No. _____

In the

Supreme Court of the United States

_____

Travyrus Jerard Stradford,
Petitioner,

v.

United States of America,
Respondent.

_____

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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

Whether 18 U.S.C. § 3583(g) comports with the Fifth and Sixth Amendments?

PARTIES TO THE PROCEEDING

Petitioner is Travyrus Jerard Stradford, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Travyrus Jerard Stradford seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The unpublished opinion of the court of appeals is found at *United States v. Stradford,* No. 24-10144, 2024 WL 3824648 (5th Cir. August 15, 2024). It is reprinted in Appendix A to this Petition. The Petition arises from the judgment revoking Petitioner's supervised release, which is attached as Appendix B.

JURISDICTION

August 15, 2024. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT STATUTES AND CONSTITUIONAL PROVISION

18 U.S.C. §3583(g) states:

> (g) Mandatory Revocation for Possession of Controlled Substance or Firearm or for Refusal To Comply With Drug Testing.—If the defendant—
> (1) possesses a controlled substance in violation of the condition set forth in subsection (d);
> (2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;
> (3) refuses to comply with drug testing imposed as a condition of supervised release; or
> (4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;
> the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment provides:

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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

In 2021, Petitioner Travyrus Jerard Stradford received a 21-month sentence of imprisonment for stealing mail, to be followed by a three-year term of supervised release. *See* (Record in the Court of Appeals, at 73-75). On supervised release, Petitioner failed and missed drug tests, missed an appointment with his Probation Officer, failed to pay his financial penalties, and twice committed a felony assault. *See* (Record in the Court of Appeals, at 121, 232-236). A Petition to revoke Petitioner's term of release stated that the judge was obligated to revoke the term of release by 18 U.S.C. §3583(g)(1) and (3), which provisions make revocation mandatory when a releasee refuses to abide by drug testing or possesses illegal drugs. *See* (Record in the Court of Appeals, at 83). Petitioner pleaded true to each of the allegations enumerated above, *see* (Record in the Court of Appeals, at 121), and the court never questioned the Petition's claim to mandatory revocation. Rather, it stressed that it had considered "all the filings by Probation and the parties," (Record in the Court of Appeals, at 137), and "the applicable statutes and policy statements…" (Record in the Court of Appeals, at 138). The court revoked the term of release, imposing two years of imprisonment, and no further supervision. *See* (Record in the Court of Appeals, at 138, 140).

B. Appellate Proceedings

Petitioner appealed, arguing that the district court erred in applying the mandatory revocation provision of 18 U.S.C. §3583(g), because that provision violated the Fifth and Sixth Amendments under the rationale of *United States v. Haymond*,

588 U.S. 634 (2019). *See* [Appx. A]; *United States v. Stradford,* No. 24-10144, 2024 WL 3824648 (5th Cir. August15, 2024). (unpublished). Petitioner conceded that his claim was foreclosed by circuit precedent, and the court of appeals agreed. *See Stradford,* 2024 WL 3824648, at *1.

REASONS FOR GRANTING THE PETITION

I. This Court should hold the instant Petition pending any plenary grant of certiorari addressing the question presented, which was reserved by the plurality in *United States v. Haymond*, 588 U.S. 634 (2019).

A. This case presents an unaddressed question from *Haymond* regarding the continued viability of the mandatory revocation statute of 18 U.S.C. § 3583(g).

The Fifth and Sixth Amendments to the United States Constitution require that any fact that increases the defendant's maximum or minimum range of punishment must be proven to a jury beyond a reasonable doubt. *See Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Alleyne v. United States*, 570 U.S. 99 (2013). Section 3583(g)(3) of Title 18 compels the district court to impose a term of imprisonment when a defendant on supervised release refuses to comply with drug testing imposed as a condition of supervised release. A straightforward application of *Alleyne*, therefore, would tend to show that the fact of such refusal must be proven to a jury beyond a reasonable doubt. Alternatively, a reviewing court might conclude that Congress would have preferred to sever and excise the mandatory revocation provision to compelling a full-blown jury trial for every allegation of refusal to comply with required drug testing. *See United States v. Booker*, 543 U.S. 220 (2005).

Nonetheless, at least five Justices in *United States v. Haymond*, 588 U.S. 634 (2019), concluded that some revocation proceedings fall outside the simple rules of *Apprendi* and *Alleyne*. *See Haymond*, 588 U.S. at 657-658 (Breyer, J., concurring); *id.* at 667 (Alito, J., dissenting). Under the view propounded by Justice Breyer's concurrence, facts determined in a revocation proceeding should instead be compared more globally to a "traditional element." *See id.* at 2385-2386 (Breyer, J., concurring).

This analysis considers whether the fact in question sets forth an independent criminal offense, whether it triggers a mandatory minimum, and the length of the mandatory minimum. *See id.* at 658-659 (Breyer, J., concurring).

A four-Justice plurality expressly reserved the question at issue in this case: whether 18 U.S.C. 3583(g) violates the Fifth and Sixth Amendment, cautioning:

> Just as we have no occasion to decide whether § 3583(k) implicates *Apprendi* by raising the ceiling of permissible punishments beyond those authorized by the jury's verdict, see n. 4, supra, we do not pass judgment one way or the other on § 3583(e)'s consistency with *Apprendi*. Nor do we express 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.

Id. at 652, n.7 (Gorsuch, J.)(plurality op.). Such reservations have previously foreshadowed grants of certiorari on the reserved issue. ***Compare*** *Blakely v. Washington*, 542 U.S. 296, 305, n.9 (2004)("The Federal Guidelines are not before us, and we express no opinion on them.") ***with*** *United States v. Booker*, 543 U.S. 220 (2005)(rendering a holding on this question); ***compare*** *Voisine v. United States*, 579 U.S. 686, 694, n.4 (2016)(Like *Leocal*, our decision today concerning § 921(a)(33)(A)'s scope does not resolve whether § 16 includes reckless behavior.") ***with*** *Borden v. United States*, 593 U.S. 420 (March 2, 2020)(deciding this question in the context of 18 U.S.C. § 924(e), which contains a clause similarly worded to 18 U.S.C. § 16); ***see also*** *Voisine*, 579 U.S. at 689 ("…we expressly left open whether a reckless assault also qualifies as a "use" of force—so that a misdemeanor conviction for such conduct would trigger § 922(g)(9)'s firearms ban. . . . The two cases before us now raise that

issue.")(internal citations omitted)(*citing United States v. Castleman*, 572 U.S. 157 (2014)).

B. This Court should grant certiorari to address the issue in another case, and hold the instant Petition pending the outcome.

Petitioner did not challenge the constitutionality of the mandatory revocation statute at the district court. This likely presents an insurmountable vehicle problem for a plenary grant in the present case. Nonetheless, the issue is worthy of certiorari, and the Court has no shortage of cases presenting it.

In the event that the Court chooses to address this issue while the instant case remains on direct appeal, the outcome may be affected. Although the error was not preserved in district court, which compels review for plain error only, *see* Fed. R. Crim. P. 52(b), the "plain-ness" of error may be established by change of precedent on before the judgment is final. *See Henderson v. United States*, 568 U.S. 266 (2013). Accordingly, Petitioner requests that the Court hold his petition pending any case that presents the issue reserved in *Haymond*, and then grant the petition, vacate the judgment below, and remand for reconsideration. *See Lawrence on behalf of Lawrence v. Chater*, 516 U.S. 163 (1996).

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 6th day of November, 2024.

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