

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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KENNETH SIMPSON, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

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On Petition for Writ of Certiorari  
to the U.S. Court of Appeals, Eighth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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**QUESTION PRESENTED FOR REVIEW**

1) Whether a Constitutional challenge to the imposition of a new sentence on revocation constitutes, an “improperly raised collateral attack” on the underlying conviction and sentence?

2) Whether the district court relied on impermissible factors in revoking Mr. Simpson’s Supervised Release term, sentencing him, and imposing a new term of supervised release.

## LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Kenneth Simpson is the Petitioner in this case and was represented in the Court below by Kathryn B. Parish.

The United States of America is the Respondent and was represented in the Court below by Assistant United States Attorney Jonathan Clow.

## RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

### **United States District Court (E.D. Missouri):**

*United States v. Kenneth Simpson*, No. 4:10-CR-00169 (Original Judgment filed on May 12, 2011; Most Recent Supervised Release Revocation Judgment filed on July 22, 2024)

*United States v. Kenneth Simpson*, No. 4:23-CR-0029 (Judgment filed on July 22, 2024)

*Kenneth Simpson v. United States*, No. 4:11-CV-02058 (Judgment filed on 4/11/2019)

### **United States Court of Appeals (8th Cir.):**

*Simpson v. United States*, No. 11-2096 (Judgment filed 10/7/2011)

*Simpson v. United States*, No. 12-2936 (Judgment filed 9/17/2012)

*Simpson v. United States*, No. 13-2104 (Judgment filed 10/15/2013)

*Simpson v. United States*, No. 13-2105 (Judgment filed 5/29/2013)

*Simpson v. United States*, No. 14-1627 (Judgment filed 5/28/2014)

*Simpson v. United States*, No. 16-1031 (Judgment filed 2/1/2016)

*Simpson v. United States*, No. 16-4498 (Judgment filed 12/4/2017)

*Simpson v. United States*, No. 18-1692 (Judgment filed 8/6/2019)

*Simpson v. United States*, No. 24-1588 (Judgment filed 4/15/2024)

*Simpson v. United States*, 24-2575 (Judgment filed 11/6/2025)

*Simpson v. United States*, 24-2576 (Judgment filed 11/6/2025)

#### **United States Supreme Court**

*Simpson v. United States*, 13-8502 (Cert Denied on 3/10/2014)

*Simpson v. United States*, 16-1031 (Cert Denied on 10/27/2016)

*Simpson v. United States*, 17-7786 (Cert Denied on 3/28/2018)

*Simpson v. United States*, 19-6692 (Cert Denied on 1/16/2020)

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Petitioner Kenneth Simpson prays that a writ of certiorari be granted to review the judgment of the Eighth Circuit Court of Appeals entered on November 6, 2025.

### **OPINIONS BELOW**

The opinion of the Court of Appeals (App. 1a) is unreported

### **JURISDICTION**

The judgment of the court of appeals was entered on November 6, 2025. App. 1a. A timely filed petition for rehearing or rehearing en banc was denied on December 11, 2025.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

### **STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED**

18 U.S.C. §3583 (see appendix, 52a)

## STATEMENT OF THE CASE

Kenneth Simpson pleaded guilty to one count of receipt of child pornography in Case Number 4:10CR00169 on February 15, 2011 (10R.Doc. 59) and was initially sentenced to sixty months in the Bureau of Prisons, to be followed by a lifetime term of supervised release. 10R.Doc. 71. After multiple revocations for failing to register as a sex offender and failing to follow instructions of his probation officer (10R.Docs. 113, 144) and various failures to report (10 R.Doc. 179), Mr. Simpson's probation officer filed another petition to revoke, alleging at first a failure to report to the Residential Reentry Center as required and a failure to report to the probation officer. 10R.Doc. 210. On June 7 2023, Mr. Simpson was indicted in case number 4:23CR00297 for failure to register as a sex offender. 23R.Doc. 1. Approximately four months later, the petition to revoke in his 2010 case was amended to include allegations of multiple violations including failing to register as a sex offender, failure to submit his home and electronics to a search as required, and other technical violations. 10R.Doc. 242.

