No. 24-5594

IN THE SUPREME COURT OF THE UNITED STATES

SELDRICK CARPENTER, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court was required to convene a jury trial as a prerequisite for the revocation of petitioner's supervised release pursuant to 18 U.S.C. 3583(e)(3).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 104 F.4th 655. The order of the district court (D. Ct. Doc. 52 (Nov. 28, 2023)) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 17, 2024. The petition for a writ of certiorari was filed on September 16, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Central District of Illinois, petitioner was convicted of distributing fentanyl, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Judgment 1. In September 2019, the district court sentenced him to 37 months of imprisonment, to be followed by six years of supervised release. Judgment 2-3. In November 2023, the court revoked petitioner's supervised release and imposed a 30-month term of imprisonment. Revocation Judgment 3. The court of appeals affirmed. Pet. App. 1a-14a.

1. In 2017 and 2018, petitioner trafficked fentanyl and heroin in Peoria, Illinois. Presentence Investigation Report (PSR) ¶¶ 6-20. On several occasions, he sold drugs to a confidential informant. PSR ¶¶ 8-14. When law-enforcement officers arrested petitioner and showed him photos of the transactions, he told them, "[Y]ou got me." PSR ¶ 19.

A federal grand jury in the Central District of Illinois returned an indictment charging petitioner with two counts of distributing fentanyl and two counts of distributing heroin and fentanyl, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Indictment 1-3. Petitioner pleaded guilty to one count of distributing fentanyl in exchange for the government dismissing the other three counts. Plea Agreement 2, 10. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties agreed that

the court should impose a sentence of 37 months of imprisonment. Plea Agreement 2, 10.

The district court accepted the plea agreement and sentenced petitioner to 37 months of imprisonment, to be followed by six years of supervised release. Judgment 2-3. The conditions of supervised release included not committing another crime and allowing a probation officer to make home visits. Judgment 3. Petitioner did not appeal.

2. Petitioner began serving his term of supervised release on September 8, 2020. 11/2/23 Revocation Tr. (Tr.) 73. After petitioner failed to cooperate during two separate home visits with a probation officer, see Tr. 77-81, the district court modified the conditions of petitioner's supervision to require that he successfully complete a cognitive-based therapy program, D. Ct. Doc. 22, at 1 (Dec. 6, 2021). After petitioner again refused a home visit from a probation officer in April 2023, Tr. 76-77, the Probation Office filed a petition to revoke petitioner's supervised release, citing his violation of the condition that required him to allow home visits. D. Ct. Doc. 27, at 2 (Apr. 28, 2023). The court released petitioner on bond and set a date for a final revocation hearing. 18-cr-10009 Docket entry (May 15, 2023).

In the meantime, petitioner was expelled from the required therapy program for excessive absences after completing less than half the program. Tr. 83-84. The Probation Office filed a

supplemental petition to revoke supervised release, citing petitioner's violation of the condition requiring him to successfully complete the treatment. D. Ct. Doc. 33, at 2 (June 8, 2023).

Petitioner also committed new criminal offenses while on bond. In June 2023, he set fire to a car parked in a driveway across the street from his house, destroying that car and damaging another one. Tr. 8-21, 28, 84-91. When petitioner learned that a video of him setting the fire had been obtained from an adjacent carwash, he threatened carwash employees that if they turned videos of his home over to the police, he would kill them. Tr. 30-38. That threat was also captured on video. Gov't Ex. 2, Tr. 91. The Probation Office filed another supplemental petition to revoke petitioner's supervised release, stating that he violated conditions of supervision by committing the offenses of criminal damage to property, arson, and intimidation. D. Ct. Doc. 37, at 2 (Aug. 1, 2023).

Petitioner surrendered his bond; while awaiting the final revocation hearing he was involved in a physical altercation with another inmate, where he suffered an injury to his face and the other inmate lost part of his ear. Tr. 92-99. The Probation Office filed an additional supplemental petition to revoke supervised release, alleging an aggravated battery. D. Ct. Doc. 42, at 2 (Oct. 6, 2023).

3. Before the supervised-release revocation hearing, petitioner filed a motion for a jury trial. He relied on the Fifth and Sixth Amendments of the U.S. Constitution in his motion, and on Article III in his reply brief. D. Ct. Doc. 44, at 1-9 (Oct. 12, 2023); D. Ct. Doc. 47 (Oct. 31, 2023). The district court denied the motion at the outset of the hearing. See Tr. 7. ("[I]t's clear that there's no entitlement to a jury trial for supervised release issues."). At the end of the hearing, the court determined that petitioner willfully refused to permit a home visit and failed to complete the required therapy, as alleged in the first two revocation petitions. Tr. 120-122. The court also determined that petitioner committed arson and criminal damage to property, as alleged in the third petition. Tr. 130-132. But the court declined to hold petitioner responsible for the jail altercation alleged in the fourth petition, due to uncertainty about how it started. Tr. 132.

