22-7485

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DANIEL ISAIAH THODY - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DANIEL ISAIAH THODY

Petitioner

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QUESTIONS PRESENTED

1. As a case of first impression, whether the current implementation of Supervised Release, (**18 U.S.C. §3583**), as a "separate sentence" in addition to the "sentence of imprisonment", is contrary to plain reading of statutory language, unconstitutional AND at the root of virtually all of the problems and questions re Supervised Release reserved by this Court 4 years ago in *United States v. Haymond,* 139 S. Ct. 2369 (2019)? Thus, can all of those issues be resolved by implementing Supervised Release as statute is written... i.e. as a PART OF the sentence of imprisonment (where it operates as parole used to - as a reduction) rather than as an additional sentence?

2. Whether Supervised Release (as currently implemented) can be imposed at all in any case in which statutory maximum is exceeded AND if it is, then in light of this Court's opinions in *Johnson v. United States,* 529 U.S. 694 (2000), as expounded on in *Haymond* (2019), and *Apprendi* and its progeny, since the sentence of imprisonment in this case exceeds statutory maximum, and any revocation sentence functions as an extension of the original sentence; can a Supervised Release revocation hearing even be conducted especially without being afforded the Sixth Amendment right to a jury that would determine whether violations have been proven beyond a reasonable doubt.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

RELATED CASES

Criminal case from San Antonio # 5:13-cr-0153-OLG
USDC Western District of Texas San Antonio Division

1st Appeal 5th Cir. 14-50904 1/8/2016

2nd Appeal 5th Cir. 16-51301 9/26/2017

Probationary Transfer case # 1:19-pt-0030-JTN
USDC Western District of Michigan

1st Appeal 6th Cir. 21-1416 12/02/2021

Suit re Restitution from above cases: # 1:19-cv-0339-JTN-SJB
USDC Western District of Michigan

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully wishes that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

The United States court of appeals order denying rehearing is also included at Appendix C to the petition and is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 19 December 2022.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 3 February, 2023, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of the *United States Constitution* (Fifth and Sixth Amendments)

The Fifth Amendment to the Constitution provides, in relevant part: "No person shall be... subject for the same offense to be twice put in jeopardy of life or limb... nor be deprived of life, liberty, or property, without due process of law..."

The Sixth Amendment to the Constitution provides, in relevant part: "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."

18 U.S.C. §3583(a) provides:

In General.— The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

Other pertinent statutory provisions are reprinted in the Appendix D to this petition.

STATEMENT OF THE CASE

I. *Preliminary Statement.*

This case presents an issue of first impression - whether the current implementation of Supervised Release as an additional sentence is contrary to the statutory language, and whether implementing Supervised Release as statute is naturally read - as a part of the sentence of imprisonment - functioning similarly to how parole used to, would solve the myriad issues this and other Courts have raised with Supervised Release as it is currently implemented.

By raising this question, in a case which allows presentation of all the issues noted by this Court in *Haymond*, re Supervised Release as currently implemented, resolution of these issues in a novel way apparently never before considered by this Court is proposed - implement the statute as written AND as apparently facially intended by Congress.

II. *Underlying cases before this Court.*

Petitioner THODY, a *pro se* Defendant went to trial on 5 counts of income tax evasion ref **26 U.S.C. §7201** and was convicted by a jury re the indictment only. Subsequently sentenced (illegally - in violation of 5th Amendment re Double Jeopardy) to 90 months (45 months on Counts 1 & 2 consecutive) despite statutory maximum of 60 months per **§7201** and relevant guideline provisions invoking Merger Doctrine for Double Jeopardy purposes. Original sentence also included an illegal Restitution Order (also for an admitted errant amount, and in violation of required condition that Restitution be ONLY for the convicted conduct and

CANNOT include 'relevant conduct' amounts), and specified a 3 year period of Supervised Release which did not include any Restitution condition. Subsequently, on re-sentencing, a condition re Restitution was imposed over objections re AND in violation of the appellate mandate which gave ONLY IF conditions re imposition, which sentencing court did NOT meet.

