No. 24-1063

In the Supreme Court of the United States

MUNSON P. HUNTER, III, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether petitioner's knowing and voluntary waiver of his right to appeal on any ground other than ineffective assistance of counsel applies to an appeal challenging a condition of his future supervised release on due-process grounds.

2. Whether the district court's unobjected statement at the end of sentencing that petitioner "ha[d] a right to appeal" rendered the appeal waiver unenforceable.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is available at 2024 WL 5003582.

JURISDICTION

The judgment of the court of appeals was entered on December 6, 2024. On February 13, 2025, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including April 5, 2025, and the petition was filed on April 4, 2025. The petition for a writ of certiorari was granted on October 10, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

INTRODUCTION

After he was indicted on various charges stemming from a decade of financial fraud, petitioner knowingly and voluntarily entered into a plea agreement with the government. The government would dismiss nine of the

ten charges, and petitioner, in exchange, would not pursue trial and would not appeal his conviction or sentence (except for ineffective-assistance-of-counsel claims). But after the parties entered their agreement, petitioner did not abide by it, and appealed to challenge one of the conditions of his supervised release. In doing so, he claimed an implicit exception to the agreement, under which he can enjoy its benefits (the dismissed charges), but without assuming all of its burdens.

The court of appeals rejected such a one-sided unwritten carveout, and this Court should as well. This Court's precedents treat plea agreements essentially as contracts between the government and a defendant; make clear that they may include the waiver of constitutional and statutory rights, such as the statutory right to an appeal; and illustrate that they are enforceable even if a defendant does not anticipate the specific consequences of a particular waiver. Petitioner seeks what would amount to a federal-common-law exception for his own appellate challenge, but he identifies no contract-law principle that would permit his appeal despite his waiver. To the contrary, federal public policy—as codified by Congress—necessarily allows a defendant to forgo the affirmative exercise of rights that is required to trigger appellate review.

Petitioner's principal argument (Br. 3), for an exception for statutory and constitutional claims that are not "reasonably expected" at the time of the agreement, would largely vitiate the mutual benefits of appeal waivers as a bargaining tool, by rendering them unenforceable in a broad swath of cases. His alternative suggestion (Br. 34, 37), of a "safety valve" exception to appeal waivers for "egregious" errors, is no better. He provides no legal justification for that exception and no

clear definition of it—thereby necessitating frequent litigation, overlapping if not subsuming the merits, of whether the exception would apply in a particular case. And while defendants may frequently assert (even sincerely believe) that an egregious error has occurred, petitioner provides no basis for concluding that district courts will make such errors in any substantial number. Nor, at all events, would either of petitioner's arguments allow for his own appeal, which challenges a supervised-release condition that was entirely foreseeable when he entered his plea.

This Court should also reject petitioner's effort to evade his bargain based on the district court's statement at sentencing—long after the plea agreement was signed and accepted—that petitioner "ha[d] a right to appeal." Pet. App. 36a. As this Court's precedent shows, plea agreements cannot so readily be modified by the third-party statements of courts, whether or not those statements draw objections. Instead, the parties are held to the terms of their bargain—as petitioner should be.

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Texas, petitioner was convicted on one count of aiding and abetting wire fraud affecting a financial institution, in violation of 18 U.S.C. 1343 and 2. Pet. App. 38a. The court sentenced petitioner to 51 months of imprisonment, to be followed by three years of supervised release. *Id.* at 40a-41a. The court of appeals dismissed petitioner's appeal in part and otherwise affirmed. *Id.* at 1a-3a.

1. Between 2013 and 2023, petitioner defrauded several financial institutions by using false identifications to open bank accounts in fake names. C.A. ROA 102-

103. Petitioner then obtained loans (including thousands of dollars in loans from the Small Business Administration), credit cards, and blank checks under the fake names, using Social Security numbers that were not his. See *id.* at 101-107. He also used 18 falsely-named credit cards to pay thousands of dollars into accounts that he controlled. *Id.* at 104-107.

Petitioner's decade-long fraud scheme cost his victims nearly half a million dollars in total. Presentence Investigation Report (PSR) ¶ 36. A grand jury in the Southern District of Texas returned a superseding indictment charging petitioner with one count of conspiring to commit bank fraud, in violation of 18 U.S.C. 1349; one count of bank fraud, in violation of 18 U.S.C. 1344; one count of conspiring to commit wire fraud, in violation of 18 U.S.C. 1349; and seven counts of wire fraud, in violation of 18 U.S.C. 1343. Superseding Indictment 1-20.

2. Petitioner pleaded guilty, pursuant to a written plea agreement, to one count of aiding and abetting wire fraud. Pet. App. 4a. As part of the plea agreement, the United States agreed to dismiss the remaining nine charges. *Id.* at 8a. The United States Attorney's Office for the Southern District of Texas also agreed that it would not prosecute petitioner "for the specific conduct described in" the superseding indictment. *Id.* at 9a.

The plea agreement further provided that, "in exchange for" the "concessions made by the United States," petitioner would waive certain constitutional and statutory rights—including appellate rights. Pet. App. 8a; see *id.* at 6a-7a. Among other things, the plea agreement explicitly provided that petitioner "knowingly and voluntarily waives the right to appeal or 'collaterally attack' the conviction and sentence, except that [he] does

not waive the right to raise a claim of ineffective assistance of counsel on direct appeal" or collateral review. *Id.* at 6a. The agreement specified that if petitioner "files a notice of appeal following the imposition of the sentence," the government "will assert its rights under this agreement and seek specific performance" of the appeal waiver. *Id.* at 7a.

The plea agreement documented petitioner's acknowledgment that "[i]n agreeing to these waivers," he "is aware that a sentence has not yet been determined" by the district court. Pet. App. 7a. The agreement also made clear that the court "has authority to impose any sentence up to and including the statutory maximum set for the offense" to which he was pleading guilty, and that if the court "should impose any sentence up to the maximum established by statute," petitioner "cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement." *Id.* at 10a.

The plea agreement included an integration clause, which stated that "[t]his written plea agreement * * * constitutes the complete plea agreement between the United States, [petitioner], and [petitioner]'s counsel." Pet. App. 15a. The same paragraph also included a no-oral-modification clause, which states that "[n]o additional understandings, promises, agreements, or conditions have been entered into other than those set forth in this agreement, and none will be entered into unless in writing and signed by all parties." *Ibid.*

3. In February 2024, after the parties had reached their agreement, the district court held a rearraignment hearing to determine whether to accept petitioner's plea. J.A. 1-16; see Fed. R. Crim. P. 11(c)(3). After placing petitioner under oath, the court asked a

series of questions designed to establish petitioner's competence to plead guilty, which included a question about whether petitioner had "ever been diagnosed or treated for any type of mental problem." J.A. 5. In response to that question, petitioner informed the court that he had previously been treated for "[d]epression, PTSD, anxiety, things of that nature," but stated that he was not currently being treated for any of those conditions. *Ibid.*

Satisfied with petitioner's competence to proceed, the district court addressed petitioner's understanding of the consequences of his plea agreement. See J.A. 7-8. The court advised petitioner that "[t]he maximum sentence that you face if you plead guilty is 30 years in prison," and that the sentence could include "five years of supervised release." J.A. 8. The court also advised petitioner that he would be subject to "a number of conditions" during any term of supervised release. *Ibid.* And the court made clear that the "process of determining [petitioner's] sentence has not yet begun." J.A. 9. Petitioner confirmed that he understood. *Ibid.*

The district court warned petitioner that if the sentence imposed "is greater than the sentence that you now expect or greater than the sentence that your lawyer or anyone else may have predicted, you will be bound by your guilty plea today, regardless." J.A. 9. Petitioner confirmed that he understood. *Ibid.* The court then went over each term of the written plea agreement with petitioner, who confirmed that he had also reviewed the document with his counsel before the hearing, with the opportunity to ask any questions that he might have had. J.A. 10.

When the district court arrived at the appeal-waiver provision of the agreement, the court read the language

aloud. J.A. 11. The court cautioned petitioner that the "most frequent basis for an appeal is complaining of th[e] sentence," but that it was "very unlikely that you could appeal that under this waiver." *Ibid.* The court asked whether petitioner understood that "[b]asically you're agreeing to whatever sentence I impose." *Ibid.* Petitioner responded, "Yes, Your Honor." *Ibid.*

The district court then invited petitioner and his counsel to sign the written plea agreement in open court. J.A. 14. Then, after explicitly finding that petitioner's guilty plea was "knowing and voluntary," the court accepted the plea. J.A. 14-15.

4. The Probation Office calculated petitioner's sentencing range under the advisory Sentencing Guidelines as 63 to 78 months of imprisonment. PSR ¶ 91. The Probation Office also recommended that, as conditions of petitioner's supervised release, petitioner be required to "participate in a mental-health treatment program," and "take all mental-health medications that are prescribed by [his] treating physician." PSR App. 1.

