

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LITTLEHAWK EAGLEELK,
Petitioner,

v.
UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under *Abney v. United States*, a court of appeals has jurisdiction over an interlocutory appeal from the denial of a motion to dismiss an indictment asserting a colorable claim under the issue-preclusion component of the Double Jeopardy Clause, where success on that constitutional claim would bar prosecution of the charged offense altogether.

PARTIES TO THE PROCEEDING

Petitioner Littlehawk Eagleelk was the defendant in the United States District Court for the Northern District of Iowa and the appellant in the United States Court of Appeals for the Eighth Circuit.

Respondent United States of America was the plaintiff in the District Court and the appellee in the Court of Appeals.

RELATED PROCEEDINGS

United States v. Eagleelk, No. 5:25-cr-04005-LTS-KEM (N.D. Iowa). Memorandum Opinion and Order denying motion to dismiss entered May 1, 2026.

United States v. Eagleelk, No. 26-1955 (8th Cir.). Judgment dismissing interlocutory appeal for lack of jurisdiction entered May 27, 2026; petition for rehearing by the panel denied June 24, 2026.

United States v. Eagleelk, No. 5:20-cr-04049-LTS-KEM (N.D. Iowa). Jury verdicts of acquittal entered May 12, 2023.

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OPINIONS AND ORDERS BELOW

The May 27, 2026 judgment of the United States Court of Appeals for the Eighth Circuit dismissing Petitioner's interlocutory appeal for lack of jurisdiction is unpublished and reproduced at App. 1a. The June 24, 2026 order denying Petitioner's petition for panel rehearing is unpublished and reproduced at App. 33a.

The May 1, 2026 Memorandum Opinion and Order of the United States District Court for the Northern District of Iowa denying Petitioner's motion to dismiss is unpublished, available at *United States v. Eagleelk*, No. CR25-4005-LTS-KEM, 2026 WL 1195527 (N.D. Iowa May 1, 2026), and reproduced at App. 2a–12a.

The March 17, 2026 Report and Recommendation of the United States Magistrate Judge recommending denial of Petitioner's motion to dismiss is unpublished and reproduced at App. 13a–32a.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit entered judgment on May 27, 2026. App. 1a. Petitioner timely sought panel rehearing, which the Court of Appeals denied on June 24, 2026. App. 33a. Under Supreme Court Rule 13.3, the time to file this petition runs from the denial of rehearing. The petition is therefore due September 22, 2026.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Petitioner seeks leave to proceed in forma pauperis under Supreme Court Rule 39. Counsel was appointed to represent Petitioner under the Criminal Justice Act, 18 U.S.C. § 3006A, by the United States District Court for the Northern District of Iowa. Under Rule 39.1, no separate affidavit or declaration of indigency is required.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part:

“No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb”

28 U.S.C. § 1291 provides in relevant part:

“The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States”

18 U.S.C. § 922(g)(1) provides in relevant part:

“It shall be unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess in or affecting commerce, any firearm or ammunition”

STATEMENT OF THE CASE

The United States District Court had subject-matter jurisdiction under 18 U.S.C. § 3231 because the indictment charges an offense against the laws of the United States.

This case presents a narrow question of appellate jurisdiction governed by settled precedent. Petitioner does not ask this Court to decide whether his constitutional issue-preclusion claim ultimately succeeds. He asks the Court to enforce *Abney v. United States*, 431 U.S. 651 (1977), so that the Eighth Circuit may decide that question before Petitioner undergoes the very trial he contends the Double Jeopardy Clause prohibits.

A. The Prior Federal Acquittal

On March 22, 2020, Petitioner and others entered a home in Sioux City, Iowa, and stole property and cash. Petitioner was later convicted in Iowa state court of second-degree robbery. App. 3a.

A separate federal prosecution arose from a different incident in a parking lot later on March 22, 2020. The Government alleged that Petitioner shot at an occupied vehicle with retaliatory intent. The operative federal indictment charged two retaliation offenses under 18 U.S.C. § 1513 and one count of possession, brandishing, and discharge of a firearm in furtherance of a crime of violence under 18 U.S.C. § 924(c). App. 3a.

