No. 24-5160

IN THE SUPREME COURT OF THE UNITED STATES

DUANE LEO EHMER, DARRYL WILLIAM THORN, AND JAKE RYAN,
PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly determined that the district court did not commit reversible error when it sua sponte excused certain prospective jurors for cause based on their written responses to a screening questionnaire, before commencing the in-court voir dire process.

2. Whether this Court should overrule more than a century of its precedent holding that a defendant facing prosecution for a petty offense has no constitutional right to a jury trial.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-56) is reported at 87 F.4th 1073.

JURISDICTION

The judgment of the court of appeals was entered on December 7, 2023. A petition for rehearing was denied on April 26, 2024 (Pet. App. 57-58). The petition for a writ of certiorari was filed on July 25, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Oregon, petitioners Duane Leo Ehmer and Jake Ryan were convicted of depredating government property, in violation of 18 U.S.C. 1361; petitioner Darryl William Thorn was convicted of conspiring to prevent by force, intimidation, and threats, a United States officer from discharging his duties, in violation of 18 U.S.C. 372, and possessing a firearm in a federal facility, in violation of 18 U.S.C. 930(b). Pet. App. 5. And following a bench trial, petitioners were all convicted of trespassing in a national wildlife refuge, in violation of 50 C.F.R. 26.21(a), and tampering with vehicles and equipment in a national wildlife refuge, in violation of 50 C.F.R. 27.65. Pet. App. 5-6. The district court sentenced Ehmer and Ryan to 12 months and a day of imprisonment, to be followed by three years of supervised release. C.A. E.R. 283-284, 290-291. The court sentenced Thorn to 18 months of imprisonment, to be followed by three years of supervised release. Id. at 307-308.

1. In 2016, petitioners and others broke into and occupied several federal buildings in the Malheur National Wildlife Refuge as part of an armed takeover that lasted more than a month. Pet. App. 3-4. The Malheur National Wildlife Refuge is located on federal lands in eastern Oregon and is administered by the United States Fish and Wildlife Service. Id. at 2, 20. Petitioners' occupation of the federal facilities was ostensibly undertaken to

protest federal land-management policies and the prior federal prosecution of a local rancher. See id. at 3-4.

The occupation began on January 3, 2016, when an initial wave of armed men traveled in a convoy of three vehicles to the refuge and began combing through the buildings "to make sure that no one was there." Pet. App. 3. Although the refuge was open to the public that Saturday, no federal employees were present in the buildings at the time. Ibid. The occupiers then took steps to prevent any federal employees from entering the facilities, including by posting armed guards at the entrances, keeping a regularly scheduled watch, and using government vehicles to block roads. Id. at 3-4; see Gov't C.A. Br. 6-7. Petitioners, in particular, served on the armed security teams that guarded the refuge's entrances during the occupation. Pet. App. 4.

In late January, after some occupiers were arrested (and one killed) during a confrontation with FBI agents when they traveled outside the refuge, Thorn encouraged other occupiers to stay and resist. Pet. App. 4. Thorn himself, however, soon left and was later arrested. Ibid.; see Gov't C.A. Br. 43. Ehmer and Ryan responded to the FBI's efforts to defuse the conflict peacefully by using a government excavator to dig "two large defensive trenches" in preparation for resisting any forcible effort to eject them from the refuge. Pet. App. 4. But they too soon left, and were arrested. Ibid.

Other occupiers held out until February 11, when the takeover finally ended, and the remaining occupiers were arrested. Pet. App. 4. Law-enforcement officers recovered over 20,000 rounds of ammunition from the scene, along with dozens of firearms abandoned in and around the refuge buildings and vehicles and throughout the refuge. Gov't C.A. Br. 7.

2. A grand jury in the District of Oregon returned a superseding indictment charging 26 defendants, including petitioners, with various offenses arising out of the occupation. Pet. App. 4. The superseding indictment charged all three petitioners with conspiring to prevent by force, intimidation, and threats a United States officer from discharging his duties, in violation of 18 U.S.C. 372; charged Thorn and Ryan with possessing firearms in a federal facility with the intent to commit another crime, in violation of 18 U.S.C. 930(b); and charged Ryan with depredating government property, in violation of 18 U.S.C. 1361. Ibid. After other defendants were tried or pleaded guilty, petitioners were ultimately tried together, along with one other defendant. Id. at 5.[1]

