

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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JULIAN MADERO-DIAZ,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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HARINI P. RAGHUPATHI  
Federal Defenders of San Diego, Inc.  
225 Broadway, Suite 900  
San Diego, California 92101  
Telephone: (619) 234-8467

Attorneys for Petitioner

## QUESTION PRESENTED

Whether a judge's decision to revoke a person's supervised release and send him to prison subjects him to an unconstitutional punishment scheme under 18 U.S.C. § 3583(e)(3) because it violates his right to a jury trial under the Fifth and Sixth Amendments?

## PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner, Julian Madero-Diaz, and Respondent, the United States. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings directly related to the case, per Rule 14.1(b)(iii), are as follows:

- *United States v. Castillo*,<sup>1</sup> Nos. 19-CR-1207-LAB & 17-CR-1291-LAB, United States District Court for the Southern District of California, judgment issued June 12, 2019 and May 23, 2019, respectively.
- *United States v. Madero-Diaz*, Nos. 19-50203 & 19-50204, United States Court of Appeals for the Ninth Circuit, Memorandum issued August 19, 2020.

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<sup>1</sup> Petitioner's true name is "Hector Ramon Castillo," but he has consistently gone by "Julian Madero-Diaz." This brief uses the latter name to refer to Petitioner.

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Petitioner, Julian Madero-Diaz, respectfully prays that this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

**OPINION BELOW**

On August 19, 2020, the Ninth Circuit affirmed Mr. Madero-Diaz's conviction for illegal reentry and his revocation of supervised release. *See* Appendix A. Specifically, the court rejected Mr. Madero-Diaz's constitutional claim "that he was entitled to a jury trial for his supervised release revocation proceedings." *See* Appendix A.



## **JURISDICTION**

Mr. Madero-Diaz was convicted of violating 8 U.S.C. § 1326, in the United States District Court for the Southern District of California, for illegally reentering the United States after being deported. Based on that conduct, the district court found that Mr. Madero's entry violated the terms of his supervised release and accordingly revoked his supervised release. The United States Court of Appeals for the Ninth Circuit reviewed both Mr. Madero's conviction and revocation of supervised release under 28 U.S.C. § 1291. The court affirmed his conviction and revocation on August 19, 2020. This Court has jurisdiction to review the judgment under 28 U.S.C. § 1254(1).

## **PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS**

The appendix contains the following pertinent constitutional and statutory provisions: U.S. Const. amend. V; U.S. Const. amend. VI; and 18 U.S.C. § 3583.

## **STATEMENT OF THE CASE**

### **I. The district court revoked Mr. Madero-Diaz's supervised release without a jury trial.**

Border Patrol officials encountered Mr. Madero-Diaz half a mile north of the United States-Mexico border in a remote area known as "the split." He had been deported a few days earlier. Based on this conduct, the government initiated two different proceedings against Mr. Madero-Diaz. First, in district court case number 19-CR-1207-LAB, the government charged Mr. Madero-Diaz with being a removed

alien found in the United States, in violation of 8 U.S.C. § 1326. He went to trial on that charge, and the jury found him guilty.

Second, in district court case number 17-CR-1291-LAB, Mr. Madero-Diaz faced the revocation of his supervised release. In that case, Mr. Madero-Diaz was originally convicted in 2017 of being a removed alien found in the United States, in violation of § 1326. The court sentenced him to twenty-one months in custody, followed by three years of supervised release. Mr. Madero-Diaz began his supervision on November 7, 2018.

When Mr. Madero-Diaz entered the United States two days later, his probation officer filed a petition to revoke his supervised release. The petition alleged that Mr. Madero-Diaz's entry violated two terms of his supervised release—that he not commit another federal crime, and that he not reenter the United States illegally.

While the jury was deliberating in Mr. Madero-Diaz's trial on the new § 1326 charge, the court held a revocation hearing “on the basis of the evidence that was presented” at trial. Defense counsel, in turn, objected: “Although I recognize the Ninth Circuit case law, it currently doesn't require a jury finding to sustain the allegations made in the order to show cause, I believe that a jury finding should be required, and in the event the Supreme Court overrules that precedent, I want to preserve that issue.” The court overruled the objection and ultimately found Mr. Madero violated both terms of his supervised release. It then sentenced Mr. Madero-Diaz to a year in prison, followed by two years of supervised release.

**II. Mr. Madero-Diaz appealed the revocation of his supervised release, arguing that it constituted an unconstitutional punishment scheme, but the Ninth Circuit affirmed.**

On appeal, Mr. Madero-Diaz argued that the court's revocation of supervised release was a violation of his constitutionally-protected rights. Specifically, he maintained that the revocation was not supported by facts alleged in an indictment, or a trial by jury with proof beyond a reasonable doubt, in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny.

