No. _____

IN THE

Supreme Court of the United States

DEVIN CHANEY,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Although the right to appeal a criminal sentence is a statutory entitlement, federal prosecutors in many jurisdictions—including the Eastern District of Louisiana—require plea agreements containing a waiver of that right. At the point a criminal defendant enters into such an agreement, however, he has no way of knowing what errors the district court may commit at a future sentencing hearing nor the magnitude and impact of such errors. This Court has yet to rule on the validity of such waivers nor the limits on their enforcement. The result is a messy, multi-dimensional circuit split that injects confusion, unpredictability, and disparate treatment into one of the most common procedures in federal criminal law: the plea agreement. In this case, Petitioner Devin Chaney signed such an agreement without knowing (or possibly being able to anticipate) that the district court would eschew its basic duties and responsibilities at sentencing—not just failing to correct error brought to its attention but refusing to address the issue at all. As a result, Mr. Chaney received a sentence six years higher than he should have, following a sentencing proceeding that did not comport with basic tenants of due process.

Thus, the questions presented are:

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

Relatedly, did the appeal waiver in Mr. Chaney's case qualify for the so-called "miscarriage of justice" or other exception recognized by numerous appellate courts?

RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *United States v. Chaney*, No. 22-cr-16-1, U.S. District Court for the Eastern District of Louisiana. Judgment entered June 27, 2023.
- *United States v. Chaney*, No. 23-30454, U.S. Court of Appeals for the Fifth Circuit. Judgment entered November 8, 2024.

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PETITION FOR A WRIT OF CERTIORARI

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

JUDGMENT AT ISSUE

On November 8, 2024, a panel of the Fifth Circuit Court of Appeals dismissed Mr. Chaney's appeal based on an appeal waiver in his plea agreement. A copy of the judgement and decision are attached to this petition as the Appendix.

JURISDICTION

The Fifth Circuit entered its decision on November 8, 2024, and no petition for rehearing was filed. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition for a writ of certiorari is timely filed pursuant to Supreme Court Rule 13 because it is being filed within 90 days of the Fifth Circuit's final judgment.

STATUTORY PROVISION INVOLVED

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

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

STATEMENT OF THE CASE

On October 25, 2022, Petitioner Devin Chaney pleaded guilty to committing a Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a), and bank robbery, in violation of 18 U.S.C. § 2113(a) and (d). Prior to sentencing, the U.S. Probation Office calculated Mr. Chaney's Sentencing Guidelines range, concluding that he qualified as a "career offender" under U.S.S.G. § 4B1.1(a). That assessment was based, in relevant part, on Probation's determination that Mr. Chaney had a prior "controlled substance offense," i.e., his prior Louisiana state conviction for distributing "marijuana," in violation of La. R.S. § 40:966(B)(2)(a) (eff. Aug. 1, 2018, through July 31, 2019). Application of the career-offender enhancement was hugely impactful. As a result, Mr. Chaney's Guidelines range increased by more than six years—from 110-137 months to 188-235 months.

Mr. Chaney objected—pointing out that his Louisiana state conviction did not qualify as a "controlled substance offense" under the Guidelines. He explained that, at the time of his conviction, Louisiana's definition of "marijuana" was broader than the federal definition of that term because it included hemp. Mr. Chaney pointed out that at least two Courts of Appeal already had ruled that state convictions involving marijuana are not "controlled substance offenses" under the Guidelines if the state definition of "marijuana" encompassed hemp at the time of the defendant's conviction.[1] At the time of Mr. Chaney's sentencing, the Fifth Circuit had not yet had

[1] *See United States v. Abdulaziz*, 998 F.3d 519 (1st Cir. 2021) (holding that a 2014 conviction in Massachusetts state court for possession with intent to distribute marijuana was not a "controlled substance offense" under the Sentencing Guidelines because the Massachusetts definition of marijuana at the time of the prior conviction included hemp);

the occasion to reach the issue in a preserved posture, though it later did, ultimately confirming that Mr. Chaney's objection was correct and that prior marijuana convictions like his cannot be used to apply the career-offender enhancement. *See United States v. Minor*, 121 F.4th 1085 (5th Cir. 2024).

