SUPREME COURT OF THE UNITED STATES

No. 92–1662

UNITED STATES, PETITIONER *v.* RALPH STUART GRANDERSON, JR.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[March 22, 1994]

JUSTICE GINSBURG delivered the opinion of the Court.

This case presents a question of statutory interpretation regarding revocation of a federal sentence of probation. The law at issue provides that if a person serving a sentence of probation possesses illegal drugs, "the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence." 18 U. S. C. §3565(a). Congress did not further define the critical term "original sentence," nor are those words, unmodified, used elsewhere in the Federal Criminal Code chapter on sentencing. Embedded in that context, the words "original sentence" in §3565(a) are susceptible to at least three interpretations.

Read in isolation, the provision could be taken to mean the reimposition of a sentence of probation, for a period not less than one-third of the original sentence of probation. This construction, however, is implausible, and has been urged by neither party, for it would generally demand no increased sanction, plainly not what Congress intended.

The Government, petitioner here, reads the provision to draw the time period from the initially imposed sentence of probation, but to require incarceration, not renewed probation, for not less than one-third of that

period. On the Government's reading, accepted by the District Court, respondent Granderson would face a 20–month mandatory minimum sentence of imprisonment.

Granderson maintains that "original sentence" refers to the sentence of incarceration he could have received initially, in lieu of the sentence of probation, under the United States Sentencing Guidelines. Granderson's construction calls for a 2–month mandatory minimum. The Court of Appeals accepted Granderson's interpretation, see 969 F. 2d 980 (CA11 1992); returns in other circuits are divided.[1]

The "original sentence" prescription of §3565(a) was a late-hour addition to the Anti-Drug Abuse Act of 1988, a sprawling enactment that takes up 364 pages in Statutes at Large. Pub. L. 100–690, 102 Stat. 4181–4545. The provision appears not to have received Congress' careful attention. It may have been composed, we suggest below, with the pre-1984 federal sentencing regime in the drafter's mind; it does not easily adapt to the regime established by the Sentencing Reform Act of 1984.

According the statute a sensible construction, we recognize, in common with all courts that have grappled with the "original sentence" conundrum, that Congress prescribed imprisonment as the *type* of

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[1]Compare *United States* v. *Penn*, __ F. 3d ___ (CA4 1994); *United States* v. *Alese*, 6 F. 3d 85 (CA2 (1993) (*per curiam*); *United States* v. *Diaz*, 989 F. 2d 391 (CA10 1993); *United States* v. *Clay*, 982 F. 2d 959 (CA6 1993), cert. pending, No. 93–52; *United States* v. *Gordon*, 961 F. 2d 426 (CA3 1992) (all interpreting "original sentence" to mean the period of incarceration originally available under the United States Sentencing Guidelines); with *United States* v. *Sosa*, 997 F. 2d 1130 (CA5 1993); *United States* v. *Byrkett*, 961 F. 2d 1399 (CA8 1992); *United States* v. *Corpuz*, 953 F. 2d 526 (CA9 1992) (all reading "original sentence" to refer to the term of the revoked probation).

punishment for drug-possessing probationers.[2] As to the *duration* of that punishment, we rest on the principle that "`the Court will not interpret a federal criminal statute so as to increase the penalty . . . 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 (1980), quoting *Ladner* v. *United States*, 358 U. S. 169, 178 (1958). We therefore adopt Granderson's interpretation and affirm the judgment of the Court of Appeals.

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[2]The interpretation offered by JUSTICE KENNEDY—a reduced sentence of *probation* as the mandatory minimum—is notable for its originality. No court that has essayed construction of the prescription at issue has come upon the answer JUSTICE KENNEDY finds clear in "the text and structure of the statute." *Post*, at 1, 9. But cf. *id.*, at 8 (describing the statute as "far from transparent").

Granderson, a letter carrier, pleaded guilty to one count of destruction of mail, in violation of 18 U. S. C. §1703(a). Under the Sentencing Guidelines, the potential imprisonment range, derived from the character of the offense and the offender's criminal history category, was 0–6 months. The District Court imposed no prison time, but sentenced Granderson to 5 years' probation and a $2,000 fine.[3] As a standard condition of probation, Granderson was required to submit periodically to urinary testing for illegal drug use.