Petitioner testified at trial. He stated that he had a 20-gauge shotgun in his possession and admitted shooting at the vehicle, while denying an intent to kill or retaliate. On May 12, 2023, the jury returned general verdicts acquitting Petitioner of all three federal counts. App. 3a.

B. The Subsequent Firearm Prosecution

On February 20, 2025, the Government returned the present indictment charging Petitioner with possession of a firearm by a felon under 18 U.S.C. § 922(g)(1). The charge stems from March 22, 2020, and the same prosecutor who prosecuted the prior federal case is prosecuting the present case. Petitioner asserted below that the firearm used in the home robbery was the same firearm involved in the prior federal case and the present indictment. App. 3a.

Before trial, Petitioner moved to dismiss. As relevant here, he argued that the prior acquittal barred the Government, under the issue-preclusion component of the Double Jeopardy Clause, from again litigating his possession of the firearm.

C. The District Court Rejects the Double Jeopardy Claim on the Merits

The Magistrate Judge recognized that *Ashe v. Swenson*, 397 U.S. 436 (1970), incorporated collateral estoppel into the protections of the Double Jeopardy Clause. She nevertheless concluded that Petitioner's prior § 924(c) acquittal did not necessarily determine possession in his favor. App. 31a–32a.

The Magistrate Judge reasoned that § 924(c) contained multiple elements and that, although possession was necessary to convict, the jury could have acquitted because the Government failed to prove another element. Because Petitioner admitted possessing and firing the shotgun while contesting retaliatory intent, the Magistrate Judge reasoned that the jury “likely” acquitted because the Government failed to prove that the firearm was possessed in furtherance of the alleged crime of violence. App. 31a–32a.

Petitioner objected. On May 1, 2026, the District Court conducted de novo review and rejected the constitutional issue-preclusion claim on its merits. The court expressly acknowledged that the Magistrate Judge had “speculated as to the meaning of the jury’s verdict,” but considered that uncertainty dispositive because “we do not know the jury’s ultimate determination on the issue of possession in the prior case.” App. 11a.

Applying *Yeager v. United States*, 557 U.S. 110 (2009), and *Ashe*, the District Court concluded that possession was not necessarily decided because the jury “could have (and likely did)” find another element unproved. App. 11a. The court denied the motion to dismiss. App. 12a.

The District Court did not find Petitioner’s Double Jeopardy claim frivolous or noncolorable. It addressed the claim de novo and resolved the *Ashe* issue on the merits.

D. The Eighth Circuit Dismisses the Appeal as “Premature”

Petitioner immediately appealed the denial of his Double Jeopardy claim. The appeal was docketed as No. 26-1955.

On May 27, 2026, a panel consisting of Judges Kelly, Erickson, and Stras entered a one-page judgment. After stating that it had “carefully reviewed the original file” of the District

Court, the court “order[ed] that this premature appeal be dismissed for lack of jurisdiction.” App. 1a.

The Court of Appeals did not state that Petitioner’s Double Jeopardy claim was frivolous or noncolorable. It did not discuss *Abney*, *Ashe*, or its own published decisions exercising interlocutory jurisdiction over colorable Double Jeopardy and collateral-estoppel claims. It simply dismissed the appeal as “premature.”

For a colorable Double Jeopardy claim asserting a constitutional right not to undergo trial, however, an appeal after trial is not more timely. Under *Abney*, it is too late.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT THE PETITION AND SUMMARILY REVERSE BECAUSE THE JUDGMENT BELOW CANNOT BE RECONCILED WITH *ABNEY*.

This case does not require the Court to announce a new jurisdictional rule, resolve conflicting interpretations of a federal statute, or decide an unsettled constitutional question. The governing rule already exists.

In *Abney v. United States*, this Court held that a pretrial order denying a motion to dismiss an indictment on Double Jeopardy grounds falls within the collateral-order doctrine and is immediately appealable under 28 U.S.C. § 1291. 431 U.S. at 659–62.

This Court subsequently confirmed that the jurisdictional inquiry turns on colorability, not ultimate merit. In *Richardson v. United States*, 468 U.S. 317 (1984), the Court held that the defendant had raised “a colorable double jeopardy claim appealable under 28 U.S.C. § 1291,” even though resolving the claim required examination of the record of the first trial. *Id.* at 322–23. The Court explained that frivolous claims may be screened out, but a colorable Double Jeopardy claim remains immediately appealable. *Id.* at 322.

