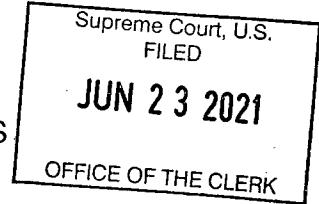


20-8477

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



STEPHEN AGUIAR — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Stephen Aguiar, pro se; Reg. No. 03722-082
(Your Name)

FCC Petersburg Medium; P.O. Box 1000
(Address)

Petersburg, VA 23804
(City, State, Zip Code)

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SUPREME COURT, U.S.

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QUESTION(S) PRESENTED

1. WHETHER THE SECOND CIRCUIT WRONGLY DISMISSED PETITIONER'S APPEAL PREMATURELY AS MOOT BEFORE ALLOWING HIM THE OPPORTUNITY TO SHOW THAT HIS APPEAL MEETS THE CASE OR CONTROVERSY REQUIREMENT UNDER ARTICLE III OF THE UNITED STATES CONSTITUTION?
2. DID THE SECOND CIRCUIT WRONGLY DETERMINE PETITIONER'S REVOCATION OF SUPERVISED RELEASE SENTENCE EXPIRED BY WRONGLY RELYING ON UNITED STATES V. PROBBER, 170 F.3d 345 (2d Cir. 1999) WHEN PETITIONER IS SERVING AN AGGREGATED 30-YEAR CONCURRENTLY-IMPOSED SENTENCE FOR BOTH HIS MULTIPLE DRUG CONSPIRACY CASE AND SINGLE REVOCATION OF SUPERVISED RELEASE CASE CONVICTIONS?
3. IS PETITIONER'S APPEAL MOOT WHEN HE HAS OPEN VIOLATIONS OF SUPERVISED RELEASE AND A STANDING ARREST WARRANT IN THE MASSACHUSETTS DISTRICT COURT THROUGH ITS FLAWED AND PREJUDICIAL TRANSFER OF JURISDICTION OF PETITIONER'S SUPERVISED RELEASE TO THE VERMONT COURT UNDER 18 U.S.C. § 3605?
4. IS PETITIONER'S APPEAL MOOT WHEN THE DISTRICT COURT FAILED TO APPOINT PETITIONER CJA COUNSEL FOR HIS REVOCATION OF SUPERVISED RELEASE PROCEEDING UNDER THE FIFTH AMENDMENT AND PROCEEDED TO CONVICT PETITIONER OF REVOCATION OF SUPERVISED RELEASE BASED ON A STILL-SEALED ON THE VERMONT DISTRICT COURT'S DOCKET WARRANT PETITION THAT HE WAS NEVER PROVIDED OR WAS AWARE EXISTED AND THEN SENTENCE PETITIONER OVER THE AUTHORIZED STATUTORY MAXIMUM WITHOUT CONSIDERING A SINGLE 18 U.S.C. § 3553 FACTOR AS REQUIRED BY CONGRESS UNDER 18 U.S.C. § 3583(e)?

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6. DOES THE DISTRICT COURT'S APRIL 2020 RULING THAT PETITIONER'S 28 U.S.C. § 2255 MOTION IS TIME-BARRED UNDER THE AEDPA MEET THE CASE OR CONTROVERSY REQUIREMENT UNDER ARTICLE III OF THE UNITED STATES CONSTITUTION RENDERING PETITIONER'S APPEAL BELOW JUSTICIALE?

7. IS PETITIONER'S APPEAL MOOT WHEN THE DISTRICT COURT FAILED TO DOCKET PETITIONER'S TIMELY-FILED DECEMBER 2011 PRO SE NOTICE TO APPEAL BOTH HIS DRUG CONSPIRACY AND REVOCATION CONVICTIONS/SENTENCES CONTEMPORANEOUSLY AND DOES SUCH A FAILURE VIOLATE THE FIFTH AMENDMENT AND REQUIRE THAT HIS 30-YEAR CONCURRENTLY-IMPOSED SENTENCE BE VACATED TO ALLOW PETITIONER TO RESTORE HIS RIGHT TO EXERCISE THE LOST OPPORTUNITY THAT HE HAD PROPERLY PRESERVED?

8. IS PETITIONER'S 2001-IMPOSED SUPERVISED RELEASE TERM TOLLED UNDER 18 U.S.C. § 3624(e) CONSISTENT WITH THIS COURT'S HOLDING IN MONT V. UNITED STATES, 587 U.S. __, 139 S.Ct. 1826 (2019), GIVEN THE COURTS' DEFECTIVE TRANSFER OF JURISDICTION OF PETITIONER'S SUPERVISED RELEASE FROM MASSACHUSETTS TO VERMONT AND PETITIONER'S INCOMPLETE REVOCATION PROCEEDING AND UNADJUDICATED VIOLATIONS OF SUPERVISED RELEASE?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- United States v. Aguirar, No. 2:09-cr-90 (D. Vt. 2011)
- United States v. Aguirar, No. 11-5262 (2d Cir. 2013)
- United States v. Aguirar, No. 1:07-cr-10257 (D. Mass. 2007)

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APPENDIX M: August 2018 letter to Petitioner from Drug Conspiracy Case CJA Counsel advising that Petitioner has no right to appeal a revocation of supervision and that the revocation is part of the conspiracy case and not yet final and will be vacated if the appeal is successful

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 16, 2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 26, 2021, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Constitutional Provisions

Article III, § 2: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treatise made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all Cases of Admiralty and Maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Amendment V: No person shall be held to answer for a Capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without

just compensation.

Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defence.

B. Statutory Provisions

Title 18 U.S.C. § 3006A(a)(1): Representation shall be provided for any financially eligible person who - ...
(E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension of revocation of a term of supervised release [.]

Title 18 U.S.C. § 3583(e): The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) - ...

(3) revoke a term of supervised release and require the defendant to serve in prison all or part of the term of

supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision if the court, pursuant to the Federal Rules of Criminal Procedure, applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony or more than one year in any other case [.]

Title 18 U.S.C. § 3583(i): The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

Title 18 U.S.C. § 3584(c): Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

Title 18 U.S.C. § 3605: A court, after imposing a sentence, may transfer jurisdiction over a probationer or person on supervised release to the district court for any other district to which the person is required to proceed as a condition of his probation or release or is permitted to proceed, with the concurrence of such court. A later transfer of jurisdiction may be made in the same manner. A court to which jurisdiction is transferred under this section is authorized to exercise all powers over the probationer or releasee that are permitted by this subchapter or subchapter B or D of chapter 227.

Title 18 U.S.C. § 3624(e): [A] term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection for a Federal, State,

or local crime unless the imprisonment is for a period of less than 30 consecutive days....

Title 18 U.S.C. § 3742(a): A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence - (1) was imposed in violation of law; (2) was imposed as a result of an incorrect application of the sentencing guidelines; or (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline range; or (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

Title 21 U.S.C. § 851(a): No person who stands convicted of an offense under [21 U.S.C. § 841] shall be sentenced under increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon....

STATEMENT OF THE CASE

In 2001, Petitioner involuntarily pled guilty to possession with intent to distribute 23 grams of heroin under an unfiled and inapplicable 21 U.S.C. § 851 enhancement after he was misled by: the United States Attorney; the district court; the United States Probation office; and his court-appointed attorney, David J. Williams, that resulted in his being given an unlawfully-imposed enhanced sentence. United States v. Aguiar, No. 2:00-cr-119, ECF 37 (D. Vt. 2001) (2014-filed post-conviction challenges).

In January 2007, Petitioner was released from custody and began serving his unlawfully-imposed six-year statutory mandatory minimum term of supervision in Massachusetts pending the transfer of jurisdiction of his supervision under 18 U.S.C. § 3605 from Vermont to Massachusetts that was finalized by September 2007. United States v. Aguiar, No. 1:07-cr-10257, ECF 1-2, (D. Mass. 2007).

In January 2008, Petitioner completed a re-entry program in the Massachusetts Court and the court reduced his term of supervision by one year under 18 U.S.C. § 3583, but failed to memorialize any record of the reduction until 2018. Id., ECF 25.

In October 2008, Petitioner violated his conditions of supervised release by being arrested by New Hampshire State Police for reckless driving. Appendix D. To begin proceedings to resolve the violation, the United States Probation Office ("USPO") told Petitioner that it would first modify the terms of his supervised release

conditions if he waived his right to a court hearing. Id.

The USPO then secretly moved the court to add a Community Service Component to Petitioner's supervised release conditions until it later advised the court further of any action or inaction after it had obtained and reviewed Petitioner's arrest report from the police, see id., but Petitioner was not aware of the sealed events on the court's docket. The court granted the USPO's motion. Id.

On April 28, 2009, Petitioner again violated his supervised release conditions by being criminally charged by Massachusetts police for again driving recklessly, Appendix E.

In June 2009, the USPO openly filed with the court a supervised release violation, but did not serve Petitioner notice that a violation had been filed. Id.; see also Aguiar, No. 1:07-cr-10257, ECF 5 (June 2009-filed/docketed violation). The USPO moved the court to stay the violation until Petitioner's criminal charges were resolved, see id., at which time an actionable determination would then be made, and the court granted the motion under seal. Appendix F.

In July 2009, Petitioner pled guilty to the reckless driving criminal charge; the state court continued the proceedings until October 2009 by placing Petitioner on probation and conditioning: that he pay fines; that he complete a safe driver course; and that he not be charged with any further criminal conduct during the

probationary period. Appendix G. The USPO secretly advised the court of Petitioner's status and again moved the court to stay the violation until he met the probation conditions. Id. The court granted the motion, but Petitioner was again not aware of the sealed events on the Massachusetts court's docket. Id.

On July 30, 2009, however, Petitioner was arrested and charged in Vermont for a drug conspiracy, see United States v. Aguiar, No. 2:09-cr-90 (D. Vt. 2011) (the "drug conspiracy case"), and the Vermont court again appointed David Williams – the same attorney who had misadvised Petitioner in 2000-2001 – to represent him under the Criminal Justice Act ("CJA"). Id.

In August 2009, the USPO secretly filed in the Massachusetts court a warrant petition detailing the Vermont court's filed allegations of Petitioner's drug conspiracy case arrest seeking the issuance of an arrest warrant to revoke his term of supervision, but Petitioner was again not aware of the sealed events on the Massachusetts court's docket. Appendix H.

On August 27, 2009, the Massachusetts court issued a warrant for Petitioner's arrest, see Appendix I, but again Petitioner was not aware of this sealed event on the court's docket. Id. On August 30, 2009, Petitioner's term of supervised release was effectively tolled under 18 U.S.C. § 3624(e).