The Ninth Circuit disagreed with Mr. Madero-Diaz's argument. It held that its "precedent foreclose[d] his argument that he was entitled to a jury trial for his supervised release revocation proceedings." Appendix A (citing *United States v. Santana*, 526 F.3d 1257, 1262 (9th Cir. 2008)).

**REASONS FOR GRANTING THE PETITION**

**I. Sentencing Mr. Madero-Diaz to a year in prison and two years of supervised release under the terms of 18 U.S.C. § 3583(e)(3), which does not require a jury to make the findings authorizing the additional punishment, conflicts with this Court's caselaw and violates the Fifth and Sixth Amendments.**

In Mr. Madero-Diaz's case, the district court revoked his term of supervision—and sent him back to prison for another year—after it "f[ound] by a preponderance of the evidence that the defendant violated a condition of supervised release." See 18 U.S.C. § 3583(e)(3). The court did so with minimal procedural safeguards, see Fed. R. Crim. P. 32.1(b)(2), which do not include the normal protections of a criminal

prosecution, like the right for a jury to render a unanimous verdict based on factual findings made beyond a reasonable doubt.

A judge punishing Mr. Madero-Diaz, and others like him, under a preponderance-of-the-evidence standard raises “serious constitutional questions.” *Johnson v. United States*, 529 U.S. 694, 700 (2000). Specifically, such a punishment scheme violates his Fifth and Sixth Amendment rights, which guarantee that charges be proved beyond a reasonable doubt, as well as tried to a jury. *See* U.S. Const. amend. V (right to due process of law); U.S. Const. amend. VI (right to jury trial). Under *Apprendi v. New Jersey*, 530 U.S. 466, 483 (2000), and *Alleyne v. United States*, 570 U.S. 99, 108 (2013), any fact that increases the range of punishment beyond what is authorized by a conviction must be found beyond a reasonable doubt by a jury—not a judge. The court’s revocation of Mr. Madero-Diaz’s supervised release therefore results in a punishment scheme that violates this Court’s *Apprendi/Alleyne* rule: it subjects him to additional punishment beyond his original sentence without a jury’s beyond-a-reasonable-doubt finding or a guilty plea.

Importantly, this Court has been clear that a judge is the wrong factfinder for these types of factual findings that increase a defendant’s punishment. *See Blakely v. Washington*, 542 U.S. 296, 303 (2004) (a judge may only sentence a defendant “on the basis of the facts reflected in the jury verdict or admitted by the defendant.”); *see also Southern Union Co. v. United States*, 567 U.S. 343, 348 (2012) (“judges ... may not inflict punishment that the jury’s verdict alone does not allow.”) (quotation and alterations omitted). And the Court has also been clear that any findings authorizing

increased punishment must be made beyond a reasonable doubt—not by the lower preponderance of the evidence standard that is applicable in civil proceedings with much lower stakes. *See Alleyne*, 570 U.S. at 108 (holding that facts subjecting a defendant to an increased mandatory sentencing range must be submitted to a jury and found beyond a reasonable doubt); *see also In re Winship*, 397 U.S. 358, 363 (1970) (“a person accused of a crime would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.”) (alterations and quotation omitted). The revocation of Mr. Madero-Diaz’s supervision, then, conflicts with this Court’s caselaw.

**II. Section 3583(e)(3) also conflicts with this Court’s decision in *Haymond*.**

Recently, this Court addressed the supervised release scheme in *United States v. Haymond*, 139 S. Ct. 2369 (2019), which dealt with a different subsection of the supervised release statute than the one at issue in Mr. Madero-Diaz’s case. Nevertheless, the case is instructive here. In *Haymond*, the Court analyzed 18 U.S.C. § 3583(k), which addressed a supervised release revocation procedure for sex offenders that requires a judge to revoke supervised release and impose a mandatory minimum sentence if the judge finds a particular type of violation. The Court began its opinion by underscoring that “[o]nly a jury, acting on proof beyond a reasonable doubt, may take a person’s liberty.” *Haymond*, 139 S. Ct. at 2373. It emphasized the jury trial right as “one of the most vital protections against arbitrary government,”

*id.*, and the “heart and lungs” of our liberties. *Id.* at 2375. The Court held unconstitutional the supervision provision that allowed a judge—“acting without a jury and based only on a preponderance of the evidence”—to find that Haymond violated his supervised release, and then required the judge to impose a sentence of at least five years. *Id.* at 2378.

