No. 24-1063

In the Supreme Court of the United States

MUNSON P. HUNTER, III,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

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

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

This case squarely presents two important and recurring questions concerning when the Constitution and contract principles permit appeals notwithstanding an appeal waiver. *See* Pet. 8-26. Both easily warrant certiorari.

The petition's first question asks the Court to decide whether the Fifth Circuit correctly recognizes only two circumstances in which defendants can appeal their sentences in the face of valid waivers. The government (at 7-14) does not dispute that the Fifth Circuit's inflexible standard—versions of which have been adopted by the Sixth, Tenth, and Eleventh Circuits—directly conflicts with the more expansive approaches taken by several other circuits. Nor does the government deny that had Hunter been sentenced in one of those circuits, he would not be categorically barred from arguing on appeal that

the forced medication provision of his sentence violates due process. So instead, the government attempts to rewrite the question presented. But Hunter does not ask the Court to decide whether a defendant may set aside appeal waivers any time he "belie[ves] that his sentence may be illegal." Opp. 10. The question presented is narrowly focused on the Fifth Circuit's ultra-restrictive rule. Contrary to the government's scaremongering, the Court can readily correct that draconian test without rendering all appeal waivers invalid.

The government's opposition to the second question presented (at 14-15) fares no better. The government admits that there is a longstanding circuit split about whether a defendant may appeal, notwithstanding an appeal waiver, when the trial judge at sentencing unequivocally instructed the defendant that he may appeal. That acknowledged split alone warrants this Court's review. In resisting that result, the government's response misinterprets Ninth Circuit law, which confirms that Hunter would have the right to appeal had he been sentenced in Honolulu rather than Houston.

This petition is also an ideal vehicle. The government disputes neither that the petition presents two questions of pure law, nor that Hunter preserved these arguments. The government's ripeness arguments also present no barrier to review. Whether Hunter's appeal waiver foreclosed his claims is self-evidently ripe.

For nearly as long as challenges to appeal waivers have percolated through the courts of appeals, those courts have fissured about what claims can overcome those waivers. These fissures will not heal themselves, as this Court's accumulation of related cert. petitions cited

by the government (at 6-7 n.1) demonstrates.[1] *See also* McAlpin Br. Only this Court can ensure uniformity, and the time for that intervention has come.

I. The Circuits Are Sharply Divided Regarding Exceptions to Appeal Waivers

The government (at 6-14) fails to undercut the "cloud of uncertainty," *United States v. West*, 138 F.4th 357, 364 (5th Cir. 2025) (Oldham, J., dissenting from order denying rehearing en banc), that hovers within and between circuits about what exceptions apply to appeal waivers and when they apply, *see Garza v. Idaho*, 586 U.S. 232, 238-39 & n.6 (2019). There is no evidence that the circuit courts are migrating towards consensus. At least four circuits categorically enforce appeal waivers against claims of sentences violating due process, whereas four do not. Intervention would not be "premature." Opp. 14.

The Fifth Circuit has repeatedly "recognized only two exceptions" to appeal waivers, neither of which encompass due process claims or a miscarriage of justice standard. *United States v. Jones*, 134 F.4th 831, 839-40 (5th Cir. 2025); *United States v. Barnes*, 953 F.3d 383, 388-

[1] The government (at 6) is wrong to imply that this Court has "repeatedly denied certiorari" petitions raising similar claims. This Court has denied petitions asking the Court to find *all* sentencing-related appeal waivers presumptively unconstitutional, *e.g.*, *Jones v. United States*, No. 24-6505 (U.S. June 6, 2025), or that defendants' appeal waivers were not made knowingly and voluntarily, *e.g.*, *Sanchez v. United States*, 142 S. Ct. 410 (2021) (No. 21-5712). Hunter's questions are far narrower. Regardless, this Court's denial of those petitions "carries with it no implication whatever regarding the Court's views on the merits of a case which it has declined to review." *Maryland v. Balt. Radio Show, Inc.*, 338 U.S. 912, 919 (1950) (Frankfurter, J., statement respecting the denial of certiorari).

89 (5th Cir. 2020).[2] This categorical approach directly conflicts with decisions from the First, Second, Fourth, and Ninth Circuits that embrace broader standards Hunter could easily satisfy. *See* Pet. 11-13.

