

No.

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES BALDEMORO,
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

Whether revoking supervised release under 18 U.S.C. 3583(e)(3), on the basis of facts found by a judge under a preponderance of the evidence standard, violates the Fifth and Sixth Amendments as applied to a defendant who has already been punished by the maximum prison term prescribed by his underlying statute of conviction.

PARTIES TO THE PROCEEDING

The United States and Petitioner James Baldemoro were the only parties to the proceedings in both the district court and the court of appeals.

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

United States District Court for the Southern District of Texas:

United States v. James Baldemoro, No. 4:14-cr-86-1

United States Court of Appeals for the Fifth Circuit:

United States v. James Baldemoro, Nos. 24-20451 & 25-20094
(consolidated)

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PETITION FOR WRIT OF CERTIORARI

Petitioner James Baldemoro petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit’s decision is reported at 178 F.4th 933 and is reproduced as Appendix A to this petition (App. 1a-12a).

JURISDICTION

The Fifth Circuit entered judgment on June 16, 2025. App. 1a. This petition is filed within 90 days of that date. *See* Sup. Ct. R. 13.1. The Court has jurisdiction under 28 U.S.C. 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The Fifth Amendment to the Constitution provides, in relevant part: “No person shall be . . . deprived of life, liberty, or property, without due process of law.”

2. The Sixth Amendment to the Constitution provides, in relevant part: “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, ...”

3. Section 3583(e) of Title 18 provides, in relevant part:

(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)—

* * *

(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 postrelease 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.

STATEMENT OF THE CASE

A. Legal Framework

1. Congress first devised and enacted the scheme of supervised release at issue here in the mid-1980s as part of the landmark federal Sentencing Reform Act (SRA), Pub. L. No. 98-473, Title II, Ch. 2, § 212(a)(2), 98 Stat. 1837 (Oct. 12, 1984); *see* 18 U.S.C. 3583. But the story of American courts and legislatures deploying various forms of nondetentive monitoring, as part of the consequence for being convicted of criminal behavior, traces to the Founding.

a. Both before and after the revolution, courts of that era widely embraced the longstanding common-law practice of using a “recognizance,” sometimes called a “peace bond” or “surety for the peace,” as a means of ensuring compliance with judicial orders. Jacob Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. 1381, 1384, 1403-05 (2024). Under that practice, individuals convicted (or accused) of crimes would put up a sum of money, often provided by third-party “sureties” tasked with monitoring the offender, on the understanding that their release was contingent on their promise not to “breach the peace” and to otherwise “be of good behavior” for a certain period of time. *Id.* at 1404-05, 1408, 1411-12; *see* 4 William Blackstone, *Commentaries* *252; *cf. Ex Parte United States*, 242 U.S. 27, 45 (1916) (recognizing “the power of courts after a conviction and the suffering of the legal penalty to exact from the convicted person a bond for his good behavior thereafter”). A recognizer believed to have broken that promise could be detained and made to appear at a forfeiture proceeding, where he faced the prospect not only of losing the posted bond but also of being reimprisoned. *See* Schuman, *supra*, at 1415-17. In either case, so long as the alleged breach

of the peace or misbehavior happened outside the presence of the court, the recognizer was entitled to have the facts necessary to establish the violation submitted to a jury. *See id.* at 1419-25 (discussing state and federal cases memorializing the use of juries in recognizance-forfeiture proceedings); *cf., e.g., Basset v. United States*, 76 U.S. 38, 40-41 (1869) (acknowledging the in- versus out-of-court violation distinction).

b. Starting in the mid-19th century, the recognizance model gave way to the conditional-liberty schemes we now know as probation and parole. *See* Schuman, *supra*, at 1391-92. Whereas post-conviction recognizance involved extracting a promise to keep the peace from an individual whose sentence for his crime had already run, and exacting a new penalty for violating that pact through new antisocial behavior, these new models shifted the focus to offering convicted defendants a form of sentencing reprieve—either pretermittting their confinement, or accelerating their release—so long as they abided by certain conditions for the duration of a defined period of supervision.

In its initial iterations, probation gave courts the discretion to “suspend the imposition or execution” of sentence at the front end, such that success on supervision meant the defendant would avoid prison altogether. *Burns v. United States*, 287 U.S. 216, 220-21 (1932). Now, federal law treats probation as an imposed “sentence in its own right,” with successful completion having the same effect. *See* Fiona Doherty, *Indeterminate Sentencing Returns: the Invention of Supervised Release*, 88 N.Y.U. L. Rev. 958, 999 (2013); 18 U.S.C. 3561(a). The “essence” of parole, in contrast, “is release from prison, before the completion of” an imposed sentence, at the discretion of an administrative board or commission. *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972).

Under both schemes, noncompliance with the imposed conditions was (and for probation, still is) sanctionable by revocation: upon finding a violation, the parole board “return the parolee to prison to serve out the balance of his sentence,” *Morrissey*, 408 U.S. at 478-79, while the court could proceed to sentence—or, as conceived now, resentence—the probationer to “any [prison term] which might originally have been imposed.” *Burns*, 287 U.S. at 222; *see* 18 U.S.C. 3565(a)(2). In *Morrissey*, this Court held that, given parole’s character as an administrative act of sentencing forbearance, the revocation of that “conditional liberty” is “not part of a criminal prosecution and thus” does not trigger “the full panoply” of Fifth and Sixth Amendment rights. 408 U.S. at 480. The following year, the Court held that probation revocation required the same degree of process specified in *Morrissey*: notice of the alleged violations, preliminary and final revocation hearings, disclosure of evidence, confrontation (unless good cause exists to deny it), and a written statement of reasons. *See Gagnon v. Scarpelli*, 411 U.S. 778, 781-82, 786 (1973).