After making those determinations, the district court indicated that it wanted to make a further record on the Article III argument that petitioner had raised in his reply brief. Tr. 133-135. The court later denied petitioner's jury-trial motion in a written order. D. Ct. Doc. 52 (Nov. 28, 2023). The court rejected petitioner's argument that Article III's statement that "[t]he trial of all crimes * * * shall be by jury" requires a jury trial for revocation proceedings. Id. at 4; see id. at 4-6 (citation omitted). It explained that the supervised-release

system under 18 U.S.C. 3583, including revocation and potential reimprisonment for a violation, is typically understood as part of the penalty for the initial offense. Id. at 5 (citing United States v. Haymond, 588 U.S. 634, 658 (2019)).

The district court revoked petitioner's supervised release and imposed a revocation term of 30 months of imprisonment. Revocation Judgment 3.

4. The court of appeals affirmed. Pet. App. 1a-14a. The court rejected petitioner's effort to "leverage" a recent law-review article "purporting" to show practices in the Founding Era to argue that his revocation of supervised release is a "criminal prosecution" requiring a jury trial under the Sixth Amendment. Id. at 3a. The court observed that petitioner's Sixth Amendment argument "collides with thirty years of contrary precedent" in the circuit. Id. at 4a (citing cases). And the court disagreed with petitioner's argument that the prior circuit precedent was undermined by United States v. Haymond, supra.

Haymond involved a challenge to 18 U.S.C. 3583(k), which applies only to defendants required to register under the Sex Offender Registration and Notification Act, 34 U.S. 20901 et seq., and requires the district court to impose a sentence of "not less than 5 years" if the defendant commits an enumerated sex crime while on supervised release. See 588 U.S. at 639 n.2 (plurality opinion). Joining all other courts of appeals to consider the scope of that divided opinion, the court below recognized that

Justice Breyer's concurring opinion in Haymond provides the controlling precedent. Pet. App. 9a (citing cases).

The court of appeals then emphasized that Justice Breyer's concurrence relied on several distinct characteristics of revocation under Section 3583(k) -- including its mandatory nature -- that made Section 3583(k) "less like ordinary revocation" of supervised release and more like criminal punishment requiring a jury trial under the Sixth Amendment. Pet. App. 9a (quoting Haymond, 588 U.S. at 636 (Breyer, J., concurring in the judgment) (emphasis omitted)). And the court observed that petitioner's revocation proceeding under Section 3583(e) was "precisely the kind of 'ordinary revocation' that Justice Breyer took care to explain falls outside the scope of the Sixth Amendment." Ibid.

The court of appeals also rejected petitioner's argument that he was alternatively entitled to a jury trial under Article III, which provides that "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury." U.S. Const. Art. III, § 2, Cl. 3. It found "no footing in the history of either the Sixth Amendment or Article III" for petitioner's view that Article III's jury guarantee is "independent from and broader than" the right contained in the Sixth Amendment. Pet. App. 11a. Instead, after tracing the history of the two constitutional provisions, the court determined that the jury trial guarantees in Sixth Amendment and Article III are "identical in scope," such that "a proceeding that

does not trigger the Sixth Amendment cannot independently trigger Article III, § 2." Id. at 13a.

ARGUMENT

Petitioner contends (Pet. 17-32) that the district court was required to convene a jury trial as a prerequisite for the revocation of petitioner's supervised release pursuant to 18 U.S.C. 3583(e)(3). The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. No further review is warranted.*

1. Petitioner claims that the Sixth Amendment entitles him to a jury trial for the revocation of his supervised release. Pet. 17-28. That contention does not warrant this Court's review.

a. The Sixth Amendment of the U.S. Constitution provides that 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." By its terms, the Sixth Amendment jury-trial right does not apply in every court proceeding, only in "criminal prosecutions."

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* Another pending petition for a writ of certiorari raises a similar Sixth Amendment challenge to the revocation of supervised release under 18 U.S.C. 3583(e)(3). See Smith v. United States, No. 24-5608 (filed Sept. 16, 2024). Other pending petitions raise a Sixth Amendment challenge to the revocation of supervised release under 18 U.S.C. 3583(g). See Sevier v. United States, No. 24-5679 (filed Sept. 27, 2024); Stradford v. United States, No. 24-5943 (filed Nov. 6, 2024); Reyes v. United States, No. 24-5944 (filed Nov. 5, 2024).