The 90 month sentence of imprisonment was fully served out on 9/13/2019, and Supervised Release commenced on that date. One year subsequent to that event, Termination of Supervised Release was requested of, and denied by, the supervising court under case #1:19-pt-0030-JTN (a Probationary Transfer was conducted due to physical location where release occurred being different from district of trial/sentencing court). On 2/10/2021 and then again on 02/07/2022 the questions presented to this Court were raised to the supervising court arguing that Supervised Release could NOT be revoked, consistent with the positions laid out by this Court's *Haymond* plurality opinion. On 4/21/2021, the supervising court issued a Memorandum Opinion and Order denying the filing, without ever reaching or discussing the questions presented here, and on the same day revoked Supervised Release and imposed a sentence of 6 months incarceration followed by a 2 year term of Supervised Release (with a Restitution condition), while simultaneously ignoring objections re, to include that the revocation order/judgment ignored the appellate mandate in the case re Restitution, AND whether Restitution could be ordered as a condition of Supervised Release, in the circumstances of the instant case. Subsequently, a 2nd revocation hearing was held resulting in an Amended Judgment, and once again the district court avoided reaching the merits of the questions presented here, denying them for other reasons on 3/15/2021 and refusing

to consider their merits during the hearing. Appeals of that judgment and the following amended judgment were subsequently and timely raised to the 6th Circuit, which also failed to address the questions presented here on their merits. This petition follows.

NOTE: consistent with the questions presented herein, Petitioner holds that:

The 3 year period of Supervised Release (originally ordered in this case) could be legal if implemented, as Petitioner contends statute is written (i.e. as a reduction of the sentence of imprisonment), which is granted to prisoner by judge at time of sentencing, and which results in prisoner's time of imprisonment being reduced by the length of the term of Supervised Release imposed - subject to return to prison to finish out the unserved portion of the sentence of imprisonment as a possible consequence of violation of the conditions, IF prisoner consents to abide by the conditions thereof;

As it is being implemented, for this and many other 'crimes', whose statutes don't specify Supervised Release as a possible sentence option, Supervised Release is illegally being added as an unauthorized separate and additional sentence.

III. *Effect of granting the requested relief.*

If this Court grants Petitioner the requested relief, by holding that Supervised Release must be implemented as a reduction of the sentence of imprisonment, the immediate effect on Petitioner would be termination of Supervised Release period, since the sentence of imprisonment has already been fully served by Petitioner. Anticipated impact to others would be immediate release from Supervised Release for those currently serving Supervised Release who have

likewise, as is the case for the majority, fully served their imprisonment sentence (presumably those for whom a 'lifetime' Supervised Release sentence is authorized by their violation statute, or whose violation statute otherwise provides for a separate, additional Supervised Release term, in addition to the term of imprisonment, would not be so affected). Further, it is anticipated that the result for those still imprisoned, but with less time left to serve than the specified term of Supervised Release, would immediately be released to start their term of Supervised Release (assuming they consent to the terms), and that the remainder with Supervised Release imposed would have their release dates reduced/altered by the term of Supervised Release imposed, and would be released on the revised dates assuming they agreed to the conditions. If they found the conditions disagreeable, they would be free to choose to reject Supervised Release and fully serve out the remainder of their sentence of imprisonment, with no further term of Supervised Release to follow. Since nearly ALL prisoners in BOP custody currently (at least those sentenced since Supervised Release was created) have some Supervised Release provision in their sentence, and a large number of those have served more of their sentence than would be required to start Supervised Release, a large exodus of BOP would likely result. This would also likely result in the Probation offices being flooded with those newly released to Supervised Release, but also simultaneously remove much of their current Supervised Release workload. Presumably this would be somewhat mitigated by the delays BOP would almost certainly create and impose to implementation of the decision, and unless District Courts responded by unilaterally severing their Supervised Release charges, each Supervised Release server whom the decision impacted would presumably have to

file with the Court for release based on the decision. Those currently serving Supervised Release revocation sentences would also presumably be entitled to immediate release without any follow on Supervised Release obligation (subject to the exceptions noted previously).