Despite the Massachusetts court's standing 2009-issued arrest warrant for multiple ongoing violations of supervised release, over two years later on December 9, 2009, the court

issued and docketed a notice of transfer order under 18 U.S.C. § 3605 ordering that its "jurisdiction of [Petitioner's supervised release] be transferred with the records of the Court to the United States District Court for the [District of Vermont]...", Aguiar, No. 1:07-cr-10257, ECF 12 (emphasis added), but Petitioner was given no such notice.

On Monday, December 12, 2011, two hours before his drug conspiracy case sentencing in Vermont, the Massachusetts court transmitted, see id., and the Vermont court received, the court's December 9, 2011 transfer order and incomplete records that consisted of only the Massachusetts court's still-filed-under-seal August 2009 warrant petition seeking to revoke Petitioner's supervision. Cf. Aguiar, No. 2:00-cr-119, ECF 31; 32. This transfer was a sealed event for which there was no notice of electronic filing, Id.

As Petitioner proceeded to be sentenced in the drug conspiracy case, he was not aware of the early-morning's sealed docket activity. Because the Massachusetts court had not transferred its records to the Vermont court consistent with its own order, see Aguiar, No. 1:07-cr-10257, ECF 12, to include the openly-filed June 2009-filed violation, see Appendix E, when the Vermont court failed to appoint Petitioner CJA Counsel for the revocation, see Aguiar, No. 2:00-cr-119, ECF 31-34, and unexpectedly announced during the drug conspiracy case sentencing that it would address the

[still-sealed] supervised release violation filed by the USPO in Massachusetts, that record makes clear that Petitioner was misled to believe that the court's reference was to the Massachusetts court's untransferred record of its docketed June 2009-filed pending violation cited in Petitioner's PSR, see Aguiar, No. 2:09-cr-90, ECF 629 at 3 (drug conspiracy case sentencing transcript), that increased his criminal history points. See id., PSR PPA 110-111. Drug conspiracy case CJA counsel's conflict of interest misled Petitioner to allow the court to revoke his term of supervision based solely on the Massachusetts court's [still-sealed on the Vermont court's docket at the time he was sentenced] sealed August 2009 warrant petition that he knew nothing about and was never provided, see Aguiar, No. 2:00-cr-119, ECF 32 (sealed event of the Massachusetts court's still-filed-under-seal August 2009 USPO petition being received by the Vermont court); but see id., ECF 33 (post-sentencing after-the-fact docket entry of Dec. 13, 2011 Vermont court hearing in absentia and order that the petition be unsealed), and sentence him over the authorized statutory maximum under 18 U.S.C. §§ 3559(a)(3); 3583(e)(3) for his original offense and 21 U.S.C. §§ 841(a)(1); (b)(1)(C) conviction without satisfying Congress's jurisdictional prerequisite under 18 U.S.C. § 3583(e) to first consider multiple 18 U.S.C. § 3553 factors that included the guidelines. Cf. Aguiar, No. 2:09-cr-90, ECF 629 at 9 (drug conspiracy case sentencing transcript).

After sentencing for the drug conspiracy and revocation, Petitioner sent the district court a pro se notice of appeal that the court misfiled in only the drug conspiracy case. See id., ECF 598. Drug conspiracy case CJA counsel also never advised Petitioner about his appellate rights and knowingly misled Petitioner about his intention to contemporaneously appeal both his revocation and drug conspiracy convictions and sentences. See, e.g., Aguiar, No. 2:00-cr-119, ECF 86-1 (attempted post-conviction amended claims held untimely under the AEDPA); see also Aguiar, No. 2:09-cr-90, ECF 807-1 (amended Fed. R. Civ. P. 60(b) Motion to reopen habeas proceeding based on Petitioner being misled by CJA counsel about his right to contemporaneously appeal both his revocation and drug conspiracy case convictions and sentences that the district court denied as not being within the scope of Rule 60(b), see id., ECF 819).

Because Petitioner's 2001 prior conviction and 2011 revocation were used to enhance his drug conspiracy case punishment under 18 U.S.C. § 851 and U.S.S.G. §§ 4A1.1 and 4B1.1, see id., ECF 396; PSR §§ 88; 110; 111, Petitioner diligently sought all evidence relevant to his defense and made pro se post-conviction challenges while being actively and unknowingly misled by his conflicted attorney. See, e.g., United States v. Aguiar, No. 2:94-cr-65, ECF 49 (D. Vt. 1995); Aguiar, No. 2:00-cr-119, ECF 37 (petitions for writ of error coram nobis). Drug conspiracy case court-appointed CJA counsel's conflict of

interest adversely affected the fundamental fairness of Petitioner's Fifth Amendment right to due process and Sixth Amendment right to effective assistance of counsel and prejudiced Petitioner in every court proceeding against him in the wake of his July 2009 arrest. See Aguiar, No. 1:07-cr-10257 (D. Mass. 2007); Aguiar, No. 2:00-cr-119 (D. Vt. 2001); Aguiar, No. 2:09-cr-90 (D. Vt. 2011); United States v. Aguiar, No. 11-5262-cr (2d Cir. 2013).

