No. 24-6543

IN THE SUPREME COURT OF THE UNITED STATES

DEVIN CHANEY, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly dismissed petitioner's appeal based on the appeal waiver in his plea agreement.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 3a-7a) is reported at 120 F.4th 1300.[1]

JURISDICTION

The judgment of the court of appeals was entered on November 8, 2024. Pet. App. 1a-2a. The petition for a writ of certiorari was filed on February 6, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1] The appendix to the petition for a writ of certiorari is not consecutively paginated. This brief refers to the appendix as if it were consecutively paginated.

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Louisiana, petitioner was convicted on one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a), and one count of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d). Judgment 1. The district court sentenced petitioner to 188 months of imprisonment, to be followed by four years of supervised release. Judgment 2-3. The court of appeals dismissed petitioner's appeal. Pet. App. 1a-2a.

1. On December 12, 2021, petitioner robbed a Subway restaurant in New Orleans. Presentence Investigation Report (PSR) ¶¶ 23-24. Petitioner entered the store wearing a facemask and forced an employee, at gunpoint, to empty the cash register. Ibid. Petitioner took $600 and fled. Ibid.

Twelve days later, on December 24, petitioner robbed a Capitol One Bank in New Orleans. PSR ¶¶ 25-27. Again wearing a facemask, petitioner forced two bank tellers to give him about $2,500; petitioner handed the first teller a demand note and threatened the other with a handgun. Ibid.

2. A grand jury in the Eastern District of Louisiana returned a superseding indictment charging petitioner with those robberies along with other crimes. Superseding Indictment 1-8. Specifically, the indictment charged petitioner with four counts of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); five counts of brandishing a firearm during and in relation to a crime

of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii); one count of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d); and one count of possessing cocaine hydrochloride with intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(C). Superseding Indictment 1-8.

Petitioner later pleaded guilty, pursuant to a written plea agreement, to one count of Hobbs Act robbery (the December 12 Subway robbery) and one count of armed bank robbery (the December 24 Capitol One robbery). Plea Agreement 1; see Superseding Indictment 1-8. As part of the plea agreement, the government promised to dismiss the nine other charges, and not to bring additional charges arising out of the conduct at issue. Ibid. The plea agreement also provided that petitioner "[w]aives and gives up any right to appeal or contest his guilty plea, conviction, sentence, fine, supervised release, and any restitution imposed by any judge under any applicable restitution statute, including but not limited to any right to appeal * * * any aspect of his sentence, including but not limited to any and all rights which arise under Title 18, United States Code, Section 3742 and Title 28, United States Code, Section l29l." Plea Agreement 3.

The plea agreement also explicitly provided that petitioner "further waives and gives up any right to challenge the manner in which his sentence was determined and to challenge any United States Sentencing Guidelines determinations and their application by any judge to the defendant's sentence and judgment." Plea

Agreement 3. The agreement specified, however, that petitioner "does not waive, and retains the right to bring a direct appeal of any sentence imposed in excess of the statutory maximum" and "to raise a claim of ineffective assistance of counsel." Ibid.

In the agreement, petitioner also acknowledged his "understand[ing] that the sentencing guidelines are advisory and are not mandatory for sentencing purposes" and that "the Court could impose the maximum term of imprisonment and fine allowed by law, including the imposition of supervised release." Plea Agreement 3. And he further acknowledged that the district court, "in determining a fair and just sentence, * * * has the authority and discretion, pursuant to Title 18, United States Code, Sections 3553 and 3661 and the United States Sentencing Guidelines, to consider any and all 'relevant conduct' that the defendant was involved in, the nature and circumstances of the offenses, and the history and characteristics of the defendant." Ibid.

Petitioner and his counsel initialed every page of the plea agreement (including a sealed attachment) and signed the final page. Pet. App. 7a. At his rearraignment, petitioner informed the district court that he had reviewed the plea agreement, that he understood he was waiving the right to appeal, and that his attorney had explained his appeal rights and the effect of waiving them. C.A. ROA 244, 247-249. Petitioner's attorney confirmed that petitioner was pleading guilty "voluntarily and with full understanding and knowledge of his plea." Id. at 251. The court

found that the plea was "knowledgeable" and "voluntary" and accepted it. Ibid.

3. Before sentencing, the Probation Office calculated petitioner's sentencing range under the advisory Sentencing Guidelines to be 188 to 235 months of imprisonment.[2] PSR ¶ 90. Among other things, the Probation Office determined that petitioner was a "career offender" under Sentencing Guidelines § 4B1.1(a) based on two prior felony convictions for controlled substances offenses: a 2012 conviction for possessing cocaine with intent to distribute and a 2019 conviction for distributing (and possessing with intent to distribute) marijuana. PSR ¶ 52. Petitioner objected that his 2019 marijuana conviction could not be used as a predicate offense under Section 4B1.1(a) on the theory that, at the time of his conviction, Louisiana's definition of marijuana was broader than the federal definition because it included hemp. C.A. ROA 320-321. The Probation Office responded that the Fifth Circuit had rejected that line of argument. Id. at 326-327.