Accordingly, in Morrissey v. Brewer, 408 U.S. 471 (1972), this Court recognized that the Sixth Amendment does not extend to a proceeding concerning "the revocation of parole," because it "is not part of a criminal prosecution." Id. at 480. Likewise, in Gagnon v. Scarpelli, 411 U.S. 778 (1973), the Court reached an identical conclusion with respect to probation revocation, explaining that probation revocation, "like parole revocation, is not a stage of a criminal prosecution." Id. at 782.

In United States v. Haymond, 588 U.S. 634 (2019), this Court considered the Sixth Amendment's application to 18 U.S.C. 3583(k), a supervised-release provision that applies to certain sex offenders. Under Section 3583(k), if the sentencing court finds by a preponderance of the evidence that such a defendant has committed certain specified sex offenses while on supervised release, the court must revoke supervised release and order reimprisonment for a minimum of five years. 18 U.S.C. 3583(k).

Writing for a four-Justice plurality, Justice Gorsuch concluded that Section 3583(k) violates the Sixth Amendment "as applied in cases" that "expose a defendant to an additional mandatory minimum prison term well beyond that authorized by the jury's verdict." Haymond, 588 U.S. at 652 (emphasis omitted) (plurality opinion). The plurality acknowledged that "supervised release punishments arise from and are '[t]reat[ed] * * * as part of the penalty for the initial offense'"; that a jury need "not * * * find every fact in a revocation hearing that may

affect the judge's exercise of discretion with the range of punishments authorized by the jury's verdict." Id. at 648 (emphasis added; citation omitted; brackets in original). But the plurality concluded that, under Alleyne v. United States, 570 U.S. 99 (2013), which addressed the application of the Sixth Amendment to statutory-minimum sentences, "a jury must find any facts that trigger a new mandatory minimum prison term." Ibid.; see, e.g., Haymond, 588 U.S. at 654.

Justice Breyer concurred in the judgment, in an opinion that is narrower than Justice Gorsuch's plurality opinion and therefore controlling under Marks v. United States, 430 U.S. 188, 193 (1977). See Pet. App. 9a. Justice Breyer reiterated that "the role of the judge in a supervised-release proceeding is consistent with traditional parole" and does not require a jury trial. Haymond, 588 U.S. at 657-658 (Breyer, J., concurring in the judgment). For that reason, Justice Breyer "would not transplant" Sixth Amendment cases like Alleyne "to the supervised-release context." Ibid. Justice Breyer nevertheless found Section 3583(k) unconstitutional because of three features that, in his view, made it "less like ordinary revocation and more like punishment for a new offense, to which the jury right would typically attach." Id. at 659. "First, § 3583(k) applies only when a defendant commits a discrete set of federal criminal offenses specified in the statute." Ibid. (emphasis omitted). "Second, § 3583(k) takes away the judge's discretion to decide whether violation of a condition of supervised

release should result in imprisonment and for how long." Ibid. (emphasis omitted). "Third, § 3583(k) limits the judge's discretion in a particular manner: by imposing a mandatory minimum term of imprisonment of 'not less than 5 years' upon a judge's finding that a defendant has 'commit[ted] any' listed 'criminal offense.'" Ibid. (emphasis omitted).

Justice Alito authored a dissenting opinion for four Justices. See Haymond, 588 U.S. at 659-683. The dissent explained that because a supervised-release revocation proceeding is not part of a "'criminal prosecution' within the meaning of the Sixth Amendment," the jury-trial right does not apply. Id. at 667. And Justice Alito and the three other dissenters would have upheld Section 3583(k) for that reason. Id. at 669.

b. This case does not involve Section 3583(k), but instead Section 3583(e), under which the court that sentenced a defendant may "revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release," if it "finds by a preponderance of the evidence that the defendant violated a condition of supervised release," subject to certain limits based on the nature of the violation. 18 U.S.C. 3583(e)(3). The court of appeals in this case correctly recognized that the Sixth Amendment did not require the district court to conduct a jury trial as a prerequisite for revoking supervised release pursuant to that provision.