Thus, as things stood under the pre-SRA federal sentencing regime, “Congress defined the maximum, the judge imposed a sentence within the statutory range (which he usually could replace with probation), and the Executive Branch’s parole official eventually determined the actual duration of imprisonment.” *Mistretta v. United States*, 488 U.S. 361, 365 (1989). Over time, this last aspect started to draw considerable criticism, particularly for the inherent “uncertainty as to the time the offender would spend in prison” versus on parole. *Id.* at 366; *see* Schuman, *supra*, at 1395; *Doherty, supra*, at 995-96.

2.a. Enter supervised release. As part of its shift to a determinate-sentencing model in the SRA, Congress abolished parole and replaced it with supervised release. *See* 18 U.S.C. 3583. The new scheme required defendants to serve the entire prison term imposed for a given crime (less any time credited for good behavior in custody) before being released to a probation officer’s supervision for a defined period—imposed, by the court, at its discretion, at the time of sentencing. *Id.* § 3583(a). Naturally, the allowable term of supervision release is keyed to the class of the defendant’s offense, § 3583(b), and, accordingly, the maximum prison term authorized by the statute of conviction. *See* 18 U.S.C. 3559(a). Supervised defendants must comply with several mandatory release conditions—like to abstain from drug use and new crimes—as well as any discretionary conditions set by the court. 18 U.S.C. 3583(d).

b. As originally enacted, Congress’s new supervised-release scheme provided no authority for revocation, and thus, reimprisonment, as a sanction for failing to abide by conditions. Instead, noncompliance was redressable through modification of existing conditions, extension of the release term, or the initiation of a prosecution for criminal contempt “pursuant to section 401(3) of” title 18. SRA, § 212(a)(2); *see* S. Rep. No. 98-225, at 58, 124-25 (1983). The authority to “revoke a term of supervised release” first appeared, as a complementary alternative to contempt, through several “miscellaneous technical amendments” made in the Anti-Drug Abuse Act of 1986, Pub. L. 99-570, Title I, § 1006(a)(3)-(4), 100 Stat. 3207 (Oct. 27, 1986); *see* 18 U.S.C. 3583(e)(3)-(4) (eff. Nov. 1, 1987 to Nov. 18, 1988). Another round of “minor and technical” amendments in 1988 purported to both drop the contempt provision, and yet account for it, in the

process of adding the option to order home confinement “as an alternative to incarceration.” Pub. L. 100-690, Title VII, §§ 7108(b), 7305(b), 102 Stat. 4418, 4419, 4464-66 (Nov. 18, 1988).¹

Since then, Section 3583(e)(3) has authorized the sentencing court to revoke the defendant’s term of supervised release, and return him to prison, if it “finds by a preponderance of the evidence that the defendant violated a condition.” The maximum length of the reimprisonment, per revocation, is again tied to the class of the “offense that resulted” in the term of supervised release: “no more than” five years for class A felony, three years for a class B felony, two years for class C and D felonies, and one year in all other cases. 18 U.S.C. 3583(e)(3).

The revoking court is also empowered to order a further period of supervised release after reimprisonment. *Id.* § 3583(h). Subsection (h) purports to limit the amount of additional supervised release to the maximum term that originally could have been ordered, “less any term of imprisonment that was imposed upon revocation of supervised release.” *Ibid.* As commentators have pointed out, however, the provision “has no impact” when “the maximum possible term of supervised release is life,” as “is true for convictions under the federal drug-trafficking laws, terrorism offenses, and many sex offenses.” Doherty, *supra*, at 1011 (citing U.S. Sentencing Comm’n, *Federal Offenders Sentenced to Supervised Release* 6 n.22, 45 (2010)) “In such cases, there is no cap on a potential lifetime cycle of reimprisonment for supervised release violations.” *Ibid.*

¹ This left the statute with subsections (e)(3) (revocation) and (e)(5) (home confinement), but no subsection (e)(4). Congress later addressed the conflict by relocating home confinement to (e)(4) and removing (e)(5). *See* Pub. L. 101-647, Title XXXV, § 3589, 104 Stat. 4930 (Nov. 29, 1990).

c. In *Johnson v. United States*, 529 U.S. 694 (2000), this Court construed Section 3583(e)(3)’s revocation sanction “as part of the penalty for the initial offense.” *Id.* at 700. This reading, the Court emphasized, was necessary to “avoid” at least two “serious constitutional problems” that would arise if revocation was instead treated “as punishment for the violation.” *Id.* at 700. First, although its consequence is “reimprisonment,” “the violative conduct need not be criminal and need only be found by a judge under a preponderance of the evidence standard, not by a jury beyond a reasonable doubt.” *Id.* at 700. And “[w]here the acts of violation are criminal in their own right,” punishing them once through revocation would also “raise an issue of double jeopardy” in any “separate prosecution” seeking to punish the same conduct. *Ibid.*

3.a. Mere months later, the Court issued its decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), clarifying the scope of the Sixth Amendment right to trial and the Fifth Amendment’s “companion right” to proof beyond reasonable doubt. *Id.* at 478. “Other than the fact of a prior conviction,” the Court held, “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond reasonable doubt.” *Id.* at 490. The Court has consistently applied that rule to require a jury to find (or the defendant to admit) the facts necessary to trigger a more onerous penalty than the law would otherwise allow for a single offense, including an elevated minimum prison term. *See Alleyne v. United States*, 570 U.S. 99, 111-13 (2013); *see, e.g., Erlinger v. United States*, 602 U.S. 821, 834-35 (2024) (minimum *and* maximum imprisonment); *Southern Union Co. v. United States*, 567 U.S. 343, 346, 358 (2012) (maximum fine); *United States v. Booker*, 543 U.S. 220, 230-44