The reason was the nature of the constitutional right. The Double Jeopardy Clause does more than protect a defendant from multiple punishments. It protects him against being “twice put to trial for the same offense.” *Abney*, 431 U.S. at 661 (quoting *Green v. United States*, 355 U.S. 184, 190 (1957)). Consequently, the protection “would be significantly undermined” if appellate review were postponed until after conviction and sentence. *Abney*, 431 U.S. at 660.

A defendant forced to wait until final judgment has already suffered the constitutional injury his motion sought to prevent. Even if a later appeal results in reversal, “he has still been forced to endure a trial that the Double Jeopardy Clause was designed to prohibit.” *Abney*, 431 U.S. at 662.

That principle controls the jurisdictional question here. Petitioner moved before trial to dismiss the indictment because the prosecution is, in his view, prohibited by the Double Jeopardy Clause. The District Court denied that claim. Petitioner appealed before undergoing the allegedly prohibited trial. The Eighth Circuit nevertheless dismissed the appeal as “premature.” App. 1a.

That disposition is the inverse of *Abney*. For a colorable Double Jeopardy claim, appellate review must occur before trial precisely because post-trial review cannot restore the right not to be tried. The Eighth Circuit identified no reason why *Abney* did not govern. None is apparent.

The Court should grant the petition and summarily reverse.

II. ASHE FORECLOSES ANY JURISDICTIONAL DISTINCTION BETWEEN PETITIONER’S CONSTITUTIONAL ISSUE-PRECLUSION CLAIM AND OTHER COLORABLE DOUBLE JEOPARDY CLAIMS.

There is no basis for avoiding *Abney* merely because Petitioner’s claim rests on issue preclusion rather than the traditional same-elements rule.

Ashe held that collateral estoppel “is embodied in the Fifth Amendment guarantee against double jeopardy.” 397 U.S. at 445. The constitutional rule applies when “an issue of ultimate fact has once been determined by a valid and final judgment.” *Id.* at 443. When an issue of ultimate fact has necessarily been determined by a valid and final acquittal, the Government may not relitigate that issue in a subsequent prosecution. *Id.* at 443–45.

Yeager reaffirmed that principle: the issue-preclusion component of the Double Jeopardy Clause “precludes the Government from relitigating any issue that was necessarily decided by a jury’s acquittal in a prior trial.” 557 U.S. at 119.

Petitioner’s claim is therefore constitutional Double Jeopardy in substance, not merely an evidentiary objection bearing the label “collateral estoppel.” And the requested relief confirms the point. Petitioner does not merely seek to prevent the Government from introducing an exhibit or proving a subsidiary fact. He seeks dismissal of the sole charge against him. His theory is that the first jury necessarily resolved possession against the Government and that knowing possession is indispensable to the present § 922(g)(1) charge. If that theory is correct, there can be no trial.

That is the right protected by *Abney*: a claimed constitutional entitlement not to be tried at all. Whether Petitioner is correct about what the first jury necessarily determined is a merits question for the Court of Appeals. It is not a reason to postpone appellate review until after the asserted right has been lost.

III. THE EIGHTH CIRCUIT'S OWN PUBLISHED PRECEDENT CONFIRMS THAT PETITIONER’S APPEAL WAS IMMEDIATELY APPEALABLE.

The error is especially clear because the Eighth Circuit has repeatedly understood *Abney* and *Ashe* to require interlocutory jurisdiction in materially the same posture.

A. *Bearden* exercised interlocutory jurisdiction over a collateral-estoppel claim.

In *United States v. Bearden*, 265 F.3d 732 (8th Cir. 2001), the defendant took an interlocutory appeal from an order rejecting a Double Jeopardy claim based on collateral estoppel. Before reaching the merits, the Eighth Circuit held that it had jurisdiction because the defendant had raised a colorable Double Jeopardy claim. *Id.* at 734–35.

The court then turned directly to collateral estoppel, recognized that the doctrine “is embodied in the Fifth Amendment guarantee against double jeopardy,” *id.* at 735 (quoting *Ashe*, 397 U.S. at 445), and decided what the prior acquittal necessarily determined. It rejected the claim on the merits. *Id.* at 735–36.