The presentence report explained that petitioner "suffers from symptoms of anxiety and depression" and "was diagnosed with both conditions when he was approximately 10 years old." PSR ¶ 80. The report further explained that petitioner "has refused medication to treat his symptoms." *Ibid.* And it made clear that the Probation Office was recommending the mental-health conditions in light of petitioner's "self-reported history of mental health diagnoses" and in order to "assist the probation office" during petitioner's supervision. PSR App. 1.

The district court subsequently held a sentencing hearing. See Pet. App. 18a-38a. During that hearing, the court rejected petitioner's objection to the Proba-

tion Office's recommendation that his supervised-release conditions include a requirement to take prescribed mental-health medications. *Id.* at 23a-24a. The court explained that if petitioner was "going to participate in mental health treatment and the treatment provider prescribes drugs," petitioner "should take them." *Id.* at 24a. But the court assured petitioner that "[i]f there's a dispute, you can address it to the probation officer," and "[i]f the probation officer can't resolve the dispute, you can address it to me." *Ibid.*

The district court sentenced petitioner to 51 months of imprisonment, to be followed by three years of supervised release. Pet. App. 35a. The conditions of that supervised release included requirements that petitioner "must participate in a mental health treatment program," and "must take all mental health medications that are prescribed by your treating physician." *Ibid.*

The government then made an oral motion to dismiss the remaining counts in the superseding indictment, which the court granted. Pet. App. 36a. Petitioner's counsel then confirmed that the government had complied with its obligations under the plea agreement. *Ibid.*

The district court then said to petitioner: "All right. You have a right to appeal. If you wish to appeal, [petitioner's counsel] will continue to represent you." Pet. App. 36a. The court asked if either counsel wished to say anything else, and both the government attorney and petitioner's counsel said that they did not. *Ibid.*

5. Notwithstanding his appeal waiver, petitioner appealed his sentence. In that appeal, petitioner raised a due-process challenge to the condition of his supervised release that would require him to take mental-health medications that might later be prescribed by a physi-

cian. Pet. C.A. Br. 9. Petitioner argued that he should be able to pursue that challenge on appeal notwithstanding his appeal waiver, on the theory that an appeal waiver should not extend to constitutional claims. *Id.* at 8. In the alternative, petitioner argued that an appeal waiver should not be enforced where the district court states at sentencing that a defendant has a right to appeal and the government does not object. *Id.* at 8-9. Petitioner acknowledged, however, that both arguments were foreclosed by circuit precedent. *Id.* at 9 nn.5 & 6.

Applying that precedent, the court of appeals dismissed petitioner's appeal of the medication condition. Pet. App. 1a-3a. The court observed that petitioner's appeal waiver barred his claims. *Id.* at 2a. And the court cited its precedent rejecting the theories that "the right to challenge an unconstitutional sentence cannot be waived" and that "the district court's statement at the sentencing hearing that [petitioner] had a right to appeal * * * impact[ed] the validity of the appeal waiver." *Ibid.*

SUMMARY OF ARGUMENT

As part of his plea agreement, petitioner knowingly and voluntarily waived his right to appeal his sentence on any grounds except ineffective assistance of counsel. That waiver forecloses petitioner's present appeal.

I. As part of an appeal waiver, a defendant may waive many fundamental constitutional rights, and also statutory rights such as the right to appeal the conviction and sentence. Appeal waivers in plea agreements are mutually beneficial for the government and defendants: they spare the government the resources of litigating an appeal; reciprocally, they provide a bargaining chip that can improve the defendant's position in negotiations with the prosecution. Like other contract pro-

visions, appeal waivers are enforceable if they were knowingly and voluntarily entered into, even if the defendant regrets the deal in hindsight. And this Court's precedents make clear that an appeal waiver can be knowing and voluntary even when the defendant does not know yet what specific claims he is forgoing.

Petitioner does not dispute that he knowingly and voluntarily agreed to waive his statutory right to appeal his sentence. Instead, he asks this Court to craft a substantive exception to the enforceability of appeal waivers, apparently as a matter of federal common law, for situations in which the defendant receives a sentence inconsistent with what he "reasonably expected." None of the contract-law principles on which he relies supports that argument. Petitioner's argument also would have no limiting principle, because defendants who appeal their sentences following plea agreements routinely point to unanticipated developments. The court of appeals was accordingly correct to reject petitioner's "reasonable expectations" theory, and petitioner cannot justify his argument by positing inconsistencies in that court's approach.

Nor should this Court accept petitioner's fallback suggestion to create a "safety valve" exception to the enforceability of appeal waivers for the most "egregiously unjust" sentences. Petitioner's approach does not even match any of the lines that Congress or this Court have drawn in other contexts when carving out narrow exceptions to finality. And recognizing such an amorphous exception would force the government constantly to litigate whether a particular appeal falls within its scope. Those costs are not justified by petitioner's remote concerns about extreme, and largely hypothetical, sentencing errors.

At all events, under any standard, the court of appeals correctly enforced petitioner's knowing and voluntary appeal waiver and dismissed petitioner's appeal. The challenged condition of supervised release, which will require petitioner to take mental-health medication that he is prescribed, is a common supervised-release condition that was foreseeable in light of petitioner's acknowledged mental-health history. And enforcing petitioner's appeal waiver would not work an "injustice," particularly because petitioner has acknowledged that his appeal would be independently foreclosed under circuit precedent as unripe.

II. The district court's comment at sentencing that petitioner "ha[d] a right to appeal," Pet. App. 36a, did not render petitioner's appeal waiver unenforceable. As an initial matter, the district court's statement was accurate, because petitioner did have a limited "right to appeal" under the terms of the agreement and under circuit precedent. But even if the court's comment were incorrect, the appeal waiver would still be enforceable as written. The parties did not mutually assent to modification of the waiver, let alone in writing as the plea agreement required. Federal Rule of Criminal Procedure 11 does not authorize a court to unilaterally modify the terms of a plea agreement after it has been entered, and this Court has made clear that a party need not object to an inaccurate statement about appellate rights.

ARGUMENT

There is no dispute that the government fulfilled its obligations under petitioner's plea agreement, resulting in his ultimately facing only one charge—not ten—for his extensive acts of fraud. There is likewise no dispute that, in return, petitioner "knowingly and voluntarily waived" his "right to appeal * * * the conviction and

sentence, except" for "the right to raise a claim of ineffective assistance of counsel." Pet. App. 6a. The terms of that appeal waiver plainly bar his current appellate claim: a due-process challenge to a condition of his future supervised release.

That should be the end of this case. Petitioner's effort to read in an implicit and amorphous exception into the plain terms of his waiver is legally unsound and practically destabilizing. And petitioner's knowing and voluntary waiver was not vitiated by the district court's unobjected statement at the end of sentencing—long *after* petitioner entered into the plea agreement—that petitioner "ha[d] a right to appeal." Pet. App. 36a. Instead, the court of appeals correctly enforced the terms of the bargain, from which petitioner has benefited, by dismissing his appeal. This Court should affirm.

I. PETITIONER'S APPEAL IS FORECLOSED BY HIS KNOWING AND VOLUNTARY APPEAL WAIVER

As part of a plea agreement, a defendant may knowingly and voluntarily waive constitutional and statutory rights, including the right to bring an appeal. See *Garza* v. *Idaho*, 586 U.S. 232, 238-239 (2019); *United States* v. *Mezzanatto*, 513 U.S. 196, 201 (1995). Such waivers are a valuable bargaining chip for defendants in plea discussions, serving as an additional inducement for the government to agree to dismiss charges or grant other valuable concessions to the defendant. Petitioner knowingly and voluntarily utilized that bargaining chip here, and he was appropriately and fairly held to its terms.

A. Knowing And Voluntary Appeal Waivers Are Enforceable Against Unforeseen Sentencing Claims

1. Appeal waivers are a valuable, mutually beneficial element of plea bargaining

A plea agreement is generally treated as a contract between the government and a criminal defendant. See *Puckett* v. *United States*, 556 U.S. 129, 137 (2009). Like other contracts, such bargains are enforceable, as long as the parties' agreement is knowing and voluntary. See *Brady* v. *United States*, 397 U.S. 742, 751-752 (1970). Also like other contracts, both parties to a plea agreement bargain for and obtain "substantial benefits" in exchange for assuming certain burdens. *Ricketts* v. *Adamson*, 483 U.S. 1, 9 (1987); see *Santobello* v. *New York*, 404 U.S. 257, 262 (1971). The government agrees to concessions like dropping particular charges or agreeing to seek a reduced sentence. *Brady*, 397 U.S. at 752; see Fed. R. Crim. P. 11(c)(1). In exchange, the defendant agrees to waive certain rights that he otherwise would have been able to exercise. See *Mezzanatto*, 513 U.S. at 201.