(2005) (mandatory guidelines range); *Blakely v. Washington*, 542 U.S. 296, 301-05 (2004) (same); *Ring v. Arizona*, 536 U.S. 584, 609 (2002) (death).

b. In *United States v. Haymond*, 588 U.S. 634 (2019), the Court confronted the Fifth and Sixth Amendments’ application to supervised-release revocation in the form of 18 U.S.C. 3583(k)—a provision that deviated from Section 3583(e)(3) by mandating revocation, and a minimum five-year term of reimprisonment, for specified criminal violations committed by defendants on supervised release for certain sex crimes. A four-Justice plurality, authored by Justice Gorsuch, deemed Section 3583(k) to work a straightforward violation of *Alleyne*’s application of *Apprendi* to facts necessary to “expose a defendant to an additional mandatory minimum prison term . . . based on facts found by a judge by a mere preponderance of the evidence.” *Haymond*, 588 U.S. at 652.

Concurring in the judgment, Justice Breyer embraced a narrower, and so controlling, *Johnson*-based theory as to why the provision could not be reconciled with the Fifth and Sixth Amendments. *See id.* at 657-59. Justice Breyer isolated three factors that, in his view, together caused Section 3583(k) to function as new punishment for the violation, and no longer as “part of the penalty for the initial offense,” *id.* at 658 (quoting *Johnson*, 529 U.S. at 700), without affording the attendant Fifth and Sixth Amendment rights, “including the jury right.” *Id.* at 659 (citing *Alleyne*, 570 U.S. at 103).

Writing for four Justices in dissent, Justice Alito expressed disagreement with both the plurality and controlling concurrence. *Id.* at 659. The dissent’s substantive analysis, however, centered on the threat to the vitality of Section 3583(e)(3)’s general revocation authority it perceived in the plurality’s broader rationale. *See id.* at 659-83.

The dissent saw no room for the Fifth and Sixth Amendment rights to trial by jury and proof beyond reasonable doubt in supervised-release revocation proceedings because, in its view, the system of supervised release embodied in Section 3583 is not meaningfully different than the parole system it replaced. *See id.* at 667-69. Since the Court in *Morrissey* had regarded parole revocation as independent from the “criminal prosecution” that produced the parolee’s sentence, the dissent reasoned that the same must be true of supervised release revocation. *See id.* at 669-75. In doing so, the dissent acknowledged the founding-era practice of releasing convicted criminals “on bonds and recognizances that made their continued liberty contingent on good behavior” as one of the “nearest” potential historical analogues to supervised release. *Id.* at 677. But because it had uncovered “no evidence that there was a right to a jury trial at such proceedings, and the plurality” had not “attempt[ed] to prove otherwise,” *ibid.*, the dissent regarded that perceived absence as further support for its view that the rule of *Apprendi* is a categorical misfit in the conditional-release revocation context. *See id.* at 677-79.

Pertinent here, both the plurality and dissent emphasized that *Haymond* did not implicate, and thus should not be read as resolving, the discrete question presented in this petition. *See* 588 U.S. at 652 n.7, 654 (plurality); *id.* at 666 (Alito, J., dissenting). Nevertheless, both opinions devoted dicta to the subject. The plurality stressed that, even if its opinion could be read to “cast doubts” on Section 3583(e)’s “consistency with *Apprendi*,” the blast radius would be small because, “[i]n most cases (including th[at] one), combining a defendant’s initial and post-revocation sentences . . . will not

yield a term of imprisonment that exceeds the statutory maximum term of imprisonment the jury has authorized for the original crime of conviction.” *Id.* at 655 (plurality). The dissent countered that Section 3583 should be understood as effectively authorizing an additional range of imprisonment on top of the maximum identified in the statute of conviction, such that “a defendant sentenced to x years of imprisonment followed by y years of supervised release is really sentenced to a maximum punishment of $x + y$ years of confinement.” *Id.* at 665-66 (Alito, J., dissenting).

c. Last Term, Justice Gorsuch dissented from the denial of certiorari in a case raising essentially the same question presented here: whether “a jury [must] decide any contested facts under the reasonable doubt standard where . . . a court seeks to impose a [revocation] sentence that will cause a defendant’s total time in prison to exceed the statutory maximum Congress has authorized for his underlying conviction.” *United States v. Burnett*, 146 S. Ct. 875, 876 (2026). Consistent with the view endorsed in the *Haymond* plurality, Justice Gorsuch noted that the question remains open and that the answer turns on whether allowing judges to find revocation-supporting facts in that scenario “can be squared with” *Apprendi*. *Id.* at 877. Justice Gorsuch registered his hope that the Court would agree to take up the issue in another suitable case “soon.” *Ibid.* “In the meantime,” he urged the “lower courts” to “more carefully consider the Sixth Amendment’s application in this context.” *Ibid.*

B. Factual and procedural background

1. In 2014, petitioner James Baldemoro was charged with three counts of distributing material that contained child pornography, 18 U.S.C. 2252A(a)(2)(B), and one

count of possessing such material, 18 U.S.C. 2252A(a)(5)(B). Under the penalty provision applicable to the distribution counts, petitioner faced a minimum of five years and a maximum of 20 years in prison. § 2252A(b)(1). The provision implicated in the possession count, in contrast, provided that petitioner “shall” be “imprisoned for not more than 10 years.” § 2252A(b)(2). Petitioner pleaded guilty to the latter count, waiving his right to direct appeal in exchange for dismissal of the remaining counts. App. 2a. The district court imposed the “statutory maximum” prison term of 10 years, to be followed by 10 years of supervised release. C.A. ROA.24-20451.233; App. 2a. Petitioner’s term of supervision began upon his release on October 28, 2022, and, if completed successfully, would have lapsed in October 2032. App. 2a.

