No. 24-5679

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER MICHAEL SEVIER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner is entitled to appellate relief on his claim that the district court was required to convene a jury trial as a prerequisite for the revocation of his supervised release under 18 U.S.C. 3583(g), after petitioner admitted the facts that supported revocation.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (N.D. Tex.):

United States v. Sevier, No. 3:17-cr-69-1 (Aug. 19, 2019)

United States Court of Appeals (5th Cir.):

United States v. Sevier, No. 19-10936 (May 6, 2020)

Supreme Court of the United States:

Sevier v. United States, No. 20-5948 (Nov. 9, 2020)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1) is available at 2024 WL 3290399.

JURISDICTION

The judgment of the court of appeals was entered on July 3, 2024. The petition for a writ of certiorari was filed on September 27, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted of

possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (2018); and possessing a controlled substance with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Judgment 1. The district court sentenced petitioner to 60 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed, 803 Fed. Appx. 792, and this Court denied a petition for a writ of certiorari. 141 S. Ct. 837.

In December 2023, the district court revoked petitioner's supervised release and ordered a seven-month term of imprisonment, to be followed by two years of supervised release. Revocation Judgment 1-3. The court of appeals affirmed. Pet. App. A1.

1. In 2016, during a traffic stop in Dallas, Texas, police officers found a loaded handgun, marijuana packaged for distribution, and a digital scale in the car petitioner was driving, and a loaded pistol magazine on his person. PSR ¶ 9. Later, while petitioner was being processed at a local jail, police also found a box containing several baggies of methamphetamine in petitioner's clothes. PSR ¶ 10.

A federal grand jury in the Northern District of Texas returned an indictment charging petitioner with possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1) and 18 U.S.C. 924(a)(2) (2018), and possessing with intent to distribute methamphetamine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Indictment 1-2. After this Court's

decision in Rehaif v. United States, 588 U.S. 225 (2019), petitioner waived his right to be indicted by a grand jury and agreed to be charged with the same two crimes by an information containing the additional allegation that petitioner knew he had previously been convicted of a felony. D. Ct. Doc. 42 (July 31, 2019); see Information 1-2.

Petitioner pleaded guilty to both offenses. Judgment 1. The district court sentenced him to 60 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court imposed conditions of supervised release, including that petitioner not possess or use unlawful controlled substances, that he submit to periodic drug testing, that he participate in a drug-treatment program, and that he report to his probation officer as instructed. Judgment 3-5. The court of appeals affirmed, 803 Fed. Appx. 792, and this Court denied a petition for a writ of certiorari. 141 S. Ct. 837.

3. Petitioner was released from prison and began his term of supervised release on January 6, 2023. 12/11/23 Revocation Tr. 9. On July 12, 2023, the Probation Office sought revocation of petitioner's supervised release, reporting that petitioner had used amphetamines prior to a drug test; failed to attend two substance-abuse treatment sessions; failed to report for drug testing on nine occasions; failed to report to his probation officer on two occasions; and left the Northern District of Texas

without permission from his probation officer. D. Ct. Doc. 67, at 1-2 (July 12, 2023).

At a revocation hearing in August 2023, petitioner admitted to the alleged violations. 8/18/23 Revocation Tr. 4. The district court held the matter in abeyance for 90 days, ordered petitioner to continue with the terms of his supervision, and added conditions that petitioner participate in an outpatient drug treatment program, participate in mental health treatment services, and wear an ankle monitor to enforce the home-detention condition. Id. at 24-25, 27-28; D. Ct. Doc. 82 (Aug. 18, 2023) (listing additional conditions).

The district court held a final revocation hearing on December 11, 2023. See 12/11/23 Revocation Tr. 1-44. Before that hearing, the Probation Office notified the court that petitioner had failed to report for drug-treatment sessions on September 4, November 9, and November 30, 2023; that he had failed to report for drug tests on September 13, November 15, and November 20, 2023; and that on several occasions he violated the home-detention condition without permission. Id. at 10-17. Petitioner admitted to those violations as well. Id. at 5. The court revoked petitioner's supervised release and ordered a seven-month term of imprisonment, to be followed by two years of supervised release. Id. at 39-41; Revocation Judgment 2-3.