Several weeks after his original sentencing, Granderson tested positive for cocaine, and his probation officer petitioned for revocation of the sentence of probation. Finding that Granderson had possessed cocaine, the District Court revoked Granderson's sentence of probation and undertook to resentence him, pursuant to §3565(a), to incarceration for "not less than one-third of the original sentence." The term "original sentence," the District Court concluded, referred to the term of probation actually imposed (60 months) rather than the imprisonment range authorized by the Guidelines (0–6 months). The court accordingly sentenced Granderson to 20 months' imprisonment.

The Court of Appeals upheld the revocation of the sentence of probation but vacated Granderson's new sentence. 969 F. 2d 980 (CA11 1992). That court observed that the probation revocation sentence of 20 months' imprisonment imposed by the District Court was far longer than the sentence that could have been imposed either for the underlying crime of destroying mail (six months) or for the crime of

[3]The Sentencing Reform Act of 1984, for the first time, classified probation as a sentence; before 1984, probation had been considered an alternative to a sentence. See S. Rep. No. 98–225, p. 88 (1983).

cocaine possession (one year). *Id.*, at 983, and n. 2. The Court of Appeals called it "legal alchemy" to convert an "original sentence" of "conditional liberty," with a correspondingly long term, into a sentence of imprisonment with a time span geared to the lesser restraint. *Id.*, at 984, quoting *United States* v. *Gordon*, 961 F. 2d 426, 432 (CA3 1992). Invoking the rule of lenity, *id.*, at 983, the court concluded that the phrase "original sentence" referred to "the [0–6 month] sentence of incarceration faced by Granderson under the Guidelines," not to the 60–month sentence of probation. *Id.*, at 984. Because Granderson had served 11 months of his revocation sentence—more than the 6–month maximum—the Court of Appeals ordered him released from custody. *Id.*, at 985.

The text of §3565(a) reads:

> "If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may . . .
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> "(1) continue him on probation, with or without extending the term or modifying or enlarging the conditions; or
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> "(2) revoke the sentence of probation and impose any other sentence that was available . . . at the time of the initial sentencing.
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> "*Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance . . . the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence.*" (Emphasis supplied.)

The Government argues that the italicized proviso is unambiguous. The "original sentence" that establishes the benchmark for the revocation sentence, the Government asserts, can only be the very sentence actually imposed, *i.e.*, the sentence of probation. In this case, the sentence of probation

was 60 months; "one-third of the original sentence" is thus 20 months. But for two reasons, the Government continues, Granderson's 20–month revocation sentence must be one of imprisonment rather than probation. First, the contrast in subsections (1) and (2) between "continu[ing]" and "revok[ing]" probation suggests that a revocation sentence must be a sentence of imprisonment, not a continuation of probation. Second, the Government urges, it would be absurd to "punish" drug-possessing probationers by revoking their probation and imposing a new term of probation no longer than the original. Congress could not be taken to have selected drug possessors, from the universe of all probation violators, for more favorable treatment, the Government reasons, particularly not under a provision enacted as part of a statute called "The Anti-Drug Abuse Act."

We agree, for the reasons stated by the Government, that a revocation sentence must be a term of imprisonment. Otherwise the proviso at issue would make little sense.[4] We do not agree, however,

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[4]JUSTICE KENNEDY's novel interpretation would authorize revocation sentences under which drug possessors could profit from their violations. The present case is an example. The District Court determined, just over four months into Granderson's 60–month sentence of probation, that Granderson had violated his conditions of probation by possessing drugs. If JUSTICE KENNEDY were correct that the proviso allows a revocation sentence of probation, one-third as long as the sentence of probation originally imposed, then the District Court could have "punished" Granderson for his cocaine possession by reducing his period of probation from 60 months to just over 24 months. JUSTICE KENNEDY's interpretation would present a similar anomaly whenever the drug-possessing probationer has served less than two-thirds of the sentence of probation initially imposed. Surely such an

that the term "original sentence" relates to the duration of the sentence set for probation. The statute provides that if a probationer possesses drugs, "the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence." This language appears to differentiate, not to equate or amalgamate, "the sentence of probation" and "the original sentence." See *United States* v. *Penn*, __ F. 3d ___, ___ (CA4 1994) (slip op., at 6) ("a sentence of probation does not equate to a sentence of incarceration"). If Congress wished to convey the meaning pressed by the Government, it could easily have instructed that the defendant *be incarcerated* for a term "not less than one-third of the original sentence of probation," or "not less than one-third of the revoked term of probation."