2. Alas, petitioner’s probation officer moved to revoke his supervised release in April 2024 on the strength of four alleged technical, noncriminal violations. App. 2a. Prior to the revocation hearing, petitioner filed pro se objections to the proceedings on the ground that he had already received and served the maximum authorized prison term for his offense, and that revoking his release based on facts found by the judge, not a jury, exposed him to new or additional punishment in violation of the Fifth and Sixth Amendments. C.A. ROA.24-20451.161-66; App. 2a. At the subsequent hearing, petitioner pleaded not true to each of the alleged violations and re-urged his objections. C.A. ROA.24-20451.252-53, 273-79.² After hearing the government’s evidence, the court concluded that all four violations were more likely than not true, overruled petitioner’s

² The court of appeals’ decision erroneously characterizes petitioner as having “conceded the violations.” App. 2a. As noted above, he in fact pleaded not true, *see* C.A. ROA.24-20451.252 (“I’m going to say not guilty based on Constitutional rights conflicts.”), and the government proceeded to present evidence attempting to prove up the violation conduct. *See id.* at 253-73.

objections, revoked supervised release, sentenced him to six months’ reimprisonment, and imposed eight more years of supervised release. App. 2a. Petitioner timely appealed (No. 24-20451), renewing his statutory and constitutional objections. App. 3a, 6a.

3. As the first appeal progressed through the early stages, petitioner served the additional six months and was again released, on December 16, 2024, to supervision. C.A. ROA.25-20094.504. But, due in large part to difficulties arising out of the combination of homelessness and a serious, chronic medical issue—stage 5 (or end-stage) kidney failure requiring weekly dialysis—he rather quickly struggled to comply to his probation officer’s satisfaction with two of the technical conditions on his release. *See* C.A. ROA.338-39, 345, 353-54. Another revocation petition, alleging the pair of perceived noncriminal violations, ensued. C.A. ROA.25-20094.504-07; App. 2a. At the hearing, petitioner preserved the same arguments he raised in the prior proceeding, and had since pressed in the first appeal, and again pleaded not true. App. 2a.

The district court’s conclusion that a preponderance of evidence supported one of the alleged violations led it, albeit reluctantly, to once more revoke petitioner’s release and impose a further six months in custody. App. 2a. The court opted to order yet more supervised release to follow, specifically with an “expiration date of December 15, 2032.” C.A. ROA.25-20094.210 (judgment); App. 2a-3a.

Petitioner appealed (No. 25-20094) the second revocation judgment. App. 3a. After a period of abatement and request for supplemental letters, the court of appeals consolidated the appeals with the parties’ agreement, ordered a second round of full, expedited briefing, and heard oral argument. App. 3a.

4. The Fifth Circuit affirmed in a published decision. App. 1a-12a. First, the court of appeals rejected the government’s contention that the first appeal (though not the second) was moot, holding that petitioner retained a justiciable interest in setting aside the initial judgment as unconstitutional because a ruling to that effect would allow him to seek modification of his term of supervised release to account for overserved time—a total of 12 months if both identical appeals were successful. App. 4a-6a & n.1.

On the merits, the court of appeals held that the successive six-month revocation adjustments, on top of petitioner’s initial statutory maximum sentence, neither resulted in an unlawful sentence, App. 6a-8a, nor implicated the Fifth and Sixth Amendments. App. 8a-11a. As to the latter point, the Court reasoned, as has “[e]very sister Circuit that has considered the issue thus far,” that the claim that *Apprendi* requires a jury, not a judge, to find the facts necessary to push combined initial and revocation sentences beyond the underlying statutory maximum is irreconcilable with Justice Breyer’s *Haymond* concurrence. App. 10a-11a & n.4. The court thus defaulted to its pre-*Haymond* precedent equating revocation of supervised release with parole revocation for all purposes. App. 9a. Under that precedent, it reaffirmed, “the Fifth and Sixth Amendment protections” petitioner sought “do not attach in revocation proceedings.” App. 11a-12a.

REASONS FOR GRANTING THE PETITION

The question whether Section 3583(e)(3) violates the Fifth and Sixth Amendments, as applied to a defendant who has already received and served the statutory maximum prison term for his offense, warrants this Court’s review. There is no doubt as to that question’s importance: though not presented, it loomed large in the background of this Court’s divided opinion in *Haymond*. Petitioner’s case squarely presents the opportunity to resolve that question with the benefit of full briefing, as well as recent scholarship addressed to historical evidence the Court admittedly lacked in 2019. And, as the decision below illustrates, the courts of appeals remain steadfast in their refusal to accept Justice Gorsuch’s recent invitation to reconsider Section 3583(e)’s compatibility with *Apprendi* even in the narrow but consequential circumstances presented here: a defendant who has now served 11 years—for a crime punishable by “no more than 10 years”—based on new, noncriminal facts found more likely than not to be true. That result could not have happened under the parole system supervised release replaced. And there is no textual, contextual, or historical basis to read Section 3583(e)(3) as silently increasing the maximum prison term authorized for every federal crime. The decision below wrongly retreated to precedent assuming otherwise to find the statute categorically immune to *Apprendi*. The petition should be granted.

