

No. 25-7045

IN THE
Supreme Court of the United States

Kenneth Robert Simpson,
Petitioner

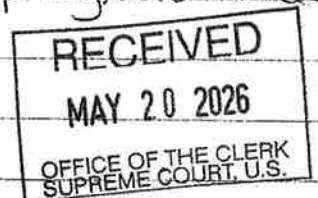
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United States of America,
Respondent

On Writ of Certiorari to
the Eighth Circuit Court of Appeals

Request for Rehearing of Petition

Kenneth Simpson, prose
U.S. McFP Springfield
PO Box 4000
Springfield MO 65801



Both courts below refused to address challenges to the requirement to register as a sex offender and the legality of supervised release. This is the fourth time Simpson has been imprisoned without a ruling on the legality of his detention. This radical departure from the "accepted and usual course" of court proceeding warrants this Court's review and a GUR.

Questions Presented

- 1) Does repeated violation and reimposition of release under § 3583(h)&(k), exceeding the two year maximum of (e)(3), create the same constitutional concerns and "perpetual release... eroding essential safeguards" warned of in *U.S. v Haymond* 204 LEd2d 897 (2019)?
- 2) Given that revocation prevents reintegration and rehabilitation, does it ever serve "forward looking goals" as *Esteras v U.S.*, 220 LEd 2d 438 (2025) requires? Does the "breach of trust" guideline remain valid?
- 3) Where a class of offenders poses no danger to children or risk of recidivism can society still infringe their fundamental rights and subject them to the arbitrary restrictions of the registry?
- 4) Does Congress retain a freestanding regulatory authority over all former offenders as 18 U.S.C. § 2250(a)(2)(A) asserts? Does *U.S. v Kebodeaux*, 186 LEd2d 540 (2013) apply to non-military offenders?

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Kenneth Simpson, pro se, requests this Court rehear his petition for Certiorari. As both lower courts explicitly refused to address properly presented challenges to the statutes of conviction and sentencing, he is currently incarcerated without a finding that he violated a valid law. Given the importance of the underlying issues in general, and the negative perception this creates, this Court should summarily Grant, Vacate and Remand (GVR), since there is no judgment to review.

Reasons to Grant the Writ

I. The 8th Circuit's Refusal to Review the Constitutionality of Both Statutes Violates This Court's Precedents and Illegally Departs From Required Statutory Appellate Practices

This Court has repeatedly held, for well over a century, that the claim that a statute is unconstitutional goes to the power to try an individual, Class v U.S., 200 LEd 2d 37, 43 (2018). A conviction or sentence under an illegal statute is "not merely erroneous, it is void" and can be no legal cause for imprisonment, Montgomery v Louisiana, 193 LEd 2d 599, 615-16 (2016) (citing Ex Parte Siebold, 100 US 371, 376-77 (1880)). Addressing such a challenge is not "discretionary" but mandatory; a court has no "prudential license" to decline adjudication, Bond v U.S., 180 LEd 2d 269, 283 (2011).

Yet, on the face of the record, this is exactly what the 8th Circuit has done. Since at least 2016, Simpson has repeatedly challenged his obligation to register under SORNA and the lower courts have repeatedly refused to rule on it; the same is true for

supervised release. Precedent at the time of initial release from prison required this be addressed before release, see U.S. v Rideout, 478 Fed Appx 339 (8th, 2012) the lower courts have refused and have violated Simpson three times for engaging in state litigation.

Though Susan B Anthony List v Driehaus, 189 Fed 2d 246, 255 (2014) and progeny should have barred prosecution under these facts, the Eastern District of Missouri, in Case No. 4:23-cr-297, justified the current case on these facts. Because criminal charges were filed, the Court had an obligation to ensure it had valid basis to proceed, but both lower courts declined, in blatant disregard of long settled precedent and procedure. Whatever the merits of declining in a revocation, the same reasoning does not apply here.

If the law is invalid, Simpson cannot be punished under it, "no matter how validly his guilt is established" and even taking him to trial deprived him of due process, Class at 43. While there are no valid excuses for declining, the ones put forward below are both factually incorrect and contrary to law.

The 8th Circuit's claim that it did not address the claims because they were raised for the first time on appeal is contradicted by even a cursory review of the record. Both the Government and District Court repeatedly noted Simpson was clearly reraising his prior challenges. Further, even were the claim true, it would not matter. If such a challenge cannot be affirmatively waived, under Class, it cannot be forfeited, and would require at least plain error review, see, e.g., U.S. v Reed, 784 Fed Appx 467, 468 (8th, 2019); U.S. v Jennings, 930 F3d 1024, 1027 (8th, 2019). Note even this lower review was given.

