No.

In the Supreme Court of the United States

DARIUS WAYNE HAWS, PETITIONER,

v.

STATE OF IDAHO

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IDAHO

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a criminal defendant's purported waiver of the right to appeal in a plea agreement is knowing, intelligent, and voluntary—as required by the Due Process Clauses of the Fifth and Fourteenth Amendments—when the trial court incorrectly informs the defendant, during the colloquy in which the court accepts the defendant's guilty plea, that the defendant has reserved the right to appeal.

RELATED PROCEEDINGS

Supreme Court of Idaho:

State of Idaho v. *Haws*, No. 47800 (Sept. 9, 2020), opinion amended, Oct. 2, 2020

Court of Appeals of Idaho:

State of Idaho v. *Haws*, No. 46225 (Oct. 25, 2019)

District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Fremont:

State of Idaho v. *Haws*, Nos. CR-2016-1756, CR-2017-285 (July 3, 2017, entry of orders retaining jurisdiction) (Apr. 2, 2018, entry of order relinquishing jurisdiction)

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PETITION FOR A WRIT OF CERTIORARI

Darius Wayne Haws respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Idaho.

OPINIONS BELOW

The opinion of the Supreme Court of Idaho, App., *infra*, 1a-22a, is reported at 472 P.3d 576. The opinion of the Court of Appeals of Idaho, App., *infra*, 23a-25a, is not published in the *Pacific Reporter* but is available at 2019 WL 8017375.

JURISDICTION

The judgment of the Supreme Court of Idaho was entered on September 9, 2020. On March 19, 2020, this Court extended the deadline for any certiorari petition due on or after that date to 150 days after the date of the lower court's judgment or order denying rehearing. In this case, the Court's March 19 order, as well as this Court's Rule 30.1, had the effect of extending the deadline for a certiorari petition to February 8, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides in relevant part: "No person shall * * * be deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment to the U.S. Constitution provides in relevant part: "No State shall * * * deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

Under the Due Process Clauses of the Fifth and Fourteenth Amendments, a criminal defendant's waiver of fundamental rights in connection with a guilty plea must reflect "an intentional relinquishment or abandonment of a known right or privilege." *McCarthy* v. *United States*, 394 U.S. 459, 466 (1969) (quoting *Johnson* v. *Zerbst*, 304 U.S. 458, 464 (1938)). Accordingly, as this Court recently explained, "courts agree" that a criminal defendant's waiver of appellate rights as part of a plea agreement is not "valid and enforceable" if "it was unknowing or involuntary." *Garza* v. *Idaho*, 139 S. Ct. 738, 745 (2019).

Federal courts of appeals and state high courts, however, sharply disagree over the circumstances that render an appeal waiver unknowing or involuntary—and in particular, where a trial court orally misinforms a criminal defendant about the right to appeal, contrary to the terms of a written appeal waiver. In the decision below, the Idaho Supreme Court held that petitioner Darius Haws "made a voluntary, knowing, and intelligent waiver of his appellate rights" as part of his plea agreement, even though the trial judge expressly told Haws at his guilty-plea hearing that Haws was "reserving [his] right to appeal [his] sentences." App., *infra*, 12a, 19a. The Idaho Supreme Court acknowledged that its decision conflicted with the case law of the Ninth Circuit, the court of appeals with jurisdiction over Idaho. *Id.* at 14a-18a. Recognizing that the Ninth Circuit has held that "a statement by a district court may nullify an appellate waiver," *id.* at 14a, the Idaho Supreme Court instead held that "a

misstatement by the district court cannot, by itself, invalidate" such a waiver, *id.* at 17a-18a.

In so holding, the Idaho Supreme Court joined the First Circuit on the short side of a split over whether a trial judge's misstatements regarding appeal rights during a plea colloquy render a purported appeal waiver in a written plea agreement unknowing and involuntary, and thus unenforceable. On the other side of the split, the case law of at least ten jurisdictions accords with the rule succinctly stated by the Fourth Circuit: "When a district court has advised a defendant that, contrary to the plea agreement, he is entitled to appeal his sentence, the defendant can hardly be said to have knowingly waived his right of appeal." *United States* v. *Manigan*, 592 F.3d 621, 628 (4th Cir. 2010).

Plea agreements with appeal waivers are a staple of the U.S. criminal-justice system at both the federal and state levels. The question presented here is thus critically important and frequently recurring, as the numerous cases in the entrenched split demonstrate. This case presents an ideal vehicle for resolving that split: The case's straightforward, undisputed facts squarely present the question over which courts of appeals have divided, and that question was both raised and decided below. This Court's review is warranted.

STATEMENT

1. Pursuant to plea agreements, petitioner Darius Haws pleaded guilty in Idaho state court to delivery of a controlled substance (12 hydrocodone pills) and battery on a police officer. App., *infra*, 3a-4a. Haws' plea agreements provided that Haws was waiving certain

"rights guaranteed by the United States Constitution and the Constitution of the State of Idaho," including the "right to appeal [his] conviction[s] and the sentence[s] imposed." *Id.* at 30a, 37a-38a.

