

IN THE  
**Supreme Court of the United States**

---

EDUARDO ROMERO MARTINEZ,  
*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**

---

G. ALAN DUBOIS  
FEDERAL PUBLIC DEFENDER  
EASTERN DISTRICT OF NORTH CAROLINA

ERIC J. BRIGNAC  
CHIEF APPELLATE ATTORNEY  
*Counsel of Record*

150 Fayetteville St., Suite 450  
Raleigh, N.C. 27601  
(919) 856-4236  
eric\_brignac@fd.org

*Counsel for Petitioner*

---

## QUESTION PRESENTED

Whether the Double Jeopardy Clause prohibits a federal court from revoking supervised release and sentencing someone based on criminal conduct for which the federal government has already punished that person.

## TABLE OF CONTENTS

QUESTION PRESENTED .....	i
TABLE OF AUTHORITIES .....	iii
PETITION FOR WRIT OF CERTIORARI.....	1
OPINION BELOW.....	1
LIST OF PRIOR PROCEEDINGS .....	1
JURISDICTION.....	2
CONSTITUTIONAL PROVISION INVOLVED.....	2
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION.....	4
CONCLUSION.....	6
APPENDIX	
Fourth Circuit Opinion.....	1a

## TABLE OF AUTHORITIES

## CASES

<i>Benton v. Maryland</i> , 395 U.S. 784 (1969) .....	4
<i>North Carolina v. Pearce</i> , 395 U.S. 711 (1969) .....	4
<i>Tapia v. United States</i> , 564 U.S. 319 (2011) .....	6
<i>United States v. Booker</i> , 543 U.S. 220 (2005) .....	5
<i>United States v. Woodrup</i> , 86 F.3d 359 (4th Cir. 1996) .....	3-5

Statutes

18 U.S.C. § 3553(a) .....	5
18 U.S.C. § 3583(e) .....	5-6
18 U.S.C. § 3583(e)(1996) .....	6
28 U.S.C. § 1254(1) .....	2

Other Authorities

Sup. Ct. R. 10(c) .....	4
U.S. Const. Amend. V .....	4

IN THE  
**Supreme Court of the United States**

---

EDUARDO ROMERO MARTINEZ,  
*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**

---

Petitioner Eduardo Romero Martinez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

**OPINION BELOW**

The Fourth Circuit's Opinion affirming Mr. Hayes's revocation and sentence is attached at Pet. App. 1a and is reported at 773 Fed. Appx. 712 (4th Cir. 2019).

**LIST OF PRIOR PROCEEDINGS**

1. *United States v. Eduardo Romero Martinez*, No. 7:08-cr-0039-D-1, United States District Court for the Eastern District of North Carolina.

Final judgment entered on November 14, 2018.

2. *United States v. Eduardo Romero Martinez*, No. 7:18-cr-12-D-1, United States District Court for the Eastern District of North Carolina.

Final judgment entered on November 20, 2018

3. *United States v. Eduardo Romero Martinez*, No. 18-4847(L), United States Court of Appeals for the Fourth Circuit.

Opinion issued on July 19, 2019.

## JURISDICTION

The Fourth Circuit issued its opinion on July 19, 2019. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISION INVOLVED

### The Fifth Amendment to the United State Constitution

No person shall be . . . subject for the same offense to be twice put in jeopardy of life or limb

## STATEMENT OF THE CASE

In 2009 the federal district court for the Eastern District of North Carolina sentenced Mr. Martinez to 156 months of incarceration and 3 years of supervised release after he pleaded guilty to distributing a quantity of cocaine. In August, 2015, he left prison and started his supervised release. During 2016 and 2017, the district court made small adjustment to his supervision to sanction him for traffic offenses and positive drug tests.

In February and May, 2017, he sold user amounts of cocaine to a confidential informant over the course of several controlled purchases and was found possessing cocaine. He admitted that he sold the cocaine in order to support his own cocaine habit. As a result of these cocaine sales, (1) a Grand Jury sitting in the Eastern District of North Carolina indicted him for distributing cocaine and possessing cocaine with the intent to distribute it, and (2) the United States Probation Office

moved the district court to revoke his supervised release from the 2009 conviction. He pleaded guilty to one count in the indictment of possessing cocaine with the intent to distribute it. The district court scheduled his sentencing and his revocation hearing at the same time.

The district court first sentenced him to 60 months on incarceration for the drug distribution. The court then turned to the revocation. Mr. Martinez moved to dismiss the revocation, arguing that the Fifth Amendment's Double Jeopardy Clause prevented the government from punishing him for certain conduct and then punishing him again for the same conduct by using it as the basis to revoke his supervised release. The district court denied the motion and sentenced him to 24 months on the revocation to run consecutively to the 60 months imposed on the criminal charges.