The district court overruled petitioner's objection and found that petitioner was a career offender as defined by Section 4B1.1(a). C.A. ROA 255. After petitioner declined the court's invitation "to add any further argument" on his Guidelines objection, the court found "the probation officer's response to be

[2] All citations of the Sentencing Guidelines in this brief refer to the 2021 version in effect at petitioner's sentencing.

accurate regarding the defendant's status as a career offender" under "Section 4B1.1." Ibid. The court sentenced petitioner to concurrent terms of 188 months of imprisonment on each count and concurrent terms of supervised release of three years on the Hobbs Act robbery count and four years on the bank robbery count. Id. at 260-261; Judgment 2-3.

4. Petitioner appealed. In his opening brief, petitioner argued that the district court erred in treating his 2019 marijuana conviction as a controlled substance offense under Section 4B1.1(a). Pet. C.A. Br. 10-21. The government moved to dismiss the appeal based on petitioner's knowing and voluntary waiver. Gov't C.A. Mot. to Dismiss 1. After carrying the motion with the case, C.A. Doc. 70-2 (Jan. 30, 2024), and receiving briefing on the merits, the court of appeals dismissed petitioner's appeal. Pet. App. 1a, 7a.

The court of appeals explained that it analyzes waivers of appeal in plea agreements using contract-law principles and "'a two-step inquiry'" that asks whether "(1) 'the waiver was knowing and voluntary' and (2) 'under the plain language of the plea agreement, the waiver applies to the circumstances at issue.'" Pet. App. 5a (citation omitted). The court found that petitioner's waiver satisfied both requirements. Id. at 6a-7a.

The court of appeals found that petitioner's waiver was knowing and voluntary because he had initialed and signed it; the district court clearly explained the maximum possible sentences;

and the district court confirmed with petitioner that he understood that he was expressly waiving his right to a direct appeal as set forth in the agreement. Pet. App. 6a-7a. The court of appeals rejected petitioner's contrary contention that his waiver was "'inherently unknowing and involuntary'" because "sentence-related appeal rights are unknown at the time they are waived," id. at 6a (citation omitted), as foreclosed by circuit precedent, ibid. (citing United States v. Barnes, 953 F.3d 383, 386-387 (5th Cir.), cert. denied, 141 S. Ct. 438 (2020); United States v. Burns, 433 F.3d 442 (5th Cir. 2005)).

The court of appeals then observed that petitioner's guidelines challenge fell within the scope of his waiver of "any right to challenge * * * any [Guidelines] determinations and their application by any judge to the defendant's sentence" and did not fall within agreement's carveout for "'a direct appeal of any sentence imposed in excess of the statutory maximum.'" Pet. App. 6a (citation omitted); see id. at 7a. The court also rejected petitioners assertion that his appeal fit within an implicit "'miscarriage of justice'" exception to his waiver, noting that it had "not adopted a miscarriage-of-justice exception for appeal waivers" and "decline[d] to do so here." Id. at 6a-7a (citation omitted).

ARGUMENT

Petitioner contends (Pet. 15-27) that the court of appeals erred in enforcing the appeal waiver contained in his written plea

agreement, on the theory that the waiver was inherently unknowing and unintelligent. The court of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or another court of appeals. This Court has repeatedly denied certiorari in cases presenting similar issues.[3] Moreover, this case would be an unsuitable vehicle for addressing the question presented. No further review is warranted.

1. a. This Court has recognized that a defendant may knowingly and voluntarily waive constitutional or statutory rights -- including appellate rights -- as part of a plea agreement. See, e.g., Garza v. Idaho, 586 U.S. 232, 238-239 (2019) (waiver of right to appeal); Ricketts v. Adamson, 483 U.S. 1, 8-10 (1987) (waiver of right to raise a double-jeopardy defense); Town of Newton v. Rumery, 480 U.S. 386, 389 (1987) (waiver of right to file an action under 42 U.S.C. 1983). As a general matter, statutory rights are subject to waiver in the absence of some "affirmative indication" to the contrary from Congress. United States v. Mezzanatto, 513 U.S. 196, 201 (1995). Likewise, even the "most fundamental protections afforded by the Constitution" may be waived. Ibid.

