No. 24-5608

IN THE

Supreme Court of the United States

JASON L. SMITH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Historical documents showing that the Framers would have understood the jury right to apply to forfeitures of recognizance, a proceeding similar to revocations of supervised release in form, function, and purpose. In light of this historical record, should this Court's holding in *United States v. Haymond*, 139 S. Ct. 2369 (2019), be expanded to hold that the Sixth Amendment, including the right to confront accusers, applies to all revocations of federal supervised release?

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Cases

Other Authorities

ARGUMENT

Most of the parties' disputes about whether to grant certiorari are already addressed in the companion case, *Carpenter v. United States*, 24-5594. In opposition to certiorari in this case, the government incorporates its arguments in opposition from *Carpenter*. (Gov't Br. at 8–9.) Smith likewise refers this Court to the reply in support of certiorari in *Carpenter*, which addresses the government's arguments about the historical role of the jury right at the time of the founding.

The government raises two additional arguments against certiorari in Smith's case. Neither is persuasive.

First, the government argues that historical evidence about the scope of the jury right is irrelevant to whether the Confrontation Clause applies at revocation. (Gov't Br. at 10.) But the government is overcomplicating the issue. Either the Sixth Amendment applies to supervised-release revocations, or it does not. If the Sixth Amendment does apply, as Smith contends, then federal supervisees are entitled to the entire bundle of rights under that amendment. Smith did not need to invoke his right to a jury under the Sixth Amendment's jury clause to avoid waiving his rights under the Sixth Amendment's Confrontation Clause. *See Davis v. Washington*, 547 U.S. 813, 820, 829–33 (2006).

Second, the government argues that this case is a poor vehicle because any violation of the Confrontation Clause was harmless. (Gov't Br. at 11–12.) But the government focuses only on whether admission of hearsay evidence of Smith's alleged drug use was harmless. As explained in Smith's petition, his confrontation

rights were also violated when the government relied on hearsay to prove Smith's role in an alleged high-speed car chase. (Smith's Pet. At 38.) As the government recognizes, the alleged car chase formed the basis of Smith's advisory guideline range. And because Smith was denied his right to confront one of the officers whom the government relied on to identify him as the suspect in the chase, the proceeding likely would have been different had the district court recognized that the Confrontation Clause applied.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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