The court of appeals recognized that a revocation proceeding under Section 3583(e)(3) is not a "criminal prosecution" triggering the application of the Sixth Amendment because it "focuses on the modification of a sentence already imposed and implicates the conditional (rather than absolute) liberty that the defendant enjoys as a result of that sentence." Pet. App. 4a (citation omitted). And that understanding is consistent with Justice Breyer's controlling opinion in Haymond that the Sixth Amendment does not apply to "ordinary revocation," which sanctions a defendant's "failure to follow the court-imposed conditions that followed his initial conviction," rather than "the particular conduct triggering the revocation as if that conduct were being sentenced as new federal criminal conduct." 588 U.S. at 658 (citation and internal quotation marks omitted).

Section 3583(e)(3) has none of the three features of Section 3583(k) that, in Justice Breyer's view, called for an exception to that general rule. First, unlike Section 3583(k) which "applies only when a defendant commits a discrete set of federal criminal offenses specified in the statute," Haymond, 588 U.S. at 659 (Breyer, J., concurring in the judgment), Section 3583(e)(3) can apply to a variety of criminal and noncriminal supervised-release violations. Indeed, petitioner's supervised release was revoked not only due to criminal violations, but also due to his failure to cooperate with home visits and to complete a therapy program. Tr. 120-122. Second, unlike Section 3583(k), Section 3583(e) does

not require the court to revoke supervised release or expose petitioner to a mandatory minimum sentence. See Pet. App. 10a; Haymond, 588 U.S. at 659. Third, unlike Section 3583(k), Section 3853(e)(3) does not mandate that the judge "impos[e] a mandatory minimum term of imprisonment of 'not less than five years,'" but instead leaves the disposition of a revocation up to the judge. Ibid.; see Pet. App. 10a.

Indeed, as the court below correctly recognized, petitioner's revocation proceeding under Section 3583(e) was "precisely the kind of 'ordinary revocation' that Justice Breyer took care to explain falls outside the scope of the Sixth Amendment." Pet. App. 10a. Nor would petitioner be entitled to relief under the plurality opinion in Haymond, which makes clear that its application of the Sixth Amendment to revocation hearings would "not mean a jury must find every fact in a revocation hearing that may affect the judge's exercise of discretion within the range of punishments authorized by the jury's verdict." 588 U.S. at 648 (emphasis added). Instead, the scope of its conclusion extends only to cases in which a "new" and "mandatory minimum prison term" is called for. Ibid.

The plurality moreover expressly explained that "even if [its] opinion could be read to cast doubts on § 3583(e)," any such issue would arise (at most) "in a small set of cases" -- specifically, those in which the combination of the terms imposed initially and upon revocation "exceeds the statutory maximum term

of imprisonment the jury has authorized for the original crime of conviction." Haymond, 588 U.S. at 655. This is not such a case. The 30 months of reimprisonment ordered by the district court brings petitioner's total period of imprisonment to 67 months, which does not exceed the 20-year statutory maximum for the crime to which petitioner pleaded guilty. See 21 U.S.C. 841(b)(1)(C); Judgment 2; Revocation Judgment 3. Petitioner also would not prevail under Justice Alito's dissent in Haymond, which explained that a defendant never has a right to a jury trial on revocation. 588 U.S. at 682-683.

Petitioner accordingly acknowledges that he is asking this Court to "expand[]" Haymond to permit his claim, Pet. i -- an expansion that would take it beyond the scope of any of the separate opinions in that case. As petitioner recognizes (Pet. 11 n.1, 32-33), no court of appeals has adopted his theory. To the contrary, the courts of appeals to have considered the question after Haymond have uniformly rejected Sixth Amendment challenges to Section 3583(e). See, e.g., United States v. Peguero, 34 F.4th 143, 156-165 (2d Cir. 2022); United States v. Ka, 982 F.3d 219, 221-223 (4th Cir. 2020); United States v. Eagle Chasing, 965 F.3d 647, 650-651 (8th Cir. 2020), cert. denied, 141 S. Ct. 575 (2020); United States v. Henderson, 998 F.3d 1071, 1076-1078 (9th Cir. 2021), cert. denied, 142 S. Ct. 810 (2022); United States v. Salazar, 987 F.3d 1248, 1253-1261 (10th Cir. 2021), cert. denied,

142 S. Ct. 321 (2021); United States v. Moore, 22 F.4th 1258, 1265-1269 (11th Cir. 2022).

c. Relying on a single law review article from earlier this year, petitioner asserts that after Haymond, new scholarly research shows that jury trials were the norm for "[f]orfeitures of recognizance," which he contends are a historical analogue for supervised-release revocation hearings. Pet. 19-25 (citing Jacob Schuman, Revocation at the Founding, 122 Mich. L. Rev. 1381 (2024)). In petitioner's view, that article compels the Court to revisit Haymond and extend a jury-trial right to all supervised-release revocations. Ibid. That argument lacks merit.

