No._____

In The

Supreme Court of the United States

JOSHUA WAYNE RILEY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Hearings to revoke federal supervised release allow defendants to be sentenced to a new prison term based on findings of fact by only a preponderance of the evidence, and through procedures lacking many of the protections that accompany a criminal trial. Historically, supervised release revocation hearings were considered identical to parole revocation hearings. In recent years, however, significant judicial decisions and rule amendments have recognized that defendants who risk this loss of liberty nevertheless retain important constitutional protections.

This case presents two questions. First, whether the Fifth Amendment requires the district court in the appropriate case to apply the exclusionary rule in a supervised release revocation hearing to protect against forced confessions or custodial statements elicited without the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966). Second, whether an uncorroborated confession can, by itself, prove a violation of supervised release, given that the same concerns regarding the unreliability of confessions apply to criminal prosecutions and revocation hearings.

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit, No. 18-4783, *United States v. Riley* (April 3, 2019)

United States District Court for the Western District of Virginia, No. 5:13-cr-2, *United States v. Riley* (October 24, 2018)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Joshua Wayne Riley respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App., *infra*, 1a-14a) is reported at 920 F.3d 200.

JURISDICTION

The judgment of the court of appeals was entered on January 29, 2019. On June 13, 2019, Chief Justice Roberts extended the time to file a petition for a writ of certiorari to and including August 31, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fifth Amendment to the United States Constitution provides, in relevant part:

> No person 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.

INTRODUCTION

This case presents the question of whether the exclusionary rule applies in a supervised release revocation hearing to suppress an "unMirandized" custodial confession obtained by a probation officer. This confession became the only evidence that the defendant had violated his supervised release. More broadly, the

issues are whether either the Fifth Amendment self-incrimination clause or the corroboration of confessions requirement apply in supervised release revocation proceedings.

The underlying facts illustrate the problem. The probation officer visited Mr. Riley in jail after he was arrested on a federal warrant for violating his supervised release and questioned him about new, uncharged criminal conduct—the distribution of controlled substances. The government then used Mr. Riley's incriminating, unMirandized, custodial admission of distribution in his subsequent supervised release revocation hearing as the only evidence of the new offense and as the sole basis for tripling his presumptive sentencing guideline range.

Because the statement that resulted in his re-incarceration was introduced against him in the context of a supervised release revocation hearing and not at a criminal trial, the United States Court of Appeals for the Fourth Circuit found that its admission did not violate Mr. Riley's Fifth Amendment rights and that the exclusionary rule did not apply. Left unreviewed, this holding would also mean that a defendant could be compelled to testify against himself at a revocation hearing. Further, the opinion below found that the rule requiring corroboration of confessions set forth by this Court in *Opper v. United States*, 348 U.S. 84, 89 (1954), only applied at criminal trials and not supervised release revocation hearings.

The Fourth Circuit's holding conflicts with both the ultimate holding from *United States v. Haymond*, 139 S. Ct. 2369 (2019), and the reasoning set forth in the plurality opinion. This case can resolve these important questions about the nature

of revocation hearings and the constitutional rights a defendant has in these hearings, which can result in substantial deprivations of liberty.

STATEMENT OF THE CASE

Mr. Riley was convicted on federal drug-related charges in 2013. App. 2a. After he was released from prison, he began serving a five-year term of supervised release. *Id.* On March 16, 2018, he was stopped for a traffic infraction by local law enforcement officers, who found methamphetamine in his vehicle. *Id.* He was charged by the state with possession of a controlled substance and released on bond. *Id.;* CAJA 109. His federal probation officer then petitioned the district court for an arrest warrant, alleging a violation of his supervised release due to his possession of a controlled substance. App. 2a.

While Mr. Riley was in custody awaiting supervised release revocation proceedings based on this warrant, his probation officer visited him to obtain a urine screen and question him about the pending charge. App. 3a; CAJA 37. After asking Mr. Riley to admit to using narcotics, the probation officer asked him if he had been distributing narcotics as well. *Id.* Mr. Riley, in custody, and under a separate condition of supervision to answer all inquiries of his probation officer truthfully, admitted to distribution. App. 3a; CAJA 42-43. The probation officer never provided *Miranda* warnings during this questioning. App. 3a.

