No. 25-5442

IN THE SUPREME COURT OF THE UNITED STATES

JARON BURNETT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD 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).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D.N.J.):

United States v. Burnett, No. 07-cr-427 (Mar. 20, 2009)

United States Court of Appeals (3d Cir.):

United States v. Burnett, No. 09-1883 (Apr. 27, 2010)

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OPINION BELOW

The order of the court of appeals (Pet. App. 1a) is available at 2025 WL 2438475.

JURISDICTION

The judgment of the court of appeals was entered on May 20, 2025. The petition for a writ of certiorari was filed on August 18, 2025. 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 District of New Jersey, petitioner was convicted of

transporting an individual in interstate commerce to engage in prostitution, in violation of 18 U.S.C. 2421. 3/20/09 Judgment 1. The district court sentenced petitioner to 105 months of imprisonment, to be followed by 15 years of supervised release. Id. at 2-3. The court of appeals affirmed. 377 Fed. Appx. 248.

In January 2022, petitioner admitted to violating his release conditions, after which the district court revoked his supervised release and ordered him to serve a 13-month term of imprisonment, to be followed by eight years of supervised release. 1/27/22 Judgment 1-3. In November 2024, the district court found that petitioner had violated his release conditions again, revoked his supervised release, and ordered him to serve a 14-month term of imprisonment, to be followed by six years of supervised release. Pet. App. 7a-9a. The court of appeals affirmed. Id. at 1a.

1. In July 2006, petitioner began sex trafficking a minor girl in the New York City area. Presentence Investigation Report (PSR) ¶¶ 13-17. After the minor was arrested for prostitution in New York, petitioner began transporting her to New Jersey, where he would give her drugs and alcohol, take nude photographs of her to advertise on sex-trafficking websites, and have her engage in commercial sex acts. PSR ¶¶ 18-25. During a warrant-based search of his home, petitioner admitted that he transported the minor from New York to New Jersey to engage in prostitution. PSR ¶¶ 28-29.

Petitioner entered into an agreement with the government to plead guilty to one count of transporting a minor in interstate commerce to engage in prostitution, in violation of 18 U.S.C. 2421. PSR ¶¶ 1, 4. As a result, he faced a sentence that could include up to 120 months of imprisonment, to be followed by up to a lifetime term of supervised release. PSR ¶¶ 131-135. After accepting petitioner's guilty plea, the district court sentenced him to 105 months of imprisonment, to be followed by 15 years of supervised release. 3/20/09 Judgment 2-3. The court of appeals affirmed. 377 Fed. Appx. 248.

2. Petitioner began his term of supervised release in November 2014. D. Ct. Doc. 132, at 1 (May 28, 2021). In May 2021, the district court issued a warrant for his arrest based on a petition from the Probation Office alleging that he had violated certain conditions of his supervised release. Id. at 1-4. In an amended petition, the Probation Office identified six violations related to petitioner's possession and use of marijuana and his commission of new crimes, including petit larceny, third-degree menacing, third-degree possession of a weapon, public urination, unlawfully entering a dwelling with the intent to commit a crime, and first-degree criminal attempt (related to an alleged threat to shoot his ex-girlfriend). D. Ct. Doc. 146, at 1-3 (Jan. 25, 2022). After petitioner admitted to committing the larceny, menacing, and possession-of-a-weapon offenses, D. Ct. Doc. 147, at 1 (Jan. 27, 2022), the district court revoked his supervised release and

ordered him to serve a 13-month term of imprisonment, to be followed by eight years of supervised release, 1/27/22 Judgment 1-3.

3. Petitioner completed that term of post-revocation imprisonment in July 2022 and again commenced supervised release. D. Ct. Doc. 159, at 1 (July 24, 2024). Two years later, the district court issued a warrant for petitioner's arrest in response to another petition from the Probation Office alleging that petitioner had committed eight violations of his supervised release that included, inter alia, not attending mental health treatment; leaving an inpatient addiction treatment program; committing new crimes such as shoplifting, threatening others with a knife, stealing someone's cell phone, and attempting to strike a security guard at a hospital; and failing to report to the Probation Office his arrest for attempting to strike the security guard. Id. at 2-6.