Though initially represented by counsel, Mr. Simpson filed several pro se motions, including an argument that revoking his supervised release would violate double jeopardy. 10R.Doc. 250. These challenges was ultimately denied by the district Court. 10R.Doc. 256.

Mr. Simpson was ultimately found guilty after a trial of the new offense of failing to register as a sex offender. 23R.Doc. 179 (Tr.Feb82024) at 3-5; Tr.Tr: 163.

Both the hearing on Mr. Simpson's final revocation and his sentencing on the new case took place on July 22, 2024. Appendix 15a. Mr. Simpson reinvoked his *Faretta* rights at that time and represented himself for the course of these proceedings. Despite the facts that Mr. Simpson had a Guideline Range of 10-12 months and that the Government was recommending an 18 month sentence, the Court varied upward from the Guidelines, sentencing the Defendant to 60 months, to be followed by five years of supervised release. Appendix: 27a -32a.

The court then moved on to the supervised release revocation case. After Mr. Simpson conceded that based on the verdict, he could not contest the finding as to his failure to register and admitted what he described as the "technical violations" in the petition (Appendix: 39a), the court gave Mr. Simpson the opportunity to speak about his sentence, and the following exchange took place:

THE DEFENDANT: The only issue I have going forward is again being put back on supervised release. Considering every time I come up here, other people are taken off of it, again, it's simply untrue that you can't request that at this point. That really bothers me. I have no problem at this point just going on and being left alone. I have no problem registering. I just want to go back, after my five years, which is already kind of a harsh sentence as it is, and be left alone after that. I do not believe that this five-year revolving door that you keep doing is legal in any way, shape, or form.

THE COURT: Mr. Chapman?

MR. CHAPMAN: Well, Your Honor, the lifetime supervision is already imposed. It's part of the Defendant's initial sentence. And in reading through the transcripts of all the previous revocation proceedings before Judge Sippel, that was explained to him. All I would say is that, really, the person who would control the revolving door here would be Mr. Simpson. So I would just argue, Your Honor, that obviously the term of supervision is already a part of his original sentence. In regard to what the Defendant is sentenced to, the Government would request the top of the Guidelines, ten months, and that that run consecutive to his 2023 Failure to Register case.

THE DEFENDANT: The imposition of new papers still has to be justified.

Appendix: 42a-43a. Just prior to sentencing Mr. Simpson for the supervised release revocation, the court stated:

Based upon Simpson's ongoing blatant defiance of federal, state, and local sex offender registration laws, Simpson's history of violations, the seriousness of the offense, and his refusal to engage in the basic first step of reporting as directed for supervised release, it appears Simpson is not amenable to community supervision at this time.

Appendix: 43a. It then sentenced Mr. Simpson to ten months in prison, to be served consecutive to the 60 month sentence pronounced moments before in his failure to register case and to be followed by a term of lifetime supervision. Appendix: 44a.

Mr. Simpson timely filed notice of appeals in both cases, and undersigned counsel was appointed to represent him. Among other things, it was argued that the imposition of new sentence and supervised release term

at the time of the supervised release revocation constituted violation of double jeopardy, and that the sentencing court considered improper factors and failed to adequately explain its decision to impose a new lifetime term of supervised release. As to the double jeopardy issue, the Court of Appeals ruled that the argument constituted an improper collateral attack on a final judgment and that it could not be raised at the time of a supervised release revocation. As to the imposition of a new term of supervised release, the Court of Appeals that the Court had adequately explained its decision and that the cited grounds were part of the “nature and circumstances of the offense and history and characteristics of the defendant” that the court was permitted to consider.