Alternatively, the second question presented gives this Court the opportunity to leave the current implementation of Supervised Release in place, and yet address the Constitutional ramifications identified in the *Haymond* plurality opinion, and have them become the rule, instead of being avoided by all the circuit courts who have confronted *Haymond's* conclusions and dodged them because of the narrowness of the controlling opinion. This would have the effect of offering relief not only to the petitioner, but also to a significant portion of the population subject to Supervised Release now or future, and the circumstances and standards which would be the basis for enforcement and punishment.

Petitioner has noted to the sentencing court for the revocation process that the standard made clear by the *Haymond* plurality, re the necessity of a jury decision in a case where statutory maximum threshold was being exceeded by the addition of a revocation sentence, was in play in the instant case and requested a jury decision, which request was denied/ignored.

IV. *Arguments in Support*

This Court is being asked to interpret the Supervised Release statute as naturally read and change the implementation to have the effect of reducing, <u>not adding to</u>, the term of imprisonment specified by the sentencing judge."

A. For crimes which do NOT list Supervised Release as a possible consequence (Most crimes list some combination of probation, fine, imprisonment, and restitution as possible sentences for violation... very few mention Supervised Release as a possible sentence); addition of Supervised Release as a separate standalone sentence is contrary to the statutory language and an incorrect implementation of the statute.

B. For those same crimes which do not list Supervised Release but do include imprisonment, it could be a proper implementation of the Supervised Release statute to allow judge to specify at sentencing (within §3583 parameters), conditions under and a period of time for which, the sentence of imprisonment can be reduced if defendant agrees to the conditions in exchange for being released to Supervised Release, and subsequently complies with them. Subject to revocation and service of up to a maximum of the balance of the unserved portion of the previously imposed sentence of imprisonment, upon court determination that the conditions had not been complied with.

C. Such an implementation would also restore the stated purpose of the Sentencing Reform Act (SRA) which created Supervised Release: "to make prison terms more determinate and abolish the practice of parole" [where parole boards and not judges decided how much or if time off of the imposed sentence of imprisonment would happen][1]. Especially since the current implementation

[1] "the SRA aimed to promote truth in sentencing and thus to eliminate a much-derided feature of the old parole system. See United States Sentencing Commission, Guidelines Manual ch. 1, pt. A (Nov. 2018) (USSG). Under the parole system, a defendant who was convicted of a serious crime and given what seemed to be a stiff sentence could be and not infrequently was set free after serving only a fraction of the sentence originally pronounced. A prisoner was generally eligible for parole

has apparently made them even more indeterminate than they were before the SRA.

D. The natural plain reading of Supervised Release statute suggests facially that Congress intended to replace parole with Supervised Release, with the only meaningful difference being the elimination of the parole boards and having judges decide at sentencing (subject to potential modification during period of Supervised Release) how much time off a prisoner could receive and under what conditions.

E. The absence of any aspect of consent to the conditions of Supervised Release as currently implemented does remove the contractual basis of authority for their imposition, which was inherently present in the abolished parole system, and which currently exists in the probation scenario, by way of the agreement to the imposed conditions in exchange for the benefit of less or no prison time.

F. Since, in the instant case, the sentence of imprisonment has already been served in full, and thus there is no further opportunity for Supervised Release implementation per statutory language as a PART OF the sentence of imprisonment - acting to reduce the sentence of imprisonment - imposition of another term of Supervised Release was improper and Defendant's current term of Supervised Release should be terminated by this Court in the interests of justice.