Before the revocation hearing, petitioner filed an objection to "the imposition of a custodial term on any of the alleged violations without findings of guilt made beyond a reasonable doubt by a jury" as a "violat[ion] [of] his rights under the Fifth and Sixth Amendments." D. Ct. Doc. 166, at 1 (Nov. 4, 2024). Petitioner acknowledged that his request was foreclosed by circuit precedent, ibid., and the district court overruled his objection, Pet. App. 6a. After a contested revocation hearing, the district court found that petitioner had violated his supervised release by

failing to complete his mental health treatment, attend his addiction treatment, and notify the Probation Office of his arrest. Id. at 7a. The district court revoked his supervised release and ordered him to serve a 14-month term of imprisonment, to be followed by six years of supervised release. Id. at 7a-9a.

4. Petitioner appealed, claiming that the second revocation of his supervised release without a jury trial violated his Fifth and Sixth Amendment rights under Apprendi v. New Jersey, 530 U.S. 466 (2000). Pet. C.A. Br. 5-7. Both he and the government recognized, however, that the claim was foreclosed by circuit precedent. Id. at 8 (citing United States v. Seighman, 966 F.3d 237, 245 (3d Cir. 2020)); Gov't C.A. Letter Br. 2 (Apr. 3, 2025). The court of appeals summarily affirmed. Pet. App. 1a.[1]

ARGUMENT

Petitioner contends (Pet. 11-29) that the district court was required to convene a jury trial as a prerequisite to revoking his supervised release and ordering him to serve a 14-month term of imprisonment pursuant to 18 U.S.C. 3583(e)(3). Petitioner's challenge to the length of his term of imprisonment is now moot because that term has expired. In any event, the court of appeals' decision is correct, and its decision does not conflict with any decision of this Court or another court of appeals. This Court

[1] The court of appeals incorrectly identified the government's request for summary affirmance as a "Motion by Appellee to Enforce Appellate Waiver and for Summary Affirmance." Pet. App. 1a.

has recently denied review of petitions raising the same or similar challenges to the revocation of supervised release under 18 U.S.C. 3583(e). See Carpenter v. United States, 145 S. Ct. 1188 (2025) (No. 24-5594); Smith v. United States, 145 S. Ct. 1184 (2025) (No. 24-5608); Kerrick v. United States, 145 S. Ct. 1109 (2025) (No. 24-6104); Henderson v. United States, 142 S. Ct. 810 (2022) (No. 21-6286); Salazar v. United States, 142 S. Ct. 321 (2021) (No. 21-5231); Cameron v. United States, 141 S. Ct. 925 (2020) (No. 20-6102). No further review is warranted.

1. Petitioner's challenge to the 14-month term of imprisonment that the district court ordered after revocation of his supervised release is moot because that term has now expired. See D. Ct. Doc. 180, at 1 (Aug. 18, 2025). The completion of a defendant's sentence does not moot an appeal challenging the defendant's conviction because criminal convictions generally have "'continuing collateral consequences'" beyond the sentences imposed. Spencer v. Kemna, 523 U.S. 1, 8 (1998). But when a defendant challenges only the length of his term of imprisonment, the defendant's completion of that prison term moots an appeal unless the defendant can show that the challenged action continues to cause "collateral consequences adequate to meet Article III's" requirement of an injury-in-fact traceable to the challenged action and redressable by a favorable decision. Id. at 14. This Court has applied that rule to conclude that challenges to parole-revocation procedures were moot after a defendant completed the

corresponding term of reimprisonment. See Id. at 12-14; see also Lane v. Williams, 455 U.S. 624, 631 (1982) ("Since respondents elected only to attack their sentences, and since those sentences expired during the course of these proceedings, this case is moot.").

