No. _____

In the

Supreme Court of the United States

_____

Terrell Dewayne Johnson,
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 comports with the Sixth Amendment?

PARTIES TO THE PROCEEDING

Petitioner is Terrell Dewayne Johnson, 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 Terrell Dewayne Johnson 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The unpublished opinion of the court of appeals is found at *United States v. Johnson,* No. 24-10194, 2025 WL 32820 (5th Cir. January 6, 2025). 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

The court of appeals issued an opinion affirming the district court judgment on January 6, 2025. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT STATUTES AND CONSTITUTIONAL PROVISIONS

18 U.S.C. §3583(e)(3) states:

> (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)—
>
> ***
>
> (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, or more than one year in any other case; or 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).

Article III, Section 2 of the United States Constitution provides in relevant part:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

The Sixth Amendment to the United States Constitution 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

Petitioner Terrell Dewayne Johnson previously received a 120-month sentence for possessing a stolen firearm, the statutory maximum for this offense. *See* (Record in the Court of Appeals, at 80-82). After leaving prison, he began a term of supervised release, but soon began using drugs. *See* (Record in the Court of Appeals, at 114-116, 205-207). A Petition for revocation of supervised release alleged that he repeatedly tested positive for multiple drugs, that he admitted using immediately drugs on supervised release, and that he missed drug counseling sessions. *See* (Record in the Court of Appeals, at 114-116). It found that these acts constituted Grade C Violations of the terms of release, which generated an advisory sentencing range of 8-14 months imprisonment under USSG §7B1.4. *See* (Record in the Court of Appeals, at 117).

An Addendum followed Mr. Johnson's arrest on this Petition. *See* (Record in the Court of Appeals, at 131-132). It alleged additional drug use, alcohol use, and the failure to prepare monthly reports or keep appointments. *See* (Record in the Court of Appeals, at 131-132). It also alleged drug possession, including 2.1 grams of methamphetamine and 21.6 grams of fentanyl. *See* (Record in the Court of Appeals, at 132-133). The Addendum stated that the new allegations changed the advisory sentence, now identifying the most serious violation as a Grade A, meaning that it constituted either a drug trafficking offense or an offense punishable by more than 20 years. *See* (Record in the Court of Appeals, at 133). This changed the recommended sentence to 24 months imprisonment. *See* (Record in the Court of Appeals, at 133).

At the revocation hearing, Petition pleaded true to the allegations in the original Petition, but not true to the allegations in the Addendum. *See* (Record in the Court of Appeals, at 207). The court ultimately adopted the Petition "and addendum thereto," showing that it regarded the advisory range as 24 months. *See* (Record in the Court of Appeals, at 210).

B. Appellate Proceedings

Petitioner appealed, arguing that the district court erred in concluding that his conduct constituted a Grade A violation of supervised release, as it amounted only to simple possession of a controlled substance. The court of appeals, however, concluded that the quantity at issue supported a finding of possession with intent to distribute. *See* [Appx. A]; *United States v. Johnson*, No. 24-10194, 2025 WL 32820 (5th Cir. Jan. 6, 2025)(unpublished).

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to rectify the widespread deprivation of the fundamental right to a jury trial in federal supervised release revocations.

Section 3583 of Title 18 authorizes federal district courts to impose a term of supervised release following the defendant's term of imprisonment. *See* 18 U.S.C. §3583(a). Subsection (e)(3) permits these courts to conduct fact-finding as to whether the defendant violated a term of supervised release. *See* 18 U.S.C. §3583(e)(3). And it permits them to revoke terms of supervised release upon finding a violation by a preponderance of the evidence. *See* 18 U.S.C. §3583(e)(3). Although it contemplates revocation for the commission of new crimes, *see* 18 U.S.C. §3583(d),(g), the statute does not provide for a jury trial. A defendant whose supervised release is revoked may be returned to prison. *See* 18 U.S.C. §3583(e)(3). Sometimes, in cases like the instant one, such a defendant may serve a cumulative term of imprisonment for the original offense and violation that exceeds the statutory maximum for the original offense alone.

The courts of appeal have held that the defendant has no right to a jury trial on the question of whether he or she violated the terms of supervised release. *United States v. McIntosh*, 630 F.3d 699, 703 (7th Cir. 2011("… since the *Apprendi* decision, every circuit court to consider the supervised release revocation framework under 18 U.S.C. § 3583 has concluded that there is no constitutional violation."). This is so even if the revocation sentence pushes total term of imprisonment beyond the maximum permitted for the original offense. *See United States v. Henderson*, 998 F.3d 1071,

