No. _____

In the

Supreme Court of the United States

_____

Charles Lee Kruse,

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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QUESTION PRESENTED

I. Whether due process requires that a defendant must receive notice of factual information the district court will use at a revocation sentencing before the imposition of the sentence?

PARTIES TO THE PROCEEDING

Petitioner is Charles Lee Kruse, 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 WRIT OF CERTIORARI

Petitioner Charles Lee Kruse seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The opinion of the court of appeals is reported at *United States v. Kruse*, 2016 WL 383605 (5th Cir. Feb. 11, 2026) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence entered in *United States v. Kruse*, No. 2:18-CR-00135-Z (April 2, 2025), is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on February 11, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS

Question I

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; not shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Federal Rules of Criminal Procedure 32.1(b)(2) states:

> (2) Revocation Hearing. Unless waived by the person, the court must hold the revocation hearing within a reasonable time in the district having jurisdiction. The person is entitled to:
>
> > (A) written notice of the alleged violation;
> >
> > (B) disclosure of the evidence against the person;
> >
> > (C) an opportunity to appear, present evidence, and question any adverse witness unless the court determines that the interest of justice does not require the witness to appear;
> >
> > (D) notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and
> >
> > (E) an opportunity to make a statement and present any information in mitigation.

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

Appellant Charles Lee Kruse received a 97-month term of imprisonment for violations of 18 U.S.C. § 2252A, to be followed by 15 years of supervised release. ROA.75. While on supervised release, Kruse built a computer, in violation of a condition of supervised release requiring pre-approval to possess a computer. ROA.93. He confessed this to his probation officer, explaining that he wanted to play a video game with his mother. ROA.93. A search of his computer discovered nothing of note. ROA.146.

Appellant also exchanged messages with someone on supervised release for the same offense as he was. ROA.93. This man texted him to say that he (the other man) had acquired an audiobook. See ROA.93, 146. Appellant replied "woot." ROA.146. This violated a condition of release prohibiting contact with felons without Probation's approval. ROA.93.

Probation petitioned to revoke the term of release, alleging these two acts. See ROA.92-95. Because the violations were non-criminal, and because Appellant had no criminal history, his recommended range of imprisonment was just 3-9 months, the lowest available for any violation of supervised release. ROA.95,176; USSG § 7B1.4.

Appellant pleaded true, ROA.143, and requested a sentence at the bottom of the policy statement range. ROA.174. The government requested a

sentence at the top of the range, citing the short period of time between the commencement of release and the first violation. ROA.145. The parties concurred in requesting that the district court return the defendant to a 15-year term of release. ROA.145, 147.

"On its own motion," the court varied from the lowest possible range found in USSG § 7B1.4 to the harshest available sentence. ROA.150. It imposed two years imprisonment, the statutory maximum, and extended the term of supervised release from 15 years to life. ROA.150. The court called the act of building a computer "a serious and egregious breach of trust." ROA.152. In explaining the sentence, however, it also noted information Probation communicated to the court via a "blue sheet." ROA.151-153. This included at least one, and maybe more, factual allegations of which the record reflects no prior notice. The court said:

> This is reflected in the supervised release recommendation received from the U.S. probation officer, what we call the blue sheet. Although there's no evidence Defendant used his homemade computer to participate in criminal activity, Defendant's blatant violation of an explicit term of supervised release is a serious and egregious breach of trust.
>
> Furthermore, according to the probation officer, Defendant, quote, continues to express a desire to place himself into high-risk situations and associate with individuals in similar situations and to consume alcohol, which is a trigger to child sexual exploitation material, or CSAM, consumption. This is relayed by the sex offender counselor consulted by the probation officer and relayed through the blue sheet to the Court.
>
> Accordingly, this violation of building a computer, combined with the violation of communicating with another felon, is a grave concern and suggests that Defendant is at a very high risk to recidivate into criminal sexual behavior if he does not

> rectify his behavior. These are direct quotes from the probation officer supervising this case.
>
> Accordingly, the Court finds that Defendant's egregious breach of trust and patent unwillingness to comply with his terms of supervised release indicate Defendant remains a persistent threat to the community.

ROA.151-153. The "blue sheet" is not disclosed to the parties, and the fact that it contained otherwise undisclosed factual allegations would not have been known to the defense but for the court's recitation at sentencing. Nor, of course, would the defense have known that the court relied on those allegations in choosing a sentence of the maximum severity.

II. Appellate Proceedings

Petitioner appealed, arguing this issue in the Fifth Circuit.

