No. 21-7802

THE SUPREME COURT OF THE UNITED STATES

In re JAIME RODRIGUEZ and STEVEN CAMACHO,

Petitioners.

On Petition for a Writ of Mandamus to the United States Court of Appeals for the Second Circuit in Case No. 21-1469, Honorable Circuit Judges Dennis Jacobs, Reena Raggi, and William J. Nardini

Joint Petition for a Writ of Mandamus of Jaime Rodriguez and Steven Camacho with Appendix

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[1] 139 S.Ct. 2369 (2019)
[2] 263 F.3d 34 (2d Cir. 2001)

RELIEF SOUGHT

Petitioners Jaime Rodriguez ("Rodriguez") and Steven Camacho ("Camacho") (herein collectively, "Petitioners"), pro-se, respectfully submit this Petition for Writ of Mandamus to the United States Court of Appeals for the Second Circuit ("Second Circuit") seeking to compel the Second Circuit Court to exercise its authority and duty to hear and rule upon Petitioners' appeal. Simply, Petitioners seek to compel the Second Circuit to properly fulfill its official duties.

ISSUE PRESENTED

Whether a Writ of Mandamus should issue to compel the United States Court of Appeals for the Second Circuit to hear and rule upon Petitioners' appeal that is based upon, inter alia, the Supreme Court's holding in *United States v. Haymond*,[1] the Second Circuit's own holding in *United States v. Merced*,[2] and the uncontested factual circumstances of Petitioners' case.

INTRODUCTION

The Second Circuit[3] has dismissed Petitioners' appeal with the claim that the appeal "'lacks an arguable basis either in law or in fact.'" Second Circuit Order, January 5, 2022, USCA No. 21-1469, Document 33 (quoting from *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) and citing 28 U.S.C. § 1915(e)); attached as Appendix page A-1. As shown below and in Petitioners' Appeal Brief, Petitioners' appeal is indeed based upon uncontested facts, statutory law, and the

[1] 139 S.Ct. 2369 (2019)
[2] 263 F.3d 34 (2d Cir. 2001)
[3] Specifically, a panel comprised of the Honorable Circuit Judges Dennis Jacobs, Reena Raggi, and William J. Nardini.

law as established by this Court and the Second Circuit itself. The Second Circuit has wrongly denied Petitioners' right to appellate review. Hearing and ruling upon an appeal is an imperative duty of a public nature that the Second Circuit must perform. Failure to do so, and here, the failure to even consider the issues presented in Petitioners' appeal, impugns on the integrity and public reputation of the judicial system, and results in the violation of Petitioners' First, Fifth and Fourteenth Amendment rights. Moreover, it leaves Petitioners in the untenable position of possibly serving more time in prison than the law allows. Such irreparable prejudice can be avoided by proper appellate review which will also aid in jurisdiction to bring such issue, if necessary, to this Court. This Court should issue a writ of mandamus to compel the Second Circuit to fulfill its official duty to hear and rule upon Petitioners' appeal.

Petitioners, proceeding pro-se, are not attorneys and request that this Court apply less stringent standards to their arguments of law and to imply the strongest arguments possible. *Haines v. Kerner*, 404 U.S. 519 (1972).

FACTS NECESSARY TO UNDERSTAND THE PETITION

On July 27, 1994, Petitioners were convicted after trial by jury of violating the narcotics laws. Rodriguez and Camacho were both convicted of distributing heroin, possessing with intent to distribute heroin, and conspiracy to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Counts One and Two) (the "offense of conviction"). In rendering its verdict on the drug trafficking counts, the jury did not make any heroin quantity determination. On November 10, 1994, the district court made all drug quantity determinations by a preponderance of the evidence and sentenced Petitioners to 240 months on the primary

