No. _____

IN THE

Supreme Court of the United States

KAHLIQ WILLIAMS,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Can a criminal defendant knowingly and voluntarily forfeit his right to appeal the district court's yet-to-be-made sentencing errors as part of his plea agreement with the government, and, if so, what are the limits on the validity and enforceability of such "appeal waivers"?

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Kahliq Williams*, No. 2:20-cr-085, U.S. District Court for the Eastern District of Louisiana. Judgment entered May 31, 2022.
- *United States v. Kahliq Williams*, No. 22-30323, U.S. Court of Appeals for the Fifth Circuit. Judgment entered February 13, 2023.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kahliq Williams respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

On February 13, 2023, a panel of the Fifth Circuit Court of Appeals dismissed Mr. Williams's appeal of the district court's sentence based on appeal waivers in his plea agreement. A copy of the order is attached to this petition as the Appendix (1a).

JURISDICTION

The Fifth Circuit entered its order of dismissal on February 13, 2023, and no petition for rehearing was filed. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed pursuant to Supreme Court Rules 13 and 30 because 90 days from the Fifth Circuit's judgment was Sunday, May 14, 2023, and this petition is being filed on Monday, May 15, 2023—*i.e.*, the next day that is not a Saturday, Sunday, or legal holiday.

FEDERAL STATUTE INVOLVED

18 U.S.C. § 3742(a) provides, in relevant part:

> A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—
>
> (1) was imposed in violation of law;
>
> (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
>
> (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range; or
>
> (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

INTRODUCTION

The right to appeal a criminal sentence is a statutory entitlement under 18 U.S.C. § 3742. But in many federal jurisdictions—including the Eastern District of Louisiana—local U.S. Attorney's Offices have developed "standard" plea agreements requiring that all defendants wishing to plead guilty pursuant to a written agreement waive nearly all appellate and collateral relief rights. The Eastern District's standard agreement includes the broadest and most restrictive appeal waivers available, mandating forfeiture of all appellate and collateral relief rights except attacks on sentences imposed in excess of the statutory maximum and claims of ineffective assistance of counsel. Defendants are required to enter these agreements long before sentencing occurs, almost always without any agreement among the parties about the sentence the defendant might face or even the Guidelines range that will apply.

This Court has yet to directly rule on the permissibility of these waivers, despite intense criticism, questionable legality, and inconsistent treatment by lower courts. Particularly concerning is the federal government's use of standardized, non-negotiable appeal waivers that force defendants to relinquish their right to challenge yet-to-be-made sentencing errors. Those waivers are inherently unknowing and involuntary, threaten the integrity of the judicial process, create unwarranted sentencing disparities, and stifle the development of the law. And, in cases like this one, they act to insulate a sentencing judge's failure to comply with fundamental procedural requirements that are critical to the fairness, integrity, and transparency of the criminal justice system. The validity of these waivers must be addressed.

STATEMENT OF THE CASE

On July 20, 2021, Petitioner Kahliq Williams pleaded guilty to carjacking, burglary, and firearm-related charges. As has become standard practice in criminal cases in the Eastern District of Louisiana, Mr. Williams's plea agreement with the government required him to waive all appellate and collateral relief rights except an attack on a sentence imposed in excess of the statutory maximum or a claim of ineffective assistance of counsel. Relevant here, the waivers broadly encompassed his right "to appeal or contest his . . . sentence" and "to challenge the manner in which his sentence was determined."

In anticipation of Mr. Williams's sentencing, U.S. Probation prepared a Presentence Report (PSR). The PSR indicated Mr. Williams had no prior convictions when he committed the instant offenses and that he immediately and fully confessed to his criminal conduct upon his arrest. Based on the details of Mr. Williams's offense conduct and his criminal history category of I, the PSR calculated an advisory Sentencing Guidelines range of 70 to 87 months. However, Mr. Williams's conviction for brandishing a firearm in furtherance of a crime of violence required a mandatory, consecutive sentence of at least 84 months, pursuant to 18 U.S.C. § 924(c)(1)(A)(ii).