As part of a plea agreement, a defendant may waive even the "most fundamental protections afforded by the Constitution." *Mezzanatto*, 513 U.S. at 201. A defendant pleading guilty necessarily waives his right to a "fair trial," as well as "other accompanying constitutional guarantees," like the Sixth Amendment right to confront his accusers. *United States* v. *Ruiz*, 536 U.S. 622, 628-629 (2002); see, *e.g.*, *Ricketts*, 483 U.S. at 10 (waiver of right to raise double-jeopardy defense). A defendant may also waive statutory rights as part of a plea agreement, absent an "affirmative indication" to the contrary by Congress. *Mezzanatto*, 513 U.S. at 201.

One right that defendants commonly waive as part of a plea agreement is the right to appeal their conviction and sentence. See *Garza*, 586 U.S. at 238-239. For "a century after this Court was established, no appeal as of right existed in criminal cases." *Abney* v. *United States*, 431 U.S. 651, 656 (1977). And the modern criminal-appeal statutes—28 U.S.C. 1291 and 18 U.S.C. 3742—do not limit a defendant's ability to waive the rights that those statutes confer. To the contrary, "no appeal" remains "the default position." *United States* v. *Wenger*, 58 F.3d 280, 282 (7th Cir.), cert. denied, 516 U.S. 936 (1995). A defendant who wishes to exercise his statutory right to appeal his conviction or sentence must take the affirmative step of filing a notice of appeal, see Fed. R. App. P. 4(b), and a defendant who does not wish to appeal his conviction—"perhaps to put an unpleasant episode behind him more quickly"—is always free to do so, simply by doing nothing. *Wenger*, 58 F.3d at 282. A defendant is likewise free to make that default outcome part of his plea bargain. *Ibid.*

Appeal waivers, like other terms of a plea agreement, offer benefits to both the government and defendants. Cf. *Bordenkircher* v. *Hayes*, 434 U.S. 357, 363 (1978). Appeal waivers benefit the government—and the judicial system as a whole—by securing the finality of criminal judgments, saving the resources required for an appeal, and discouraging meritless appeals. See *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.), cert. denied, 540 U.S. 997 (2003); *United States* v. *Teeter*, 257 F.3d 14, 22-23 (1st Cir. 2001). Society shares the "strong * * * interest in finality" in criminal cases, which "has 'special force'" with respect to convictions based on a defendant's sworn admission

of guilt. *Lee* v. *United States*, 582 U.S. 357, 368-369 (2017) (citation omitted).

Defendants, in turn, benefit from appeal waivers as an additional tool to gain concessions during plea discussions. See *Teeter*, 257 F.3d at 22. One early study found that plea agreements containing appeal waivers "more frequently" led to fixed sentences or sentencing ranges, downward departures from the Sentencing Guidelines range, enhanced availability of "safety-valve" mechanisms for avoiding statutory-minimum sentences, and factual stipulations that could make sentencing more predictable. Nancy J. King & Michael E. O'Neill, *Appeal Waivers and the Future of Sentencing Policy*, 55 Duke L.J. 209, 212-213 (2005).

The utility of an appeal waiver as a bargaining chip necessarily depends on its breadth. A general appeal waiver covering a wider scope of claims is of the greatest value to the government, and thus most valuable to the defendant during plea bargaining. But the "language of appeal waivers can vary widely, with some waiver clauses leaving many types of claims unwaived." *Garza*, 586 U.S. at 238. The parties are masters of their own plea agreements and are free to negotiate exceptions depending on the burdens and benefits they are mutually willing to assume.

2. The enforceable scope of an appeal waiver includes claims unknown at the time of the parties' agreement

In entering into a plea agreement, like any other contract, the parties "can never be sure about what the future will bring." *Morta* v. *Korea Ins. Corp.*, 840 F.2d 1452, 1460 (9th Cir. 1988). But they enter into such agreements "for the very purpose of guarding against unforeseen contingencies." *Ibid.* Those agreements are accordingly enforceable when such contingencies arise.

"[W]ith the benefit of hindsight," a plea agreement, like any other agreement, sometimes may look less favorable than it did at the time of contracting. *United States* v. *Goodall*, 21 F.4th 555, 562 (9th Cir. 2021), cert. denied, 142 S. Ct. 2666 (2022) (citation omitted). For example, after sentencing, a defendant who entered into an appeal waiver may find himself wishing that he could appeal after all. See *ibid.* But a "plea agreement is no different in this respect from any other contract in which someone may have buyer's remorse after an unforeseen future event—the contract remains valid because the parties knowingly and voluntarily agreed to the terms." *Ibid.* And such hindsight regret is not a reason to decline to enforce a bargain. See, *e.g.*, *Morta*, 840 F.2d at 1460; 11 Richard A. Lord, *Williston on Contracts* § 31:5 (4th ed. 2025) (Williston).

Plea agreements, in particular, come with considerable protections to ensure that defendants are entering into them knowingly, voluntarily, and with their eyes open. Defendants have a right to counsel during the plea process. *Missouri* v. *Frye*, 566 U.S. 134, 140-147 (2012). And Federal Rule of Criminal Procedure 11 requires that, "[b]efore the [district] court accepts a plea of guilty," it must ensure, *inter alia*, that the defendant fully understands the rights that he is waiving. Fed. R. Crim. P. 11(b)(1). With respect to appeal waivers specifically, the court must confirm that the defendant personally understands "the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence." Fed. R. Crim. P. 11(b)(1)(N).

A defendant may knowingly and voluntarily waive his right to appeal his sentence even though "he does not know with specificity what claims of error, if any, he is foregoing." *United States* v. *Hahn*, 359 F.3d 1315,

1326 (10th Cir. 2004) (en banc) (per curiam). Such "[w]aivers of the legal consequences of unknown future events are commonplace" in the law. *United States* v. *Khattak*, 273 F.3d 557, 561 (3d Cir. 2001). And as this Court's precedents make clear, waivers in a defendant's plea may be knowing, intelligent, and enforceable notwithstanding his lack of awareness of certain claims.

The Court "has found that the Constitution, in respect to a defendant's awareness of relevant circumstances, does not require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor." *Ruiz*, 536 U.S. at 630. Indeed, even *without* a written appeal or collateral-attack waiver, a defendant may be precluded from raising certain claims that he is unaware of at the time of his plea.

For example, a defendant's misapprehension about the availability of a "potential defense"—including a constitutional defense that would, if successful, preclude conviction on a particular charge—will not allow the defendant to later raise such a claim if it is inconsistent with his plea. *United States* v. *Broce*, 488 U.S. 563, 573-574 (1989) (double-jeopardy claim). The Court has also rejected challenges to the knowing and voluntary nature of a plea entered by a defendant in order to avoid the possibility of a death sentence, notwithstanding this Court's subsequent finding of a constitutional infirmity in the death-penalty provision. See *Brady*, 397 U.S. at 749-758; *Parker* v. *North Carolina*, 397 U.S. 790, 794-795 (1970).

The "law ordinarily considers a waiver" in a plea to be "knowing, intelligent, and sufficiently aware if the

defendant fully understands the nature of the right and how it would likely apply *in general* in the circumstances —even though the defendant may not know the *specific detailed* consequences of invoking it." *Ruiz*, 536 U.S. at 629. Thus, a defendant may "may waive his right to remain silent, his right to a jury trial, or his right to counsel," even if he "does not know the specific questions the authorities intend to ask, who will likely serve on the jury, or the particular lawyer the State might otherwise provide." *Id.* at 629-630. Similarly, he may waive his right to receive impeachment evidence about government witnesses without knowing what it might have revealed. See *id.* at 628-633.

The same principle applies to waivers of the right to appeal. Petitioner's plea agreement, for example, not only contains the unambiguous appeal waiver, see Pet. App. 6a, but specifically documents petitioner's "aware-[ness] that a sentence has not yet been determined," and that the district court "has authority to impose any sentence up to and including the statutory maximum," *id.* at 7a, 10a. Petitioner had a full opportunity to discuss the agreement with his counsel, see J.A. 9-10, whose effectiveness he does not question here. And at the plea colloquy, the district court not only went over the appeal waiver orally, but went so far as to specifically ensure petitioner's understanding that "[t]he most frequent basis for an appeal is complaining of th[e] sentence," which had yet to be determined in his case, and that "[b]asically," petitioner was "agreeing to whatever sentence [the court] impose[d]." J.A. 11.

Only after all of that did petitioner sign the agreement, in which he waived his right to appeal the sentence. J.A. 14. In doing so, he "fully underst[ood] the nature of the right and how it would likely apply *in gen-*

eral in the circumstances," rendering it enforceable even if he did "not know the *specific detailed* consequences of invoking it." *Ruiz*, 536 U.S. at 629.

B. Petitioner Offers No Legitimate Basis For Exempting Statutory And Constitutional Sentencing Claims, Foreseeable Or Otherwise, From Appeal Waivers

Petitioner does not dispute that plea bargains may include knowing and voluntary appeal waivers like his own. His principal contention is that courts of appeals should not enforce such waivers if the defendant receives a sentence inconsistent with what he "reasonably expected," Pet. Br. 17, and that defendants reasonably expect that sentencing courts will not "exceed the bounds of what Congress and the Constitution permit," *id.* at 25. But that theory, on its face, would largely eliminate the effect of an appeal waiver by allowing a defendant to raise *any* statutory or constitutional challenge to a sentence, while still enjoying all of the benefits of his plea. The theory has no basis in constitutional or contract law and would destabilize appeal waivers across the board. It would also deflate the value of appeal waivers to prosecutors—who would reasonably anticipate defending appeals in many or most cases, notwithstanding the waiver—and thus harm defendants by reducing their leverage in plea negotiations.