The Government's interpretation has a further textual difficulty. The Government reads the word "sentence," when used as a verb in the proviso's phrase "sentence the defendant," to mean "sentence to imprisonment" rather than "sentence to probation." Yet, when the word "sentence" next appears, this time as a noun ("original sentence"), the Government reads the word to mean "sentence of probation." Again, had Congress designed the language to capture the Government's construction, the proviso might have read: "the court shall revoke the sentence of probation and sentence the defendant to *a term of imprisonment whose length is* not less than one-third *the length of* the original sentence *of probation*." Cf. *Reves* v. *Ernst & Young*, 507 U. S. ___, ___ (1993) (slip op., at 7) ("it seems reasonable to give . . . a similar construction" to a word used as both a noun and a verb in a single statutory sentence).

As the Court of Appeals commented, "[p]robation

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interpretation is implausible.

and imprisonment are not fungible"; they are sentences fundamentally different in character. 969 F. 2d, at 984. One-third of a 60–month term of *probation* or "conditional liberty" is a sentence scarcely resembling a 20–month sentence of *imprisonment*. The Government insists and, as already noted, we agree, that the revocation sentence, measured as one-third of the "original sentence," must be a sentence of imprisonment. But that "must be" suggests that "original sentence" refers the resentencer back to an anterior sentence of imprisonment, not a sentence of probation.

Granderson's reading of the §3565(a) proviso entails such a reference back. The words "original sentence," he contends, refer back to §3565(a)(2), the prescription immediately preceding the drug-possession proviso: the "other sentence that was available under subchapter A [the general sentencing provisions] at the time of the initial sentencing." The Guidelines sentence of imprisonment authorized by subchapter A was the "original sentence," Granderson argues, for it was the presumptive sentence, the punishment that probation, as a discretionary alternative, replaced. The Guidelines range of imprisonment available at Granderson's initial sentencing for destruction of mail was 0–6 months. Starting at the top of this range, Granderson arrives at 2 months as the minimum revocation sentence.

Granderson's interpretation avoids linguistic anomalies presented by the Government's construction. First, Granderson's reading differentiates, as does the proviso, between "the sentence of probation" that the resentencer must revoke and "the original sentence" that determines the duration of the revocation sentence. See *supra*, at 6. Second, Granderson's construction keeps constant the meaning of

"sentence" in the phrases "sentence the defendant" and "original sentence." See *supra*, at 6–7. While the Government cannot easily explain how multiplying a sentence *of probation* by one-third can yield a sentence *of imprisonment*, Granderson's construction encounters no such shoal. See *Gordon*, 961 F. 2d, at 433 ("one-third of three years probation is one year *probation*, not one year *imprisonment*").[5]

Granderson's reading of the proviso also avoids the startling disparities in sentencing that would attend the Government's interpretation. A 20–month minimum sentence would exceed not only the 6–month maximum punishment under the Guidelines for Granderson's original offense; it would also exceed the one-year statutory maximum, see 21 U. S. C. §844(a), that Granderson could have received, had the Government prosecuted him for cocaine possession and afforded him the full constitutional protections of a criminal trial, rather than the

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[5]The dissent notes that the term "original sentence" has been used in a number of this Court's opinions and in other statutes and rules, in each instance to refer to a sentence actually imposed. See *post*, at 4–5, and nn. 4–5. None of those cases, statutes or rules, however, involves an interpretive problem such as the one presented here, where, if the "original sentence" is the sentence actually imposed, a "plain meaning" interpretation of the proviso leads to an absurd result. See *supra*, at 1, 5–6, and n. 4.

