No. _____

In the

Supreme Court of the United States

ISSAC ORAL CHANDLER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Should this Court grant review to determine whether the mandatory provision for revocation of supervised release set forth in 18 U.S.C. § 3583(g) violates the Fifth and Sixth Amendments by requiring revocation and a term of imprisonment without affording a defendant the right to proof to a jury beyond a reasonable doubt?

PARTIES

Issac Oral Chandler, is the petitioner, who was the defendant-appellant below.

The United States of America is the respondent, and was the plaintiff-appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Issac Oral Chandler seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion is reprinted in the appendix. *See United States v. Issac Oral Chandler*, 789 Fed. Appx. 492 (5th Cir. January 10, 2020) (unpublished).

JURISDICTION

The Fifth Circuit issued its written judgment on January 10, 2020. (Appendix A). The 90-day deadline for filing a petition for writ of certiorari provided for in Supreme Court Rule 13 has been extended to 150 days from the date of the lower court judgment by order of this Court on March 19, 2020. This Court has jurisdiction to review the judgment under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides the following:

> 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.

The Sixth Amendment to the United States Constitution provides the following:

> 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 defense.

LIST OF PROCEEDINGS BELOW

1. *United States v. Issac Oral Chandler*, 4:13-CR-0009-A-1, United States District Court for the Northern District of Texas. Judgment and sentence entered on March 23, 2019.

2. *United States v. Issac Oral Chandler*, CA No.19-10364, Court of Appeals for the Fifth Circuit. Judgment affirmed on January 10, 2020.

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

This case involves the revocation of a term of supervised release and the imposition of a 24-month term of imprisonment and an additional term of supervised release of 12 months. See (ROA.107-109).[1] On March 15, 2013, Chandler pleaded guilty to a one-count indictment charging the offense of uttering counterfeit obligations in violation of 18 U.S.C. § 472. (ROA.9,32). On August 16, 2013, Chandler was sentenced to 48 months imprisonment and a three-year term of supervised release. (ROA.51-52). Chandler began serving his term of supervised release on May 17, 2016. (ROA.70).

On January 29, 2019, the probation officer filed a Petition for Offender Under Supervision, alleging several violations of supervised release and requesting a warrant for Chandler's arrest. (ROA.74-78). In the violation report, which was a part of the petition, the probation officer specifically found that Chandler was subject to "Mandatory revocation for possession of a controlled substance. Sentence to a term of imprisonment. 18 U.S.C. § 3583(g)(1)." (ROA.77).

On March 20, 2019, the government filed a motion to revoke Chandler's term of supervised release, essentially alleging the same violations set forth in the probation officer's Petition for Offender Under Supervision. See (ROA.97-100). The motion included an allegation that Chandler pleaded guilty in Parker County Texas

[1] For the convenience of the Court and the parties, the Petitioner is citing to the page numbers of the record on appeal below.

to one charge of forgery of a government instrument; and one charge of possession of methamphetamine, to which he received two 15-year sentences to run concurrently. (ROA.99). The motion to revoke also alleged that Chandler had used and possessed methamphetamine on six occasions between October 2017 and March 2018. (ROA.99).

Chandler pleaded true to all the allegations in the motion to revoke. (ROA.174). Prior to accepting the true plea, the district court advised Chandler that if he pleaded true, his term of supervised release would be revoked. (ROA.172).

At the conclusion of the revocation hearing, the district court entered a judgement revoking supervised release and imposing a term of imprisonment of 24 months and an additional term of supervised release of 12 months, the statutory maximum sentence. (ROA.99,179-180).

After Chandler was sentenced and filed his notice of appeal, this Court issued its decision in *United States v. Haymond*, 139 S. Ct. 2369 (June 26, 2019). There, the Court held that the mandatory supervised release revocation statute of 18 U.S.C. § 3583(k) unconstitutionally required a revocation and sentence of imprisonment without affording the accused the right to a have a jury determine the truth of the allegations beyond a reasonable doubt. *Id*. at 2380.

II. Appeal

On Appeal, Petitioner argued that *Haymond* required reversal of his revocation because the district court, applying the provisions of 18 U.S.C. § 3583(g), treated the revocations and imprisonment as mandatory. The Petitioner recognized

that this issue had not been raised in the trial court and had to be reviewed under the plain error standard.

The Fifth Circuit affirmed the revocation and sentence under the plain error standard, holding, "Because there is currently no caselaw from either the Supreme Court or this court extending *Haymond* to § 3583(g) revocations, we conclude that there is no error that was plain." *United States v. Chandler*, 789 Fed. Appx. 492, 493 (5th Cir. January 10, 2020).

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER THE MANDATORY PROVISION FOR REVOCATION OF SUPERVISED RELEASE SET FORTH IN 18 U.S.C. § 3583(G) VIOLATES THE FIFTH AND SIXTH AMENDMENTS BY REQUIRING REVOCATION AND A TERM OF IMPRISONMENT WITHOUT AFFORDING A DEFENDANT THE RIGHT TO PROOF TO A JURY BEYOND A REASONABLE DOUBT.

