No. _____

IN THE
Supreme Court of the United States

STANLEY RAY LUBKIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether an erroneous application of the ACCA enhanced penalty constitutes a sentence imposed in excess of the statutory maximum penalty.

II. Whether a criminal defendant's waiver in his plea agreement of the right to appeal his "sentence" covers an appeal of an erroneous application of the ACCA enhanced penalty.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Stanley Ray Lubkin, respectfully prays that a writ of certiorari issues to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit in Case No. 23-4190, entered on December 4, 2024.

OPINION BELOW

The Fourth Circuit's opinion (App. 1A-16A) is reported at 122 F.4th 522. Mr. Lubkin did not file a petition for rehearing or rehearing en banc. The district court's judgment (App. 18A-27A) is unreported.

JURISDICTION

The Fourth Circuit issued its opinion and entered its judgment on December 4, 2024. App. 17A. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is filed within 90 days of December 4, 2024

STATUTORY PROVISION INVOLVED

Section 924(e)(1) of Title 18 of the United States Code provides:

> In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

INTRODUCTION

An appeal waiver is not an absolute bar to appellate review. This Court has held that a court "lacks the power to exact a penalty that has not been authorized by any valid criminal statute," *Welch v. United States*, 578 U.S. 120, 134 (2016), and has reiterated "that a guilty plea does not bar a claim on appeal 'where on the face of the record the court had no power to . . . impose the sentence,'" *Class v. United States*, 583 U.S. 174, 181 (2018) (quoting *United States v. Broce*, 488 U.S. 563, 569 (1989)). And though this Court has yet to rule on the scope of their validity, circuit courts have uniformly agreed that an appellate waiver may not bar a defendant from contesting "a sentence imposed in excess of the statutory maximum." In the decision below, the Fourth Circuit rejected this principle in the context of enhanced penalties under the Armed Career Criminal Act ("ACCA"). The remaining circuit courts are divided.

Petitioner pled guilty to one count of felon in possession of a firearm, in violation of 18 U.S.C. § 922(g), pursuant to a plea agreement that included an appellate waiver. At sentencing, and over Petitioner's objection, the district court found he committed three prior South Carolina state offenses that qualified as "serious drug felonies" under ACCA. Therefore, the court imposed the enhanced fifteen (15) year minimum penalty rather than the non-ACCA ten (10) year maximum penalty.

Petitioner waived his right to appeal or collaterally attack his 18 U.S.C. § 922(g) conviction or sentence as part of a written plea agreement. However, because the district court erroneously applied ACCA's enhancement, Petitioner's sentence

constitutes an illegal sentence, a claim outside the scope of a boilerplate appeal waiver.[1] In its opinion below, the Fourth Circuit characterizes this fundamental defect as "mere legal error." App. 13A. It is not. Defining crimes and prescribing penalties is a legislative function, not a judicial function. A district court exceeds its judicial power by imposing a sentence in excess of the statutory maximum proscribed by the legislature because the authority to define and fix the punishment for crime "resides wholly with Congress." *Whalen v. United States*, 445 U.S. 684, 689 (1980).

Coincidentally, the lack of judicial oversight in the pervasive plea-bargaining system—which allows prosecutors to dictate the charge, conviction, and penalty—has reduced the role of courts to merely ascertaining whether a plea was entered knowingly and voluntarily. "It is an administrative system where the prosecutor combines both executive and judicial power--posing the very danger the Framers tried to prevent." Rachel E. Barkow, *Separation of Powers and the Criminal Law*, 58 Stan. L. Rev. 989, 1048 (2006). And expansive appeal waivers have only further solidified the state of virtually unchecked executive power in our criminal justice system. *See* The Federalist No. 47. ("The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny.").

[1] Petitioner uses the term "illegal sentence" to refer to a sentence imposed in excess of the statutory maximum.

This case provides the appropriate vehicle to answer the question left open in *Garza v. Idaho*, 586 U.S. 232 (2019): what rights and claims remain "unwaivable" regardless of a broad appeal waiver. *Id.* at 239, n. 6.

The Court should grant certiorari.

STATEMENT OF THE CASE

Petitioner pled guilty to a violation of 18 U.S.C. § 922(g) pursuant to a written plea agreement. The agreement included an appeal waiver which provided:

> The Defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, the Defendant, in exchange for the concessions made by the Government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 28 U.S.C. § 2255. This waiver does not apply to claims of ineffective assistance of counsel, prosecutorial misconduct, or future changes in the law that affect the Defendant's sentence.

