No. 25-6134

IN THE

Supreme Court of the United States

RODRICK JOHNSON,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The United States agrees, at a minimum, that the petition should be held pending this Court's decision in *Rico*. Mem., at 2. This Court should go further, however, and summarily grant, vacate, and remand to the Fifth Circuit to reconsider its judgment in light of *Esteras*. Moreover, the Court need not wait to decide *Rico* before remanding for the Fifth Circuit to address the *Esteras* error. Time is of the essence, as Mr. Johnson's current release date, according to the Bureau of Prison's Inmate Locator system, is June 5, 2026.

The government does not address, nor defend, the Fifth Circuit's "dominant factor" caselaw, and does not respond to Mr. Johnson's argument that Fifth Circuit precedent conflicts with *Esteras*. Mem., at 1-2; *see also* Pet., at 13-14. Rather, the government seemingly asserts that the district court did not consider retribution at all. Mem., at 1-2. However, the Fifth Circuit never made that finding. Indeed, under the Fifth Circuit's "dominant factor" caselaw, such a finding was unnecessary so long as the court determined that any impermissible factor, like retribution, was merely "secondary" or "an additional justification" for the sentence. *United States v. Rivera*, 784 F.3d 1012, 1017 (5th Cir. 2015). And, in affirming Mr. Johnson's sentence, the Fifth Circuit applied this caselaw and cited *Rivera*. *See* Pet. App., at 4.

The Fifth Circuit's "dominant factor" precedents, including *Rivera*, conflict with this Court's recent holding in *Esteras v. United States* that district courts cannot consider the retribution factor *at all*. 606 U.S. 185, 145 S. Ct. 2031, 222 L. Ed. 2d 438 (2025). *Esteras* correctly held that the statutory text dictated a bright line rule: "District courts *cannot consider* § 3553(a)(2)(A) when revoking supervised release."

606 U.S. at 195 (emphasis added); *id.* at 203 ("District courts *may not consider* the retributive purpose of § 3553(a)(2)(A) before revoking supervised release.") (emphasis added); *id.* (explaining that a district court must "not tak[e] account of § 3553(a)(2)(A)").

The Fifth Circuit did not apply *Esteras*'s holding in resolving Mr. Johnson's case. Because there is no dispute that the Fifth Circuit applied its "dominant factor" caselaw instead, this Court should vacate and remand for the Fifth Circuit to reconsider its decision under the correct legal standard announced in *Esteras*.

Mr. Johnson's petition should be summarily granted, the Fifth Circuit's judgment vacated, and his case remanded for further proceedings in light of *Esteras*.

Respectfully submitted,

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