offense of conviction, and a mandatory consecutive 60-month sentence on an 18 U.S.C. § 924(c) offense, for a total sentence of 300 months. See, SDNY 93 Cr. 549 Docket entry 89-92. On appeal the conviction on the § 924(c) offense was vacated, and the matter remanded to the district court for resentencing on the remaining counts. See, *United States v. Hernandez*, 85 F.3d 1023 (2d Cir. 1996). On September 24, 1996, the district court resentenced Petitioners on the primary offense of conviction to 300 months. See, Amended Judgments, SDNY 93 Cr. 549 Docket entry 118-119.[4] The statutory maximum for Petitioners' offense of conviction for the drug offense, i.e., an offense under 21 U.S.C. § 841(b)(1)(C), is 240 months (twenty years). See, *United States v. Gonzalez*, 420 F.3d 111, 131, (2d Cir. 2005) (holding that a defendant convicted only on a lesser unqualified drug charge "must be sentenced pursuant to Section 841(b)(1)(C)"); see also, 21 U.S.C. Section 841(b)(1)(C) (setting a 20-year maximum). The district court imposed concurrent terms of twenty-five years of imprisonment on Counts One and Two, with a five-year term of supervised release. Id. Petitioners served the entirety of that sentence of imprisonment and on May 27, 2020, began to serve their terms of supervised release.

On November 19, 2020, Petitioners submitted a Motion to Terminate and/or Discharge, or Revoke and Terminate and/or Discharge, Petitioners' Terms of Supervised Release. See, SDNY 93 Cr. 549 Docket entry 196 (Petitioners' "motion"). This motion was predicated upon, inter alia, the Supreme Court's ruling in *United States v. Haymond*, 139 S.Ct. 2369 (2019), where this Court held that an accused's "final sentence" includes any supervised release sentence he may receive and that punishments for revocation of supervised release "arise from and are

[4] Other lesser counts of conviction, ordered to run concurrent with each other and with Counts One and Two, remained as initially imposed (See, Amended Judgments, SDNY 93 Cr. 549 Docket entry 118-119) and have no impact or bearing on the resolution of this issue.

'treat[ed] . . . as part of the penalty for the original offense.'" Id., at 2379-80 (2019) (quoting *Johnson v. United States*, 529 U.S. 694, 700 (2000)). The Court noted that "when a defendant is penalized for violating the terms of supervised release, what the court is really doing is adjusting the defendant's sentence for his original crime," Id., at 2380, n. 5, and held that a supervised release revocation and sentence "constitutes a part of the final sentence for [the] crime." Id. at 2380. See, Petitioners' motion, SDNY 93 Cr. 549, Docket entry 196. Simply put, *Haymond* establishes that the combination of a defendant's initial and post revocation sentences cannot exceed the statutory maximum period of incarceration authorized by the jury's verdict for the original offense of conviction.

The motion was also based upon, inter alia, the law of the Second Circuit where it held that "once the statutory maximum period [of incarceration] established by [the supervised release statute] has been exhausted, supervised release is at an end." *United States v. Merced*, 263 F.3d 34, 37 (2d Cir. 2001). See, Id. In short, petitioners argued that, in light of the fact that Petitioners have completely served the imposed 25-year sentences, even if an additional period of incarceration above the statutory maximum for the offense of conviction can be imposed for a violation of supervised release, they have served the statutory maximum 20 year sentences for their offense of conviction *and* an additional 5 years, which is the statutory maximum period of incarceration for any violation of supervised release (see, 18 U.S.C. § 3583(e)(3)). The sentences cannot be adjusted any further to include a further period of incarceration, and thus supervised release is at an end. See, Id. Petitioners argued that while remaining on supervision, Petitioners suffer under the constant potential threat of being incarcerated for longer than the law allows, simply based upon any of many non-criminal acts that are a violation of a condition of

supervision. See, 18 U.S.C. § 3606 (allowing a probation officer to arrest a person serving a term of supervised release "[i]f there is probable cause to believe that a probationer or a person on supervised release has violated a condition of his probation or release."). See Id. Moreover, Petitioners highlighted the fact that this Court has also held that "equitable considerations of great weight exist when an individual is incarcerated beyond the proper expiration of his prison term," and that in such circumstances the termination of supervised release under 18 U.S.C. § 3583(e)(1) is an available remedy. *United States v. Johnson*, 529 U.S. 53, 60 (2000).

