No. _____

In The

Supreme Court of the United States

ANTHONY D. WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. WHETHER MR. WILLIAMS DUE PROCESS RIGHTS REQUIRING THE GOVERNMENT TO SHOW GOOD CAUSE FOR A WITNESS'S ABSENCE FROM A SUPERVISED RELEASE REVOCATION HEARING WERE SATISFIED.

LIST OF PARTIES

ANTHONY WILLIAMS, Petitioner

UNITED STATES OF AMERICA, Respondent

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PETITION FOR WRIT OF CERTIORARI

Petitioner Anthony Williams respectfully prays for a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The decision of the Fourth Circuit Court of Appeals affirming the judgment entered against Mr. Williams is reported at *United States v. Anthony Williams*, 134 F.4th 134 (4th Cir., April 7, 2025). (App A).

JURISDICTION

The United States Court of Appeals for the Fourth Circuit released a decision on April 7, 2025. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), and this Petition is timely filed within ninety days of the underlying Judgment of the Fourth Circuit (App B) pursuant to United States Supreme Court Rule 13(1) and 28 U.S.C. § 2101.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Fifth Amendment:

> 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.

Rule of Criminal Procedure 32.1:

Revoking or Modifying Probation or Supervised Release

(a) Initial Appearance.

(1) *Person In Custody*. A person held in custody for violating probation or supervised release must be taken without unnecessary delay before a magistrate judge.

(A) If the person is held in custody in the district where an alleged violation occurred, the initial appearance must be in that district.

(B) If the person is held in custody in a district other than where an alleged violation occurred, the initial appearance must be in that district, or in an adjacent district if the appearance can occur more promptly there.

(2) *Upon a Summons*. When a person appears in response to a summons for violating probation or supervised release, a magistrate judge must proceed under this rule.

(3) *Advice*. The judge must inform the person of the following:

(A) the alleged violation of probation or supervised release;

(B) the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and

(C) the person's right, if held in custody, to a preliminary hearing under Rule 32.1(b)(1).

(4) *Appearance in the District With Jurisdiction*. If the person is arrested or appears in the district that has jurisdiction to conduct a revocation hearing—either originally or by transfer of jurisdiction—the court must proceed under Rule 32.1(b) –(e).

(5) *Appearance in a District Lacking Jurisdiction*. If the person is arrested or appears in a district that does not have jurisdiction to conduct a revocation hearing, the magistrate judge must:

(A) if the alleged violation occurred in the district of arrest, conduct a preliminary hearing under Rule 32.1(b) and either:

(i) transfer the person to the district that has jurisdiction, if the judge finds probable cause to believe that a violation occurred; or

(ii) dismiss the proceedings and so notify the court that has jurisdiction, if the judge finds no probable cause to believe that a violation occurred; or

(B) if the alleged violation did not occur in the district of arrest, transfer the person to the district that has jurisdiction if:

(i) the government produces certified copies of the judgment, warrant, and warrant application, or produces copies of those certified documents by reliable electronic means; and

(ii) the judge finds that the person is the same person named in the warrant.

(6) *Release or Detention.* The magistrate judge may release or detain the person under 18 U.S.C. § 3143(a)(1) pending further proceedings. The burden of establishing by clear and convincing evidence that the person will not flee or pose a danger to any other person or to the community rests with the person.

(b) Revocation.

(1) *Preliminary Hearing.*

(A) *In General*. If a person is in custody for violating a condition of probation or supervised release, a magistrate judge must promptly conduct a hearing to determine whether there is probable cause to believe that a violation occurred. The person may waive the hearing.

(B) *Requirements*. The hearing must be recorded by a court reporter or by a suitable recording device. The judge must give the person:

(i) notice of the hearing and its purpose, the alleged violation, and the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel;

(ii) an opportunity to appear at the hearing and present evidence; and

(iii) upon request, an opportunity to question any adverse witness, unless the judge determines that the interest of justice does not require the witness to appear.

(C) *Referral.* If the judge finds probable cause, the judge must conduct a revocation hearing. If the judge does not find probable cause, the judge must dismiss the proceeding.

(2) *Revocation Hearing.* Unless waived by the person, the court must hold the revocation hearing within a reasonable time in the district having jurisdiction. The person is entitled to:

(A) written notice of the alleged violation;

(B) disclosure of the evidence against the person;

(C) an opportunity to appear, present evidence, and question any adverse witness unless the court determines that the interest of justice does not require the witness to appear;

(D) notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and

(E) an opportunity to make a statement and present any information in mitigation.

(c) Modification.

(1) *In General.* Before modifying the conditions of probation or supervised release, the court must hold a hearing, at which the person has the right to counsel and an opportunity to make a statement and present any information in mitigation.