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[3] See, e.g., Allen v. United States, 144 S. Ct. 859 (2024) (No. 23-6405); Rivers v. United States, 144 S. Ct. 215 (2023) (No. 23-5121); Jimenez v. United States, 143 S. Ct. 1745 (2023) (No. 22-536); Harper v. United States, 143 S. Ct. 582 (2023) (No. 22-5111); Sanchez v. United States, 142 S. Ct. 410 (2021) (No. 21-5712); Zamarripa v. United States, 141 S. Ct. 2571 (2021) (No. 20-6668); Goldston v. United States, 141 S. Ct. 828 (2020) (No. 20-5862). A petition presenting a similar issue, Jones v. United States (No. 24-6505), is currently pending.

In accord with those principles, the courts of appeals have uniformly recognized that a defendant's voluntary and knowing waiver in a plea agreement of the right to appeal is enforceable.[4] As the courts have explained, appeal waivers benefit defendants by providing them with "an additional bargaining chip in negotiations with the prosecution." United States v. Teeter, 257 F.3d 14, 22 (1st Cir. 2001); see, e.g., United States v. Elliott, 264 F.3d 1171, 1174 (10th Cir. 2001). In turn, appeal waivers benefit the government and the courts by enhancing the finality of judgments and sentences and discouraging meritless appeals. See, e.g., 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.) (en banc), cert. denied, 540 U.S. 997 (2003); Teeter, 257 F.3d at 22-23.

This case illustrates the mutual benefits of appeal waivers. In exchange for petitioner's plea and waiver of his rights to appeal and collaterally attack his convictions and sentences on

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[4] See United States v. Teeter, 257 F.3d 14, 21-23 (1st Cir. 2001); United States v. Riggi, 649 F.3d 143, 147-150 (2d Cir. 2011); United States v. Khattak, 273 F.3d 557, 560-562 (3d Cir. 2001); United States v. Marin, 961 F.2d 493, 495-496 (4th Cir. 1992); United States v. Melancon, 972 F.2d 566, 567-568 (5th Cir. 1992); United States v. Toth, 668 F.3d 374, 377-379 (6th Cir. 2012); United States v. Woolley, 123 F.3d 627, 631-632 (7th Cir. 1997); United States v. Andis, 333 F.3d 886, 889-891 (8th Cir.) (en banc), cert. denied, 540 U.S. 997 (2003); United States v. Navarro-Botello, 912 F.2d 318, 320-322 (9th Cir. 1990), cert. denied, 503 U.S. 942 (1992); United States v. Hernandez, 134 F.3d 1435, 1437-1438 (10th Cir. 1998); United States v. Bushert, 997 F.2d 1343, 1347-1350 (11th Cir. 1993), cert. denied, 513 U.S. 1051 (1994); United States v. Guillen, 561 F.3d 527, 529-532 (D.C. Cir. 2009).

two counts, the government agreed to dismiss nine additional counts. Plea Agreement 1; Superseding Indictment 1-8. Those dismissed counts included three counts of Hobbs Act robbery, five counts of brandishing a firearm during and in relation to a crime of violence, and one count of possessing cocaine hydrochloride with intent to distribute. Superseding Indictment 1-8; see pp. 2-3, supra. The government further agreed not to pursue additional charges against petitioner arising out of his participation in the five robberies charged in the Superseding Indictment or his participation in the distribution of and possession with intent to distribute controlled substances on or before January 7, 2022. Plea Agreement 1.

The court of appeals correctly enforced petitioner's appeal waiver. Because plea agreements are contractual in nature, courts "begin [their] analysis as [they] would with any contract" by "examin[ing] first the text of the contract." United States v. Gebbie, 294 F.3d 540, 545 (3d Cir. 2002); see United States v. Hahn, 359 F.3d 1315, 1324-1325 (10th Cir. 2004) (en banc) (per curiam); Margalli-Olvera v. INS, 43 F.3d 345, 351 (8th Cir. 1994); see also Pet. App. 5a-6a. Petitioner's plea agreement included an express waiver of the right to appeal "any aspect of his sentence" and "any right to appeal any order, decision, or judgment arising out of or related to Title 18, United States Code, Section 3582(c)(2) imposed by any judge." Plea Agreement 3. Petitioner also specifically "further waive[d] and g[ave] up any right to

challenge the manner in which his sentence was determined and to challenge any United States Sentencing Guidelines determinations and their application" to petitioner's "sentence and judgment." Ibid.