The day after signing the plea agreements, Haws appeared in court for a change of plea hearing. In such a hearing, the trial judge must make "the constitutionally required determination that a defendant's guilty plea is truly voluntary." *McCarthy* v. *United States*, 394 U.S. 459, 465 (1969); accord *Boykin* v. *Alabama*, 395 U.S. 238, 242-244 (1969). Accordingly, Idaho Criminal Rule 11—like Federal Rule of Criminal Procedure 11—requires a trial court to ensure that a defendant's decision to plead guilty is adequately "informed" and "voluntar[y]." Idaho Crim. R. 11(c)-(d); cf. Fed. R. Crim. P. 11(b). Idaho Criminal Rule 11(d)(3) provides that "[i]f the defendant is waiving the right to appeal * * * , and the court is aware of this waiver, the court must ask the defendant if defendant is aware of the waiver of appeal." Cf. Fed. R. Crim. P. 11(b)(1)(N) (imposing similar requirement).

At the change of plea hearing, the trial judge asked generally whether Haws had read and understood his plea agreements. App., *infra*, 61a. Later in the hearing, the judge asked Haws, "Do you understand that if you plead guilty, you're giving up all your defenses to this case *and basically only reserving your right to appeal the sentences that will come down later?*" *Id.* at 65a (emphasis added). Haws answered, "Yes." *Ibid.*

As the decision below acknowledged, the trial judge's "misstatement * * * that Haws had reserved his right to appeal his sentence" was "in direct conflict" with Haws' plea agreements. App., *infra*, 14a. The

prosecutor, however, did not intervene to clarify that Haws' agreements contained provisions waiving his right to appeal. After Haws affirmed—at the trial judge's erroneous urging—that he understood himself to be "reserving [his] right to appeal [his] sentences," *id.* at 65a, the trial judge accepted Haws' guilty pleas, *id.* at 72a-73a.

As a result of his pleas, Haws faced a potential sentence of up to life imprisonment. App., *infra*, 55a. In the plea agreements, the State agreed to recommend sentences of five years, with two years fixed, on each of the charges to which Haws pleaded guilty.[1] *Id.* at 4a. Deviating from that agreement, the trial court sentenced Haws to six years, with two years fixed, on the controlled-substance charge, and to four years, with one year fixed, on the battery charge. *Id.* at 5a. The court ordered the sentences to run consecutively. *Ibid.* At the end of the sentencing hearing, the trial judge again erroneously "advise[d] [Haws] that [he] ha[d] a right to appeal th[e] sentence." Sentencing Hr'g Tr. 44 (June 30, 2017).

In accordance with the plea agreements, the trial court "retained jurisdiction" over Haws, providing Haws with an opportunity to avoid serving his prison term by completing a treatment program. App., *infra*, 5a. But based on Haws' allegedly "poor" performance in the program, including his asserted "difficulty identifying appropriate new thinking," the trial court relinquished jurisdiction over Haws, resulting in the

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[1] The "fixed" term refers to the number of years Haws would need to serve before becoming eligible for parole. See Idaho Code § 19-2513(1) (2020).

"imposition of the original sentences" of incarceration. *Id.* at 5a-6a. Haws is currently serving his sentences and is not eligible for parole until September 2023.

2. Haws appealed, arguing, among other things, that his sentences were excessive.[2] App., *infra*, 24a. The Idaho Court of Appeals dismissed Haws' challenge to his sentences based on the appeal waivers in his plea agreements. *Id.* at 24a-25a.

On review, the Idaho Supreme Court disagreed with the Idaho Court of Appeals' conclusion that Haws had forfeited the right to challenge the validity of his appeal waivers by not addressing those waivers in his opening appellate brief; instead, the Idaho Supreme Court held that Haws was entitled to address the issue in his reply brief, in response to the government's waiver argument in its brief.[3] App., *infra*, 8a-12a. The

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[2] Idaho law provides that defendants may "appeal as a matter of right" from criminal judgments. Idaho App. R. 11(c); see also Idaho Code § 19-2801 (2020).

[3] Citing *State* v. *Lee*, 443 P.3d 268, 273 (Idaho Ct. App. 2019), Haws' reply brief argued that his appeal waiver was not "made voluntarily, knowingly, and intelligently" given the trial judge's assertion that Haws was "reserving [his] right to appeal [his] sentences." Pet. Reply Br. 2-3; see also Appellant's Br. in Support of Pet. for Review 9-11 (Haws made similar argument in brief supporting petition for review to Idaho Supreme Court). *Lee* discussed the requirement that pleas be "taken in compliance with * * * due process standards," *Lee*, 443 P.3d at 273, and relied on a line of Idaho precedents founded on this Court's federal due process case law, starting with *State* v. *Murphy*, 872 P.2d 719 (Idaho 1994). See *Murphy*, 872 P.2d at 720 (citing *State* v. *Carrasco*, 787 P.2d 281 (Idaho 1990), in holding that an appeal waiver in a plea agreement must be "voluntar[y], knowing[] and intelligent[]"); see also *Carrasco*, 787 P.2d at 286 (citing *Boykin* v. *Alabama*, 395 U.S. 238 (1969), in holding that a guilty plea

court, however, concluded that Haws' appeal waivers were enforceable and thus dismissed Haws' appeal of his sentences. *Id.* at 12a-19a, 22a.