The dissent observes, further, that other federal sentencing provisions "use the word `sentence' to refer to the punishment actually imposed on a defendant." *Post*, at 3, n. 2. In each of the cited instances, however, this reference is made clear by context, either by specifying the type of sentence (*e.g.*, "sentence to pay a fine," "sentence to probation," 18 U. S. C. §3551(c)), or by using a variant of the phrase "impose sentence" (see §§3553(a), (b), (c), (e); 3554–3558).

limited protections of a revocation hearing.[6] Indeed, a 20–month sentence would exceed consecutive sentences for destruction of mail and cocaine possession (18 months in all).

Furthermore, twenty months is only the *minimum* revocation sentence, on the Government's reading of the proviso. The Government's interpretation would have allowed the District Court to sentence Granderson to a term of imprisonment equal in length to the revoked term of probation. This prison term—five years—would be ten times the exposure to imprisonment Granderson faced under the Guidelines for his original offense, and five times the applicable statutory maximum for cocaine possession. It seems unlikely that Congress could have intended so to enlarge the District Court's discretion. See *Penn*, __ F. 3d, at ___ (slip op., at 6).[7]

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[6]At a revocation hearing, in contrast to a full-scale criminal trial, the matter is tried to the court rather than a jury; also, the standard of proof has been held to be less stringent than the reasonable doubt standard applicable to criminal prosecutions. See 18 U. S. C. §3565(a); Fed. Rule Crim. Proc. 32.1; *United States* v. *Gordon*, 961 F. 2d 426, 429 (CA3 1992) (citing cases).

[7]The dissent suggests that the statutory maximum for the original offense (five years in this case, see 18 U. S. C. §1703(a)) is the maximum revocation sentence. See *post*, at 9, n. 8. The District Court, however, could not have imposed this sentence originally, without providing "the specific reason" for departing from the Guidelines range, 18 U. S. C. §3553(c), and explaining in particular why "an aggravating . . . circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines . . . ." §3553(b). Upward departures from the presumptive Guidelines range to the statutory maximum are thus appropriate only in exceptional cases. See *infra*, at 17, n. 14. The dissent's interpretation, however, would allow district

Two of the Government's arguments against Granderson's interpretation are easily answered. First, the Government observes that the purpose of the Anti-Drug Abuse Act was to impose tough sanctions on drug abusers. See Brief for United States 22–26 (listing new penalties and quoting statements from members of Congress that they intended to punish drug offenders severely). But we cannot divine from the legislators' many "get tough on drug offenders" statements any reliable guidance to particular provisions. None of the legislators' expressions, as the Government admits, focuses on "the precise meaning of the provision at issue in this case." *Id.*, at 24, and n. 4; cf. *Busic* v. *United States*, 446 U. S. 398, 408 (1980) ("[W]hile Congress had a general desire to deter firearm abuses, that desire was not unbounded. Our task here is to locate one of the boundaries, and the inquiry is not advanced by the assertion that Congress wanted no boundaries."). Under Granderson's interpretation, moreover, drug possessors are hardly favored. Instead, they are singled out among probation violators for particularly adverse treatment: They face mandatory, rather than optional, terms of imprisonment.

Next, the Government argues that the drug-possession proviso must be construed *in pari materia* with the parallel provision, added at the same time, governing revocation of supervised release upon a finding of drug possession. In the latter provision, the Government observes, Congress ordered a revocation sentence of "not less than one-third of the term of supervised release," and it expressly provided that the revocation sentence should be "serve[d] in prison." 18 U. S. C. §3583(g). Correspondingly, the

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courts to impose the statutory maximum as a revocation sentence in the routine exercise of their ordinary discretion.

Government maintains, the probation revocation proviso should be construed to require a minimum prison term of one-third the term of probation. The Government acknowledges that, while Congress spelled out "one-third of the term of supervised release," Congress did not similarly say "one-third of the term of probation." However, the Government attributes this difference to the fact that, unlike probation under the current sentencing regime, supervised release is not itself an "original sentence," it is only a component of a sentence that commences with imprisonment.

We are not persuaded that the supervised release revocation prescription should control construction of the probation revocation proviso. Supervised release, in contrast to probation, is not a punishment in lieu of incarceration. Persons serving post-incarceration terms of supervised release generally are more serious offenders than are probationers. But terms of supervised release, because they follow up prison terms, are often shorter than initial sentences of probation.[8] Thus, under the Government's *in pari materia* approach, drug possessors whose original offense warranted the more serious sanction of prison plus supervised release would often receive shorter revocation sentences than would drug-possessing probationers.

