No. _____

IN THE SUPREME COURT OF THE UNITED STATES

NICHOLAS JAVON MARTIN, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent,

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. When the government offers hearsay at a supervised release revocation hearing, does due process require the district court, before admitting the evidence, to balance, on the record, the government's reasons for not producing the witness against the defendant's right to question adverse witnesses?

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the Western District of Michigan and the United States Court of Appeals for the Sixth Circuit:

- *United States v. Nicholas Javon Martin*, W.D. Mich. Case No.1:17-cr-11-1, Judgment entered May 27, 2025.

- *United States v. Nicholas Javon Martin*, Case No. 25-1512, 2026 U.S. App. LEXIS 1815 (6th Cir. January 22, 2026).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

Nicholas Javon Martin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The United States Court of Appeals for the Sixth Circuit affirmed the revocation of Martin's supervised release and consecutive sentences totaling 37 months in an unpublished opinion. *United States v. Nicholas Javon Martin*, Case No. 25-1512, 2026 U.S. App. LEXIS 1815 (6th Cir. January 22, 2026). (Pet. App. 1a).

JURISDICTION

The Sixth Circuit's opinion was filed on January 22, 2026. There was no petition for rehearing. The mandate issued on February 13, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition involves the Fifth Amendment to the Constitution and Federal Rule of Criminal Procedure 32.1(b)(2)(C).

The Fifth Amendment says that "no person shall . . . be deprived of life, liberty, property, without due process of law. . . . " U.S. Const. amend. V.

The rule says that at a revocation hearing:

> The person is entitled to:
> . . . (C) An opportunity to appear, present evidence, and question the adverse witness unless the court determines that the interest of justice does not require the witness to appear . . .

Fed. R. Crim P. 32.1(b)(2)(C).

STATEMENT OF THE CASE

In 2016 Martin pled guilty to possession with intent to distribute heroin and possession of a firearm in furtherance of a drug trafficking offense. (See Presentence Report, R. 30, Page ID # 133–34). The district court sentenced him to serve 41 months on the drug conviction, plus a consecutive 60 months on the firearm conviction, with concurrent terms of supervised release. (Judgment, R. 33, Page ID # 179–85).

The terms of Martin's supervision included special conditions requiring substance abuse testing and treatment and that he not use or possess any controlled substance without a valid prescription, and a mandatory condition that prohibited committing new crimes. (Judgment, R. 33, Page ID # 181–83).

Martin was released from prison in May 2024. In February 2025 he was arrested by the Kalamazoo, Michigan police, and charged with assault by strangulation and domestic violence, third offense, after his girlfriend, Ashley Butler, called police to say Martin had assaulted her. (Corrected Amended Petition for Warrant of Summons for Offender Under Supervision ("Petition"),

R. 76, Page ID # 386–87).

Martin's arrest led to his probation officer filing a petition for a warrant or summons to bring Martin before the court. (*Id.*, Page ID # 386–90).

The Petition alleged eight violations. Only two of these violations are at issue here —Violations 1 and 2 alleging Martin had committed new crimes. Violation Number 1 alleged that Martin had assaulted his romantic partner by strangulation; Violation Number 2 alleged that he had committed domestic violence, third offense at the same time. Violations 3, 4, 6, and 8 concerned Martin's positive drug tests for marijuana and that the test results meant that he possessed marijuana, contrary to federal law. Violation Number 5 alleged that he lied to his probation officer about his drug use. Violation Number 7 alleged that he failed to report for a drug test a few days before the assault. (*Id.*, Page ID # 388–89).

Violation Number 1 was a Grade A violation under the Sentencing Guidelines; the rest were Grade B and Grade C violations. (Second Amended Violation Worksheet, R. 81, Page ID # 397).

The court held a supervised release revocation hearing on May 27, 2025. The only witness to testify was Martin's probation officer, Alexander Kellogg.

At the start of the revocation hearing Martin objected when Probation

Officer Kellogg started to testify about what Ashley Butler told him about her call to police about Martin:

Q. . . . Who called you and talked to you about this?

A. Ashley Butler.

Q. All right. And what did she allege when she talked to you?

A. She alleged that Mr. Martin –

MR. DONDZILA: Objection, Your Honor, hearsay.

THE COURT: Hearsay is allowed in this as long as there's a sufficient indicia of reliability of the evidence. I'll allow the evidence.

BY MR. VERHEY:

Q. Please continue.

A. Ms. Butler alleged that Mr. Martin assaulted her at their residence the night before when she called the police.

(Revocation Hearing Tr., R. 91, Page ID # 427).

