No. 22-536

In the Supreme Court of the United States

ELIEZER ALBERTO JIMENEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a defendant's waiver of the right to collaterally attack a conviction or sentence, as part of a plea agreement, is categorically invalid under the unconstitutional-conditions doctrine.

2. Whether the court of appeals correctly denied petitioner's motion to modify his sentence under 28 U.S.C. 2255(a), where petitioner knowingly and voluntarily entered into a plea agreement that contained a waiver of the right to collaterally attack his sentence.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is not published in the Federal Reporter but is available at 2022 WL 2610337. The opinion of the district court (Pet. App. 13a-33a) is not published in the Federal Reporter but is available at 2021 WL 37484.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 2022. A petition for rehearing was denied on September 9, 2022 (Pet. App. 55a). The petition for a writ of certiorari was filed on December 8, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Kentucky, petitioner

was convicted of conspiring to launder money, in violation of 18 U.S.C. 1956(h). Pet. App. 2a. He was sentenced to 87 months of imprisonment, to be followed by three years of supervised release. *Id.* at 3a. The district court subsequently denied petitioner's motion to modify his sentence under 28 U.S.C. 2255(a), Pet. App. 13a-33a, and the court of appeals affirmed, *id.* at 1a-8a.

1. Petitioner was a participant in a drug-trafficking and money-laundering operation; his primary role involved collecting drug proceeds and transferring them to couriers. Plea Agreement 2-3. In total, he helped to launder nearly $300,000. Pet. App. 2a. A grand jury charged petitioner with conspiring to commit money laundering, in violation of 18 U.S.C. 1956(h), Pet. App. 15a, and he pleaded guilty to that charge, *id.* at 2a.

In his plea agreement, petitioner "waive[d] the right to appeal the guilty plea and conviction," as well as "any determination made by the [district court] at sentencing," unless "the length of the term of imprisonment exceeds the advisory sentencing guidelines range as determined by the [district court] at sentencing." Plea Agreement 5; Pet. App. 2a. Petitioner also "waive[d] the right to attack collaterally the guilty plea, conviction, and sentence," except "for claims of ineffective assistance of counsel." *Ibid.*

In exchange for petitioner's guilty plea, the government agreed to recommend that the district court decrease petitioner's offense level by two levels for his acceptance of responsibility, as well as an additional level if the court determined that petitioner's offense level was 16 or greater. Plea Agreement 4; see Sentencing Guidelines § 3E1.1 (2018). Petitioner and his attorney "acknowledge[d] that [petitioner] underst[ood] th[e] Agreement, that [petitioner's] attorney ha[d] fully

explained th[e] Agreement to [petitioner], and that the [petitioner's] entry into th[e] Agreement [was] voluntary." Plea Agreement 7; Pet. App. 2a.

The district court held a hearing at which it accepted petitioner's guilty plea. Rearraignment Tr. 35. During the hearing, the court explained to petitioner that his plea agreement waived his right "to collaterally attack the guilty plea, the conviction, or the sentence," except for "a claim of ineffective assistance of counsel." *Id.* at 22. The court additionally specified that the waiver encompassed "a habeas motion or a habeas proceeding." *Ibid.* The court then found that petitioner was "fully competent and capable of entering an informed plea," and that his plea was "knowing" and "voluntary." *Id.* at 35.

2. Approximately one month after pleading guilty, but before his sentencing proceeding, petitioner challenged a 2015 Minnesota conviction for second-degree possession of six grams or more of cocaine by filing a pro se motion for postconviction relief in Minnesota state court. See Pet. App. 16a; D. Ct. Doc. 140-1, at 1 (Oct. 3, 2019). Petitioner did not seek to postpone his federal sentencing proceeding while his state postconviction motion was pending.

The Probation Office determined that petitioner's statutory maximum sentence was 20 years of imprisonment, and his advisory guidelines range was 70 to 87 months of imprisonment. See Presentence Investigation Report (PSR) ¶¶ 71-72; Pet. App. 16a; 18 U.S.C. 1956(a)(1) and (h). In determining petitioner's criminal history score for purposes of his guidelines range, the Probation Office assessed one point for petitioner's 2015 Minnesota conviction. PSR ¶ 45; Pet. App. 16a. And because petitioner committed his federal money-

laundering offense while serving a term of probation for the 2015 Minnesota conviction, the Probation Office also added two criminal history points pursuant to Sentencing Guidelines § 4A1.1(d) (2018). PSR ¶ 48; Pet. App. 16a.