Importantly, the PSR identified multiple "factors that may warrant a variance" in Mr. Williams's case. First, the PSR described the "challenging" nature of his childhood, including the fact that he required special accommodations in school, witnessed domestic violence in his home, and lost his uncle to a brutal murder when he was 15 years old, just five years before he committed the instant offenses. The PSR

also explained that "[t]he trauma associated with witnessing domestic violence as a child and losing his uncle may have contributed to his using drugs to cope," noting that Mr. Williams developed cocaine and tramadol addictions for which he never received treatment. Finally, the PSR discussed Mr. Williams's diagnosis with depression and his hospitalization following a suicide attempt, which occurred within months of his commission of the instant offenses. The PSR identified all of these circumstances as factors potentially warranting a variance and further stated that, in light of Mr. Williams's history, the court may wish to "consider a sentence that includes supportive services and treatment to adequately protect the community and reduce the likelihood the defendant would commit future crimes."

Prior to sentencing, Mr. Williams's counsel filed a motion requesting a downward variance based on the circumstances identified by the Probation Office in the PSR. Counsel specifically asked the court to consider granting a variance based on Mr. Williams's mental and emotional state, reiterating the information presented in the PSR about his history, characteristics, traumatic experiences, mental health issues, and substance abuse. Counsel also cited a specific departure provision in the Sentencing Guidelines advising courts that "mental and emotional conditions may be relevant in determining whether a departure is warranted" and that a downward departure "may be appropriate to accomplish a specific treatment purpose." *See* U.S.S.G. § 5H1.4. Counsel urged the court to consider Mr. Williams's atypical circumstances and severe, untreated mental health and substance abuse issues in

deciding whether a variance may be appropriate, along with Mr. Williams's mitigating post-arrest conduct.

At sentencing, Mr. Williams apologized to the court and his family for his crimes, and his lawyer reiterated the grounds for the downward variance request. The prosecutor confirmed the accuracy of the defense's representations about Mr. Williams's full acceptance of responsibility and did not express any objection to his request for a downward variance sentence. Following the parties' remarks, the district court stated: "I'm going to deny the motion for a downward variance." The court then sentenced Mr. Williams to 164 months of imprisonment, consisting of an 84-month term for the § 924(c) conviction run consecutively to 80-month, within-Guidelines terms for his other counts of conviction. The district court did not mention any of the factors enumerated in 18 U.S.C. § 3553(a), address any of Mr. Williams's individualized circumstances, or provide any explanation for its sentence—articulating no reason for denying Mr. Williams's request for a variance or for selecting the specific term the court imposed.

Mr. Williams timely appealed his sentence, arguing that the district court abused its discretion by failing to consider the § 3553(a) factors, treating the Guidelines as mandatory, and failing to explain its sentencing decision. While recognizing that the appeal waivers in his plea agreement broadly forfeited his right to appeal or contest the "manner in which his sentence was determined," Mr. Williams noted that the government had discretion to choose whether to enforce those waivers to bar his appeal. *See United States v. Davis*, 530 F.3d 318, 320-21 (5th

Cir. 2008). Mr. Williams urged the government to decline to do so in his case in light of the district court's wholesale abandonment of its statutory sentencing obligations, which stripped Mr. Williams of his right to a careful, individualized sentencing.

Nonetheless, the government moved to dismiss Mr. Williams's appeal based on the broad sentencing-related appeal waivers in his plea agreement. Mr. Williams opposed dismissal, arguing that sentencing appeal waivers like those in his case are bad policy, harmful to the integrity of the criminal process, and inherently unknowing and involuntary. He acknowledged, however, that his challenges to the waiver's validity were foreclosed under Fifth Circuit precedent. A Fifth Circuit panel dismissed Mr. Williams's appeal without reaching the merits of his claims (1a).