This Court's recent decision in *Haymond* makes clear that, even in the context of supervised release, "a jury must find any facts that trigger a *new* mandatory prison term." *Haymond*, 139 S. Ct. at 2380 (emphasis in original). Here, Chandler was sentenced under a statute that required mandatory imprisonment after failing to afford him the right to a jury trial to determine the truth of the allegations against him using the beyond a reasonable doubt standard.

From the opening paragraph of the *Haymond* decision, this Court made clear that the mandatory revocation statute of 18 U.S.C. § 3583(k) violated the Constitution by failing provide the accused with the right to a jury and the reasonable doubt standard:

> Only a jury, acting on proof beyond a reasonable doubt, may take a person's liberty. That promise stands as one of the Constitution's most vital protections against arbitrary government. Yet in this case a congressional statute compelled a federal judge to send a man to prison . . . without empaneling a jury of his peers or requiring the government to prove his guilt beyond a reasonable doubt. As applied here, we do not hesitate to hold that the statute violates the Fifth and Sixth Amendments.

Haymond, 139 S .Ct. at 2373.

In his initial trial, Haymond was convicted of possessing child pornography, in violation of 18 U.S.C. § 2252(b)(2). *Id.* Haymond was sentenced to 38 months'

imprisonment and 10 years of supervised release. *Id.* After completing his prison sentence and beginning his term of supervised release, Haymond was found with several "images that appeared to be child pornography" on his phone. *Id.* at 1374. The government moved to revoke Haymond's supervised release and imposed a new, additional prison sentence. *Id.*

After a hearing, the district judge found by a preponderance of the evidence that Haymond possessed some of the images. *Id.* The district judge felt "bound by [18 U.S.C. § 3583(k)] to impose an additional term of prison." *Id.* at 2375.

Section 3583(k) of United States Code Title 18 states in relevant part:

> Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 involving a minor victim, and for any offense under section 1591, 1594(c), 2241, 2242, 2243, 2244, 2245, 2250, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425, is any term of years not less than 5, or life. If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.

18 U.S.C.A. § 3583(k).

On appeal, Haymond challenged the constitutionality of the punishment, and the Tenth Circuit concluded that § 3583(k) violated the Fifth and Sixth Amendment. *Id.* The Tenth Circuit concluded that the last two sentences of § 3583(k) were "unconstitutional and unenforceable." *Id.* (citing 869 F.3d 1153, 1168 (10th Cir. 2017)).

On review this Court explained:

> [T]he Framers adopted the Sixth Amendment's promise that "[i]n all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury." In the Fifth Amendment, they added that no one may be deprived of liberty without "due process of law." Together, these pillars of the Bill of Rights ensure that the government must prove to a jury every criminal charge beyond a reasonable doubt, an ancient rule that has "extend[ed] down centuries."

Id. at 2376 (citing *Apprendi v. New Jersey*, 530 U.S. 466, 477 (2000)).

Despite these rights, the Court noted that Haymond's revocation involved "a judge—acting without a jury and based only on a preponderance of the evidence—[who] found that Mr. Haymond had engaged in additional conduct in violation of the terms of his supervised release." *Id.* at 2378. Then, "[u]nder § 3583(k), that judicial factfinding triggered a new punishment in the form of a prison term of at least five years and up to life. [Thus,] the facts the judge found here increased 'the legally prescribed range of allowable sentences' in violation of the Fifth and Sixth Amendments." *Id.* (citing *Alleyne v. United States*, 570 U.S. 99 (2013)).

> Our precedents, *Apprendi*, *Blakely*, and *Alleyne* included, have repeatedly rejected efforts to dodge the demands of the Fifth and Sixth Amendments by the simple expedient of relabeling a criminal prosecution a "sentencing enhancement." Calling part of a criminal prosecution a "sentence modification" imposed at a "postjudgment sentence-administration proceeding" can fare no better. As this Court has repeatedly explained, any "increase in a defendant's authorized punishment contingent on the finding of a fact" requires a jury and proof beyond a reasonable doubt "no matter" what the government chooses to call the exercise.

Id. at 2379.

In a concurrence, Justice Breyer did not go so far. In his view supervised release may be likened to parole, violations of which may be ordinarily found without the aid of a jury. *See Haymond*, 139 S. Ct. at 2385 (Breyer, J., concurring). But he vacated Haymond's sentence because of three features of 3583(k):

> First, § 3583(k) applies only when a defendant commits a discrete set of federal criminal offenses specified in the statute. Second, § 3583(k) takes away the judge's discretion to decide whether violation of a condition of supervised release should result in imprisonment and for how long. Third, § 3583(k) limits the judge's discretion in a particular manner: by imposing a mandatory minimum term of imprisonment of "not less than 5 years" upon a judge's finding that a defendant has "commit[ted] any" listed "criminal offense."