The refusal to address supervised release was even worse. Counsel discussed at great length why the 8th Circuit's ruling

is wrong on its merits. But there is a simpler reason to reject the dodge of the issue by the panel: case 4:23cr297 involved the imposition of a new term of release, not just a revocation. Law of the case required the panel to deal with the challenge in the new term.

Moreover, the panel explicitly refused to follow U.S. v Haymond, 204 LEd 2d 894 (2019) and it acknowledged that it has repeatedly addressed these challenges at revocation, just not for Simpson. But this means Simpson is in an invalid "class of one" Bank Markazi v Peterson, 194 LEd 2d 463, 484-85 (2016) which is an independent constitutional violation.

In both cases, the failure to rule was an invalid departure from normal procedure, denying due process, which warrants a GVR.

II. The Questions Presented are of Great Importance and Repetition and Affect Countless Individuals

A. Both §3583(h) & (k) create the same Risks of "Perpetual Release" That Haymond Warned Of

Repeated violations as presented in this case are common under supervised release. This court's dicta in U.S. v Johnson, 529 US 694, 709 (2000) that violation proves a releasee "needs more help" have inspired automatic reimposition of release after violation as a matter of course. Despite Haymond demanding some practical limits, lower courts have universally declined to impose any.

Justice Breyer's concurrence in Haymond, at 913-15 is usually considered controlling, see U.S. v Shakespeare, 32 F4th 1228 at *2-3 (10th, 2022); U.S. v Seighman, 966 F3d 237, 242 (3rd, 2020), where he distinguished the permissible 0-2 range of (e)(3) from the lifetime max of (k) on the basis that §3583(e)(3) was tied

the severity of the original crime. For a Class C, that is 2 years. Given that, it was similar to parole and did not violate the jury trial right.

This sounds good. But release does not limit judges to a single violation. 18 U.S.C. § 3583(h) permits reimposition. So while a judge cannot give more than (e)(3) allows per violation, it does not set the overall punishment, as Breyer's concurrence seems to require. And no lower court has been willing to set a ceiling.

The 8th Circuit has already held Haymond does not prevent a judge from exceeding the statutory maximum of the original charge, U.S. v Childs, 17 F4th 790 (8th, 2021). Nor does it cap the punishment at the statutory maximum for § 3583(a), U.S. v Two Crow, 781 Fed Appx 562 (8th, 2019). The 8th is not alone. Virtually every circuit has held supervised release sentences do not aggregate, U.S. v Spencer, 720 F3d 363, 368-70 (DC App 2013) (collecting cases). And Constitutional protections at revocation either are not available or are watered down, U.S. v Busey, 11 F4th 1604, 1608 (8th, 2021).

This leaves every releasee's freedom to the arbitrary whims of both probation officers and judges alike. Instead of ending unjustified disparities and unfair treatment in who gets release, this system has exacerbated it. But unlike parole, where an inmate still knew when he was done even if he was denied early release, today's releasee's have no such assurance. Now, instead of depending on pleading his case every day to reduce his sentence, now he must litigate every day to keep from getting another term extending his time after it concludes, contra Mackey v U.S., 401 US 667, 690-91 (1971). This flies in the face of the basic requirement of justice that, at some point, there comes an end to litigation and

an opportunity to move on with life, Sanders v U.S., 373 U.S. 1, 24-25 (1963).

The recent case of U.S. v Morin, 95 F4th 592 (8th, 2024) shows just how oppressive this can be. There, the defendant was given a 3 month prison sentence with 2 years paper. (As Justice Alito argued in his Haymond dissent, at 919, this term of "xty" should equal 27 months. However, more than a decade later, Morin has served 57 months in prison, more than double the "xty" original sentence, and had another 3 years to go. Such violations need not even be legal. In U.S. v Callier, 80 F4th 564 (8th, 2023), for example, the Court held that a condition found unconstitutional by a court would still remain in effect, and could form the basis for a violation.

These rulings have, in practical effect, nullified Haymond. What good is a "per time" limit, if there is no limit on how many times it can occur? And each violation usually comes with new conditions, increasing the chance of future violation, even where these conditions are manifestly unwise or unjust, Estes as Amicus Brief p 16 (citing Jacob Schuman, Revocation and Retribution, 46 Wash L. Rev 881, 907 (2021)). Returning from prison to a perpetual limitation of liberty serves no valid government purpose, Weems v U.S., 217 U.S. 349, 367 (1910).