At sentencing, Petitioner objected to his ACCA classification arguing that because the South Carolina definition of "methamphetamine" is categorically broader than the federal definition of "methamphetamine" under the Controlled Substances Act, his three prior South Carolina convictions do not qualify as predicate serious drug offenses. The district court overruled his objection and imposed a sentence of fifteen (15) years.[2]

On appeal to the Fourth Circuit, Petitioner renewed his argument that he did not qualify as an armed career criminal. The government argued that his ACCA claim fell within the scope of the appeal waiver. By way of a published opinion dated December 4, 2024, the Fourth Circuit dismissed the appeal. Without

[2] The Bipartisan Safer Communities Act, which took effect on June 25, 2022, increased the maximum penalty for §922(g) offenses from ten (10) years to fifteen (15) years' imprisonment. Pub. L. 117-159, 136 Stat. 1313, 1329. Petitioner's offense occurred prior to its enactment.

considering Petitioner's arguments on the merits, the Fourth Circuit determined that the waiver was enforceable because the sentence "plainly does not exceed the statutory maximum." App. 10A. The Fourth Circuit further found that Petitioner's argument "boils down to a claim of legal error" which "fall firmly outside [the] exception for 'illegal' sentences and do not circumvent valid appeal waivers." App. 13A.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. The Pervasive Use Of Appeal Waivers In Plea Agreements Underscores The Need For This Court's Intervention.

The question of the enforceability of appeal waivers is recurrent and important. *Lafler v. Cooper*, 566 U.S. 166, 170 (2012) ("Criminal justice today is for the most part a system of pleas, not a system of trials."). Since their introduction in the early 1990s, appeal waivers have spread "like wildfires." *See* Klein et al., *Waiving the Criminal Justice System: An Empirical and Constitutional Analysis*, 52 Am. Crim. L. Rev. 73, 76-88 (2015). As a condition for a negotiated guilty plea, the vast majority of criminal defendants are compelled to forego their rights to appellate review. Kevin Bennardo, *Post-Sentencing Appellate Waivers*, 48 U. Mich. J.L. Reform 347, 348 (2015). Given the ever-growing "accumulation of adjudicative and executive powers in the prosecutor's office," Rachel E. Barkow, *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 Stan. L. Rev. 869, 887 (2009) [hereinafter *Policing Prosecutors*], the need for this Court's intervention in this matter is most critical. *See also* Ronald Wright & Marc Miller, *Honesty and Opacity in Charge Bargains*, 55 Stan. L. Rev. 1409, 1415 (2003) ("We now have not only an administrative criminal justice system, but one so dominant that trials take place in the shadow of guilty pleas."). As a consequence of the rapid rise of appeal waivers, widespread disagreement and confusion about their meaning, scope, and enforceability exists within and among the circuit courts.

II. The Questions Presented Are Important And On Which National Uniformity Is Needed.

Despite circuit courts' near uniform position on the unenforceability of appeal waivers in the context of illegal sentences,[3] there remains great uncertainty and confusion about what constitutes an "illegal sentence"—including whether an erroneous ACCA designation constitutes an illegal sentence. In fact, the Fifth Circuit has repeatedly elected not to address this specific issue due to its complexity. *See United States v. Barlow*, 17 F.4th 599, 602 (5th Cir. 2021) ("[R]esolution of the waiver issue would be more difficult than resolving whether [defendant's] state convictions were serious drug felonies."); *United States v. Thompson*, 54 F.4th 849, 851 (5th Cir. 2022) ("follow[ing] the wisdom" of the *Barlow* panel). *But see United States v. Kelly*, 915 F.3d 344 (5th Cir. 2019) (concluding appeal waiver bars ACCA enhancement challenge).