REASONS FOR GRANTING THE PETITION

"Imposing a criminal sentence is among the gravest powers a government exercises over its people." *United States v. Abney*, 957 F.3d 241, 253 (D.C. Cir. 2020) (citation omitted). "It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." *Koon v. United States*, 518 U.S. 81, 113 (1996). Just like the right to allocution, the right of criminal defendants to reasoned, individualized sentencing is essential "to avoid the appearance of dispending assembly-line justice." *See United States v. Barnes*, 948 F.2d 325, 331 (7th Cir. 1991); *see also, e.g.*, *Gall v. United States*, 552 U.S. 38, 51 (2007); *Rita v. United States*, 551 U.S. 338, 346 (2007). District courts thus have "a duty to listen and give

careful and serious consideration" to the information presented by a defendant in mitigation of punishment. *Abney*, 957 F.3d at 253.

This appeal arose from a fundamentally flawed sentencing hearing in which the district court abandoned its duty to conduct a careful, individualized assessment of Mr. Williams's circumstances and provide individualized, case-specific reasons for imposing a particular punishment. Mr. Williams presented numerous, meritorious arguments in support of a sentence below his Guidelines range, and the government did not object to his request or advocate for a sentence within the Guidelines range. Nevertheless, the district court summarily denied his request for a variance and imposed a within-Guideline sentence without any discussion of the § 3553(a) factors. The record shows that the district court did not consider the applicable sentencing factors and effectively treated the Guidelines as mandatory, ultimately providing no basis—much less a reasoned basis—for denying Mr. Williams's variance request.

Those fundamental procedural defects mandated correction by the appellate court. Yet the government's enforcement of the broad, boilerplate sentencing appeal waivers in Mr. Williams's plea agreement prevented the Fifth Circuit from reaching the merits of his claims. Although this Court has suggested possible limits on the reach of appeal waivers, it has not yet fully examined their legality or clarified restrictions on their enforcement. *See Garza v. Idaho*, 139 S. Ct. 738, 744–45 (2019) (recognizing that "no appeal waiver serves as an absolute bar to all appellate claims" and that "all jurisdictions appear to treat at least some claims as unwaiveable"). For a number of reasons, this Court should provide that necessary clarification now.

First, as commentators and judges alike have observed, the widespread and compulsory forfeiture of appellate rights—especially those regarding yet-to-be-made sentencing errors—raises serious policy and fairness concerns, implicating not only the fundamental rights of huge swaths of criminal defendants, but also the health of the criminal process as a whole. Second, broad waivers like those in Mr. Williams's case are inherently unknowing and involuntary and therefore legally dubious. Finally, the circuits are split over the limits on and exceptions to the enforcement of appeal waivers, leading to confusion, unpredictability, and disparate treatment of similarly situated individuals. Absent intervention by this Court, important legal issues regarding the proper application of the Sentencing Guidelines will continue to be insulated from appellate scrutiny in the vast majority of criminal cases, and fundamental sentencing errors by district courts—including the wholesale abandonment of statutory requirements intended to ensure fair, transparent, and individualized sentencing proceedings for all criminal defendants—will continue to go unchecked.[1] Clarification from this Court on the validity, enforceability, and limitations of sentencing-related appeal waivers is urgently needed.

[1] Approximately ninety-seven percent of federal criminal defendants plead guilty pursuant to plea agreements, which typically mandate broad waivers of appellate rights. *See Missouri v. Frye*, 566 U.S. 134, 144 (2012); Conrad & Clements, *The Vanishing Criminal Jury Trial: From Trial Judges to Sentencing Judges*, 86 Geo. Wash. L. Rev. 99, 153 (2018); Susan R. Klein et al., *Waiving the Criminal Justice System: An Empirical and Constitutional Analysis*, 52 Am. Crim. L. Rev. 73, 87, 122-26 (2015); *see also Lafler v. Cooper*, 132 S. Ct. 1376, 1388 (2012) (observing that "criminal justice today is for the most part a system of pleas, not a system of trials.").