Before petitioners' trial, the grand jury returned an additional indictment charging Ehmer with depredating government property, in violation of 18 U.S.C. 1361, and both pending

[1] The fourth defendant, Jason Patrick, was a co-appellant below, see Pet. App. 6, and was originally a petitioner in this Court. On September 13, 2024, this Court granted defense counsel's motion under Rule 46 of the Rules of this Court to dismiss the petition as to Patrick following his death.

indictments were joined for trial. Pet. App. 5. The government also filed a criminal information charging all three petitioners with misdemeanor violations of "various regulations governing conduct at national wildlife refuges." Ibid. Among other things, the information charged petitioners with trespassing in a national wildlife refuge, in violation of 50 C.F.R. 26.21(a). Ibid.

Approximately two months before trial, the district court informed the parties that it planned to mail several forms to 1000 prospective jurors, including a generic "Jury Duty Excuse Form" and a case-specific screening questionnaire. Pet. App. 7. The court directed the parties to be prepared to review prospective jurors' responses shortly before trial, at which point the parties could seek to "agree" on "which jurors * * * should be excused for cause" before any in-court voir dire. Ibid.; see Gov't C.A. Supp. E.R. 9. In subsequent communications, the court clarified that it planned to unilaterally "make decisions on deferral or hardship" based on the jurors' responses and would be "simply informing" the parties of those decisions. Pet. App. 7 (emphasis omitted). But with respect to striking prospective jurors for cause based on the questionnaire responses, the court outlined a process in which the parties would submit recommendations and the court would resolve any disputed for-cause challenges in court as part of voir dire. Id. at 7-8.

After receiving the prospective jurors' written responses, the district court excused some of them based on hardship. Pet.

App. 8. In a departure from its originally announced plan, the court also determined, without the parties' input, that certain prospective jurors' questionnaire responses warranted excusal for cause -- for example, because the responses demonstrated "familiarity with the case producing strong opinions in favor of or against one party or another." Ibid. (brackets and emphasis omitted); see Gov't C.A. Br. 23 (quoting court's explanation that some responses said, in substance, "[t]he defendants are guilty" and "nothing will change my mind"). The court later explained that it had memorialized its reasons for each such decision in handwritten notes on the relevant questionnaire responses. Pet. App. 9. Petitioners did not ask to review any of those notes when the court informed the parties of their existence before trial, nor did petitioners otherwise object to the court's procedures in winnowing the jury pool before the in-court voir dire process began. Id. at 15.

The remaining prospective jurors were summoned to court and were "subjected to voir dire in the ordinary course." Pet. App. 9. A jury was empaneled and, "[a]fter a 12-day trial, the case was submitted to the jury on the felony counts." Id. at 5. The jury found Ehmer and Ryan guilty of depredating government property, in violation of 18 U.S.C. 1361, and it found Thorn guilty of conspiring to prevent by force, intimidation, and threats, a United States officer from discharging his duties, in violation of 18 U.S.C. 372, and of possessing a firearm in a federal facility,

in violation of 18 U.S.C. 930(b). Ibid. While the jury was deliberating, the district court "conducted a brief bench trial at which it received additional evidence as to the misdemeanor counts." Ibid. In the bench trial, the district court found each petitioner guilty of multiple misdemeanors, including trespassing. See id. at 5-6.

The district court sentenced Thorn to 18 months of imprisonment, to be followed by three years of supervised release. C.A. E.R. 307-308. The court sentenced Ehmer and Ryan to 12 months and a day of imprisonment, to be followed by three years of supervised release. Id. at 283-284, 290-291.

3. The court of appeals affirmed petitioners' convictions and sentences but remanded to the district court for the limited purpose of disclosing one sealed document to defense counsel. Pet. App. 1-56. As relevant here, the court of appeals rejected petitioners' various challenges to "aspects of the jury selection procedures that the district court employed in this case," concluding that the district court "should have used different procedures" in some respects, but determining that reversal was unwarranted "on this record." Id. at 6.[2]

[2] As noted above, petitioners had not requested to review the questionnaires that the district court had annotated by hand when striking prospective jurors for cause, before summoning the venire for in-court voir dire. After noticing their appeal, however, petitioners moved in the district court to access those questionnaires. The district court granted petitioners' unopposed motion. After petitioners had been given access to all of the relevant materials, petitioners moved to "formally add to the

Petitioners contended that striking prospective jurors for cause based on a case-specific assessment of potential bias constituted a "critical stage of the proceedings with respect to which the parties and their counsel must be given an opportunity to be heard." Pet. App. 13. The court of appeals agreed with that premise and concluded that the district court had erred insofar as it had excused prospective jurors for cause without soliciting the parties' input. Ibid.