Id. at 2386.

At least two of the three of these criteria are present in 3583(g). Subsection (g) names "a discrete set of federal criminal offenses," namely: unlawful possession of controlled substances, 3583(g)(1), possession of a firearm (necessarily a violation of 18 U.S.C. 922(g) when the underlying offense is a felony), 3583(g)(2), and repeated use of a controlled substance, as evidenced by positive drug tests, 3583(g)(4). The only other basis for mandatory revocation named in 3583(g)(3) – non-compliance with drug testing – is so closely associated with illegal drug use as to be essentially a means of proving a discrete federal offense. The statute thus creates the appearance of a legislative effort to provide punishment for criminal offenses while circumventing cumbersome constitutional guarantees. *See Haymond*, 139 S. Ct. at 2381 (Gorsuch, J., plurality op.)("If the government were right, a jury's conviction on one crime would (again) permit perpetual supervised release and allow the government to evade the

need for another jury trial on any other offense the defendant might commit, no matter how grave the punishment.")

Here, as with Mr. Haymond, Chandler also had his supervised release revoked and was subjected to mandatory imprisonment without being afforded the right to a jury trial and the beyond a reasonable doubt standard. In petitioning the court for action against Chandler, the probation officer reported that Chandler faced, "mandatory revocation for possession of a controlled substance," and was subject to a mandatory imprisonment under 18 U.S.C. § 3583(g)(1). (ROA.77).

Section 3583(g) of Title 18 of the United States Code states:

> **(g) Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing.**--If the defendant--
>
> **(1)** possesses a controlled substance in violation of the condition set forth in subsection (d);
> **(2)** possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;
> **(3)** refuses to comply with drug testing imposed as a condition of supervised release; or
> **(4)** as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;
>
> the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

18 U.S.C. § 3583(g). This statute shares almost identical language to the unconstitutional language of subsection (k): "the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment." *Compare* 18 U.S.C. § 3583(g), *with* 18 U.S.C. § 3583(k).

Just as Mr. Haymond faced mandatory imprisonment without the benefit of a jury trial and the beyond a reasonable doubt standard under § 3583(k), Mr. Chandler was subjected to mandatory imprisonment under § 3583(g) without the option of a jury trial or the beyond a reasonable doubt standard.

Accordingly, in light of *Haymond*, this Court should grant review to determine whether the mandatory provision for revocation of supervised release set forth in 18 U.S.C. § 3583(g) violates the Fifth and Sixth Amendments by requiring revocation and a term of imprisonment without affording a defendant the right to proof to a jury beyond a reasonable doubt?

Chandler did not raise this issue in the trial court, and, therefore, it must be reviewed for plain error. *See United States v. Olano*, 507 U.S. 725, 736 (1993). "Plain error exists if (1) there is an error, (2) the error is plain, (3) the error affects substantial rights and (4) the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *United States v. Gordon*, 838 F.3d 597, 604 (5th Cir. 2016).

However, in determining whether error is plain, "it is enough that the error be plain at the time of appellate consideration." *Henderson v. United States*, 568 U.S. 1121, 1130 (2013). If this Court were to decide this issue favorably to Chandler, then the district court's treatment of Chandler's revocation and imprisonment as mandatory would be plain error. *See United States v. Knowles*, 29 F.3d 947, 951 (5th Cir. 1994) ("It is self-evident that basing a conviction on an unconstitutional statute is both 'plain' and 'error' . . .).

Moreover, "[i]t is of no consequence" to this analysis that the illegality of the statute was determined in a case "decided after the proceedings in the district court concluded"; thus, "on direct appeal, newly announced rules apply." *Id*. (citing *Griffith v. Kentucky*, 479 U.S. 314, 328 (1984)).

In the present case, if this Court were to find the mandatory revocation provisions of 18 U.S.C. § 3583(g) are unconstitutional, then the district court revoked Petitioner's sentence and sentenced him to the statutory maximum 24 months imprisonment under the mistaken belief that revocation and imprisonment were mandatory. This is certainly sufficient prejudice to satisfy the third prong of plain error review. *See Molina-Martinez v. United States*, 136 S. Ct. 1338, 1348 (2016) (A district court calculating the wrong guideline range is sufficient to show substantial prejudice). Moreover, a district court's mistaken believe that revocation and imprisonment are mandatory should also be sufficient to satisfy the fourth prong of plain error. *See Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1911 ("In the ordinary case, as here, failure to correct a plain Guidelines error that that affects a defendant's substantial rights will seriously affect the fairness, integrity and public reputation of the judicial proceedings.")

CONCLUSION

For all the foregoing reasons, the Petition for a writ of certiorari should be granted.

Respectfully submitted this 5th day of June, 2020.

Respectfully submitted,

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