The Idaho Supreme Court acknowledged that it could enforce Haws' appeal waivers only "if the record shows the waiver[s] [were] made knowingly, intelligently, and voluntarily." App., *infra*, 14a. After surveying federal court of appeals case law, the Idaho Supreme Court stated that it "agree[d]" with what it understood to be the "majority" rule that "a misstatement by the district court cannot, by itself, invalidate a plea agreement." *Id.* at 14a-18a. Instead, the Idaho Supreme Court stated, "any misstatement by the [trial] court should merely be a fact to consider when determining whether the defendant made a knowing, intelligent, and voluntary waiver of his appellate rights." *Id.* at 18a. In so holding, the Idaho Supreme Court expressly "rejected the Ninth Circuit's [contrary] approach." *Id.* at 17a. Noting Haws' general affirmations during the plea colloquy that he had "read" and "understood" his plea agreements, the court concluded that Haws had "made a knowing, intelligent, and voluntary waiver of his appellate rights," despite the trial judge's "conflicting statement" that Haws was "reserving [his] right to appeal [his] sentences." *Id.* at 12a, 18a-19a.

"cannot stand unless the record of the entire proceedings on appeal indicates that the plea was entered voluntarily, knowingly and intelligently"); *State* v. *Colyer*, 557 P.2d 626, 627-629 (Idaho 1976) (similar, discussing *Boykin* and other decisions of this Court).

REASONS FOR GRANTING THE PETITION

I. Federal And State Courts Are Split About Whether An Appeal Waiver Is Knowing And Voluntary Where A Trial Court Incorrectly Advises The Defendant During The Plea Colloquy That He Retains The Right To Appeal

A. The Vast Majority Of State And Federal Courts To Consider The Question Have Concluded That A Judge's Misstatement At A Plea Hearing Renders An Appeal Waiver Not Knowing And Voluntary

A majority of courts that have squarely considered the issue hold that an appeal waiver is not knowing or voluntary when the trial court directly contradicts the written waiver at a plea hearing. Indeed, in at least ten other jurisdictions, the appeal waiver in this case would have been unenforceable, because governing precedent would treat it as not knowing, intelligent, and voluntary, as required by the Due Process Clauses of the Fifth and Fourteenth Amendments. In those jurisdictions, criminal defendants may "naturally, and quite reasonably, rely on the [trial] court's characterization of the material terms disclosed during the [plea] hearing." *United States* v. *Wood*, 378 F.3d 342, 349 (4th Cir. 2004). Accordingly, in those jurisdictions, Haws' waiver would have been unenforceable.

With respect to federal courts, the Idaho Supreme Court recognized that its decision here conflicted with the case law of the Ninth Circuit, the court of appeals with jurisdiction over Idaho. See App., *infra*, 14a-18a. Under Ninth Circuit precedent, an appeal waiver is invalid when "confusion regarding appellate rights

arises contemporaneously with the waiver." *United States* v. *Lopez-Armenta*, 400 F.3d 1173, 1177 (9th Cir. 2005). Therefore, an appeal waiver is unenforceable where, as here, the trial court at a plea hearing "unequivocally, clearly, and without qualification" contradicts the waiver. *United States* v. *Arias-Espinosa*, 704 F.3d 616, 620 (9th Cir. 2012).[4]

Contrary to the Idaho Supreme Court's suggestion, the Ninth Circuit hardly "stands alone in its conclusion that a statement by a [trial] court may nullify an appellate waiver." App., *infra*, 14a. In fact, nearly all

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[4] The Idaho Supreme Court's discussion of Ninth Circuit case law focused on *United States* v. *Buchanan*, 59 F.3d 914 (9th Cir. 1995) (cited at App., *infra*, 14a-17a). There, the defendant had moved to withdraw his guilty plea under a plea agreement. *Id.* at 916. At subsequent hearings, the district court incorrectly informed the defendant that he retained the right to appeal despite an explicit appellate waiver in the original and modified plea agreements. *Ibid*. Because the defendant "might have relied on this advice in deciding not to withdraw his plea," *Lopez-Armenta*, 400 F.3d at 1176, the Ninth Circuit concluded that the appeal waiver was unenforceable, *Buchanan*, 59 F.3d at 917-918. In *Lopez-Armenta*, the Ninth Circuit explained that "*Buchanan* addresses the situation in which confusion regarding appellate rights arises contemporaneously with the waiver," even if the result may be different "where the defendant attempts to have later confusion 'relate back' to his waiver," such as might result where a district court misstates the terms of a prior appellate waiver at a subsequent sentencing hearing. *Lopez-Armenta*, 400 F.3d at 1177. In short, *Lopez-Armenta* accurately summarizes the outcome in the Ninth Circuit for a case—like this one—where a trial court's mischaracterization of an appellate waiver provision occurs contemporaneously with a plea. Cf. pp. 18-21, *infra* (discussing Idaho Supreme Court's disregard of distinction between misstatements during plea colloquies and at sentencing hearings).

