No. 24-5594

IN THE
Supreme Court of the United States

SELDRICK CARPENTER,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

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

BRIEF OF CRIMINAL LAW SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are law professors who teach and research criminal law and procedure. They have no personal interests in this case. Their sole interest is in the protection and preservation of the constitutional rights of criminal defendants.[2] Their names are:

- Evan Bernick, Assistant Professor of Law at Northern Illinois University College of Law.
- Brittany Deitch, Assistant Professor of Law at Capital University Law School.
- Ingrid Eagly, Professor of Law at UCLA School of Law.
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[1] Counsel for all parties have been notified of *amici*'s intent to file this brief. No party authored this brief in whole or in part, and no one other than *amici* and their counsel have paid for the preparation or submission of this brief.

[2] *Amici* submit this brief in their individual capacities only, not on behalf of the institutions with which they are affiliated.

- Aliza Hochman Bloom, Assistant Professor of Law at Northeastern University School of Law.

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- Ira Robbins, Distinguished Professor of Law and Barnard T. Welsh Scholar at American University Washington College of Law.

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SUMMARY OF ARGUMENT

A district court judge found that Seldrick Carpenter violated his supervised release, revoked his supervision, and sentenced him to 30 months of imprisonment. On appeal, the Seventh Circuit rejected Mr. Carpenter's argument that the proceedings violated his right to a jury trial. This brief of criminal law scholars as *amici curiae* in support of his petition for a writ of certiorari explains why the original understanding of the jury right requires a jury trial for revocation of supervised release.

This Court interprets the Fifth and Sixth Amendment jury right based on "the historical role of the jury at common law … in the colonies and during the founding era." *Southern Union Co. v. United States*, 567 U.S. 343, 353 (2012). In *United States v. Haymond*, 139 S. Ct. 2369 (2019), the Court split 4-1-4 on whether a five-year mandatory-minimum sentence imposed upon revocation of supervised release violated the jury right. In his dissenting opinion, Justice Alito identified "forfeiture" of a "recognizance" as the closest Founding Era equivalent to revocation of supervised release, but said he could find "no evidence" that forfeiture proceedings required a jury trial. *Id.* at 2396.

Justice Alito was half-right. When the Constitution was ratified, forfeiture of a recognizance *was* the closest equivalent to revocation of supervised release. *See* Jacob Schuman, *Revocation at the Founding*, 122 MICH. L. REV. 1381, 1407-1417 (2024). However, there is also abundant evidence that

recognizance forfeitures at the Founding *did* require a jury trial. *See id*. at 1417-1426.

This jury requirement only disappeared during the 19th century due to the development of parole and probation, which changed the structure of community supervision from an additional penalty to a withheld punishment. Because supervised release is structured as an additional penalty, not a withheld punishment, the common law at the time the Constitution was ratified would require a jury trial for revocation of supervised release, even if not for revocation of parole or probation. This Court should grant Mr. Carpenter's petition and hold that revoking supervised release based on judge-found facts violates the original understanding of the right to a jury trial.

ARGUMENT

I. In *United States v. Haymond*, Justice Alito correctly identified forfeiture of a recognizance as the Founding Era equivalent to revocation of supervised release.

For most of the 20th century, the federal government used a system of community supervision called "parole." *Tapia v. United States*, 564 U.S. 319, 323-25 (2011). Judges sentenced convicted defendants to imprisonment, and after they had served one-third of their sentences, they could apply to a parole board for early release. *See id.* If a defendant violated a condition of parole, then the board could "revoke" their release and send them back to prison to serve the rest of their original sentence. Fiona Doherty, *Indeterminate Sentencing Returns: The Invention of Supervised Release*, 88 N.Y.U. L. REV. 958, 985 (2013).

In 1972, this Court held that parole revocation was "not part of a criminal prosecution" and therefore not subject to the "full panoply of rights," including the right to a jury trial. *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972); *see also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same for probation). Balancing the interests at stake, the Court concluded that revoking parole required only an "informal" hearing before a "neutral" arbiter "structured to assure that the finding of a ... violation will be based on verified facts." *Morrissey*, 408 U.S. at 481-89; *see also Gagnon*, 411 U.S. at 786-89 (same for probation).