On March 16, 2021, the Government submitted its opposition letter to Petitioners' motion. See SDNY 93 Cr. 549, Docket entry 201. Petitioners' claims and arguments were not contested by the Government in its opposition letter. Id. Nor did the Government challenge as wrong or inapplicable the holdings of the Supreme Court and the Second Circuit that were cited and relied upon in Petitioners' motion. Id. Instead, the Government framed Petitioners' motion as a basic motion for "early termination" under 18 U.S.C. § 3583(e)(1). Id. The Government argued that Petitioners were ineligible under that section because they had not (at that time) completed a full year of supervision as is required under that section, see § 3583(e)(1), and opposed early termination based upon Petitioners' offenses and criminal history. See, Id. The closest the Government came to opposing the actual claims is in a footnote at the very end of its letter where, after selectively quoting an incomplete portion of Petitioners' arguments, the Government states that Petitioners "are serving their initial term of supervised release and have not had their supervised release revoked let alone been sentenced to any additional term of imprisonment for any revocation." Id., at 3, n. 2. On March 25, 2021, and April 6, 2021, Petitioners submitted a letter reply and an addendum, respectively, to the Government's

opposition letter. SDNY 93 Cr. 549, at Docket entries 204-207. Petitioners therein highlighted the government's failure to contest Petitioners' claims and the applicable caselaw. Id.

On May 26, 2021, (on the one-year mark of supervision) the district court denied Petitioners' motion as a basic motion for early termination under 18 U.S.C. § 3583(e)(1) rather than based upon the claims in the motion. Id., at Docket entry 208. The district court rendered its decision without making necessary legal and factual findings essential to determination of Petitioners' claims and without review or consideration of the Supreme Court and Second Circuit cases upon which Petitioners' motion was based. Id. On June 3, 2021, Petitioners submitted a Motion to Reconsider, Amend and/or Make Additional Factual Findings (filed on June 9, 2021), highlighting the district court's failure to consider the supporting caselaw and make findings of law and fact. Id., at Docket entry 211. The district court denied this motion by Order dated June 15, 2021, without addressing the claims. Id., at Docket entry 213.

Petitioners then submitted a timely Joint Notice of Appeal and submitted the Brief of Appellants Jaime Rodriguez and Steven Camacho, and its Appendix. See, 2d Cir. USCA No. 21-1469, Document 27-28. The question presented is "[w]hether the district court erred in denying the Defendants' motion for termination of supervised release when the Defendants have already served the statutory maximum sentences of imprisonment for the offense of conviction *and* supervised release." See, Id. (italics in original). The appeal brief presented the same issues, factual circumstances, statutory law, and caselaw (and more) that were presented to the district court. See Id. The Second Circuit did not allow the government to respond to the claims and simply issued an Order dismissing the appeal based on the claim that it "'lacks an arguable basis either in law or in fact.'" Second Circuit Order, January 5, 2022, USCA No. 21-1469,

Document 33 (quoting from *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) and citing 28 U.S.C. § 1915(e)); attached at Appendix page A-1. Petitioners then submitted a motion for reconsideration presenting, in short form, the facts and law the appeal is clearly based upon. 2d Cir. USCA No 21-1469, Document 42. The Second Circuit denied the reconsideration motion. See, Id., Document 47; attached at Appendix page A-2. Petitioners now submit this Petition for Writ of Mandamus.