federal courts of appeals that have addressed the issue agree with the Ninth Circuit.

For example, the Fourth Circuit has crisply explained that "[w]hen a district court has advised a defendant that, contrary to the plea agreement, he is entitled to appeal his sentence, the defendant can hardly be said to have knowingly waived his right of appeal." *United States* v. *Manigan*, 592 F.3d 621, 628 (4th Cir. 2010). In *Manigan*, the district court advised the defendant "contrary to the Plea Agreement * * * that he *would* be able to appeal his sentence." *Ibid.* Because of the court's direct contradiction of the written appeal waiver, the Fourth Circuit concluded that the waiver was not made knowingly. *Ibid.*

Like the Fourth Circuit, the D.C. and Third Circuits also decline to enforce an appeal waiver where a district court has orally misstated the terms of the written agreement at a plea hearing. In the D.C. Circuit, if a district court "mischaracterized the meaning of the waiver in a fundamental way," *United States* v. *Godoy*, 706 F.3d 493, 495-496 (D.C. Cir. 2013), then "the district court's oral pronouncement controls," *id.* at 496 (quoting *Buchanan*, 59 F.3d at 918); see also *United States* v. *Brown*, 892 F.3d 385, 396 (D.C. Cir. 2018) (per curiam) (holding that an appeal waiver is not knowing, voluntary, and intelligent when the court mischaracterizes an appeal waiver). As the D.C. Circuit has explained, "when a court mischaracterizes a waiver provision" during a plea colloquy, "a defendant can hardly be taken to comprehend, let alone accept," the waiver. *Godoy*, 706 F.3d at 495. Similarly, the Third Circuit has concluded that an appeal waiver is not knowing and voluntary where "[t]he District

Court's statement [during the plea colloquy] is clearly at odds with the otherwise plain and straightforward language of the agreement." *United States* v. *Saferstein*, 673 F.3d 237, 242 (3d Cir. 2012).

The Second and Tenth Circuits have likewise held that a defendant's appeal waiver is not knowing and voluntary (and thus is unenforceable) when the trial court misstates the scope of the waiver at the plea hearing.[5] See *United States* v. *Ready*, 82 F.3d 551, 557-558 (2d Cir. 1996) (holding that an appeal waiver was not knowing where "the court explained that it understood the waiver to be a limited one"), superseded on other grounds by rule as stated in *United States* v. *Cook*, 722 F.3d 477, 481 (2d Cir. 2013); *United States* v. *Wilken*, 498 F.3d 1160, 1168-1169 (10th Cir. 2007) (holding that an appeal waiver was not "knowing and voluntary" because "the written agreement enumerates a broad waiver of [the defendant's] appellate rights, but the court's statements during the plea colloquy describe a much narrower waiver").

Finally, the Eleventh Circuit has held an appeal waiver was not "knowing[] and voluntar[y]" where the district court's "confusing" statements during the plea colloquy "did not clearly convey to [the defendant] that he was giving up his right to appeal under *most*

[5] The same rule also appears to apply in the Sixth Circuit. See *United States* v. *Melvin*, 557 Fed. Appx. 390, 396 (6th Cir. 2013) ("However trivial the district court's misstatement seems to be, that misstatement prevents us from concluding that Melvin's appeal waiver was knowing and voluntary.").

circumstances." *United States* v. *Bushert*, 997 F.2d 1343, 1352-1353 (11th Cir. 1993).[6]

State courts reach similar results. In Indiana, for instance, an appeal waiver is not knowing, voluntary, and intelligent when, at the plea hearing, a trial judge tells a defendant he retains the right to appeal, contrary to the terms of a written waiver. *Ricci* v. *State*, 894 N.E.2d 1089, 1093-1094 (Ind. Ct. App. 2008) (holding an appeal waiver is a "nullity" when the trial court misstates the defendant's appellate rights at a plea hearing); see also *Crider* v. *State*, 984 N.E.2d 618, 623 (Ind. 2013) (citing *Ricci*'s holding approvingly). *Ricci* itself rests on an earlier Indiana Supreme Court case analyzing whether an appeal waiver remains valid despite the judge contradicting its written terms at a subsequent sentencing hearing. *Creech* v. *State*, 887 N.E.2d 73, 77 (Ind. 2008). In analyzing that question, *Creech* emphasized the importance of whether a defendant understood "the terms of the agreement *at the time he signed it*," and thus also "emphasize[d] the importance of avoiding confusing remarks in a plea colloquy." *Id.* at 76 (emphasis added). Indiana's intermediate appellate courts have consistently applied *Creech* in concluding that a trial court's oral contradiction at the plea hearing—i.e., a misstatement contemporaneous with the defendant entering a plea—renders the waiver unenforceable. See, *e.g.*,