But the court of appeals rejected petitioners' contention that petitioners were entitled to attend an "in-person hearing" about those matters, explaining that "nothing in the Due Process Clause or the Federal Rules of Criminal Procedure" prohibits a district court from deciding to excuse jurors for cause based on written questionnaire responses, without requiring such jurors to appear for an in-court voir dire. Pet. App. 14. And the court of appeals likewise rejected petitioners' contention that the district court's jury-selection procedures had violated petitioners' right to a public trial. Ibid. The court of appeals explained that although the "the Sixth Amendment right to a public trial affirmatively requires an in-court proceeding that the public can * * * attend" in "some instances," that requirement

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record [a] particular subset of juror materials" -- namely, questionnaire responses and juror excuse forms for nine prospective jurors. Pet. App. 15. The district court also granted that request, and the materials were therefore available to the court of appeals in reviewing petitioners' challenges to jury selection. Ibid.

does not apply where, as here, the relevant issue can be decided "on a strictly paper record." Ibid.

Petitioners further contended that, even if an in-person hearing was not required, the district court had effectively deprived them of the assistance of counsel at a "critical stage of the trial proceedings," insofar as the court had acted without any opportunity for counsel's input, and that any such denial of counsel at a critical stage "requir[es] automatic reversal without any harmless error inquiry." Pet. App. 15 (citing United States v. Cronic, 466 U.S. 648, 658-659 (1984)). "Under the specific circumstances of this case," however, the court of appeals found any rule of "automatic reversal" inapplicable, emphasizing that the reviewing court was fully capable of assessing any prejudice because "the challenged decisions involved the resolution of a carefully focused question based solely on a discrete paper record" that both the court and the parties were "subsequently able to review." Id. at 15-16. And having reviewed all the juror responses identified by petitioners, the court of appeals determined that any error by the district court in failing to afford defense counsel an opportunity to be heard before striking nine prospective jurors for cause was harmless because "none of the challenged excusals [was] improper." Id. at 16.

Assuming arguendo that reversal would be warranted unless any error was harmless "beyond a reasonable doubt," Pet. App. 16, the court of appeals reviewed the materials at issue and found, "beyond

a reasonable doubt, that the nine [prospective] jurors identified by counsel were properly excused," id. at 17. One questionnaire revealed, for example, that the prospective juror's spouse "was a member of a SWAT team that had responded to the occupation." Ibid. Other responses made clear that the prospective jurors at issue "could not be impartial," had already improperly "researched the case on the internet," or would be unable to "follow court instructions." Ibid. And because all the "prospective jurors who were released" before the in-person voir dire process "would and should have been released in any event," ibid. (citation omitted), the court of appeals found that any error in striking those jurors for cause before "consult[ing] with counsel or the parties * * * did not make any difference" on this particular record, ibid.

Petitioners separately contended that the district court had violated their constitutional right to a jury trial by declining to submit the misdemeanor charges to the jury and instead resolving those charges in a bench trial. Pet. App. 17. The court of appeals rejected that contention in light of the "long-recognized petty-offense exception to the jury-trial right." Id. at 18. And based on the maximum term of imprisonment of six months or less for each misdemeanor offense and other factors, the court found that the charged violations were "petty offense[s]" to which the jury-trial right does not apply. Id. at 23; see id. at 22-23.

Judge Berzon concurred in part and concurred in the judgment in part. Pet. App. 45-52. She would have held that the district

court's jury-selection procedures violated due process by depriving petitioners of any "meaningful opportunity," either "on paper or in person, to review and contest the district court's dismissals for cause based on the questionnaires." Id. at 50. But in her view, that violation did not warrant reversal because it "did not, beyond a reasonable doubt, affect the verdict" by depriving petitioners of an impartial jury. Id. at 52.