The court of appeals affirmed. *See* Pet.App.A.

REASON FOR GRANTING THE PETITION

I. Circuit courts are split on the issue of whether and to what extent Rule 32.1 applies to the sentencing phase of revocation proceedings.

The minimum standard of due process is notice and an opportunity to be heard before the deprivation of liberty or property. *See Boddie v. Connecticut*, 401 U.S. 371, 377-78 (1971). Federal Rule of Criminal Procedure 32 recognizes this imperative in the context of criminal sentencing, requiring the disclosure of the Presentence Report with adequate time to prepare objections. See Fed. R. Crim. P. 32(e). Likewise, Rule 32.1 provides a right to "disclosure of the evidence against the person" in cases of supervised release. Fed. R. Crim. P. 32.1(b)(2)(B).

In the context of initial sentencing, this Fifth Circuit has held that a district court's reliance on undisclosed information at sentencing represents clear or obvious subject to reversal on plain error review. *See United States v. Johnson*, 956 F.3d 740 at 744–747. But it has applied a different standard in cases involving the revocation of supervised release. *See United States v. Warren*, 720 F.3d 321, 330 (5th Cir. 2013). In *Warren*, the defendant, like Appellant here, pleaded true to the violation of his conditions of release. *See Warren*, 720 F.3d at 325. To assess sentence, however, the district court relied on allegations disclosed for the first time in a colloquy between the district court and the defendant. *See id.* at 325-326.

The Fifth Circuit found no error. It reasoned that the flexibility of supervised release proceedings could offer some benefit to the defendant, and

that the constitution did not require a more formal process to guarantee due process. *See Warren*, 720 F.3d at 330. It said:

> It may often be the defendant who wishes to raise arguments for revocation leniency for the first time when he addresses the court. Even here, Warren's attorney welcomed the district court's free and candid exchange with Warren…. We conclude that there is no constitutional or statutory basis, and no recommendation by the U.S. Sentencing Commission, on which to find error when the district court engages in the "predictive and discretionary" task of revocation sentencing, by referencing without prior notice conduct that, as the district court here stressed, was "part of [Warren's] behavior while on" supervised release.

Id. (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)) (internal citation omitted).

Warren also held that nothing in Rule 32.1 required the disclosure of evidence prior to an allocution colloquy. It said:

> Under Rule 32.1(b)(2)(B), the defendant is entitled to "disclosure of the evidence against the person" prior to the court's determination that the defendant violated a condition of supervised release. Rule 32.1 makes no clear provision for notice of information, however, relevant to revocation sentencing. In that regard, Rule 32.1 stands in notable contrast to Rule 32, which requires and elaborates extensive, pre-hearing notice mechanisms for information at original sentencing.

Id. at 327–28 (citing Fed. R. Crim. 32.1(b)(2)(B), Fed. R. Crim. P. 32, *United States v. Hall*, 383 F.App'x. 412, 414 (5th Cir.2010) (unpublished)(internal citations omitted).

Here, the district court cited at least one allegation that had not been disclosed before it imposed sentence – that the defendant "continues… to consume alcohol, which is a trigger to child sexual exploitation material, or

CSAM, consumption." ROA.152. The district court's statement that the "Defendant, quote, continues to express a desire to place himself into high-risk situations and associate with individuals in similar situations," ROA.152, may also reflect factual allegations that add to the Petition for Revocation.

The federal circuits appear to be split on this issue. On the one side of the debate are the Second, Fifth, Seventh, Tenth, and Eleventh Circuits. The Tenth Circuit reasons that Rule 32.1's protections do not extend to the sentencing: "[T]he sentencing phase of a revocation hearing is governed by the rule surrounding normal sentencing, Rule 32, not Rule 32.1." *United States v. Ruby*, 706 F.3d 1221, 1226 (10th Cir. 2013). In a similar, albeit distinct, vein, the Eleventh Circuit has found that waiver of a revocation hearing also waives any rights Rule 32.1 affords. *United States v. Jones*, 798 F. App'x 494, 497 (11th Cir. 2020). The Second Circuit grapples with Rule 32.1 primarily in the hearsay context, *see United States v. Diaz*, 986 F.3d 202 (2nd Cir. 2021), but seems to be in step with the finding from the Eleventh Circuit that waiving a revocation hearing waives Rule 32.1 rights. *United States v. Shapiro*, 711 F. App'x 25, 29 (2nd Cir. 2017). The Sixth Circuit has fallen somewhere in the middle, "frown[ing] upon a sentencing court's reliance on information not contained in the record where [the defendant] or his counsel do not have a meaningful opportunity to contest the veracity or relevance of the information relied upon by the district court." *United States*

v. Hatcher, 947 F.3d 383, 391 (6th Cir. 2020); *United States v. Brown*, 2022 WL 1511609 (6th Cir. 2020).