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[6] Recognizing the prevailing rule in "[s]everal of [its] sister circuits," the Eighth Circuit has "assum[ed] without deciding that [an appeal] waiver [did] not preclude" a defendant's appeal given the trial court's "misstatement" regarding "the waiver's scope" during the plea colloquy. *United States* v. *Valencia*, 829 F.3d 1007, 1012 & n.3 (8th Cir. 2016).

Ricci, 894 N.E.2d at 1093-1094; *Holloway* v. *State*, 950 N.E.2d 803, 805-806 (Ind. Ct. App. 2011).

In addition, the Iowa Supreme Court has held that if the trial court orally misstates the terms of a plea agreement during a plea colloquy, the terms described by the judge are controlling rather than the written terms.[7] See *State* v. *Macke*, 933 N.W.2d 226, 237 (Iowa 2019) ("The controlling terms * * * are those described on the record during the plea hearing rather than the conflicting terms of the written order because the written order was never reviewed with [the defendant] in open court."). Iowa's rule is grounded in due process. *Id.* at 236-237 ("The purpose of requiring disclosure 'in open court' is to allow a colloquy to ensure that the defendant's plea is knowing, intelligent, and voluntary."). Applying that rule to appeal waivers, the Iowa Supreme Court held that appeal waivers cannot be knowing, intelligent, and voluntary if they are not reviewed by the judge on the record at the plea hearing. *State* v. *Loye*, 670 N.W.2d 141, 147-149 (Iowa 2003).

So too in Washington. Courts there look to the oral plea colloquy in determining whether a defendant waived his right to appeal knowingly, voluntarily, and intelligently. See *State* v. *Smith*, 953 P.2d 810, 811 (Wash. 1998) (per curiam). And the Washington

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[7] Similarly, in California, a trial court's oral characterization of an appellate waiver will trump inconsistent written terms. See, *e.g.*, *People* v. *Armendariz*, No. E029702, 2002 WL 31025874, at *1 n.1 (Cal. Ct. App. Sept. 11, 2002) (allowing a defendant to appeal a probable cause determination despite an appeal waiver in his plea agreement because the judge orally advised him—before he entered the plea—that the waiver was "very limited").

Supreme Court has held that an oral misstatement regarding the existence or terms of an appeal waiver can render a written appeal waiver involuntary and thus unenforceable. *Ibid.* (holding that the defendant did not knowingly, voluntarily, and intelligently waive his right to appeal a suppression ruling where defense counsel made an incorrect statement about the appeal waiver and neither the court nor the prosecutor corrected the statement).

B. A Small Minority Of Jurisdictions Enforce Appeal Waivers Even Where A Trial Court Orally Misadvises The Defendant At The Time Of The Plea

In its decision here, the Idaho Supreme Court joined the First Circuit in enforcing a written appeal waiver, even after a trial court directly contradicted the terms of the written waiver during the oral plea colloquy.

As discussed above, the Idaho Supreme Court enforced Haws' appeal waiver despite finding that the trial court's "misstatement" that Haws was "reserving" the right to appeal his sentence stood "in direct conflict with the written plea waiver." App., *infra*, 13a-14a. In the Idaho court's view, even that kind of grave misstatement "cannot, by itself, invalidate a plea agreement." *Id.* at 17a-18a. Instead, according to the Idaho high court, a judge's misstatement "should merely be a fact to consider when determining whether the defendant made a knowing, intelligent, and voluntary waiver of his appellate rights." *Id.* at 18a.

In so holding, Idaho aligned itself with the First Circuit, which allows enforcement of an appeal waiver notwithstanding a direct oral contradiction by a trial

court during a plea colloquy. The leading case from the First Circuit, *United States* v. *Teeter*, 257 F.3d 14, 23-25 (2001), states that a district court's oral statements sending "contradictory messages" regarding an appeal waiver are "not necessarily a fatal error" rendering the waiver not "knowing[] and voluntar[y]." That court explained that "[w]hile broad assurances to a defendant who has waived her appellate rights (e.g., 'you have a right to appeal your sentence') are to be avoided * * * they do not effect a per se nullification of a plea-agreement waiver of appellate rights." *Id.* at 25.[8] In applying *Teeter*, the First Circuit has subsequently enforced an appeal waiver even where the trial court directly contradicted the terms of a written plea agreement. See *United States* v. *Villodas-Rosario*, 901 F.3d 10, 17-18 (1st Cir. 2018). In that case, the First Circuit concluded that the appeal waiver was knowing and voluntary, where the written language was clear, the defendant's counsel did not object to the trial court's erroneous description, and defense counsel, "without prompting by the court and in his client's