The plurality limited its decision to § 3583(k), emphasizing that it required a mandatory minimum sentence if a judge revoked supervised release. *Id.* at 2383. Yet it also recognized that perhaps its decision could raise constitutional questions for § 3583(e), the supervised release provision at issue in this case, albeit only in a small number of cases. *Id.* at 2384.

While *Haymond* specifically dealt only with § 3583(k) and its mandatory imposition of prison time for violations, its broad principles nevertheless extend to Mr. Madero-Diaz’s supervised release subsection, § 3583(e)(3). This subsection, which allows a judge to impose an additional custodial term for violations, without empaneling a jury to make beyond-a-reasonable-doubt findings, cannot be reconciled with *Haymond*’s clear statement that the Constitution requires that “any accusation triggering a new and additional punishment [be] proven to the satisfaction of a jury beyond a reasonable doubt.” *See* 139 S. Ct. at 2380.

The dissent in *Haymond* recognized as much. It noted that the plurality opinion in *Haymond* “suggest[s] that the entire system of supervised release ... is fundamentally flawed in ways that cannot be fixed.” *Id.* at 2387 (Alito, J., dissenting). It reasoned that “the thrust of the plurality’s statement is that any factual finding

needed to [send someone to prison] must be made by a jury, not by a judge, as is currently done.” *Id.* This “strongly suggest[s] that the Sixth Amendment right to a jury trial applies to *any* supervised-release revocation proceeding,” since, in a § 3583(e) proceeding, a judge may send a defendant to prison based on a preponderance finding. *Id.*

**III. All of the federal courts of appeals to address this issue have refused to follow *Haymond*’s broad principles about constitutional punishment.**

Yet despite *Haymond*’s broad principles, which indicate that § 3583(e)(3) is unconstitutional, the circuits that have addressed this issue after *Haymond* have refused to follow *Haymond*’s reasoning for § 3583(e)(3) supervision terms. This demonstrates that this is an important question that the Court should address by granting certiorari. For instance, the Second Circuit held that *Haymond* did not apply to § 3583(e)(3) because it does not eliminate a trial judge’s discretion in revocation proceedings, and does not impose a mandatory minimum term of imprisonment for a supervised release violation. *See United States v. Doka*, 955 F.3d 290, 296-97 (2d Cir. 2020).

Similarly, the D.C. Circuit refused to apply *Haymond*’s principles where the supervised release violations were not for criminal offenses and no mandatory minimums were involved. *See United States v. Casseday*, 807 F. App’x 5, 8-9 (D.C. Cir. 2020); *see also United States v. Johnson*, 814 F. App’x 970, 973 (6th Cir. 2020) (refusing to apply *Haymond* to supervision violation that did not arise from

§ 3583(k)); *United States v. Horne*, 789 F. App'x 139, 142-43 (11th Cir. 2019) (refusing to apply *Haymond* to § 3583(e)(3)); *United States v. Aguirre*, 776 F. App'x 866, 867 (5th Cir. 2019) (same); *United States v. Mooney*, 776 F. App'x 171, 171 n.\* (4th Cir. 2019) (holding that *Haymond* does not apply beyond § 3583(k)).

Given that the lower courts have refused to apply *Haymond*'s broad principles beyond the § 3583(k) context, as well as that almost every convicted defendant is subject to a supervised release term, whether § 3583(e)(3) is constitutional is a question of substantial importance with broad impact. This Court should therefore grant the petition to address whether the principles underlying the narrow holding in *Haymond* apply in the greater supervised release context.

**IV. This case is a good vehicle for the Court to resolve the question presented.**

Finally, Mr. Madero-Diaz's case is a good vehicle for this Court to resolve the issue. From the very beginning of his revocation proceedings, Mr. Madero-Diaz raised this argument at every turn. First, he raised it before the district court. That court passed on, and ultimately, rejected the argument. Next, Mr. Madero-Diaz appealed his revocation to the court of appeals. That court likewise passed on, and ultimately rejected, the issue. Thus, both lower courts have ruled on the issue, and it is undoubtedly preserved.



## CONCLUSION

This Court should grant the writ to address this important question of constitutional law and ensure that defendants like Mr. Madero-Diaz are not subject to unconstitutional punishment schemes.

Date: November 17, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Harini P. Raghupathi', is written over a horizontal line.

Harini P. Raghupathi  
Federal Defenders of San Diego, Inc.  
225 Broadway, Suite 900  
San Diego, California 92101  
Telephone: (619) 234-8467  
Counsel for Mr. Julian Madero-Diaz