On the other side of the debate are the First, Eighth, Ninth, Fourth, and D.C. Circuits, which apply Rule 32.1 to the sentencing phase of revocation hearings, at least for certain purposes, such as timing and allocution. Of these Circuits, the Ninth Circuit has most firmly found that Rule 32.1 applies to the sentencing portion of a supervised release hearing. *United States v. Reyes-Solosa*, 761 F.3d 972, 974 (9th Cir. 2014) (citations omitted) ("We have said that sentencing procedures for probation and supervised release violations are primarily governed by Rule 32.1 ... not Rule 32."). The Eighth Circuit said: "We agree with the Ninth Circuit that Rules 32 and 32.1 are complementing rather than conflicting[.]" *United States v. Patterson*, 128 F.3d 1259, 1261 (8th Cir. 1997) (citing another source). Similarly, the D.C. Circuit has said: "[W]hen a court revokes a defendant's supervised release, it is sentencing him." *United States v. Abney*, 957 F.3d 241, 251 (D.C. Cir. 2020). The First Circuit has expressed some ambivalence but clearly leans towards finding that Rule 32.1 extends to sentencing procedures. *United States v. Colon-Maldonado*, 953 F.3d 1, 9 n.6 (1st Cir. 2020) (citing another source) ("[W]e've already written that Rule 32.1 governs post-revocation sentencing.... Still, this statement ... was arguably dictum[.]"). In *United States v. Combs*, The Fourth Circuit "reject[ed] the Government's argument that Rules 32.1(b)(2)(B) and (C) do not apply to the sentencing

phase of a revocation proceeding." 36 F.4th 502 (4th Cir. 2022). There, the Fourth Circuit explicitly disagreed with the Tenth's Circuit's reasoning in *Ruby*, finding it unpersuasive, "We cannot agree that there is 'no meaningful difference between sentencing at a revocation proceeding and sentencing after a guilty plea or jury verdict of conviction.'" *Id.* at n. 1 (citing *Ruby*, 706 F.3d at 1227; *see United States v. Crudup*, 461 F.3d 433, 438-39 (4th Cir. 2006) (emphasizing "the unique nature of supervised release revocation sentences" as compared to "original sentences".)

However far diminished the defendant's liberty interest may be after pleading true to a violation of the conditions of release, it remains the case that he has some constitutional interest in how long he serves in prison. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action."). If he has any due process interest at all in how long he served in prison, he must **at least** hear the relevant facts before the court formally makes its decision–this is the barest minimum of due process. And if there is any duty to "disclose the evidence against the person,"[1] even if that evidence relates only to sentencing, it must at least happen before sentence is pronounced. That didn't happen here.

[1] *Warren* rejected any requirement of prehearing notice of sentencing evidence when the defendant pleads true. *See Warren*, 720 F.3d at 328. Again, however, *Warren* did not address a case in which the record reflected no pre-decision disclosure at all. *See id*. at 325-326. Notably, the Rule refers generally to "disclosure of the evidence against the person," without distinguishing between evidence relevant to sentencing and evidence relevant to a violation. This contrasts with Rule 32.1(b)(2)(A), which requires

A defendant does not waive literally all procedural due process protections by pleading true to a violation of supervised release. *See Warren*, 720 F.3d at 330 ("There are, of course, other legal limits on the district court's sentence imposition discretion at revocation sentencing.") And it is clear that the bare minimum due process protection, the most limited protection available, is some opportunity to be heard before the decision is made. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985) ("[T]he root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest"). The procedures here clearly failed at this basic standard and federal circuit courts are divided on if and to what extent Rule 32.1 applied to revocation sentencing hearings. Clarity is needed on this issue.

"**written** notice of the alleged **violation**." The framers of the Rule knew how to refer specifically to evidence relevant to a violation when they wished to do so, but chose to do so only in reference to the heightened requirement of written notice. Accordingly, there is no reason to stretch *Warren* to reach the factual scenario at issue here, where the record reflects no disclosure of facts used at sentencing any time before the pronouncement of sentence.

CONCLUSION

Petitioner asks this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, or if it does so in another case to decide the above issue, should hold the instant Petition pending the outcome.

Respectfully submitted this 12th day of May, 2026.

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