A. The decision below is wrong and contrary to this Court’s *Apprendi* line of precedents.

1. For 26 years, this Court has consistently reaffirmed *Apprendi*’s guiding principle: if a fact—apart from a prior conviction—must be found in order to punish a crime beyond its otherwise applicable statutory maximum, then that fact “must be resolved

by a unanimous jury beyond reasonable found (or freely admitted in a guilty plea).” *Er-linger*, 602 U.S. at 835 (citing *Apprendi*, 530 U.S. at 490). In the *Apprendi* context, the “statutory maximum” is “the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*.” *Blakely*, 542 U.S. at 303 (original emphasis). Put differently, if the facts encompassed by the jury’s verdict (or the defendant’s plea) “alone do[] not authorize the sentence, if, instead, the judge must find an additional fact to impose the longer term, the Sixth Amendment requirement is not satisfied.” *Cunningham v. California*, 549 U.S. 270, 290 (2007).

Section 3583(e)(3)’s application to individuals in petitioner’s shoes plainly implicates this rule. To extend petitioner’s 10-year, statutory maximum prison sentence to 10.5 years, and then again to 11 years, the district court had to find new facts: that he violated at least one of the conditions placed on his initial and reimposed supervised-release terms. Without that additional finding, petitioner could not lawfully be sentenced to serve even one day over 10 years for his crime. So, under the rule of *Apprendi*, that fact had to be found, or admitted, beyond reasonable doubt.

2. In line with other circuits to confront the issue, the Fifth Circuit below wrongly took Justice Breyer’s concurrence in *Haymond* to preclude that straightforward result. App. 9a-11a (collecting cases). And like those circuits, the Fifth Circuit accordingly refused to reengage its earlier decisions affirming Section 3583(e)(3)’s compatibility with *Apprendi*—on facts that did not implicate the question this case raises—on the ground that revocation of supervised release as a whole operates like revocation of parole, and thus occurs in a context that the jury-trial right can never reach. App. 8a-9a, 11a-12a.

The Fifth Circuit also reaffirmed its understanding of Section 3583(e)(3) as authorizing a range of reimprisonment “separate and apart from,” and in addition to, the maximum prison term set in “the underlying statute of conviction.” App. 7a. This reasoning, mirrored in the *Haymond* dissent, is misguided as to the question presented here.

a. As an initial matter, nothing in *Haymond* justifies dodging that question’s merits. The plurality expressly reserved the question, *see* 588 U.S. at 652 n.7, offering only in dicta—persuasive, in petitioner’s view—that finding Section 3583(e)(3) incompatible with *Apprendi* in the narrower circumstance at issue here would not inevitably (or even likely) cast doubt on the statute’s mine-run application. *See id.* at 654. Despite its concerns about the consequences of the plurality’s rationale as to the question that *Haymond* did present, the dissent likewise emphasized that the narrower question here was not implicated. *Id.* at 666 (Alito, J., dissenting). And while Justice Breyer expressed general agreement with the dissent’s view that judicial factfinding as it exists in Section 3583(e)(3)’s core applications is consistent with that of parole revocation, *id.* at 657-58, the rule of his concurrence left both that question and the one presented here where they stood—undecided. *See id.* at 659. If there were any room for doubt, Justice Gorsuch’s recent entreaty to the lower courts to “carefully consider” the question presented confirms that *Haymond* did not resolve the issue. *See Burnett*, 146 S. Ct. 877 (Gorsuch, J., dissenting from denial).

b. The lower courts also err in assuming that supervised-release revocation under Section 3583(e)(3) equates to parole revocation in all material respects, such that it, too, is not a stage of the “criminal prosecution” to which the jury right attaches. App.

9a (citing *United States v. Hinson*, 429 F.3d 114, 118 (5th Cir. 2005)). The *Haymond* dissent picked up on this thread, faulting the plurality for making “no real effort to show that the Sixth Amendment was originally understood to require a jury trial in a proceeding like a supervised-release revocation proceeding.” 588 U.S. at 669 (Alito, J., dissenting).

This overlooks that, for *Apprendi* purposes, the question is not, “at what stage are the pertinent facts found,” but rather, “what is the effect of finding those facts?” Take *Oregon v. Ice*, 555 U.S. 160 (2009), and its refusal to extend *Apprendi* to facts supporting consecutive versus concurrent sentences. As the Court noted, consistent with *Apprendi*, to determine the scope of the jury-trial right the Court “consider[s] whether the finding of a particular fact was understood as within ‘the domain of the jury . . . by those who framed the Bill of Rights.’” *Ice*, 555 U.S. at 167-68 (quoting *Harris v. United States*, 536 U.S. 545, 557 (2002)). The historical record showed that any such facts, to the extent discernible, were not traditionally the province of a jury. And that made sense, given that the decision to run two sentences for two separate crimes consecutively does not affect the length of either sentence.

Apprendi, in contrast, concerned facts that extended the amount prison time imposed as a penalty for a single crime beyond the upper limit set by the statute of conviction. And as to facts having *that* effect, the Court held that the Sixth Amendment *was* originally understood to require such facts to be submitted to a jury. In other words, “[t]he dispositive question” is “‘one not of form, but of effect.’” *Ring*, 536 U.S. at 603 (quoting *Apprendi*, 530 U.S. at 494). And “the novelty” of a given “legislative scheme”

does not excuse “remov[ing] the jury from the determination of a fact that, if found, exposes the criminal defendant to a penalty *exceeding* the maximum he would receive if punished according to the facts reflected in the jury verdict alone.” *Apprendi*, 530 U.S. at 482-83 (original emphasis).