There is literally no more pressing issue coming to this Court.

B. There Are No "Forward Looking" Purposes to Revocation.

While the supposed "primary purpose of supervised release is to facilitate the reentry of offenders... rather to inflict punishment," U.S. v Ka, 982 F3d 219, 228 & n 4 (4th, 2020) for many offenders it is their primary obstacle. It has become a "more expansive, more

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rigid, more punitive system" than parole, Jacob Schuman, Supervised Release is Not Parole, 53 Loy L.A. L. Rev. 587, 606 (2020). By the time of Haymond, there were almost 17,000 revocations a year, at 917; by Esteras, it was almost 30,000, doubling in only 6 years.

As the 7th Circuit has noted, supervised release is "problematic," U.S. v Thompson, 777 F3d 368, 374-75 (7th, 2014). If the goal is to assist individuals, by definition, revocation never fulfills that goal. Incarcerated individuals do not hold jobs, support their families, etc, Mont v U.S., 2012 Ed 2d 94, 104 (2019). Nor does imprisonment fulfill rehabilitative goals, Tapia v U.S., 1801 Ed 2d 357, 366 (2011) especially not in county jail, Barker v Wingo, 407 US 514, 532-33 (1972).

Nor are all these individuals returning to a life of crime. According to the Sentencing Commission, the vast majority are technical, not criminal violations; Schuman at 606. Most of these are not forbidden of average citizens, nor, Constitutionally, could they be, Samson v California, 547 US 843, 853 (2006). Even where the violation is criminal in nature, it does not benefit the releasee to determine he has no right to a trial. Thus, revocation is never a valid part of an assistance program.

Revocation is one thing, and one thing only: punishment. But this raises problems. If the individual is being punished for legal behavior, this is prohibited by the Due Process Clause, Johnson, at 699-700. Previously, this Court recognized that courts must look backwards to the original offense to justify it. But now, in Esteras, this Court has recognized that looking backwards causes problems, too. Courts can no longer consider anything but "forward looking" purposes of §3553(a); the "backward looking" retributive and punitive goals are now forbidden.

But revocation, by its very nature, has no forward looking purposes.

It looks back to the original offense, relitigates it, and adds to the original punishment, as Haymond recognized at 908 n4. Once an individual is rearrested, his reintegration is completely inhibited, and, if his incarceration is of any length, it takes every thing he has worked to build away and forces him to start over.

Changing the label to "deterrence" or "incapacitation?" does not meaningfully alter the analysis. Even if we pretend these are "forward looking" (and they are not, the plain text of §3553(a)(2)(B-D) refers to "the offense"), the practical effects are the same. Moreover, where the violation is for legal behavior, society has nothing it can legally "deter." And incapacitating someone for legal behavior is Constitutionally dubious. Society has nothing to be "protected" from.

As Justice Alito's dissent in Haymond noted, at 918-23, since these behaviors are not connected to the initial offense at all, it is "awkward" to even claim that we are still part of the original prosecution. But this argument goes the other way - we cannot realistically claim that punishing an activity today deters an action 20 years in the past. Yet, this is how the statute is worded.

Esteras raises serious questions about the legality of this continued system of detention. Nearly 100 people a day's freedom hinges on the answer Certiorari should grant.

C. The Registry is Invalid for Tier I/Pornography Offenders

In the wake of several high profile horrific sex cases, states began enacting sex offender registry and notification acts, in the guise of community safety. This Court blessed early laws under the erroneous belief that sex offender recidivism was "frightening and high", Smith v Doe, 538 US 84, 93 (2003). Ever

since, registries have exploded in size and scope, see Does v. Snyder, 834 F.3d 696, 702-03 (6th, 2016).

Today, more than one million people are registered, with restrictions on where they can live, work, and frequent. Both the federal government and states have indiscriminately expanded who must register. At the federal level, SORNA's entire first tier is low risk offenders who are unlikely to recidivize.

Simpson's offense would not even be classified as a sex offense, but for the "Amie Zyla Expanded Definition" of 34 U.S.C. § 20911(5)(iii).