In the Sentencing Reform Act of 1984, Congress abolished parole and replaced it with a new form of community supervision imposed by the judge at sentencing called "supervised release." 18 U.S.C. § 3583. Now, defendants must serve their prison terms in full, followed by separate terms of supervised release. *See* 18 U.S.C. §§ 3624(a) & 3583(a). If a defendant violates a condition of supervised release, then the judge can "revoke" their supervision and sentence them to a new term of imprisonment. 18 U.S.C. § 3583(e)(3).

The replacement of parole with supervised release marked a "significant break with prior practice." *Johnson v. United States*, 529 U.S. 694, 724-25 (2000) (Scalia, J., dissenting). "Unlike parole," supervised release "does not replace a portion of the sentence of imprisonment, but rather is an order of supervision in addition to any term of imprisonment imposed by the court." U.S.S.G. Ch. 7, Pt. A(2)(b). Parole "shorten[ed] prison time, substituting restrictions on the freed prisoner," whereas supervised release "does not shorten prison time; instead it imposes restrictions on the prisoner to take effect upon his release from prison." *United States v. Thompson*, 777 F.3d 368, 372 (7th Cir. 2015); *see also United States v. Reyes*, 283 F.3d 446, 461 (2d. Cir. 2002) (same difference between probation and supervised release).

Over the next 35 years, this Court issued no opinions explaining how the right to a jury trial applied to revocation of supervised release. Meanwhile, the Court's approach to constitutional interpretation changed dramatically, with "an increasing enthusiasm for originalist methodology in

the field of criminal procedure and with respect to the jury trial in particular." Joan L. Larsen, *Ancient Juries and Modern Judges: Originalism's Uneasy Relationship with the Jury*, 71 OHIO ST. L.J. 959, 959 (2010). Rather than balance the interests at stake, the Court now determines "the scope of the constitutional jury right … by the historical role of the jury at common law," focusing on the "historical record" and legal practices "in the colonies and during the founding era." *Southern Union Co.*, 567 U.S. at 353 (citations omitted).

Finally, in *United States v. Haymond*, 139 S. Ct. 2369 (2019), this Court issued its first decision on how the jury right applied to revocation of supervised release. *Haymond* involved a challenge to 18 U.S.C. § 3583(k), which imposed a five-year mandatory-minimum revocation sentence on sex offenders who violated their supervised release by committing another sex offense. The defendant argued that § 3583(k) violated his Fifth and Sixth Amendment right to a jury trial under *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) and *Alleyne v. United States*, 570 U.S. 99, 112-14 (2013), which required the government to prove any fact triggering a mandatory-minimum sentence to a jury.

This Court split 4-1-4 on the result, striking down § 3583(k) while leaving application of the jury right unclear. In a four-vote dissenting opinion, Justice Alito correctly identified "forfeiture" of a "recognizance" as the closest Founding Era equivalent to revocation of supervised release, but inaccurately asserted that there was "no evidence" that juries were required in recognizance forfeitures. *Haymond*, 139 S. Ct. at 2396.

A. This Court split 4-1-4 on how to apply the jury right to revocation of supervised release.

In *Haymond*, Justice Gorsuch wrote a four-vote plurality opinion concluding that § 3583(k) violated the jury right under *Apprendi* and *Alleyne* because it triggered a five-year mandatory-minimum sentence based on facts found by a judge, not a jury. *See id.* at 2375-76. Although revocation of parole and probation did not require a jury, he emphasized the "structural difference" between those forms of supervision and supervised release. *Id.* at 2382. Parole and probation both "replace[d] a portion" of a prison term, he explained, and therefore revoking them exposed the defendant "only to the *remaining* prison term authorized for his crime of conviction, as found by a unanimous jury." *Id.* Supervised release, by contrast, ran "*after* the completion" of a prison sentence, and thus § 3583(k) could expose a defendant "to an additional mandatory minimum prison term well *beyond* that authorized by the jury's verdict." *Id.*

Justice Breyer penned a solo concurrence joining the plurality in invalidating § 3583(k) but declining to apply *Apprendi* and *Alleyne*. *See id.* at 2385-86. Instead, he found that the mandatory minimum was unconstitutional because it applied to a discrete set of federal criminal offenses, took away the judge's discretion, and imposed a five-year minimum prison sentence, which led him to "think it is less like ordinary revocation and more like punishment for a new offense, to which the jury right would typically attach." *Id* at 2386.