After discovering new facts about his revocation; his attorney's misconduct; and the Vermont court's mishandling of his 2011 timely-filled pro se notice to appeal both his revocation and drug conspiracy case convictions/sentences, Petitioner renewed his notice to appeal, see Aguiar, No. 2:00-cr-119, ECF 91, that was sent to the Second Circuit, United States v. Aguiar, No. 20-1279 (2d Cir. 2020). On October 16, 2020, the Second Circuit wrongly dismissed the appeal as moot prematurely suggesting that it had no jurisdiction to hear the appeal, see Appendix A, relying on United States v. Probber, 170 F.3d 348 (2d Cir. 1999). Petitioner filed a timely petition for rehearing arguing that this case meets the case or controversy requirement under Article III of the Constitution and that the Second Circuit overlooked that its reliance on its holding in Probber was inapplicable to the distinguishable facts of this case. On January 21, 2021, the Second Circuit denied the petition for rehearing. See Appendix C.

REASONS FOR GRANTING THE PETITION

This Petition is one of first impression involving ongoing injury surrounding multiple unadjudicated supervised release violations and an incomplete and defective multi-jurisdictional revocation proceeding interdependently intertwined with Petitioner's drug conspiracy case. Granting this Petition is needed to clarify the scope of the case or controversy requirement under Article III of the United States Constitution given the fact-intensive nature of Petitioner's case:

1. The Second Circuit Wrongly Dismissed Petitioner's Appeal as Moot Giving Petitioner No Opportunity to Show that the Appeal Meets the Case or Controversy Requirement under Article III of the United States Constitution

This Court has instructed that "it is the burden of the 'party who seeks the exercise of jurisdiction in his favor,' 'clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute.'" *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990) (internal citations omitted). The Fifth Amendment also requires that a party be given that opportunity under due process of law.

Here, the Second Circuit's ruling to prematurely dismiss Petitioner's appeal as moot without allowing the appeal

to Move forward violates the Dallas Court's holding and the Fifth Amendment. Had the Second Circuit not disregarded this Court's binding authority of its Dallas holding and allowed Petitioner to exercise his right to due process below, he would have presented record evidence proving that the appeal he made below was both meritorious and justiciable.

2. The Second Circuit Wrongly Relied on United States v. Probber, 170 F.3d 345 (2d Cir. 1999) Because Petitioner is Presently Serving a 30-Year Concurrently-Imposed Single Aggregated Sentence for Multiple Drug Conspiracy Case and Single Revocation of Supervised Release Case Convictions that can be Remedied by a Favorable Ruling on Appeal

Petitioner's appeal below lays challenge to his 2001 conviction and sentence and 2011 revocation conviction and sentence each of which cause him ongoing consequences for which he is incarcerated. This Court's precedent holds that a defendant's challenge to the validity of a conviction is not moot if there are any concrete or collateral consequences. See Carafas v. LaVallee, 391 U.S. 234, 237-37 (1968); United States v. Morgan, 346 U.S. 502 (1954); Sibron v. New York, 392 U.S. 40, 55-56 (1968). This Court's precedent also holds that there is a presumption of collateral consequences for criminal convictions that overcome mootness and

satisfy the case or controversy requirement under Article III of the United States Constitution. Id. The Court's precedent further holds that such a presumption does not extend to state parole revocations unless the defendant shows concrete injuries-in-fact attributable to the revocation. Spencer v. Kemna, 523 U.S. 1, 7-14 (1998). The Second Circuit expanded Spencer's holding to revocations of federal supervised release. See United States v. Propper, 170 F.3d 345 (2d Cir. 1999).

Justice calls on this Court to correct the Second Circuit's error to misapply Propper to the distinguished facts of Petitioner's case and conflict with this Court's binding precedent and Article III.

Record evidence below shows that the appeal below was not moot and meets Article III's case or controversy requirement: (i) Petitioner challenged the validity of his 2001 conviction and sentence; (ii) Petitioner challenged the validity of his 2011 revocation of supervised release conviction and sentence; (iii) Petitioner presently serves a 30-year aggregated prison sentence for revocation of supervised release; and (iv) Petitioner presently suffers injuries-in-fact attributable to his 2001 drug conviction and sentence and 2011 revocation of supervised release conviction and sentence.

i. Petitioner's challenge to the validity of his 2001 conviction and sentence

While being actively misled by drug conspiracy case court-appointed counsel, Petitioner challenged the validity of

his 2001 conviction and sentence based on a never filed and inapplicable 21 U.S.C. § 851 enhancement. See Aguiar, No. 2:00-cr-119, ECF 37 (post-sentencing challenge to the validity of the 2001 conviction and sentence). Because Petitioner's "challenge to the validity of his conviction always satisfies the case-or-controversy requirement," see Spencer, 523 U.S. at 7, the appeal below was not moot. Cf. Appendix A.

ii. Petitioner's challenge to the validity of his 2011 revocation conviction and sentence

After being misled by drug conspiracy case counsel and the district court, Petitioner challenged the validity of both his 2001 drug and 2011 revocation convictions and sentences through amendment given the confusingly-interdependent and improper joinder of drug conspiracy and revocation of supervised release cases in conjunction with the defective jurisdictional nature of Petitioner's multiple violations of supervised release in Massachusetts. See Aguiar, No. 2:00-cr-119, ECF 86-1 (amended post-sentencing challenges that the district court held to be untimely under the AEOPA); see also Appendices D-I; Aguiar, No. 2:00-cr-119, ECF 91 (Petitioner's renewed notice of appeal). Because Petitioner appealed the district court's subject matter jurisdiction to revoke his supervised release and independently challenged the validity of his revocation of supervised release conviction and sentence, the appeal below was not moot and meets the case or controversy requirement under Article III.