1. Petitioner's theory lacks legal grounding

To the extent that petitioner seeks any legal footing for his theory, he appears to be asking this Court to craft a rule of federal common law. See *Boyle* v. *United Techs. Corp.*, 487 U.S. 500, 504 (1988) ("[O]bligations to and rights of the United States under its contracts are governed exclusively by federal law."). He identifies no basis for his theory in the Constitution or in history:

there is "no constitutional right to an appeal," *Jones* v. *Barnes*, 463 U.S. 745, 751 (1983), and Congress granted defendants a statutory right to appeal a sentence only in the late nineteenth century. Briana Lynn Rosenbaum, *Righting the Historical Record*, 62 Hastings L.J. 865, 881 (2011). Before then, even facially unconstitutional sentences were generally unreviewable. See, *e.g.*, *Ex parte Watkins*, 32 U.S. (7 Pet.) 568, 574 (1833). Petitioner instead relies (Br. 18-25) on four principles of contract law. But none of them supports invalidating a knowing and voluntary appeal waiver whenever a defendant's "reasonable expectations" for his sentence are purportedly unmet.

a. *Public policy.* Petitioner first attempts (Br. 18-20) to ground his approach in "public policy." But in the federal system, "it is Congressional enactments which determine public policy." *Muschany* v. *United States*, 324 U.S. 49, 68 (1945). This Court therefore exercises extreme caution before finding a type of contract to be "contrary to public policy in the absence of legislation to that effect." *Id.* at 65; see also *Eastern Associated Coal Corp.* v. *United Mine Workers*, 531 U.S. 57, 68 (2000) (Scalia, J., concurring in the judgment). And Congress has not announced any public policy limiting the enforceability of presentence appeal waivers.

When Congress wants to place limitations on the enforceability of particular waivers, it does so expressly. See, *e.g.*, 29 U.S.C. 1856 ("Agreements by employees purporting to waive or to modify their rights under [the Migrant and Seasonal Agricultural Worker Protection Act] shall be void as contrary to public policy."); 29 U.S.C. 626(f)(1)(C) (restricting the prospective waiver of rights under the Age Discrimination in Employment Act). But Congress placed no such limitations on the right to ap-

peal, despite its presumable awareness of the practice of presentence appeal waivers. See Fed. R. Crim. P. 11(b)(1)(N) (expressly addressing such waivers); see also 28 U.S.C. 2074(a) (requiring transmission to Congress of amendments to the Federal Rules). To the contrary, appeal-right statutes *always* give defendants the choice whether or not to bring an appeal. See p. 14, *supra*.

An appeal waiver is simply a presentence exercise of the choice not to appeal that Congress always gives to defendants. See *Wenger*, 58 F.3d at 282. No federal public policy prevents defendants from waiving statutory and constitutional claims, whether or not specifically anticipated. See, *e.g.*, *Khattak*, 273 F.3d at 561 ("[T]he prospective nature of waivers has never been thought to place waivers off limits or to render a defendant's act unknowing.") (brackets, citation, and internal quotation marks omitted). And a waiver that was lawful at the time of the plea does not retroactively become contrary to public policy based on what later happens at sentencing. To the contrary, "[w]hether a promise is unenforceable on grounds of public policy is determined as of the time that the promise is made and is not ordinarily affected by a subsequent change of circumstances." Restatement (Second) of Contracts § 179, cmt. d (1981) (Restatement).

Petitioner asserts (Br. 19) that this Court already "applied the public policy defense" in an "analogous context" in *Town of Newton* v. *Rumery*, 480 U.S. 386 (1987). But in that case, the Court *upheld* the enforceability of a release-dismissal agreement, under which a criminal defendant gave up his right to bring a claim under 42 U.S.C. 1983 in exchange for the prosecutor dismissing the pending charges against him. *Rumery*,

480 U.S. at 391. Although the Court suggested that "in some cases," such agreements might harm the "public interests" by encouraging prosecutorial abuse, *e.g.*, *id.* at 392, the Court left open the possibility that a defendant's "voluntariness alone"—a sine qua non of a plea—might be "sufficient" to "enforc[e]" one. *Id.* at 398 n.10.

The Court, moreover, expressly distinguished release-dismissal agreements from plea agreements, which are "subject to judicial oversight" that guards against abuse. *Rumery*, 480 U.S. at 393 n.3, 398 n.10; see *id.* at 402 (O'Connor, J., concurring in part and concurring in the judgment). Plea agreements also do not "explicitly trade[]" "public criminal justice interests" against "the private financial interest of the individuals involved in the arrest and prosecution." *Id.* at 401 (O'Connor, J., concurring in part and concurring in the judgment). And although the Court has suggested public-policy limits on prospective waivers of claims under the antitrust laws or Title VII, see Pet. Br. 19-20 n.6, waiving the right to appeal does not similarly implicate broader "social interests" that form "part of the unalterable 'statutory policy,'" as the defendant may always choose not to appeal. *New York* v. *Hill*, 528 U.S. 110, 117 (2000).

b. *Unconscionability.* Petitioner next asserts (Br. 21) that enforcing a knowing and voluntary appeal waiver to preclude appeal of "an unforeseeable error" at sentencing would be unconscionable. For a contract provision to be unenforceable on unconscionability grounds, courts traditionally look to whether "the contract was both procedurally and substantively unconscionable when made." See 8 Williston § 18:10; see also *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 340 (2011).

Knowing and voluntary appeal waivers are neither—let alone both.

The "procedural" aspect of unconscionability focuses on deficiencies in the contract formation process that result in one party lacking "meaningful choice about whether and how to enter into the transaction." 8 Williston § 18:10. But precisely because it must be knowing and voluntary, a knowing and voluntary appeal waiver does not raise concerns about a "meaningful choice." *Ibid.*; see *New* v. *GameStop, Inc.*, 753 S.E.2d 62, 75 (W. Va. 2013) (per curiam) (describing procedural unconscionability as "the lack of a real and voluntary meeting of the minds"). Rule 11, which requires the district court to ensure that the defendant fully understands his plea, guards against any "unfair surprise." 7 Joseph M. Perillo, *Corbin on Contracts* § 29.4 (Rev. ed. 2002); see Fed. R. Crim. P. 11(c)(5); *Santobello*, 404 U.S. at 262.

The requirement of a knowing and voluntary agreement likewise mitigates any unconscionability concerns about assertedly uneven bargaining power, by ensuring that that waivers are not "the product of fraud or coercion." *Mezzanatto*, 513 U.S. at 210. Indeed, if the bargaining-power disparities were so extreme as to render the appeal waiver unconscionable, the entire plea agreement—not just the appeal waiver—would be called into question. A defendant should not be allowed to stand on the benefits of the agreement but selectively avoid the burdens of the waiver, as petitioner is trying to do here.

"Substantive" unconscionability, in turn, concerns the contract terms themselves, and whether they are unduly harsh. See 8 Williston § 18:10. A contract term is substantively unconscionable when it is "so one-sided

that no one in his right mind would agree" to it. *Sanderson* v. *Sanderson*, 245 So. 3d 421, 427 (Miss. 2018) (citation omitted); see, *e.g.*, *Hume* v. *United States*, 132 U.S. 406, 411 (1889); *Blanchard* v. *Blanchard*, 148 A.3d 277, 283 (Me. 2016) ("so one-sided as to shock the conscience"). But as discussed above (at 14-15), appeal waivers are not one-sided; instead, the benefits they provide to the government are useful bargaining chips for defendants and are accepted in exchange for the government's concessions in other provisions of the agreement. Petitioner's blinkered, context-free approach to appeal-waiver provisions would invalidate many—if not most—provisions in plea agreements (and other contracts), which in isolation favor one party, but must be understood in the context of the full exchange.

"The substantive branch of unconscionability" thus "has little relevance for plea bargaining." Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 Yale L.J. 1909, 1921 (1992). Indeed, at bottom, petitioner's unconscionability argument focuses not on the appeal waiver itself, but instead on the subsequent unlawful sentence that the defendant might receive. See Pet. Br. 20, 27-29. That focus is misplaced. "[W]hat a defendant bargains away in an appellate waiver is not the underlying right" to be sentenced lawfully, "but rather the ability to *appeal* based on an alleged violation of that right." *United States* v. *Atherton*, 106 F.4th 888, 902-903 (9th Cir. 2024) (Miller, J., dissenting), vacated, 134 F.4th 1009 (9th Cir. 2025). And whether *that* bargain is unconscionable is judged "at the time of its making rather than at some subsequent point in time (e.g., at the time for performance)." 8 Williston § 18:12.