I. Appeal waivers raise serious policy and fairness concerns that require this Court's attention.

Many judges and commentators have expressed dismay over the appeal waiver trend, noting the serious policy concerns raised by the widespread, compelled forfeiture of appellate rights—and the inherent unfairness of those waivers. Appeal waivers like those in Mr. Williams's plea agreement require defendants to forfeit serious errors that they could not have anticipated at the time of relinquishment and that arise from inherently inequitable bargaining positions.

At the time a defendant pleads guilty, he or she does so in the face of "information deficits and pressures to bargain," with the threat of severe potential penalties that can be imposed at the prosecution's whim. Stephanos Bibas, *Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection*, 99 Cal. L. Rev. 1117, 1138 (2011). As one commentator explained:

> The lack of bargaining equality between the defense and prosecution has led some judges to reject appeal waivers as contracts by adhesion. Because conditioning the plea agreement on acceptance of an appeal waiver skews the balance so far in the prosecution's favor, the defendant has no hope at achieving equal bargaining power. This renders the contract unconscionable.

Andrew Dean, *Challenging Appeal Waivers*, 61 Buff. L. Rev. 1191, 1211 (2013); *see also* Editorial, *Trial Judge to Appeals Court: Review Me*, N.Y. Times, July 17, 2012, at A24 ("Congress gave appeals courts the power to review federal sentences to ensure the government applies the law reasonably and consistently. Without an appeals court's policing, the odds go up that prosecutors will do neither. Our system of pleas then looks more like a system of railroading."). At the same time—while in the vice-like grip of plea bargaining—the defendant has no way of knowing what future errors

may be committed by the district court or what rights may be trampled, nor the potential cost of those harms. Indeed, the Sentencing Guidelines' range has not yet been calculated at that early stage, nor have disputes about the proper application of the Guidelines surfaced.

On an institutional level, waivers reduce incentives for careful sentencing and strict compliance with the applicable laws, insulating serious and obvious errors—like the ones in this case—from review and correction. This not only leads to unfair and inconsistent outcomes but leaves difficult or open legal questions unanswered and otherwise inhibits development of the law. As one district court put it, "[t]he criminal justice system is not improved by insulating from review either simple miscalculations or novel questions of law." *United States v. Mutschler*, 152 F. Supp. 3d 1332, 1339 (W.D. Wash. 2016); *see also United States v. Melancon*, 972 F.2d 566, 573 (5th Cir. 1992) (Parker, J., concurring) ("Any systemic benefits that might inhere in this type waiver cannot overcome its extremely deleterious effects upon judicial and congressional integrity, and individual constitutional rights."). And the post-*Booker* "reasonableness" review of sentences is undermined by a system that leaves the length of sentences and the procedures producing them immune from review. *See United States v. Vanderwerff*, No. 12-CR-00069, 2012 WL 2514933, at *5 (D. Colo. June 28, 2012), *rev'd and remanded*, 788 F.3d 1266 (10th Cir. 2015) ("Indiscriminate acceptance of appellate waivers undermines the ability of appellate courts to ensure the constitutional validity of convictions and to maintain consistency and reasonableness in sentencing decisions.").

Of course, courts long have pointed to the institutional benefits of appeal waivers. Most common among those are the conservation of resources and finality of judgments. However, as one district court observed, these benefits may be overblown:

> Any suggestion that unilateral waivers of the right to appeal promote finality is disingenuous. Finality is not secured simply because only the Government, and not the defendant, is entitled to appeal. Moreover, to the extent the Government's motive is merely to reduce the burden of appellate and collateral litigation on sentencing issues, the avenue for achieving such finality is explicitly contemplated in Rule 11(c)(1)(C), pursuant to which the Government may agree to a specific [Sentencing Guidelines] range and bind both the defendant and the Court.

