No. 24-654

In the Supreme Court of the United States

DAVID LESH, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

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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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-31a) is reported at 107 F.4th 1239. The opinion of the district court (Pet. App. 32a-48a) is unreported. The memorandum decision and order of the magistrate judge (Pet. App. 49a-67a) are not published in the Federal Supplement but are available at 2021 WL 4941013.

JURISDICTION

The judgment of the court of appeals was entered on July 16, 2024. On September 17, 2024, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and including November 13, 2024. On November 8, 2024, Justice Gorsuch further extended the time to and including December 13, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial before a magistrate judge in the United States District Court for the District of Colorado, petitioner was convicted of violating two regulations governing conduct on federal lands within the National Forest System, 36 C.F.R. 261.10(c) and 261.14. Pet. App. 4a-5a. Petitioner was sentenced to six months of probation, ordered to perform 160 hours of community service, and fined $10,000. C.A. App. 67-69. The district court affirmed. Pet. App. 32a-48a. The court of appeals affirmed in part, reversed in part, and remanded for further proceedings. *Id.* at 1a-31a.

1. In April 2020, petitioner posted two photos to his Instagram account showing him riding a snowmobile in a terrain park at the Keystone Ski Resort in Colorado. Gov't C.A. Br. 2. Keystone is operated by Vail Resorts on lands leased from the federal government in the White River National Forest. Pet. App. 3a, 51a-52a. At the time, Keystone "was closed due to the COVID-19 pandemic, per decisions by Vail Resorts and a statewide directive issued by" the governor of Colorado, and Keystone employees had posted signs indicating that the ski areas and terrain park were closed. *Id.* at 51a-52a. Keystone had also constructed snow barriers to make the terrain park inaccessible during the COVID-19 shutdown. *Id.* at 52a.

When petitioner posted his photos, he included the caption, "Solid park sesh [*i.e.*, session], no lift ticket needed." Pet. App. 53a. He later edited the caption to add, "#FuckVailResorts." *Ibid.* Petitioner used the Instagram account at issue to promote his business. Petitioner "owns a small outdoor apparel company," and he often posted pictures to his Instagram account of indi-

viduals engaged in winter sports or other outdoor activities as a way to market his products and brand. *Id.* at 52a; see Gov't C.A. Br. 2.

A Keystone employee was alerted to the photos the same day that they were posted. Pet. App. 52a. The employee investigated the terrain park and "found snowmobile tracks looping around a ski jump." *Id.* at 54a. The resort employee also observed that a shovel had been taken from a nearby shed and used to clear a channel in the barriers wide enough "for a snowmobile to ride through." *Ibid.*

In June 2020, petitioner posted a photo to the same Instagram account appearing to show him standing on a log in the middle of Hanging Lake, a body of water in the White River National Forest that is off-limits to the public. Pet. App. 4a, 54a. In October 2020, petitioner posted a photo appearing to show him defecating in Maroon Lake, which is also on National Forest lands. *Id.* at 4a, 34a; see Gov't C.A. Br. 4. Petitioner later maintained that the Hanging Lake and Maroon Lake images were "photoshopped" (faked). Pet. App. 4a. He has not claimed that the earlier photos were. See *id.* at 59a.

2. After an investigation by the United States Forest Service, petitioner was charged in the District of Colorado with operating a snowmobile on National Forest lands outside of the areas designated for snowmobile use, in violation of 36 C.F.R. 261.14, and conducting work activity on National Forest lands without authorization, in violation of 36 C.F.R. 261.10(c). C.A. App. 21-22.

For both of the charged violations, the maximum authorized term of imprisonment was "not more than six months." 16 U.S.C. 551; see 7 U.S.C. 1011(f). Accordingly, both violations were Class B misdemeanors, for

which any fine would be capped at $5000. See 18 U.S.C. 3559(a)(7), 3571(b)(6).[1] Such Class B misdemeanors constitute "petty offense[s]" as defined by 18 U.S.C. 19, triable to a magistrate judge with a right of appeal to the district court, see 18 U.S.C. 3401, 3402.