[8] Ultimately, the First Circuit in *Teeter* concluded that the waiver there was unenforceable because it was not "sufficiently informed." 257 F.3d at 27. In so holding, the Court relied on several factors, including that the district judge had orally discussed the plea agreement generally "but did not direct [the defendant's] attention to the [appellate] waiver provision." *Id.* at 26. The court also explained that the judge had orally informed the defendant that "both you and the government will have a right to appeal any sentence I impose," thereby "directly contradict[ing] the tenor of the [written] waiver provision," and had failed subsequently to correct that error. *Id.* at 27.

presence[,] reiterated the defendant's agreement to the specific appellate waiver provision." *Ibid.*[9]

II. The Decision Below Is Wrong

As this Court has explained, "courts agree" that a waiver of appellate rights is not "valid and enforceable" if "it was unknowing or involuntary." *Garza* v. *Idaho*, 139 S. Ct. 738, 745 (2019). That rule stems from the federal due process principle that the waiver of fundamental rights accompanying a guilty plea must reflect "an intentional relinquishment or abandonment of a known right or privilege." *McCarthy*, 394 U.S. at 466 (quoting *Johnson* v. *Zerbst*, 304 U.S. 458, 464 (1938)); see also *Evitts* v. *Lucey*, 469 U.S. 387, 393 (1985) ("[I]f a State has created appellate courts as 'an integral part of the . . . system for finally adjudicating the guilt or innocence of a defendant,' the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection

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[9] In addressing a related issue—i.e., the validity of appeal waivers where a written agreement overstates the permissible scope of such waivers—New York has articulated principles reflecting a similar approach to oral misstatements. In *People* v. *Thomas*, 144 N.E.3d 970 (2019), the New York Court of Appeals surveyed its case law treating a trial court's oral misstatement regarding a written appeal waiver as merely one factor to be considered in deciding whether a waiver "reflects a knowing and voluntary choice." *Id.* at 978-979 (citation omitted). The relevant question in New York is whether "the court's advisement as to the rights relinquished was incorrect and irredeemable under the circumstances." *Id.* at 981. Indeed, in New York, "ambiguity in the sentencing court's colloquy" can be *cured* by "a detailed written waiver," which standing alone may "establish[] that [a] defendant knowingly, intelligently and voluntarily waived [the] right to appeal." *Id.* at 982 n.5 (citation omitted).

Clauses of the Constitution." (quoting *Griffin* v. *Illinois*, 351 U.S. 12, 18 (1956) (plurality op.))). Accordingly, the Due Process Clauses of the Fifth and Fourteenth Amendments require courts to ensure that a defendant pleading guilty is "fairly apprised of [the plea's] consequences." *Mabry* v. *Johnson*, 467 U.S. 504, 509 (1984), disapproved of on other grounds by *Puckett* v. *United States*, 556 U.S. 129 (2009); see also *Kercheval* v. *United States*, 274 U.S. 220, 223-224 (1927); *Boykin*, 395 U.S. at 242-244; *Brady* v. *United States*, 397 U.S. 742, 755 (1970). Therefore, where—as in Idaho, see note 2, *supra*—"a system of appeals as of right" has been established, "due process" precludes "refus[ing] * * * an adjudication on the merits of [a defendant's] appeal" by enforcing a purported appeal waiver that was not knowing, intelligent, and voluntary. *Evitts*, 469 U.S. at 405; see also *Garza*, 139 S. Ct. at 744 n.4 (discussing appellate rights in federal and state courts).

The Idaho Supreme Court violated those due process principles by enforcing the appeal-waiver provision in Haws' plea agreement even though the trial judge erroneously advised Haws regarding his guilty plea's consequences for his right to appeal. Haws' "plea agreements provided that [he] would waive his 'right to appeal [his] conviction and the sentence[s] imposed.'" App., *infra*, 4a-5a. But during Haws' plea colloquy, the trial judge asked Haws, "Do you understand that if you plead guilty, you're giving up all your defenses to this case and basically only *reserving your right to appeal the sentences that will come down later*?" *Id.* at 65a (emphasis added). Haws answered, "Yes." *Ibid.* The prosecutor did nothing to

correct the record and ensure Haws' understanding that his plea agreements in fact contained provisions waiving his right to appeal. Therefore, Haws' purported waiver of his appeal rights in his plea agreements was "unknowing" and "involuntary," *Garza*, 139 S. Ct. at 745, because Haws expressly affirmed—at the trial judge's erroneous urging—that he understood himself to be "reserving [his] right to appeal [his] sentences," App., *infra*, 65a; see also *Wilken*, 498 F.3d at 1168 ("[L]ogic indicates that if we may rely on the * * * court's statements to eliminate ambiguity prior to accepting a waiver of appellate rights, we must also be prepared to recognize the power of such statements to achieve the opposite effect.").