Following Mr. Chaney's objection, Probation refused to remove the career offender enhancement nor consider the authority presented by Mr. Chaney on the subject. Indeed, Probation did not provide any substantive response to the defense's objection at all, instead summarily citing an unpunished Fifth Circuit decision that had merely declined to reverse under the plain-error standard of appellate review. *See United States v. Belducea-Mancinas*, No. 20-50929, 2022 WL 1223800 (5th Cir. Apr. 26, 2022). That case held that a similar error—in an unpreserved appellate posture—could not satisfy the "clear or obvious error" requirement of plain-error review since the Fifth Circuit had not yet reached the specific question. The Court did not hold, however, that the argument was wrong. Quite the opposite, Judge Higginson concurred, explaining in great detail why applying the career-offender enhancement based on a prior marijuana conviction like Mr. Chaney's was, in fact, sentencing error—just not plain error on appeal (yet). *Id.* at *2. Nonetheless, Probation concluded that Mr. Chaney's argument was wrong because the Fifth Circuit "had never held" that it was right. In other words, Probation determined that

United States v. Bautista, 989 F.3d 698 (9th Cir. 2021) (holding that a district court plainly erred in concluding that a 2017 marijuana conviction in Arizona was a "controlled substance offense" because the state definition encompassed hemp, explaining that the state offense's "greater breadth is evident from the text").

Mr. Chaney could not have his claim of error adjudicated at all because there was no Fifth Circuit case directly on point.

Defense counsel filed a written response to Probation, explaining that the Fifth Circuit plain-error decision had no bearing on the district court's determination of a legal question *in the first instance* and that the Fifth Circuit's decision did not resolve the question nor relieve the district court of the duty to reach it. Nonetheless, the court at sentencing refused to address the merits of the impactful error identified by Mr. Chaney. Instead, the court "overrule[d]" the objection to the career offender enhancement, stating only that it found "the probation officer's response to be accurate regarding the defendant's status as a career offender in accordance with United States Sentencing Guidelines, Section 4B1.1." The court did not address Mr. Chaney's argument that Probation had relied solely on inapposite Fifth Circuit caselaw, nor did the court address the merits of the hemp-related argument. The court then sentenced Mr. Chaney to a bottom-of-the-Guidelines sentence of 188 months' imprisonment—over six years higher than the bottom of his properly calculated Guidelines range.

Mr. Chaney filed a timely appeal, reraising the career-offender error as his sole challenge to his sentence. Rather than defend Mr. Chaney's sentence on the merits or acknowledge his claimed error, the government simply moved to dismiss the appeal based on the broad appeal waiver provision contained in Mr. Chaney's plea agreement. Specifically, that appeal waiver stated that Mr. Chaney "knowingly and voluntarily":

> a. Waives and gives up any right to appeal or contest his sentence, including any right to appeal any aspect of his sentence, including but not limited to any and all rights which arise under 18 U.S.C. § 3742 and 28 U.S.C. § 1291.
>
> b. Waives and gives up any right to challenge the manner in which his sentence was determined and to challenge any U.S.S.G. determinations and their application by any judge to the defendant's sentence and judgment.

Importantly, Mr. Chaney had entered into that agreement prior to sentencing or issuance of his Presentence Report. Thus, he had no way of knowing at the time that the career offender enhancement would be erroneously applied in his case—despite authority counseling against it—nor, more importantly, that the district court would entirely refuse to reach the merits of the error once alerted to it.