The Sixth Circuit has determined that a sentence imposed as a result of an erroneous ACCA enhancement is a sentence imposed in excess of the statutory

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[3] *See, e.g., United States v. Kim*, 988 F.3d 803, 810 (5th Cir. 2021); *United States v. Bownes,* 405 F.3d 634, 637 (7th Cir.), *cert. denied,* 546 U.S. 926 (2005); *United States v. Hahn,* 359 F.3d 1315, 1327 (10th Cir. 2004); *United States v. Andis,* 333 F.3d 886, 891 (8th Cir.), *cert. denied,* 540 U.S. 997 (2003); *United States v. Teeter,* 257 F.3d 14, 25 n. 10 (1st Cir. 2001); *United States v. Phillips,* 174 F.3d 1074, 1076 (9th Cir. 1999); *United States v. Bushert,* 997 F.2d 1343, 1350 n. 18 (11th Cir. 1993), *cert. denied,* 513 U.S. 1051 (1994); *United States v. Marin,* 961 F.2d 493, 496 (4th Cir. 1992); *see also United States v. Khattak,* 273 F.3d 557, 563 (3d Cir. 2001); *United States v. Rosa,* 123 F.3d 94, 100 & n. 5 (2d Cir. 1997). *Cf. United States v. Hollins,* 97 F. App'x. 477, 479 (5th Cir. 2004) ("[A] § 2255 waiver does not preclude review of a sentence that exceeds the statutory maximum.").

maximum, a claim that remains outside the scope of an appellate waiver. *See Vowell v. United States*, 938 F.3d 260, 268 (6th Cir. 2019). *See also United States v. Jones*, 743 F.3d 826, 828 (11th Cir. 2014).

The Fourth, Seventh and Eleventh Circuits have barred defendants from appealing their ACCA designation as a result of broad appeal waivers. App. 1A; *United States v. Carson*, 855 F.3d 828, 831 (7th Cir. 2017). These circuits, however, have determined that an appeal waiver that explicitly reserves a defendant's right to appeal an illegal sentence or any sentence in excess of the statutory maximum, sufficiently preserves the right to challenge an erroneous ACCA designation. *See e.g. United States v. White*, 987 F.3d 340, 342 n.2 (4th Cir. 2021); *United States v. Gray*, No. 23-11334, 2025 WL 459196, at *4 (11th Cir. Feb. 11, 2025); *United States v. Adkins*, 636 F.3d 432, 434 (8th Cir. 2011); *United States v. Heikes*, 525 F.3d 662, 664 (8th Cir. 2008).

And while the First Circuit has also hinted at the enforceability of broad appellate waivers when challenging a district court's erroneous ACCA designation, *United States v. Doe*, 49 F.4th 589, 598 (1st Cir. 2022), the Tenth Circuit appears to disagree, *United States v. Titties*, 852 F.3d 1257, 1263 n. 4 (10th Cir. 2017).

The divergence among the circuits is both confusing and arbitrary, defying the fundamental principle of uniformity in federal law. *See Ableman v. Booth*, 62 U.S. 506 (1859) ("[I]t is manifest that this ultimate appellate power in a tribunal created by the Constitution itself was deemed essential . . . to make the Constitution and laws of the United States uniform."). Petitioner should not be

compelled to serve an illegal sentence simply because he resides in Columbia, SC and not Nashville, TN. This Court's guidance is desperately needed given the ubiquity of appeal waivers and the lack of clarity and uniformity among the circuits as a result.

III. The Decision Below Is Wrong And Violates The Separation Of Powers Doctrine.

Enforcing waivers that preclude review of ACCA enhancements allows courts to impose sentences beyond what Congress has authorized, effectively permitting the judicial branch to overstep its constitutional boundaries. By allowing prosecutors to insulate sentences from appellate review, this practice can also lead to executive overreach; waivers will result in unchecked executive power, undermining the judiciary's role in ensuring lawful sentencing.

The Fourth Circuit previously ruled that "a defendant who does not constitute an armed career criminal has received a punishment that the law cannot impose upon him." *United States v. Newbold*, 791 F.3d 455, 460 (4th Cir. 2015) (cleaned up). Echoing the Eleventh Circuit, it went on to state that "[i]t is axiomatic that 'there are serious, constitutional, separation-of-powers concerns that attach to sentences above the statutory maximum penalty authorized by Congress,' for it is as if the defendant 'is being detained without authorization by any statute.'" *Id.* (citing *Bryant v. Warden*, 738 F.3d 1253, 1283 (11th Cir. 2013). *See also United States v. Brown*, 232 F.3d 399, 405 (4th Cir. 2000) (court "troubled" by government's "fail[ure] to state that the waiver did not preclude an appeal of a sentence in excess of the statutory maximum").