Contrary to the Idaho Supreme Court's decision, when a trial judge erroneously advises a defendant that he retains the right to appeal, it cannot be said that the defendant was "fairly apprised of [the plea's] consequences." *Mabry*, 467 U.S. at 509. And when defendants tell the court that they understand that, as a consequence of the plea, they are *not* waiving the right to appeal, the appeal waiver cannot be considered "knowing, intelligent, and sufficiently aware." *United States* v. *Ruiz*, 536 U.S. 622, 629 (2002); see also *Manigan*, 592 F.3d at 628 ("When a district court has advised a defendant that, contrary to the plea agreement, he is entitled to appeal his sentence, the defendant can hardly be said to have knowingly waived his right of appeal.").

In reaching its conclusion that Haws' appeal waiver was knowing, intelligent, and voluntary, the Idaho Supreme Court relied almost exclusively on federal court of appeals decisions holding that misstatements about

the right to appeal made at sentencing hearings cannot alone vitiate an appeal waiver. App., *infra*, 16a-17a. But federal courts of appeals have explicitly distinguished between misstatements regarding appellate rights made at sentencing hearings and those made at plea hearings, noting that the two contexts pose different legal questions. See, *e.g.*, *Wilken*, 498 F.3d at 1167 (whether a "court's mischaracterization of an appellate waiver during a plea colloquy" invalidates the waiver "presents * * * a different question" than a mischaracterization after plea's acceptance). Compare *United States* v. *Godoy*, 706 F.3d 493, 495 (D.C. Cir. 2013) (holding that an appeal waiver was unenforceable when "in a colloquy during [the] plea hearing, the district court mischaracterized the meaning of the waiver in a fundamental way"), *United States* v. *Manigan*, 592 F.3d 621, 628 (4th Cir. 2010) (holding that the plea colloquy "fatally taint[ed] the waiver's enforceability" when the court incorrectly told the defendant at the plea hearing that he would be able to appeal his sentence), and *United States* v. *Bushert*, 997 F.2d 1343, 1352-1353 (11th Cir. 1993) (refusing to enforce appeal waiver because of district court's "confusing" language during plea colloquy), with *United States* v. *Guillen*, 561 F.3d 527, 531 (D.C. Cir. 2009) (holding that an appeal waiver was still enforceable when the judge at the sentencing hearing misinformed the defendant about the right to appeal), *United States* v. *One Male Juvenile*, No. 96-4023, 1997 WL 381955, at *2-4 (4th Cir. July 11, 1997) (per curiam) (district court's erroneous oral pronouncement during sentencing that the defendant had an "absolute right" to appeal his sentence did not nullify appeal waiver), and *United States* v. *Benitez-Zapata*, 131 F.3d

1444, 1446 (11th Cir. 1997) (enforcing appeal waiver where district court's "confusing statements * * * about the right to appeal" occurred during "the *sentencing* hearing and not during the *plea* hearing").

Cases involving misstatements at sentencing hearings are inapposite here. In those cases, the courts reasoned that any information provided *after* the trial court's acceptance of a guilty plea with an accompanying appeal waiver did not render the waiver unenforceable because it did not affect the defendant's understanding or inform the defendant's decision when the plea was entered. See, *e.g.*, *United States* v. *Azure*, 571 F.3d 769, 774 (8th Cir. 2009). In such cases, courts have concluded that the defendants understood that they were waiving their appellate rights based on *accurate* information provided in the plea colloquy. See, *e.g.*, *United States* v. *Melancon*, 972 F.2d 566, 568 (5th Cir. 1992). In contrast, this case involves *inaccurate* information provided in the plea colloquy, before the court's acceptance of the guilty plea. This case therefore implicates this Court's long line of cases emphasizing that the Due Process Clause requires a court to ensure that a defendant understands a guilty plea's implications. See *Ruiz*, 536 U.S. at 629; *Boykin*, 395 U.S. at 243-244.

The Idaho Supreme Court went astray by failing to recognize the key distinction between misstatements during sentencing hearings, *after* a knowing, intelligent, and voluntary waiver of appeal rights has occurred as part of a guilty plea satisfying due process requirements, and misstatements about appeal rights during the guilty-plea colloquy itself, the purpose of which is to ensure that a defendant's waiver of rights

is knowing, intelligent, and voluntary. Here, the *only* statement regarding appeal rights made during Haws' plea colloquy was the trial judge's inaccurate statement that Haws "reserv[ed] [his] right to appeal [his] sentences." App., *infra*, 65a. Haws expressly affirmed that he shared the trial judge's understanding that he retained the right to appeal. *Ibid.* Under these circumstances, the Idaho Supreme Court erred in concluding that "Haws made a voluntary, knowing, and intelligent waiver of his appellate rights." App., *infra*, 19a.