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after serving only one-third of his sentence, and a sentence of life was treated as a sentence of 30 years. Therefore, a defendant sentenced to imprisonment for life could be out on the streets after only 10 years." *United States v. Haymond*, 139 S. Ct. 2369, 2389 (2019)

G. The issues with the current implementation of Supervised Release include, without limitation:

a) Due Process Notice (a Constitutional 5th Amendment issue), because most crimes for which Supervised Release is being imposed do NOT list Supervised Release as a possible punishment, when it is an additional punishment as implemented currently.

b) Double Jeopardy concerns when violations occur and are punished (a Constitutional 5th Amendment issue).

1) See *Haymond* @ 2384, 2386 and *Johnson v. United States*, 529 U.S. 694, 700 (2000)

c) Right to jury finding for revocation proceedings (a Constitutional 5th & 6th Amendment issue)

1) See *Haymond* @ 2377-78, 2382-83 for discussion of this issue and the plurality conclusion that revocation proceedings do require a jury trial per the decisions in *Apprendi* and *Alleyne*. And @ 2388 for dissent interpretation of that conclusion.

d) Constitutionality of extending sentence via Supervised Release beyond statutory maximum (a Constitutional 5th and 6th Amendment issue).

1) See *Haymond* @ 2380 n.5 for discussion of this issue.

e) Absence of any element of consent/agreement to Supervised Release conditions imposed – a key element for legalizing the imposition of conditions not authorized by statute of conviction. (one of the key elements of probation/parole – from which Supervised Release draws much of its structure – is the aspect of consent/agreement to the conditions, in exchange

for a benefit [avoiding prison in the case of probation and early release from prison in the case of parole], which functions as authority for imposition of the conditions... it's a contract which is signed on to by the one the conditions are imposing on)

1) This also has constitutional due process implications
2) Plea agreements similarly authorize and make legal many things not otherwise statutorily permitted... for example: standalone Restitution Orders for tax crimes (of the type held illegal in my case) are held to be legal if they are authorized by a Plea Agreement.

H. The implementation of Supervised Release as a Part Of the sentence of imprisonment addresses all of these issues as follows:

a) No Due Process Notice issue as there is neither an extension of the statutory maximum sentence nor of the sentence of imprisonment originally imposed... as even in the case of revocation of Supervised Release, at worst the violator only serves out the balance of the unserved term of imprisonment originally imposed.

b) Just like this Court has previously held re Parole, (see discussion re in *Haymond* and *Johnson*) revocation imprisonment would no longer have potential Double Jeopardy concerns).

c) Similarly, there would be no 6th Amendment jury considerations for revocation hearings.

d) Since revocation sentences would be limited to completion of original sentence of imprisonment (at worst), there would be no questions in play, of revocation imprisonment extending beyond statutory maximum.

e) Because prisoners would have to agree to the conditions of Supervised Release in order to be released early from their imprisonment, then, just like with a Plea Agreement, that consent would function to authorize any conditions imposed not otherwise statutorily authorized (such as Restitution in the case of tax crimes). This consent to the conditions, in exchange for a benefit of early release, would resolve the Due Process constitutional implications inherent in non-consensual imposition of otherwise illegal conditions without an agreement to them.

I. Additionally, implementation of Supervised Release as a Part Of the sentence of imprisonment addresses the following issues:

a) Restores Congress's facial intent to replace Parole with Supervised Release, with the only primary difference being the judge, instead of a parole board, deciding if/when one being sentenced to imprisonment is eligible for early release and under what conditions.

b) Restores the stated purpose of the SRA which created Supervised Release: "to make prison terms more determinate and abolish the practice of parole" [where parole boards and not judges decided how much or if time off of the imposed sentence of imprisonment would happen][2]. Especially since the