Finally, Justice Alito authored a four-vote dissent criticizing the plurality for "mak[ing] no real effort to show that the Sixth Amendment was originally understood to require a jury trial in a proceeding like a supervised-release revocation proceeding." *Id.* at 2392. He claimed that there was "no support for the proposition that the jury trial right was extended to anything like a supervised-release or parole revocation proceeding at the time of the adoption of the Sixth Amendment," and concluded that the jury right did not apply to revocation of supervised release. *Id.* at 2396, 2398.

B. Justice Alito correctly identified forfeiture of a recognizance as the Founding Era equivalent to revocation of supervised release.

To determine whether the original understanding of the jury right required a jury trial for revocation of supervised release, Justice Alito searched for the nearest "historic analogues." *Id.* He settled on a legal procedure from the Founding Era called "forfeiture" of a "recognizance," which he said was similar to modern-day revocation proceedings:

> Prior to and at the time of the adoption of the Sixth Amendment, convicted criminals were often released on bonds and recognizances that made their continued liberty contingent on good behavior. If a prisoner released on such a bond did

> not exhibit good behavior, the courts had discretion to forfeit the bond (a loss of property) or to turn the individual over to the sheriff (a loss of liberty) until new conditions could be arranged.

Id.[3] However, Justice Alito could find "no evidence that there was a right to a jury trial at such proceedings," and noted that "the plurality does not even attempt to prove otherwise." *Id.*

Justice Alito was correct to identify forfeiture of a recognizance as the Founding Era equivalent to revocation of supervised release (although, as explained in Section II, he was wrong to claim that forfeiture proceedings did not require a jury). Like supervised release, the recognizance was (1) a term of conditional liberty in the community, (2) imposed as part of the sentence for a crime, (3) providing supervision and reporting on the defendant's behavior, and (4) with violations punishable by imprisonment. These similarities make forfeiting a recognizance the closest Founding Era analogue to revoking supervised release. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2133 (2022) ("[A]nalogical reasoning requires only … a

[3] Justice Alito also suggested "corporal punishment of prisoners" as a possible revocation analogue. *Haymond*, 139 S. Ct. at 2396-97 (Alito, J., dissenting). However, this comparison overlooked the "tradition of summary process in prison," which does not apply to "persons out in the world who retain the core attributes of liberty." *Id.* at 2383.

well-established and representative historical *analogue*, not a historical *twin*.").

First, like supervised release, the recognizance was a term of conditional liberty in the community. Sir William Blackstone defined the recognizance as an "obligation to the king, entered on record, and taken in some court or by some judicial officer; whereby the parties acknowledge themselves to be indebted to the crown in the sum required," with "condition to be void and of none effect, if the party shall appear in court on such a day ... keep the peace ... [or] for the good behaviour." 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 249-50 (1st ed. 1769). In other words, a judge taking recognizance required the defendant to promise on the record to follow conditions such as appearing in court, keeping the peace, or maintaining good behavior, and if the defendant violated that promise, then the government could sue to forfeit the bond. *See* Schuman, *supra*, at 1407-09.

Second, like supervised release, the recognizance was often imposed as part of the sentence for a criminal conviction. According to Blackstone, common-law judges had inherent power to take recognizances as "part of the penalty inflicted upon … gross misdemeanors." 4 BLACKSTONE, *supra*, at 248. American courts similarly held that trial judges could take a recognizance for good behavior following conviction on any "indictable offence, in which case it forms part of the judgment of the court." *Commonwealth v. Davies*, 1 Binn. 97, 98 n.a (Pa. 1804). Legal records from the Founding Era show that judges frequently took recognizances as part of

the punishment for various crimes. *See* Schuman, *supra*, at 1409-12.

Third, like supervised release, the recognizance provided supervision and reporting on the defendant's behavior. When taking a defendant's recognizance, the judge could require them to find "sureties," third parties who would promise to forfeit their own money if the defendant violated a condition. *Id.* at 1412. This financial stake in the defendant's compliance gave sureties an incentive to monitor their conduct and enforce the conditions. *Id.* at 1413. A surety even had the power to "arrest" the defendant "upon the recognizance and surrender him to the court." *Reese v. United States*, 76 U.S. 13, 21 (1869); *see also Nicolls v. Ingersoll*, 7 Johns. 145, 156 (N.Y. 1810) (surety "may break open the outer door of the principal, if necessary, in order to arrest him").