In the opinion below, however, the Fourth Circuit's constitutional concerns dissipated entirely. The Fourth Circuit instead focused on how the government was "deprive[d]" of its side of the bargain, admonishing that "the government should not have to brief merits claims like Lubkin's when they are plainly foreclosed by valid appeal waivers." App. 15A.

The Fourth Circuit's reasoning contradicts not only its own precedent, see *Marin*, 961 F.2d at 493 ("[A] defendant could not be said to have waived his right to appellate review of a sentence imposed in excess of the maximum penalty provided by statute."), but also the reality of plea bargaining in the federal criminal system: the government's immensely superior bargaining power. "To a large extent … horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it is the criminal justice system." Scott & Stuntz, *Plea Bargaining as Contract*, 101 Yale L. J. 1909, 1912 (1992). From mandatory minimums to trial penalties—and now all-encompassing boilerplate appeal waivers—prosecutors wield the ability to effectively coerce a defendant into a plea agreement. *See Policing Prosecutors*, supra, at 878; *Lafler*, 566 U.S. at 185 (Scalia, J. dissenting) (Plea bargaining "presents grave risks of prosecutorial overcharging that effectively compels an innocent defendant to avoid massive risk by pleading guilty to a lesser offense."). A divided panel of the Eighth Circuit addressed these concerns two decades ago:

> As a practical matter, however, I doubt criminal defendants have the prescience and bargaining power necessary to participate as full and equal

> players in the contractual process [relating to plea agreements]. Applying pure contract theory in the plea bargain context **insufficiently accounts for the imbalance of power between prosecutors and defendants**. Nor does contract theory acceptably govern the disparate consequences to the parties should they misjudge the risks. I am particularly troubled by the risk of an egregious and unbounded sentencing decision that could not be foreseen even by diligent counsel.

Andis, 333, F.3d at 886 (Bye, K. concurring) (emphasis added).

Given the power disparity between Petitioner and the Government of the United States of America and the resultant playing field that is acutely tilted in the Government's favor, this court should scrupulously police appeal waivers, particularly when those waivers are interpreted to bar an appeal from an illegal sentence.[4]

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[4] Moreover, "the prosecutor-dictated plea bargain system, by creating such inordinate pressures to enter into plea bargains, appears to have led a significant number of defendants to plead guilty to crimes they never actually committed." Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. Rev. Books (Nov. 20, 2014). The pressure often comes from their own defense attorneys, too. The plea-bargaining process often involves "intimidation by the prosecution and incompetence by the defense." H. Lee Sarokin, *Why Do Innocent People Plead Guilty?*, HuffPost (May 29, 2012, 4:39 PM), https://www.huffingtonpost.com/judge-h-lee-sarokin/innocent-people-guilty-pleas_b_1553239.html (last updated July 29, 2012). Judge Sarokin goes on to state,

> The defendant, frightened, most often poor, uneducated, a minority member is advised that a trial is likely to end with a conviction and a long sentence, whereas a plea will guarantee a much shorter sentence. Despite his protestations of innocence, the defendant seeks guidance frequently from an over-worked, underpaid defense lawyer who would much prefer a quick deal rather than a long drawn out trial. Of course, not all defense counsel fit that description. Many do not, but even the best and most devoted are required to put this draconian choice to their clients—a guaranteed short sentence versus a potentially long one—possibly life in prison.

The Fourth Circuit's opinion also violates the separation of powers principle. "Because the ordinary maximum sentence for a felon in possession of a firearm is 10 years, while the minimum sentence under the Armed Career Criminal Act is 15 years, a person sentenced under the Act will receive a prison term at least five years longer than the law otherwise would allow." *Welch*, 578 U.S. at 122–23. Petitioner received a prison term five years longer than the law otherwise would allow. It is an illegal sentence. The Court must not allow prosecutors, the executive branch, to enter plea agreements which impose conditions that allow courts, the judicial branch, to encroach into the legislature's constitutional domain. In this case, the district court illegally extended Petitioner's sentence. Thus, "the court had no power to . . . impose the sentence." *Class*, 583 U.S. at 181.