Nonetheless, based on the broad waiver (which is required in all standard plea agreements in the Eastern District of Louisiana), the government argued that Mr. Chaney "knowingly and voluntarily waived his right to appeal his sentence" and that "the waiver covers his current challenge to the application of the Sentencing Guidelines." Though the government had discretion to permit Mr. Chaney's appeal to proceed, it insisted on enforcement of the waiver anyway. *See Garza v. Idaho*, 139 S. Ct. 738, 745 (2019) ("[E]ven a waived appellate claim can still go forward if the prosecution forfeits or waives the waiver."); *United States v. Acquaye*, 452 F.3d 380, 382 (5th Cir. 2006) (recognizing that the government ordinarily urges waiver after the appellant has filed a brief).

Mr. Chaney filed a response in opposition to dismissal. Mr. Chaney noted that the Fifth Circuit had thus far declined to either adopt or reject a "miscarriage of justice" exception to the enforcement of appeal waivers like his and that such an

exception was appropriate in his case. Mr. Chaney observed that numerous other circuits had adopted "miscarriage of justice" frameworks and urged the Fifth Circuit to do the same. He further argued that sentencing appeal waivers like the one in his case are bad policy, harmful to the integrity of the criminal process, and inherently unknowing and involuntary. He acknowledged that those challenges were foreclosed under Fifth Circuit precedent, which long had held that appeal waivers like his are presumptively valid.

The Fifth Circuit carried the government's dismissal motion with the case and required the parties to brief the issues raised in the appeal. Following oral argument, however, the Fifth Circuit panel nonetheless dismissed Mr. Chaney's claims without reaching the merits of his appeal nor deciding one way or the other whether the Circuit would recognize a "miscarriage of justice" exception similar to that adopted by other courts. The court stated only: "We have not adopted a miscarriage-of-justice exception for appeal waivers, and we decline to do so here." *United States v. Chaney*, 120 F.4th 1300, 1303 (5th Cir. 2024).

REASONS FOR GRANTING THE PETITION

This Court must finally resolve the complex circuit conflict concerning appeal-waiver enforcement, which is hopelessly entrenched and has resulted in wild variability from circuit to circuit. The question of when appeal waivers should be enforced is tremendously important—reaching vast numbers of criminal defendants and directly affecting development of criminal law through appellate review. Approximately ninety-seven percent of federal criminal defendants plead guilty

pursuant to plea agreements—agreements that often mandate broad waivers of not just trial rights, but all appellate rights as well.[2] But broad waivers like the one in Mr. Chaney's case are inherently unknowing and involuntary and, therefore, legally dubious. Moreover, as commentators and judges alike have observed, this widespread and compulsory waiver of appellate rights—especially those regarding yet-to-be-made sentencing errors—raises serious policy and fairness concerns, implicating not only the fundamental rights of criminal defendants, but also the health of the criminal process as a whole.

This Court has yet to weigh in on the issue of appeal waivers—thus far declining to address the broader question of their permissibility and, more specifically, the limits, if any, on their enforcement. Unsurprisingly, the circuits are split over the limits on and exceptions to the enforcement of appeal waivers. That split has led to confusion, unpredictability, and disparate treatment of similarly situated individuals. Central to that split is the question of whether to recognize a "miscarriage of justice" exception to appeal-waiver enforcement, and, if so, the contours of such an exception. Absent intervention by this Court, this confusion and conflict will persist. Moreover, if this Court permits appeal waivers to propagate unabated as they have for decades, critical legal questions will continue to be insulated from appellate scrutiny in criminal cases, and fundamental sentencing

[2] *See Missouri v. Frye*, 566 U.S. 134, 144 (2012); Honorable Robert J. Conrad & Katy L. Clements, *The Vanishing Criminal Jury Trial: From Trial Judges to Sentencing Judges*, 86 Geo. Wash. L. Rev. 99, 153 (2018); Susan R. Klein et al., *Waiving the Criminal Justice System: An Empirical and Constitutional Analysis*, 52 Am. Crim. L. Rev. 73, 87, 122-26 (2015); *see also Lafler v. Cooper*, 132 S. Ct. 1376, 1388 (2012) (observing that "criminal justice today is for the most part a system of pleas, not a system of trials.").

errors by district courts will continue to go unchecked. Clarification from this Court is urgently needed.