Mr. Martinez timely appealed both sentences. The Fourth Circuit Court of Appeals consolidated the two appeals. In one opinion, it affirmed the 60 month sentence as substantively reasonable and held that the Double Jeopardy Clause allows the United States to revoke someone's supervised release and sentence them based on conduct for which it has already punished the person. In rejecting Mr. Martinez's double jeopardy claim, the Fourth Circuit relied on its two-decades-old case of *United States v. Woodrup*, 86 F.3d 359, 361 (4th Cir. 1996).

This petition follows.

## REASONS FOR GRANTING THE PETITION

This Court should grant review because this case presents an important question of federal law that this Court should decide. Sup. Ct. R 10(c).

The Double Jeopardy Clause of the Fifth Amendment says no person will “be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. It is a “fundamental ideal in our constitutional heritage.” *Benton v. Maryland*, 395 U.S. 784, 794 (1969). Relevant to this appeal, it bars later prosecutions for the same offense as well as successive punishments. *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969).

The district court punished Mr. Martinez twice for selling cocaine. It sentenced him to 60 months after he pleaded guilty to doing it. It then sentenced him to a consecutive 24 months for violating his supervised release through committing criminal conduct by selling cocaine. Thus, the district court violated Mr. Martinez’s Fifth Amendment right against being put in double jeopardy.

That the second punishment derived from a revocation does not change this analysis. In rejecting Mr. Martinez’s appeal, the Fourth Circuit relied on its prior decision in *United States v. Woodrup*, which held that “the sentence imposed upon revocation of supervision is punishment for the original offense,” and not for the conduct underlying the violation. 86 F.3d at 361. This holding does not survive later changes in the law or Congressional amendments to the revocation statute. The revocation of supervised release and the sentence imposed for the violation



conduct is, in part, punishment for that conduct—not simply for the original offense. It thus implicates double jeopardy.

When the Fourth Circuit decided *Woodrup*, the United States Sentencing Guidelines were mandatory. The court naturally focused on the Guidelines to determine whether punishment upon revocation was punishment for the revocation conduct or for the original offense. *Id.* at 361. *United States v. Booker* famously made the Guidelines advisory. 543 U.S. 220, 243-44 (2005). The focus must therefore turn away from those Guidelines and toward the relevant statutes to determine revocation punishment.

Those statutes show that a district court at a revocation punishes a defendant, at least in part, for the conduct underlying the revocation. When a district court decides whether to revoke a term of supervised release and imposed a revocation sentence, Congress requires it to consider, among other things

(1) the nature and circumstances of the offense . . .

(2) the need for the sentence imposed—

. . .

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant;  
and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(1)-(2) (cross-referenced by 18 U.S.C. § 3583(e)).

The district court must consider the seriousness of the underlying conduct. It must also consider deterrence, incapacitation, and rehabilitation. “These four considerations . . . are the four purposes of sentencing generally.” *Tapia v. United States*, 564 U.S. 319, 325 (2011). District courts thus decide to revoke supervised release—and what sentence to impose upon revocation—by applying traditional punishment theory to the revocation conduct. After *Booker*, a revocation punishes the revocation conduct, not the original criminal conviction, whatever the advisory Guidelines may suggest to the contrary.

Congressional changes to the revocation statute after *Woodrup* confirm this understanding. In 1996, when the Fourth Circuit decided *Woodrup*, the revocation statute did not ask the district court to consider “the need to provide restitution to any victims of the offense.” Now it does. Compare 18 U.S.C. §3583(e) (1996) with 18 U.S.C. § 3583(e) (2018). Considering restitution makes sense regarding only the revocation conduct, not the long-past original criminal conviction. Congress thus requires the district court to focus on the revocation conduct—not the original criminal conviction—when conducting a revocation hearing and sentencing.

The federal government punished Mr. Martinez for selling cocaine. Then it punished him again for the same conduct. The Double Jeopardy Clause forbids this. This Court should grant review to establish that the law has changed and that the Double Jeopardy Clause now applies to revocations of supervised release.

## CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

G. ALAN DuBOIS  
FEDERAL PUBLIC DEFENDER  
EASTERN DISTRICT OF NORTH CAROLINA

A handwritten signature in black ink, appearing to read "Eric J. Brignac", is written over a horizontal line.

ERIC J. BRIGNAC  
CHIEF APPELLATE ATTORNEY  
OFFICE OF THE FEDERAL PUBLIC  
DEFENDER  
EASTERN DISTRICT OF NORTH CAROLINA

*Counsel of Record*  
150 Fayetteville St.  
Suite 450  
Raleigh, N.C. 27601  
(919) 856-4236  
eric\_brignac@fd.org

OCTOBER 10, 2019

*Counsel for Petitioner*