As a result of the admission, the probation officer sought revocation based on the *distribution* of controlled substances, even though Mr. Riley was not then, nor ever was, charged with distribution by any jurisdiction. *Id.* The result was an

increase in his Guidelines-recommended sentence from 4-10 months for possession of a controlled substance to 24-30 months of incarceration for distribution. *Id.* At his revocation hearing, Mr. Riley admitted possession of a controlled substance, a Grade B violation of his supervision, but moved to suppress his custodial confession of distribution and denied committing the Grade A violation. *Id.*

The district court ruled that there was no remedy of exclusion available in a supervised release revocation hearing based on the Fourth Circuit's prior decision in *United States v. Armstrong*, 187 F.3d 392 (4th Cir. 1999). App. 3a. Finding no difference between revocation of parole and revocation of supervised release, *Armstrong* extended this Court's holding from *Pennsylvania Board of Probation and Parole v. Scott*, 524 U.S. 357 (1998)—that the exclusionary rule did not apply to state parole revocation proceedings—to the federal supervised release revocation context. The district court also rejected Mr. Riley's argument that his uncorroborated admission alone was insufficient to prove by the preponderance of the evidence that he had committed the offense of distribution because corroboration requirements applied only at a full criminal trial, not in a revocation hearing. App. 3a.

On appeal, the Fourth Circuit likewise relied on the distinction between supervised release revocation proceedings and criminal trials to conclude that Mr. Riley did not have a Fifth Amendment right against self-incrimination at a violation hearing. In particular, the panel held that the self-incrimination clause of the Fifth Amendment can only be violated if statements are used in a criminal trial and that

"revocation or parole is not part of a criminal prosecution." App. 7a-8a. Because "supervised release proceedings" were "analogous to and largely indistinguishable from probation and parole revocation proceedings," the panel concluded that Mr. Riley's Fifth Amendment rights were not violated. *Id.* The panel likewise found that corroboration of a confession was required only for criminal proceedings and that, again, revocation proceedings were not criminal proceedings. App. 12a-13a.

After the Fourth Circuit affirmed the district court's judgment, this Court decided *Haymond*, 139 S. Ct. 2369, which directly addresses the nature of supervised release revocation proceedings and the attendant constitutional rights afforded to a defendant.

This petition followed.

REASONS FOR GRANTING THE PETITION

A. The Fourth Circuit's Holding that Fifth Amendment Rights Do Not Attach in Supervised Release Revocation Hearings Conflicts with Prior Precedent of this Court and the Plurality Opinion in *Haymond*

If a law enforcement officer approached Mr. Riley while he was in custody and questioned him without advising him of his Fifth Amendment right against self-incrimination, his answers would be excluded from a later criminal trial. *Miranda*, 384 U.S. at 467. The opinion below holds that the same set of facts does not create a constitutional problem if the answers are instead used in a supervised release revocation proceeding because a defendant does not have Fifth Amendment protection against self-incrimination in that hearing. In Mr. Riley's case, both a conviction at trial for distribution of methamphetamine and a determination that

he violated his supervised release by the distribution of methamphetamine would have the same result: the restriction of his liberty through incarceration.

1. This Court has long recognized that constitutional due process is required at revocation hearings.

Due process requires the right to confront and cross-examine adverse witnesses at a parole revocation hearing. *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972). The same due process concerns mean a hearing is necessary before a probation term can be revoked. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1978). Revoking probation without evidence that a probation has violated probation is a substantive violation of due process. *Douglas v. Buder*, 93 S. Ct. 2199 (1973). And a court cannot revoke probation for failure to pay a fine or restitution if the probationer did not have financial means to pay without violating the fundamental fairness intrinsic to the due process clause. *Bearden v. Georgia*, 461 U.S. 680, 672-73 (1983).

These early cases considered state probationers and parolees and therefore the due process protections were grounded in the Fourteenth Amendment. But federal defendants facing revocation have the same due process protections in the Fifth Amendment, which also protects defendants from self-incrimination. The opinion below nonetheless concluded that the self-incrimination clause of the Fifth Amendment did not apply in revocation hearings because such hearings are not criminal trials. The result not only means that a compelled confession can be introduced as evidence against a defendant—it means a defendant could be compelled to testify against himself as a Government witness at a revocation

proceeding as long as his answer could not be used against him in a future criminal trial. There is no principled reason why some aspects of this Fifth Amendment constitutional protection—but not others—should apply at a revocation hearing.