(2) *Exceptions.* A hearing is not required if:

(A) the person waives the hearing; or

(B) the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and

(C) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

(d) Disposition of the Case. The court's disposition of the case is governed by 18 U.S.C. § 3563 and § 3565 (probation) and § 3583 (supervised release).

(e) Producing a Statement. Rule 26.2(a) –(d) and (f) applies at a hearing under this rule. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

STATEMENT OF THE CASE

A jury in the district of Arizona found the Petitioner, Anthony D. Williams, guilty of conspiracy to possess with intent to distribute cocaine base and of possession with intent to distribute cocaine base on July 22, 1999. On June 13, 2001, Judge John Roll sentenced Mr. Williams to 324 months on each of the charges with those sentences to be served concurrently and to be followed by 60 months of supervised

release. Mr. Williams appealed to the Ninth Circuit Court of Appeals which reversed the conviction on the conspiracy charge. *United States v. Williams*, 45 Fed. Appx. 775, 2002 WL 2022100 (9th Cir.2002)(Unpublished). On November 12, 2002, Judge Roll signed an Amended Judgment which imposed a 324-month sentence for possession with intent to distribute cocaine base to be followed by a 60-month period of supervised release.

In 2020, Mr. Williams filed a *pro se* motion for resentencing due to the COVID-19 pandemic and his appointed counsel filed an emergency motion for compassionate release. That case was assigned to Judge Raner Collins, a Senior District Judge in the district of Arizona. Judge Collins considered Mr. Williams numerous pre-existing risk factors and the conditions within the facilities and found, in part, that Mr. Williams had a "chronic illness from which he is not expected to recover and…Williams' ability to provide self-care against serious injury or death as a result of Covid-19 is substantially diminished, within the environment of a correctional facility, by the chronic condition itself." Judge Collins granted the motion for compassionate release and reduced Mr. Williams' sentence to time served. On July 9, 2020, Judge Collins signed a Second Amended Judgment changing the sentence to time served to be followed by a 60-month period of supervised release.

On October 6, 2021, Judge Collins signed an order transferring jurisdiction over Mr. Williams' supervised release to the Western District of North Carolina. On March 10, 2023, a probation officer specialist, Jessica Issacs, filed a Petition for Warrant for Offender Under Supervision alleging three violations of the provisions of

supervised release. Violation 1 and Violation 2 were both "new law" violations which arose from an incident between Mr. Williams and his girlfriend[1] after which she accused him of assault and of strangulation. Violation 3 was testing positive for marijuana which Mr. Williams had admitted to his PO. Magistrate Judge David Keesler issued the arrest warrant on March 10, 2023.

The matter came before Judge Frank D. Whitney for a hearing on the allegations contained the petition on November 28, 2023. During that hearing Charlotte-Mecklenburg Police Officer DePierro testified to her interview of the girlfriend. The government also attempted to introduce photographs which the Declarant had given the officer as well as the officer's body cam footage. Mr. Williams objected through counsel to their admission. Judge Whitney allowed Officer DePierro to testify without making an ultimate ruling on the proffered testimony. Judge Whitney recessed the hearing directing the attorneys involved to brief the issue.

The supervised release revocation hearing resumed on January 8, 2024. Judge Whitney allowed the government to present testimony from PO Isaacs regarding her filing of the SRV as well as her telephone conversation with the Declarant. Judge Whitney overruled a hearsay objection to her testimony saying, "I guess we're just getting all the evidence out right now." Ms. Isaacs also testified that she had not had contact with the Declarant since March 8, 2023. On cross-examination Ms. Isaacs acknowledged that prior to the alleged incident of domestic violence the Declarant had told her that she wanted Mr. Williams out of her house. Following the PO's

[1] Given the allegations of domestic violence, Petitioner will refer to Mr. Williams' girlfriend as the Declarant.

testimony Judge Whitney heard argument regarding the admissibility of all the testimony presented and found the hearsay testimony from Officers DePierro and Isaacs to be admissible.

Mr. Williams then testified. He testified that he had known the Declarant since he was 16 and that he resumed the relationship when he was released from prison in California. He moved to North Carolina because of a deathbed promise to his mother. Mr. Williams denied having assaulted or strangled the Declarant and testified that he only touched her when he grabbed her wrist to stop her from hitting him with a retractable baton. He testified that the State court dismissed the charges which Declarant brought. He also testified to his numerous health problems and that he was not receiving appropriate medical care while in custody.

The government recalled Officer Isaacs and presented recordings from some telephone calls Mr. Williams made from jail. Mr. Williams returned to the stand and explained what was meant in the conversations recorded.