Mr. Chaney's Petition presents an ideal vehicle for addressing these critically important and long-neglected issues. Mr. Chaney's case involved more than just a run-of-the-mill Guidelines error. To the contrary, the district court abdicated its duty at sentencing to resolve error brought to its attention. Certainly, in waiving the right to appeal that court's sentencing decisions, Mr. Chaney did not knowingly waive his right to the fair and lawful adjudication of sentencing issues before the district court. To the contrary, his waiver of appellate rights *presumed* a full and fair opportunity to adjudicate issues at his sentencing hearing in compliance with due process. This Court must intervene.

I. This Court should finally weigh in on the constitutionality of ubiquitous appeal waivers like the one in this case—which are inherently unknowing and involuntary.

Despite their widespread use—and associated widespread criticism—this Court "has not yet ruled on the constitutionality of plea agreement waivers of the statutory right to . . . direct appeal of sentence after conviction by plea." Klein, *supra* note 1, at 81. Circuit courts, for the most part, have allowed these waivers to proliferate relatively unabated, with few defined limits on their enforcement. "The established law" of the Fifth Circuit "provides that a defendant may, by knowingly and voluntarily entering into a valid plea agreement, waive the statutory right to appeal his sentence," including the right to appeal errors in the district court's calculation of his Sentencing Guidelines range. *United States v. Somner*, 127 F.3d 405, 408-09 (5th Cir. 1997) (Jolly, J., concurring); *see also, e.g.*, *United States v.*

Williams, 949 F.3d 237, 239 (5th Cir. 2020). Other Circuits agree. *See, e.g.*, *United States v. Khattak*, 273 F.3d 557, 561 (3d Cir. 2001); *United States v. Rutan*, 956 F.2d 827, 829 (8th Cir. 1992), *overruled in part by United States v. Andis*, 333 F.3d 886, 892 n.6 (8th Cir. 2003); *United States v. Navarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990); *United States v. Wiggins*, 905 F.2d 51, 52–54 (4th Cir. 1990).

In enforcing appeal waivers, courts have reasoned that, because defendants may waive *constitutional* rights, they also may waive the statutory right to appeal a sentence.[3] But the analogy courts have drawn between sentencing-related appeal waivers and the waiving of constitutional rights by pleading guilty is fundamentally flawed and has been rightly criticized because the constitutional rights waived by a guilty plea are known at the time they are waived:

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

United States v. Melancon, 972 F.2d 566, 571 (5th Cir. 1992) (Parker, J., concurring). In that context, due process is satisfied because the waiver is an intentional, knowing "relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); *see also United States v. Olano*, 507 U.S. 725, 732–33 (1993);

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[3] *See, e.g.*, *Andis*, 333 F.3d at 889 ("[T]he right to appeal is not a constitutional right but rather purely a creature of statute. . . . Given that the Supreme Court has allowed a defendant to waive constitutional rights, we would be hard-pressed to find a reason to prohibit a defendant from waiving a purely statutory right." (internal quotation marks omitted)); *Khattak*, 273 F.3d at 561 ("The ability to waive statutory rights, like those provided in 18 U.S.C. § 3742, logically flows from the ability to waive constitutional rights."); *United States v. Teeter*, 257 F.3d 14, 21-22 (1st Cir. 2001) ("[T]he idea of permitting presentence waivers of appellate rights seems relatively tame because the right to appeal in a criminal case is not of constitutional magnitude.").

Boykin v. Alabama, 395 U.S. 238, 243 n.5 (1969).