At the time the parties form the plea agreement, a defendant could rationally determine that the benefits of an appeal waiver outweigh the risks of not being able to appeal the future sentence. In particular, the defendant is certain to receive the benefits of the government's concessions, whereas the district court is far from certain to make any error at sentencing—much less an "unreasonable" one. The unfortunate materialization of an unlikely risk, and the attendant regret, does not retroactively invalidate the defendant's upfront judgment.

c. *Implied duty of good faith.* Petitioner's reliance (Pet. 21-23) on the implied duty of good faith and fair dealing is likewise unsound. The doctrine's "implied obligation that neither party will do anything to injure or destroy the right of the other party to receive the benefits of the agreement," 23 Williston § 63:22, is not breached by the government's enforcement of the knowing and voluntary terms of the plea bargain. The defendant receives "the benefits of the agreement," *ibid.*, when the government "delivers the essence of what was bargained for"—dropped charges and other concessions, Scott & Stuntz 1921. Enforcement of the appeal waiver simply holds the defendant to his end of the bargain.

Petitioner suggests (Br. 22-23) that the district court itself violates the implied duty of good faith if it sentences the defendant in a manner that the defendant did not reasonably anticipate when he signed the plea agreement. But that suggestion has no support in contract law. The implied covenant of good faith is imposed "upon each *party*" to a contract. Restatement § 205 (emphasis added). The district court is not a party to a plea agreement. See Fed. R. Crim. P. 11(c)(1) (precluding court from participating in plea discussions). And

while petitioner argues (Br. 22-23) that the bad faith of third-party delegees to a contract can sometimes excuse the parties' nonperformance, district courts are also not delegees. District courts sentence defendants pursuant to their legal authority, see 18 U.S.C. 3553, not because plea agreements authorize them to do so.

d. *Supervening frustration of purpose.* The final contract-law principle that petitioner invokes—the doctrine of supervening frustration of purpose, see Pet. Br. 2—is similarly inapposite. That doctrine excuses a party from performing under a contract if, after the time of contracting, an intervening event frustrates his principal purpose in contracting. See Restatement § 265. For the doctrine to apply, however, "(1) [the] frustrated purpose must have been so completely the basis of the contract that, as both parties understood, without it the transaction would have made little sense; (2) the frustration must be such that [the] intervening event cannot fairly be regarded as within the risks the frustrated party assumed under the contract; and (3) the nonoccurrence of the frustrating event must have been a basic assumption upon which [the] contract was made." 30 Williston § 77:94. Those requirements are not satisfied simply because a defendant is sentenced in a manner that he believes unlawful.

The risk that the defendant will believe his sentence to be unlawful is plainly "within the risks" that he assumes in giving up his right to appeal. *United States* v. *Chaidez-Guerrero*, 665 Fed. Appx. 723, 726 (10th Cir. 2016) (per curiam). And the plea agreement does not rest on any kind of "basic assumption" that the defendant will believe that his subsequent sentence is lawful. See *ibid.* To the contrary, the central premise is that the defendant *might* have a legal claim, or at least be-

lieve that he does, but is agreeing to waive his ability to raise it on appeal. If the defendant wants to hedge against future risk, he can limit his appeal waiver to a defined set of sentencing errors that he deems "reasonably expected." But he cannot knowingly and voluntarily agree to a broad appeal waiver and then seek an exception for outcomes later deemed "unreasonable."

2. Petitioner's theory has no limiting principle

Petitioner's proposal has no limiting principle and would undermine the enforcement of nearly all appeal waivers, making them less valuable for both the government and defendants alike.

a. Petitioner argues (Br. 17) that plea agreements should not be enforced when the defendant's "reasonable expectations are unfairly subverted" by the sentence that was later imposed. But as Judge Easterbrook has explained, "if this were sufficient to allow an appeal then waivers would be utterly ineffectual" as a categorical matter. *Wenger*, 58 F.3d at 282. Defendants "who appeal from sentences following plea agreements *always* point to unanticipated and unwelcome developments." *Ibid.* If the defendant had "anticipated (which is to say, consented to) these developments," then "they would not be grounds of complaint." *Ibid.* Therefore, to decline to enforce appeal waivers on the ground that the sentence was not what the defendant "reasonably expected," Pet. Br. 17, "is to say that waivers will not be honored," *Wenger*, 58 F.3d at 282.

To the extent that petitioner's references to a defendant's "reasonable" expectations suggest that he would cabin his theory to allow only meritorious appeals, that is no limitation at all. See *United States* v. *Howle*, 166 F.3d 1166, 1169 (11th Cir. 1999). Under that approach, the parties would still need to litigate the

merits of the appeal in order to determine whether the appeal waiver applies. Doing so would undermine the entire effect of the waiver—namely, to conserve litigation resources and bring finality to the proceeding. To actually confer those benefits—and thus, to have any value to the defendant as a bargaining chip—the appeal waiver must provide for "the relinquishment of claims *regardless* of their merit." *Hahn*, 359 F.3d at 1326 n.12 (citation omitted). An appeal waiver thus necessarily includes a "waiver of the right to appeal difficult or debatable legal issues," or even "blatant error." *Howle*, 166 F.3d at 1169.

b. Petitioner downplays (Br. 29) the radical consequences of his theory, arguing that appeal waivers would retain "bite in all but the most extreme circumstances." Specifically, he argues that although appeal waivers should not preclude constitutional and statutory claims, an appeal waiver would still foreclose "garden-variety" "'procedural and substantive challenges,'" such as an "'allegation that the sentencing judge misapplied the Sentencing Guidelines or abused his or her discretion.'" *Ibid.* (citations omitted). But petitioner offers no coherent basis for that distinction.

The requirement that a sentence be procedurally and substantively reasonable is itself statutory, and a sentence that fails to satisfy either requirement is a sentence that was unlawfully imposed. See *Gall* v. *United States*, 552 U.S. 38, 46-52 (2007); *United States* v. *Booker*, 543 U.S. 220, 260-261 (2005). Furthermore, a defendant who wants to appeal his sentence on reasonableness grounds presumably did not "expect" the asserted procedural mistake or substantive abuse of discretion. Petitioner contends that reasonableness challenges are different because "in entering an appeal waiver, the de-

fendant plainly agrees to forgo such run of the mill" challenges. Pet. Br. 29 (brackets omitted). But an appeal waiver whose language is not limited to such claims just as "plainly agrees to forgo" other challenges as well.

A defendant who wishes to make specific carveouts to his appeal waiver—such as the right to bring constitutional and statutory claims—is of course free to bargain for a more limited appeal waiver. See, *e.g.*, *United States* v. *Dixon*, 511 Fed. Appx. 592, 593 (8th Cir. 2013) (per curiam) (waiver drafted to permit appeal "if the sentence is constitutionally defective"); *United States* v. *Petrushkin*, 142 F.4th 1241, 1244 (9th Cir. 2025) (defendant's appeal waiver reserved "the right to appeal 'only the reasonableness of his sentence' "). But when a defendant enters into a general appeal waiver without any carveout, he cannot unilaterally assert that the waiver contains such a carveout nonetheless.

3. The court of appeals correctly rejected petitioner's theory

Petitioner also contends (Br. 16-17, 25) that the court of appeals' approach to appeal waivers is internally inconsistent. That argument is misplaced. As petitioner notes (*ibid.*), while that court has rejected petitioner's "reasonable expectations" exception to appeal waivers, see *United States* v. *Barnes*, 953 F.3d 383, 389 (5th Cir.), cert. denied, 141 S. Ct. 438 (2020), it will not enforce an appeal waiver when "the waiver itself was tainted by the ineffective assistance of counsel," *United States* v. *White*, 307 F.3d 336, 339 (5th Cir. 2002), or when the defendant is appealing "a sentence exceeding the statutory maximum," *Barnes*, 953 F.3d at 389. There is no inherent incoherence in that approach, and

even if there were, it would not justify petitioner's proposed rule.

The exception for ineffective-assistance claims is part of the requirement that a plea agreement be knowing and voluntary. See *United States* v. *Bond*, 414 F.3d 542, 544 (5th Cir. 2005). This Court has recognized that "the voluntariness" of the plea agreement "depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.' " *Hill* v. *Lockhart*, 474 U.S. 52, 56 (1985) (citation omitted). Accordingly, a defendant who has waived his right to appeal may pursue on appeal (or, more likely, collateral review) a claim that his waiver was the product of ineffective assistance of counsel. See *White*, 307 F.3d at 339; see also *Massaro* v. *United States*, 538 U.S. 500, 508 (2003) (explaining circumstances in which ineffective-assistance-of-counsel claims can be raised on direct appeal). But neither petitioner's "reasonable expectations" theory, nor his particular appellate claim here, is similarly grounded in the knowledge-and-voluntariness requirement.