No doubt, some offenders pose a genuine risk, but today's registry sweeps up multitudes of people who plainly fall outside of any legitimate scope, posing no risk to children. While it is not at all obvious that Congress can dispense with individualized findings, as suggested in Conn. Dep't of Pub. Safety v. Doe, 538 U.S. 1, 7-8 (2003), even that case recognized that some categorical review of a "class" of offenders was needed. After all, the registry affects (at a minimum) privacy rights, Smith at 100-06 (or what Justice Brandeis termed "the right to be let alone", Olmstead v. U.S., 277 U.S. 438, 478 (1928)). If a class does not pose a risk, society may not override their rights. Weighty as protecting children maybe, society cannot simply invoke this goal and then avoid the Constitution, Packingham v. North Carolina, 198 L.Ed.2d 273, 276 (2017).

The registry strips offenders of basic rights, subjects them to the possibility of up to a decade of imprisonment, and marginalizes them for ten years, fifteen, twenty-five, or life. Whatever the proper standard of review, for any class who provably doesn't pose a risk to children, it will not even survive rational basis, Ortiz v. Breslin, 212 L.Ed.2d 51, 52-53 (2022). Congress may not impose such burdens

without serious evidence they pose a risk, and certainly not in the face of evidence they do not.

Here, Congress has found Tier I offenders are not a genuine risk. Further, it finds in the §2251 findings that possession of illegal porn is a contraband, not a sex offense. Its own findings undermine need. And the Sentencing Commission, whose findings must be given significant weight, Wilson v CFTC, 322 F3d 555, 559 (8th, 2003), has similarly found that non-contact porn offenders do not go on to commit crimes against children in the future.

The Government failed to dispute that, at any level of generality, the registry failed to serve a valid societal goal. No effort was made to show society had any right to force registration in this case, and, thus, no punishment can legally be imposed for failing to abide by an invalid enactment.

D. Congress Does Not Retain Continuing Jurisdiction Over Former Federal Prisoners

In 18 U.S.C. §2250(a)(2)(A), Congress has created a new jurisdictional hook, asserting for the first time in history that it retains criminal jurisdiction over any former prisoner indefinitely. Novelty is usually a sign of constitutional infirmity, Nat. Fed. of Indep. Bus. v Sebelius, 132 LEd2d 450, 471 (2012), and this statute is very novel indeed.

As this Court has repeatedly recognized, Congress generally lacks the power to make an act committed wholly within one state criminal, Bond v U.S., 131 LEd2d 1, 10 (2014) (citing U.S. v Fox, 95 US 670, 672 (1878)). Every statute Congress passes must invoke one or more of its constitutional powers, U.S. v Morrison, 529 US 598, 607 (2000). Here, no power, express or implied, is

invoked for a simple reason - there is none to invoke.

The deficiency of §2250(a)(2)(A) is best seen in comparing it to the following provision, (a)(2)(B). That crime covers failing to register after travelling in interstate commerce, something long held within Congress' power. (As this provision is not at issue here, its validity is not discussed.) The 8th Circuit has previously acknowledges Congress itself recognizes it has no legitimate basis to regulate intrastate failure to register, U.S. v Howell, 552 F3d 709, 716 (8th, 2008).

But that is exactly what §2250(a)(2)(A) does. It covers purely intrastate failures to register that otherwise fall plainly outside the scope of its commerce clause power.

Viewing cases construing the interstate movement provision also speak against this. Twice, this Court has construed §2250(a)(2)(B) as not giving Congress perpetual jurisdiction over anyone who travels across state lines. Rather the movement must come after the law passed, and the failure to register must be tied to that movement, Carr v U.S., 560 US 438 (2010); Reynolds v U.S., 565 US 432 (2012). Congress could not punish someone who moved from Ohio to Texas in 2005, but failed to register in 2026.

This is entirely consistent with this Court's long held understanding that, at some point, commerce "comes to rest", Schechter Poultry Corp v U.S., 295 US 495, 535 (1935); Am. Build. Maint. Indus. v U.S., 422 US 271, 285 (1975). Congress must use "active, not past, passive, or passing" connections to commerce to regulate, Jones v U.S., 529 US 848, 855 (2000). There is no perpetual, freestanding right of regulation over any interstate movement.

What Congress is asserting with this law is simply incompatible

with this Court's precedent and this theory of limited Constitutional powers. Yes, §2250(a)(2)(A) is limited to sex offenders who have been federally convicted, but, if that power exists by virtue of conviction, that logically extends to all convicts. If Congress may assert power over purely intrastate, non-commercial acts because of a 2011 conviction for a sex offense, it may do it for anyone. Moreover, as the basis for that conviction was, itself, commerce, this extends the commerce power beyond its bounds.