iii. Petitioner now serves an interdependent and adversely-imposed 30 year concurrent sentence for both his revocation of supervised release case and drug conspiracy case convictions that can be remedied by a favorable ruling on appeal

Under Article III, § 2, of the Constitution, the "case-or controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate" and "[t]he parties must continue to have 'a personal stake in the outcome' of the lawsuit" requiring that the plaintiff "must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." Lewis v. Continental Bank Corp., 494 U.S. 472, 477-78 (1990); see also Preiser v. New Kirk, 422 U.S. 395, 401 (1975). Prior convictions that enhance a petitioner's current sentence also satisfy Article III. United States v. Morgan, 346 U.S. 502 (1954).

Despite the claimed invalidity of his prior 2001 conviction and sentence — a case in which no 21 U.S.C. § 851 information was ever filed rendering Petitioner's plea involuntary and his sentence unlawfully enhanced — relied on to increase his current sentence, see pp. 8; 12-13 of this Petition, Petitioner presently suffers an actual injury likely to be redressed by a favorable appeal ruling — injury independently attributable to his revocation.

The Second Circuit Misapplied Propper and Spencer to the facts of Petitioner's case — this begs intervention

from this Court. The Probber Court defendant's challenged sentence had expired and he had been released from custody without consequence and the court ruled that Spencer's binding precedent precluded the presumption of collateral consequences attributable to the supervised release revocation to satisfy Article III nor had Probber proved such consequences. See Probber, 170 F. 3d 345, 348. Conversely, Petitioner now serves an adverse single aggregated 30 year sentence under 18 U.S.C. § 3584(c) for both his revocation of supervised release case and drug conspiracy case convictions that can be remedied by a favorable ruling on appeal. See Appendix J (current June 2021 sentence computation) and Appendix K (e-mail from prison officials verifying the ongoing collateral consequences of Petitioner's revocation of supervised release). Undeniably, Petitioner's release date for the supervised release revocation is 2035 and prison officials continue to make adverse determinations against Petitioner based on his revocation of supervised release under such statutory authority. Id. The Second Circuit failed to acknowledge that Petitioner suffers concrete injury - in - fact that is attributable to his revocation of supervised release and wrongly determined that Petitioner is finished serving the challenged term of imprisonment. Appendix A. Were this Court to even agree with this inaccurate presumption, Petitioner still suffers collateral consequences from his habeas challenges

as described above and below in this Petition.

iv. Petitioner suffers concrete injury under Article III independently attributable to both his 2001 drug conviction and sentence and his 2011 revocation of supervised release conviction and sentence

Unlike the Spencer and Probber defendants, Petitioner suffers injury attributable to his 2001 drug and 2011 revocation of supervised release convictions and sentences because both proceedings are interdependently intertwined with, and each independently harmfully affect, Petitioner's current drug conspiracy case-enhanced sentence and Petitioner's custody and classification determinations in the Federal Bureau of Prisons ("FBIOP"). See Appendices J-K.

Were Petitioner's revocation of supervised release reversed, for example, he would no longer be serving an aggregated sentence for revocation of supervised release thus disallowing prison officials to continue making adverse determinations against Petitioner based on the revocation. A favorable appeal would likewise result in Petitioner being resentenced for the drug conspiracy case allowing him to correct the injury-in-fact caused by either the potentially unlawful 2001 or 2011 revocation convictions and sentences. In any event, Petitioner's appeal satisfies Article III based

on collateral consequences independently attributable to the revocation of Petitioner's supervised release. Id.

3. Petitioner's Appeal Satisfies Article III

Because Petitioner's Revocation Proceeding is Not Yet Final by Having Multiple Unadjudicated Violations of Supervised Release and a Warrant for his Arrest in Massachusetts

Due process of law under the Fifth Amendment applies to violations of supervised release and revocation proceedings. This Court holds that the "minimum requirements of due process... include... written notice of the claimed violations..." Morrissey v. Brewer, 408 U.S. 471, 489 (1972).

Under an improper transfer of jurisdiction of Petitioner's Supervision to Vermont, Petitioner's due process rights were violated under the Fifth Amendment. See pp. 8-11 of this Petition. The district court gave Petitioner no written notice of any claimed violations of supervised release and revoked Petitioner's term of supervised release without proper legal authority. Id. The record makes clear that the Vermont district court failed to appoint Petitioner CJA counsel for his revocation of supervised release. Id. The record also makes clear that the district court gave Petitioner no written notice of any claimed violations and improperly revoked Petitioner's term of supervision based on a still-sealed on the Vermont court's docket at the time Petitioner was

Sentenced August 2009 Warrant Petition he knew nothing about without considering a single 18 U.S.C. § 3553 factor as required by Congress under 18 U.S.C. § 3583(e). See pp. 8-14 of this Petition. The record further makes clear that the district court left multiple violations of supervised release unadjudicated and disregarded Petitioner's standing arrest warrant in Massachusetts for such violations and failed to properly docket Petitioner's pro se notice to contemporaneously appeal both his revocation of supervised release case and drug conspiracy case convictions and sentences. Id.