4. The court of appeals summarily affirmed in an unpublished per curiam decision. Pet. App. A1. The court rejected

petitioner's argument, raised for the first time on appeal, that 18 U.S.C. 3583(g) -- which requires revocation of supervised release and a term of reimprisonment when an offender violates the conditions of his supervised release by (inter alia) refusing to comply with drug testing -- is unconstitutional because it denies the defendant the right to a jury trial and fails to require the government to prove violations beyond a reasonable doubt. Pet. App. A1. The court observed that petitioner's argument was foreclosed by circuit precedent. Ibid. (citing United States v. Garner, 969 F.3d 550 (5th Cir. 2020), cert. denied, 141 S. Ct. 1439 (2021)).

ARGUMENT

Petitioner contends (Pet. 4-6) that the district court was required to hold a jury trial as a prerequisite to revoking his supervised release pursuant to 18 U.S.C. 3583(g). The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or another court of appeals. The Court has recently and repeatedly denied petitions raising the same issue.[1] It should follow the same course here.

[1] See Ivory v. United States, 144 S. Ct. 1375 (2024) (No. 23-6979); Johnson v. United States, 144 S. Ct. 1074 (2024) (No. 23-6645); Nevins v. United States, 144 S. Ct. 852 (2024) (No. 23-6359); Wheeler v. United States, 144 S. Ct. 309 (2023) (No. 23-5484); Rojas v. United States, 144 S. Ct. 305 (2023) (No. 23-5449); Harris v. United States, 144 S. Ct. 151 (2023) (No. 22-7723); Villarreal v. United States, 143 S. Ct. 2629 (2023) (No. 22-7585); Kinsey v. United States, 143 S. Ct. 832 (2023) (No. 22-6493); Bookman v. United States, 143 S. Ct. 393 (2022) (No. 22-

Moreover, this would be a poor vehicle to consider petitioner's claim because he did not request a jury trial in the district court and in fact admitted to his violations of the conditions of supervised release. Accordingly, petitioner's own admissions, rather than judicial factfinding, provided the basis for revocation of his supervised release and reimprisonment.

1. Petitioner contends that the Fifth and Sixth Amendments require a jury trial before a district court can revoke supervised

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5769); Ervin v. United States, 143 S. Ct. 242 (2022) (No. 22-5167); Lynch v. United States, 143 S. Ct. 179 (2022) (No. 21-8159); Barrieta-Barrera v. United States, 143 S. Ct. 162 (2022) (No. 21-8074); Marshall v. United States, 142 S. Ct. 2846 (2022) (No. 21-7910); Nguyen v. United States, 142 S. Ct. 824 (2022) (No. 21-6404); Carter v. United States, 142 S. Ct. 270 (2021) (No. 21-5160); Strong v. United States, 142 S. Ct. 187 (2021) (No. 20-8330); Walker v. United States, 142 S. Ct. 177 (2021) (No. 20-8287); Onick v. United States, 141 S. Ct. 2742 (2021) (No. 20-7941); Green v. United States, 141 S. Ct. 1708 (2021) (No. 20-7041); Dorman v. United States, 141 S. Ct. 1448 (2021) (No. 20-6977); Pandey v. United States, 141 S. Ct. 1439 (2021) (No. 20-6888); Garner v. United States, 141 S. Ct. 1439 (2021) (No. 20-6883); Mankin v. United States, 141 S. Ct. 1422 (2021) (No. 20-6715); Del Rio v. United States, 141 S. Ct. 1276 (2021) (No. 20-6566); Coston v. United States, 141 S. Ct. 1252 (2021) (No. 20-6513); Homer v. United States, 141 S. Ct. 1246 (2021) (No. 20-6452); Richey v. United States, 141 S. Ct. 1106 (2021) (No. 20-6292); Williams v. United States, 141 S. Ct. 1105 (2021) (No. 20-6285); Skidmore v. United States, 141 S. Ct. 925 (2020) (No. 20-6101); Weightman v. United States, 141 S. Ct. 834 (2020) (No. 20-5940); Washington v. United States, 141 S. Ct. 637 (2020) (No. 20-5738); Nguyen v. United States, 141 S. Ct. 416 (2020) (No. 20-5219); Cortez v. United States, 141 S. Ct. 386 (2020) (No. 20-5056); Chandler v. United States, 141 S. Ct. 310 (2020) (No. 19-8675); Blanton v. United States, 140 S. Ct. 2585 (2020) (No. 19-7771).