In the Fourth Circuit, for example, appeal waivers can be overcome if the defendant raises a "fundamental constitutional" right "firmly established at the time of sentencing." *United States v. Carter*, 87 F.4th 217, 225-26 (4th Cir. 2023) (quotation omitted). The right to be free from the "unwanted administration of antipsychotic drugs" absent an "essential or overriding [governmental] interest," *Sell v. United States*, 539 U.S. 166, 178-79 (2003) (citation omitted), was around long before Hunter sought to vindicate it, (Pet. C.A. Br. 10-11 & n.6).

Similarly, by reading appeal "waivers … narrowly," *United States v. Burden*, 860 F.3d 45, 55 (2d Cir. 2017), the Second Circuit permits appeals claiming sentences, including conditions of supervised release, violate fundamental rights that have "an overriding impact on public interests," *United States v. Lajeunesse*, 85 F.4th 679, 693 (2d Cir. 2023) (quotation omitted). That exception would comfortably fit Hunter's mandatory-medication claim. *See also United States v. Del Valle-Cruz*, 785 F.3d 48, 54, 57 (1st Cir. 2015) ("miscarriage of justice"); *United States v. Atherton*, 106 F.4th 888, 893-95 (9th Cir. 2024) (unconstitutional sentences). And at a minimum, Hunter would

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[2] The government (at 11) suggests that the Fifth Circuit's exception for sentences "in excess of statutory authorization," *see Jones*, 134 F.4th at 839, could address certain unconstitutional sentences hypothesized in the petition (at 24). Not so. The Fifth Circuit interprets statutory maximum "narrowly" such that it does not apply to "all illegal [or unconstitutional] sentences." *Jones*, 134 F.4th at 840; *see also Barnes*, 953 F.3d at 389. Moreover, the court has upheld appeal waivers when defendants raise Eighth Amendment violations. *See United States v. Lytle*, 90 F. App'x 453, 454 (5th Cir. 2004).

not be categorically barred in these circuits from pursuing his due process claim.

The government (at 11-14) tries to sidestep the self-evident circuit split in two ways. Both fall flat.

First, the government highlights (at 13-14) the Ninth Circuit's grant in *Atherton* of the government's petition for rehearing en banc. But that only reinforces the need for this Court's review. The government's rehearing petition recognized that *Atheron* "diverges from other circuits' rules"—the same divergence Hunter pointed to.[3] And even if the government prevails in *Atherton*, that would not resolve the split permeating the circuits; it would only change where the Ninth Circuit falls within that split. This Court could and should decide the issue once and for all.

Second, the government (at 13) speculates that the Fifth Circuit may one day adopt a "miscarriage of justice" test that is broader than its current two-exceptions-only standard. That's not a reason to deny certiorari, either, for several reasons. To start, after Hunter filed this petition, the Fifth Circuit expressly "decline[d] to recognize and apply a miscarriage of justice exception" despite the defendant having "credibl[y] argu[ed]" for one. *Jones*, 134 F.4th at 842. So much for the government's hypothesis. The government also does not (nor could it) predict that the Fifth Circuit would apply a miscarriage of justice standard in the same fashion as other circuits.[4] And regardless, the government does not suggest that the Sixth

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[3] Pet. Reh'g En Banc at 1, 10, 15, *United States v. Atherton*, No. 21-30266 (9th Cir. filed Oct. 16, 2024), ECF 52-1.

[4] The Tenth and First Circuits, for example, each purport to use a "miscarriage of justice" standard, yet the First likely would have permitted Hunter's appeal, *see Del Valle-Cruz*, 785 F.3d at 57, whereas

and Eleventh Circuits—which have similarly restrictive standards and uphold appeal waivers when facing claims that sentences violate due process—will also reverse course.

In short, for all the government's efforts at misdirection, the fact remains that at least the First, Second, Fourth, and Ninth Circuits do not categorically enforce appeal waivers when faced with claims of sentences violating due process. By contrast, at least the Fifth, Sixth, Tenth, and Eleventh Circuits categorically enforce appeal waivers against such claims. That is a meaningful, enduring, and determinative conflict, and it falls squarely within the *raison d'être* for this Court's certiorari jurisdiction—uniformity in the law.