Because the premature revocation of Petitioner's supervised release and the district court's errors that violated Petitioner's due process rights caused multiple collateral consequences as well as concrete injuries-in-fact-as detailed in this Petition, the Petitioner's appeal satisfies Article III and the Supreme Court must grant this Petition.

4. Petitioner's Appeal Satisfies Article III and the District Court Lacked Subject Matter Jurisdiction to Revoke Petitioner's Supervised Release

Under 18 U.S.C. § 3583(e), "[t]he court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)...", id., "revoke a term of supervised release..." 18 U.S.C. § 3583(e)(3). Section 3583(e) is a

jurisdictional prerequisite to a court's subject matter jurisdiction to revoke a term of supervision under § 3583(e)(3). Under Federal Rule of Criminal Procedure 32.1, a defendant facing revocation of supervised release has due process rights and must be given: written notice of the violations; disclosure of the evidence; and the opportunity to present evidence, make a statement, and present mitigating evidence. See Fed. R. Crim. P. 32:1(b)(2)(A) - (E). This Court holds that the minimum requirements of due process includes written notice of the claimed violations. Morrissey, 408 U.S. at 489.

The appeal below satisfies Article III; the district court lacked subject matter jurisdiction to revoke Petitioner's term of supervised release and a favorable ruling on appeal will allow Petitioner to return to Massachusetts to resolve the warrant for his arrest and unadjudicated violations of supervised release. See Appendices C-I.

Despite the defective transfer of jurisdiction of Petitioner's supervised release to Vermont under 18 U.S.C. § 3605, see pp. 8-12 of this Petition, the district court failed to comply with any requirement under Rule 32.1. Id. at 10-12. The court gave Petitioner neither notice of his right to counsel under 18 U.S.C. § 3006A nor written notice of the charges. Id. Without disclosure of any evidence, the court revoked Petitioner's term of supervision based on a still-filed-under seal warrant petition Petitioner knew nothing about and then

sentenced Petitioner over the authorized statutory maximum without considering a single § 3553 factor as required by Congress under 18 U.S.C. § 3583(e). See pp. 11-12 of this Petition. Add to that, the court failed to docket Petitioner's pro se notice to contemporaneously appeal both his revocation case and drug conspiracy case convictions and sentences.

Id. at 13.

Because the Vermont district court violated Petitioner's Fifth Amendment right to due process and disregarded Morrissey; Fed. R. Crim. P. 32.1; and 18 U.S.C. § 3583(e) in its entirety, the court lacked subject matter jurisdiction to revoke Petitioner's term of supervised release and he must return to Massachusetts to where jurisdiction of his supervision must lie.

5. **Petitioner's Appeal Satisfies Article III and his Revocation of Supervised Release was Relied on to Make Adverse Determinations in the PSR of Petitioner's Drug Conspiracy Case**

An "allegedly-erroneous PSR implicates sufficient collateral consequences to preserve a live controversy." United States v. Ramirez-Gonzalez, 840 F.3d 240, 245 (5th Cir. 2005). Even "a clerical error in the PSR is "not harmless because it affects [a defendant's] substantial rights," and that "like a judgment determines the rights and obligations of the defendant moving forward." United States

v. Mackay, 757 F.3d 195, 200 (5th Cir. 2014). "The BOP's adjustment to [a defendant's] administrative records following [a] resentencing reinforces the direct nexus between the two sentences." United States v. Fluher, 891 F.3d 541, 550 (4th Cir 2018).

An interdependently direct and adverse nexus exists between Petitioner's drug conspiracy case and revocation of supervised release case sentences that would be remedied by a favorable appeal ruling: First, Petitioner would be remanded to be resentenced in the drug conspiracy case allowing him to quell the harmful revocation-related inaccurate determinations made against him in the PSR, see Aguiar, No. 2:09-cr-90, PSR APP 110-111, that prison officials rely on to execute ongoing adverse decisions against Petitioner during his present ongoing incarceration. See Appendices J-L. Second, any remand would force prison officials to adjust Petitioner's administrative records and correct the injury-in-fact and adverse nature of such injury being caused by the revocation. Id. Last, a favorable appeal would allow Petitioner to return to Massachusetts to where jurisdiction of his revocation of supervised release properly lies affording Petitioner his right to due process of law so that he may resolve his unadjudicated violations of supervised release and standing warrant for his arrest as guaranteed under the United States Constitution. See Appendices D-I.

Given the above-identified injuries-in-fact and Petitioner's incomplete and not yet final revocation of supervised release proceeding, the Court must vacate the Second Circuit's error to dismiss Petitioner's appeal as moot under Article III. Appendix A.

6. **The Appeal Below Satisfies Article III Given that the District Court Denying Petitioner's Motion to Vacate as Untimely Under the AEDPA is an Injury-in-Fact Directly Attributed to his Supervised Release Revocation Conviction and Sentence Proceeding**

Article III Standing requires a case-or-controversy and continuing injury likely to be redressed by a favorable judicial decision. See Spencer, 523 U.S. 1, 7-8. Under 28 U.S.C. § 2255(a), a prisoner can move a court for relief based on violations of law. Under § 2255(f)(1), motions for relief must be filed within one year from the date on which the judgment of conviction becomes final.