The Government counters that Congress might have intended to punish probationers more severely because they were "extended special leniency."

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[8]A probation term of 1–5 years is available for Class C and D felonies; the corresponding term of supervised release is not more than 3 years. For Class E felonies, a 1–5 year probation term is available, but not more than a 1–year term of supervised release. For misdemeanors, a probation term of not more than 5 years is available; the corresponding term of supervised release is not more than 1 year. See 18 U. S. C. §§3561(b), 3583(b).

Reply Brief for United States 13, n. 14. A sentence of probation, however, even if "lenient," ordinarily reflects the judgment that the offense and offender's criminal history were not so serious as to warrant imprisonment. In sum, probation *sans* imprisonment and supervised release following imprisonment are sentences of unlike character. This fact weighs heavily against the argument that the discrete, differently worded probation and supervised release revocation provisions should be construed *in pari materia*.

The history of the probation revocation proviso's enactment gives us additional cause to resist the Government's interpretation. The Anti-Drug Abuse Act, in which the proviso was included, was a large and complex measure, described by one member of the House of Representatives as "more like a telephone book than a piece of legislation." 134 Cong. Rec. 33290 (1988) (remarks of Rep. Conte). The proviso seems first to have appeared in roughly its present form as a Senate floor amendment offered after both the House and the Senate had passed the bill. See *id.*, at 24924–24925 (House passage, Sept. 22); *id.*, at 30826 (Senate passage, Oct. 14); *id.*, at 30945 (proviso included in lengthy set of amendments proposed by Sen. Nunn, Oct. 14). No conference report addresses the provision, nor are we aware of any post-conference discussion of the issue.[9]

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[9]Debate over the conference bill took place in the middle of the night, see 134 Cong. Rec. 32633 (1988) ("I am cognizant that it is 2:20 in the morning, and I will not take long") (remarks of Sen. Dole); *id.*, at 33318 (House vote taken at 1 a.m.), with Congress anxious to adjourn and return home for the 1988 elections that were little more than two weeks away. Section-by-section analyses were produced after conference in both the Senate and the House, but neither publication casts much light on the

The proviso thus seems to have been inserted into the Anti-Drug Abuse Act without close inspection. Cf. *United States* v. *Bass*, 404 U. S. 336, 344 (1971) (applying rule of lenity, noting that statutory provision "was a last-minute Senate amendment" to a long and complex bill and "was hastily passed, with little discussion, no hearings, and no report").

Another probation-related provision of the Anti-Drug Abuse Act, proposed shortly before the proviso, casts further doubt on the Government's reading. That provision amends the prohibition against using or carrying an explosive in the commission of a federal felony, to provide in part: "Notwithstanding any other provision of law, the court *shall not place on probation or suspend the sentence* of any person convicted of a violation of this subsection . . . ." Pub. L. 100–690, §6474(b), 102 Stat. 4380, codified at 18 U. S. C. §844(h) (emphasis supplied). This provision, notwithstanding its 1988 date of enactment, is intelligible only under pre-1984 law: the 1984 Sentencing Reform Act had abolished suspended sentences, and the phrase "place on probation" had yielded to the phrase "impose a sentence of probation."

Granderson's counsel suggested at oral argument, see Tr. of Oral Arg. 22–23, 29–31, 36–41, that the proviso's drafters might similarly have had in mind the pre-1984 sentencing regime, in particular, the pre-1984 practice of imposing a sentence of imprisonment, suspending its execution, and placing the defendant on probation. See 18 U. S. C. §3651 (1982) (for any offense "not punishable by death or life imprisonment," the court may "suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best").

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proviso. See *id.*, at 32707 (1988) (Senate); *id.*, at 33236 (1988) (House).