Petitioner filed a pro se objection to his criminal history score, contending that his 2015 Minnesota conviction should not be counted because he had filed a state postconviction relief motion challenging it. Pet. App. 3a; D. Ct. Doc. 140 (Oct. 3, 2019). At sentencing, where he was represented by counsel, petitioner withdrew that objection. Pet. App. 17a; Sent. Tr. 5. After the withdrawal, the district court observed that regardless of the outcome of petitioner's state postconviction relief motion, the 2015 Minnesota conviction "would still be countable under the [Sentencing] [G]uidelines under Section 4A1.2." Sent. Tr. 6; Pet. App. 17a; see Sentencing Guidelines § 4A1.2, comment. (n.6) (2021) (permitting a court to consider "the criminal conduct underlying any conviction that is not counted in the criminal history score").

The district court sentenced petitioner to 87 months of imprisonment, to be followed by three years of supervised release. Pet. App. 3a. The court "concluded that a sentence at the top of the guidelines range was necessary to reflect the seriousness of the offense and deter [petitioner] from future criminal activity based upon his past conduct." *Id.* at 18a n.1. The court emphasized, however, that petitioner's sentence fell "well below the statutory maximum of 20 years." *Id.* at 6a; see 18 U.S.C. 1956(a)(1) and (h).

3. Approximately eight months after petitioner's federal sentencing, a Minnesota court granted a joint motion by petitioner and the State to vacate petitioner's

2015 drug-possession conviction as obtained "in violation of . . . the laws and constitution of the United States and the State of Minnesota." Pet. App. 3a; see *id.* at 37a. In response, petitioner filed a motion in district court under 28 U.S.C. 2255(a), asking the court to recalculate his guidelines range and impose a new sentence in light of the now-vacated Minnesota conviction. Pet. App. 3a-4a.

Adopting a magistrate judge's recommendation, the district court denied petitioner's motion, but granted him a certificate of appealability. Pet. App. 13a-33a; see *id.* at 34a-54a. The court found that the collateral-attack waiver in petitioner's plea agreement "bar[red] [his] motion." *Id.* at 28a. And it rejected petitioner's reliance on a "miscarriage-of-justice exception" to his "otherwise valid collateral attack waiver[]," because the court of appeals had not yet recognized such an exception. *Ibid.* The court additionally observed that "even if such an exception had been recognized, it is unclear whether it would apply to this case." *Id.* at 29a. The court emphasized that petitioner's case did not involve "an unanticipated change in the law [that] rendered a sentence excessive"; rather, petitioner's "Minnesota challenges were pending at sentencing," and "[h]is acknowledgement of the waiver's consequences should have informed him of his obligations under the [plea] agreement." *Id.* at 32a.

4. The court of appeals affirmed in an unpublished decision. Pet. App. 1a-8a.

The court of appeals found "that [petitioner] knowingly and voluntarily waived his collateral-attack rights." Pet. App. 5a. It observed that the "plea agreement that [petitioner] signed has a broad and unambiguous waiver provision," and that the "district court

explained the provision—its meaning and its consequences—before accepting [petitioner's] guilty plea." *Ibid.*

The court of appeals acknowledged that it has "refuse[d] to enforce knowing and voluntary waivers" where a "defendant attacks his plea agreement as 'the product of ineffective assistance of counsel,'" where "a district court sentences a criminal defendant above the statutory maximum," and where "a district court punishes a defendant because of the defendant's race." Pet. App. 6a (citations omitted). But the court determined that "[n]one of those exceptions applies here." *Ibid.*; see *id.* at 6a-7a.

Although petitioner asked the court of appeals "to recognize a 'miscarriage of justice' exception to waiver enforceability," the court "decline[d] to do so in this case." Pet. App. 7a (citation omitted). The court explained that petitioner "knowingly and voluntarily waived the right to collaterally attack his sentence, and this situation, *i.e.*, a vacated state-court conviction and a diminished guidelines range, was a foreseeable consequence of that waiver." *Id.* at 7a-8a. Accordingly, the court determined that "[e]nforcing the waiver and applying the plea agreement as written does not work a miscarriage of justice." *Id.* at 8a.