II. The Parties Agree the Circuits Are Squarely Divided over the Impact of the Sentencing Judges' Statements on Appeal Waivers

Hunter's second question asks whether an appeal waiver applies when the sentencing judge advises a defendant that he has a right to appeal, and the government does not object. The Ninth Circuit says no; other circuits say yes. *See* Pet. 14-15. The government acknowledges the split but claims that Hunter's appeal would have been

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the Tenth has consistently dismissed claims with appeal waivers that sentences violated due process, *see, e.g.*, *United States v. Kent*, 361 F. App'x 920, 921 (10th Cir. 2010).

The government wrongly suggests (at 13) that Hunter was required to seek a miscarriage of justice exception in the Fifth Circuit. Hunter's first question presented asks the Court to decide whether the Fifth Circuit's standard is correct; what standard should replace the Fifth Circuit's rule can be resolved on remand. And in any event, a party does not waive legal arguments if doing so below would have been "futile." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 125 (2007).

barred in the Ninth Circuit because Hunter acknowledged the appeal waiver during his plea colloquy, *months before* the sentencing judge advised he had the right to appeal.

The government misstates Ninth Circuit law. The Ninth Circuit examines the "enforceability of … waiver provision[s]" by focusing on the judge's statements "during [the defendant's] *sentencing*," not his plea colloquy. *United States v. Buchanan*, 59 F.3d 914, 917 (9th Cir. 1995) (emphasis added). Although it is true the circuit investigates the circumstances of defendants' pleas when sentencing judges make *ambiguous* statements about appellate rights, the sentencing judge's statements here were anything but. *See* Pet. 14. In the Ninth Circuit, where, as here, the judge's statement at sentencing about the defendant's right to appeal is "clear," that statement "renders unenforceable" the "prior waiver of this right in a plea agreement" and supersedes any acknowledgment of that waiver during the plea colloquy. *United States v. Arias-Espinosa*, 704 F.3d 616, 618-19 (9th Cir. 2012) (citing *Buchanan*, 59 F.3d at 916-18).

The Ninth Circuit has been consistent in its approach. Pet. 14-15 (collecting cases). For example, in *United States v. Perry* (cited at Pet. 14 n.3), the district court informed Perry during his plea colloquy that Perry was waiving "both the right to appeal as well as to collaterally attack any part of [his] plea and sentence," and Perry confirmed that he understood those terms. Tr. Of Plea Hr'g at 9-10, *United States v. Perry*, No. 20-108 (9th Cir. Mar. 21, 2022). Yet, at sentencing, the district court informed Perry "he ha[d] a right to appeal." *United States v. Perry*, 2024 WL 2874155, at *1 (9th Cir. June 7, 2024). The Ninth Circuit vitiated the appeal waiver because of that "unequivocal" statement. *Id.*

That the Ninth Circuit stands alone against others does not undermine this petition. This Court has time and again granted certiorari to resolve issues where one court of appeals disagrees with numerous others. *See, e.g.*, *Royal Canin U.S.A., Inc. v. Wullschleger*, 144 S. Ct. 1455 (2023); *Lindke v. Freed*, 143 S. Ct. 1780 (2023).

III. The Petition Is an Ideal Vehicle.

1. The government does not dispute that the questions raised in the petition are important. This Court's intervention would provide clarity and protection to the tens of thousands of defendants who enter plea agreements each year. *See* Pet. 16-19; Cato Institute Br. 4. Instead, the government seeks to avoid this Court's review by claiming (at 15-16) that this case would be a "poor vehicle" because Hunter's challenge to the mandatory medication condition would be unripe in the Fifth Circuit.

The argument is a red herring. As the government concedes (at 6), the decision below turned exclusively on the Fifth Circuit's application of circuit precedent requiring it to enforce the appeal waiver, even in the face of Hunter's unconstitutional sentence and the trial judge's instruction that Hunter had the right to appeal. *See* Pet. 19; Pet.App.2a. The government did not raise ripeness and the Fifth Circuit did not address it. Pet.App.2a-3a; C.A. Opp. Br. Whether the appeal waiver foreclosed Hunter's appeal is self-evidently ripe, which is the only issue the petition raises. As the government recently confirmed in a different case, "potential alternative grounds that the [Fifth] Circuit did not address"—like the government's ripeness argument—have "no bearing on the resolution" of this petition. Brief for the United States as Amicus Curiae at 23, *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.*, No. 24-983 (U.S. Aug. 27, 2025). "This Court often grants review to address barriers to

suit, regardless of whether other issues remain in the case." *Id.* It should do so here as well.