The case proceeded to trial before a magistrate judge, who determined that petitioner was guilty of both charged violations beyond a reasonable doubt. Pet. App. 49a-66a. The magistrate judge sentenced petitioner to six months of unsupervised probation, ordered him to perform 160 hours of community service during his probation, and imposed an aggregate fine of $10,000. C.A. App. 67-69.

Petitioner appealed to the district court, which affirmed. Pet. App. 32a-48a. Petitioner contended, *inter alia*, that he had been deprived of "his constitutional right to a trial by jury." C.A. App. 109; see *id.* at 106-109. The district court rejected that contention as foreclosed by "binding precedent," observing that this Court has long held that "there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision." Pet. App. 36a-37a (quoting, indirectly, *Duncan* v. *Louisiana*, 391 U.S. 145, 159 (1968)). And although petitioner took issue with this Court's long line of cases recognizing that the Constitution does not require jury trials for petty offenses, he

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[1] At the time of petitioner's conduct, a Forest Service regulation stated that any violation of the relevant rules was punishable "by a fine of not more than $500 * * * unless otherwise provided." 36 C.F.R. 261.1b (2020). With respect to petitioner's violations, however, Section 3571 "otherwise provided" the applicable maximum fines. *Ibid.* In 2024, the Forest Service updated its regulation on fines to cross-reference the fines authorized by Section 3571. See 36 C.F.R. 261.1b (2024); 88 Fed. Reg. 68,035, 68,037 (Oct. 3, 2023).

did not dispute that his violations constituted petty offenses under those precedents. See *ibid.*

3. The court of appeals affirmed one conviction, set aside the other, and remanded for further proceedings. Pet. App. 1a-31a. Like the district court, the court of appeals recognized that "[b]inding * * * precedents" of this Court foreclose petitioner's contention that the trial of his petty offenses to a magistrate judge violated "the Sixth Amendment right to a jury trial." *Id.* at 24a. But the court of appeals vacated petitioner's conviction for conducting work activity on National Forest lands without authorization, in violation of Section 261.10(c), on separate grounds. *Id.* at 11a-24a.

In the court of appeals' view, the regulation was impermissibly vague as applied to petitioner's conduct because he lacked adequate notice that taking photos on National Forest lands to promote his clothing company constituted "work activity." Pet. App. 14a (citation omitted). And in the alternative, the court deemed the evidence insufficient to prove the violation. *Id.* at 21a-24a.

In a concurrence, the panel opinion's author and one other panel judge expressed the view that the "scope of the Constitution's right to a trial by jury may warrant a closer examination" by this Court. Pet. App. 28a (Tymkovich, J., concurring); see *id.* at 28a-31a. But they agreed that, under existing precedent, petitioner was "only charged with two petty counts" and "was not entitled to a jury trial." *Id.* at 28a.

ARGUMENT

Petitioner challenges (Pet. 13-23) his one remaining misdemeanor conviction on the theory that he has a federal constitutional right to be tried by a jury for that petty offense. Petitioner recognizes, however, that his challenge runs contrary to precedents of this Court

reaching back more than a century, which he dismisses as poorly reasoned and urges the Court to overrule. See Pet. 5-8, 23-31. The Court's precedents are correct, and petitioner fails to provide a sound reason to reexamine them now. The Court has repeatedly denied petitions for writs of certiorari presenting similar arguments—including earlier this Term. *Ehmer* v. *United States*, 145 S. Ct. 574 (2024) (No. 24-5160); *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). It should follow the same course here.

1. 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. 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).

In *Lewis* v. *United States*, the Court explained that "[t]o determine whether an offense is properly characterized as 'petty,'" 518 U.S. at 325 (citation omitted), courts must seek "objective indications of the seriousness with which society regards the offense," *id.* at 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).