There is no question that, at least in the circumstances raising the question presented here, finding the facts necessary to revoke supervised release has the requisite effect. *Johnson* made clear that revocation under Section 3583(e)(3) is “part of the penalty for the initial offense,” and thus represents an upward adjustment to the original sentence. 529 U.S. at 700; *see id.* at 714 (Kennedy, J., concurring in part) (“What is at issue in this case is the appropriate adjustment to make to th[e] sentence when the prisoner has violated the conditions of supervised release.”); *see also Haymond*, 588 U.S. at 648 n.5 (plurality) (“As *Johnson* recognized, when a defendant is penalized for violating the terms of his supervised release, what the court is really doing is adjusting the defendant’s sentence for his original crime.”). Of course, the effect of finding revocation-triggering facts ordinarily is simply to adjust the initial prison term *within* the range prescribed by the statute of conviction. *Haymond*, 588 U.S. at 655 (plurality). In those instances, Section 3583(e)(3) operates in the way that the parole and probation revocation schemes did in *Morrissey* and *Gagnon*.

But, as the *Haymond* plurality foreshadowed, the statute’s effect is meaningfully different in the rare cases in which revocation would push the total imprisonment sanction for the original offense beyond the statutory maximum. There, unlike in *Morrissey* and *Gagnon*, a judge’s finding of the facts necessary to trigger revocation results in the

defendant serving more time in prison than he could have lawfully received based on the crime of conviction alone. It is that maximum-exceeding *effect* that triggers the process due under *Apprendi*.

Contrary to the lower courts' reasoning, Justice Breyer's controlling opinion in *Haymond* actually reinforces the point. As to Section 3583(k), too, the factual findings necessary to trigger the new mandatory revocation sentence, and that Justice Breyer viewed as implicating *Johnson*'s prohibition on using revocation to impose "punishment for a new offense," *Haymond*, 588 U.S. at 659 (Breyer, J., concurring), occurred at the same stage: a revocation proceeding. Nevertheless, because the effect of that judicial factfinding was to "trigger a mandatory minimum prison term," the failure to afford "the rights, including the jury right," *at that stage* worked a Fifth and Sixth Amendment violation. *Ibid.* (citing *Alleyne*, 570 U.S. at 103).

c. The claim that Section 3583(e)(3) sets out a new penalty range that is separate from, but at the same time in addition to, the maximum identified in the statute of conviction is similarly misguided.

For one, it is contrary to *Johnson*. Unmooring the length of reimprisonment imposed under Section 3583(e)(3) from the prosecution for the crime that resulted in the revoked term of supervision would necessarily redirect that penalty to the new violation conduct. And this would walk the statute right into the unconstitutionality that *Johnson* purposefully avoided (and that Justice Breyer perceived in Section 3583(k)). That is why, as the *Haymond* plurality accurately noted, to acknowledge that "an accused's final sentence includes any supervised release sentence he may receive" is simply to

restate what *Johnson* “already recognized.” 588 U.S. at 648 (citing *Johnson*, 529 U.S. at 700).

The extreme consequence of this conception reinforces its flaws. The *Haymond* dissent posited two theories as to Section 3583(e)(3)’s relationship to the maximum prison term set in the underlying statute of conviction. First, after the SRA’s switch from parole to supervised release, “the maximum period of confinement authorized” for any count of conviction “is the maximum term of imprisonment plus the maximum term of supervised release.” *Haymond*, 558 U.S. at 668 (Alito, J., dissenting). Second, the maximum period of confinement could be seen to depend on the amount of supervised release imposed—that is, “that a defendant sentenced to x years of imprisonment followed by y years of supervised release is really sentenced to a maximum punishment of $x + y$ years of confinement.” *Id.* at 665-66.

But either characterization presents a classic elephants-in-mouseholes problem. Under the pre-SRA parole system, the maximum period of confinement any individual could serve—irrespective of whether, and if so how many times, he had his parole revoked—was the maximum specified in the statute of conviction. *See Haymond*, 588 U.S. at 651-52 (plurality). Indeed, if the parolee’s original prison sentence was below the statutory maximum, revocation could see him serve only the remainder of that sentence. When Congress replaced parole with supervised release, it did so with the aim of adding stability and predictability to the amounts of time defendants would in fact serve both imprisoned and under parole-based supervision. The goal was rehabilitative, not punitive. *See Johnson*, 529 U.S. at 709 (citing S. Rep. No. 98-225, at 124-25 (1983)).

Yet under the dissent’s conception, Congress understood the switch to supervised release not as a mere evolution to post-confinement monitoring but as a means to silently revolutionize the maximum available prison terms for every federal crime in the U.S. Code. A crime like petitioner’s, which all agree could have resulted in no more than 10 total years in prison before the SRA, suddenly became punishable by up to the rest of the defendant’s life (or, under the $x + y$ formulation, the amount of supervised release initially imposed). There is no evidence that the Congresses that enacted and amended Section 3583 understood the statute to have that counterintuitive effect.

d. Finally, as noted, *Johnson*’s avoidance construction of Section 3583(e)(3)’s revocation sanction as having the effect of adjusting the sentence for the initial offense eliminates any need to search for founding-era analogies to modern revocation proceedings. Where, as here, the effect of the adjustment is to breach the underlying statutory ceiling, the statute runs afoul of *Apprendi*. But if the Court were to tread that path, the weight of the available evidence tends to undermine, not bolster, the constitutionality of Section 3583(e)(3).

The *Haymond* dissent recognized writs of recognizance as among the “nearest” historical analogues to modern supervised-release revocation proceedings; but it found no evidence that revoking recognizance required a jury. *See* 588 U.S. at 677 (Alito, J., dissenting). Commentators have since unearthed ample evidence that recognizance-forfeiture proceedings did, in fact, routinely rely on juries. *See* Schuman, *Revocation at the Founding*, 122 Mich. L. Rev. at 1419-25. If anything, this suggests that, at the founding, individuals who had completed the sentence for a crime but were nevertheless subject

to a form of conditional liberty—like individuals on supervised release (and unlike the parolees and probationers in *Morrissey* and *Gagnon*)—were traditionally understood to be entitled to have a jury find the facts necessary to see their recognizance forfeited.