Here, petitioner challenges only the length of his second post-revocation imprisonment, not the district court's ordering of further supervised release. See, e.g., Pet. i (stating the question presented as "[w]hether the Fifth and Sixth Amendment jury right applies to supervised release revocation proceedings that impose a term of imprisonment beyond the maximum custodial sentence authorized by the underlying statute of conviction") (emphasis added); id. at 1-2 (challenging petitioner's "term of imprisonment"); id. at 11-21 (challenging petitioner's reincarceration); id. at 27-28 (noting petitioner's objection "to his reincarceration past the statutory maximum"). But petitioner identifies no continuing collateral consequences that would allow him to continue to challenge the circumstances under which his now-completed incarceration was ordered.

In particular, nothing indicates that petitioner's challenge to his imprisonment would have an effect on his current service of supervised release. "Supervised release fulfills rehabilitative ends, distinct from those served by incarceration," and is "intended * * * to assist individuals in their transition to community life." United States v. Johnson, 529 U.S. 53, 59 (2000).

Accordingly, "[t]he objectives of supervised release would be unfulfilled if excess prison time were to offset and reduce terms of supervised release." Ibid. And in United States v. Johnson, this Court held that a defendant who serves too long a term of incarceration is not entitled to receive credit against his term of supervised release. Id. at 54.

Although a sentencing judge generally has discretion to terminate supervised release after one year of supervision if the judge finds such action warranted by the "conduct of the defendant" and "the interest of justice," 18 U.S.C. 3583(e)(1); see *Johnson*, 529 U.S. at 60, the record here does not suggest that petitioner would obtain such relief if this Court were to grant review. Before the court could exercise its discretion to reduce his term of supervision, it would have to "consider[] [a series of] factors," including the nature and circumstances of petitioner's offense, the need to afford adequate deterrence to criminal conduct, and the need both to protect the public and to provide the defendant with the most effective correctional treatment. 18 U.S.C. 3583(e); see 18 U.S.C. 3553(a).

As the Third Circuit (the court below in this case) has explained, "[t]he possibility that the sentencing court will use its discretion to modify the length of [a defendant's] term of supervised release * * * is so speculative" that it does not suffice to present a live case or controversy with respect to a claim challenging only the length of incarceration. Burkey v.

Marberry, 556 F.3d 142, 149, cert. denied, 558 U.S. 969 (2009) (citations and footnote omitted).[2] And here, no basis exists for concluding that the district court's future "choices * * * will be made in such manner as to * * * permit redressability of injury." Lujan v. Defenders of Wildlife, 504 U.S. 555, 562 (1992); cf. West Virginia v. EPA, 597 U.S. 697, 718 (2022). To the contrary, the record underscores the need for petitioner's ongoing supervision. At the revocation hearing, the court emphasized the need for petitioner "to take supervised release seriously" and undergo necessary treatment that is part of his supervised release. 11/5/24 Tr. 50-51.

2. In any event, the court of appeals' summary affirmance is correct and does not conflict with the decision of any other court of appeals.

a. The Sixth Amendment 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

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[2] Other courts of appeals have concluded that the possibility that the sentencing court would exercise its discretion to reduce a defendant's supervised-release term can be sufficient to prevent a sentencing challenge from becoming moot upon completion of the prison term. See, e.g., United States v. Salazar, 987 F.3d 1248, 1251-1253 (10th Cir.), cert. denied, 142 S. Ct. 321 (2021); United States v. Ketter, 908 F.3d 61, 66 (4th Cir. 2018); Pope v. Perdue, 889 F.3d 410, 414 (7th Cir. 2018); Levine v. Apker, 455 F.3d 71, 77 (2d Cir. 2006); Mujahid v. Daniels, 413 F.3d 991, 994-995 (9th Cir. 2005), cert. denied, 547 U.S. 1149 (2006); Johnson v. Pettiford, 442 F.3d 917, 917-918 (5th Cir. 2006) (per curiam). Regardless, the need for this Court to resolve the mootness question at a minimum makes this case a poor vehicle for considering the question presented.

wherein the crime shall have been committed." U.S. Const. Amend. VI. And the Fifth Amendment includes a "companion right to have the jury verdict based on proof beyond a reasonable doubt." Apprendi v. New Jersey, 530 U.S. 466, 478 (2000). Because the Sixth Amendment jury-trial right applies only in "criminal prosecution[s]," this Court has held that the Sixth Amendment does not extend to "the revocation of parole," Morrissey v. Brewer, 408 U.S. 471, 480 (1972), or probation revocation, Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973).