The court of appeals accepted that some other circuits "decline to enforce valid appeal or collateral-attack waivers when doing so would result in a 'miscarriage of justice.'" Pet. App. 8a. But the court observed that petitioner "identifies no circuit court that has found a miscarriage of justice in his circumstances—when a court subsequently vacates a prior conviction used to enhance a defendant's advisory guidelines range." *Ibid.*

Judge Bush issued a concurrence in which he observed that petitioner "waived his right, unambiguously and in open court, to bring *any* collateral attack other than for ineffective assistance." Pet. App. 12a. He explained that petitioner "thus necessarily knew that the exact claim he now seeks to press—a mere sentence-reduction request—was subject to waiver." *Ibid.* And he highlighted that "as to that claim, the fact remains that [petitioner's] vacated conviction implicates *only* his advisory guidelines range—not the sentencing range set by statute, and thus not the lawfulness of his sentence." *Ibid.* "Indeed," Judge Bush emphasized, "the district court today could lawfully reimpose the precise sentence [petitioner] received." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 9-24) for the first time that collateral-attack waivers in plea agreements are categorically invalid under the unconstitutional-conditions doctrine. In the alternative, he contends (Pet. 24-30) that an implied miscarriage-of-justice exception to his collateral-attack waiver should allow his Section 2255(a) motion to proceed. The court of appeals correctly affirmed the denial of petitioner's Section 2255(a) motion because he validly waived his right to collaterally attack his sentence. The court's unpublished disposition does not conflict with any decision of this Court or another court of appeals. No further review is warranted.

1. Petitioner primarily presses (Pet. 9) a sweeping claim that he did not raise below—namely, that collateral-attack waivers are categorically invalid under the "unconstitutional conditions" doctrine. See Pet. i, 9-24. That claim lacks merit.

a. This Court has repeatedly recognized that a defendant may validly waive constitutional and statutory

rights as part of a plea agreement so long as his waiver is knowing and voluntary. See, *e.g.*, *Ricketts* v. *Adamson*, 483 U.S. 1, 9-10 (1987) (waiver of right to raise double-jeopardy defense); *Town of Newton* v. *Rumery*, 480 U.S. 386, 389, 398 (1987) (waiver of right to file action under 42 U.S.C. 1983). As a general matter, statutory rights are subject to waiver in the absence of some "affirmative indication" to the contrary from Congress. *United States* v. *Mezzanatto*, 513 U.S. 196, 201 (1995). Likewise, even the "most fundamental protections afforded by the Constitution" may be waived. *Ibid.*

In accord with those principles, the courts of appeals have uniformly enforced knowing and voluntary waivers of the right to appeal or collaterally attack a sentence.[1] As the courts of appeals have recognized, such waivers benefit defendants by providing them with "an additional bargaining chip in negotiations with the prosecution." *United States* v. *Teeter*, 257 F.3d 14, 22 (1st Cir. 2001); see *United States* v. *Elliott*, 264 F.3d 1171, 1174 (10th Cir. 2001). Appeal waivers correspondingly benefit the government by enhancing the finality of judgments and discouraging meritless appeals. See,

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[1] See *United States* v. *Teeter*, 257 F.3d 14, 21-23 (1st Cir. 2001); *United States* v. *Riggi*, 649 F.3d 143, 147-150 (2d Cir. 2011); *United States* v. *Khattak*, 273 F.3d 557, 560-562 (3d Cir. 2001); *United States* v. *Marin*, 961 F.2d 493, 495-496 (4th Cir. 1992); *United States* v. *Wilkes*, 20 F.3d 651, 653 (5th Cir. 1994) (per curiam); *Watson* v. *United States*, 165 F.3d 486, 489 (6th Cir. 1999); *United States* v. *Woolley*, 123 F.3d 627, 631 (7th Cir. 1997); *United States* v. *Andis*, 333 F.3d 886, 889-890 (8th Cir.) (en banc), cert. denied, 540 U.S. 997 (2003); *United States* v. *Abarca*, 985 F.2d 1012, 1014 (9th Cir.), cert. denied, 508 U.S. 979 (1993); *United States* v. *Hernandez*, 134 F.3d 1435, 1437 (10th Cir. 1998); *United States* v. *Bushert*, 997 F.2d 1343, 1347-1350 (11th Cir. 1993), cert. denied, 513 U.S. 1051 (1994); *United States* v. *Guillen*, 561 F.3d 527, 529-532 (D.C. Cir. 2009).

e.g., *United States* v. *Guillen*, 561 F.3d 527, 530 (D.C. Cir. 2009); *United States* v. *Andis*, 333 F.3d 886, 889-890 (8th Cir.) (en banc), cert. denied, 540 U.S. 997 (2003); *Teeter*, 257 F.3d at 22.