III. This Case Is An Ideal Vehicle To Address The Important And Frequently Recurring Question Presented

1. The question presented here potentially arises in every case where a criminal defendant pleads guilty through an agreement containing an appeal waiver. Guilty pleas are, of course, ubiquitous in the criminal justice system today, at both the federal and state levels. Defendants plead guilty in over 97% of the 90,000 federal criminal cases filed annually. See U.S. Sent'g Comm'n, *Overview of Federal Criminal Cases, Fiscal Year 2019*, at 8 (2020); U.S. Courts, Federal Judicial Caseload Statistics 2019 (2020), http://bit.ly/39BpXRu. Furthermore, the estimated number of state criminal cases filed each year is over 15 *million*. Court Statistics Project, *State Court Caseload Digest: 2018 Data* 13 (2020). Some 94% of state felony cases end in guilty pleas. U.S. Dep't of Justice, *Felony Sentences in State Courts, 2006—Statistical Tables* 1 (2010). As this Court has stated, plea bargaining "*is* the criminal justice system." *Missouri* v. *Frye*, 566 U.S. 134, 144 (2012) (citation omitted).

Appeal waivers, in turn, are standard practice in the modern plea bargaining process. See Nancy J. King & Michael E. O'Neill, *Appeal Waivers and the Future of Sentencing Policy*, 55 Duke L.J. 209, 231-232 (2005) (estimating that 90% of plea agreements in federal courts in the Ninth Circuit and 65% of plea agreements in the federal court system generally contained appeal waivers). A recent study surveyed a sample of plea agreements used by federal prosecutors and found more than 80% included an appeal waiver. Susan R. Klein et al., *Waiving the Criminal Justice System: An Empirical and Constitutional Analysis*, 52 Am. Crim. L. Rev. 73, 85-87, 122-126 (2015) (93 of 114 plea agreements analyzed). Indeed, current guidance to federal prosecutors explicitly encourages them to seek waivers of appeals and post-conviction remedies. See U.S. Dep't of Justice, Justice Manual § 9-16.330 (2018). In short, the available data indicate that millions of cases each year are resolved with criminal defendants waiving their appellate rights. And as the sheer number of decisions cited in Section I demonstrates, conflicts between a written agreement and the oral plea colloquy are unfortunately far from uncommon.

The substantive stakes could not be higher. A criminal defendant's decision to surrender appellate rights has immense legal and practical significance. The availability of appellate review safeguards criminal defendants—and the criminal justice system more generally—from prejudicial error, facilitates the development of substantive and procedural criminal law, and promotes uniformity in criminal process. See ABA Standards for Criminal Justice Standard 21-1.2 (2015); see also 4 William Blackstone, *Commentaries*

on the Laws of England 383-386 (1769). And as a practical matter, defendants asked to plead guilty while waiving the right to appeal a future sentence must do so at a stage when they often do not know what that sentence will be, never mind whether the court will make a sentencing error. See, *e.g.*, *United States* v. *Fleming*, 239 F.3d 761, 763 (6th Cir. 2001) (statement by trial judge to defendant that "[y]ou * * * have given up your right to appeal any sentence that I might impose, even though you don't know what the sentence is going to be"). The facts of this case starkly illustrate the severe prejudice a criminal defendant may face. Petitioner was charged with selling 12 hydrocodone pills, but faced a potential life sentence. App., *infra*, 3a, 55a.

2. This case presents a clean and attractive vehicle to address the question presented. The facts are undisputed and straightforward: Petitioner's plea agreements stated that he was waiving his "right to appeal [his] conviction and the sentence[s] imposed." App., *infra*, 4a-5a. During the plea colloquy, however, the trial court asked whether Haws understood that he was "only reserving [his] right to appeal the sentences." *Id.* at 12a. Haws responded: "Yes." *Ibid.* As the Idaho Supreme Court specifically found, the trial court's "misstatement" regarding petitioner's appeal waiver stands "in direct conflict with the written" plea agreements. *Id.* at 14a.

In determining whether petitioner nonetheless "made a knowing, intelligent, and voluntary waiver of his appellate rights," App., *infra*, 18a, the Idaho Supreme Court undertook an extensive survey of federal case law addressing the validity of appeal waivers

where the trial court's oral pronouncement conflicts with a written plea agreement, and expressly "rejected the Ninth Circuit's approach" on that issue, *id.* at 14a-18a. The Idaho high court's conclusion that petitioner knowingly, intelligently, and voluntarily waived his right to appeal was outcome determinative: On that basis, the court declined to review the trial court's sentences, including the trial court's unexplained decision to sentence Haws above even the State's recommendation on his controlled-substance charge. *Id.* at 5a. If this Court were to reverse, Haws would have the opportunity for his custodial sentence to be reduced.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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