By contrast, sentencing-related appeal waivers are made at the time of the plea and therefore lack the essential prerequisite for waiver: contemporaneous knowledge of the rights being relinquished. Defendants enter into appeal waiver agreements long before sentencing occurs, and those waivers often are made, as here, with no agreement between the parties regarding the sentence the defendant might receive or even the Sentencing Guidelines range that will apply. At that moment, the right to appeal has not yet accrued, and the sentencing errors have not yet occurred. There can be no waiver without knowledge of the right waived. *Cf. Newton v. Rumery*, 480 U.S. 386, 390–403 (1987) (approving waiver of right to bring civil suit for false arrest and imprisonment, when right to sue had already accrued).

A defendant cannot preserve sentencing errors for review by making a blanket objection at rearraignment to any prospective error in the court's application of the Guidelines or balancing of the applicable sentencing factors. *See* Fed. R. App. P. 51(b) (requiring an objection "when the court ruling or order is made or sought"); *Puckett v. United States*, 556 U.S. 129, 135 (2009) (describing Rule 51(b) as a "contemporaneous-objection rule"). Conversely, a defendant cannot waive—*i.e.*, knowingly and intentionally relinquish—the right to have such an error corrected without first knowing what the error is. *See Olano*, 507 U.S. at 733. Moreover, it is unreasonable to expect a defendant to anticipate—and thus "know"—whether errors will be made in calculating a sentence, much less the severity of those errors' impact. To the contrary, a defendant presumes that a sentencing court will follow the law and

basic constitutional tenants when rendering a sentencing determination. *United States v. Gordon*, 480 F.3d 1205, 1210 (10th Cir. 2007) ("[W]e should presume that all promises made were legal, and that the non-contracting 'party' who implements the agreement (the district judge) will act legally in executing the agreement." (internal citations and quotation marks omitted)). And, at base, a defendant cannot have concrete knowledge of what is ceded when supposedly waiving the right to appeal a sentence. Thus, sentencing-related appeal waivers are inherently unknowing.

Sentencing-related appeal waivers are also involuntary in federal jurisdictions like the Eastern District of Louisiana, where prosecutors inflexibly mandate that plea agreements include broad, boilerplate waivers of this important statutory right. As has become standard practice in criminal cases in the Eastern District of Louisiana, Mr. Chaney's plea agreement required him to waive all appellate and collateral relief rights except an attack on a sentence imposed in excess of the statutory maximum or a claim of ineffective assistance of counsel. This is the broadest and most restrictive appeal waiver permitted by law and U.S. Department of Justice Policy.[4] By incorporating these waivers into every plea agreement and requiring defendants to assent to the agreement's terms to accept any plea deal—even when those waivers

[4] *See* U.S. Dep't of Justice, "Department Policy on Waivers of Claims of Ineffective Assistance of Counsel," Oct. 14, 2014, https://www.justice.gov/file/70111/download (prohibiting federal prosecutors from seeking in plea agreements to have a defendant waive any claims of ineffective assistance of counsel); U.S. Dep't of Justice, U.S. Attorney's Manual, CRM § 626, "Plea Agreements and Sentencing Appeal Waivers—Discussion of the Law" (detailing various arguments on appeal that cannot legally be waived, including challenges to sentences exceeding the statutory maximum).

were not part of the bargained-for exchange—the government is compelling defendants to waive their appeal rights for no benefit.

Many judges and commentators have expressed dismay over this trend, noting the serious legal and policy concerns raised by the widespread, compelled waiver of appellate rights. For example, these broad appeal waivers require defendants to waive serious errors that they could not have anticipated at the time of relinquishment; arise from inherently inequitable bargaining positions; reduce incentives for careful sentencing and strict compliance with the Sentence Guidelines; insulate serious errors from review and correction; leave difficult legal questions unanswered; and otherwise inhibit development of the law. *See, e.g.*, *Melancon*, 972 F.2d at 573 (Parker, J., concurring) ("[E]ven if I were convinced that the sort of futuristic waiver at issue in this case could be knowing and intelligent, I could not support it. Any systemic benefits that might inhere in this type [of] waiver cannot overcome its extremely deleterious effects upon judicial and congressional integrity, and individual constitutional rights."); *United States v. Mutschler*, 152 F. Supp. 3d 1332, 1339 (W.D. Wash. 2016) ("Although the Court would not intentionally impose an improper sentence, the Court is not infallible and, in the course of formulating a sentence, the Court is often faced with issues on which reasonable minds can differ. The criminal justice system is not improved by insulating from review either simple miscalculations or novel questions of law."); *United States v. Vanderwerff*, No. 12-cr-69, 2012 WL 2514933, at *5 (D. Colo. June 28, 2012) ("Indiscriminate acceptance of appellate waivers undermines the ability of appellate courts to ensure the