[2] "the SRA aimed to promote truth in sentencing and thus to eliminate a much-derided feature of the old parole system. See United States Sentencing Commission, Guidelines Manual ch. 1, pt. A (Nov. 2018) (USSG). Under the parole system, a defendant who was convicted of a serious crime and given what seemed to be a stiff sentence could be and not infrequently was set free after serving only a fraction of the sentence originally pronounced. A prisoner was generally eligible for parole after serving only one-third of his sentence, and a sentence of life was treated as a sentence of 30 years. Therefore, a defendant sentenced to imprisonment for life could be out on the streets after only 10 years." *United States v. Haymond*, 139 S. Ct. 2369, 2389 (2019)

current implementation has apparently made them even more indeterminate than they were before the SRA, as prisoners currently can be and frequently are recycled through Supervised Release revocations repeatedly adding many years to the sentence beyond that authorized by statute, and in some cases – as district courts are implementing things, turning Supervised Release into a perpetual imprisonment cycle with no limit. See *Haymond* @ 2381 "verdict does not trigger a perpetual motion machine..."

c) Reduces the significance of issues with district courts failing to announce or justify their reasons for imposing conditions of Supervised Release, since the opportunity to reject the conditions as unreasonable, too onerous, or unacceptable will be available to one willing to serve out the balance of their imposed imprisonment rather than submit to the conditions. A marked contrast to being stuck with the conditions, with no alternative but to appeal to the supervising court and/or appellate court re any issues with them, which is the current situation for most supervisees.

The following summary of the sentencing flow process as it relates to Supervised Release is provided for reference to aid understanding of the question(s) presented:

Step through process for **26 U.S.C. §7201** violation sentence:

§7201

1.guilty of a felony (no felony class ref **18 U.S.C. §3581, 3583** is given)

2.authorizes other penalties provided by law (none utilized in the instant case)

3.authorizes fine (up to $100K), imprisonment (0-5 years) or both (7.5 years in the instant case – 150% of statutory max) (Guidelines: level 20: 33-41 months – all counts concurrent due to Double Jeopardy implications of consecutive sentencing[3]) (now at 8 years due to 6 month revocation sentence)

4.authorizes cost of prosecution (not utilized in the instant case)

18 U.S.C. §3553(a)(3) the kinds of sentences available (see **§3551(b)**)

NO authorization for Supervised Release can be found in **§3551(b)** as noted below.

§3551(b)

Authorizes probation, fine, or imprisonment (**§3581**), authorizes fine in addition to imprisonment/probation – does NOT authorize Supervised Release or reference to **§3583**. Adds probation option, does not otherwise expand or modify possible sentences given in **§7201** (but does reference as authorities subchapters B,

[3] see re Guidelines §3D Intro. Comm. "In order to... prevent multiple punishment for substantially identical offense conduct... Convictions on multiple counts do not result in sentence enhancement unless they represent additional conduct that is not otherwise accounted for by the guidelines." §3D1.2.(d) ...Offenses covered by the following guidelines are to be grouped under this subsection... 2T1.1." and §2T1.1 App. Notes 2. all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated. [in the instant case it is undisputed and abundantly clear that the 5 counts reflect an ongoing continuous course of conduct with the only significant distinction between the counts being the consecutive dates (tax years) from 2006-2010]

C, D – **18 U.S.C. §3561, 3571, 3581** et seq. – again suggesting a basis for rejection of this section as a valid criteria for **§7201** violation, as courts have consistently ruled that the relevant criteria/limits are those in **§7201**, not using authorized terms from **§3581**, etc). [as an aside, Petitioner is unsure/unclear as to why reference is made to **18 U.S.C.** at all for a **§7201** violation sentencing, as it would seem that **§7201** has all the necessary information and authority needed to sentence a violator, and makes NO reference to **18 U.S.C.** whatsoever, unlike violations of various **18 U.S.C.** statutes which do reference to and obviously connect to the sentencing provisions of **18 U.S.C.**; but Petitioner is not raising that issue here]

§3583

authorizes inclusion of Supervised Release as a <u>part of</u> the sentence of imprisonment (see **§3586**... if the sentence [of imprisonment] includes a term of Supervised Release), but specifies that the authorized terms (b) are determined by the class of felony, giving possible classes of A, B, C, D, E (in apparent reference to **§3559** and **§3581**'s listing of classes and authorized terms re). **§7201** being *arguendo* classified as 'D', as **§7201** does not specify a felony class.