Whatever conclusions might be drawn as to the effect of that historical evidence on supervised-release revocation as a whole, the question presented here does not call on the Court to investigate that larger, murkier issue. *Johnson* and *Haymond* make clear that, by relating to the penalty for the underlying offense, revocation proceedings may continue to implicate the due process and jury-trial rights of the accused. And, under *Apprendi*, it is the effect of a particular factfinding that determines whether those rights are implicated. In the circumstances here, the effect is to increase the maximum amount of impossible prison time for a single count of conviction. It thus suffices to note that, even if relevant, the available historical evidence at a minimum suggests that an individual facing an analogous scenario at the founding would expect that a jury, not a judge, would have to find the facts necessary to trigger imprisonment he couldn't have otherwise received.

As Justice Breyer confirmed in *Haymond*, the revocation of supervised release crosses over into new punishment at least when it triggers a new minimum, and mandatory, amount of imprisonment for specified criminal violations. And as the plurality observed, revocation likewise ceases to penalize the initial offense, and exposes the defendant to new punishment, when it threatens to push the amount of prison time imposed for the same offense beyond the maximum identified in the statute of conviction. This Court should grant review. And it should so hold.

B. The question presented is important, and the decision below reinforces that the courts of appeals will not correct course on their own.

1. The question presented is undoubtedly important.

a. The extent to which revocation of supervised release implicates the core procedural protections guaranteed by the Fifth and Sixth Amendments, as a general matter, sharply divided the members of this Court in *Haymond*. Indeed, the precise issue presented here—concerning *Apprendi*’s applicability when initial and revocation sentences combine to surpass the underlying statutory maximum—occupied a sizable portion of the discussion at argument, *see* Tr. of Oral Argument, at 13-14, 15-16, 38-40, *United States v. Haymond*, No. 17-1672, and was debated by the plurality and dissent. A question that has already merited so much of this Court’s attention, in a case that did not present it, can hardly be dismissed as unworthy of review.

b. And, as Justice Gorsuch recently underscored, “even if the class of cases like [petitioner]’s is small, the stakes are high.” *Burnett*, 146 S. Ct. at 876 (Gorsuch, J., dissenting from denial). The question presented can only arise where the revocation of supervised release under Section 3583(e)(3) “cause[s] a defendant’s total time in prison to exceed the statutory maximum Congress has authorized for his underlying conviction.” *Ibid.* The imposition of a sentence “beyond what the relevant statute allows” is universally understood as a “miscarriage of justice” that warrants redress—even where doctrines like forfeiture, waiver, or default would otherwise preclude relief. *Hunter v. United States*, 146 S. Ct. 1702, 1713 (2026); *see Glover v. United States*, 531 U.S. 198, 203 (2001) (noting that overserving “any amount of actual jail time is prejudicial”).

c. But “it is not [simply] the abstract dignity of the statutory maximum that is at stake in [this] Court’s Sixth Amendment jurisprudence, but the integrity of the jury right itself, the cornerstone of our criminal justice system.” *United States v. Faust*, 456 F.3d 1342, 1350 (11th Cir. 2006) (Barkett, J., specially concurring). The Fifth Amendment’s corresponding interest in proof beyond reasonable doubt is just as weighty. That standard not only gives “concrete substance” to the foundational presumption of innocence, but guards against the “lack of fundamental fairness” that would arise if a defendant “could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.” *In re Winship*, 397 U.S. 358, 363 (1970) (internal citation marks omitted).

This case illustrates how unchecked judicial factfinding, as a basis for reimprisoning released defendants, can create this kind of constitutional loophole. On the basis of noncriminal conduct proved only under the civil preponderance standard, petitioner has now been sentenced to, and served, 11 years in prison for a crime punishable by “not more than 10 years”—a result that could not have occurred under the traditional parole scheme that supervised release replaced. And, as the successive revocations in this case demonstrate, the prospect of a perpetual cycle of repeating constitutional harm is not theoretical. *See Haymond*, 588 U.S. at 650 (plurality) (noting the potential for “perpetual supervised release” in cases such as this); *Doherty, Indeterminate Sentencing Returns: the Invention of Supervised Release*, 88 N.Y.U. L. Rev. at 1011 (same).

2. Despite the gravity of the question presented, there is every reason to think that the courts of appeals will continue to reflexively deny *Apprendi*’s clear relevance

to revocation under Section 3583(e)(3) in these circumstances. As the decision below both illustrates, and well documents, *see* App. 9a-11a & n.4 (collecting cases), the lower courts are entrenched in their erroneous views that the constitutional implications of supervised-release revocation are in all instances coterminous with those of parole revocation, and that *Haymond* precludes the application of *Apprendi* even in the scenario presented here.

To be sure, several circuit judges have forcefully fought against the current to make the case for revisiting Section 3583(e)'s compatibility with the Fifth and Sixth Amendments. *See United States v. Peguero*, 34 F.4th 143, 165-79 (2d Cir. 2022) (Underhill, J., dissenting); *United States v. Moore*, 22 F.4th 1258, 1279-84 (11th Cir. 2022) (Newson, J., dissenting); *United States v. Henderson*, 998 F.3d 1071, 1078-88 (9th Cir. 2021) (Rakoff, J., dissenting), *cert. denied*, 142 S. Ct. 810 (2022); *United States v. Ka*, 982 F.3d 219, 223-29 (4th Cir. 2020) (Gregory, J., dissenting). But to no avail. Only this Court can answer the question that divided eight of its members in *Haymond*.

C. This case is an ideal vehicle.

Petitioner's case is the right vehicle for doing so.