Mutschler, 152 F. Supp. 3d at 1340 (internal citations omitted).

Moreover, use of sentencing appeal waivers in *every* plea agreement does not merely reduce direct criminal appeals—it seeks to eliminate them. No doubt, some balance must be struck between the interests of resource management and finality on the one hand, and, on the other, the statutory right to appeal—a right that allows for error correction and just results while also providing guidance for lower courts. The former cannot be allowed to consume the latter. *Vanderwerff*, 2012 WL 2514933, at *4 ("Prioritizing efficiency at the expense of the individual exercise of constitutional rights applies to the guilty and the innocent alike, and sacrificing constitutional rights on the altar of efficiency is of dubious legality.").

II. Appeal waivers that forfeit the right to challenge unforeseen sentencing errors are inherently unknowing and involuntary.

Appellate courts generally have upheld appeal waivers based on a false equivalency between prospectively waiving the right to appeal and the waiver of certain constitutional rights that are relinquished upon entry of a guilty plea. Appellate courts generally reason that, since defendants can waive constitutional

rights by pleading guilty, they may also waive statutory rights, including the right to appeal a sentence. *See*, *e.g.*, *Melancon*, 972 F.2d at 567; *United States v. Khattak*, 273 F.3d 557, 561 (3d Cir. 2001); *United States v. Rutan*, 956 F.2d 827, 829 (8th Cir. 1992), *overruled in part by United States v. Andis*, 333 F.3d 886, 892 n.6 (8th Cir. 2003); *United States v. Navarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990); *United States v. Wiggins*, 905 F.2d 51, 52-54 (4th Cir. 1990). At the same time, appellate courts generally will not enforce waivers that were not knowingly and voluntarily made. *See, e.g.*, *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005).

These two positions are at odds. Appeal waivers like the one in this case are inherently unknowing, because a defendant's sentence—and any procedural errors committed by the judge imposing it—cannot be known at the time of the defendant's plea. Importantly, defendants enter into appeal waiver agreements long before sentencing occurs, and those waivers often are made, as here, with no agreement between the parties regarding the sentence the defendant might face. In other words, a defendant cannot knowingly waive a future appeal of those yet-to-be-made errors. In Mr. Williams's case, he could not have known at the time of his guilty plea that the district court would simply disregard the § 3553(a) factors and his individualized circumstances and reject his request for a downward variance without providing any explanation whatsoever.

Appellate courts have sidestepped these issues by reasoning that because defendants may waive *constitutional* rights, they also may waive the statutory right to appeal a sentence. *See, e.g.*, *Andis*, 333 F.3d at 889 ("[T]he right to appeal is not a

constitutional right but rather purely a creature of statute. . . . Given that the Supreme Court has allowed a defendant to waive constitutional rights, we would be hard-pressed to find a reason to prohibit a defendant from waiving a purely statutory right." (internal quotation marks and citations omitted)); *Khattak*, 273 F.3d at 561 ("The ability to waive statutory rights, like those provided in 18 U.S.C. § 3742, logically flows from the ability to waive constitutional rights."); *United States v. Teeter*, 257 F.3d 14, 21–22 (1st Cir. 2001) ("[T]he idea of permitting presentence waivers of appellate rights seems relatively tame because the right to appeal in a criminal case is not of constitutional magnitude.").

But the analogy courts have drawn between waiving the right to appeal future sentencing decisions and waiving constitutional rights is flawed. The constitutional rights waived by a guilty plea are known at the time they are waived:

> [O]ne waives the right to silence, and then speaks; one waives the right to have a jury determine one's guilt, and then admits his or her guilt to the judge. In these cases, the defendant knows what he or she is about to say, or knows the nature of the crime to which he or she pleads guilty.