The court of appeals' allowance of statutory-maximum challenges likewise does not support petitioner's rule. That court's initial published case allowing such a challenge treated it as essentially a matter of "contract interpretation" and "contract formation," given that the plea agreement explicitly stated that "any sentence imposed would be 'solely in the discretion of the Court,' '*so long as it is within the statutory maximum*.'" *United States* v. *Leal*, 933 F.3d 426, 431 (5th Cir.), cert. denied, 589 U.S. 1114 (2019). In subsequent cases, the court has characterized the statutory-maximum allowance as a matter of contract enforceability rather than contract interpretation. See, *e.g.*, *United States* v. *Kim*,

988 F.3d 803, 810 n.1, 811 (5th Cir.), cert. denied, 142 S. Ct. 225 (2021). But allowing such challenges is fully explicable as an interpretation of a defendant's waiver of his right to appeal his sentence to be circumscribed by the textual description of the sentence as maximum-limited. See, *e.g.*, Pet. App. 5a (describing punishment range); *id.* at 10a (specifying that "[i]f the Court should impose any sentence up to the maximum," petitioner "will remain bound to fulfill all of the obligations under this plea agreement").

There is no analytical inconsistency between interpreting an appeal waiver not to cover particular claims and strictly enforcing a waiver as to the terms that it does cover. Petitioner here is not arguing that his appeal falls outside the written scope of his knowing and voluntary appeal waiver. And the court of appeals has soundly rejected petitioner's approach, under which courts would decline to enforce terms that were knowingly and voluntarily agreed to based on disagreement with the substance of the parties' bargain. In all events, any inconsistency in the Fifth Circuit's approach is not implicated in this case, because petitioner has never argued that his sentence is above the statutory maximum.

C. This Court Should Not Create An Exception To The Enforcement Of Knowing And Voluntary Appeal Waivers To Encompass Petitioner's Claim

As a fallback argument, petitioner suggests (Br. 34-37) a "miscarriage of justice" exception to appeal waivers that would apply to any "egregiously unjust sentence[]." Pet. Br. 34 (capitalization omitted). Obviously, nobody—including the government—has an interest in "egregiously unjust" sentences, and the government can decline to invoke an appeal waiver when egregious injustice occurs. See *Garza*, 586 U.S. at 238-239

("[E]ven a waived appellate claim can still go forward if the prosecution forfeits or waives the waiver."); see also *Grzegorczyk* v. *United States*, 142 S. Ct. 2580, 2581 (2022) (Sotomayor, J., dissenting from denial of a grant, vacate, and remand order) (describing government waiver practice). But "egregious injustice" is often in the eye of the beholder, and defendants have a strong incentive to characterize their sentences as egregious. Isolated, and largely hypothetical, instances of "egregious" errors cannot support a sweeping and amorphous rule under which the contours of an appeal waiver's enforceability must be continually litigated—depriving such waivers of much of their expected value.*

1. Petitioner does not ground his proposed "safety valve" (Br. 11) in any clear legal doctrine. He fails to explain, for example, how contract law could permit courts to disrupt the parties' appeal waivers in "extreme cases" (Br. 34) if the Court rejects his frontline arguments about public policy and unconscionability. And to the extent that petitioner is invoking equitable concerns when he asserts (Br. 35) that courts should not "'put the justice system's integrity at stake,'" or require the judiciary to "contribute[] to patently unjust outcomes," *ibid.* (citation omitted), he is simply reintroducing his unsound policy arguments by a different name.

Enforcing a defendant's knowing and voluntary appeal waiver against a claim like petitioner's does not

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* Petitioner notes that in an oral argument earlier this year, a government attorney referred to the approach of the court below as "draconian" and encouraged the Ninth Circuit to adopt a broader "manifest-injustice" exception to the enforcement of appeal waivers. Pet. Br. 3, 10, 26 (citation omitted). This brief sets forth the government's position.

make courts complicit in a result that Congress, or this Court's precedents, would deem inequitable. Instead, Congress and this Court have long accepted that interests of finality may outweigh the interest in correcting mistakes, thereby leaving potentially unjustified sentences in place. See, *e.g.*, *Jones* v. *Hendrix*, 599 U.S. 465, 482 (2023); *Grzegorczyk*, 142 S. Ct. at 2581 (statement of Kavanaugh, J., joined by four other Justices, respecting denial of certiorari). Indeed, substantively erroneous sentences will persist when a defendant fails to file a timely notice of appeal, see Fed. R. App P. 4(b)(1), or files a collateral attack outside the statute of limitations, see 28 U.S.C. 2255(f).

Petitioner also does not even attempt to align his approach with any of the lines that Congress or this Court has drawn in other contexts when carving out narrow exceptions to finality. See, *e.g.*, *Jones*, 599 U.S. at 469-470. In the habeas context, for example, Congress has relaxed otherwise applicable procedural bars to review for violations of "clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. 2254(d)(1). Even in an appellate posture, and even when a claim of error is forfeited through inadvertence, rather than deliberately waived, the error must be "clear" or "obvious" to warrant appellate relief. See *United States* v. *Olano*, 507 U.S. 725, 732 (1993). And some exceptions are focused specifically on race-based claims. Cf. *Pena-Rodriguez* v. *Colorado*, 580 U.S. 206, 221 (2017).

2. In seeking an exception to appeal waivers that would extend well beyond any of those limitations, petitioner disregards that "[t]here is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle." *Caperton* v. *A.T. Massey*

Coal Co., 556 U.S. 868, 899 (2009) (Roberts, C.J., dissenting). As illustrated by courts that have adopted a "miscarriage of justice" exception to appeal waivers, such an exception is inherently amorphous. The First Circuit, for example, weighs a variety of factors, including "the clarity of the [sentencing] error, its gravity, its character * * * , 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." *United States* v. *Boudreau*, 58 F.4th 26, 33 (1st Cir.) (citation omitted), cert. denied, 144 S. Ct. 229 (2023). The court has described its test as "infinitely variable," *Teeter*, 257 F.3d at 25 n.9, and "more a concept than a constant," *Boudreau*, 58 F.4th at 33 (citation omitted).

That sort of indeterminate balancing test is not simply a "safety valve" for egregious outcomes; it is an invitation to protracted litigation in any number of cases. Even if relief is uncommon, litigation can ensue whenever a defendant has a colorable claim that his case presents a "miscarriage of justice." See *United States* v. *Del Valle-Cruz*, 785 F.3d 48, 56 (1st Cir. 2015) (noting that although relief under miscarriage-of-justice exception is "seldom meted out," it is "often sought") (citation omitted). Many defendants may sincerely believe that their sentences were egregious. For example, a defendant may genuinely believe that the only explanation for his sentence is racial or religious prejudice by the sentencing judge, even if that belief is incorrect.

In those cases, so as not to forfeit its right to enforce the appeal waiver, the government will need to litigate why the exception for egregiously unjust sentences does not apply. Briefing on that question will often subsume, or at least substantially overlap with, the merits

of the defendant's appeal. For example, if a defendant were to argue that his appeal waiver should not apply because he believes that he was sentenced on the basis of his race, the government may need to litigate the merits of that racial-bias issue in order to enforce the appeal waiver. Having to litigate such issues largely eliminates the benefit of an appeal waiver. That cheapens the value of appeal waivers for the government across the board, which in turn makes them less valuable as bargaining chips for defendants. See *Mezzanatto*, 513 U.S. at 208 (cautioning against placing "arbitrary limits on [the parties'] bargaining chips").

3. The principal justification that petitioner offers for his broad-brush approach is the remote possibility of substantive outcomes that seem unfair. See Pet. Br. 27-28. But even assuming that such errors could not be corrected through other mechanisms, he provides no evidence of an existing or potential problem commensurate with the ones that his proposed "solution" would create. Instead, his approach would produce numerous meritless appeals of otherwise-final judgments in search of an ill-defined and vanishingly small set of "egregious" cases.

Whether or not a defendant has executed an appeal waiver, district judges are oath-bound to apply the Constitution and the laws of the United States, see U.S. Const. Art. VI, Cl. 3; 28 U.S.C. 453, and are presumed to try in good faith to do so. An exception intended to allow for "the most unforeseen and extreme" cases, Pet. Br. 34, focuses by definition on a minuscule number of cases. And petitioner provides no basis for concluding that "egregious" results are anything other than hen's-teeth rare. For example, petitioner provides no real-world examples of federal courts engaging in explicitly

race-based sentencing, or public flogging, or any of the more extreme scenarios that he describes. See *id.* at 27.