Other pending petitions raise the same question. Stradford v. United States, No. 24-5943 (filed Nov. 6, 2024); Reyes v. United States, 24-5944 (filed Nov. 5, 2024).

release under 18 U.S.C. 3583(g). The court of appeals correctly rejected that contention, and no further review is warranted.

a. The Fifth Amendment of the U.S. Constitution provides that no one may be deprived of liberty without "due process of law." U.S. Const. Amend. V. The Sixth Amendment adds that 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." U.S. Const. Amend. VI.

In United States v. Haymond, 588 U.S. 634 (2019), the Court considered the constitutionality under the Fifth and Sixth Amendments of 18 U.S.C. 3583(k), a supervised-release provision that applies only to certain sex offenders. Under Section 3583(k), if the sentencing court finds by a preponderance of the evidence that such a defendant has committed certain specified sex offenses while on supervised release, the court must revoke supervised release and order reimprisonment for a minimum of five years. Ibid.

Writing for a four-Justice plurality, Justice Gorsuch concluded that Section 3583(k) violates the Sixth Amendment "as applied in cases" that "expose a defendant to an additional mandatory minimum prison term well beyond that authorized by the jury's verdict." Haymond, 588 U.S. at 652 (plurality opinion) (emphasis omitted). The plurality acknowledged that "supervised release punishments arise from and are '[t]reat[ed] . . . as

part of the penalty for the initial offense,'" and that a jury need "not * * * find every fact in a revocation hearing that may affect the judge's exercise of discretion with the range of punishments authorized by the jury's verdict." Id. at 648 (emphasis added; citation omitted; brackets in original). But the plurality concluded that, under Alleyne v. United States, 570 U.S. 99 (2013), which addressed the application of the Sixth Amendment to statutory-minimum sentences, "a jury must find any facts that trigger a new mandatory minimum prison term." Haymond, 588 U.S. at 648; see, e.g., id. at 654. The plurality disclaimed "any view" on the separate issue of the constitutionality of Section 3583(g). Id. at 652 n.7.

Justice Breyer concurred in the judgment, in an opinion that is narrower than Justice Gorsuch's plurality opinion and therefore controlling under Marks v. United States, 430 U.S. 188, 193 (1977). Justice Breyer reiterated that "the role of the judge in a supervised-release proceeding is consistent with traditional parole" and does not require a jury trial. Haymond, 588 U.S. at 657-658. For that reason, Justice Breyer "would not transplant" Sixth Amendment cases like Alleyne "to the supervised-release context." Id. at 658. Justice Breyer nevertheless found Section 3583(k) unconstitutional because of three features that, in his view, made it "less like ordinary revocation and more like punishment for a new offense, to which the jury right would typically attach." Id. at 659. "First, § 3583(k) applies only

when a defendant commits a discrete set of federal criminal offenses specified in the statute." Ibid. (emphasis omitted). "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." Ibid. (emphasis omitted). "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.'" Ibid. (emphasis omitted; brackets in original).