Bearden thus separates the two inquiries the judgment below collapsed: colorability determines appellate jurisdiction; whether *Ashe* actually bars the later prosecution is the merits.

B. *Howe* expressly recognizes interlocutory jurisdiction over “double jeopardy and collateral estoppel” claims.

United States v. Howe, 590 F.3d 552 (8th Cir. 2009), is even more explicit. The Eighth Circuit stated: “This court has jurisdiction to review a pretrial order denying a motion to dismiss an indictment on double jeopardy and collateral estoppel grounds where, as here, the defendant has raised a colorable claim.” *Id.* at 555.

Howe also demonstrates that the Court of Appeals must independently distinguish jurisdiction from ultimate merit. The district court there had found the defendant’s motion frivolous. *Id.* at 555 n.2. The Eighth Circuit disagreed, found the claim colorable, exercised jurisdiction, and proceeded to decide the merits. *Id.*

Howe further recognized that collateral estoppel can bar a later trial for a different statutory offense if a fact necessarily determined in the first proceeding is an essential element of

the later prosecution. *Id.* at 556. Thus, the fact that § 924(c) and § 922(g)(1) are not the same offense under *Blockburger* does not remove Petitioner’s *Ashe* claim from *Abney*’s jurisdictional rule.

C. Grabinski, Ledon, and Harrington make colorability - not ultimate success - the jurisdictional threshold.

The Eighth Circuit sitting en banc has long held that “a district court’s order denying a defendant’s motion to dismiss based on a claim of double jeopardy is appealable only if a colorable claim is made.” *United States v. Grabinski*, 674 F.2d 677, 678 (8th Cir. 1982) (en banc) (per curiam). *Grabinski* described a colorable claim as a colorable showing of previous jeopardy and threatened repeated jeopardy. *Id.* at 679.

Grabinski found no jurisdiction because jeopardy had never attached in either of the defendant’s proceedings. *Id.* at 679–80. The contrast here is stark: Petitioner was tried to a verdict, and the jury acquitted him of every count.

United States v. Ledon, 49 F.3d 457 (8th Cir. 1995), makes the merits-jurisdiction distinction explicit. The court described the defendant’s argument as a “colorable, though ultimately unsuccessful, Double Jeopardy claim” and therefore exercised interlocutory jurisdiction before rejecting the claim. *Id.* at 459.

And in *United States v. Harrington*, 997 F.3d 812 (8th Cir. 2021), the Eighth Circuit again held that the denial of a motion to dismiss on Double Jeopardy grounds may be raised interlocutorily if the claim is colorable. *Id.* at 814–15. Where the district court made no written colorability finding, *Harrington* examined the record itself. *Id.* at 815. It found the claim colorable in part because the district court had engaged in a thorough analysis before rejecting it. *Id.*

Those cases leave no doctrinal gap for the unexplained disposition here. The May 27 judgment does not call the claim frivolous or noncolorable. It calls the appeal “premature.” App.

1a. But for a colorable Double Jeopardy claim seeking dismissal before trial, *Abney* and the Eighth Circuit’s own published precedent say the opposite.

**IV. PETITIONER PRESENTED A COLORABLE DOUBLE JEOPARDY CLAIM;
WHETHER THAT CLAIM ULTIMATELY SUCCEEDS IS A QUESTION FOR THE
MERITS OF HIS APPEAL.**

The Court need not decide the underlying *Ashe* question to correct the jurisdictional error. It need determine only that Petitioner’s claim clears the modest colorability threshold. A claim is colorable when there is “some possible validity” to it. *Richardson v. United States*, 468 U.S. 317, 326 n.6 (1984). Petitioner’s claim easily satisfies that threshold.

There was unquestionably previous jeopardy. Petitioner was tried before a federal jury and acquitted of all three charges. There is unquestionably threatened repeated jeopardy: the same sovereign has returned another federal indictment and seeks to put Petitioner before another jury.

The dispute is whether the prior acquittal necessarily determined a fact - possession of the firearm - that is an essential element of the new § 922(g)(1) prosecution. That is a conventional *Ashe* issue. The District Court treated it as one, applied *Ashe* and *Yeager*, and resolved it on the merits. App. 10a–11a.

