No. _____

In the

Supreme Court of the United States

_____

Kalen Aniji Gatlin,
Petitioner,

v.

United States of America,
Respondent.

_____

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

_____

PETITION FOR A WRIT OF CERTIORARI

_____

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QUESTIONS PRESENTED

Whether 18 U.S.C. § 3583(e)(3) comports with the Sixth Amendment and Article III, Section 2 of the United States Constitution in any case, or, alternatively, when the revokee is accused of a new crime on supervised release?

PARTIES TO THE PROCEEDING

Petitioner is Kalen Aniji Gatlin, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Kalen Aniji Gatlin seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The unpublished opinion of the court of appeals is found at *United States v. Gatlin,* No. 24-11078, 2025 WL 1378751 (5th Cir. May 13, 2025). It is reprinted in Appendix A to this Petition. The Petition arises from the judgment revoking Petitioner's supervised release, which is attached as Appendix B.

JURISDICTION

The court of appeals issued an opinion affirming the district court judgment on May 13, 2025. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT STATUTES AND CONSTITUTIONAL PROVISIONS

18 U.S.C. §3583(e)(3) states:

> (e) Modification of Conditions or Revocation.—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)—
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> ***
>
> (3) 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 without credit for time previously served on post-release supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison

if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case.

Article III, Section 2, Paragraph 3 of the United States Constitution provides:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

Petitioner Kalen Aniji Gatlin pleaded guilty to one count of possessing a firearm after a felony conviction, *see* (ROA.23-25), then received 30 months imprisonment and three-years of supervised release, *see* (ROA.37-40). About six months after his release from prison, Probation moved for revocation, alleging a car burglary, the use of marijuana, failure to attend mandatory treatment, and failure to pay a special assessment. *See* (ROA.47-51). Shortly thereafter, Probation amended the Petition, alleging also that Petitioner committed an aggravated robbery. *See* (ROA.64). This changed the Grade of Violation from Grade C to Grade A, and it changed the advisory Policy Statement sentencing range from 8-14 months imprisonment to 18-24 months imprisonment. *See* (ROA.51, 66).

The court convened a revocation hearing. Petitioner pleaded true to the use of marijuana, the failure to attend treatment, and the failure to pay a special assessment, but he pleaded not true to the allegations that he committed car burglaries or aggravated robbery. *See* (ROA.94-96). The government abandoned the allegations of car burglary but sought to prove the robbery. *See* (ROA.96-97). It called a witness who said Petitioner pulled a knife on him in a transaction the two arranged online to sell a phone. *See* (ROA.97-101). This man identified Petitioner as the man who robbed him, *see* (ROA.98), and the government introduced a police report detailing the officer's investigation of the incident, *see* (ROA.128-131).

The court found that Petitioner did commit the robbery, see (ROA.107), and imposed 24 months imprisonment, *see* (ROA.109), the maximum under both 18 U.S.C. §3583(e)(3) and USSG §7B1.4, *see* (ROA.179). It also imposed a year's additional supervised release, the maximum available for a defendant convicted of a Class C felony who receives two-years imprisonment. *See* (ROA.109).

B. Appellate Proceedings

Petitioner appealed, contending that at Founding the right to a jury trial encompassed the right to have a jury determine whether a criminal defendant had violated the conditions of "recognizance," a condition closely analogous to contemporary supervised release. *See* Jacob Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. 1381, 1384 (2024). As such, he contended, when the Founders ratified the jury trial guarantees of Article III, Section 2 and the Sixth Amendment, they likely intended to provide a right to jury trial in revocations like Petitioner's. He conceded that the denial of this right was not yet plain error, and advanced it to preserve review.

The court of appeals concluded that the claim was foreclosed by *United States v. Hinson*, 429 F.3d 114, 117-19 (5th Cir. 2005), and summarily affirmed. *See* [Appx. A]; *United States v. Gatlin,* No. 24-11078, 2025 WL 1378751 (5th Cir. May 13, 2025).

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are countenancing a widespread deprivation of a fundamental constitutional right.

A. This Court should decide whether and when the constitution provides a right to jury trial upon revocation of the terms of supervised release.