Makes numerous uses of "part of" (contrasted to "in addition to"); refers to maximum authorized terms not being exceeded and to not exceeding terms authorized by statute for the original offense – clearly NOT authorizing additional separate sentence.[4]

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[4] **(a)** IN GENERAL.-The court, in imposing a <u>sentence to a term of imprisonment</u> for a felony or a misdemeanor, may include as a <u>part of</u> the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment...

(b) AUTHORIZED TERMS OF SUPERVISED RELEASE.-Except as otherwise provided, the authorized terms of supervised release are-**(1)** for a Class A or Class B felony, not more than five years;**(2)** for a Class C or Class D felony, not more than three years; and**(3)** for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

[note that, consistent with the plain reading implementation posited here – all these terms are LESS THAN OR EQUAL TO the top end of the felony class sentence limits – thus includable as PART OF those sentences. *See* **§3581(b) Authorized Terms.**—The authorized terms of imprisonment are—

(1) for a Class A felony, the duration of the defendant's life or any period of time;
(2) for a Class B felony, not more than twenty-five years;
(3) for a Class C felony, not more than twelve years;
(4) for a Class D felony, not more than six years;
(5) for a Class E felony, not more than three years;
(6) for a Class A misdemeanor, not more than one year;]

(e) MODIFICATION OF CONDITIONS OR REVOCATION.-The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)-**(1)** terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice; **(3)** revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony... **18 U.S.C. §3583**

18 U.S.C. §3551 authorizes only probation, fine, imprisonment (essentially the same options as **26 U.S.C. §7201**), thereby limiting options under **§3553(a)(3)** - the kinds of sentences available.

Additional Statutory Evidence

18 U.S.C. §3624

Prior to 2008 (Presumably reworded because it too clearly laid out the issue at hand, since as implemented, generally BOP releases prisoners on supervision after the sentence of imprisonment is fully served – thus BOP lacks any statutory authority to continue to imprison them – whether they "agree" to anything or not)

(e) Supervision after release. ...No prisoner shall be released on supervision unless such prisoner agrees to adhere to an installment schedule... to pay for any fine imposed...

Currently – Upon release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing of the requirement that the prisoner adhere to an installment schedule...

18 U.S.C. §3586 – Implementation of a sentence of imprisonment

... if the sentence [of imprisonment] includes [not 'is accompanied by'] a term of Supervised Release...

REASONS FOR GRANTING THE PETITION

In *Haymond*, this Court clearly indicated that it was looking for a case that would allow it to resolve the significant issues with Supervised Release identified in the plurality opinion and commented on in the dissent, which noted that the plurality opinion was indeed indicating just that. This case offers this Court that opportunity and further posits a potential solution to a situation which has been described as 'fundamentally flawed in ways that cannot be fixed'. And it does so without straining the statutory language or convoluted reasoning, while upholding a stated intent of Congress in passing the Supervised Release statute – determinate sentencing. The ramifications would go far beyond those to the petitioner, and would affect in some way nearly all of BOP's current population, and a large portion of those currently serving Supervised Release – in a way that would almost certainly be viewed by them as positive, and which could likely be objectively viewed as serving the interests of justice.

Alternatively, the second question presented gives this Court the opportunity to leave the current implementation of Supervised Release in place, and yet address the Constitutional ramifications identified in the *Haymond* plurality opinion, and have them become the rule, instead of being avoided by all the circuit courts who have confronted *Haymond's* conclusions and dodged them because of the narrowness of the controlling opinion. This would have the effect of offering relief not only to the petitioner, but also to a significant portion of the population subject to Supervised Release now or future, and the circumstances and standards which would be the basis for enforcement and punishment.

CONCLUSION

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

Respectfully submitted,

Without prejudice

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