2. The plurality's opinion in *Haymond* applies Fifth and Sixth Amendment rights in the revocation context.

After the Fourth Circuit's opinion below, this Court decided *Haymond*, which held that it was unconstitutional for a statute to require a mandatory minimum prison term for a violation of supervised release. *Haymond*, 139 S. Ct. at 2385-6 (Breyer, J., concurring). The four-Justice plurality opinion went further, however, noting that revocation hearings involve a judge "acting without a jury and based only a preponderance of the evidence" to trigger new punishment in the form of imprisonment "in violation of the Fifth and Sixth Amendments." *Id.* at 2378 (plurality opinion). In particular, the plurality questioned whether revocation hearings were different than other criminal prosecutions. Since prior Court precedent had rejected "efforts to dodge the demands of the Fifth and Sixth Amendments by the simple expedient of relabeling a criminal prosecution a 'sentencing enhancement,'" the plurality opinion found that labeling a violation hearing a "postjudgment sentence-administration proceeding" was similarly problematic. *Id.* at 2379. And since "a 'criminal prosecution' continues and the defendant remains an 'accused' with all the rights provided by the Sixth Amendment, until a final sentence is imposed," the plurality explained that a "final sentence" includes any supervised release revocation sentence. *Id.* at 2379 (internal

citation omitted).

In contrast, the opinion below found that "[s]upervised release revocation proceedings, however, are *not* part of the underlying criminal prosecution," and that therefore the self-incrimination clause of the Fifth Amendment—a "fundamental trial right of criminal defendants"—did not attach to revocation hearings. App. 6a (citation omitted). This conflicts with both *Haymond*'s ultimate holding and the reasoning set forth in its plurality opinion. In finding that 18 U.S.C. § 3583(k) more closely resembled the punishment of a new criminal offense than a consequence for violating supervised release, *Haymond* requires lower courts to look behind a punishment's label to see whether a defendant's liberty is at stake and thus whether Sixth Amendment jury trial rights are required. 139 S. Ct. 2386. Further, the *Haymond* plurality's reasoning calls into question the assumption below that a defendant in a revocation proceeding is not entitled to Fifth or Sixth Amendment constitutional protections. *See Haymond*, 139 S. Ct. at 2373-85. Specifically, the plurality found that the fundamental premise of the opinion below—that "supervised release revocation procedures are practically identical to historic parole and probation revocation procedures"—is "faulty." *Id.* at 2381.

The heart of the panel opinion below is the assumption that there is a clear dividing line between a revocation hearing and a criminal trial, and that defendants on the revocation side are not entitled to Fifth Amendment privileges or protections like the ones set forth in *Opper*. It is this exact line, and the constitutional protections available in revocation hearings, that *Haymond* calls into question.

3. Developments in the Federal Rules of Criminal Procedure and lower-court cases support the *Haymond* plurality's reasoning and the extension of Fifth Amendment protections to revocation hearings.

Haymond's holding is that it violates the Sixth Amendment to require a mandatory prison sentence based on judicially found facts on a preponderance of the evidence standard—even where the proceeding is labeled a supervised release revocation hearing and does not involve a new formal criminal charge. 139 S. Ct. at 2386. The plurality opinion in *Haymond* reasoned more broadly that the Fifth and Sixth Amendments applies to all "criminal prosecutions," defined as any "ac[t] to which the law affixes . . . punishment" where "formal charges" are brought "against an offender before a legal tribunal." *Id.* at 2376 (internal quotation marks omitted). And the plurality recognized that "a 'criminal prosecution' continues and the defendant remains an 'accused' with all the rights provided by the Sixth Amendment, until a final sentence is imposed." *Id.* at 2379 (quoting *Apprendi v. New Jersey*, 530 U.S. 466 at 481-82). Therefore, the Sixth Amendment applies to revocation hearings, according to the plurality, because "an accused's final sentence includes any supervised release sentence he may receive." *Id.* at 2379 (internal citation omitted).