Collateral-attack waivers have the same benefits. See, *e.g.*, *DeRoo* v. *United States*, 223 F.3d 919, 923 (8th Cir. 2000). "The 'chief virtues' of a plea agreement * * * are promoted by waivers of collateral appeal rights as much as by waivers of direct appeal rights." *Ibid.* (citation omitted). Like appeal waivers, collateral-attack waivers "preserve the finality of judgments and sentences, and are of value to the accused to gain concessions from the government." *Ibid.*

b. This case directly illustrates the mutual benefits of such waivers. Pursuant to the plea agreement, the government recommended that the district court decrease petitioner's offense level based on his acceptance of responsibility. Plea Agreement 4; see p. 2, *supra*. In exchange, petitioner pleaded guilty and expressly waived his "right to attack collaterally the * * * sentence," except for "claims" raising "ineffective assistance of counsel." Plea Agreement 5.

Petitioner does not dispute that he knowingly and voluntarily entered into the plea agreement, including the collateral-attack waiver. Nor could he: the record establishes that petitioner was "well-aware" that he was waiving his collateral-attack rights as a condition of his plea. Pet. App. 6a. Accordingly, the court of appeals correctly enforced the terms of petitioner's "unambiguous" bargain with the government. *Id.* at 5a.

c. Petitioner's unconstitutional-conditions argument is unsound. Petitioner asks (Pet. 12) the Court to balance the "level of coercion" in collateral-attack waivers against the "public interest" in such waivers and

conclude that they are categorically invalid. But petitioner derives that balancing framework from *Koontz* v. *St. Johns River Water Management District*, 570 U.S. 595 (2013), which arose in the "special" context of claims involving "the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits." *Id.* at 604 (citation and internal quotation marks omitted). Petitioner cites no case in which the Court has applied his proposed framework in the context of plea bargaining.

To the contrary, this Court "has long sanctioned law enforcement practices, including plea bargaining, that may exert 'pressure' on defendants to waive 'a series of fundamental rights' in exchange for the 'substantial benefits' of leniency." *Kincaid* v. *Government of D.C.*, 854 F.3d 721, 728 (D.C. Cir. 2017) (Kavanaugh, J.) (quoting *Mezzanatto*, 513 U.S. at 120); see, *e.g.*, *Corbitt* v. *New Jersey*, 439 U.S. 212, 219-221 (1978); *Bordenkircher* v. *Hayes*, 434 U.S. 357, 364 (1978); *Brady* v. *United States*, 397 U.S. 742, 753, 758 (1970). The Court should "decline [petitioner's] invitation to deviate from that established precedent by adopting a novel 'unconstitutional conditions' rule that would call into question the traditional practices of police departments, prosecutors, and law enforcement agencies across the country," *Kincaid*, 854 F.3d at 728, and deprive courts, prosecutors, and defendants of the benefits of collateral-attack waivers.

d. Petitioner's application (Pet. 15-24) of his proposed balancing framework also fails on its own terms. With respect to the first aspect of the framework, petitioner principally relies on law review articles to assert that plea bargaining is "inherently coercive" in the relevant sense. Pet. 15; see Pet. 15-17. But this Court has

recognized that plea bargaining is a "'give-and-take'" process with a "'mutuality of advantage'" to both "defendants and prosecutors." *Bordenkircher*, 434 U.S. at 363 (citation omitted). And the Court has found that defendants who are "advised by competent counsel and protected by other procedural safeguards are presumptively capable of intelligent choice in response to prosecutorial persuasion." *Ibid.* The Court has accordingly rejected "any notion that a guilty plea is involuntary in a constitutional sense simply because it is the end result of the bargaining process." *Ibid.*; see, *e.g.*, *Corbitt*, 439 U.S. at 219-223.