ARGUMENT

Petitioners renew their contention (Pet. 4-5) that the district court violated their right to a public trial when the court excluded certain prospective jurors from the jury pool on the basis of written responses to a questionnaire, without an in-court hearing open to the public, and that automatic reversal is required. The court of appeals correctly rejected that contention, explaining that the district court was not required to hold any hearing on this record. And because no public-trial violation occurred, this case does not present any occasion to address -- and the court of appeals did not decide -- whether any such violation should have been treated as structural error (see Pet. 6-9). At all events, the fact-bound decision below regarding jury selection does not conflict with any decision of this Court or another court of appeals and does not otherwise warrant further review.

Petitioners separately urge (Pet. 9-11) this Court to overrule its longstanding precedent recognizing that the Sixth

Amendment does not confer any right to a jury trial for "petty offenses." Petitioners fall far short of establishing the special justification needed to overrule this long line of precedent. This Court has denied review in other cases presenting the same question, see Reaves v. United States, 583 U.S. 1169 (2018) (No. 17-6657); Hollingsworth v. United States, 577 U.S. 1009 (2015) (No. 15-5317); Harrison v. United States, 531 U.S. 943 (2000) (No. 99-9003), and the same course is warranted here.

1. The court of appeals correctly rejected petitioners' public-trial argument. As that court explained, the district court was not required to hold any in-person hearing before determining that certain prospective jurors' written responses to a pretrial questionnaire warranted excluding those individuals from the jury pool for cause without requiring them to appear in court for in-person voir dire. Pet. App. 15. Although the court of appeals concluded that the district court should not have done so without first affording the parties an opportunity to be heard, nothing in the Sixth Amendment required holding an in-court hearing rather than soliciting the parties' views in writing. And because no hearing was held or required to be held, it follows a fortiori that the district court did not violate any right for the non-existent hearing to be open to the public. See ibid.

a. "In all criminal prosecutions, the accused shall enjoy the right to a * * * public trial." U.S. Const. Amend. VI. In Presley v. Georgia, 558 U.S. 209 (2010) (per curiam), this Court

confirmed "that the Sixth Amendment right to a public trial extends to the voir dire of prospective jurors." Id. at 213. This Court has also separately held that a violation of the public-trial right falls within the "very limited class" of "structural" constitutional errors that are not amenable to harmless-error analysis -- for example, because their effect on the outcome of the proceedings is difficult or impossible to assess. Neder v. United States, 527 U.S. 1, 8 (1999) (quoting Johnson v. United States, 520 U.S. 461, 468 (1997)). Thus, under the harmless-error rule that applies to preserved objections, see Fed. R. Crim. P. 52(a), the defendant can obtain relief for such a violation on appeal without a case-specific showing that the closure affected the defendant's substantial rights.

If, however, a claim of error is "not brought to the [district] court's attention" at the proper time, then a defendant may obtain appellate relief only if he establishes reversible "plain error." Fed. R. Crim. P. 52(b); see, e.g., Greer v. United States, 593 U.S. 503, 507-508 (2021); Puckett v. United States, 556 U.S. 129, 135 (2009). To establish reversible plain error, a defendant must show "(1) 'error,' (2) that is 'plain', and (3) that 'affects substantial rights.'" Johnson, 520 U.S. at 467 (quoting United States v. Olano, 507 U.S. 725, 732 (1993)) (brackets omitted). If those first three prerequisites are satisfied, the reviewing court has discretion to correct the error based on its assessment of whether "(4) the error seriously affects

the fairness, integrity, or public reputation of judicial proceedings." Ibid. (quoting United States v. Young, 470 U.S. 1, 15 (1985)) (brackets and internal quotation marks omitted).

The plain-error inquiry "is meant to be applied on a case-specific and fact-intensive basis," Puckett, 556 U.S. at 142, and "the defendant has the burden of establishing each of the four requirements for plain-error relief," Greer, 593 U.S. at 508. "Meeting all four" requirements "is difficult, 'as it should be.'" Puckett, 556 U.S. at 135 (citation omitted). "This Court has several times declined to resolve whether 'structural' errors * * * automatically satisfy the third prong of the plain-error test." Id. at 140. But the Court has twice recognized that structural errors do not automatically satisfy the fourth prong of plain-error review. See United States v. Cotton, 535 U.S. 625, 633-634 (2002); Johnson, 520 U.S. at 469-470.

b. The decision below is fully consistent with those principles. The court of appeals assumed that if an in-court hearing had been required before the district court could dismiss the identified individuals for cause, petitioners' public-trial rights "would have extended" to that hearing. Pet. App. 14 (citing Waller v. Georgia, 467 U.S. 39, 46-47 (1984), and United States v. Allen, 34 F.4th 789, 800-801 (9th Cir. 2022)); cf. Presley, 558 U.S. at 213 (explaining that "there are exceptions" to the "general rule" that voir dire must be open to the public). But the district court did not hold any such hearing. And, as the court of appeals

explained, "the Sixth Amendment right to a public trial" does not itself create any entitlement to an in-person hearing -- "so that the public can then attend it" -- on matters that a court may otherwise permissibly address without a hearing. Pet. App. 14.