Petitioner first suggests (Pet. 19-20) that Justice Alito's dissent in Haymond already recognized that recognizances were a close analogue for modern supervised release. But the dissent in Haymond in fact found no close historical analogues to supervised release. See 588 U.S. at 677 ("Supervised release was not instituted until 1984, and parole was unknown until the 19th century, so close historic analogues are lacking."). While the dissent identified forfeitures of recognizance as one of "the nearest practices that can be found," it did not say that the comparison was close enough to resolve the question presented, even if there were evidence that juries decided recognizance forfeitures. Ibid.

Neither of the other opinions in Haymond even mentioned recognizances, let alone suggested that they provided a close

historical analogue to supervised release. Nor would it have been sound for them to do so. Although there may be some superficial similarities between recognizances in the 18th century and modern-day supervised release, those similarities are outpaced by several critical distinctions.

Unlike supervised release, recognizances were not a feature tied to criminal-law sanctions, but rather a more generalized power "incident to, and inherent in, courts of record." 76 C.J.S. Recognizances § 3 (2024); see 2 William Blackstone, Commentaries on the Laws of England 341 (1765) ("A recognizance is an obligation of record, which a man enters into before some court of record or magistrate duly authorized, with condition to do some particular act; as to appear at the assizes, to keep the peace, to pay a debt, or the like.") (emphasis omitted); see also, e.g., Paul Lermack, The Law of Recognizances in Colonial Pennsylvania, 50 Temp. L.Q. 475, 475 (1977). As such, "[i]t appears that most jurisdictions followed the same procedures for forfeited recognizances as they used for civil debt." Kellen R. Funk & Sandra G. Mayson, Bail at the Founding, 137 Harv. L. Rev. 1816, 1831 (2024).

The enforcement mechanisms therefore were not tied to criminal sentencing. For example, the enforcing party sought to enforce a forfeiture using a civil "writ of scire facias," which is "an all-purpose judicial order to the recipient to appear before the court and show cause why a penalty should not issue against them." Funk & Mayson, 137 Harv. L. Rev. at 1831; see 76 C.J.S.

Recognizances § 31 (2024). The inference that petitioner would draw -- that the Framers necessarily incorporated such generalized procedures into the Sixth Amendment through the reference to "criminal prosecutions," U.S. Const. Amend. VI -- is accordingly unsupported.

Moreover, petitioner's observation (Pet. 11) that other courts of appeals that have rejected a Sixth Amendment challenge to Section 3583(e)(3) post-Haymond did not have the benefit of the law-review article is a reason for the Court to deny certiorari, not to grant it. Even assuming the article could be understood to alter the constitutional calculus, review by this Court would be premature, unless and until the lower courts can consider new materials and analyze whether recognizances provide a close analogy to supervised-release revocation, using en banc review if necessary.

2. Petitioner also contends that Article III "creates an additional and distinct jury right for federal supervisees facing revocation." Pet. 28-32. That contention likewise does not merit this Court's review.

Article III, Section 2, Clause 3 provides that "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury." Petitioner asserts that Article III "broadly preserves the right to a jury whenever the government brings claims against a defendant," and the Sixth Amendment simply provides "additional rules about jury features and criminal procedure" that apply only

to criminal prosecutions. Pet. 31. That argument is inconsistent with this Court's precedents, which have never drawn such a distinction. On the contrary, because the Sixth Amendment "and the original Constitution were substantially contemporaneous," the Court has long instructed that the two provisions "should be construed in pari materia." Patton v. United States, 281 U.S. 276, 298 (1930), abrogated on other grounds by Williams v. Florida, 399 U.S. 78 (1970).

"In other words, the two provisions mean substantially the same thing." Patton, 281 U.S. at 298; see United States v. Garner, 874 F.2d 1510, 1511 n.2 (11th Cir. 1989) (per curiam) (observing that this Court has "not distinguished between the guarantee of a right to a jury trial in Article III and the Sixth Amendment"). Nor would it make sense to create an amorphous interstitial category of cases subject to Article III's jury-trial requirement, but not the additional requirements of the Sixth Amendment. Petitioner identifies no court that has accepted his Article III argument, and this Court does not usually grant certiorari to give "guidance" on what petitioner admits is "an underdeveloped area of jurisprudence" (Pet. 32) in the absence of any disagreement in the courts of appeals. See Sup. Ct. R. 10. There is no reason to do so here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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