Because of the record-evident constitutional violations and district court-caused errors below as described in this Petition, the court wrongly concluded that Petitioner's motion for relief under § 2255 was time-barred under the AEDPA. See Aguiar, No. 2:00-cr-119, ECF 93. This qualifies as a continuing collateral consequence attributable to the revocation of supervised release that can be remedied by a favorable appeal and thus further satisfies Petitioner's Article III Standing in this case.

Record evidence below shows that the district court first mishandled Petitioner's intended pro se 2011 letter to the court to contemporaneously appeal his revocation and drug conspiracy Case convictions and sentences. See, e.g., Aguirar, No. 2:09-cr-90, ECF 598 (pro se notice to appeal); but see Aguirar, No. 2:00-cr-119, ECF 31-34, and id., ECF 91 (renewed notice of appeal). Next, Drug conspiracy case CJA counsel actively misled Petitioner about the appeal, see Appendix L (CJA counsel's 2012 letter Misadvising Petitioner that he had no right to appeal a revocation and that the revocation was not yet final and would be vacated were the appeal successful), and such Misadvice was supported by the district court's failure to docket Petitioner's timely- filed pro se notice to appeal that he had believed included the revocation.

The collateral consequences of the violations of Petitioner's due process rights; of the district court's errors; and of CJA counsel's misdirection and misadvice caused the premature and inappropriate 2014 filing of a *coram nobis* petition, see Aguirar, No. 2:00-cr-119, ECF 31 (challenging Petitioner's 2001 conviction/sentence), and 2017 filing of a motion to vacate under 28 U.S.C. § 2255, see Aguirar, No. 2:00-cr-119, ECF 67; 75; 77; 84; 86 (challenging Petitioner's 2001 conviction/sentence and 2011 revocation of supervised release conviction/sentence), that were denied as untimely under the AEDPA, Id., ECF 93. These injuries-in-fact satisfy Article III and can be remedied by a favorable appeal.

7. The Appeal Below Satisfies Article III and the Favorable Ruling Would Remedy the Violations of Petitioner's Sixth Amendment Right to Counsel and Fifth Amendment Due Process Preserved Right to Contemporaneously Appeal his Drug Conspiracy and Revocation of Supervised Release Case Convictions and Sentences

This Court has instructed courts that defendants have a right to counsel at revocation hearings, See Mempa v. Rhay, 389 U.S. 128 (1967), and a right to counsel on appeal. See Anders v. California, 386 U.S. 738 (1967). Fed. R. Crim. P. 32.1 and 18 U.S.C. § 3006A also instruct that defendants have a right to counsel independently for revocations of supervised release and 18 U.S.C. § 3742(a) guarantees a defendant a statutory right to a properly-preserved right to appeal. This Court also instructs that defendants have a right to representation free of a conflict of interest, see Wood v. Georgia, 450 U.S. 261, 271 (1981); it has even vacated a probation revocation because the trial court had failed to inquire into a possible conflict of interest on the part of a petitioner's attorney. Id. at 273-74.

The evidence in Petitioner's case below shows that during his scheduled drug conspiracy case sentencing, the trial court did not appoint Petitioner counsel for his revocation of supervised release proceeding. See Aguirre, No. 2:00-cr-119, ECF 31-34. The record also shows that drug conspiracy case CJA counsel was ineffective

in his 2001 representation of Petitioner that caused a conflict of interest. See, e.g., id., ECF 86-1 at 31-33 (post-sentencing claims).

The trial court misjoined Petitioner's revocation and drug conspiracy case proceedings; ambushed Petitioner with a violation of supervised release proceeding for which he was given no advance notice; revoked Petitioner's term of supervision based on a still-filed-under seal Massachusetts warrant petition that the court never gave to Petitioner, compare id., ECF 31-32 (sealed event of court's transfer of jurisdiction for which no notice of electronic transfer was given) with id., ECF 33 (Dec. 13, 2011 post-sentencing after-the-fact court hearing in absentia and order that the warrant petition be unsealed); and sentenced Petitioner without considering a single 18 U.S.C. § 3553 factor as required by Congress under 18 U.S.C. § 3583(e). See Aguiar, No. 2:09-cr-90, ECF 629 at 26-27. (Dec. 12, 2011 sentencing transcript).

The trial court sentenced Petitioner "to 360 months on Counts 1-7, to be run concurrently, followed by a ten year term of supervised release... three years [for violation of supervised release] to be run concurrently... not to be followed by supervised release... Both the defendant and the government may have the right to appeal [under 18 U.S.C. § 3742(a)]... If the defendant so requests, the clerk shall prepare and file forthwith on behalf of the defendant.

Id. at 24-27. Because drug conspiracy case CJA counsel never met with Petitioner about an appeal, Petitioner sent a pro se letter to the district court advising that he wished to appeal his convictions and sentences, but the court filed the pro se appellate notice in

only Petitioner's drug conspiracy case. See Aguiar, No. 2:09-cr-90, ECF 598, when if fact Petitioner had preserved his right to contemporaneously appeal both his revocation and drug conspiracy case convictions and sentences, see United States v. Warner-Freeman, 270 Fed. Appx. 745 (11th Cir. March 18, 2008) (concluding that the defendant had preserved her right to contemporaneously appeal both her revocation of supervised release and fraud convictions and sentences despite that her pro se notice to appeal that she sent to the court did not specifically identify the revocation).