## REASONS FOR GRANTING THE WRIT

- I. **The Appellate Court’s Refusal To Conduct Any Substantive Review Of The Question Of Whether Revoking Mr. Simpson’s Release Violated Double Jeopardy Constituted A Failure OF The Appellate Court to Perform Its Function And Was So Far Of a Departure From The Accepted And Usual Course Of Legal Proceedings So As To Call For An Exercise Of This Court’s Supervisory Power.**

In appealing the Supervised Release revocation, Mr. Simpson raised a double jeopardy challenge to the revocation of his supervised release and imposition of a new sentence and new term of supervised release, urging that even accepting that the legislature authorized multiple punishments for the same offense in the supervised release statutes, this did not fall under the exception to the double jeopardy rule outlined in *Missouri v. Hunter*, 459 U.S. 359, 368–69 (1983) because that exception still required that the multiple punishments be imposed in the context of a “single trial”, and a lifetime of supervised release and potential re-incarceration for the same crime (to which the legislature assigned a statutory mandatory term of incarceration of 20 years) threatened established principles at the core of the double jeopardy clause’s concerns, namely, the need for finality of judgments.

The Eighth Circuit refused to review this issue, urging that it was a collateral attack on the prior judgment of conviction and supervised release and that it had addressed the issue in Mr. Simpson’s prior appeals. But neither of these

things was accurate or provided grounds for the Court of Appeals to refuse to exercise one of its most basic appellate functions – i.e. addressing Constitutional challenges to the actions of lower courts. See 18 U.S.C. §3742 (A Defendant may appeal a sentence in a criminal case on the basis that it was in violation of the law.) Specifically, the court had not previously engaged in any substantive review of the question of whether the imposition of a new sentence based on a revocation of supervised release. When addressing the issue in 2019, the Eighth Circuit cited to its opinions in Mr. Simpson’s cases in 2016, 2017, but none of these cases addressed the substantive issue. *Simpson v. United States*, 932 F.3d 1154, 1157 (8th Cir. 2019); *Simpson v. United States* 704 Fed. Appx. 609 (8th Cir. 2017) cert. denied; *Simpson v. United States*, 653 Fed. Appx. 850 (8th Cir. 2016), cert. denied, — U.S. —, 137 S. Ct. 318, 196 L.Ed.2d 232 (2016)). To the extent they did address the issue previously, it relied on the same “collateral attack” principal.

The case the Court or Appeals cited to in its 2019 opinion in Mr. Simpson’s case where this “procedural rule” applied was *United States v. Miller*, 557 F.3d 910, 913 (8th Cir. 2009). In *Miller*, the Defendant was arguing that he should not have been revoked based on violations of conditions which he alleged were themselves, “vague, ambiguous, and contrary to law.” The problem with this argument, this Court said, was that Mr. Miller had not challenged the conditions at the time they were imposed or at any time prior to his revocation on their basis. Citing to a number of cases for the proposition that, “A defendant may challenge the validity of his underlying conviction and sentence through a direct appeal or a habeas corpus

proceeding,” the Court ruled that such a “collateral attack” was impermissible.

But Mr. Simpson’s most recent appeal did not in any way lodge a collateral attack on the conditions imposed or any other decision made by the district court at the time of his original sentencing in the supervised release case. The double jeopardy was not the question of whether imposing the original term of supervised release constituted a violation of double jeopardy, but rather the question of whether revoking it and imposing an additional prison sentence and a new term of supervised release does. It was a challenge to an action of the Court that occurred at the time of revocation. There would and could be no such claim until such time as the additional punishment of additional prison time and a new term of supervised release was imposed at the time of revocation.

This Court made clear in *United States v. Haymond*, 588 U.S. 634 (2019) that a constitutional challenge to the imposition of a sentence on supervised release is appropriately raised at the time of a supervised release revocation. The Court of Appeals improperly distinguished *Haymond* dealt with a different portion of the supervised release statute, and therefore did not address the “procedural rule” discussed. But that was a distinction without a difference. *Haymond* establishes that a Defendant can raise a challenge to the Constitutionality of a sentence imposed on revocation at the time of revocation. In other contexts, the Eighth Circuit as well has conducted a substantive review of the question of whether imposition of a sentence on revocation was lawful, rather than avoiding the question through misapplication of the collateral attack rule. *See United States v.*

*Childs*, 17 F.4th 790, 792 (8th Cir. 2021) (reviewing of whether the total sentence after imposition of a term of supervised release exceeded the maximum sentence); *United States v. Varner*, No. 23-2670, 2024 WL 3200476, at \*2 (8th Cir. June 27, 2024)(unpublished)(reviewing the question of whether the revocation sentence imposed was unreasonable). While ruling against the Appellant in both cases, the court did not decline to review the issues. This was because, as the Court inherently acknowledged by substantively evaluating the issues, the issue of whether the revocation and imposition of a new sentence was lawful did not become ripe for review until Supervised Release was actually revoked and a new term imposed.