Kellogg then testified about body camera video footage he'd gotten from Kalamazoo Department of Public Safety Officer Julie Misner, admitted as Exhibit 1, that recorded what happened when Misner responded to Butler's call. (*Id.*, Page ID # 428). The exhibit shows Butler telling the officer that Martin put her in a headlock and choked her during an argument. The exhibit also shows two children who said much the same thing, with less

emotion and detail.

Butler came to Kellogg's office the day after the alleged assault. He took three photographs of her that were admitted as Exhibits 2, 3, and 4. (*Id.*, Page ID # 431). Exhibits 2 and 3 showed bruises on Butler's upper bicep. (*Id.*). None of the pictures showed any marks on Butler's neck, nor did Butler tell Kellogg that Martin grabbed her arms. (*Id.*, Page ID # 445–46).

A week or two later Butler told Kellogg that she did not want Martin to go to prison, after she learned that Martin's state charges carried a penalty of up to five years in prison. (*Id.*, Page ID # 431–32).Butler failed to appear for a court hearing in the state case and on May 1, 2025, the state charges against Martin were dismissed. (*Id.*, Page ID # 441).

On cross-examination Martin challenged the reliability of Butler's accusations. Kellogg admitted that Butler never complained that Martin grabbed her by the arms. Kellogg never spoke to Butler after the state case was dropped. (*Id.*, Page ID # 446). Moreover, there was no evidence of strangulation marks in the video footage or the photographs. (*Id.*, Page ID # 457).

In argument, Martin said that the claims against him carried very serious consequences, that Butler had not showed up for two hearings, that the state assault charges had been dismissed, and that the government had

either made no effort to call Officer Misner, Butler, or her children, or had strategically decided not to call them. (*Id.*, Page ID # 456–57, 462).

The court found Martin guilty of all eight violations. The court said that the witnesses on the video seemed sincere and that the two children corroborated their mother's testimony that there had been a fight about a vacuum that resulted in Martin putting Butler in a choke hold. (*Id.*, Page ID # 466). The court also found that Martin assaulted Butler at the same time. The court based its finding of assault on the photographs admitted as Exhibits 2, 3, and 4, that the court said showed bruising due to a physical altercation. (*Id.).*

The court revoked Martin's supervision and sentenced him to serve 37 months in prison—24 months on the drug conviction, and 13 months, consecutive, on the firearm conviction. (*Id.*, Page ID # 478).

On appeal, Martin argued that the district court had denied him due process and failed to find good cause for denying him the right to confront and cross-examine Ashley Butler and her children. He pointed out that the government never told the district court why it chose not to produce Butler or her children and the district court never considered his need for confrontation. Nor did the court say why it found the evidence reliable when it overruled Martin's hearsay objection.

Martin argued that out-of-court statements by an ex-girlfriend are adversarial and are the "least reliable form of hearsay," citing *United States v. Lloyd*, 566 F.3d 341, 346 (3d. Cir. 2009), *quoting United States v. Comito*, 177 F.3d 1166, 1171 (9th Cir. 1999). He said that in order to permit effective appellate review, the court should require district courts to say how out-of-court evidence is reliable and how the government's grounds for not requiring confrontation outweigh the defendant's need for confrontation.

The Court of Appeals rejected Martin's arguments. The court used the plain error standard of review because Martin had only objected to the admission of hearsay, not to the admission of the video footage or to the district court's failure to expressly balance his interest in confronting the witnesses against him with the government's reasons for not producing them. The court said there was no plain error. The court said that the Sixth Circuit had never required district courts to conduct the balancing test on the record. Pet. App. 6a.

In addition, the court said that the evidence was sufficiently reliable for the district court to rely on it at the hearing. Pet. App. 5a–6a.

REASONS FOR GRANTING THE WRIT

Almost everyone sentenced to prison for a federal crime must serve a term of supervised release after release from prison. See 18 U.S.C. § 3583(a).

Many then go on to face hearings over claims that they have violated the terms of their supervision by committing a new offense. According to a United States Sentencing Commission study on recidivism released in September 2021, 49.3% of all federal offenders sentenced in 2010 were rearrested within eight years of release, and of those, 76.3% were rearrested during the term of their supervised release. https://www.ussc.gov/research-report/recidivism-federal-offenders-released-2010, retrieved February 18, 2026.

The circuit courts disagree about how courts should conduct supervised release violation hearings. In particular, they disagree about how to address defendants' right to question adverse witnesses when the government offers hearsay. Some courts require the district court to explicitly balance the defendant's interest in questioning witnesses against the government's reasons for not producing witnesses. Other do not. They allow courts to admit hearsay if it is reliable, without requiring balancing.