Indeed, only two of petitioner's cited examples (Br. 27-28) involve an actual federal sentence, and only one required an appeal to correct. In *United States* v. *Smith*, 972 F.2d 960 (1992), the Eighth Circuit invalidated a condition of supervised release that prohibited fathering "another child other than to [the defendant's] wife," in light of his obligations to his existing dependents. *Id.* at 961. And in *United States* v. *Hernandez*, 209 F. Supp. 3d 542, 544 (E.D.N.Y. 2016), a convicted child-pornography offender violated a supervised-release condition by befriending a female minor at his church, and a magistrate judge imposed a bail condition that he not attend church with minors. *Ibid.* No sentence or appeal waiver was involved; and the district court itself ultimately lifted the condition on free-exercise grounds. *Ibid.*

None of that shows that the certainty and finality that appeal waivers provide should be disrupted by an eye-of-the-beholder exception for "egregious" errors. If district courts regularly began imposing petitioner's hypothetical egregious sentences, Congress itself could create a safety valve, with whatever statutory boundaries it deemed appropriate. And if such errors became sufficiently common, defendants surely would not "continue to agree to appellate waivers without demanding greater concessions from the government on other terms of the plea agreement." *Atherton*, 106 F.4th at 905 (Miller, J., dissenting). The fact that defendants do not regularly bargain for carveouts in their appeal waivers for flogging or explicitly race-based sentencing, even in circuits that more strictly enforce appeal waiv-

ers, indicates that petitioner's stated concerns are not real concerns for defendants.

D. Under Any Standard, The Court Of Appeals Correctly Dismissed Petitioner's Appeal

To the extent that some type of exception to the enforceability of appeal waivers might be desirable, it would not apply here. Petitioner cannot prevail under either of his theories, and this Court could accordingly affirm his sentence even if it wished to hold open the possibility of relief in some more extraordinary case. See *Dandridge* v. *Williams*, 397 U.S. 471, 475 n.6 (1970) (prevailing party may rely on any ground to support the judgment).

1. Petitioner cannot bring an appeal under his frontline theory, because the supervised-release condition that he seeks to challenge was in no way unforeseeable. Congress has long authorized courts to require, as a condition of supervised release, that defendants "undergo available medical, psychiatric, or psychological treatment * * * as specified by the court." 18 U.S.C. 3563(b)(9); see Sentencing Guidelines § 5D1.3(d)(5) (2023). Petitioner asserts (Br. 10) that he had "no reason to think that pleading guilty to a financial crime" would result in the imposition of that condition. But petitioner admitted, at the time of his plea, that he had suffered from mental-health problems. J.A. 5. And courts frequently apply the condition to individuals convicted of financial crimes. See, *e.g.*, *United States* v. *Hightower*, No. 18-cr-600, 2020 WL 7864074, at *3 (S.D. Tex. Nov. 4, 2020); *United States* v. *Finney*, No. 19-cr-57, 2020 WL 4504586, at *3 (E.D. Tex. July 7, 2020); *United States* v. *Morgan*, No. 17-cr-193, 2018 WL 2106542, at *3 (M.D. Pa. Feb. 13, 2018).

Petitioner alternatively suggests (Br. 33) that what was "unforeseeable" was not the condition itself but rather the district court's failure to "make findings to support" the condition. But the risk that petitioner would not be satisfied with the court's rationale or explanation for its sentence was clearly foreseeable when he entered his plea. Even on his own view, "run of the mill 'procedural'" challenges are exactly what a defendant "'agrees to forgo'" when he enters an appeal waiver. Pet. Br. 29 (brackets omitted).

2. Petitioner's appeal is even more obviously foreclosed under his fallback theory, because there is nothing "egregious" about his case. As discussed above (at 37), the challenged condition is expressly contemplated by statute and the Sentencing Guidelines. Moreover, it is not clear whether petitioner, who currently remains in federal custody, will ever be prescribed any medication at all—and even if he is prescribed such medication years from now (and still does not want to take it), "he may petition the district court for a modification of his conditions." *United States* v. *Ellis*, 720 F.3d 220, 227 (5th Cir.) (per curiam), cert. denied, 571 U.S. 1074 (2013); see Pet. App. 24a. Accordingly, as petitioner has acknowledged, his claim would be barred below as unripe even if he had not waived his right to appeal. Pet. C.A. Br. 8 n.4. Applying petitioner's knowing and voluntary appeal waiver to a contingent future claim, challenging a condition of supervised release that may never affect him adversely, let alone unjustly, is not an "injustice"—particularly when petitioner continues benefit from the rest of the plea agreement.

II. THE DISTRICT COURT'S STATEMENT AT SENTENCING DID NOT RENDER PETITIONER'S APPEAL WAIVER UNENFORCEABLE

Petitioner separately contends (Br. 38-46) that his appeal waiver is unenforceable because, at the conclusion of his sentencing hearing—well after his plea agreement had been signed and accepted by the court—the district court briefly said that petitioner had a right to appeal and the government did not object. See Pet. App. 36a. That contention lacks merit, and the courts of appeals have overwhelmingly rejected similar contentions. See *Teeter*, 257 F.3d at 25; *United States* v. *Fisher*, 232 F.3d 301, 304 (2d Cir. 2000); *United States* v. *Melancon*, 972 F.2d 566, 568 (5th Cir. 1992); *United States* v. *Fleming*, 239 F.3d 761, 765 (6th Cir. 2001); *United States* v. *Ogden*, 102 F.3d 887, 888-889 (7th Cir. 1996); *United States* v. *Michelsen*, 141 F.3d 867, 872 (8th Cir.), cert. denied, 525 U.S. 942 (1998); *United States* v. *Atterberry*, 144 F.3d 1299, 1301 (10th Cir. 1998); *United States* v. *Bascomb*, 451 F.3d 1292, 1297 (11th Cir. 2006); see also *United States* v. *Guzman*, 457 Fed. Appx. 223, 225 (4th Cir. 2011) (per curiam). This Court should do the same.

A. The District Court's Statement After The Plea Proceedings Had No Effect On The Plea

Federal Rule of Criminal Procedure 32(j)(1)(B) requires that, "[a]fter sentencing—regardless of the defendant's plea—the court must advise the defendant of any right to appeal the sentence." At least one court of appeals has held that the requirement applies even when, as in this case, the defendant has waived his right to appeal the sentence, subject to narrow exceptions. See *United States* v. *Marsh*, 944 F.3d 524, 528 (4th Cir. 2019), cert. denied, 140 S. Ct. 2787 (2020). And at the

end of the sentencing hearing here, the district court told petitioner, "[y]ou have a right to appeal," represented by existing counsel. Pet. App. 36a.

That statement was accurate. "[N]o appeal waiver serves as an absolute bar to all appellate claims." *Garza*, 586 U.S. at 238. And in this case, in addition to the ineffective-assistance-of-counsel claims expressly carved out of petitioner's appeal waiver, see Pet. App. 6a, circuit precedent permitted petitioner to raise other claims on appeal through his existing counsel. Specifically, petitioner could appeal on the ground that his plea was unknowing or involuntary for reasons other than ineffective counsel, or that he was sentenced above the statutory maximum. See pp. 30-31, *supra*. Indeed, regardless of whether petitioner identified any nonfrivolous ground for appeal despite the waiver, a refusal by counsel to file a notice of appeal on petitioner's behalf would have amounted to constitutionally ineffective assistance. See *Garza*, 586 U.S. at 244-245.

Courts have accordingly found that district courts' statements that a defendant has a right to appeal "can easily be understood as entirely consistent with the terms" of an appeal waiver. *United States* v. *Benitez-Zapata*, 131 F.3d 1444, 1446-1447 (11th Cir. 1997); see *Michelsen*, 141 F.3d at 871-872; *Atterberry*, 144 F.3d at 1301. While petitioner portrays (Br. 41-42) the statement here as an advisement that he had an unfettered right to appeal his sentence, or a more specific right to appeal his mental-health condition of supervised release, the court never said either. To the contrary, when petitioner objected to the mental-health supervised-release condition, the court informed petitioner that petitioner could address any future concerns to his "probation of-

ficer" or "to me" (*i.e.* the district court)—not to the court of appeals. Pet. App. 24a.

Moreover, the district court was already required to, and did, ensure petitioner's specific understanding of the appeal waiver during the previous plea colloquy. See J.A. 11; see also Fed. R. Crim. P. 11(b)(1)(N). And "a statement made at the *sentencing hearing*, even if it was misleading, 'could not have informed (or misinformed)'" a defendant's "decision to waive his right to appeal, which was made at the earlier *plea hearing*." *United States* v. *Lee*, 888 F.3d 503, 508 (D.C. Cir. 2018) (Kavanaugh, J.) (citation omitted).

Nor could the statement have some effect on plea withdrawal. A defendant may withdraw "before the court accepts the plea, for any reason or no reason," Fed. R. Crim. P. 11(d)(1). He may also withdraw "after the court accepts the plea, but before it imposes sentence," if the plea agreement is rejected under Rule 11(c)(5) or he "can show a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). But neither law nor logic suggests that a statement about a defendant's appeal rights, at the end of sentencing, would allow him to withdraw his plea. To the contrary, petitioner willingly pleaded guilty on the understanding that he would generally be precluded from appealing.

To the extent that a nonspecific statement about his appeal rights by the district court at the end of sentencing might confuse a defendant, he can consult with his counsel, who can ask for clarification. But only he knows whether he is confused, so it is incumbent on him—not the court or the government—to seek such clarification, which would inform him that he will in fact be held to the terms of the binding bargain that he en-

tered. Neither the statement nor the absence of objection supports granting him the windfall of releasing him from a plea-agreement provision that he agreed to and expected to have to comply with.