Here too, Mr. Simpson challenged the imposition of the sentence on Supervised Release as well as the new term of supervised release after revocation. This does not and could not constitute a collateral attack because the action being challenged did not occur until the time of the revocation hearing when Mr. Simpson's Supervised Release was revoked, and an additional sentence of imprisonment and new and additional term of supervised release was imposed.

The right to appeal is a creature of federal statute. *Abney v. United States*, 431 U.S. 651, 656 (1977); 28 U.S.C. 1291. While this Court is a court of limited jurisdiction, the Court of Appeals are not given the power of discretionary review. Rather, they are tasked with reviewing the issues and cases that come before them, so long as they are presented within the confines and limits of the rules governing federal appeals, for example regarding timeliness, final judgments, and error preservation.

The failure of the Appellate Court to review a raised error also is a failure to perform an important function that the Court performs in the system. The underlying issue cannot be presented to this Court at this time because the Appellate Court, based on a clear and obvious legal error failed to perform its function in conducting a substantive review. The issues have not been fully explored before reaching this Court.

The reality is that if the Eighth Circuit's rule applied, it would be legally impossible to challenge the imposition of a new sentence or new supervised release term on revocation. This is concerning since it is well established a punishment on a supervised release revocation is punishment for the original crime and not acts that constituted supervised release violations. *Johnson v. United States*, 529 U.S. 694, 700 (2000). Since this clearly constitutes more than one punishment for the exact same offense, this begs the question of why this doesn't cause problems under the double jeopardy clause, particularly if, as argued in Mr. Simpson's opening brief, the *Missouri v. Hunter* exception does not apply in this context.

But that is not the question before this Court under which Mr. Simpson requests review. That is because the Eighth Circuit refused to rule on this issue on grounds that were clearly and obviously erroneous. Mr. Simpson is not requesting full briefing or argument on this issue at this time. Rather, it is Mr. Simpson's position that the error is obvious enough that this Court should Grant, Vacate, and Remand so that the double jeopardy issue may be decided.

**II. The Appellate Court’s Action In Upholding The Sentence On Supervised Release And The New Term Lifetime Term Of Supervised Release Sanctioned An Action By The Lower Court That So Far Departed From The Requirements Of The Law That They Call For An Exercise Of This Court’s Supervisory Power.**

In *Esteras v. United States*, 606 U.S. 185 (2025), this Court established that in revoking a person’s supervised release, a court cannot consider retribution or the need to promote the respect for the law. *Id.* at 197-198. In so doing, the Court reiterated its prior findings that the court could not consider those same factors in imposing a term of supervised release. *Id.* (citing *Concepcion v. United States*, 597 U.S. 481, 494 (2022) and *Tapia v. United States*, 564 U.S. 319, 325 (2011)). In *Esteras*, the Court also reiterated that the purpose of supervised release was that it, “ ‘fulfills rehabilitative ends’ ” and “ ‘provides individuals with post-confinement assistance.’ ” *Id.* (citing *United States v. Johnson*, 529 U.S. 53, 59–60 (2000)).

When imposing the sentence on the Supervised Release revocation the court specifically indicated that it considered, “Section 3553(a) entitled, Factors to be Considered in Imposing a Sentence”. ST:28. But section 3553(a) is not the statute that governs revocation of a term of supervised release. Rather as clearly acknowledged by this Court in *Esteras*, that statute is 18 U.S.C. §3583. At no point during Mr. Simpson’s supervised release revocation proceedings did the Court invoke, acknowledge, or reference §3583.