In United States v. Haymond, 588 U.S. 634 (2019), this Court considered the Fifth and Sixth Amendments' 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). The Court did not issue a majority opinion.

A four-justice plurality concluded that Section 3583(k) violated 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). In doing so, the plurality acknowledged that "supervised release punishments arise from and are '[t]reat[ed] * * * as part of the penalty for the initial

offense'"; made clear 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"; and did "not pass judgment one way or the other on" the Sixth Amendment's application to supervised release revocation more generally under Section 3583(e). Id. at 648, 652 n.7 (emphasis added; citation omitted; brackets in original).

Justice Breyer concurred in the judgment, in an opinion that is narrower than the plurality opinion and therefore controlling under Marks v. United States, 430 U.S. 188, 193 (1977). Justice Breyer agreed with the four dissenting Justices that "a supervised-release proceeding is consistent with traditional parole" and generally does not require a jury trial. Haymond, 588 U.S. at 657-658 (Breyer, J., concurring in the judgment); see id. at 665-668 (Alito, J., dissenting). But Justice Breyer identified three features that made Section 3583(k) proceedings "more like punishment for a new offense, to which the jury right would typically attach." Id. at 659 (Breyer, J., concurring in the judgment).

"First, § 3583(k) 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) (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; brackets in original).

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 the application of Section 3583(k) based on judicial factfinding by a preponderance of the evidence. 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 correctly recognized that the Fifth and Sixth Amendments did not require the district court to conduct a jury trial before revoking supervised release under that provision.

As Justice Breyer's controlling opinion in Haymond explains, the jury-trial right does not apply to "ordinary revocation" under Section 3583(e)(3) because it does not impose punishment for a new crime. 588 U.S. at 658-659. And 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 the general rule. Ibid. First, unlike Section 3583(k) which "applies only when a defendant commits a discrete set of federal criminal offenses specified in the statute," id. at 659, Section 3583(e)(3) can apply to a variety of criminal and noncriminal supervised-release violations. See 18 U.S.C. 3583(e). Indeed, petitioner's supervised release was revoked based on his failure to complete treatments and to report a prior arrest -- not for any criminal violation. See Pet. App. 7a. 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 18 U.S.C. 3583(e); 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,'" Haymond, 588 U.S. at 659, but instead leaves the disposition of a revocation up to the judge, see 18 U.S.C. 3583(e)(3).

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. (emphasis omitted). Accordingly, as petitioner acknowledges, the courts of appeals that have considered the issue after Haymond have uniformly held that no jury-trial right applies to revocation under Section 3583(e). See Pet. 23-24 (citing cases); cf. United States v. Seighman, 966 F.3d 237, 243-245 (3d Cir. 2020) (finding no trial right in revocation proceedings under Section 3583(g)).

c. Petitioner argues (Pet. 11) that a different result obtains here because the "aggregated" amount of imprisonment that he has served exceeds the maximum term of non-supervision-related imprisonment authorized for his original offense under 18 U.S.C. 2421. But as petitioner notes (Pet. 24), every court of appeals to consider that argument after Haymond has rejected it, as it misunderstands the punishment imposed at petitioner's original sentencing. See United States v. Peguero, 34 F.4th 143, 147 (2d Cir. 2022); Seighman, 966 F.3d at 245; United States v. Childs, 17 F.4th 790, 791-792 (8th Cir. 2021); United States v. Henderson, 998 F.3d 1071, 1076-1077 (9th Cir. 2021), cert. denied, 142 S. Ct. 810 (2022); United States v. Moore, 22 F.4th 1258, 1265-1269 (11th Cir. 2022).