The Court should grant the petition to settle this important issue, which has constitutional dimensions. See Sup. Ct. Rule 10(a) and (c)(1).

Rule 32.1 of the Federal Rules of Criminal Procedure governs supervised release revocation proceedings. The rule codifies the minimum due process requirements this Court established for parole revocation proceedings in *Morrissey v. Brewer*, 408 U.S. 471, 488–89 (1972). Those requirements

include, among other things, "the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)." *Morrissey v. Brewer*, 408 U.S. at 489.

Due process applies because the termination of parole inflicts a grievous loss of liberty. *Morrissey v. Brewer*, 408 U.S. at 482. The same loss of liberty applies when the court revokes supervised release. If anything, a person on supervised release has an even greater liberty interest than a parolee, since unlike a parolee, a person on supervised release has already completed his prison sentence.[1]

Federal Rule of Criminal Procedure 32.1(b)(2)(C) says that at a revocation hearing the defendant "is entitled" to "question adverse witnesses" unless the court determines that the "interest of justice" does not require the witness to appear. The advisory committee's note to the 2002 amendment to the rule added the "interest of justice" requirement. The note cites *Morrissey's* admonition that the court must balance the person's interest in questioning witnesses against the government's good cause before denying the constitutionally guaranteed right to confrontation. Fed. R. Crim. P. 32.1

[1]Some even argue that the Fifth Amendment rights to indictment and proof beyond a reasonable doubt and the Sixth Amendment rights to jury trial and confrontation should apply when the violation of supervision alleged is a new crime, with a possible penalty of more than one year. *United States v. Peguero*, 34 F.4th 143, 167–68 (2d Cir. 2022) (Underhill, J., dissenting).

advisory committee's note to 2002 amendment, *United States v. Jordan*, 742 F.3d 276, 279 (7th Cir. 2014).

Some circuits require courts to make an explicit finding of good cause under the rule before allowing hearsay at revocation hearings, while others do not. *Compare United States v. Kelley*, 446 F.3d 688, 692 (7th Cir. 2006) (no explicit balancing required if hearsay is sufficiently reliable) *with Barnes v. Johnson*, 184 F.3d 451, 454 (5th Cir. 1999) (requiring an explicit finding of good cause to permit hearsay at a parole revocation hearing). But courts should expressly balance the defendant's interest in confronting a witness against the government's grounds for not producing the witness before permitting the use of the out-of-court evidence because of the value the law places on confrontation.

The right to confront and cross-examine witnesses is fundamental. Cross examination is "the constitutionally prescribed method of assessing reliability," *United States v. Ferguson,* 752 F.3d 613, 619 (7th Cir. 2014) (quoting *Crawford v. Washington*, 541 U.S. 36, 62 (2004)). "Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty." *United States v. Ferguson,* 752 F.3d at 619 (quoting *Crawford v. Washington*, 541 U.S. at 62 and holding that reliability alone does not excuse the government from

producing witnesses at a supervised release violation hearing).

Supervised release violation hearings are not trials, but the same interests in fundamental fairness and the need to ensure accuracy that underlie the right to confront witnesses at trial apply. "When liberty is at stake, the limited right to confront and cross-examine adverse witnesses [at a supervised release violation hearing] should not be denied without a strong reason." *United States v. Jordan*,742 F.3d at 279. No reason was given in Martin's case.

Even if the hearsay is reliable, reliability is not enough to support its admission, absent a district court ruling that the government has shown that the interest of justice calls for denying confrontation. *United States v. Jordan*, 742 F.3d at 280.

The reasons the district court gave for finding Martin guilty of Violation 1 depended on hearsay. The district court said the witnesses on the video "seemed sincere" and "appeared to be telling the truth." (Hearing Tr., R. 91, Page ID # 465–67). The Court used the same evidence, plus photographs of bruises on Butler's body to find Martin guilty of Violation 2. (*Id.*, Page ID # 467–68). But Martin never got the chance to question those witnesses. It is impossible to say now what his cross-examination would have revealed.

Even if the hearsay evidence is reliable, the Court should insist that the

district courts protect the right to confront witnesses at supervised release violation hearings. Before the district court denies a defendant the opportunity to confront and cross examine witnesses against him in open court, this Court should require an explicit finding of good cause for excusing their appearance. Implicit findings made by the reviewing court, reading the record after the fact, do not protect the defendant's strong interest in confronting and cross-examining witnesses. Here, we are left with a record that tells us nothing about why Ashley Butler and the other witness were not produced to testify.

CONCLUSION

The Court should grant the petition for writ of certiorari, vacate Martin's convictions on Counts 1 and 2 of the petition, vacate his sentences, and remand the case for further proceedings.

Respectfully submitted,

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