While §3583 does reference portions of §3553, as this Court rightly pointed out in the first paragraph of its *Esteras* opinion, “Conspicuously missing from this list is § 3553(a)(2)(A), which directs a district court to consider ‘the need for the sentence imposed’ ‘to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.’ ” *Esteras*, 606 U.S. at 188. When the district court in Mr. Simpson’s case referenced §3553(a) without indicating those exclusions during his supervised release revocation proceedings, it was clearly considering impermissible factors. The panel’s finding that the court was only referencing permissible factors such as “the nature and circumstances of the offense” and “the history and characteristics of the Defendant” is contrary to the actual record as made by the clear words of the district court.

Moreover, the finding that the court was not considering “respect for the law” simply do not pass the sniff test. Aside from the new charge for failure to register, the only violations found were violations of conditions of probation, but not violations of the law. Aside from the failure to register, the violations that were found by the court were all for actions which would be perfectly legal conduct but for the fact that Mr. Simpson was on supervised release. 10R.Doc. 312. Both the sentencing for the new offense and the supervised release revocation proceedings were replete with emphasis on the need to comply with the law. During the sentencing proceedings, the prosecutor argued that Mr. Simpson needed to

establish his credibility with the court by, “follow[ing] all of the other conditions” of his supervised release and that a message needed to be sent that he “needs to comply with the law.” Appendix: 31a. And in explaining the reason for the upward variance, the Court stated, “You have totally no respect for the law. So I want you to be clear that the reason why I made a variance upward is because of that.” Sent.Tr:20. While this was a permissible consideration in the sentencing the defendant for the new underlying offense, the court’s language when proceeding under the supervised release revocation reflected the same concern, referencing, “Simpson's ongoing blatant defiance of federal, state, and local sex offender registration laws . . . and his refusal to engage in the basic first step of reporting as directed for supervised release.” Appendix:42a. There was no reference at all to the need to protect society from Mr. Simpson (no facts in the record supported the finding of any such need) or any suggestion of a belief that another term of lifetime supervision would somehow aid in Mr. Simpson’s rehabilitation or integration back into society. In fact, the court’s analysis was entirely devoid of any reference to or concern for the question of whether lifetime supervision would achieve those aims or simply create another obstacle to Mr. Simpson moving on with his life and being a productive member of society.

The Eighth Circuit’s finding that this was a permissible consideration under the category of, “the nature and circumstances of the offense and the history and

characteristics of the defendant,” and that there was no error in “placing great weight on [Simpson’s] history of noncompliance with court supervision (Appendix: 5a (citing to *United States v. Pratt*, 142 F.4th 1090, 1095 (8th Cir. 2025)) paid lip-service to, but was not consistent with this Court’s ruling in *Esteras*. This Court did not say in *Esteras*, “you can consider retribution, punishment, and the need to promote respect for the law in the context of a supervised release revocation proceeding, but only if you call them something else.” What this Court said is that the choice of the legislature to include those factors in §3553, but to specifically exclude them from §3583 meant that those factors simply should not be considered in that context. The error the Court made in Mr. Simpson’s case was doubly erroneous in that it considered those factors both in revoking Mr. Simpson’s supervised release, and in setting the term of the new supervised release at a new life term.<sup>1</sup> It was not reasonable. See *United States v. Jenkins*, 854 F.3d 181, 194 (2d Cir. 2017)(Imposing 25 years of supervised release after a 19 year sentence would make the defendant 88 years old when he

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<sup>1</sup> The record is not fully clear that the sentencing Court even understood its authority to impose a new term of supervised release other than the lifetime term. At sentencing, the Government argued that Mr. Simpson was already on a term of Supervised Release and therefore must simply continue serving it, a point that was never questioned by the trial Court. On appeal however, the Government argued that the trial court understood its authority to impose a different term of supervised release based on the Sentencing Computation. That document was not mentioned during the hearing.

was off of supervised release, prevent him from ever “fully re-engaging” in community, and was unreasonable).

*Estaras* was relatively new at the time the Eighth Circuit handed down its decision in Mr. Simpson’s case, and had not even been decided at the time his initial briefing was submitted. While counsel understands that the simple assertion of error is not generally sufficient to merit review by this Court, counsel submits that the Eighth Circuit’s attempt to skirt the law as stated by this Court merits the exercise of this Court’s supervised authority.

### CONCLUSION

WHEREFORE, the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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