This analysis follows logically from the additional protections that courts and the Federal Rules of Criminal Procedure have applied to supervised release revocation hearings in recent years. Defendant supervisees now have a statutory right to counsel and the right to allocute at revocation proceedings. Fed. R. Crim. Pr. 32.1(a)(3)(B), (b)(1)(B)(i), (b)(2)(D). Prosecutors now play a significant role

representing the Government. Fed. R. Crim. P. 32.1(b)(2)(E). Accordingly, defendants also have a right to put on evidence and cross-examine witnesses. Fed. R. Crim. P. 32.1(b)(2)(C). Circuit Courts of Appeal have also extended the plain error rule from *United States v. Olano*, 507 U.S. 725, 732 (1993)—a case about waiver in a criminal trial—to apply to revocation hearings such that a failure to make specific objections results in forfeiture and deferential review. *See, e.g.*, *United States v. Williams*, 847 F.3d 251 (5th Cir. 2017); *United States v. Johnson*, 403 F.3d 813 (6th Cir. 2005); *United States v. Maxwell*, 285 F.3d 336 (4th Cir. 2002).

4. This Court's early cases affording limited rights to revocation defendants must be reconsidered in light of these changes in law and practice.

Haymond requires reconsideration of the line of cases that assume all revocation hearings are the same—whether they be revocations of probation, parole, or supervised release. In the decades since these cases uniformly held that a criminal defendant in a supervised release revocation hearing did not have the protections that would typically be found in a criminal trial, two significant things have taken place. First, intervening caselaw and amendments to the Federal Rules of Criminal Procedure have affirmed that defendants in supervised release proceedings do in fact have additional protections that distinguish them from parolees, as set forth above. Second, the sheer volume of individuals on supervised

release has dramatically increased, creating a revolving door of individuals released on conditions who are then reincarcerated.

This reconsideration must start with *Gagnon,* the decision that found a hearing was required to revoke probation, but that the probationer was not constitutionally entitled to court-appointed counsel. 411 U.S. at 782. *Gagnon* reached this conclusion by distinguishing both probation and parole hearings from criminal trials. *Id.* That was because in a criminal trial, the State was represented by a prosecutor, and the defendant enjoyed procedural rights that might be lost if not timely raised. *Id.* At the time *Gagnon* was decided, these were distinguishing features of probation revocation hearings. And *Gagnon* warned that recognizing a Sixth Amendment right to defense counsel in a revocation hearing would prompt the Government to use prosecutors in those hearings, making revocations "more akin" to a trial and "less attuned to the rehabilitative needs" of defendants, increasing "pressure to reincarcerate [rather] than to continue nonpunitive rehabilitation." *Id*. at 782.

After *Gagnon*, this Court decided *Scott*, 118 S. Ct. 2014, which held that the exclusionary rule does not apply in a state parole revocation hearing. *Scott* found that "[t]he costs of excluding reliable, probative evidence are particularly high in the context of parole revocation proceedings" for several reasons. 118 S. Ct. at 2020. First, because parole was simply a more lenient variation on imprisonment, in which the government extended a limited degree of freedom to a parolee in return for the parolee's assurance that he would comply with the terms of his parole. *Id*. at

2020. Second, because application of the exclusionary rule would be "incompatible with the traditionally flexible, administrative procedures of parole revocation" and would often necessitate extensive litigation, thereby altering the relatively less adversarial nature of parole revocation proceedings. *Id.* at 2021. Finally, *Scott* reasoned that application of the exclusionary rule would have minimal deterrence benefits because a law enforcement officer would already be deterred from violating a parolee's Fourth Amendment rights by application of the exclusionary rule in any subsequent criminal proceedings. *Id.* at 2021-22.

After Congress overhauled federal sentencing procedures in 1984 and abolished parole, establishing a system of supervised release in its place, the lower courts all quickly concluded there was no relevant difference between parole revocation and revocation of supervised release. *See, e.g.*, *United States v. Woodrup*, 86 F.3d 359, 361 (4th Cir. 1996) (calling parole and supervised release "analogous contexts"); *United States v. Frazier*, 26 F.3d 110 (11th Cir. 1994) (finding no "significant nor persuasive" difference between parole and supervised release); *United States v. Stephenson*, 928 F.2d 728, 731-32 (6th Cir. 1991) (drawing no distinction between probation, parole or supervised release). Then, since the exclusionary rule did not apply to parole revocation hearings, the Circuit Courts of Appeal also ruled that the exclusionary rule must not apply in revocations of supervised release. *See, e.g.*, *United States v. Charles*, 531 F.3d 637, 640 (8th Cir. 2008); *United States v. Herbert*, 201 F.3d 1103, 1104 (9th Cir. 2000); *Armstrong*, 187 F.3d at 393; *United States v. Montez*, 952 F.2d 854, 857 (5th Cir. 1992).