Petitioners err in likening (Pet. 4-5) the jury-selection procedures in this case to the public-trial violation in Presley v. Georgia. There, the Court found such a violation where the trial court had actually excluded the public from an in-court voir dire, without sufficient consideration of reasonable alternatives. See 558 U.S. at 210-215. Here, in contrast, the voir dire process at petitioners' trial occurred "in the ordinary course" in open court. Pet. App. 9. Petitioners' public-trial claim therefore rests not on any actual courtroom closure, but rather on the antecedent proposition that the district court "should have held an in-court hearing on this subject," to which petitioners' right to a public trial would then have attached. Id. at 11 (emphasis omitted). Thus, contrary to petitioners' contention (Pet. 5), the court of appeals did not engage in any "end-run around Presley." Instead, to succeed on their public-trial claim, petitioners would be required to show (1) that the district court erred in acting without first holding an in-court hearing; and (2) that automatic reversal follows from such an error.

The first proposition was rejected by both lower courts, see Pet. App. 13-14, is fact-bound, and does not warrant this Court's review. See United States v. Johnston, 268 U.S. 220, 227 (1925)

("We do not grant a [writ of] certiorari to review evidence and discuss specific facts."); see also Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) ("[U]nder what we have called the 'two-court rule,' the policy [in Johnston] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.") (citing Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949)). And the second proposition was not addressed by the court below: its application of harmless-error analysis, rather than structural-error principles, was based on petitioners' claims that the jury-selection procedures constituted "a complete deprivation of the right to counsel with respect to a critical stage" of the proceedings and violated their "due process right to be heard," Pet. App. 15, 17, and relied on "unique features of this case," id. at 16; cf. United States v. Williams, 504 U.S. 36, 41 (1992) (reiterating this Court's "traditional rule * * * preclud[ing] a grant of certiorari * * * when the question presented was not pressed or passed upon below") (citation and internal quotation marks omitted).

Further review is especially unwarranted because petitioners did not preserve any timely objection to the district court's purported violation of their right to a public trial. In the court of appeals, the government contended that petitioners' active participation in the jury-selection procedures constituted an affirmative waiver of any objection to those procedures. See Gov't

C.A. Br. 24, 27. The court of appeals did not endorse that theory or resolve the case on waiver grounds. But at a minimum, petitioners' failure to object in district court would require that review of their public-trial claim be solely for plain error. See Fed. R. Crim. P. 52(b). And here, where "the record is clear that those particular prospective jurors who were released" on the basis of their questionnaire responses "would and should have been released in any event," Pet. App. 17 (brackets and citation omitted), petitioners cannot show any error that "seriously affects the fairness, integrity, or public reputation of judicial proceedings," Johnson, 520 U.S. at 467 (brackets and citation omitted).

The court of appeals emphasized, in support of its determination that any error was not "structural," that (1) the decisions in question (i.e., the district court's for-cause excusals) "involved the resolution of a carefully focused question based solely on a discrete paper record"; (2) petitioners had been given the opportunity to review all of the juror materials and present them to the court of appeals for its review; and (3) the court of appeals' review of those materials revealed beyond a reasonable doubt that none of the challenged excusals had been improper. Pet. App. 16. That aspect of the decision below was correct, highly fact-bound, and would preclude relief on plain-error review even if the error asserted here were structural.

c. Petitioners do not identify any decision of any court of appeals that takes a different view of the relevant legal principles. Much less do they identify any decision by another court of appeals reaching a different outcome on similar facts. Thus, particularly given the case-specific nature of the decision below, see Pet. App. 9, 16, the decision below does not warrant this Court's intervention.

2. Petitioners separately urge (Pet. i, 9-11) this Court to overrule its well-entrenched precedent recognizing that the Sixth Amendment's right to a jury trial reaches "crimes," but not petty offenses. The Court's precedent is correct and does not warrant reconsideration.

a. Section 2 of Article III of the Constitution provides that in federal court "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury." U.S. Const. Art. III, § 2, Cl. 3. And the Sixth Amendment provides criminal defendants with "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.