Both the court of appeals and the district court correctly recognized that petitioner's remaining misdemeanor conviction is for a "petty offense" under this Court's precedent. Pet. App. 24a, 36a. Petitioner does not contend otherwise. The maximum authorized sentence was a term of imprisonment of "not more than six months," a fine of up to $5000, or both. *Id.* at 24a (citation omitted). Those maximum penalties are comparable to the maximum penalties for the drunk-driving offense at issue in *Blanton* v. *City of North Las Vegas*, which the Court found to be a petty offense. 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"). Under this Court's precedents,

petitioner was thus not entitled to a jury trial on the charge.[2]

2. Instead of disputing whether his jury-trial claim was correctly resolved under existing precedent, petitioner contends that this Court should abandon that precedent and adopt a rule under which a defendant is entitled to a jury trial even for petty offenses. That contention lacks merit.

a. Petitioner principally contends (Pet. 13-17) that petty offenses are encompassed by the text of 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 petitioner's proposed construction of those terms. The constitutional text must be understood in light of the public meaning of the relevant terms at the time of their adoption, as well as the historical tradition that preceded and informed their public meaning. See *Schick*, 195 U.S. at 70. 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

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[2] Petitioner contended below that he was entitled to a jury trial at least where he was "charged with multiple petty offenses" in a single proceeding and the sentencing court could theoretically have imposed consecutive sentences for each offense that would have resulted in an aggregate "term of imprisonment longer than six months." Pet. App. 28a n.4 (Tymkovich, J., concurring); see 18 U.S.C. 3584. He has not renewed that contention in this Court, and it is no longer relevant in light of the court of appeals' reversal of one of his two convictions. In any event, this Court has squarely held that when the maximum possible "deprivation of liberty exceeds six months only as a result of the aggregation of charges, the jury trial right does not apply." *Lewis*, 518 U.S. at 330.

omissions of less consequence are comprised under the gentler names of 'mi[s]demeanors' only." *Id.* at 69-70 (quoting 4 William Blackstone, *Commentaries on the Laws of England* 5 (1769) (*Commentaries*)).

That distinction is particularly significant given the drafting history of Article III. As this Court explained in *Schick* v. *United States*, in the initial draft of what became Article III, the relevant "language was 'the trial of all criminal offenses . . . shall be by jury.'" 195 U.S. at 70; see 2 Max Farrand, *The Records of the Federal Convention of 1787*, at 187 (1911) (Farrand) ("The trial of all criminal offenses (except in cases of impeachments) shall be in the State where they shall be committed; and shall be by Jury."). That language was amended "by unanimous vote * * * so as to read 'the trial of all crimes.'" *Schick*, 195 U.S. at 70; see 2 Farrand 434. The "obvious * * * intent" of the change, "in the light of the popular understanding of the meaning of the word 'crimes,' as stated by Blackstone, * * * was to exclude from the constitutional requirement of a jury the trial of petty criminal offenses." *Schick*, 195 U.S. at 70; cf. *id.* at 80 (Harlan, J., dissenting) (agreeing that the Constitution permits a legislature to authorize bench trials for "minor or petty offenses," consistent with English practice).

Petitioner asserts (Pet. 15-16) that the Court misread Blackstone's *Commentaries*, pointing to Blackstone's statement that the term "crime * * * comprehends both crimes and misdemeanors; which, properly speaking, are mere synonymous terms." *Commentaries* 5 (capitalization omitted). But the Court was plainly aware of that statement, which it quoted in full. See *Schick*, 195 U.S. at 69-70. As the Court explained, however, the more salient point from Blackstone is that

the term "crime" had come to bear a particular meaning "in common usage" at the time of the adoption of the Constitution. *Ibid.* And petitioner does not explain why the Court erred in looking to the "popular understanding of the meaning of the word." *Id.* at 70; cf. *CFPB* v. *Community Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 438 (2024) (relying on the "original public meaning" of the term "'Appropriations'" as used in Article I) (citation omitted).