At the conclusion of the hearing, Judge Whitney found that Mr. Williams has committed all three alleged violations and sentenced him to 24 months to be followed by an additional 12 months of supervised release. Mr. Williams entered notice of appeal on January 12, 2024. The Fourth Circuit released a decision on April 7, 2025 affirming the district court's judgment. (App A).

REASONS FOR GRANTING THE WRIT

Petitioner asserts that the Writ should be issued because the district court erred by allowing the government to present hearsay evidence from an out of court witness despite making minimal, if any, efforts to locate the witness.

The probation officer alleged three supervised release violations. Violation 3 was Mr. Williams' admitted usage of marijuana. Mr. Williams admitted the usage both to the probation officer and to Judge Whitney. The other two allegations involved an alleged assault. She was not in court to testify. The government had no information of her whereabouts and gave no explanation for her absence. Instead, the district court allowed officers to testify to her hearsay statements, and to present other evidence including photos and body cam footage.

On appeal, the Fourth Circuit panel found, in part, that the district court did not abuse its authority in finding the government's efforts sufficient despite those efforts being made after the revocation hearing had begun.

Mr. Williams was admittedly not entitled to the full protection of a trial. The Fourth Circuit has previously held that "[r]evocation hearings are less formal than trials of guilt, where 'the full panoply of rights due a defendant' are in effect." *United States v. Ferguson*, 752 F.3d 613, 616 (4th Cir.2014), *quoting*, *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972). The *Ferguson* Court noted that they are similar in that both may result in a loss of liberty. "Accordingly, some due process rights apply. [c]. In *Morrissey*, this Court explicitly identified 'the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)' as one of several 'minimum requirements of due process' that apply to revocation hearings." *Ferguson*, *id.*, *quoting*, *Morrissey* at 488-89, 92 S. Ct. 2593. These requirements are also now found in F. R. Crim. P. 32.1(b)(2)(C).

In another prior revocation case, *United States v. Doswell*, 670 F.3d 526, 530 (4th Cir.2012), the Circuit Court observed that "Rule 32.1(b)(2)(C) specifically requires that, prior to admitting hearsay evidence in a revocation hearing, the district court must balance the releasee's interest in confronting an adverse witness against any proffered good cause for denying such confrontation." The *Doswell* Court noted that reliability is a "critical factor in the balancing test." "If hearsay evidence is reliable and the Government has offered a satisfactory explanation for not producing the adverse witness, the hearsay evidence will likely be admissible under Rule 32.1. On the other hand, hearsay evidence of questionable reliability will of course provide a far less firm basis for denying a releasee the opportunity to 'question any adverse witness.'" *Id*., at 531.

Here, for the two "new law" allegations the government's entire case rested upon the two domestic violence allegations. Those allegations were founded upon the Declarant's identification of Mr. Williams as her assailant. The government's case lived or died upon proving that Mr. Williams assaulted and strangled the Declarant, but she was not in court – she was absent on both days. Instead, the government was forced to use out-of-court statements and argued, in its brief to the district court that her reliability "is evident from the fact Victim photographed herself bloodied and while still under the stress of the incident." With all due respect, that was insufficient to corroborate or to establish the reliability of the Declarant's hearsay.

The fact that she "photographed herself bloodied" might serve as evidence of an assault but it is nonspecific and did not point to a definitive perpetrator. It did

not implicate Mr. Williams any more than her husband who was in the area or any other assailant. Instead, the injuries – or, more precisely the photographs of the injuries since Declarant was not present – were not reasonably any support for the government's contention that her statements were reliable.

As for the timing, the SRV petition states that the assault occurred on or about March 5, 2023. The Declarant went to law enforcement a day later on March 6, 2023. She then did not speak with the probation officer who filed the violation report until March 8, 2023. Neither the timing nor the content of the photos were dispositive or even suggestive of reliability. Similarly, the government stated that the Declarant's voice was raspy and the "domestic violence form recognizes a raspy voice as a common injury for strangulation victims…". Again, however, raspiness does not add credibility to the specific allegations naming Mr. Williams as the perpetrator.

The Petitioner does not contend that the police report created by Office DiPierro was not reliable. Assumably, the law enforcement officer took down accurately what she was told. However, the source of the information was not in court and was not available for cross-examination. In *Day v. Johns Hopkins Health System Corporation*, the Circuit Court referenced the "'crucible of cross-examination,' which has always served as the vehicle for discovering the truth in our judicial system." *Day v. Johns Hopkins Health System Corporation*, 907 F.3d 766, 772 (4th Cir.2018), *quoting*, *Crawford v. Washington*, 541 U.S. 36, 61, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004). Cross-examination was here particularly important given that the "adversarial nature of a hearsay declarant's relationship with the accused

prompts courts to scrutinize out-of-court statements made by former lovers." *United States v. Lloyd*, 566 F.3d 341 (3rd Cir.2009), *citing*, *United States v. Comito*, 177 F.3d 1166, 1171 (9th Cir.1999).