Justice Alito authored a dissenting opinion for four Justices. See Haymond, 588 U.S. at 659-683. The dissent explained that because a supervised-release revocation proceeding is not part of a "'criminal prosecution' within the meaning of the Sixth Amendment," the jury-trial right does not apply. Id. at 667. And Justice Alito and the three other dissenters would have upheld Section 3583(k) for that reason. Id. at 669.

b. This case does not involve Section 3583(k), but instead 18 U.S.C. 3583(g), under which "the court shall revoke the term of supervised release and require the defendant to serve a term of" reimprisonment if the defendant violates the conditions of supervised release in particular ways, including by "refus[ing] to comply with drug testing imposed as a condition of supervised release," 18 U.S.C. 3583(g)(3), and by "test[ing] positive for illegal controlled substances more than 3 times over the course of

1 year" as part of a court-imposed drug-testing program, 18 U.S.C. 3583(g)(4). Unlike Section 3583(k), Section 3583(g) does not specify a particular term of reimprisonment, but instead requires the district court to impose a term of reimprisonment "not to exceed the maximum term" authorized by Section 3583(e)(3), which is the general provision governing supervised release.[2]

The court of appeals correctly recognized that the district court was not required to conduct a jury trial as a prerequisite for revoking supervised release under Section 3583(g). Pet. App. A1; see United States v. Garner, 969 F.3d 550, 551-553 (5th Cir. 2020), cert. denied, 141 S. Ct. 1439 (2021). Section 3583(g) has none of the three features of Section 3583(k) that led Justice Breyer to conclude in his controlling opinion in Haymond that Section 3583(k) operated "less like ordinary revocation and more like punishment for a new offense, to which the jury right would typically attach." 588 U.S. at 659 (Breyer, J., concurring in the judgment).

First, whereas Section 3583(k) "applies only when a defendant commits a discrete set of federal criminal offenses specified in the statute," Haymond, 588 U.S. at 659 (Breyer, J,. concurring in the judgment), Section 3583(g) is more attenuated from criminal sentencing because it can apply in cases of noncriminal conduct,

[2] Other pending petitions for a writ of certiorari raise constitutional challenges to the revocation of supervised release under 18 U.S.C. 3583(e)(3). See Carpenter v. United States, No. 24-5594 (filed Sept. 16, 2024); Smith v. United States, 24-5608 (filed Sept. 16, 2024).

such as "refus[ing] to comply with drug testing imposed as a condition of supervised release" or "test[ing] positive for illegal controlled substances more than 3 times over the course of 1 year," 18 U.S.C. 3583(g)(3) and (4).

Second, whereas Section 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," Haymond, 588 U.S. at 659 (Breyer, J,. concurring in the judgment), Section 3583(g) requires only that a court "require the defendant to serve" some unspecified "term of imprisonment not to exceed the maximum term of imprisonment authorized under" the default revocation provision (18 U.S.C. 3583(e)(3)), leaving the length of the term up to the discretion of the court. 18 U.S.C. 3583(g).

Third, whereas Section 3583(k) "limits the judge's discretion * * * 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,'" Haymond, 588 U.S. at 659 (Breyer, J., concurring in the judgment) (quoting 18 U.S.C. 3583(k)) (brackets in original), Section 3583(g) does not specifically prescribe a particular "mandatory minimum term of imprisonment," nor does it require a court to find that the defendant has committed any particular listed criminal offense, ibid., as opposed to a noncriminal supervised-release violation.

Furthermore, petitioner would not even be entitled to relief under the plurality opinion in Haymond, which made clear that its

reasoning was "limited to § 3583(k)" and expressly stated that it did not adopt "a view on the mandatory revocation provision for certain drug and gun violations in § 3583(g), which requires courts to impose 'a term of imprisonment' of unspecified length." 588 U.S. at 652 n.7, 654. The plurality opinion, moreover, highlighted the "substantial" five-year minimum term of reimprisonment required by Section 3583(k). Id. at 652; see id. at 653 (stating that Section 3583(k) requires a court to send a defendant "back to prison for years based on judge-found facts"). That concern does not apply to Section 3583(g), which requires no specific minimum term of reimprisonment, and in fact limits the amount of reimprisonment that a district court can order by cross-referencing the caps on reimprisonment in the default revocation provision, Section 3583(e)(3). 18 U.S.C. 3583(g); see D. Ct. Doc. 67, at 4; 18 U.S.C. 3583(e)(3) (limiting petitioner's reimprisonment term to three years based on his initial commission of class B felonies).