The proviso would fit the suspension-of-execution scheme precisely: The "original sentence" would be the sentence imposed but not executed, and one-third of that determinate sentence would be the revocation sentence. In that application, the proviso would avoid incongruities presented in Granderson's and the Government's interpretations of the words "original sentence": an imposed, albeit unexecuted, term of imprisonment would be an actual rather than a merely available sentence, and one-third of that sentence would be a term of imprisonment, not probation. If Granderson could demonstrate that the proviso's drafters in fact drew the prescription to match the pre-1984 suspension-of-execution scheme, Granderson's argument would be all the more potent: The closest post-1984 analogue to the suspended sentence is the Guidelines sentence of imprisonment that could have been implemented, but was held back in favor of a probation sentence.[10]

We cannot say with assurance that the proviso's drafters chose the term "original sentence" with a view toward pre-1984 law.[11] The unexacting process by which the proviso was enacted, however, and the evident anachronism in another probation-related section of the Anti-Drug Abuse Act, leave us doubtful that it was Congress' design to punish drug-possessing probationers with the extraordinarily

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[10]See Cunningham, Levi, Green, & Kaplan, Plain Meaning and Hard Cases, 103 Yale L. J. ___, ___-___ (1994) (forthcoming).

[11]The chief difficulty with such an interpretation is that pre-1984 law recognized two kinds of suspended sentences, each of which could lead to probation. While suspension of the *execution* of sentence, as mentioned, neatly fits Granderson's theory, suspension of the *imposition* of sentence fits the theory less well: In that situation, no determinate "original sentence" would be at hand for precise calculation of the revocation sentence.

disproportionate severity the Government urges.

In these circumstances—where text, structure, and history fail to establish that the Government's position is unambiguously correct—we apply the rule of lenity and resolve the ambiguity in Granderson's favor. See, *e.g.*, *Bass*, 404 U. S., at 347–349. We decide that the "original sentence" that sets the duration of the revocation sentence is the applicable Guidelines sentence of imprisonment, not the revoked term of probation.[12]

We turn, finally, to the Government's argument that Granderson's theory, and the Court of Appeals' analysis, are fatally flawed because the Guidelines specify not a term but a range—in this case, 0–6 months. Calculating the minimum revocation

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[12]JUSTICE KENNEDY suggests that our interpretation of the proviso "read[s] a criminal statute against a criminal defendant," *post*, at 9, and that to the extent the rule of lenity is applicable, it would "deman[d] the interpretation" advanced in his opinion—that the proviso establishes a mandatory minimum sentence of probation, one-third as long as the sentence of probation initially imposed. *Post*, at 11. We note that Granderson, the criminal defendant in this case, does not urge the interpretation JUSTICE KENNEDY presents. More to the point, both of JUSTICE KENNEDY's assertions presuppose that his interpretation of the proviso is a permissible one. For reasons set out above, we think it is not. See *supra*, at 5–6, and n. 4.

JUSTICE SCALIA suggests that on our interpretation of the proviso, the mandatory minimum revocation sentence should include a fine as well as a term of imprisonment. See *post*, at 1–2. The term of probation, however, was imposed in lieu of a sentence of imprisonment, not in lieu of a fine. Revocation of the sentence of probation, we think, implies replacing the sentence of probation with a sentence of imprisonment, but does not require changing an unrevoked sentence earlier imposed.

sentence as one-third of that range, the mandatory minimum term of imprisonment would be 0–2 months, the Government asserts, which would permit a perverse result: A resentencing court could revoke a drug possessor's sentence of probation, and then impose no sentence at all. Recognizing this curiosity, lower courts have used not 0–6 months as their starting place, but the top of that range, as the "original sentence," which yields two months as the minimum revocation sentence. The Government complains that no court has explained why the top, rather than the middle or the bottom of the range, is the appropriate point of reference.[13]

The reason for starting at the top of the range, however, is evident: No other solution yields as sensible a response to the "original sentence" conundrum. Four measures of the minimum revocation sentence could be hypothesized as possibilities, if the applicable Guidelines range is the starting point: The sentence could be calculated as (1) one-third of the Guidelines maximum, (2) one-third of the Guidelines minimum, (3) one-third of some point between the minimum