2. Hunter's challenge to the mandatory medication condition is ripe. *See* Pet. 19-20. A challenge is ripe if it satisfies the Article III "Case or Controversy" requirements and prudential considerations. In making that assessment, this Court considers: (1) injury in fact, (2) redressability, (3) fitness of issues for judicial decision, and (4) hardship to parties of withholding court consideration. *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 149 (1967); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Each prong is satisfied.

First, the final and binding judgment of conviction and sentence injured Hunter by imposing a condition that will require him to take, against his will, all medication prescribed to him during mental health treatment. *See, e.g.*, *Berman v. United States*, 302 U.S. 211, 212-13 (1937); *United States v. Loy*, 237 F.3d 251, 257 (3d Cir. 2001); *United States v. Williams*, 356 F.3d 1045, 1051 (9th Cir. 2004). Put differently, Hunter knows *today* that he could be re-incarcerated upon his release from prison if he declines medication. That threat constantly "hangs over [Hunter] like the sword over Damocles." *Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 265 n.13 (1991).

Further, the threat to Hunter is imminent; his release date is April 12, 2026—*seven months away*. And it will be even closer (if not already started) on remand.

Second, Hunter's injury is redressable simply by striking the mandatory medication condition from the terms of his supervised release. *See Seila Law LLC v. CFPB*, 591 U.S. 197, 211 (2020).

Third, the fitness prong is satisfied because the petition presents "purely legal [issues that] will not be

clarified by further factual development." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985). The sentencing court's imposition of the mandatory medication condition—without any specific factual findings—was either proper or improper when imposed. *See* Pet. 20 (citing *United States v. Fonville*, 2022 WL 817990, at *3 (10th Cir. Mar. 18, 2022)).

Finally, the "hardship" prong is satisfied because the alternative—kicking the can down the road—would lead to untenable results. If Hunter cannot appeal until the term of his supervised release begins, he will face the Hobson's choice of either taking antipsychotic medications against his will or risking re-imprisonment for refusing to do so. *See Fonville*, 2022 WL 817990, at *3. Courts, however, do not and should not "require[] violation of a specified supervised release condition to permit appellate review." Pet. 20 (quoting *Williams*, 356 F.3d at 1052); *see also Steffel v. Thompson*, 415 U.S. 452, 459 (1974); *Loy*, 237 F.3d at 257.

That principle is particularly important here, where the injured right is well-established and significant. Time and again, this Court has recognized that a criminal defendant has a "significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the Due Process Clause." *Washington v. Harper*, 494 U.S. 210, 221-22 (1990). That interest cannot and should not be easily pushed aside. *See Sell*, 539 U.S. at 178-79; *United States v. Krueger*, 815 F. App'x 847, 856 (6th Cir. 2020); *see also Fonville*, 2022 WL 817990, at *3.

IV. The Decision Below Is Wrong

Although the government praises the Fifth Circuit's decision to enforce the appeal waiver in this case, it notably does not defend the rule that led to that result, under which the Fifth Circuit recognizes two—and only two—

circumstances when appeal waivers may be overcome. On this first question presented, the government is reticent to embrace the Fifth Circuit's overly cramped test for good reason: as Hunter has explained (Pet. 20-26), the Fifth Circuit's rule is contrary to well-established principles of contract law, and it also undermines important constitutional values, *see also* Cato Institute Br. 15-17 (citing *United States v. Smith*, 134 F.4th 248, 261 (4th Cir. 2025)).

Instead of defending the Fifth Circuit specifically, the government (at 7-10) invokes the general principle that even constitutional rights may be waived when bargaining for a plea. But Hunter does not ask the Court to decide whether appeal waivers may *ever* be enforced. Of course they can. The question presented is rather whether the Fifth Circuit is right to say that appeal waivers must *always* be enforced, absent ineffective assistance of counsel or a sentence that exceeds the statutory maximum. Neither law nor logic compels this Court to limit the acceptable challenges to appeal waivers to that tiny and arbitrary set of claims.

Similar contract rationales support the second question presented. *See* Pet. 25-26. Defendants bargain for foreseeable risks, and the government (at 10-11) is wrong to suggest that mandatory medication is foreseeable absent an explanation of a compelling state interest. *See* Cato Institute Br. 18-19. Furthermore, the government does not explain how its failure to object to the judge's broad statement of appellate rights prevented Hunter's confusion or preserved the waiver. This Court should not allow the government to enforce a waiver in such circumstances.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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