The plurality opinion also states that, to the extent ordering reimprisonment under Section 3583(e) based on judicial factfinding could violate the jury-trial right, it would not do so where the "defendant's initial and post-revocation sentences issued under § 3583(e) [do] not yield a term of imprisonment that exceeds the statutory maximum term of imprisonment the jury has authorized for the original crime of conviction." Haymond, 588 U.S. at 655. Here, the seven months of reimprisonment ordered by the district

court brings petitioner's total period of imprisonment to 67 months, which does not exceed the statutory maximum term of imprisonment for petitioner's original crimes of conviction, which were 10 years of imprisonment for the Section 922(g)(1) offense and 20 years for the Section 841(a)(1) offense. See Revocation Judgment 2; PSR ¶ 78. Petitioner also would not prevail under Justice Alito's dissent in Haymond, which explained that a defendant never has a right to a jury trial in the context of revocation and reimprisonment. 588 U.S. at 682-683.

2. Petitioner identifies no decision of any court that has held Section 3583(g) unconstitutional. And he does not even seek plenary review of that issue in his case because, as he acknowledges (Pet. 6), he did not argue in the district court that he was entitled to a jury finding on whether he violated the conditions of his supervised release. Petitioner's claim that his revocation and reimprisonment under 18 U.S.C. 3583(g) deprived him of his constitutional rights can accordingly be reviewed only for plain error. See Fed. R. Crim. P. 52(b); Pet. 6.

To show plain error, petitioner must demonstrate (1) "an error" (2) that is "clear or obvious, rather than subject to reasonable dispute," (3) that "affected [his] substantial rights," and (4) that "'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" Puckett v. United States, 556 U.S. 129, 135 (2009) (quoting United States v. Olano, 507 U.S. 725, 736 (1993)) (second set of brackets in original).

Petitioner all but acknowledges that he cannot meet that standard under existing law. Petitioner identifies no decision of any court adopting his argument that Section 3583(g) violates the Fifth and Sixth Amendments. And Haymond itself cannot support plain-error relief on the constitutionality of Section 3583(g), as Haymond did not concern that provision. Indeed, as petitioner acknowledges (Pet. 5), the plurality in Haymond "expressly reserved the question at issue in this case."

Petitioner nonetheless asks this Court to at least hold his petition pending "any case" in which a challenge to the constitutionality of Section 3583(g) has been properly preserved, and remand in light of that hypothetical future decision, which he contends may establish "the 'plainness' of error" in his case while it remains on direct appeal. Pet. 6 (citing Henderson v. United States, 568 U.S. 266 (2013)). Petitioner, however, does not identify any pending petition in which the petitioner preserved a challenge to Section 3583(g) in the lower courts. And the government is not aware of any such petition, as the other petitions pending before this Court that present the issue likewise arise on plain-error review. See p. 6 n.1, supra. There is no basis to hold this petition indefinitely, as petitioner requests.

3. At all events, even if the jury-trial right at issue in Haymond clearly and obviously applied to 18 U.S.C. 3583(g), that right was not violated here because petitioner admitted the facts that supported his revocation and reimprisonment. In Haymond, the

district court found by a preponderance of the evidence -- over the offender's objection -- that he had violated the conditions of his supervised release by possessing child pornography and was therefore subject to mandatory revocation and reimprisonment under Section 3583(k). 588 U.S. at 639 (plurality opinion). Here, by contrast, petitioner admitted that the alleged violations were true. 8/18/23 Revocation Tr. 4; 12/11/23 Revocation Tr. 5. The jury-trial right applied in Haymond does not extend to facts "admitted by the defendant." Haymond, 588 U.S. at 643 (plurality opinion). Furthermore, and at a minimum, those admissions render plain-error relief is unwarranted in this case. See Olano, 507 U.S. at 736 (explaining that plain-error relief is not appropriate unless the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings") (citation omitted; brackets in original).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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