Given the trivialized threat to one of the core tenants of our democracy, it is no surprise that district court judges have also sounded the alarms about executive aggrandizement in criminal matters. In a recent order, Judge Dalton expressed his concerns regarding executive encroachment of the judiciary, stating

> Much ink has been spilled on how mandatory minimums are inherently flawed, encroach on the separation of powers, and rob judges of the means to impose fair sentences. And when the Legislature's failures collide with the Executive's, we are all tarnished by the result. In this case, the prosecution has done an end-run around equity, significantly overplayed its hand, and failed to exercise its prosecutorial discretion to allow the imposition of a just sentence.

United States v. Moore, No. 6:24-CR-40-RBD-EJK, 2024 WL 5011842, at *2 (M.D. Fla. Dec. 6, 2024) (internal citations omitted). *See also United States v. Morefield*, No. 1:18-CV-03054-SAB, 2018 WL 3945605, at *6 (E.D. Wash. Aug. 16, 2018) ("Rule 11(c)(1)(C) plea agreements and statutory mandatory minimums alter the separation of power dynamic and tend to tip the scales toward the executive branch, which can create the danger of too much prosecutorial discretion over the sentencing decision."); *United States v. Wilmore*, 282 F. Supp. 3d 937, 945 (S.D.W. Va. 2017) ("Such an administrative system where the prosecutor acts as judge and jury poses a danger that the Framers intended to prevent.") (citing John H. Langbein, *On the Myth of Written Constitutions: The Disappearance of Criminal Jury Trial*, 15 Harv. J.L. & Pub. Pol'y 119, 124 (1992) ("Plea bargaining achieves just what the Framers expected the jury to prevent, the aggrandizement of state power.")); *United States v. Walker*, 423 F. Supp. 3d 281, 293 (S.D.W. Va. 2017) ("We now resolve almost every criminal case by a process that is no longer justified by the circumstances making it acceptable in the first place."); *United States v. Vasquez*, No. 09-CR-259 (JG), 2010 WL 1257359, at *5 (E.D.N.Y. Mar. 30, 2010) ("[T]here was no judging going on at [defendant]'s sentencing . . . the prosecutor's refusal to permit consideration of a lesser sentence ended the matter, rendering irrelevant all the other factors that should have been considered to arrive at a just sentence."); *United States v. Green*, 346 F. Supp. 2d 259, 313 (D. Mass. 2004), *vacated in part sub nom. United States v. Yeje-Cabrera*, 430 F.3d 1 (1st Cir. 2005), and *vacated and remanded sub nom. United States v. Pacheco*, 434 F.3d 106 (1st Cir. 2006)

(recognizing that "prosecutorial abuse is possible, that it was by no means unknown to the framers of the Constitution, and that when an individual's liberty is at stake, it is not sufficient to rely on the Department's well-deserved professional reputation").

Petitioner does not suggest abolishing plea bargaining, plea agreements, or even reasonable appeal waivers. Rather, he urges this Court to consider the tremendous bargaining power the prosecutor wields, and how appellate courts play a crucial role in checking that power. Because "[e]ven if the defendant consents, [courts] cannot turn a blind eye to punishment for acts not criminalized by Congress. The judiciary must safe-guard the separation of powers." *United States v. Yung*, 37 F.4th 70, 82 (3d. Cir. 2022). Broadly drafted boilerplate appeal waivers are "clearly contrary to manifest public interest," *Rinaldi v. United States*, 434 U.S. 22, 30 (1977), as they effectively gut this necessary judicial oversight—and the separation of powers principle—in the criminal arena, where "trials [continue to] take place in the shadow of guilty pleas," Wright & Miller, *supra*, at 1415.[5]

[5] This is particularly true given courts' heightened caution against limiting prosecutorial independence under the separation of powers doctrine. *See e.g. United States v. Banuelos-Rodriguez*, 215 F.3d 969, 976 (9th Cir. 2000) ("Courts generally have no place interfering with a prosecutor's discretion regarding whom to prosecute, what charges to file, and whether to engage in plea negotiations."); *United States v. Robertson*, 45 F.3d 1423, 1438 (10th Cir. 1995) ("[W]hile district courts may reject charge bargains in the sound exercise of judicial discretion, concerns relating to the doctrine of separation of powers counsel hesitancy before second-guessing prosecutorial choices.")