For more than a century, this Court has recognized that the right to a jury trial embodied in Article III and the Sixth Amendment reaches "crimes," but does not extend to petty offenses. See, e.g., Southern Union Co. v. United States, 567 U.S. 343, 350 (2012) (Sixth Amendment); Lewis v. United States, 518 U.S. 322, 325 (1996) (same); Blanton v. City of N. Las Vegas, 489 U.S. 538,

541 (1989) (same); Duncan v. Louisiana, 391 U.S. 145, 159 (1968) (same); District of Columbia v. Clawans, 300 U.S. 617, 624 (1937) (Article III and Sixth Amendment); Schick v. United States, 195 U.S. 65, 68-72 (1904) (same); Callan v. Wilson, 127 U.S. 540, 547-549, 557 (1888) (same).

Those decisions confirm that petitioners were not entitled to a jury trial for their misdemeanor offenses. In Lewis v. United States, the Court explained that "[t]o determine whether an offense is properly characterized as 'petty,'" courts must seek "'objective indications of the seriousness with which society regards the offense.'" 518 U.S. at 325-326 (quoting Frank v. United States, 395 U.S. 147, 148 (1969)); see Clawans, 300 U.S. at 628. The "most relevant" criterion for making that assessment is "the maximum penalty attached to the offense." Lewis, 518 U.S. at 326. And this Court has long followed the rule that "[a]n offense carrying a maximum prison term of six months or less is presumed petty, unless the legislature has authorized additional statutory penalties so severe as to indicate that the legislature considered the offense serious." Ibid.; see Blanton, 489 U.S. at 543; Codispoti v. Pennsylvania, 418 U.S. 506, 512 (1974).

In this Court, petitioners do not dispute that the misdemeanor violations at issue in this case are "petty offenses," as both lower courts correctly recognized, see Pet. App. 17. The violations, as charged, were punishable by a maximum term of imprisonment of six months and a maximum fine of $500. Id. at 19,

22-23; see 16 U.S.C. 460k-3 (authorizing the regulations at issue and stating that a violation of those regulations "shall be a misdemeanor with maximum penalties of imprisonment for not more than six months, or a fine of not more than $500, or both"). Indeed, those penalties are comparable to -- and in some respects less severe than -- the maximum penalties for the driving-under-the-influence offense at issue in Blanton v. City of North Las Vegas, which the Court found to be a petty offense. See 489 U.S. at 543-544 (state law authorized maximum penalty of imprisonment "not [to] exceed six months," along with "90-day license suspension," community service, and "possible $1,000 fine"). Petitioners were therefore not entitled to a jury trial on their misdemeanor charges.

b. Although petitioners no longer dispute that their jury-trial claim was correctly resolved under existing precedent, petitioners now contend (Pet. 9-11) that this Court should abandon that precedent and instead adopt a rule under which a defendant is entitled to a jury trial even for petty offenses. That contention lacks merit.

Petitioners assert (Pet. 9-10) that they are entitled to a jury trial for their petty offenses by the "clear text" and "plain meaning" of both Article III and the Sixth Amendment, which refer respectively to "all Crimes" and "all criminal prosecutions." U.S. Const. Art. III, § 2, Cl. 3; U.S. Const. Amend. VI. But this Court has repeatedly and correctly rejected that construction of those

terms. The constitutional text must be understood in light of the meaning of the relevant terms at the time of their adoption, as well as the common-law tradition that preceded and informed that public meaning. See Schick, 195 U.S. at 70. And, quoting Blackstone, this Court has observed that at the time of the Framing, "in common usage the word 'crimes' [wa]s made to denote such offenses as are of a deeper and more atrocious dye; while smaller faults and omissions of less consequence are comprised under the gentler name of 'mi[s]demeanors' only." Id. at 69-70 (quoting 4 William Blackstone, Commentaries on the Laws of England 5 (1769)). And the Court has repeatedly recognized that Article III used the word in that narrow sense. See id. at 70; see also Callan, 127 U.S. at 549 (concluding that Article III uses the term "crime" in its "limited sense" to refer to offenses "of a serious or atrocious character," and explaining that the Sixth Amendment does not "supplant" that limitation).