Petitioner highlights (Pet. 16) the Court's statement in *Schick* that it "need not go beyond" its prior "express rulings" to decide that case. *Schick*, 195 U.S. at 70. And he notes (Pet. 16) that the Court relied in particular on its prior decision in *Callan* v. *Wilson*. But far from supporting petitioner, *Schick*'s reference to *Callan* embraced *Callan*'s observation that the Constitution guarantees a jury trial "[e]xcept in that class or grade of offenses called petty offenses, which, according to the common law, may be proceeded against summarily in any tribunal legally constituted for that purpose." *Schick*, 195 U.S. at 70 (quoting *Callan*, 127 U.S. at 557). And while *Callan* acknowledges that "[t]he word 'crime,' * * * embraces as well *some* classes of misdemeanors," 127 U.S. at 549 (emphasis added), "reference was made" in *Callan* "to many decisions of state courts, holding that the trial of petty offenses was not within any constitutional provision requiring a jury in the trial of crimes," *Schick*, 195 U.S. at 70; see *Callan*, 127 U.S. at 550-554 (approvingly citing such cases).

b. This Court's longstanding view that the jury-trial right does not extend to certain minor offenses is confirmed by history and tradition. Indeed, petitioner's own sources report that "eighteenth-century legisla-

tures 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. 8); see Andrea Roth, *The Lost Right to Jury Trial in "All" Criminal Prosecutions*, 72 Duke L.J. 599, 655-661 (2022) (cited at, *e.g.*, Pet. 5, 14-15) (acknowledging that "English and colonial common-law practices * * * limit[ed] the jury right in certain petty cases," but arguing that the Framers may have intended to reject these practices).

Petitioner is therefore wrong to suggest (Pet. 5) that the petty-offense exception to the jury-trial trial was "offhandedly * * * fashioned" by a series of decisions in the late 1800s. This Court has repeatedly identified the roots of the exception in pre-revolutionary English and colonial practice. In *Duncan* v. *Louisiana*, for example, the Court explained that "[s]o-called petty offenses were tried without juries both in England and in the Colonies" and that "[t]here is no substantial evidence that the Framers intended to depart from this established common-law practice." 391 U.S. at 160.

The Court's decision in *Callan* similarly observed, *inter alia*, that while Pennsylvania provided "the right of trial by jury," "'summary convictions for petty offenses against statutes were always sustained, and they were never supposed to be in conflict with the common-law right.'" 127 U.S. at 552 (quoting *Byers* v. *Commonwealth*, 42 Pa. 89, 94 (1862) (Strong, J.)); see *Byers*, 42 Pa. at 94-95 (observing that "[t]he ancient as well as the modern British statutes at large are full of Acts of Parliament authorizing such convictions," and citing examples). The same understanding is reflected in other state-court decisions. See *Callan*, 127 U.S. at 550-554.

Indeed, "all the colonies * * * resorted to summary jurisdiction for minor offenses with full loyalty to their conception of the Englishman's right to trial by jury. Felix Frankfurter & Thomas G. Corcoran, *Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury*, 39 Harv. L. Rev. 917, 936 (1926). 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, not to apply to petty offenses. See *id.* at 942-944, 954-965.[3]

Petitioner asserts (Pet. 21) that some of the early state-court decisions are better understood as involving summary adjudication of civil offenses. That contention fails to grapple with the reasoning of the decisions themselves. For example, in *Ex parte Marx*, 9 S.E. 475 (Va. 1889), the Supreme Court of Appeals of Virginia rejected the defendant's claim to have been deprived of his right to trial by jury where he was imprisoned for a

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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) (rejecting jury-trial claim and explaining 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*, 42 Pa. at 94 ("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.").