1077 (9th Cir. 2021)(collecting cases). Though there is no circuit split on the issue, the constitutional status of supervised release has nonetheless generated horizontal dissension. *See United States v. Peguero*, 34 F.4th 143, 167 (2d Cir. 2022)(Underhill, D.J., dissenting)(arguing that revocations require the procedural rights applicable in a trial); *Henderson*, 998 F.3d at 1084 (Rakoff, J., dissenting)(arguing that the original term of imprisonment and revocation term may not exceed the punishment for the underlying offense); *Moore*, 22 F.4th 1258, 1279 (11th Cir. 2022)(Newsom, J., dissenting in part)(arguing that a defendant suffers constitutional injury when his total term of imprisonment for the original offense and all revocations exceeds the combined maximum for the original offense and a single revocation); *see also United States v. Ka*, 982 F.3d 219, 228 (4th Cir. 2020)(Gregory, J. dissenting)(arguing that supervised release revocations give rise to a Fifth Amendment right against self-incrimination). As will be discussed below, there is likely a right to a jury trial upon revocation, at least in cases like Petitioner's.

In addition to the general protections of the Due Process Clause, two provisions of the United States Constitution provide specifically for a trial by jury as a precondition to criminal punishment. Article III, Section 2 provides that "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury…" And, of course, the Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury …" Notwithstanding the foregoing, the court below has held that a defendant facing revocation of supervised release has no right to a jury in supervised release revocations. *See United*

States v. Hinson, 429 F.3d 114, 115 (5th Cir. 2005). This holding, however, is contrary to the original understanding of the Sixth Amendment and Article III. And if these provisions permit the denial of a jury trial in supervised release revocations generally, they do not allow them where the defendant suffers a total term of imprisonment that was not authorized by the original plea or verdict, or where the government alleges the commission of a new crime.

In general, provisions of the constitution mean what people thought they meant at the time of ratification. *See New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1, 27–28 (2022); *United States v. Jones*, 565 U.S. 400, 404–405 (2012); *Caetano v. Massachusetts*, 577 U.S. 411, 411–412 (2016). At the time of ratification, most people considering the issue would have understood the right to a jury trial -- guaranteed both by the Sixth Amendment and Article III -- to reach proceedings like supervised release revocations.

At Founding, there was in fact a proceeding closely akin to supervised release revocations: forfeiture of recognizance. At that time, judges often ordered criminal defendants to abide by certain conditions before or after their sentences – not dissimilar from those imposed in contemporary supervised release -- and could order them to pay a debt on evidence of a violation. *See* Jacob Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. 1381, 1384, 1407 (2024)(citing Lawrence M. Friedman, *Crime & Punishment in Am. History* at 38 (1993); 4 Blackstone, *Commentaries on the Laws of England* at 250-251)). This was called "recognizance," and the violations of the conditions were called "forfeiture of recognizance." 4 Blackstone, *Commentaries*

on the Laws of England at 251, 341. If the debt went unsatisfied – and sometimes judges deliberately ordered payment of amounts no one could realistically pay – the defendants could be incarcerated. *See* Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. at 1415-1416 (citing Thomas Raeburn White, *Commentaries on the Constitution of Pennsylvania*, 111 (1907); *Regina v. Dunn* (1840) 113 Eng. Rep. 939, 940 (QB); 4 Richard Burn, *The Justice of the Peace, and Parish Officer* 105 (London, A. Strahan 1800)("[A]nd if the party shall refuse to be bound, the justice may send him to gaol [jail]."); James Parker, *Conductor Generalis: Or, the Office, Duty and Authority of Justices of the Peace* 363 (Woodbridge, James Parker 1764)).

Critical for our purposes, both English and early American courts used a jury to determine whether the defendant had violated the conditions of recognizance. *See* Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. at 1417–18. That is clear from court opinions referring to such jury trials on both sides of the Atlantic. *See Mix v. People*, 29 Ill. 196, 197–98 (1862)("upon a common recognizance … The verdict of the jury was ... for the plaintiff"); *Regina v. Harmer*, 1859 WL 9677 (U.C. Q.B. 1859); *Sans v. People*, 3 Gilman 327, 329 (Ill. 1846)("[A] scire facias issued against him, and … his security … The jury returned a verdict against the plaintiff, upon which judgment was rendered by the court."); *Rex v. Wiblin*, 2 Car. & P. 9 n. 2 (1825)("When a person has entered into a recognizance to keep the peace … If the jury find that the recognizance has been forfeited, they find a verdict for the crown, and judgment is entered up."); *Commonwealth v. Emery*, 2 Binn. 431, 433–35 (Penn. 1810)("The objections are, that the evidence given to the jury was not a recognizance, but only a