Finally, like supervised release, violations of a recognizance were punishable by imprisonment. If a defendant violated a condition and failed to pay, then the court could imprison them until they complied. *See* Schuman, *supra*, at 1415-16. Even if a defendant did pay, the court could use the violation as grounds for taking another recognizance, for even more money, and then imprison the defendant for "want of sureties." 4 BLACKSTONE, *supra*, at 253. Judges at the time "did not hesitate to leverage their power to convert recognizance forfeitures into prison sentences."[4] Schuman, *supra*, at 1416. Although

[4] This Court recently applied similar logic in *United States v. Rahimi*, 144 S. Ct. 1889 (2024), which held that Founding Era surety laws were the "appropriate analogue" to modern-day restrictions on gun possession by individuals subject to domestic-violence restraining orders. *Id.* at 1902. Although

recognizance forfeitures were formally considered civil matters, courts also held they were "criminal" for jurisdictional purposes, describing them as both "prosecution[s]" and "punishment." *Respublica v. Cobbett*, 3 U.S. 467, 475-76 (Penn. 1798). Forfeiting a recognizance was the closest Founding Era analogue to revoking supervised release.

II. Because forfeiture of a recognizance required a jury trial, the original understanding of the jury right also requires a jury trial for revocation of supervised release.

Although Justice Alito correctly identified forfeiture of a recognizance as the Founding Era equivalent to revocation of supervised release, he inaccurately asserted that there was "no evidence" for the use of juries in such proceedings. *Haymond*, 139 S. Ct. at 2396. In fact, there is abundant evidence that the common law *did* require a jury trial in recognizance forfeitures to protect defendants against unjustified deprivations of property or liberty.

This jury requirement only disappeared during the 19th century due to the invention of parole and probation, which changed the structure of community supervision from an additional penalty to a withheld

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violating a surety was only punishable by a financial loss, whereas violating modern-day gun laws is punishable by imprisonment, the Court concluded that the two systems were "relevantly similar," because another set of colonial laws, known as "affray laws," provided "a mechanism for punishing those who had menaced others with firearms" through "imprisonment." *Id.* at 1900-01; *see also* Schuman, *supra*, at 1415 n.260.

punishment. Because supervised release is structured as an additional penalty, not a withheld punishment, the original understanding of the jury right requires a jury trial for revocation of supervised release, even if not for revocation of parole or probation.

A. When the Constitution was ratified, forfeiture of a recognizance required a jury trial.

During the Founding Era, the government could initiate a recognizance forfeiture through either a "writ of *scire facias*" or an action of "debt." *Commonwealth v. M'Neill*, 36 Mass. 127, 138 (1837). Both of these proceedings required a jury trial to resolve factual disputes. *See* JOHN MERRIFIELD, THE LAW OF ATTORNIES, WITH PRACTICAL DIRECTIONS IN ACTIONS AND PROCEEDINGS BY AND AGAINST THEM 494–96 (1830); CHARLES PETERSDORFF, PRACTICAL TREATISE ON THE LAW OF BAIL, IN CIVIL AND CRIMINAL PROCEEDINGS 385 (1824); *see also* JULIUS GOEBEL JR. & T. RAYMOND NAUGHTON, LAW ENFORCEMENT IN COLONIAL NEW YORK: A STUDY IN CRIMINAL PROCEDURE (1664-1776) 533 (1944) ("In the case of a forfeited recognizance to keep the peace … [t]he issue of breach was tried by a jury.").

The requirement of a forfeiture jury was ancient. English records from as far back as the 15th century describe "jurors" rendering "verdict[s]" in recognizance forfeitures. *Record Detail #1494.073*, LEGAL HISTORY: THE YEAR BOOKS, BOSTON UNIVERSITY SCHOOL OF LAW, https://www.bu.edu/phpbin/lawyearbooks/display.php?id=21576. In 1725 in Virginia's King George