In addition, this Court has emphasized that omitting petty offenses from the scope of the jury-trial right was consistent with the established common-law practice at the time of the adoption of the Constitution. As the Court has explained, "[s]o-called petty offenses were tried without juries both in England and in the Colonies," and "[t]here is no substantial evidence that the Framers intended to depart from this established common-law practice." Duncan, 391 U.S. at 160; see Felix Frankfurter & Thomas G. Corcoran, Petty Federal Offenses and the Constitutional

Guaranty of Trial by Jury, 39 Harv. L. Rev. 917, 936 (1926) ("[A]ll the colonies * * * resorted to summary jurisdiction for minor offenses with full loyalty to their conception of the Englishman's right to trial by jury."). The same is true for early state court decisions interpreting analogous provisions in state constitutions. Several state constitutions expressly guaranteed a jury trial in all criminal "prosecutions," but, in light of their common-law roots, courts understood those guarantees, like those in the federal constitution, as not applying to petty offenses. See id. at 942-944, 954-965.[3]

Petitioners do not address those state constitutional provisions, the history of Article III, traditional English and colonial practices, or the common usage of "Crimes" described in

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[3] See, e.g., Md. Declaration of Rights Art. 19 (1776) ("all criminal prosecutions"); Pa. Declaration of Rights Art. IX (1776) ("all prosecutions for criminal offenses"); Va. Declaration of Rights § 8 (1776) ("all capital or criminal prosecutions"); Ex parte Marx, 9 S.E. 475, 478 (Va. 1889) (explaining that the state constitution "is not to be construed as extending any more than restricting the right of trial by jury as it existed at the time the constitution was adopted" and that "a great variety of petty offenses * * * were not only cognizable by a justice at the time our constitution was adopted, but for centuries before"); In re Glenn, 54 Md. 572, 602 (1880) ("[T]here has been no time since the earliest days of the colony that the summary jurisdiction by justices of the peace has not been exercised, in one form or another."); Byers v. Commonwealth, 42 Pa. 89, 94 (1862) (Strong, J.) ("Summary convictions for petty offences against statutes were always sustained, and they were never supposed to be in conflict with the common law right to a trial by jury."); cf. Goddard v. State, 12 Conn. 448, 455 (1838) ("[T]he [state] constitution never intended to take from single magistrates the power of trying petty offences, which has been so long exercised by them, to the great advantage of the public.").

Blackstone. Petitioners instead merely state (Pet. 10) that "[r]ecent scholarship debunks" the proposition that "something akin to the petty offense exception existed at common law." But petitioners' own sources confirm that "eighteenth-century legislatures in England and America specified that certain offenses could be tried by judges." Colleen P. Murphy, The Narrowing of the Entitlement to Criminal Jury Trial, 1997 Wis. L. Rev. 133, 137 (cited at Pet. 10); cf. Andrea Roth, The Lost Right to Jury Trial in "All" Criminal Prosecutions, 72 Duke L.J. 599, 651-661 (2022) (cited at Pet. 10) (same, but arguing that the Framers may have intended to "reject[]" existing practices). And petitioners' reliance (Pet. 11) on a concurring opinion in United States v. Lesh, 107 F.4th 1239 (10th Cir. 2024) -- which relies on the same or similar sources and arguments -- is similarly misplaced. See id. at 1253-1254 (Tymkovich, J., concurring).

In any event, petitioners' arguments sound at bottom in the contention that this Court's precedents were wrongly decided and thus run afoul of the bedrock principle of stare decisis. See, e.g., Kimble v. Marvel Entm't, LLC, 576 U.S. 446, 455 (2015) (describing stare decisis as a "'foundation stone of the rule of law'" and explaining that "an argument that [the Court] got something wrong" ordinarily cannot "justify scrapping settled precedent") (citation omitted). Petitioners do not claim that the petty-offense doctrine is unworkable, nor do they identify any other "special justification" for revisiting it. Haliburton Co.

v. Erica P. John Fund, Inc., 573 U.S. 258, 266 (2014) (quoting Dickerson v. United States, 530 U.S. 428, 443 (2000)). Petitioners also fail to address the dramatic consequences of their proposal for States, which are obliged by the Fourteenth Amendment to provide a jury trial in criminal cases to the same extent as required of the federal government under Article III and the Sixth Amendment. See Duncan, 391 U.S. at 149. The Court should decline petitioners' request to take such a destabilizing step.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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