The sole issue that petitioner raised in his opening brief on appeal was whether his prior state-law conviction for distribution of marijuana constituted a "controlled substance offense" under Sentencing Guidelines § 4B1.1(a). Pet. C.A. Br. 2, 10-21 (citation omitted). That issue falls squarely within the plain terms of petitioner's appeal waiver. Indeed, petitioner does not dispute that his appeal is covered by the appeal waiver. Nor does petitioner contest that he expressly acknowledged his knowing and voluntary agreement to the waiver. Indeed, he signed and initialed the agreement, acknowledged that he was waiving his right to appeal the application of the advisory Guidelines, and understood the effect of doing so after discussing it with counsel. C.A. ROA 244-248; Plea Agreement 1-5. The court of appeals correctly dismissed petitioner's appeal.

b. Petitioner nonetheless contends (Pet. 15, 17) that this Court should not enforce his appeal waiver on the theory that sentencing-related appeal waivers are "inherently unknowing and involuntary" because a defendant does not know in advance the exact sentencing-related errors that a court might make. That contention is unsound.

As the D.C. Circuit has noted in rejecting that contention, "[a]ll eleven other courts of appeals with criminal jurisdiction" likewise "have rejected" the contention that "a defendant cannot knowingly waive his right to appeal a sentence that has not yet been imposed," and have "held such waivers are presumptively valid." Guillen, 561 F.3d at 529. Regardless of whether petitioner anticipated that a particular sentencing error might occur, he knowingly waived the right to appeal any alleged error except in the limited circumstances specified in the agreement. See, e.g., ibid. ("An anticipatory waiver -- that is, one made before the defendant knows what the sentence will be -- is nonetheless a knowing waiver if the defendant is aware of and understands the risks involved in his decision."); United States v. Goodall, 21 F.4th 555, 562 (9th Cir. 2021) ("When a defendant waives his appellate rights, he knows that he is giving up all appeals, no matter what unforeseen events may happen. * * * 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.") (citation omitted), cert. denied, 142 S. Ct. 2666 (2022).

Petitioner has not identified any decisions to the contrary.[5] Indeed, this Court "has found that the Constitution, in respect to

[5] In United States v. Atherton, 106 F.4th 888 (2024), a divided panel of the Ninth Circuit focused on the anticipatory

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." United States v. Ruiz, 536 U.S. 622, 630 (2002). Accordingly, a defendant's misapprehension of a "potential defense," ibid., including a constitutional defense that would preclude a death sentence, does not preclude him from relinquishing the defense merely by pleading guilty -- even without a waiver. See United States v. Broce, 488 U.S. 563, 569 (1989).

Petitioner also errs in arguing (Pet. 18-21) that his appeal waiver is involuntary because it contains language that commonly appears in plea agreements executed in the Eastern District of Louisiana. There is no basis for his assertion that the waiver was "not part of the bargained-for exchange," Pet. 18-19, especially given his express and repeated acknowledgments of the waiver in writing and orally at his rearraignment and the significant benefits he received when the government dismissed all of the remaining counts. See pp. 3-5, supra.

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nature of an appeal waiver to deem the waiver unenforceable against the defendant's constitutional challenge, in the absence of waiver language explicitly referring to the constitutional right at issue. Id. at 897-898. But petitioner did not raise a constitutional claim in his appeal, Pet. C.A. Br. 2, 10-21, and the full Ninth Circuit recently granted the government's petition for rehearing en banc -- thereby vacating the panel opinion, Atherton, No. 21-30266, 2025 WL 1187016 (Apr. 24, 2025).

2. Rather than identifying any decision of another court of appeals that has reached a different result in circumstances like those here, petitioner simply asserts (Pet. 21-25) that courts have employed various approaches in identifying the existence and scope of a miscarriage-of-justice exception to the enforceability of appeal waivers. But this case would not implicate any disagreement on that issue because petitioner has not identified a "miscarriage of justice" in this case under any conception of that term.

The district court made clear that it had "reviewed [petitioner]'s objection" to the presentence report's application of Section 4Ba.1(a) and considered "the government's response," "the probation officer's response," "the defendant's sentencing memorandum," and "the government's response to that memorandum." C.A. ROA 255. The court then explained that it was "find[ing] that the probation officer's response to be accurate regarding the defendant's status as a career offender in accordance with * * * Section 4B1.1." Ibid. And contrary to petitioner's insistence that he was deprived of "a full and fair opportunity to adjudicate issues at sentencing," Pet. 26, the court expressly invited petitioner "to add any further argument" on the Guidelines question before finalizing its decision, C.A. ROA 255.

3. Furthermore, this case would be a poor vehicle for addressing the question presented. To the extent that petitioner asserts a procedural claim -- as his invocation of an unstated

"miscarriage of justice" exception to the appeal waiver implies -- he did not object to the procedure in district court, meaning that any claim of error would be subject only to plain-error review. See Fed. R. Crim. P. 52(b). And petitioner does not attempt to show that he could satisfy the plain-error standard.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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