B. No Legal Doctrine Justifies Disregarding The Waiver Based On The District Court's Statement

Petitioner agrees that the district court's statement "could not have informed (or misinformed) [his] decision to waive his right to appeal." Pet. Br. 45 (citation omitted). But he nonetheless argues that when the court made its statement and the government did not object, either (1) the written plea agreement was modified to eliminate the appeal waiver; or (2) the government relinquished its right to enforce the appeal waiver. See *id.* at 38-43. Neither argument has merit.

1. The district court's statement at sentencing did not modify the terms of the written plea agreement

A contract cannot be modified without the mutual assent of both contracting parties. See *Hawkins* v. *United States*, 96 U.S. 689, 696 (1877) ("Mutual consent is required to modify a contract."). A "modification to a contract is merely an offer for a revised contract," so it "cannot bind both parties until it is accepted." 17A Corpus Juris Secundum Contracts § 566 (2025). In other words, there must be a "meeting of the minds" between both contracting parties in order to modify the contract —the same as is required to form the contract in the first instance. *Ibid.*

Here, the parties never reached a mutual agreement to modify the plea agreement. The plea agreement itself stipulated, in its no-oral-modification clause, that any modification to the agreement would need to be "in writing and signed by all parties." Pet. App. 15a. The

parties did not write or sign an agreement to modify the contract. And even if an oral agreement to amend could have sufficed, no such oral agreement was reached. Petitioner objected to certain aspects of the presentence report during the sentencing hearing, see, *e.g.*, *id.* at 24a, but he never proposed to the government that the parties should modify his plea agreement to eliminate the appeal waiver. Nor did the government express acceptance of such a modification—a modification from which it would have derived no apparent benefit.

Without the parties' mutual assent, the district court could not and did not modify the appeal waiver on its own. The court was not itself a party to the plea agreement. Rule 11 "strictly limits the role of the court" in the plea process. *United States* v. *Scanlon*, 666 F.3d 796, 798 (D.C. Cir.), cert. denied, 566 U.S. 1011 (2012). Under that Rule, the court may not participate in plea negotiations. Fed. R. Crim. P. 11(c)(1). And once the defendant and government have reached a plea agreement like petitioner's, the court's options are limited to accepting the agreement, rejecting it, or deferring decision. Fed. R. Crim. P. 11(c)(3). Judicial modification of a plea agreement is "not an option" under the Rule, and "changing of the agreement by the court after acceptance of the plea is not allowed." *Scanlon*, 666 F.3d at 798; see *United States* v. *Ritsema*, 89 F.3d 392, 399 (7th Cir. 1996).

Even assuming for argument's sake that the district court's statement constituted an *offer* to modify an agreement to which it was not a party, the government's nonobjection to that statement did not constitute acceptance. Acceptance by silence can occur only in narrow, "exceptional" circumstances—primarily when "the offeree silently takes offered benefits," or "one party

relies on the other party's manifestation of intention that silence may operate as acceptance." Restatement § 69, cmt. a. Those circumstances were not present here. The government did not silently "take[] offered benefits." *Ibid.* To the contrary, if the government had agreed to drop the appeal waiver, it would have been disclaiming one of the benefits of its bargain, without any apparent countervailing benefit for itself. Nor did the government "manifest[]" an "intention" to accept a modification of the plea agreement through silence, given the parties' agreement that any modification would be expressly written. Pet. App. 15a.

2. The government did not relinquish its right to enforce the appeal waiver

Petitioner also argues (Br. 38-40) that the district court's statement placed a burden on the government to object or forever relinquish its right to enforce the appeal waiver. Whether analyzed under ordinary litigation principles or the contract-law waiver doctrine, that argument lacks merit.

a. To the extent that a party might relinquish a contractual right through litigation conduct, see *Morgan* v. *Sundance, Inc.*, 596 U.S. 411, 417 (2022), the government did not do so here. It neither waived nor forfeited its right to enforce the appeal waiver.

Waiver is the "intentional relinquishment or abandonment of a known right." *Olano*, 507 U.S. at 733 (citation omitted). The doctrine of waiver "focuses on the actions of the person who held the right; the court seldom considers the effect of those actions on the opposing party." *Morgan*, 596 U.S. at 417. In this case, the government never affirmatively abandoned its right to enforce the appeal waiver; it merely did not object to the district court's statement. See Pet. App. 36a.

The forfeiture doctrine is similarly inapplicable. "[F]orfeiture is the failure to make the timely assertion of a right." *Olano*, 507 U.S. at 733. The proper time for the government to assert its right to enforce the appeal waiver is not at the sentencing hearing, but instead after the defendant "files a notice of appeal," Pet. App. 7a, and the government can assess whether he has raised any nonwaived arguments. The government's nonobjection during sentencing, before petitioner filed a notice of appeal, therefore could not constitute a "failure to make the *timely* assertion" of its right to enforce the appeal waiver. *Olano*, 507 U.S. at 733 (emphasis added).

This Court's decision in *Class* v. *United States*, 583 U.S. 174 (2018), confirms that the appeal waiver remains valid. In that case, the Court confronted a scenario that was effectively the mirror image of the one here: the district court told the defendant that he was "giving up his right to appeal his conviction" when in fact the plea agreement contained no such term. *Id.* at 185 (brackets and citation omitted). There, in fact, the court's statement came during the plea colloquy (rather than simply at the end of sentencing) and the defendant affirmatively agreed to it (rather than remaining silent). See *ibid.* Nonetheless, this Court held that the defendant's "acquiescence neither expressly nor implicitly waived his right to appeal." *Ibid.* It follows *a fortiori* that the government did not relinquish its right to enforce petitioner's appeal waiver by not objecting to the district court's statement here.

b. Although contract law also has a waiver doctrine, it likewise would not apply in these circumstances. Contract law recognizes two forms of contractual waiver: "true waiver" and "waiver by estoppel." 13 Williston §§ 39:27, 39:29. True waiver requires actual intention

to waive a contractual right; it turns "solely on what the party charged with waiver intends to do." *Id.* § 39:28. Waiver by estoppel, in turn, exists when the waiving party had "no intention in fact to waive," but its conduct "misleads the other into a reasonable belief that a provision of the contract has been waived." *Id.* § 39:29. Neither form of waiver occurred here.

The government did not make a true waiver, because it plainly had no intention of unilaterally sacrificing the appeal waiver for which it had bargained. And no waiver by estoppel can be inferred. Even assuming that petitioner was misled about his appeal rights, and even further assuming that the government's conduct—rather than the district court's—was the source of such a misimpression, petitioner could not reasonably take the government's silence as a decision, for no apparent reason, to excise the appeal waiver from the plea agreement. "Mere silence, acquiescence, or inactivity is insufficient to show a waiver of contract rights, when there is no duty to speak or act." *Id.* § 39:35. And as discussed above, the litigation context imposed no such duty. To the contrary, even if the government had realized that the court's statement might be confusing, circuit precedent relieved it of any duty to object. See *Melancon*, 972 F.2d at 568.

C. Petitioner's Approach Would Create Practical Problems

In addition to being legally unsupported, petitioner's approach would have disruptive consequences for the plea process. Most significantly, it would undermine the "certainty" and "stability" that plea agreements are meant to provide to all participants in "the criminal justice system." *Premo* v. *Moore*, 562 U.S. 115, 132 (2011). If the government must object to statements by the dis-

trict court that might confuse a defendant, it will be unable to reliably depend on the enforceability of its plea agreements. And as petitioner acknowledges (Br. 39-40), court-inspired breaches of the written terms of the plea agreement might lead to the entire agreement being nullified—with potential adverse consequences for the defendant.

Defendants could also be incentivized to bait courts into making such statements, in the hope that the government fails to notice them. If successful, the defendant would be advantaged by sandbagging rather than seeking clarification on the record. Allowing such statements to have legal effect would also blur the clear lines drawn by Rule 11, which does not allow for "changing of the agreement by the court after acceptance of the plea." *Scanlon*, 666 F.3d at 798. Under petitioner's rule, a district court could in fact change a plea agreement if the judge misspeaks on the record, the government does not notice, and the defendant and his counsel allow the statement to enter the record without response.

Those harms far outweigh any benefit that petitioner's theory would provide. Echoing the Ninth Circuit—the sole court of appeals to have adopted petitioner's argument in any form—petitioner contends that his proposal makes sense because criminal defendants must be able to rely on the oral statements of district judges. Pet. Br. 43-45 (citing *United States* v. *Buchanan*, 59 F.3d 914, 918 (9th Cir.), cert. denied, 516 U.S. 970 (1995)). But a defendant who believes—contrary to Rule 11—that a district court can unilaterally change the terms of a plea agreement suffers, at most, the "dashing of a momentary sense of false hope." *Fleming*, 239 F.3d at 765. Avoiding that minor harm does not justify nulli-

fying the parties' written bargains, undercutting Rule 11, or undermining the plea-agreement system.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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