County Court, a "suit [was] brought by our Sovereign Lord the King against Thomas Monteith for a breach of his Recognizance for the Peace and good Behaviour," whereupon "a Jury was impanelled and sworne to try the matter" and "return'd the following verdict … Not Guilty." VIRGINIA COUNTY COURT RECORDS, ORDER BOOK ABSTRACTS OF KING GEORGE COUNTY, VIRGINIA 1723-1725, 97 (Ruth Sparacio & Sam Sparacio eds., 1992). Numerous cases from the late 17th and early 18th centuries expressly refer to the use of juries in forfeiture proceedings. *See, e.g., Dillingham v. United States*, 7 F. Cas. 708, 708 (C.C.D. Pa. 1810) ("It was an action of debt, brought there upon a recognisance … The jury found for the United States, and judgment was given on the verdict."); *Cobbett*, 3 U.S. at 475 ("[A] breach of his recognizance and a prosecution for it [is] … to be tried by a jury."); *see also* Schuman, *supra*, at 1418-22 & n. 283 (collecting sources).

The reason the common law required a jury trial in recognizance forfeitures was to protect the defendant against an unjustified loss of property or liberty. As the Supreme Court of Pennsylvania explained in 1800, a defendant's "guilt" had to be "ascertained by an impartial trial of his peers," because "the jury … ha[d] the constitutional right of determining the law and the facts, under the direction of the court," whether there were "good causes of forfeiture of a recognizance to keep the peace or of good behaviour." *Respublica v. Cobbet*, 3 Yeates 93, 99-101. A 1795 treatise emphasized the importance of this determination: "[H]e that standeth bound to keep the peace, if he hath broken or forfeited his recognizance by breach of the peace, may be bound to the peace … anew, and by better sureties," but "this

must not be done until the party be convicted of the breach of the peace upon his recognizance; for before his conviction it resteth indifferent whether the recognizance be forfeited or no," and "after that he is thereof convicted ... the recognizance is utterly determined; and then he is to be compelled to find new surety, or else to be sent to the gaol [jail]." THOMAS WALTER WILLIAMS, WHOLE LAW RELATIVE TO THE DUTY AND OFFICE OF A JUSTICE OF THE PEACE 782–83 (1795).

The sole exception to the forfeiture-jury requirement was for violations committed inside the courtroom and memorialized on the record, which could be found by a judge rather than a jury.[5] For example, if a defendant violated a recognizance by failing to appear in court and their default was recorded, then the judge could find them in violation based on that record. *See* Schuman, *supra*, at 1422-26. However, any forfeitures relying on proof by extrinsic evidence, such as breaches of the peace or other misconduct outside the courtroom, required a jury trial. *See id.* As the Supreme Court explained in an 1869 opinion, citing multiple Founding Era authorities, a recognizance forfeiture based on "a supposed record of the court in which the plea is made is tried by the court, because it is an issue to be determined by the inspection of its own records," but a forfeiture based on "the record of a foreign court …

[5] Although Justice Alito suggested that the original understanding of the jury right only protected defendants "accused" of crimes, not "convicted" of them, *Haymond*, 139 S.Ct. at 2392 (Alito, J., dissenting), no Founding Era legal authority drew this distinction with respect to recognizance forfeitures, *see, e.g., Brumme v. State*, 39 Tex. 538, 539, 543-44 (1873) (forfeiture jury required for convicted defendant).

is to be tried by a jury, because the existence of the record to be inspected must first be made by proof, which it may be necessary to submit to a jury." *Basset v. United States*, 76 U.S. 38, 39-41 & n.* (citations omitted).

B. The original understanding of the jury right also requires a jury trial for revocation of supervised release, even if not for revocation of parole or probation.

The reason the forfeiture jury disappeared during the 19th century was due to the invention of parole and probation, which changed the structure of community supervision from an additional penalty to a withheld punishment. Because parole and probation both withheld punishment, courts concluded that revoking them merely reinstated a penalty that could have been imposed earlier, and therefore did not require a jury trial. Supervised release, however, is an additional penalty, not a withheld punishment. Therefore, revocation of supervised release inflicts a new deprivation of liberty subject to the original understanding of the jury right.

During the 1830s, American judges began to experiment with new forms of community supervision by delaying defendants' sentencing hearings on condition of their good behavior, a practice referred to as putting a case "on file." Fiona Doherty, *Testing Periods and Outcome Determination in Criminal Cases*, 103 MINN. L. REV. 1700, 1707-08 (2019). If a defendant violated a condition of an "on file" case, then the judge could reconvene the delayed sentencing hearing and impose the original punishment. *See id.* Putting cases "on file" marked a major break from the

recognizance. Rather than inflicting a "legal penalty," courts were now "declin[ing] to enforce the law." *Ex Parte United States*, 242 U.S. 27, 45 (1916).