term of up to one year for failing to pay a fine imposed by a justice of the peace. *Id.* at 476. In rejecting the jury-trial claim, the court noted that the fine was imposed in proceedings that were "in [their] nature not criminal but civil." *Id.* at 478. The court went on to explain, however, that "even if the nature of the proceeding were otherwise the result would be the same," because the right to a jury trial "'in all * * * criminal prosecutions' * * * is not to be construed as extending any more than restricting the right of trial by jury as it existed at the time the [state] constitution was adopted." *Ibid.* Nor was that principle limited to offenses analogous to contempt of court; as the decision observed, with examples from Blackstone and other English and American authorities, "a great variety of petty offenses * * * were not only cognizable by a justice at the time our constitution was adopted, but for centuries before." *Ibid.*

Petitioner alternatively contends that any historical tradition of permitting some minor offenses to be tried to a judicial officer was "in *derogation of* the common law." Pet. 21 (quoting Roth, 72 Duke L.J. at 654). But to say that the "common law was a stranger to" summary adjudication, Pet. 22 (brackets and citation omitted), was merely to say that an "act[] of parliament" was generally required to authorize such proceedings for particular offenses in England, *Commentaries* 277. Beginning at least in the reign of Henry VII (1485-1509), a succession of penal statutes "made piecemeal inroads upon trial by jury" for specified petty offenses, and England "gradually adopted the practice of providing that convictions under them should be by one or more justices." Frankfurter & Corcoran, 39 Harv. L. Rev. at 925; see *id.* at 924-934.

It was the full scope of English legal tradition—both the common-law default and the permissibility of statutory exceptions for petty offenses—that the Framers of the Constitution "brought with them to their new abode." *Callan*, 127 U.S. at 552. And unlike notorious deprivations of the right to confront witnesses (see Pet. 22-23), petitioner identifies no evidence that bench trials for petty offenses were considered controversial at the time of the Framing.

c. Petitioner's remaining arguments likewise lack merit.

Petitioner errs (Pet. 17) in asserting that his position is compelled by the text of the Sixth Amendment. When the Constitution was amended in 1791 to guarantee the right to a trial by jury in "all criminal prosecutions," U.S. Const. Amend. VI, there is no evidence that the design or effect of the amendment was to eliminate the petty-offense exception incorporated into Article III two years earlier. See *Duncan*, 391 U.S. at 160 (finding "no substantial evidence" that the Framers sought to depart from the historical tradition of trying petty offenses without juries, notwithstanding the "otherwise comprehensive language of the Sixth Amendment").

Nor does the modifier "all" add anything to petitioner's arguments. Pet. 17. Affording a right to trial by jury for "all Crimes," U.S. Const. Art. II, § 2, Cl. 3, ensured that all such "Crimes" were covered, but did not expand the scope of that category to encompass petty offenses that had been understood for centuries not to require a jury trial. Cf. *Peter* v. *Nantkwest, Inc.*, 589 U.S. 23, 31 (2019) (explaining that the modifier "'all,'" as used in a federal statute, "conveys breadth" but does not "transform" the term modified to reach what is "not otherwise include[d]").

Petitioner's structural arguments (Pet. 18-20) are similarly unsound. As petitioner appears to acknowledge, this Court has not applied all of the rights set forth in the Sixth Amendment "uniformly" to "'all criminal prosecutions.'" Pet. 19; see Pet. 19 n.5. Most notably, the Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defense." U.S. Const. Amend. VI. This Court has interpreted that language, as incorporated against the States through the Fourteenth Amendment, to require the provision of court-appointed counsel for indigent defendants who cannot afford a lawyer. *Gideon* v. *Wainwright*, 372 U.S. 335, 340-345 (1963). But the Court has also held that the "constitutional right to appointed counsel" applies only if the defendant is actually "sentenced to a term of imprisonment." *Scott* v. *Illinois*, 440 U.S. 367, 373-374 (1979).