constitutional validity of convictions and to maintain consistency and reasonableness in sentencing decisions."); Editorial, *Trial Judge to Appeals Court: Review Me*, N.Y. Times, July 17, 2012, at A24 ("Congress gave appeals courts the power to review federal sentences to ensure the government applies the law reasonably and consistently. Without an appeals court's policing, the odds go up that prosecutors will do neither. Our system of pleas then looks more like a system of railroading."); Andrew Dean, *Challenging Appeal Waivers*, 61 Buff. L. Rev. 1191, 1211 (2013) ("The lack of bargaining equality between the defense and prosecution has led some judges to reject appeal waivers as contracts by adhesion. Because conditioning the plea agreement on acceptance of an appeal waiver skews the balance so far in the prosecution's favor, the defendant has no hope at achieving equal bargaining power. This renders the contract unconscionable."); John C. Keeney, *Justice Department Memo: Use of Sentencing Appeal Waivers to Reduce the Number of Sentencing Appeals*, 10 Fed. Sent. R. 209, 210 (Jan./Feb. 1998) ("The disadvantage of the broad sentencing appeal waiver is that it could result in guideline-free sentencing of defendants in guilty plea cases, and it could encourage a lawless district court to impose sentences in violation of the guidelines. It is imperative to guard against the use of waivers of appeal to promote circumvention of the sentencing guidelines.").

Of course, some courts long have pointed to the institutional benefits of appeal waivers—most commonly, conservation of resources and finality. However, as one district court observed, these benefits may be overblown:

> Any suggestion that unilateral waivers of the right to appeal promote finality is disingenuous. Finality is not secured simply because only the

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

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

Moreover, use of appeal waivers in *every* plea agreement—or, at least, virtually all of them, as occurs in the Eastern District of Louisiana—does not merely reduce direct criminal appeals—it threatens to eliminate them. No doubt, some balance must be struck between the interests of resource management and finality on the one hand, and, on the other, the statutory right to appeal with all of its benefits, such as error correction, guidance for lower courts, and just results. The former cannot be allowed to consume the latter. *Vanderwerff*, 2012 WL 2514933, at *4 ("Prioritizing efficiency at the expense of the individual exercise of constitutional rights applies to the guilty and the innocent alike, and sacrificing constitutional rights on the altar of efficiency is of dubious legality.").

This Court must finally acknowledge and address the widespread practice of blanket appellate waivers.

II. This Court should resolve the entrenched and chaotic circuit split over appeal waiver enforcement, which long has resulted in inconsistent treatment of criminal appellants.

Appeal waivers like the one in this case are ubiquitous across the country, and, although appellate courts recognize their validity as a general matter, the limits courts have set on such waivers and the situations in which courts refuse to enforce them varies wildly by circuit. As one commentator observed, "[i]n the absence of

Supreme Court precedent guiding the enforcement of appeal waivers, . . . various courts of appeal have created their own limits and exceptions to their enforcement." Aliza Hochman Bloom, *Sentence Appeal Waivers Should Not Be Enforced in the Event of Superseding Supreme Court Law: The Durham Rule As Applied to Appeal Waivers*, 18 Fla. Coastal L. Rev. 113 (2016). This means that a defendant in one circuit may be permitted to proceed with an appeal—and have a sentencing error remedied—while an identically situated defendant in another circuit will be deprived of that right entirely. This inconsistency and uncertainty is evident in the various, diverse frameworks courts have developed to examine the validity of appeal waivers. *See generally*, *id*. at 116–22 (outlining the split). The Fifth Circuit, for example, has adopted a two-step inquiry. The court first asks "(1) whether the waiver was knowing and voluntary," and then determines "(2) whether the waiver applies to the circumstances at hand, based on the plain language of the agreement." *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005). The inquiry ends there, and the court thus far has refused to examine any other exceptions to a waiver's enforcement.