LEGAL STANDARDS FOR GRANT OF WRIT OF MANDAMUS

The authority of this Court to grant a writ of mandamus is codified under the All Writs Act, 28 U.S.C. § 1651, which provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction, or to compel it to exercise its authority when it is its duty to do so." *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943). Before a writ of mandamus may issue, a party must establish that (1) "no other adequate means [exist] to attain the relief he desires," (2) the party's "right to issuance of the writ is 'clear and indisputable,'" and (3) "the writ is appropriate under the circumstances." *Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380-381, 124 S.Ct 2576, 159 L.Ed.2d 459 (2004) (some internal quotation marks and citations omitted). This Court will issue the writ of mandamus "only where a question of public importance is involved, or where the question is of such nature that it is peculiarly appropriate

that such action by this Court should be taken." *Ex parte United States*, 287 U.S. 241, 248-249, 53 S.Ct. 129, 77 L.Ed. 283 (1932).

REASONS FOR GRANTING THE WRIT

I. The Court Should Direct the Second Circuit to Promptly Hear Petitioners' Appeal

A. No Other Avenue of Relief is Available

As established by the facts set forth above, the district court's denial of the motion for termination of supervised release is reviewable on appeal because the issues and arguments in the appeal are unquestionably based on law and fact. The motion for termination of supervised release was based upon the fact that Petitioners have already served the statutory maximum sentences set by Congress for the offense of conviction and supervised release. The Government has not contested this fact, nor has the district court ruled in any way disputing this fact. No factual findings have been made by the district court in this regard. Nor has the Government contested, nor the district court ruled in any way disputing the statutory and case law as inapplicable to Petitioners' claims. Defendants who submit motions for termination of supervise release have a right of appellate review of denials of those motions. In fact, hundreds, if not thousands, of cases have received appellate review of such issues since the enactment of supervised release almost 35 years ago. Review is especially necessary in this case where the case presents mixed questions of law and fact. Such cases are to be reviewed de novo. *Oscar Gruss & Son, Inc. v. Hollander*, 337 F.3d 186, 193 (2d Cir. 2003) (stating that mixed questions of law and fact are reviewed de novo). There is simply no other avenue of relief available for review of Petitioners' claims.

B. A Writ of Mandamus is necessary to Prevent Irreparable Prejudice

Petitioners have already served more time than the law allows for the offense of conviction itself. Thus, there is even more urgency for the appeal to be heard when Petitioners, being subject to the conditions of supervised release, are under the constant threat of further incarceration beyond what the law allows for simple non-criminal acts. See, 18 U.S.C. § 3606 (allowing a probation officer to arrest a person serving a term of supervised release "[i]f there is probable cause to believe that a probationer or a person on supervised release has violated a condition of his probation or release."). For example, Petitioners can be returned to prison for such non-criminal conduct such as traveling outside of the judicial district without permission, lying to the probation officer, failing to support their dependents, failing to work regularly, moving or changing employment without notifying the probation officer ten days prior to doing so, associating with a convicted felon without permission, and not reporting police contact to the probation officer within three days, among other conditions of supervision. See, Petitioners' Amended Judgments, SDNY No. 93 Cr. 549 – 002 and 003, Standard Conditions of Supervision. A writ of mandamus is thus necessary to prevent irreparable prejudice.

C. A Writ of Mandamus is Necessary to Aid in Jurisdiction

It seems that no court has resolved the question raised in Petitioners' unique situation: whether further imprisonment can be imposed on a defendant that has already served the statutory maximum terms of imprisonment under the offense of conviction and the supervised release statute. For example, the closest case Petitioners can find to this issue, *United States v. Johnson*, 529 U.S. 53 (2000), is easily distinguishable to the issues and facts in the instant case. In *Johnson* the defendant, after having his 18 U.S.C. § 924(c) convictions vacated, had served