Section 3583(a) of Title authorizes district courts to impose terms of supervised release upon people convicted of federal crimes, which terms are served after a term of imprisonment. Section 3583(e)(3) authorizes "[t]he court" to revoke those terms after finding a violation of the terms of supervised release. Every circuit to consider the question has held that the defendant possesses no right to a jury as to whether he or she violated the terms of release. *See United States v. Johnson*, 356 F. App'x 785, 790 (6th Cir. 2009)(unpublished)(collecting cases). This remains the case even after *Haymond v. United States*, 588 U.S. 634 (2019), found constitutional error in 18 U.S.C. §3583(k), which provides for a mandatory minimum upon revocation in certain cases. *See United States v. Doka*, 955 F.3d 290, 296-7 (2d Cir. 2020); *United States v. Seighman,* 966 F.3d 237, 244-5 (3d Cir. 2020); [Appx. A]; *United States v. Carpenter*, 104 F.4th 655, 660 (7th Cir. 2024); *United States v. Childs*, 17 F.4th 790, 792 (8th Cir. 2021); *United States v. Henderson*, 998 F.3d 1071, 1076 (9th Cir. 2021); *United States v. Salazar*, 987 F.3d 1248, 1259 (10th Cir. 2021); *United States v. Moore*, 22 F.4th 1258, 1268 (11th Cir. 2022).

In fact, however, the constitution likely does provide a right to a jury trial for persons suffering revocation of supervised release. And if it does not provide such a

right to all such persons, it provides a jury trial at least to all those who suffer revocation due to allegations of new criminal conduct.

In addition to the general protections of the due process clause, two provisions of the United States Constitution provide specifically for a trial by jury as a precondition to criminal punishment. Article III, Section 2 provides that "[t]he Trial of all Crimes, except in Cases of Impeachment, shall be by Jury…" And, of course, the Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury …"

In general, provisions of the constitution mean what people thought they meant at the time of ratification. *See New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1, 27–28 (2022); *United States v. Jones*, 565 U.S. 400, 404–405 (2012); *Caetano v. Massachusetts*, 577 U.S. 411, 411–412 (2016). At the time of ratification, most people considering the issue would have understood the right to a jury trial -- guaranteed both by the Sixth Amendment and Article III -- to reach proceedings like supervised release revocations.

At Founding, there was in fact a proceeding closely akin to supervised release revocations: forfeiture of recognizance. At that time, judges often ordered criminal defendants to abide by certain conditions before or after their sentences – not dissimilar from those imposed in contemporary supervised release -- and could order them to pay a debt on evidence of a violation. *See* Jacob Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. 1381, 1384, 1407 (2024)(citing Lawrence M. Friedman, *Crime & Punishment in Am. History* at 38 (1993); 4 Blackstone, *Commentaries on the*

Laws of England at 250-251)). This was called "recognizance," and the violations of the conditions were called "forfeiture of recognizance." 4 Blackstone at 251, 341. If the debt went unsatisfied – and sometimes judges deliberately ordered payment of amounts no one could realistically pay – the defendants could be incarcerated. *See* Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. at 1415-1416 (citing Thomas Raeburn White, *Commentaries on the Constitution of Pennsylvania*, 111 (1907); *Regina v. Dunn* (1840) 113 Eng. Rep. 939, 940 (QB); 4 Richard Burn, *The Justice of the Peace, and Parish Officer* 105 (London, A. Strahan 1800)("[A]nd if the party shall refuse to be bound, the justice may send him to gaol [jail]."); James Parker, *Conductor Generalis: Or, the Office, Duty and Authority of Justices of the Peace* 363 (Woodbridge, James Parker 1764)).

Critical for our purposes, both English and early American courts used a jury to determine whether the defendant had violated the conditions of recognizance. *See* Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. at 1417–18. That is clear from court opinions referring to such jury trials on both sides of the Atlantic. *See Mix v. People*, 29 Ill. 196, 197–98 (1862)("upon a common recognizance … The verdict of the jury was ... for the plaintiff"); *Regina v. Harmer*, 1859 WL 9677 (U.C. Q.B. 1859); *Sans v. People*, 3 Gilman 327, 329 (Ill. 1846)("[A] scire facias issued against him, and … his security … The jury returned a verdict against the plaintiff, upon which judgment was rendered by the court."); *Rex v. Wiblin*, 2 Car. & P. 9 n. 2 (1825)("When a person has entered into a recognizance to keep the peace … If the jury find that the recognizance has been forfeited, they find a verdict for the crown, and judgment is

entered up."); *Commonwealth v. Emery*, 2 Binn. 431, 433–35 (Penn. 1810)("The objections are, that the evidence given to the jury was not a recognizance, but only a loose note ... But I see nothing illegal or danger-ous in the[] practice of taking and certifying recognizances by short minutes, or in permitting those minutes to be given in evidence to juries, as often as questions arise on the recognizances."); *Commonwealth v. Davies*, 1 Binn. 97, 99–100 (Penn. 1804)("The point which led ultimately to the present argument ... was this, that unless the jury might find less than the whole amount, and this it was said they could not do, a recognizance of this kind if forfeited by a libel would prove a direct restraint upon the press.").

