

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2025

RIVER WILLIAM SMITH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

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QUESTIONS PRESENTED FOR REVIEW

- 1) Whether a Defendant can be held accountable at sentencing for conduct that was dismissed?
- 2) Whether a Defendant's sentence can be enhanced because the court disapprove of his political or social beliefs?

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Petitioner River William Smith respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, filed on July 25, 2025.

OPINION BELOW

The opinion of the Court of Appeals for the Eighth Circuit that is the subject of this petition is reported in *United States v. Smith*, 135 F.4th 862 (8th Cir. 2025), and is reprinted in the appendix hereto, p. 1A-17A, infra. The Eighth Circuit denied a petition for rehearing en banc or panel rehearing in an order filed on September 39, 2025. (Appendix 18A).

The final judgment of the United States District Court for the District of Minnesota and rulings (Senior District Judge David S. Doty) that are the subject of this Petition have not been reported. The document deemed relevant to this Petition are reprinted in the Appendix.

JURISDICTION

Petitioner River William Smith pleaded guilty to unlawful possession of a machine gun in violation of 18 U.S.C. §§ 922(o) and 924(a)(2). He was sentenced to 80 months imprisonment by the Judge David S. Doty, Senior United States District Judge for the District of Minnesota. Sentence was imposed and final judgment was entered on January 30, 2024. Mr. Smith timely appealed his sentence.

The United States Court of Appeals for the Eighth Circuit affirmed Mr. Smith's sentence of 80 months on July 25, 2025,¹ and denied his petition for rehearing en banc or panel rehearing on September 30, 2025. Mr. Smith now timely files this petition for writ of certiorari.

The jurisdiction of this Court to review the judgments of the Eighth Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

United States Constitution, First Amendment - “Congress shall make no law . . . abridging the freedom of speech.

¹ The Eighth vacated three of the district court's conditions of release. That part of the decision is not part of this Petition.

United States Constitution, Fifth Amendment - “No person shall be . . . be deprived of life, liberty, or property, without due process of law.”

United States Constitution, Sixth Amendment - 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.”

STATEMENT OF THE CASE

At the time of this offense late 2022, Petitioner River Smith was a reclusive 20 year old who lived with his grandparents. He had been unemployed for two years and previously had only brief part-time jobs. He had one friend, whom he never met in-person but only online. Mr. Smith spent his time gaming, browsing and chatting on the internet, and going to a local shooting range where he acted out fantasies that he developed from the internet. The record developed in district court established that Mr. Smith was influenced by various learning disabilities and mental health disorders, and an unstable, dysfunctional and abusive family situation throughout his childhood.

While Mr. Smith was at the shooting a range, a retired law enforcement officer observed Mr. Smith’s conduct, found it to be strange, and reported it to the FBI. The FBI responded by first arranging for a confidential informant to initiate contact with Mr. Smith on social media. The informant claimed to be a female who knew Mr. Smith from high school and initiated lengthy text conversations. Given Mr. Smith's lack of social life, he was excited that a young woman his age was interested in him. The informant

begins by asking Mr. Smith about drug use, and he states that he does not use. Mr. Smith then gets into discussing his interest in guns. The informant discusses her family's interest in guns, hatred for government and racist views. The informant pressed Mr. Smith to share his views about these issues.

The day after the first FBI informant initiated a text conversation with Mr Smith, the FBI sent a second informant to the shooting range. The informant shot a gun with a binary trigger. The FBI informant succeeded in piquing Mr. Smith's curiosity about the binary trigger as Mr. Smith proceeded to inquire about it and how it compared to an automatic weapon. The informant told Mr. Smith that an auto sear is an easier way to shoot a lot of bullets, and Mr. Smith then expressed interest in an auto sear. The informant offered to sell him one for \$120. In subsequent conversations, the informant discussed tannerite explosives. Mr. Smith expressed interest in grenades, and the informant then offered to sell grenades. The informant then arranged a meeting with Mr. Smith to sell him three auto sears and three grenades on December 14, 2022. FBI agents arrested Mr. Smith when he arrived at the site of the planned transaction.

The government charged Mr. Smith by complaint and subsequently obtained an indictment against Mr. Smith alleging possession of a machine gun in violation of 18 U.S.C. § 922(o),² and attempted possession of destructive devices, specifically

² The definition of a machine gun under the statute, 18 U.S.C. § 921(a)(24), cross references 18 U.S.C. § 5845(b). The definition under § 5845(b) includes in relevant part, “any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun.” Hence the auto sears

three grenades, which were not registered to him in the National Firearms Registration and Transfer Record, in violation of 26 U.S.C. § 5861(d) and 5871.³ Mr. Smith subsequently entered a straight plea of guilty to the charge of possession of a machine gun. At the time of the guilty plea, the government dismissed the charge relating to grenades in response to the defense pointing out that underlying statutes did not encompass attempts to commit the offense.