The fundamental reasons *Gagnon* and *Scott* distinguished probation and parole revocation hearings from criminal trials must be revisited. Supervised release revocation hearings now involve counsel on both sides, creating just the adversarial environment *Gagnon* predicted. 411 U.S. at 782. And while revocation of parole is akin to a denied benefit, revocation of supervised release is a new penalty. As set forth above, other changes have distinguished supervised release revocation hearings from the traditional, flexible rules that accompanied parole revocation hearings. Finally, the four-Justice plurality opinion in *Haymond* directly found that there are relevant differences between parole and supervised release, and that these differences have constitutional implications for revocation hearings.

5. Evidence obtained in violation of the Fifth Amendment is uniquely unreliable, supporting the application of both the exclusionary rule and a corroboration requirement.

The unique nature of evidence obtained in violation of the Fifth Amendment is relevant both to the cost-benefit analysis about whether the exclusionary rule should apply and to the panel opinion's erroneous conclusion that no corroboration of a confession is required in a supervised release revocation hearing. In *Scott*, this Court explained that the "costs of excluding reliable, probative evidence are particularly high in the context of parole revocation hearings" because applying the exclusionary rule would hamper the State from ensuring compliance with parole conditions and prevent incapacitation of parolees, who are more likely to commit future criminal offenses. 524 U.S. at 365. Even if these reasons still held persuasive weight, concerns regarding evidence obtained in violation of the Fifth

Amendment are different.

Confessions are simply much less reliable—and at the same time, they are "profoundly prejudicial." *Colorado v. Connelly*, 479 U.S. 157, 182 (1986) (Brennan, J., dissenting). In *Escobedo v. Illinois*, the Court explicitly noted that the legitimacy and fairness of our adversarial criminal justice system depend on the use of independently gathered extrinsic evidence rather than on less reliable and potentially coerced confessions:

> We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the "confession" will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation.

378 U.S. 478, 488-489 (1964). Subsequent studies also have documented the unreliability of confessions.[1]

The concerns cited by this Court in *Opper* persist to this day—"the zeal of the agencies of prosecution to protect the peace, the self-interest of the accomplice, the maliciousness of an enemy or the aberration or weakness of the accused under the strain of suspicion may tinge or warp the facts of the confession." 348 U.S. at 90. While *Opper* reviewed a conviction at a criminal trial, there is nothing in the decision that limits these concerns to criminal trials and prevents them from applying to revocation hearings.

B. The Question Presented is Important and Recurs Frequently

The best estimate is that there are 4.5 million adults under state or federal

[1] *See generally* Brandon L. Garrett, *The Substances of False Confessions*, 62 STAN. L. REV. 1051

community supervision, whether probation, parole, or supervised release.[2] The most recent figure is that there are currently 129,706 persons under federal post-conviction supervision.[3] Many federal laws "require minimum periods of supervised release . . . for many offenders."[4] Even when supervised release is not required by statute, however, district courts almost always (in 99% of such cases between 2005 and 2009) use their discretion under the guidelines to impose a term of supervised release.[5] Supervised release is not a benefit conferred upon defendants resulting in less prison time but rather is routinely ordered to follow a term of imprisonment. The most recent data on supervised release is from 2008; it suggests one third of supervised release cases end in revocation.[6]

If the Court does not remand or otherwise review this case, prosecutors can use revocation hearings to incarcerate supervisees for conduct that the Government could not prove at trial. Absent remand or review, probation officers can visit supervisees in custody, require them to answer questions about uncharged crimes, and use the responses to incarcerate the supervisees for significant periods of time, skipping the jury trial process and the "beyond reasonable doubt" protections of the Sixth Amendment entirely.