Petitioner's original sentence included a term of imprisonment authorized by 18 U.S.C. 2421 as well as a term of

supervised release authorized by 18 U.S.C. 3583, which had a statutory cap of life, PSR ¶¶ 131-135. That latter term is "an independent element of the sentence" that "is not carved out of the maximum permissible time allotted for incarceration" in the former. United States v. Work, 409 F.3d 484, 489 (1st Cir. 2005). By statute, if petitioner violated the terms of that conditional liberty, the district court was empowered to "require the defendant to serve in prison all or part of the term of supervised release authorized by statute," subject to limits tethered to the severity of the original offense. 18 U.S.C. 3583(e)(3). Accordingly, "the ranges for each part of a sentence -- the initial sentence, supervised release, and any reimprisonment if that release is violated -- are all fixed by the jury's initial determination." United States v. Salazar, 987 F.3d 1248, 1261 (10th Cir.), cert. denied, 142 S. Ct. 321 (2021). Cf. Johnson v. United States, 529 U.S. 694, 700 (2000) (explaining that imprisonment following revocation is not "punishment" for the supervised release violation and is "part of the penalty for the initial offense").

Petitioner's reliance (Pet. 12-17) on Haymond is misplaced. There, Justice Breyer's controlling opinion, along with four dissenters, agreed that the jury-trial right generally does not extend to revocations in "the supervised-release context" because "the role of the judge in a supervised-release proceeding is consistent with traditional parole." 588 U.S. at 657-658 (Breyer, J., concurring in the judgment); id. at 659-668 (Alito, J.,

dissenting). As the four-justice dissent elaborated (in a passage cited by Justice Breyer's controlling concurrence), "the maximum period of confinement authorized is the maximum term of imprisonment plus the maximum term of supervised release," and "[i]f a prisoner does not end up spending this full period in confinement, that is because service of part of the period is excused due to satisfactory conduct during the period of supervised release." Id. at 668. That situation closely tracks the historical use of parole, at which "a parolee did not have a right to a jury trial" when parole was revoked. Ibid. (Alito, J., dissenting). And although the plurality's noncontrolling opinion speculated that the statutory maximum for non-supervision incarceration might limit a district court's ability to impose a term of incarceration after revoking supervised release, id. at 646, the plurality expressly did "not pass judgment one way or the other on § 3583(e)'s consistency" with the Sixth Amendment, id. at 652 n.7; see id. at 654-655.

d. Relying on a single law review article from last year, petitioner asserts that after Haymond, new scholarly research shows that jury trials were the norm for "forfeiture[s] of recognizance," which he contends are a historical analogue for supervised-release revocation hearings. Pet. 17-19 (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 supervised-release revocations like his. Ibid. That argument lacks merit.

Petitioner first suggests (Pet. 19-20) that Justice Alito's dissent in Haymond, supra, 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. While the dissent noted that forfeitures of recognizance were one of "the nearest practices that can be found," it found that "close historic analogues are lacking." Ibid. The dissent nowhere suggested that forfeitures of recognizance were so similar that their treatment would resolve the question presented.

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 (May 2025); see 2 William Blackstone, Commentaries on the Laws of England 341 (1766) ("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 and footnote 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 Recognizances § 31. 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.

At all events, petitioner's suggestion (Pet. 19) that this "more recent" article alters the historical analysis in Haymond is a reason for the Court to deny certiorari, not to grant it. As petitioner notes (Pet. 24), only a handful of courts have squarely confronted the question he presents in published decisions since Haymond, and they did so prior to the publication of the article

on which he relies. Neither petitioner here nor appellants in those cases sought en banc review. Accordingly, even assuming that the article could be understood to alter the constitutional calculus in Haymond, 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.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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