This case is more similar to that of *United States v. Woods*, 561 Fed. Appx. 270 (4th Cir. 2014)(Unpublished) in that the government sought and was allowed to admit out-of-court statements and photographic evidence. The Circuit Court vacated the judgment stating that "the admission of the hearsay statements fundamentally affected Woods' trial strategy." Note that the term "trial strategy" was generically used and it *Woods* was also a revocation appeal. The Court further noted regarding the photographs, "However, that evidence merely established that such injuries and damage occurred, and did not establish the identity of [victim's] assailant."

One other element upon which the government's admission of hearsay evidence must fail is in showing good cause for the Declarant's absence. "Put simply, unless the government makes a showing of good cause for why the relevant witness is unavailable, hearsay evidence is inadmissible at revocation hearings." *Ferguson*, *supra*, at 617. In the government's brief to the district court, the government's showing was that "[w]ith respect to good cause, the government will show at the January 10, 2024 [sic] hearing that Victim stopped responding to USPO Isaacs' attempts to contact her. USPO Isaacs also visited Victim's last known address, and the resident told USPO Isaacs that he did not know Victim and that he has lived at that address since July 2023. Accordingly, the government was unable to locate

Victim." That boils down to an admission that the government did not know where the Declarant was. That is hardly good cause for her absence.

Similarly, during the hearing the government argued that it had "provided good cause for why [Declarant] is not here, which is that she simply stopped returning calls. She's moved away, and we have no way of finding her. And she doesn't seem to be want to be found." As to the last sentence the record is devoid of any evidence of Declarant's state of mind. There is no evidence of that. The probation office testified that she sent texts and an email and left a voice mail. The PO did not give a date for any of those efforts but it is clear that the PO did not go to the home until December 12, 2023 which was after the case was first in court and Mr. Williams had objected to the admission of hearsay evidence. The only evidence that Declarant "moved away" was a statement that someone else was living in her apartment. For all that is known, Declarant could have been in the apartment next door. It was not known that she moved to some distant land. In any event, "good cause" cannot be so broad to allow the prosecution to ignore a necessary witness for months and then justify their absence because the witness was not easily found.

The balancing test enunciated in *Ferguson*, *Doswell*, and other decisions is also found in F. R. Crim. P. 32.1(b)(2)(C) which provides that the district court must weigh a defendant's rights against the interest of justice. That was not properly done by the district court. Judge Whitney said the probation office made "numerous phone calls." That is not supported by the evidence. The probation officer testified that she left a voice mail. She did not testify as to whether there was more than one phone

call. It also bears repeating that the only date given for any of these efforts was after the first revocation hearing, after the defendant objected to the use of hearsay evidence, and after the district court ordered the subject to be briefed. There is no evidence that the government ever planned on making Declarant available for cross-examination until that happened.

Judge Whitney put great weight on this court's unpublished decision in *United States v. Callen*, 850 Fed. Appx. 200 (4th Cir.2021)(Unpublished). "So as I said, the *Callen* case is unpublished and, therefore, it's not binding on this Court, but it is highly useful for this Court because the facts of this case are very similar to the facts in *Callen*, and it's a Fourth Circuit case." *Callen* should not be controlling, not just because it is unpublished but because it does not clearly state the facts.

Callen is a short memorandum opinion. The *Callen* decision says that the "statements were reliable because they were made while under the stress of a startling event." The *Callen* Court did not say whether those statements were made an hour after the event or a day after the event or longer. The *Callen* Court added that the government "worked with local law enforcement to try to locate the victim for several weeks." Here, there was no timeframe given for the government's efforts to find Declarant. As explained above, it appears that no efforts were even made until after the first revocation hearing. The only reference to having worked with local law enforcement was getting an email address from Officer Bumgardner and Officer Bumgardner – described as a DV detective with no information given as to whether Declarant even knew Bumgardner – having left a "nonchalant voice mail." This all

distinguishes *Callen* from the case at bar yet *Callen* was the admitted "foundation" which Judge Whitney used to apply the balancing test.

The district court did not conduct a proper balancing test before admitting hearsay evidence from Mr. Williams' ex-girlfriend.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits that his Petition for Writ of Certiorari should be granted.

RESPECTFULLY SUBMITTED,

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