2.5 years over the 51-month Guidelines sentence the district court had imposed on the remaining counts of conviction (which were imposed to run concurrently) and sought to reduce his supervised release term by that period of time. The statutory maximum on the remaining offenses of conviction was 20 years. This Court held that the defendant's term of supervised release began upon his release from prison and that the defendant could receive no reduction in that term for the excess prison time served. Id., at 57- 24 60. The Court held that the supervised release statute, "by its own necessary operation, does not reduce the length of a supervised release term by reason of excess time served in prison." Id., at 60. As distinguished from this case, *Johnson* focused on when a term of supervised release begins and whether a reduction of such term was warranted in that case, while this case deals with service of the combined maximum allowable terms of imprisonment under the offense of conviction and supervised release, which ends supervision. While *Johnson* found that the supervised release statute's operation does not allow a reduction of the supervised release *term* based upon excess time served, the statute's operation does indeed set limits for the period of *incarceration*, see 18 U.S.C. § 3583(e)(3), which is part of the incarceration penalty for the original offense. *Haymond*, at 2379-80.[5] *Johnson* dealt with time served in excess of a 51-month Guidelines sentence, the total of which was well below the 20-year maximum term of

[5] Indeed, in *Johnson* the Supreme Court held that "§ 3583(e)(3) [did] not have a substantial bearing on the interpretive issue" before it, Id., at 58, and therefore did not answer the question of how the excess time the defendant served in prison affects the allowable terms of additional imprisonment under the supervised release statute. Would the maximum allowable term of imprisonment for a supervised release revocation have been reduced by the excess prison time served in that instance? Or would it not since the time the defendant in *Johnson* already served in prison, combined with the allowable maximum term of imprisonment under the supervised release statute, fell well within the maximum term of imprisonment for the offense of conviction? Nonetheless, Petitioners' factual position in this case is completely different, having already served the statutory maximums of both statutes.

imprisonment under that defendant's offense of conviction, while the issue in this case deals with the statutory maximum terms of imprisonment already served. In short, Petitioners' unique position and argument has not been resolved by any court. Simply put, Petitioners argue that because a supervised release revocation and sentence "constitutes a part of the final sentence for [the] crime," *Haymond*, supra, at 2380, and "what the court is really doing is adjusting the defendant's sentence for his original crime," Id., at 2380, n. 5, then the court cannot adjust the final sentence to surpass the statutory maximums. In this case, no further period of incarceration can be imposed because the sentences have been fully served, and thus supervised release is at an end. This argument, with the set of facts in this case, seems to be one of first impression. Without appellate review it is impossible to raise such an issue – an extension of this Court's holding in *Haymond* -- to this Court. The Court should thus issue a writ of mandamus directing the Second Circuit to hear and resolve the appeal to aid in jurisdiction for the issue to be raised and heard, if necessary, in this Court.

D. Failure to Hear the Appeal Impugns on the Integrity and Public Reputation of the Judicial System and Results in the Violation of Constitutional Guarantees Under the First, Fifth and Fourteenth Amendments

The Second Circuit's dismissal of the appeal results in the denial of Petitioners' First Amendment right of access to the court "to petition the Government for a redress of grievances." *United States Constitution, Amendment I.* Dismissal of the appeal also results in the denial of Petitioners' Fifth Amendment right to "due process of law." *United States Constitution, Amendment V.* And because every defendant across the country has the right to appellate review of a denial of a motion for termination of supervised release, and hundreds, if not thousands, of defendants have in fact been granted appellate review of such claims,

dismissal of the appeal results in the denial of Petitioners' Fourteenth Amendment right to "the equal protection of the laws." *United States Constitution, Amendment XIV.* Without question, the dismissal of the appeal, and thus the Second Circuit's refusal to hear and adjudicate the appeal, impugns upon the integrity and public reputation of the judicial system. A writ of mandamus should issue directing the Second Circuit to hear and resolve the appeal.

CONCLUSION

As established above, Petitioners are entitled to appellate review and may suffer irreparable harm if denied review. A writ of mandamus is necessary in this case because there are no other existing adequate means to attain the relief desired, the right to issuance of the writ is clear and indisputable, and the writ is appropriate under the circumstances. The Court should issue a writ of mandamus to confine the United States Court of Appeals for the Second Circuit to a lawful exercise of its prescribed jurisdiction, and/or to compel it to exercise its authority when it is its duty to do so, and direct the Second Circuit to promptly hear Petitioners' appeal; and for any other relief this Court deems just and proper.

Dated: April 29, 2022

Respectfully submitted,

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