(Scalia, J., concurring) (also invoking the rule of lenity); *Bifulco v. United States*, 447 U.S. 381, 387 (1980) (rule of lenity applies "not only to interpretations of the substantive ambit of criminal prohibitions, but also to the penalties they impose").

Further, under the doctrine of constitutional avoidance, "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [this Court's] duty is to adopt the latter." *Jones v. United States*, 526 U.S. 227, 239 (1999) (*quoting United States v. ex rel. Attorney General v Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909)). As set forth in the next section, Section VIII(B), *infra*, this doctrine strongly favors invalidating the Taft hearing officer's disciplinary finding and sanctions because a contrary ruling would violate Arredondo-Virula's due process right to an independent and impartial decision-maker free of any financial interest in the outcome of his or her decision. Thus, even if the regulations were ambiguous, the rule of lenity and the doctrine of constitutional avoidance call for the regulations to be interpreted in favor of Arredondo-Virula as allowing only Bureau of Prison employees to conduct prison discipline hearings and make findings resulting in revocation of good-time credits.

B. ARREDONDO-VIRULA'S DUE PROCESS RIGHT TO AN INDEPENDENT AND IMPARTIAL DECISION MAKER AT DISCIPLINE HEARINGS WAS VIOLATED WHERE THE HEARING OFFICER WAS A PRIVATE EMPLOYEE HIRED BY A FOR-PROFIT CORPORATION THAT HAD CONTRACTED TO OPERATE TAFT CORRECTIONAL INSTITUTION RATHER THAN A BUREAU OF PRISONS EMPLOYEE.

" Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). Because a prison disciplinary hearing may result in the loss of good-time credit, however, an inmate retains a

liberty interest in such credit that is subject to minimum due process procedural protections, including the right to advance notice of the disciplinary charge, an opportunity to present a defense, and a written statement by the fact-finder of the evidence relied on and the reasons for the action. *Id.* at 561-67. The right to an impartial decision-maker is also a fundamental component of due process that applies in prison disciplinary cases. *See id.* at 592 (Marshall, J., concurring in part and dissenting in part); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (due process requires neutral and detached decision-maker in parole revocation hearing); *Schweiker v. McClure*, 456 U.S. 188, 195 (1982) ("due process demands impartiality from those who function in judicial or quasi-judicial capacities"). Indeed, "in order to insure impartiality," federal regulations covering prison discipline hearings prohibit the DHO from being "the reporting officer, investigating officer, or [Unit Discipline Committee] UDC member, or a witness to the incident or play any significant part in having the charge(s) referred to the DHO." 28 C.F.R. § 541.16.

Here, the hearing officer cannot be deemed independent and impartial because any ruling disallowing good-time credit provides a financial benefit to his private employer by keeping inmates incarcerated at the for-profit prison for longer periods. "A trial before a tribunal financially interested in the result of its decision constitutes a denial of due process of law." *Tumey v. Ohio*, 273 U.S. 510, 531-32 (1927) (due process violated where judge paid, in part, through court costs of defendants found guilty). In analogous cases, the Supreme Court has held that the due process requirement of an impartial tribunal is violated where decision-makers may reasonably be perceived as having even an indirect financial stake in the outcome of their decisions. In *Ward v. Village of Monroeville*, 409 U.S. 57 (1972),

for example, the Court considered a due process challenge to having the village's mayor also serve as the judge handling traffic offenses. Even though the mayor was not directly compensated by his handling of court cases, the Court found the arrangement violated the petitioner's due process right to an impartial tribunal. *Id.* at 60-61. The Court held that the mayor's role as judge created an impermissible conflict because he also had responsibility for handling the town's finances and the village would receive fees from court cases. *Id.*; *see also Gibson v. Berryhill*, 411 U.S. 564, 578-79 (1973) (invalidating system where a state administrative board consisting of optometrists in private practice heard charges filed against licensed optometrists competing with board members); *cf. Schweiker*, 456 U.S. at 196 (emphasizing that where "the salaries of the hearing officers are paid by the Federal Government" and "[i]n the absence of proof of financial interest on the part of [private insurance] carriers," there is no basis for assuming hearing officers were not impartial in deciding disputed claims for Medicare payments).

In this case, the discipline hearing officer is not independent but is an employee of MTC, a private corporation that has contracted with the Bureau of Prisons to run Taft Correctional Institution. Like the mayor in *Ward v. Village of Monroeville*, the private employee's handling of prison disciplinary actions may financially benefit MTC because disallowance of good-time credits increases the period of incarceration for Taft inmates. For these reasons, the Court should hold that an employee of a private corporation that has contracted to run a federal prison is not the independent and impartial hearing officer that due process requires in prison discipline hearings.