To be sure, the Government has a substantial merits argument. Petitioner testified in the first trial that he possessed the shotgun and principally disputed retaliatory intent. But physical possession alone was not enough to convict on Count 3. Instruction 8 required the Government to prove both that Petitioner committed the Count 1 retaliation offense and that he knowingly

possessed the firearm “in furtherance of” that crime. App. 24a. The jury nevertheless returned a general verdict of acquittal on Count 3. App. 3a. The District Court therefore reasoned that the jury could have, and likely did, acquit because another element had not been established. App. 11a.

That reasoning may ultimately defeat Petitioner’s issue-preclusion claim because the general verdict may permit more than one rational explanation for the acquittal. But it does not make the claim jurisdictionally nonexistent. *Richardson* asks whether the claim has “some possible validity,” not whether the defendant will ultimately prevail. 468 U.S. at 326 n.6. And *Ledon* demonstrates the point in this Circuit: the court exercised jurisdiction over a “colorable, though ultimately unsuccessful, Double Jeopardy claim.” 49 F.3d at 459.

Indeed, the District Court’s own treatment underscores colorability. It conducted de novo review, acknowledged that the Magistrate Judge had “speculated as to the meaning of the jury’s verdict,” and then applied this Court’s issue-preclusion cases to determine whether possession was necessarily resolved. App. 11a. That is a genuine constitutional merits dispute, not a groundless invocation of the Double Jeopardy label.

If the Eighth Circuit believes the District Court’s *Ashe* analysis is correct, the proper disposition is to exercise jurisdiction and affirm. The dismissal as “premature” cannot be reconciled with the distinction between the jurisdictional question whether Petitioner’s Double Jeopardy claim is colorable and the separate merits question whether issue preclusion ultimately bars the prosecution. Otherwise, jurisdiction would depend on victory on the very appeal whose availability *Abney* protects.

**V. SUMMARY REVERSAL IS APPROPRIATE BECAUSE NO FURTHER
DEVELOPMENT OF THE LAW IS NECESSARY.**

This Court’s Rule 16.1 expressly permits a summary disposition on the merits after considering a petition for certiorari. This is an appropriate case for that course.

The petition does not ask the Court to expand the collateral-order doctrine. *Abney* already places colorable Double Jeopardy claims within it. Nor does it ask the Court to constitutionalize ordinary evidentiary preclusion. *Ashe* already holds that criminal issue preclusion arising from an acquittal is embodied in the Double Jeopardy Clause.

Nor is the relationship between those rules unsettled in the Eighth Circuit. *Bearden* and *Howe* expressly exercised interlocutory jurisdiction over colorable collateral-estoppel claims. *Grabinski*, *Ledon*, and *Harrington* establish that colorability, rather than ultimate success, is the jurisdictional threshold.

Against that settled law, the court below entered a one-page judgment declaring the appeal “premature” and dismissing it for lack of jurisdiction, without identifying Petitioner’s claim as frivolous or noncolorable and without distinguishing any of the governing authorities. App. 1a.

Rule 10(a) recognizes this Court’s supervisory role when a court of appeals “has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court’s supervisory power.” And this Court has not hesitated to dispose of cases summarily when a lower court’s judgment cannot be reconciled with controlling precedent. *See, e.g., Bosse v. Oklahoma*, 580 U.S. 1, 2–3 (2016) (per curiam).

The corrective disposition is narrow. The Court need not decide what the first jury necessarily determined. It need not decide the ultimate reach of *Ashe*. It need only restore the appellate review that *Abney* requires.

The Court should grant the petition, summarily reverse the judgment of the Court of Appeals, and remand for the Eighth Circuit to consider Petitioner's Double Jeopardy appeal on the merits. At minimum, the Court should grant the petition, vacate the judgment below, and remand for reconsideration of appellate jurisdiction in light of *Abney*, *Ashe*, *Bearden*, and *Howe*.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the United States Court of Appeals for the Eighth Circuit should be summarily reversed, and the case should be remanded for consideration of Petitioner's Double Jeopardy appeal on the merits.

Respectfully submitted,

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