By contrast, some appellate courts conduct a *third* step, inquiring whether the court's failure to consider the defendant's claim will result in a "miscarriage of justice." *See, e.g.*, *United States v. Snelson*, 555 F.3d 681, 685 (8th Cir. 2009); *Khattak*, 273 F.3d at 562–63; *Teeter*, 257 F.3d at 25. The First, Third, and Tenth Circuits have recognized some version of this "miscarriage of justice" exception to the enforcement of appeal waivers and have established frameworks for making that determination. *See, e.g.*, *Teeter*, 257 F.3d at 25; *Khattak*, 273 F.3d at 562-63; *United States v. Porter*,

405 F.3d 1136, 1142 (10th Cir. 2005). The Ninth Circuit has similarly recognized such an exception, though it does not necessarily use that term to describe its review of appeal waiver enforcement. *See, e.g.*, *United States v. Atherton*, 106 F.4th 888, 896 (9th Cir. 2024). The Second, Fourth, Sixth, Seventh, Eighth, and D.C. Circuits have exercised discretion to refuse to enforce otherwise valid appeal waivers (sometimes using the term "miscarriage of justice"), but the contours of the exceptions those courts apply are not well defined. *See, e.g.*, *United States v. Johnson*, 347 F.3d 412, 415 (2d Cir. 2003); *United States v. Brown*, 232 F.3d 399, 403 (4th Cir. 2000); *United States v. Chang*, No. 19-1478, 2020 WL 8674183, at *1 (6th Cir. Apr. 23, 2020); *United States v. Nulf*, 978 F.3d 504, 505 (7th Cir. 2020); *Snelson*, 555 F.3d at 685; *United States v. Munafo*, 123 F.4th 1373, 1381 (D.C. Cir. 2024). The Eleventh Circuit, like the Fifth Circuit, has declined to address the issue. *See, e.g.*, *Rudolph v. United States*, 92 F.4th 1038, at 1048 (11th Cir. 2024).

These various, recognized exceptions to appeal-waiver enforcement have proved "infinitely variable." *Teeter*, 257 F.3d at 25 n.9. Indeed, how courts define the "miscarriage of justice" term—and how they apply it—differs tremendously from circuit to circuit. For example, the First Circuit holds broadly that even knowing and voluntary appeal waivers should not be enforced in "egregious cases" and "are subject to a general exception under which the court of appeals retains inherent power to relieve the defendant of the waiver, albeit on terms that are just to the government, where a miscarriage of justice occurs." *Id*. at 25-26. The Tenth Circuit has limited the "miscarriage of justice" exception to four discrete circumstances:

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

Porter, 405 F.3d at 1143. The Third Circuit, while declining to adopt a bright-line rule, considers certain factors (first articulated by the First Circuit), such as:

> the clarity of the error, its gravity, its character (e.g., whether it concerns a fact issue, a sentencing guideline, or a statutory maximum), the impact of the error on the defendant, the impact of correcting the error on the government, and the extent to which the defendant acquiesced in the result.

Khattak, 273 F.3d at 562.

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

observed, though: "[A]ll jurisdictions appear to treat at least some claims as unwaiveable." *Garza*, 586 U.S. at 239. "Most fundamentally, courts agree that defendants retain the right to challenge whether the waiver itself is valid and enforceable—for example, on the grounds that it was unknowing or involuntary." *Id*.