In addressing this power, we cannot just look at the fact that it is currently confined to sex offenders (although Congress has already expanded the meaning of that term) who are otherwise an unsympathetic group. This court has repeatedly warned that we must view the logical endpoint of any assertion of jurisdiction. If it would grant a general federal police power, erasing the distinction between federal and state, it must be rejected, U.S. v Lopez, 514 US 549, 567 (1995); Jones, at 857, Bond, at 14+17.

If it is enough that Congress once had a valid reason to regulate, and so can continue after that reason has passed, it is difficult to imagine anything outside of Congress' power. Most Americans have once travelled across state lines. Do they remain subject to federal regulation based on this fact? What about former federal employees? Recipients of federal funds or benefits? What limits exist here? This is all the more troubling as Sebelius held Congress cannot regulate inaction, at 450, 477-79.

Though this court has previously addressed this provision in U.S. v Kebodeaux, 186 LEd2d 540 (2013), the nature of the challenges raised and the facts of that case makes it of limited precedential value. It should either be confined to its facts or

revisited. Kebodeaux involved a military offender subject to the Wetterling Act upon release from custody who was later charged with failure to register under §2250(a)(2)(A). He did not dispute the power to regulate him generally (which was relied upon by the majority, at 548). Rather, he merely asked whether SORNA was Necessary and Proper to the execution of the Wetterling Act, and as applied to military offenders, at 547, 556 (Scalia, dissenting).

Both concurrences explicitly limited that case to military offenders, noting Congress retained no such power over other offenders, even sex offenders, at 553-54. While these broader statements are viewed as dicta, this court's dicta is often followed, see, e.g., U.S. v Bd of Cnty Comm'rs of Otero, 843 F3d 1208, 1214 (10th, 2016). This case is proof of the need to rein in such dicta.

Our system of federalism requires the lines of federal/ state power be carefully maintained. Kebodeaux does not police this line, and can be read for a general police power. It needs to be revisited or overruled.

III. This Case Presents An Excellent Vehicle for Review

The refusal to address these claims by the courts below is plainly and unambiguously contrary to law. It is a prime example of what the Sentencing Commission called the widespread misuse of supervised release as a second (or, here, fifth) term of punishment.

The "crime" at issue is categorically non-dangerous to the public, Chambers v U.S., 555 US 122, 129 (2009). It is a failure to act, and, more importantly, it is for things that are legal for everyone else, Lambert v California, 335 US 225, 229 (1957).

His "refusal" to obey the law consists of exercising legal remedies to challenge his obligations in court. All parties agree he has consistently, upon every release, renewed his motion to the state courts. Under his own state case, this is compliance with the law.

It is not just Simpson's "class" is non-dangerous, the evidence is uncontested that he himself is not a threat. At his original sentencing, all parties conceded he posed no risk. His court ordered therapist routinely told the court he could be removed from therapy, and that his prosecution did not protect the public. But for failing to report, the evidence showed Simpson was living a law abiding life, paying taxes, holding a job, and engaged in pro-social relationships.

Even his "crime" is, as his prosecutor noted, "not like a real crime" since there are no victims and no negative effects on society. The validity of his requirement to register is the sole basis for his incarceration and the Government has explicitly waived the right to defend it. Having a fifth sentence imposed on acts alleged to have occurred in 2006 imposes significant costs on Simpson, his friends, and society, with no corresponding benefit, see Rosales-Mireles v U.S., 201 LEd 2d 376, 386-88 (2018).

On this, Simpson is the average offender, SORNA as applied to this "class" however we define it, flies in the face of our requirement that individuals must be presumed to follow the law. Not only does the Government have no evidence to overcome this presumption, it knows it to be true in this case.

Conclusion

Because the refusal to address these claims is contrary to law, and as these issues are of great importance, a writ of certiorari should grant. As the issues were not addressed below, a GVR should issue.



Kenneth Simpson
May 6, 2026

Certificate of Service

A copy of this motion was sent to the Solicitor General on May 8, 2026.



Certificate of Rule 44 Compliance

I, Kenneth Simpson, hereby certify that the Petition for Rehearing is based on substantive grounds not previously presented in Counsel's original petition, primarily focused on the 8th Circuit's refusal to address the legality of the statute of conviction and statute of release in case 4:23cr297. The supplemental petition is based on cases issued by this Court after the filing of the original rehearing.

It is also certified that these issues are filed in good faith and not for the purpose of delay. As the 8th Circuit has declined to rule, rehearing is essentially the only way to test the legality of detention.


Kenneth Simpson
6/29/26