loose note ... But I see nothing illegal or dangerous in the[] practice of taking and certifying recognizances by short minutes, or in permitting those minutes to be given in evidence to juries, as often as questions arise on the recognizances."); *Commonwealth v. Davies*, 1 Binn. 97, 99–100 (Penn. 1804)("The point which led ultimately to the present argument ... was this, that unless the jury might find less than the whole amount, and this it was said they could not do, a recognizance of this kind if forfeited by a libel would prove a direct restraint upon the press."). But it is also clear from first-hand historical records and treatises. *See* Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. at 141-1422 (citing The Year Books: Report #1494.073, *Legal History: The Year Books, Boston University School of Law*)(*available at:* https://bit.ly/3ErE8Y7); Michael Dalton, *The Countrey Justice 207* (London, John Streater, James Flesher & Henry Twyford 1666); Richard Gude, 1 *Practice of the Crown Side of the Court of King's Bench, and the Practice of the Sessions; the General Rules of Court, from the Reign of James I. to the Present Time and the Statutes Relating to the Practice* 235 (London 1828); Thomas Walter Williams, 4 *The Whole Law Relative to the Duty and Office of a Justice of the Peace* 789 (London, 1795); A. Highmore, Junr., *A Digest of the Doctrine of Bail* 246 (London, His Majesty's Law Printers 1783); *King v. Monteith* (King George Cnty. Ct., Sept. 4, 1725), in *Virginia County Court Records Order Book Abstracts of King George County, Virginia 1723-1725*, at 97 (Ruth Sparacio & Sam Sparacio eds., 1992); Julius Goebel Jr. & T. Raymond Naughton, *Law Enforcement in Colonial New York: A Study in Criminal Procedure (1664-1776)* 555 (1944)).

The right to trial by jury thus naturally encompassed a right to have a jury determine whether a defendant had forfeited recognizance. This proceeding was closely akin to revocations of supervised release; the Framers and ratifiers would have therefore expected a jury trial in Petitioner's situation.

Alternatively, if the Sixth Amendment and Article III do not offer revokees a jury trial in all cases, they at least offer them when the revocation pushes the total term of incarceration for both the original offense and revocation above the statutory maximum for the original offense alone. Such is the case here, where the defendant received ten years for violating of 18 U.S.C. §922(j), the possession of a stolen firearm, and then an additional two years for his revocation conduct. At the time of his initial sentencing, Petitioner enjoyed an absolute protection against a sentence in excess of ten years barring proof of the fact of revocation. *See* 18 U.S.C. §924(a). He is thus situated precisely as one who commits a basic crime and suffers an enhanced statutory maximum for undertaking the crime with a hateful motive, *see Apprendi v. New Jersey*, 530 U.S. 466 (2000), or one who commits a carjacking offense and suffers an enhanced statutory maximum for causing bodily injury, *see Jones v. United States*, 526 U.S. 227 (1999). The fact that the law labels the extra punishment a revocation, or that it occurs after the defendant has already been to prison, is of no moment – because a total punishment exceeding ten years depends on the finding of another fact, it must be found by a jury. *See Apprendi*, 530 U.S. at 494 ("Despite what appears to us the clear "elemental" nature of the factor here, the relevant inquiry is one not

of form, but of effect-does the required finding expose the defendant to a greater punishment than that authorized by the jury's guilty verdict?")

Or, if the Sixth Amendment and Article III do not offer a jury trial whenever the defendant faces revocation of supervised release, the plain text of Article III, Section 2, plainly provides it when the government seeks revocation on allegation of a new crime. Again, Article III, Section 2, calls for a jury in "the Trial of All Crimes." When the government seeks revocation on allegation that the defendant committed a crime, as here, the revocation proceeding amounts to the "Trial of [a] Crime[]."

At the time of enactment, the jury trial guarantee of Article III was understood to apply "[w]henever the general government can be a party against a citizen." Records of the Federal Convention of 1787, p. 163 (M. Farrand ed. 1911)(quoting James Wilson, a drafter of the Constitution and member of the first Supreme Court). But even given a narrower reach, the language of Article III at least describes a determination that the defendant committed an offense proscribed by state or federal statute, and punishable by imprisonment. If a revocation of supervised release for a new crime is not "a criminal prosecution" within the meaning of the Sixth Amendment, *see Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)(so finding as respects parole revocations), it is at least the "trial of a crime," within the meaning of Article III, Section 2.

Petitioner suffered a revocation on allegations of a new crime even though he was never offered, and could not have obtained, a jury trial regarding those allegations. Further, he wound up serving more than the ten years authorized by his

plea of guilty alone. It is true that he did not preserve the jury trial issue in this Court or below, and that his case is for that reason not likely a suitable candidate for a plenary grant of certiorari. The issue is nonetheless likely to be presented to the Court in another Petition, as it recurs frequently. *See Carpenter v. United States*, No. 24-5594, 2025 WL 581690, at *1 (U.S. Feb. 24, 2025)(denying a recent Petition on this issue). This Court should grant certiorari in an appropriate case, and hold this case for those proceedings.

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 7th day of April, 2025.

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