1. First, the case cleanly and squarely presents the question. Petitioner was initially sentenced at the statutory maximum for his crime of conviction, such that each preponderance-based revocation necessarily stretched his adjusted prison term further beyond that ceiling. Petitioner's constitutional objections to that result were pressed and passed upon at all stages of the district and circuit court proceedings. And consolidation of the appeals afforded the parties two full rounds of briefing.

2. The question presented is also outcome-determinative. Petitioner explained in detail, over those two rounds of briefing, why the entry of both revocation judgments on the basis of judicially found facts was not harmless beyond reasonable doubt. The government did not argue to the contrary, and so waived any such claim. Moreover, unlike *Burnett*, petitioner does not “challenge[] only the length” of his post-revocation terms of imprisonment. *Burnett* BIO 7 (No. 25-5442). To the contrary, in both consolidated appeals below, petitioner specifically challenged the entry of revocation judgment on the basis of judge-found facts—an argument that, if successful, would necessarily invalidate the resulting extensions of his initial statutory-maximum sentence, as well as the extension of his initial term of supervised release.

3. Petitioner’s re-release to his now-twice reimposed term of supervision poses no obstacle to this Court’s path to the question presented. The government may claim, as it has before, *see Burnett* BIO 6-9, that this case is now moot because petitioner has finished serving the second six-month extension of his sentence and is now back on supervised release. For at least two reasons, any such claim would be baseless.

a. First, as noted, petitioner did not limit his challenge below to only the length of his sentence; he further contested the entry of revocation judgment as statutorily and constitutionally invalid. And, as also noted, the government did not dispute that it could not meet its burden to show harmlessness beyond reasonable doubt. Accordingly, even if petitioner lacked a justiciable interest in assailing the length of his revocation-adjusted sentence, a decision in his favor would invalidate both revocation judgments as the result of harmful constitutional error.

And here, unlike in *Spencer v. Kemna*, 523 U.S. 1, 12-14 (1998), the revocation judgments have an ongoing, direct consequence that would be redressed by a favorable decision of this Court. Invalidating those judgments would restore the original 10-year term of supervised release imposed in petitioner’s original judgment, which, as noted in the statement, was due to lapse on October 28, 2032. The operative term of supervised release reimposed in the second revocation judgment—tied, as it is, to the date of petitioner’s release after serving the first revocation adjustment—explicitly set an expiration date of “December 15, 2032.” App. 2a-3a. Petitioner’s obvious interest in retracting the advancement of the length of his initial term of post-release supervision solidifies his ongoing, concrete, and independent stake in setting aside the two unconstitutional revocations. *Cf. Burnett* BIO 7 (noting that Burnett’s challenge to the length of his revocation sentences did not implicate “the district court’s ordering of further supervised release,” and emphasizing that “nothing indicate[d]” that challenge “would have an effect on his current service of supervised release”). Petitioner’s constitutional challenge, if successful, unquestionably would affect his current service of supervised release—by shortening it.

b. In any case, petitioner’s status as still under that twice-reimposed, and lengthened term of supervised release plainly preserves an independent justiciable interest in a favorable answer to the question presented. As the decision below correctly held, petitioner’s consolidated direct appeals of his revocation judgments are not moot because a decision invalidating either (or both) of those judgments would allow him to “seek modification, and ultimately termination, of his [current] supervised-release term on

the ground that he served six [and, indeed, 12] months of excess prison time.” App. 5a-6a & n.1 (citing *Johnson v. Pettiford*, 442 F.3d 917, 918 (5th Cir. 2006)); see *Roy Lee Johnson v. United States*, 529 U.S. 53, 60 (2000) (recognizing that, although not required to do so, district courts have authority to grant a defendant’s request to alter the term of his supervised release to account for the fact that he was “incarcerated beyond the proper expiration of his prison term”). Indeed, the circuits that have confronted the issue have rightly reasoned that a released defendant’s ability to request modification or termination of an existing term of supervised release, to account for time allegedly overserved as a result of a sentencing error pressed in a still-pending direct appeal, suffices to preserve a concrete interest in pursuing the appeal.³

Moreover, in *Burnett*, the government’s primary basis for disregarding the obvious interest in requesting an equitable reduction of a supervised release term to account for overserved time turned on its view that “the record [t]here d[id] not suggest that [the] petitioner would obtain such relief” were he to win. *Burnett* BIO 8. That is not true here, where the district court expressly told petitioner that, “obviously, if [your challenge] goes up and the Fifth Circuit tells me I’m wrong, I’ll fix it.” C.A. ROA.24-20451.279 (No. 24-20451). Accordingly, even if requesting modification to account for overserved time was petitioner’s only remaining interest here, there is nothing speculative about his prospects of receiving that relief.

³ See *United States v. Prochner*, 417 F.3d 54, 59 n.4 (1st Cir. 2005); *United States v. Jackson*, 523 F.3d 234, 241 (3d Cir. 2008); *United States v. Ketter*, 908 F.3d 61, 66 (4th Cir. 2018); *United States v. Albaadani*, 863 F.3d 496, 502-503 (6th Cir. 2017); *United States v. Larson*, 417 F.3d 741, 747 (7th Cir. 2005); *United States v. Hulen*, 879 F.3d 1015, 1018 (9th Cir. 2018); *United States v. Vera-Flores*, 496 F.3d 1177, 1180 (10th Cir. 2007); *In re Sealed Case*, 809 F.3d 672, 674 (D.C. Cir. 2016).

Of course, the test for mootness does not turn on the probability that petitioner would in fact obtain relief: “a case becomes moot only when it is *impossible* for a court to grant any effectual relief whatever to the prevailing party.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (emphasis added; internal marks and citation omitted). On that score, because it is possible for petitioner to get either—and indeed, both—forms of relief discussed above, his case is not moot twice over.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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