The district court imposed two two level enhancements under the sentencing guidelines on the grounds that the three inoperable grenades comprised more than three firearms U.S.S.G. § 2K2.1(b)(1),⁴ and that the grenades were “destructive devices” which warranted an enhancement pursuant to U.S.S.G. § 2K2.1(b)(3)(B). Mr. Smith objected to these enhancements on multiple grounds, one of which was the reliance on dismissed conduct for sentencing purposes violated his Fifth and Sixth Amendment rights. The Eighth Circuit rejected the argument based on prior circuit case law interpreting the Sentencing Guidelines but did not address the constitutional issues. (Appendix 8A).

An issues raised during the sentencing proceedings in support of a higher sentence included bigoted views that Mr. Smith has expressed on the internet over a period of

sold to Mr. Smith were deemed “machineguns.”

³ The government charged Mr. Smith with “attempt” to possess the grenades because the FBI had rendered them inoperable prior to agreed upon sale, and therefore Mr. Smith did not possess actual grenades.

⁴ The three auto sears were not considered “firearms” under this guideline provision which is based on the definition set forth in 18 U.S.C. § 921(a)(3).

years, including hostility to various races and religions, and law enforcement. The Presentence Investigation Report recommended an upward departure or variance from the Sentencing Guidelines on the grounds that this was an “exceptional case” due to Mr. Smith’s controversial social and political views. At the sentencing the government presented testimony from the FBI case agent regarding Mr. Smith’s prior inflammatory statements about race and law enforcement. Mr. Smith, for his part, submitted correspondence to the Court renouncing his previously expressed racist views, explaining that his exposure in jail to people with different races and religions caused him to realize his stereotypes were wrong. He also contended that some of his statements were misunderstood, and his most controversial statements were intended as “shock humor.”

Although the district court found the applicable advisory sentencing guidelines to be 41-51 months, it imposed an upward variance and sentenced Mr. Smith to 80 months in prison. The district court cited Mr. Smith’s social and political views as one of the ground for an upward variance, “The defendant’s offense behavior was exacerbated by his long-held racist and isometric and homophobic views, rage towards law enforcement and the government, and reverence for firearms, violence, and mass shootings.” (Sentencing Transcript, R. Doc. 132 at 50:25-51:3). Mr. Smith argued before the district and appellate court that imposition of a higher sentence based on his political beliefs violated his First Amendment right to free speech. The Eighth Circuit claimed that the district court did not sentence Mr. Smith based on approval or disapproval of his beliefs but based on an

inference that his beliefs made it more likely he would cause harm. (Appendix 10A-11A).

REASONS FOR ALLOWANCE OF THE WRIT

This case presents an opportunity for the Court to address an important issue impacting the constitutional rights to due process and trial by jury which members the Court have expressed concerns about. The case also presents an opportunity to apply critical First Amendment principles to criminal sentencing.

I. THE RELIANCE ON DISMISSED CONDUCT TO ENHANCE A SENTENCE VIOLATES FUNDAMENTAL CONSTITUTIONAL RIGHTS.

The Eighth Circuit's decision upheld enhancements based on Mr. Smith's attempted purchase of hand grenades even though the government dismissed the charge relating to that conduct. The appellate decision cited prior cases in the circuit and sentencing guidelines provisions which permit a district court "to consider all relevant conduct proven by a preponderance of the evidence in determining the appropriate advisory Guidelines range, including uncharged or even acquitted conduct." (Appendedix at 10A) (citing United States v. Ruelas-Carbajal, 933 F.3d 928, 930 (8th Cir. 2019); United States v. Smith, 681 F.3d 932, 935–36 (8th Cir. 2012); U.S.S.G. §§ 1B1.3(a), 6A1.3(a) (2023)).⁵

⁵ The Sentencing Commission amended § 1B1.3, effective November 1, 2024, adding a provision, "Relevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction." U.S.S.G. § 1B1.3(c); Amendment 826. This Amendment took effect after Mr. Smith's sentencing and the appellate case was briefed and argued, but before the Eighth Circuit's decision.

This Court should revisit its own precedent and determine whether consideration of acquitted conduct violates the Fifth Amendment right to due process and the Sixth Amendment right to trial by jury. Although this Court held in United States v. Watts, 519 U.S. 148, 156-57, 117 S. Ct. 633, 136 L. Ed. 2d 554 (1997) that a court could consider acquitted conduct for sentencing purposes, distinguished jurists on this Court have called Watts into question. In United States v. Jones, 574 U.S. 948, 135 S. Ct. 8, 8-9, 190 L. Ed. 2d 279 (2014), Justices Scalia, Thomas, and Ginsberg, dissenting from denial of certiorari, encouraged the Court to decide whether the Due Process Clause and the Sixth Amendment's jury trial right permit judges to sentence defendants based on uncharged or acquitted conduct. In United States v. Sabillon-Umana, 772 F.3d 1328, 1331 (10th Cir. 2014), then appellate judge Gorsuch, the author of the Tenth Circuit opinion, cited Justice Scalia's dissent in Jones when questioning how the district court applied facts in its consideration of sentencing. Justice Gorsuch stated,

It assumes that a district judge may either decrease or increase a defendant's sentence (within the statutorily authorized range) based on facts the judge finds without the aid of a jury or the defendant's consent. It is far from certain whether the Constitution allows at least the second half of that equation.