The district court's mishandling of Petitioner's pro se notice to appeal supported drug conspiracy case CJA counsel's deception, see Appendix L, and conflict of interest throughout and the collateral consequences of counsel's misadvice and misdirection harmfully affected when, and the way in which, Petitioner raised his post-sentencing claims for relief below, See Aguiar, No. 2:09-cr-90, ECF 807-1; Aguiar, No. 2:00-cr-119, ECF 86-1, that were denied by the district court. Indeed, the above detailed injuries-in-fact are attributable to Petitioner's revocation of supervised release proceeding.

Simply put, the collateral consequences attributed to Petitioner's revocation of supervised release extend to his ongoing incarceration and harmfully affected Petitioner's Sixth and Fifth Amendment rights in all court proceedings directly and indirectly related to the supervised release revocation that can each be remedied by a favorable appeal

in this case. See Appendix D-L.

The district court failed to docket Petitioner's properly preserved right to contemporaneously appeal both his revocation of supervised release and drug conspiracy case convictions and sentences. Notwithstanding drug conspiracy case counsel's conflict of interest, every post-sentencing court proceeding that followed proceeded under false pretenses and violated Petitioner's Fifth Amendment right to due process.

Because the district court's errors and Constitutional violations can be remedied by a favorable appeal, this Court must vacate the Second Circuit's ruling in this case and determine the scope of the above detailed collateral consequences caused by, and attributed to, Petitioner's revocation and whether Petitioner's concurrently-imposed 30 year sentence must be vacated to allow Petitioner to restore his properly preserved right to contemporaneously appeal his drug conspiracy and revocation of supervised release convictions and sentences with the effective assistance of counsel under 18 U.S.C. § 3742(a) consistent with the Constitution, the CJA, and this Court's precedent.

8. The District Court's Transfer of Jurisdiction of Petitioner's Supervised Release is Void and his 2001-Imposed Term of Supervised Release is Tolled Under 18 U.S.C. § 3624(e) and this Court's Holding in Mont v. United States

Title 18 U.S.C. § 3605 authorizes a court to transfer the jurisdiction of a defendant's supervised release to another district. This Court holds that under 18 U.S.C. § 3624(e) a term of supervised release does not run during any period in which the defendant is imprisoned in connection with a federal crime for more than 30 days. See Mont v. United States, 587 U.S. ___, 139 S.Ct. 1826 (2019). This Court also holds that the minimum requirements of due process includes written notice of the claimed supervised release violations. Morrissey, 408 U.S. 471, 489.

Under this Court's precedent, Petitioner's 2001-imposed term of supervised release is tolled under 18 U.S.C. § 3624(e), see Mont, Supra; Petitioner was not given the minimum requirements of due process, see Morrissey, Supra; and Petitioner's revocation of supervised release proceeding is not yet final and the Vermont district court proceedings were void from the start. This Court must grant this Petition to clarify the scope of Mont's holding to this case of factual first impression. See pp. 8-18 of this petition.

Here, Petitioner's revocation of supervised release proceeding is interjurisdictional, See ORAN'S DICTIONARY OF THE LAW (defining "Proceeding" as "[a] case in court"; "[t]he orderly progression of a case in court"; and "[t]he recorded history of a case."), p. 335 (2ed 1993) (emphasis in original); See also Aguilar, No. 2:00-cr-119; Aguilar, No. 1:07-

cr-10257; Appendices D-I, and jurisdiction of Petitioner's still-tolled term of supervision must be returned to the District of Massachusetts to where such jurisdiction over this case properly lies:

First, Petitioner's sealed revocation proceeding first began in the District of Massachusetts as early as 2008.

See p.8 of this Petition. Indeed, Petitioner had been given an inapplicably-increased term of supervised release and would have not otherwise been on supervised release at the time of his 2009 arrest for a drug conspiracy had the Massachusetts court docketed its one year reduction of Petitioner's supervised release term in the wake of his 2008 participation in that court's re-entry program. Id.

Second, after additional sealed violations of supervised were filed with the Massachusetts court, see id., pp. 9-10, and after Petitioner had been arrested in Vermont for conspiracy and was appointed a CJA attorney who had an actual of conflict of interest, the Massachusetts court issued a warrant for Petitioner's arrest and his term of supervised release was effectively tolled on August 30, 2009. Id. p.10.

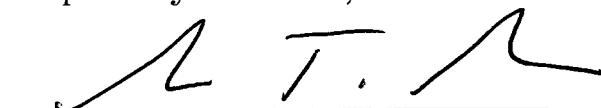
Next, years after Petitioner's drug conspiracy case arrest, the Massachusetts court inappropriately transferred its jurisdiction of Petitioner's supervision to the Vermont court — a transfer that was incomplete and void at its inception — and without warning Petitioner, the Vermont court unlawfully accepted such

jurisdiction, failed to appoint Petitioner CJA counsel and misjoined the revocation proceeding with Petitioner's drug conspiracy case proceeding, revoked Petitioner's term of supervision without giving him notice, and failed to docket his pro se appeal to the court Id. pp. 10-13. Indeed, the court's legal errors and violations of due process under the Fifth Amendment facilitated drug conspiracy case CJA counsel's conflict of interest in the years that followed as he misdirected Petitioner about the supervised release revocation and his rights. See Appendix L. Simply put, Petitioner's Vermont proceedings are void and term of supervision tolled.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: June 23, 2021