This new form of supervision also had important implications for the jury requirement. Because the defendant's sentencing hearing was "delayed from tenderness and humanity," and "not because it had ceased to be the right of the government to claim the judgment," courts at the time concluded that punishing violations of "on file" cases did not require the "verdict of the jury." PETER OXENBRIDGE THACHER, REPORTS OF CRIMINAL CASES, TRIED IN THE MUNICIPAL COURT OF THE CITY OF BOSTON, BEFORE PETER OXENBRIDGE THACHER 269-70 (1845). In other words, by punishing violations, the government was not imposing a new deprivation of liberty subject to the jury right, but simply resuming a penalty that could have been imposed earlier. *See Sylvester v. State*, 20 A. 954, 954-55 (N.H. 1889) (defendant challenging resumption of case put "on file" was "was no more entitled to . . . [a] jury trial, than he would have been on a denial of his motion for a temporary stay").

During the late 19th and early 20th centuries, states and the federal government formalized the practice of putting cases "on file" by enacting parole and probation statutes that officially authorized sentences of community supervision in lieu of imprisonment. *See* Schuman, *supra*, at 1429-30. Just like "on file" cases, courts also concluded that parole and probation withheld a punishment that could have been "imposed previously," and therefore that reinstating that punishment through a revocation hearing did not require a jury trial. *Gagnon*, 411 U.S.

at 782 n.3. As the Supreme Court explained, granting parole or probation involved a "risk that [the defendant] will not be able to live in society without committing additional antisocial acts," which gave the government "an overwhelming interest in being able to return [them] to imprisonment without the burden of a new adversary criminal trial." *Morrissey*, 408 U.S. at 480 & 483.

This explanation, however, would not apply to revocation of supervised release. Supervised release does not withhold punishment, but rather follows full service of a prison term, making it a legal penalty like the recognizance, not a delayed punishment or a risk like parole and probation. Therefore, a judge revoking supervised release "is not reimposing the term of imprisonment from which she previously granted a reprieve. Instead, she is imposing a *new* term of imprisonment." *United States v. Peguero*, 34 F.4th 143, 173 (2d Cir. 2022) (Underhill, J., dissenting); *see also United States v. Ka*, 982 F.3d 219, 228 (4th Cir. 2020) (Gregory, J., dissenting) ("[S]upervised release revocation proceedings – unlike revocations of parole or probation – consider the imposition of *new* terms of incarceration.").

As Justice Gorsuch observed in *Haymond,* this "structural difference bears constitutional consequences" grounded in the original understanding of the jury right. 139 S. Ct. at 2382. At the time the Constitution was ratified, the common law required a jury trial for recognizance forfeitures because they resulted in a "loss of liberty" or "loss of property." *Id.* at 2398 (Alito, J., dissenting). During the 19th and 20th centuries, judges concluded that revoking parole and probation did not require a jury

because they reinstated the "remaining prison term authorized by statute for [the] original crime of conviction." *Id.* at 2382. Revoking supervised release, like forfeiting a recognizance, inflicts a "new and additional prison sentence." *Id.* at 2374. As a result, the original understanding of the jury right requires a jury trial for revocation of supervised release, even if not for revocation of parole or probation.[6] *See* Schuman, *supra*, at 1430-1439.

[6] States use different names for the various forms of community supervision. *See, e.g., State v. Schwartz*, 628 N.W.2d 134, 139 (Ct. App. Minn. 2001) (describing supervision upon early release from prison as "supervised release," and supervision to follow prison as "conditional release"). What matters for the constitutional analysis, however, is the structure of the supervision, not the label. *Cf. Haymond*, 139 S. Ct. at 2379 ("Our precedents … have repeatedly rejected efforts to dodge the demands of the Fifth and Sixth Amendments by the simple expedient of relabeling.").

CONCLUSION

This Court should grant Mr. Carpenter's petition for a writ of certiorari and hold that revoking supervised release based on judge-found facts violates the original understanding of the right to a jury trial.

Respectfully submitted,

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September 24, 2024