Id. In United States v. Bell, 808 F.3d 926, 928, 420 U.S. App. D.C. 387 (D.C. Cir. 2015) then appellate judge Kavanaugh, in a concurrence to the denial of a hearing en banc, stated, "Allowing judges to rely on acquitted or uncharged conduct to impose higher sentences than they otherwise would impose seems a dubious infringement of the rights to

due process and to a jury trial."

In McClinton v. United States, 143 S. Ct. 2400, 2401 (2023), Justice Sotomayer stated in a dissent to denial of certiorari, "use of acquitted conduct to increase a defendant's Sentencing Guidelines range and sentence raises important questions that go to the fairness and perceived fairness of the criminal justice system." Justice Kavanaugh, Gorsuch and Barrett, in a concurrence to the same denial of certiorari, state, "the Sentencing Commission is currently considering the issue. It is appropriate for this Court to wait for the Sentencing Commission's determination before the Court decides whether to grant certiorari in a case involving the use of acquitted conduct." Id at 2403.

Since the Court's dissenting and concurring opinions in McClinton, the Sentencing Commission did amend the Guidelines to include a provision that acquitted conduct is not relevant conduct for sentencing purposes. U.S.S.G. § 1B1.3(c); Amendment 826. The Guideline provision and application notes do not specifically address dismissed conduct. The questions still remain as to whether consideration of acquitted conduct violates constitutional rights as well as the Guidelines, and whether the same constitutional concerns also apply to dismissed conduct. There are undoubtedly many cases that will arise where a district court is called upon in connection with sentencing to consider dismissed conduct that is arguably related to the underlying offense. It remains important for the Court to address the constitutionality of considering dismissed conduct.

II. RELIANCE ON A DEFENDANT'S POLITICAL BELIEFS TO ENHANCE A CRIMINAL SENTENCE VIOLATES THE FIRST AMENDMENT.

It is not appropriate and indeed contrary to our constitutional values to punish a person for his political or social beliefs. Dawson v. Delaware, 503 U.S. 159, 112 S.Ct. 1093 (1992). Dawson held that it was improper for prosecution to introduce evidence of the defendant's membership in a white supremacist gang in support of a death sentence where the beliefs were not part of the crime. Id. at 166-68. Yet the district court in this case specifically cited Mr. Smith's beliefs about various ethic groups, religions and law enforcement in its decision to increase his sentence above the advisory sentencing guideline range.

The Eighth Circuit decision claims that "the district court did not base its sentence on views or beliefs it disliked." (Appendix at 11A). The panel opinion stated that the district court relied on Mr. Smith's expression of his belief to show intent on committing harm. (Id. at 10-11). This conclusion is contrary to the evidence, and ultimately sets forth a dangerous precedent permitting courts to contravene the First Amendment by merely concluded that a defendant's political or social beliefs in and of themselves render the defendant dangerous.

Mr. Smith was not convicted of any crime that involved causing any harm to any person. Although some of his controversial statements were goaded by the informant who strategically aroused Mr. Smith's interest in purchasing weapons, many of the statements cited by the government and probation were far removed from the offense in time and

context. In some cases the statements were years before the offense. The PSR places Mr. Smith's statements of personal beliefs in a subcategory entitled, "Previous Communications and Internet Activity," and cites multiple statements by Mr. Smith more than two years before the offense. (PSR, R. Doc. 76 at Pages 8-9 of 36). The government similarly cited statements that were not part of the offense, also sometime dating more than two years previous. (Govt. Position Pleading, R. Doc. 87 at 24-28).

The district judge specifically cited as a reason for the upward variance at the sentencing hearing, "The defendant's offense behavior was exacerbated by his long-held racist and isometric and homophobic views, rage towards law enforcement and the government, and reverence for firearms, violence, and mass shootings." (Sentencing Tr., R. Doc. 132 at 50:25-51:3). This statements explicitly confirms that Mr. Smith received an upward variance because of his "long-held views" on a range of issues; not for views that were expressed in connection with the actual offense.

It is fundamentally abusive to impose harsher punishment because the government and court disapprove of Mr. Smith's social or political views, or his personal likes or dislikes. It is particularly indicative of totalitarianism to punish Mr. Smith because he dislikes the government. The conclusion that Mr. Smith's beliefs make him dangerous and compel that he be imprisoned for at least double the time he would normally serve is not only offensive to the value of basic freedom and liberty, but is also substantively baseless. It was constitutional error for the lower courts to consider Mr. Smith's view as a grounds

for an enhanced sentence.

Given the contemporary polarized political environment where it is common to label those with opposing views as dangerous, it is critical that the Court set clear legal limitations on consideration of First Amendment protected beliefs when determining a defendant's fate in the criminal process. This case presents a compelling opportunity for the Court to take up the First Amendment concerns. It must be noted the material facts on this issue are not in dispute and therefore need not be determined by this Court. The undisputed facts in the record present a clear question about whether a defendant can be deemed more dangerous and deserving of a higher prison sentence merely because they have political beliefs that a court considers to be unsavory and "threatening."

CONCLUSION

Petitioner River William Smith respectfully prays that a writ of certiorari issue.

Respectfully submitted,

Dated: December 29, 2025

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