408 U.S. 471, 479–80 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (extending requirements of *Morrissey* to probation revocation hearings)).

The Constitution provides procedural safeguards to ensure due process prior to the drastic consequences of revocation. These safeguards include written notice of the claimed violations of probation; disclosure of the evidence against the probationer; assistance of counsel; the opportunity to present evidence showing that revocation is unwarranted; a preliminary hearing to determine whether there was reasonable cause to believe that the probationer violated conditions of his or her probation; if requested, a final revocation hearing to determine whether revocation is warranted;

and "a written statement by the factfinders as to the evidence relied on and reasons for revoking [probation]." *Morrissey*, 408 U.S. at 485–89.

The aggregation clause of § 4A1.2(k) explicitly requires the "more serious sanction of revocation be imposed before two sentences can be aggregated[.]" *Guidry,* 960 F.3d at 688 (Graves, J., dissenting) (quoting *Mendez,* 560 F. App'x at 270 (Higginbotham, J. dissenting)). In Mr. Guidry's case, the majority notes that the state court modified his probation in 2000 pursuant to La. Code Crim. Proc. Ann. art. 896(B) (authorizing a court to "impose additional conditions of probation...without a contradictory hearing with the state").

Modification of probation in Louisianan does not provide the procedural safeguards mandated for a formal revocation hearing. As argued during Mr. Guidry's sentencing hearing, when the state court imposed the 180-day sanction in 2000, Mr. Guidry "was not represented by counsel" and the sanction imposed was "in lieu" of a formal revocation hearing. Appendix B, p. 97. Furthermore, Mr. Guidry was found only in "technical violation" of the terms of his probation, as he was not re-arrested. Had the exact same scenario occurred today, Mr. Guidry would have faced only a 15-day sanction for the first technical violation of his probation. *See* La. Code Crim. Proc. Ann art. 900(A)(6)(b)(i); Appendix B, pp. 97-98.

Since modification of probation in Louisiana does not provide the same procedural safeguards as a revocation of probation, the more serious consequence of aggregation of imprisonment terms cannot be applicable in both scenarios. Clearly, § 4A1.2(k) provides for aggregation only when a defendant's sentence was formally

revoked with all the procedural safeguards. Since Mr. Guidry's sentence was not revoked, his 180-day sanction should not be aggregated with his original term of imprisonment.

iv. **The Fifth Circuit's majority opinion conflicts with a well-reasoned persuasive decision from the Ninth Circuit Court of Appeals.**

This issue presents a split in the circuit courts, as the Ninth Circuit holds that revocation of probation is required to aggregate terms of imprisonment resulting from a single adjudication of guilt and the Fifth and Eleventh Circuits hold that any terms of imprisonment resulting from a single adjudication of guilt are automatically aggregated.

In *United States v. Ramirez*, the Ninth Circuit determined whether "temporary detentions" imposed in lieu of revocation could suffice to aggregate terms of imprisonment, pursuant to § 4A1.2(k). 347 F.3d 792 (9th Cir. 2003). When Ramirez was 17 years old, he received a 14-year sentence, served four years, and was released on parole. *Id.* at 796. On two subsequent occasions, Ramirez violated the terms of his parole and spent time in temporary detention. It was "undisputed by the parties that Ramirez's parole was never actually revoked under state law." *Id.* at 797.

The Ninth Circuit rejected the Government's argument that temporary detentions should be treated as a constructive revocation of parole and thus aggregated with his prior sentence. *Id.* at 799. The Ninth Circuit discussed at length the distinctions between modification of supervision and revocation of probation, finding when "the terms of probation are modified...but the probationer remains

under the supervision of the probation entity, revocation has not occurred" and the terms of imprisonment cannot be aggregated under § 4A1.2(K). *Id.* at 801. ""In light of the usual meaning of the term revocation, and state and federal practice, we hold that the second temporary detention does not fall within the scope of § 4A1.2(k)." *Id.* at 805.

Taking an opposite approach, the Fifth Circuit relied upon a lone decision from the Eleventh Circuit to hold that any terms of imprisonment resulting from a single adjudication of guilt are automatically aggregated. The majority opinions of both this case and the prior unpublished decision of *United States v. Mendez*, 560 Fed. Appx. 262 (5th Cir. 2014) (per curiam), argue that "*Ramirez* stands alone" and claim that "at least five other circuits have aggregated terms imposed for probation violations with prior sentences in § 4A1.2(a), regardless of the state court terminology." *Mendez*, F. App'x at 267; *Guidry*, 960 F.3d at 685. However, of the five cases relied upon by the majority in this case and in *Mendez*, only *United States v. Glover* directly addresses the issue.[1]

[1] In three of the cases relied upon by the majority, the probationer was resentenced to probation after the period of incarceration. *See United States v. Reed*, 94 F.3d 341, 342-43 (7th Cir. 1996); *United States v. Glidden*, 77 F.3d 38, 39 (2d Cir. 1996); *United States v. Galvan*, 453 F.3d 738, 740 (6th Cir. 2006) (noting that the court found it "telling" that an electronic monitoring condition of probation had to be "reinstated" after a prison term, in concluding that probation was constructively revoked despite the lack of specific terminology to that effect). In *United States v. Townsend*, the Eighth Circuit also did not explicitly address the distinction between modification of supervision versus revocation. 408 F.3d 1020 (8th Cir. 2005). As noted by the *Mendez* and *Guidry* dissenters, the cases relied upon by the majority concern procedures "more in line with the common understanding of 'revocation' and thus do[] not squarely present the difficult issue here." *Mendez*, 560 Fed. Appx. at 270, fn. 11 (Higginbotham, J., dissenting).