Melancon, 972 F.2d at 571 (Parker, J., concurring). Due process only can be satisfied when a waiver is an intentional, knowing "relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); *see also United States v. Olano*, 507 U.S. 725, 732-33 (1993); *Boykin v. Alabama*, 395 U.S. 238, 243 n.5 (1969). By contrast, there can be no waiver without knowledge of the right waived. *Cf. Newton v. Rumery*, 480 U.S. 386, 390–403 (1987) (approving waiver of right to bring civil suit for false arrest and imprisonment, when right to sue had already accrued). Because sentencing-related appeal waivers are made at the time of the plea,

they lack the essential prerequisite for waiver: contemporaneous knowledge of the rights being relinquished. At that moment, the right to appeal has not yet accrued,[2] and the sentencing errors have not yet occurred.

A defendant cannot preserve sentencing errors for review by making a blanket objection at re-arraignment to any prospective error in the court's sentencing procedures. *See* Fed. R. App. P. 51(b) (requiring an objection "when the court ruling or order is made or sought"); *Puckett v. United States*, 556 U.S. 129, 135 (2009) (describing Rule 51(b) as a "contemporaneous-objection rule"). Conversely, a defendant cannot waive—*i.e.,* knowingly and intentionally relinquish—the right to have such an error corrected without first knowing of the error's existence. *See Olano*, 507 U.S. at 733. Moreover, it is unreasonable to expect a defendant to anticipate—and thus "know"—whether errors will be made in determining his sentence, much less the severity of those errors' impact. A defendant cannot have concrete knowledge of what is ceded when supposedly waiving the right to appeal his sentence.

Nor are agreements like Mr. Williams's "voluntary." U.S. Attorney's Offices like the one in the Eastern District of Louisiana increasingly *require* appellate waivers or else defendants are not permitted to plead guilty pursuant to an agreement at all. That is true even when, as in most cases, the appeal waivers play no part in the plea-bargaining process. In other words, these are not specific,

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[2] *See* Fed. R. App. P. 4(b)(2) (allowing the filing of a notice of appeal before the entry of the judgment so long as the notice is filed "*after* the court announces a . . . sentence" (emphasis added)).

bargained-for relinquishments of rights in exchange for some benefit. Instead, defendants have no choice in the matter and receive nothing in return. In fact, when defense attorneys have attempted to push back on boilerplate provisions in the Eastern District, prosecutors have stated in no uncertain terms that they are not permitted to modify the template agreement. The defendants are then left with only two options: sign an agreement waiving rights that were never part of the deal they negotiated or suffer the consequences of declining the plea offer entirely.

III. There is a circuit split over how to enforce appeal waivers, resulting in inconsistent treatment of criminal appellants.

Although appellate courts generally will enforce appeal waivers, the limits those courts have set on waivers and the situations in which courts refuse to enforce them varies wildly by circuit. As one commentator observed, "[i]n the absence of Supreme Court precedent guiding the enforcement of appeal waivers, . . . various courts of appeal have created their own limits and exceptions to their enforcement." Aliza Hochman Bloom, *Sentence Appeal Waivers Should Not Be Enforced in the Event of Superseding Supreme Court Law: The Durham Rule As Applied to Appeal Waivers*, 18 Fla. Coastal L. Rev. 113 (2016). That means a defendant in one circuit may be permitted to proceed with an appeal—and potentially have a sentencing error remedied—while an identically situated defendant in another circuit will be deprived of that right entirely.

This inconsistency and uncertainty is evident in the various, diverse frameworks courts have developed to examine the validity of appeal waivers. *See generally*, *id*. at 116–22 (outlining the split). The Fifth Circuit, for example, has

adopted a two-step inquiry. The court first asks "(1) whether the waiver was knowing and voluntary," and then determines "(2) whether the waiver applies to the circumstances at hand, based on the plain language of the agreement." *Bond*, 414 F.3d at 544. The inquiry ends there. By contrast, some courts conduct a *third* step, inquiring whether the court's failure to consider the defendant's claim will result in a "miscarriage of justice." *See, e.g.*, *United States v. Snelson*, 555 F.3d 681, 685 (8th Cir. 2009); *Khattak*, 273 F.3d at 562–63; *Teeter*, 257 F.3d at 25.

