

No. _____

In the Supreme Court of the United States

Mario Gabriel Rodgers,
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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QUESTION PRESENTED

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

PARTIES TO THE PROCEEDING

Petitioner is Mario Gabriel Rodgers, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

RELATED PROCEEDINGS

- *United States v. Rodgers*, No. 6:23-CR-00019-H-BU-1, U.S. District Court for the Northern District of Texas. Judgment entered on November 7, 2024.
- *United States v. Rodgers*, No. 24-11002, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on April 21, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mario Gabriel Rodgers seeks a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's unreported opinion is available at *Mario Gabriel Rodgers*, No. 24-11002, 2025 WL 1157544 (5th Cir. Apr. 21, 2025). It is reprinted as Appendix A to this Petition. The district court's judgment is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on April 21, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

This Petition involves 18 U.S.C. § 3583(g), which 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 offense 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 defense.

STATEMENT OF THE CASE

A. Facts and District Court Proceedings

On October 5, 2023, the district court for the Northern District of Texas entered a judgment sentencing Mario Gabriel Rodgers to four months' imprisonment and two years' supervised release following a plea of guilty to a one count information charging theft of government property in violation of 18 U.S.C. § 641(a).¹

Petitioner began his term of supervised release on December 12, 2023.² On July 12, 2023, Petitioner's probation officer filed a Petition for Person Under Supervision alleging that Petitioner had violated his conditions of supervised release by, *inter alia*, possessing a controlled substance, refusing to comply with drug testing requirements, and submitting at least three positive drug tests over the course of a year.³ The Petition, citing 18 U.S.C. § 3583(g)(1), (g)(3) & (g)(4), contains a section titled "Mandatory Revocation Statutes" that states: "Mandatory revocation for possession of a controlled substance, refusal to comply with drug testing, and more than 3 positive drug tests over the course of 1 year. Sentence to a term of imprisonment."⁴

¹ See Record in Court of Appeals ("ROA"), at 4, 11-12, 47-53.

² See ROA at 76.

³ See ROA at 55-59.

⁴ See ROA at 58.

Petitioner admitted to the allegations.⁵ The district court revoked his supervised release and sentenced him to a term of 15 months' imprisonment, to be followed by 18 months' supervised release.⁶

B. Proceedings on Appeal

Petitioner appealed, arguing that the district court erred in applying the mandatory revocation provisions of 18 U.S.C. § 3583(g), because those provisions violate the Fifth and Sixth Amendments under the rationale of *United States v. Haymond*, 588 U.S. 634 (2019). *See* Pet. App. A; *United States v. Rodgers*, 2025 WL 1157544 at *1 (5th Cir. April 21, 2025) (unpublished). He conceded that his claim was foreclosed by circuit precedent, and the court of appeals agreed. *See id.* at *1.

⁵ *See* ROA at 127-28.

⁶ *See* ROA at 134-36.

REASONS FOR GRANTING THIS 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 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). Sections 3583(g)(1), (g)(3) and (g)(4) of Title 18 compel the district court to impose a term of imprisonment when a defendant on supervised release possesses a controlled substance, refuses to comply with drug testing, or tests positive more than 3 times during the course of one year. A straightforward application of *Alleyne*, therefore, would tend to show that the relevant fact must be proven to a jury beyond a reasonable doubt.

In *United States v. Haymond*, 588 U.S. 634 (2019), the Court addressed the constitutionality of 18 U.S.C. § 3583(k), which requires revocation and a five-year term of imprisonment when sex offenders on supervised release commit a new specified sex offense. A plurality of the Court found that the provision violates the jury trial guarantee of the Sixth Amendment, though they did not join a common opinion. *See Haymond*, 588 U.S. at 656 (Gorsuch, J., plurality op.); *Haymond*, 588 U.S. at 658 (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:

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.

Haymond, 588 U.S. at 652, n.7 (Gorsuch, J.)(plurality op.). Such reservations have previously foreshadowed grants of certiorari on the reserved issue, often promptly. 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 (2021)(rendering a holding on the question); *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, 169, n.8 (2014)).

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

This Court should grant certiorari to decide this momentous issue, and, if it does so in another case, should hold the instant Petition pending the outcome. *See*

Stutson v. United States, 516 U.S. 163, 181 (1996) (Scalia, J., dissenting) (“We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted *in order that* (if appropriate) they may be ‘GVR’d’ when the case is decided.”) (emphasis in original).

This is so notwithstanding the failure of preservation in the district court, which may ultimately occasion review for plain error. *See United States v. Olano*, 507 U.S. 725, 732 (1993). An error may become “plain” any time while the case remains on direct appeal. *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 asks this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted July 21, 2025.

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