IV. The Case Provides An Appropriate Vehicle To Answer The Question Left Open In *Garza*.

In *Garza*, this Court held that the presumption of prejudice announced in *Roe v. Flores-Ortega*, 528 U.S. 470 (2000), applies where trial counsel fails to file a notice of appeal upon a defendant's request, even though the defendant's plea agreement included an appeal waiver. 586 U.S. at 232. This Court went on to clarify that "no appeal waiver serves as an absolute bar to all appellate claims" and "while signing an appeal waiver means giving up some, many, or even most appellate claims, some claims nevertheless remain." *Id*. at 238. While surveying the circuit courts' exceptions to appeal waivers, this Court "ma[de] no statement [ ] on what particular exceptions may be required." *Id*. at 239 n. 6.

This case provides an appropriate vehicle to answer that question. First, the appellate waiver language in the plea agreement represents one of the broader boilerplate provisions used in the country. *See* Klein et al., *supra*, at 86. Notably, during the oral argument in the matter *sub judice*, Judge Wilkinson expressed confusion at the language contained within the plea agreement, calling it "mushy" and "vague." [6] During this colloquy, the government admits that the language contained within the subject plea agreement is "standard" for the District of South Carolina. *Id.* Clarity for the bench and bar is needed in order to interpret these plea agreements with precision.

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[6] Oral argument dated November 1, 2024 (28:00-30:40) https://www.ca4.uscourts.gov/OAarchive/mp3/23-4190-20241101.mp3 (last accessed March 2, 2025).

Second, the ACCA element of the challenge would resolve much confusion in other appeal waiver challenges. As previously explained, the question of whether an erroneous ACCA enhancement qualifies as an illegal sentence has vexed the circuit courts. *See e.g. Barlow*, 17 F.4th at 602. Another example arises in the question of whether a criminal defendant's waiver of the right to appeal their "sentence" covers an appeal of an order of restitution. *Compare United States v. Taylor-Sanders*, 88 F.4th 516, 519 (4th Cir. 2023), *United States v. Chem. & Metal Indus., Inc.*, 677 F.3d 750, 752 (5th Cir. 2012), *and United States v. Zink*, 107 F. 3d 716, 718 (9th Cir. 1997), *with United States v. Pearson*, 570 F.3d 480, 485 (2d Cir. 2009), *and United States v. Sistrunk*, 432 F.3d 917, 918 (8th Cir. 2006). The ACCA element of this case will provide guidance on how to address more nuanced questions such as the restitution question because both require interpreting what an "illegal sentence" means.

Third, circuit courts have carved "illegal sentence," "miscarriage of justice," and "due process" exceptions to broad appeal waivers.[7] But they offer little guidance and uniformity on their applicability. *Compare United States v. White*, 584 F.3d 935, 948 (10th Cir. 2009) (holding that appeal waiver made in a plea agreement results in a miscarriage of justice where the sentence exceeds the statutory

[7] *Andis*, 333 F.3d at 891-92 ("[A] defendant has the right to appeal an illegal sentence, even though there exists an otherwise valid waiver."); *United States v. Elliott*, 264 F.3d 1171, 1173 (10th Cir. 2001) (recognizing that "[a]ppellate waivers are subject to certain exceptions" and "a defendant who waives his right to appeal does not subject himself to being sentenced entirely at the whim of the district court"); *see also United States v. De-La-Cruz Castro*, 299 F.3d 5, 10 (1st Cir. 2002).

maximum), *and Sun Bear v. United States*, 644 F.3d 700, 705 (8th Cir. 2011) (same), *with Yung*, 37 F.4th at 82 (waiving "right to appeal a conviction for acts that are not a crime" amounts to miscarriage of justice), *Teeter*, 257 F.3d at 25 (limiting miscarriage of justice exception to only "egregious cases"), *King v. United States*, 41 F.4th 1363, 1368 n.3 (11th Cir. 2022) ("we note that our Circuit has never adopted a general 'miscarriage of justice' exception to the rule that valid appeal waivers must be enforced according to their terms"), *and United States v. Guillen*, 561 F.3d 527, 529 (D.C. Cir. 2009) (miscarriage of justice occurs when a "district court utterly fails to advert to the factors in 18 U.S.C. § 3553(a)"). This case provides an avenue to assess his claim and provide clarity on the distinct contours of each of those exceptions.

Fourth, the dispute turns on a pure question of law: whether petitioner's appeal waiver is enforceable. It has no factual or procedural impediments. And the lower courts have thoroughly ventilated the questions presented. The questions are ready for this Court's review.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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