But it is also clear from first-hand historical records and treatises. *See* Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. at 141-1422 (citing *The Year Books: Report #1494.073, Legal History: The Year Books*, Boston University School of Law)(*available at: https://bit.ly/3ErE8Y7*); Michael Dalton, *The Countrey Justice* 207 (London, John Streater, James Flesher & Henry Twyford 1666); Richard Gude, 1 *Practice of the Crown Side of the Court of King's Bench, and the Practice of the Sessions; the General Rules of Court, from the Reign of James I to the Present Time and the Statutes Relating to the Practice* 235 (London 1828); Thomas Walter Williams, 4 *The Whole Law Relative to the Duty and Office of a Justice of the Peace* 789 (London, 1795); A. Highmore, Junr., *A Digest of the Doctrine of Bail* 246 (London, His Majesty's Law Printers 1783); *King v. Monteith* (King George Cnty. Ct., Sept. 4, 1725), in *Virginia County Court Records Order Book Abstracts of King George County, Virginia* 1723-1725, at 97 (Ruth Sparacio & Sam Sparacio eds., 1992); Julius Goebel Jr. & T.

Raymond Naughton, *Law Enforcement in Colonial New York: A Study in Criminal Procedure* (1664-1776) 555 (1944)).

The right to trial by jury thus naturally encompassed a right to have a jury determine whether a defendant had forfeited recognizance. This proceeding was closely akin to revocations of supervised release; the Framers and ratifiers would have therefore expected a jury trial in Petitioner's situation.

Alternatively, if the Sixth Amendment and Article III do not offer a jury trial whenever the defendant faces revocation of supervised release, the plain text of Article III, Section 2, plainly provides it when the government seeks revocation on allegation of a new crime. Again, Article III, Section 2, calls for a jury in "the Trial of All Crimes." When the government seeks revocation on allegation that the defendant committed a crime, as here, the revocation proceeding amounts to the "Trial of [a] Crime[]."

At the time of enactment, the jury trial guarantee of Article III was understood to apply "[w]henever the general government can be a party against a citizen." *Records of the Federal Convention of 1787*, p. 163 (M. Farrand ed. 1911)(quoting James Wilson, a drafter of the Constitution and member of the first Supreme Court). But even given a narrower reach, the language of Article III at least describes a determination that the defendant committed an offense proscribed by state or federal statute, and punishable by imprisonment. If a revocation of supervised release for a new crime is not "a criminal prosecution" within the meaning of the Sixth Amendment, *see Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)(so finding as respects

parole revocations), it is at least the "trial of a crime," within the meaning of Article III, Section 2.

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

Petitioner did not challenge the constitutionality of the revocation statute at the district court. This Court should nonetheless grant certiorari. Just as this Court typically remands for a determination of harm after deciding the merits, *see Ruan v. United States*, 597 U.S. 450, 467 (2022), so may it determine the whether the defendant had a right to a jury trial and remand to decide whether the deprivation of that right merits relief on plain error review. Indeed, the government itself has noted, the "possibility that [petitioner] might ultimately be denied [relief] on another ground would not prevent the Court from addressing [the question presented]," and "the Court frequently considers cases that have been decided on one ground by a court of appeals, leaving other issues to be decided on remand, if necessary." Reply in Support of Petition for Certiorari in No. 11-159, *Astrue v. Capato*, 2011 WL 5098759, at *11 (October 26, 2011) (citing *Skinner v. Switzer*, 131 S. Ct. 1289, 1300 (2011); *Christian Legal Soc'y v. Martinez*, 130 S. Ct. 2971, 2995 n.28 (2010)); *see also* Reply in Support of Certiorari in No. 11-246, *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 2011 WL 5856195, at *10 (November 21, 2011)("…the mere potential of prevailing later on a statutory construction question does nothing to diminish the importance at this juncture of resolving the entrenched five-circuit split…")

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 11th day of August, 2025.

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