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[13]See *United States* v. *Penn*, __ F. 3d ___ (CA4 1994) (expressly declaring that the minimum revocation sentence is one-third of the top of the Guidelines range); *United States* v. *Alese*, 6 F. 3d 85 (CA2 1993) (*per curiam*) (same); *United States* v. *Gordon*, 961 F. 2d 426 (CA3 1992) (same); *United States* v. *Clay*, 982 F. 2d 959 (CA6 1993) (holding that the maximum revocation sentence is the top of the Guidelines range), cert. pending, No. 93–52; *United States* v. *Diaz*, 989 F. 2d 391 (CA10 1993) (vacating a revocation sentence that exceeded the top of the original Guidelines range). The Court of Appeals in the present case was not required to identify the minimum term, because Granderson had served 5 months more than the top of the Guidelines range by the time the opinion was issued. See *United States* v. *Granderson*, 969 F. 2d 980, 985 (CA11 1992).

and maximum, such as the midpoint, or (4) one-third of the range itself. The latter two possibilities can be quickly eliminated. Selecting a point between minimum and maximum, whether the midpoint or some other point, would be purely arbitrary. Calculating the minimum revocation sentence as one-third of the Guidelines range, in practical application, yields the same result as setting the minimum revocation sentence at one-third of the Guidelines minimum: To say, for example, that a 2–4 month sentence is the minimum revocation sentence is effectively to say that a 2–month sentence is the minimum.

Using the Guidelines minimum in cases such as the present one (0–6 month range), as already noted, would yield a minimum revocation sentence of zero, a result incompatible with the apparent objective of the proviso—to assure that those whose probation is revoked for drug possession serve a term of imprisonment. The maximum Guidelines sentence as the benchmark for the revocation sentence, on the other hand, is "a sensible construction" that avoids attributing to the legislature either "an unjust or an absurd conclusion." *In re Chapman*, 166 U. S. 661, 667 (1897).[14]

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[14]The Government observes that "in appropriate circumstances" the sentencing court may depart upward from the presumptive Guidelines range, limited in principle only by the statutory maximum. See 18 U. S. C. §3553(b). According to the Government, it follows that if the "original sentence" is the "maximum available sentence," then the statutory maximum rather than the top of the presumptive Guidelines range is the appropriate basis for the revocation sentence. Brief for United States 22. The short answer to the Government's argument is that for cases in which the sentencing judge considers an upward departure warranted, a sentence of probation, rather than one of imprisonment, is a most

We decide, in sum, that the drug-possession proviso of §3565(a) establishes a mandatory minimum sentence of imprisonment, but we reject the Government's contention that the proviso unambiguously calls for a sentence based on the term of probation rather than the originally applicable Guidelines range of imprisonment. Granderson's interpretation, if not flawless, is a securely plausible reading of the statutory language, and it avoids the textual difficulties and sentencing disparities we identified in the Government's position. In these circumstances, in common with the Court of Appeals, we apply the rule of lenity and resolve the ambiguity in Granderson's favor. The minimum revocation sentence, we hold, is one-third the maximum of the originally applicable Guidelines range,[15] and the

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unlikely prospect. It makes scant sense, then, to assume that an "original sentence" for purposes of probation revocation is a sentence beyond the presumptively applicable Guidelines range.

[15]At oral argument the Government suggested that its own interpretation is more lenient than Granderson's, in those rare cases in which the court has departed downward from the Guidelines to impose a sentence of probation. In *United States* v. *Harrison*, 815 F. Supp. 494 (DC 1993), for example, the court, on the government's motion, had departed downward from a 97–121 month Guidelines range and a 10–year statutory mandatory minimum to impose only a sentence of probation. When the Government moved to revoke probation for drug possession, the court held that the statute required basing the revocation sentence upon the term of probation rather than the Guidelines range, and, in the alternative, that even if the statute were ambiguous, the rule of lenity would so require. Having found §3565(a)'s drug possession proviso ambiguous, we agree that the rule of lenity would support a shorter sentence, whether

maximum revocation sentence is the Guidelines maximum.

In this case, the maximum revocation sentence is 6 months. Because Granderson had served 11 months imprisonment by the time the Court of Appeals issued its decision, that court correctly ordered his release. The judgment of the Court of Appeals is therefore

Affirmed.

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on *Harrison*'s analysis, or on the theory that the "applicable Guidelines range" is the maximum of a Guidelines range permitting a sentence of probation.