Petitioner also maintains (Pet. 19) that collateral-attack waivers must be coercive because of "[t]he sheer number of unknown and unknowable grounds for later collaterally attacking a conviction or sentence." But this Court has made clear that "a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise," such as the premise that "the maximum penalty then assumed applicable has been held inapplicable in subsequent judicial decisions." *Brady*, 397 U.S. at 757. And the Court has further emphasized that courts may accept guilty pleas "despite various forms of misapprehension under which a defendant might labor," including a defendant's lack of "complete knowledge of the relevant circumstances" or his failure to foresee a "change in the law." *United States* v. *Ruiz*, 536 U.S. 622, 630 (2002).

With respect to the second aspect of the framework, petitioner asserts (Pet. 21) that "there is little public interest in collateral attack waivers." But this Court's cases have "unequivocally recognized" the "legitimate

interest in encouraging the entry of guilty pleas and in facilitating plea bargaining, a process mutually beneficial to both the defendant and the State." *Corbitt*, 439 U.S. at 222. Appeal and collateral-attack waivers facilitate that process by giving defendants "a bargaining tool to convince the government to drop pending charges against [them]." *Portis* v. *United States*, 33 F.4th 331, 336 (6th Cir. 2022); see *DeRoo*, 223 F.3d at 923.

As this Court has emphasized in an analogous context, "it simply makes no sense" to "preclud[e] negotiation over an issue that may be particularly important to one of the parties to the transaction." *Mezzanatto*, 513 U.S. at 208. Instead, "[a] sounder way to encourage settlement is to permit the interested parties to enter into knowing and voluntary negotiations without any arbitrary limits on their bargaining chips." *Ibid.* Appeal and collateral-attack waivers promote more bargains, which in turn conserve prosecutorial and judicial resources, "preserve the finality of judgments and sentences," *DeRoo*, 223 F.3d at 923, and yield more sentence reductions for defendants, *Young* v. *United States*, 124 F.3d 794, 798 (7th Cir. 1997), cert. denied, 524 U.S. 928 (1998).

e. Petitioner does not dispute that "[t]he principle that future changes in law do not vitiate collateral-challenge waivers is mainstream" and followed by "[a]ll circuits." *Portis*, 33 F.4th at 335-336; see *id.* at 336 (citing cases). Ultimately, the decision whether to waive collateral-attack rights in exchange for a reduced sentence "is indistinguishable from any of a number of difficult choices that criminal defendants face every day." *Mezzanatto*, 513 U.S. at 209. "[T]he appropriate response to [petitioner's] predictions of abuse is to permit case-

by-case inquiries into whether waiver agreements are the product of fraud or coercion." *Id.* at 210. It is not to "invalidat[e] *all* such agreements," *ibid.* (citation omitted), as petitioner proposes here.

Even if petitioner's unconstitutional-conditions argument warranted further review, this case would be an unsuitable vehicle for addressing it. Petitioner never raised that argument below, so neither the district court nor the court of appeals passed on it. This Court's "traditional rule * * * precludes a grant of certiorari" on a question that "was not pressed or passed upon below." *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (citation omitted); see, *e.g.*, *EEOC* v. *Federal Labor Relations Auth.*, 476 U.S. 19, 24 (1986) (per curiam). The Court can and should deny certiorari on the first question presented for that reason alone.

2. a. Petitioner alternatively contends (Pet. 24-30) that his collateral-attack waiver is unenforceable under an unwritten exception for cases involving "a miscarriage of justice." But even assuming the existence of such an implied exception, petitioner has failed to show that his collateral attack should proceed under it.

As the court of appeals explained, petitioner "knowingly and voluntarily waived the right to collaterally attack his sentence, and this situation, *i.e.*, a vacated state-court conviction and a diminished guidelines range, was a foreseeable consequence of that waiver." Pet. App. 7a-8a. Furthermore, because the vacated state conviction affected "*only* his advisory guidelines range—not the sentencing range set by statute— * * * the district court today could lawfully reimpose the precise sentence [petitioner] received." *Id.* at 12a (Bush, J., concurring). And as the district court noted, Section 4A1.2 of the Sentencing Guidelines would permit

consideration of petitioner's state conviction even *after* its vacatur. Pet. App. 17a; see Sentencing Guidelines § 4A1.2, comment. (n.6) (2021).