The broad appeal waiver in Mr. Chaney's plea agreement—which encompassed all challenges to the Guidelines and manner in which his sentence was determined—is unjust, unknowing, and involuntary, as discussed above. But even if this Court ultimately determines that appeal waivers like Mr. Chaney's generally are lawful, there should at least be uniform rules governing their enforcement and interpretation, including whether and when appellate courts should review a challenged sentencing error notwithstanding the existence of an applicable appeal waiver. The Court's guidance is urgently needed to clarify those rules, which impact scores of criminal defendants.

III. This case is an ideal vehicle for this Court to address appeal waivers—and Mr. Chaney's circumstances similarly present an ideal opportunity to apply the "miscarriage of justice" exception.

This Court should also grant certiorari in this case because Mr. Chaney's circumstances present an ideal vehicle for this Court to address the validity and enforceability of sentencing-related appeal waivers. Mr. Chaney fully preserved these arguments in opposition to enforcement of his appeal waiver below, and, thus, these issues are cleanly presented for this Court's consideration.

Not only that, Mr. Chaney's case is an ideal lens through which to examine the serious issues arising from broad (and blind) waivers of appellate rights. This was not just a case in which the district court was wrong (and, no doubt, it was). Far

worse, the judge did not consider or adjudicate the merits of the error brought to its attention at all. That was not a run-of-the-mill Guidelines mistake—it was a full abdication of the court's duty at sentencing and a serious deprivation of Mr. Chaney's due process rights. "Certainly a defendant has a right to due process at sentencing." *United States v. Stile*, 845 F.3d 425, 430 (1st Cir. 2017). And "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time *and in a meaningful manner*.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (emphasis added) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982) ("As our decisions have emphasized time and again, the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged."). Thus, "[a]fter conviction . . . [a defendant] retains an interest in a sentencing proceeding that is fundamentally fair." *United States v. Abreu*, 202 F.3d 386, 391 (1st Cir. 2000). "This right is protected both by the Fifth Amendment and by Federal Rule of Criminal Procedure 32." *Stile*, 845 F.3d at 430.

Certainly, in waiving the right to *appeal* sentencing decisions, a defendant does not intend to waive—i.e., knowingly relinquish—the right to the fair and lawful adjudication of sentencing issues before the *district court*. To the contrary, appellate waivers *presume* a full and fair opportunity to adjudicate issues at sentencing in compliance with due process—understanding that the *outcome* may not be in the defendant's favor. *See, e.g.*, *Gordon*, 480 F.3d at 1210. That is because waiver is "an intentional relinquishment or abandonment of a known right or privilege," and courts

"do not presume acquiescence in the loss of fundamental rights." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). In other words, when waiving the right to appeal, a defendant does not waive the right to fair sentencing entirely—he simply waives review of errors that arose following fair sentencing procedure. And the obvious expectation of all parties upon entry of that agreement is that the sentence will be imposed "under fair procedures" and that the sentencing judge will comply with the obligation to properly adjudicate material, disputed issues—seeking to correct errors when they are brought to the court's attention. *United States v. Guillen*, 561 F.3d 527, 530 (D.C. Cir. 2009). Appellate waivers do not relieve district courts of "their obligations to satisfy applicable constitutional requirements," and appeal waivers cannot be enforced when district courts simply fail to do so. *Id*.

In sum, Mr. Chaney's case illustrates the very situation in which appeal waivers like these should be considered unknowing and involuntary or, at the very least, should be held to constitute a miscarriage of justice. As the First Circuit has explained, appeal waivers "are meant to bring finality to proceedings conducted in the ordinary course, not to leave acquiescent defendants totally exposed to future vagaries (however harsh, unfair, or unforeseeable)." *Teeter*, 257 F.3d at 25.

Resolution of these critical issues is long overdue. And Mr. Chaney's case represents an ideal opportunity to finally resolve the reoccurring and broadly impactful questions presented in this Petition.

CONCLUSION

For the foregoing reasons, this Court should grant Mr. Chaney's petition for writ of certiorari.

Respectfully submitted,

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