How these courts define the term "miscarriage of justice," however, varies tremendously from circuit to circuit. For example, the First Circuit holds broadly that even knowing and voluntary appeal waivers should not be enforced in "egregious cases" and "are subject to a general exception under which the court of appeals retains inherent power to relieve the defendant of the waiver, albeit on terms that are just to the government, where a miscarriage of justice occurs." *Teeter*, 257 F.3d at 25–26. The Tenth Circuit has limited the "miscarriage of justice" exception to four discrete circumstances:

> (1) reliance by the court upon an impermissible factor such as race in imposition of the sentence; (2) ineffective assistance of counsel in connection with the negotiation of the waiver; (3) the sentence exceeds the statutory maximum; or (4) the waiver is otherwise unlawful and seriously affects the fairness, integrity, or public reputation of judicial proceedings.

United States v. Porter, 405 F.3d 1136, 1143 (10th Cir. 2005). The Third Circuit, while declining to adopt a bright-line rule, considers certain factors (first articulated by the First Circuit), such as:

> the clarity of the error, its gravity, its character (e.g., whether it concerns a fact issue, a sentencing guideline, or a statutory maximum),

> the impact of the error on the defendant, the impact of correcting the error on the government, and the extent to which the defendant acquiesced in the result.

Khattak, 273 F.3d at 562.

Disturbingly, appellate courts do not even agree about whether an appeal waiver properly can be applied to exclude direct or collateral claims of ineffective assistance of counsel. *Compare, e.g.*, *Hurlow v. United States*, 726 F.3d 958, 964, 966 (7th Cir. 2013) ("[A] direct or collateral review waiver does not bar a challenge regarding the validity of a plea agreement (and necessarily the waiver it contains) on grounds of ineffective assistance of counsel."), *and United States v. Attar*, 38 F.3d 727, 729 (4th Cir. 1994) (holding that a general waiver of appellate rights cannot be construed as waiving claims of ineffective assistance of counsel), *with Williams v. United States*, 396 F.3d 1340, 1342 (11th Cir. 2005) (holding that an appeal waiver precluded a collateral claim of ineffective assistance of counsel and urging that "a contrary result would permit a defendant to circumvent the terms of the sentence-appeal waiver simply by recasting a challenge to his sentence as a claim of ineffective assistance, thus rendering the waiver meaningless").

The broad appeal waivers in Mr. Williams's plea agreement encompassing all challenges to his sentence or the manner in which it was determined are unjust, unknowing, and involuntary. But even if this Court ultimately determines that sentencing-related appeal waivers like Mr. Williams's generally are lawful, there should at least be uniform rules governing their enforcement and interpretation, including whether and when appellate courts should review a challenged sentencing

error notwithstanding the existence of an applicable appeal waiver. This Court's guidance is needed to clarify those rules, which impact scores of criminal defendants.

IV. This case is a good vehicle for this Court to address appeal waivers.

This Court should also grant certiorari because Mr. Williams's case presents a good vehicle for this Court to address the validity and enforceability of sentencing-related appeal waivers. The district court's failure to comply with basic statutory sentencing requirements is apparent from the record and deprived Mr. Williams of a fair, individualized sentencing proceeding. Enforcement of his appeal waivers prevented correction of that fundamentally flawed proceeding, undermining the core principles and integrity of our criminal justice system. His case thus presents a good opportunity for this Court to address the validity and limitations on such waivers.

CONCLUSION

For the foregoing reasons, Mr. Williams respectfully asks this Court to grant his petition for writ of certiorari.

Respectfully submitted,

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