In these circumstances, "[e]nforcing the waiver and applying the plea agreement as written does not work a miscarriage of justice." Pet. App. 8a. That is particularly true because petitioner pleaded guilty only approximately one month before filing his state postconviction relief motion. See p. 3, *supra*. Given petitioner's imminent plans to file a state postconviction relief motion, he could have sought to negotiate an exception to the collateral-attack waiver that would have permitted him to file a federal sentence-reduction motion if his state conviction were vacated. Cf. Pet. 19 (acknowledging that not all plea agreements include collateral-attack waivers). Instead, he agreed to "a broad and unambiguous waiver provision." Pet. App. 5a. Petitioner cannot now escape his choice by invoking an unwritten miscarriage-of-justice exception.

Petitioner's reliance (Pet. 25-26) on this Court's decisions in *Johnson* v. *United States*, 544 U.S. 295 (2005), *Daniels* v. *United States*, 532 U.S. 374 (2001), and *Custis* v. *United States*, 511 U.S. 485 (1994), is misplaced. None of those decisions even involved a collateral-attack waiver—let alone suggested that a defendant could override such a waiver based on a later-vacated state conviction that affected only his advisory guidelines range. At most, *Daniels* and *Custis* suggest that a defendant may seek relief under Section 2255(a) in the absence of a collateral-attack waiver where he had received a mandatory statutory sentencing enhancement based on a later-vacated state conviction. See *Daniels*, 532 U.S. at 382; *Custis*, 511 U.S. at 497. And *Johnson* simply holds that, in such circumstances, notice of an

order vacating a state conviction "is the event that starts the * * * running" of Section 2255's statute of limitations. 544 U.S. at 308.

b. Contrary to petitioner's contention (Pet. 26-30), the second question presented does not implicate any conflict in the circuits. Petitioner maintains (Pet. 27-30) that some courts of appeals have recognized an implied miscarriage-of-justice exception to appeal or collateral-attack waivers. But as petitioner acknowledges (Pet. 24), no circuit has categorically rejected the availability of such an exception in a published decision.

Nor did the court of appeals do so in its unpublished disposition here. Rather, the court simply declined to apply such an exception "in this case," Pet. App. 7a, without addressing whether the exception could apply in an appropriate future case. And in fact, the Sixth Circuit has "implicitly recognized" the availability of such an exception "in several unpublished decisions." *United States* v. *Mathews*, 534 Fed. Appx. 418, 425 (2013) (per curiam) (collecting cases), cert. denied, 571 U.S. 1104 (2013), and 571 U.S. 1168 (2014).

Moreover, the court of appeals emphasized that even if any disagreement between the circuits existed, it "would not affect the outcome here," because petitioner "identifies no circuit court that has found a miscarriage of justice in his circumstances—when a court subsequently vacates a prior conviction used to enhance a defendant's advisory guidelines range." Pet. App. 8a. The petition for a writ of certiorari likewise identifies no such case.

Five of the decisions petitioner cites *enforced* appeal waivers, so the results of those cases do not conflict with the corresponding enforcement of the collateral-attack waiver here. *Guillen*, 561 F.3d at 532; *United States* v.

Hahn, 359 F.3d 1315, 1329 (10th Cir. 2004) (per curiam); *Andis*, 333 F.3d at 893-894; *United States* v. *Khattak*, 273 F.3d 557, 563 (3d Cir. 2001);[2] *United States* v. *Yemitan*, 70 F.3d 746, 748 (2d Cir. 1995). And the three court of appeals decisions declining to enforce waivers involved circumstances meaningfully distinct from those here. See *United States* v. *Wells*, 29 F.4th 580, 587 (9th Cir.) (declining to enforce appeal waiver as to "constitutional claims" that "directly challenge[d] the sentence itself" and were not "expressly and specifically waived by the appeal waiver"), cert. denied, 143 S. Ct. 267 (2022); *United States* v. *Adams*, 814 F.3d 178, 183 (4th Cir. 2016) (declining to enforce collateral-attack waiver because defendant "ma[de] a valid claim of actual innocence"); *Teeter*, 257 F.3d at 27 (declining to enforce appeal waiver where "the appellant's surrender of her appellate rights was [not] sufficiently informed").

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[2] Petitioner cites (Pet. 28) *United States* v. *Foley*, 273 F. Supp. 3d 562 (W.D. Pa. 2017), but the Third Circuit has never endorsed that decision, and a district court decision cannot form the basis for a circuit conflict. See Sup. Ct. R. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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