(2010).
[2] Probation and Parole in the United States, 2016, Bureau of Justice Statistics (April 2018).
[3] Administrative Office of the U.S. Courts, *Post-Conviction Supervision Judicial Business in the United States* (2018), available at https://www.uscourts.gov/statistics-reports/post-conviction-supervision-judicial-business-2018.
[4] The Pew Charitable Trusts, *Number of Offenders on Federal Supervised Release Hits All-Time High*, p. 3 (January 2017).
[5] United States Sentencing Commission, *Federal Offenders Sentenced to Supervised Release*, p. 52 (July 2010).
[6] *Id.*

This concern is heightened because supervisees such as Mr. Riley are under a standard condition of release that requires them to answer truthfully any question from his probation officer. Failure to answer questions of a probation officer alone constitutes a violation of supervised release and could result in revocation and incarceration. This condition implicates the concern this Court previously identified in *Minnesota v. Murphy*, 465 U.S. 420, 434-45 (1984), about a "classic penalty situation" that "foreclose[s] a free choice to remain silent." Under such circumstances, this Court found that the Fifth Amendment right against self-incrimination was self-executing even outside of the custodial context. *Id.* In *Murphy*, the Supreme Court noted that a probationer's answers would be considered "compelled and inadmissible in a criminal prosecution" if the state "expressly or by implication" "threat[ens] . . . punishment for reliance on the [Fifth Amendment] privilege" by suggesting that "the invocation of the privilege would lead to revocation of probation." *Id.* The state violates a probationer's right against self-incrimination if it forces him to choose between answering an incriminating question and having his probation revoked for failing to answer that question. *See United States v. Saechao*, 418 F.3d 1073, 1076 (9th Cir. 2005) (quoting *Murphy*, 465 U.S. at 436) (finding that a felon probationer's statements to his probation officer admitting to possession of a firearm were compelled and inadmissible because the state "required him to choose between making incriminating statements and jeopardizing his conditional liberty by remaining silent"). Yet the panel decision below precludes any consequence for just such a Fifth Amendment violation by

finding that there is no Fifth Amendment privilege in a supervised release revocation hearing.

Absent intervention by this Court, the nature of supervised release as "fulfill[ing] rehabilitative ends, distinct from those served by incarceration" will be at risk. *United States v. Johnson*, 529 U.S. 53, 59 (2000). Allowing a probation officer to ask questions to investigate potential criminal activity and to use the supervisee's answers not to help the supervisee seek help or treatment but to significantly increase the range of incarceration for a violation is antithetical to the purpose of supervision and therefore warrants greater protection. This is especially so because the probation officer will not be otherwise deterred from violating a supervisee's constitutional rights by the operation of the exclusionary rule in criminal proceedings the way that law enforcement would be—by knowing that the answers given during a custodial interrogation in which the supervisee had not received *Miranda* warnings would be inadmissible in a criminal prosecution.

Furthermore, the panel opinion below, left unreviewed, would allow defendants to be called as witnesses at their revocation hearings and compelled to testify against themselves as long as their answers could not be used to incriminate them in a future criminal proceeding. Many violations of supervised release conditions are not prosecutable offenses. For example, an offender may be required to complete drug or alcohol treatment, or avoid all alcohol, or report to the probation office at a given time. Under the panel opinion below, a defendant could be forced to testify against himself at a revocation hearing about all of these offenses. And

upon revocation, compelled testimony could be the sole basis for the deprivation of liberty and a sentence of incarceration. This offends the very nature of the Fifth Amendment.

C. This Case Presents a Clean Vehicle to Decide the Question Presented

This case presents an ideal vehicle for deciding both issues. There are no jurisdictional disputes, and the issues concern pure questions of law. Both issues were fully briefed below and decided by the court of appeals.

D. In the Alternative, this Court Should Grant the Petition, Vacate the Judgment Below, and Remand for Reconsideration in Light of *Haymond*

The panel opinion below applied a prior Fourth Circuit opinion that is directly challenged by the plurality opinion in *Haymond*. In *Armstrong*, the Fourth Circuit previously held that "parole and supervised release are not just analogous but virtually indistinguishable" and therefore "the full panoply of constitutional protections afforded a criminal defendant is not available" in a revocation proceeding because it is not a "criminal proceeding[]." 187 F.3d at 394. Four Justices of this Court have now said the assumption that parole and supervised release are the same is faulty. *Haymond*, 139 S. Ct. at 2381. And the holding of *Haymond* shows that lower courts must look beyond the label of "supervised release

revocation hearing" to examine what is actually taking place. Therefore, in the alternative of plenary review, this Court should grant the Petition for Writ of Certiorari, vacate the decision below, and remand for further consideration in light of *Haymond*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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