3. Petitioner does not contend that the decision below conflicts with any decision of this Court or another court of appeals. Nor does petitioner identify any substantial reason to nevertheless reexamine the scope of the jury-trial right in this case. As explained above, the Court's precedent recognizing that the Constitution does not create any entitlement to a jury trial for petty offenses is correct and well-grounded in the constitutional text and the legal traditions that informed it. And petitioner's efforts to undermine adherence to those precedents in accord with stare decisis (Pet. 23-33) are unsound.

Petitioner is wrong to assert (Pet. 24) that the Court's prior decisions recognizing the petty-offense exception were based on an outmoded method of constitutional interpretation, giving undue weight to "policy

considerations." As explained above, see pp. 8-14, *supra*, this Court has understood the jury-trial right as not extending to petty offenses based on the "popular understanding" of the text of Article III and its drafting history, *Schick*, 195 U.S. at 70, as well as legal traditions reaching back centuries. It is petitioner who seeks a novel constitutional requirement for a jury trial for all petty offenses—a requirement that would have been foreign to the Framers of the Constitution.

Petitioner suggests (Pet. 25-27) that the Court's prior analysis should nonetheless receive little weight, asserting that the Court has never before "had the benefit of 'full briefing or argument on the issue.'" Pet. 25 (brackets and citation omitted). That assertion is incorrect. Petitioner focuses (Pet. 26) principally on the government's brief in *Callan* v. *Wilson*, but the issue was also briefed in that case by the defendant himself—and this Court found those arguments unpersuasive. See Appellant Br. at 7-18, *Callan*, *supra* (No. 1318); Additional Appellant Br. at 1-2, *Callan*, *supra* (No. 1318).

The Court has also received extensive briefing on the issue in later cases, including in the context of whether particular misdemeanors qualify as petty offenses. See, *e.g.*, Brief for District of Columbia at 6, 11-34, *Clawans*, *supra* (No. 103) (setting forth extensive historical evidence from English and early American practice in support of the argument that "[t]he Constitution does not require the trial of petty offenses by jury"). Nor does petitioner identify any "modern scholarship" (Pet. 27) casting doubt on this Court's prior understanding of the relevant history; to the contrary, petitioner's sources confirm that understanding. See, *e.g.*, George Kaye, *Petty Offenders Have No Peers!*, 26 U. Chi. L. Rev. 245, 246 (1959) ("Existence of summary trials in England

and the colonies is indisputable."); see also pp. 10-11, *supra*.

Petitioner's policy arguments (Pet. 27-30) are unavailing. Petitioner does not identify any respect in which the Court's longstanding precedent has proven to be "unworkable." *Payne* v. *Tennessee*, 501 U.S. 808, 827 (1991). Petitioner criticizes (Pet. 29) the sixth-month presumption adopted in *Lewis* as "fuzzy," but he provides no evidence that it has proven difficult to apply in practice. He also does not dispute the petty-offense classification in his own case. And on the other side of the ledger, both the federal government and the 50 States have substantial reliance interests in adherence to this Court's precedents on this subject. See *Duncan*, 391 U.S. at 149 (holding that the Fourteenth Amendment incorporates the Sixth Amendment's jury-trial right).

Nearly two decades ago, Justice Kennedy observed in *Lewis* that requiring a jury trial for all petty offenses "would impose an enormous burden on an already beleaguered criminal justice system by increasing to a dramatic extent the number of required jury trials." 518 U.S. at 338-339 (Kennedy, J., concurring in the judgment). There is no reason to believe that the consequences would be any less burdensome today.

Petitioner notes (Pet. 30) that some States already provide for jury trials "for some or all petty offenses." The memorandum that he cites, however, only underscores the significant variation among States. See Memorandum from the D.C. Crim. Code Reform Comm'n to the Code Revision Advisory Grp., *Advisory Group Memorandum #31*, App. A (Feb. 25, 2020) (listing various different approaches States have adopted). There is no sound reason for this Court to overturn

more than a century of precedent leaving such choices to the States or to Congress.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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