In *Glover*, the defendant was originally sentenced to three years of probation for a burglary he committed prior to his 18th birthday. 154 F.3d 1292-93. During his probationary sentence, Glover served two terms of imprisonment. *Id.* at 1293. His probation was initially modified, and he was sentenced to 90 days of imprisonment in lieu of revocation. Following his modification, he violated the terms of his probation and his probation was subsequently revoked and the court imposed a 364-day term. *Id.* Glover argued that these two periods of incarceration should not be aggregated as one because his 90-day term was a modification of probation rather than a revocation.

The Eleventh Circuit rejected this argument and found that ""§ 4A1.2(k)(1) contemplates that, in calculating a defendant's total sentence of imprisonment for a particular offense, the district court will aggregate any term of imprisonment imposed because of a probation violation with the defendant's original sentence of imprisonment, if any, for that offense." *Glover*, 154 F.3d at 1291. However, the Eleventh Circuit failed to provide any reasoning for treating 'modification' the same as 'revocation' despite the lack of procedural safeguards as well as the lack of mention of modifications in the plain text of the Sentencing Guidelines themselves. *Mendez*, 560 F. App'x at 271 (Higginbotham, J., dissenting). As noted by the dissent in this case, while the majority claims *Ramirez* stands alone, so does the Eleventh Circuit's decision to the contrary in *Glover*. *See Guidry*, 960 F.3d at 689.

The Ninth Circuit also noted the division amongst the circuits but pointed out that "only one of the other circuits considering the question has dealt specifically with

the modification versus actual revocation distinction." *Id.* at 804 (citing *Glover,* 154 F.3d at 1294-95). The *Ramirez* court also noted that:

> [N]one of these cases consider, either explicitly or implicitly, the constitutional requirements for revocation set out in *Morrissey*. Nor did any of the courts have the benefit of the usual definition of revocation articulated by the Supreme Court in *Johnson v. United States*, [529 U.S. 694, 704 (2000)]. The only rationale provided for their holdings is the general commentary introducing the Criminal History chapter of the Guidelines. *See Glover*, 154 F.3d at 1294; *Glidden*, 77 F.3d at 40.

Ramirez, 347 F.3d at 805.

Under *Ramirez*, when a court imposes a temporary detention as an *alternative* to revoking probation or parole, that detention cannot be aggregated under § 4A1.2(k). This is clearly the same scenario at issue in Mr. Guidry's case, as the state court imposed a 180-day sanction "in lieu of revocation." As such, the aggregation clause of § 4A1.2(k) does not permit the 180-day penalty to be added to his original term of imprisonment and the Fifth Circuit majority failed to provide any compelling authority to support its decision to the contrary. Considering *Ramirez* was decided after *Glover* and the Ninth Circuit explicitly considered the differences in modification and revocation of probation, *Ramirez* presents more persuasive authority on this issue and the Fifth Circuit's decision to the contrary was in error.

These disparate results necessitate this Court's intervention to resolve whether modification of probation constitutes a revocation for the purposes of § 4A1.2(k). If discretionary jurisdiction is not exercised, then similarly situated defendants in different circuits will continue to face incongruous results.

v. **The rule of lenity requires any ambiguity in the guidelines to be resolved in favor of Damien Guidry.**

Although the guidelines clearly provide for aggregation of sentences only when an actual revocation occurs, the circuit split on this issue demonstrates potential ambiguity. When a statute contains ambiguity, the rule of lenity requires criminal statutes, including sentencing provisions, to be interpreted in favor of the accused. *Taylor v. United States,* 495 U.S. 575, 596 (1990); *United States v. Kaluza*, 780 F.3d 647, 669 (5th Cir. 2015).

The rule of lenity further forbids courts from interpreting "a federal criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended." *Bifulco v. United States,* 447 U.S. 381, 387, 100 S.Ct. 2247, 65 L.Ed.2d 205 (1980).

The Fifth and Eleventh Circuits have failed to present any evidence that Congress intended any violation accompanied by a confinement sanction to be treated as a revocation for the purposes of § 4A1.2(k). To the extent that any ambiguity exists, this must be resolved in favor of Damien Guidry.

CONCLUSION

Petitioner respectfully submits that this Court should grant his petition for a writ of certiorari.

Respectfully submitted this 31st day of August, 2020.

Alfred Boustany, II, La. Bar Roll No. 3329
Counsel of Record for Petitioner Damien Guidry
Boustany Law Firm
421 West Vermilion Street
P.O. Box 4626
Lafayette, LA 70502
(337) 261-0225 (telephone)
(337) 453-4963 (fax)