No. 24-6543

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The government's opposition is notable for what it does not dispute. Most fundamentally, the government does not deny the importance of the issue presented—nor could it. The question of appeal-waiver enforcement is fundamental to the modern administration of federal criminal law—reaching vast numbers of defendants and directly affecting development of law through appellate review. Moreover, although the government stresses general circuit consensus that appeal waivers are permissible as a general matter, it does not deny the entrenched conflict over *when courts should decline to enforce* those provisions. Courts and scholars alike have bemoaned this intractable confusion for decades.

With respect to Mr. Chaney, the government's opposition does not dispute that he now is serving a sentence more than six years longer than he should be—an error that went uncorrected. As the government does not deny, the U.S. Attorney's Office for the Eastern District of Louisiana mandates that *every* defendant's plea agreement include the broadest permissible waiver of appellate rights—a contract of adhesion in which defendants are unable to negotiate a bargained-for-exchange for this blind waiver of future error.

The error in this case was both extreme and unanticipated. Apprised of the serious Guidelines miscalculation by the defense, the district court nonetheless failed to fulfill its basic duty to meaningfully resolve objections at sentencing. Then, as it has done in dozens of cases, the Fifth Circuit dismissed Mr. Chaney's appeal at the government's request—refusing to apply or acknowledge the existence of any

exception to appeal-waiver enforcement. That outcome was circuit dependent. The circuits have developed a diverse set of frameworks to address appeal-waiver enforcement. Those frameworks long have been criticized as vague and inconsistent. Some likely would have offered Mr. Chaney relief. Others likely would not have.

This highly impactful, decades-long conflict has proven intractable. It continues to produce disparate treatment, unpredictable results, and intra- and inter-circuit confusion. This Court should intervene and provide much needed clarity.

ARGUMENT

I. This Court should resolve the circuit confusion over this issue, which is critically important to administration of federal criminal law.

A. The government does not deny the circuit split over appeal-waiver enforcement.

First, the government does not deny the entrenched circuit split over appeal-waiver enforcement. Instead, the government moves the goal posts—narrowing the question presented to excise that confusion and paint a picture of uniformity. The government insists that "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." Opp. at 9. That is true, as described in Mr. Chaney's petition. But, as also demonstrated in Mr. Chaney's petition, that broad agreement as to the *general* validity of appeal waivers is meaningless considering the complex circuit split over when and how to enforce them.

The question of *when appellate courts should decline to enforce waivers* is the subject of decades-long confusion and conflict. That split is well-documented by courts and scholars.[1] The situation led one commentator to complain: "The confused state of the law concerning waivers of the right to appeal begs for a coherent and

[1] *See, e.g.*, *United States v. Teeter*, 257 F.3d 14, 25 n.9 (1st Cir. 2001); *United States v. Jones*, 134 F.4th 831, 841 & n.52 (5th Cir. 2025); Derek Teeter, *A Contracts Analysis of Waivers of the Right to Appeal in Criminal Plea Bargains*, 53 U. Kan. L. Rev. 727, 742 (2005); 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); Kristine Malmgren Yeater, Note, *Third Circuit Appellate Waivers: The Mysterious Miscarriage of Justice Standard*, 1 Duq. Crim. L.J. 94 (2010).

comprehensive method of analysis."[2] And, yet, the confusion persists, and this Court has not intervened with a "coherent and comprehensive" framework for the lower courts to apply—despite how routinely they must face this issue. The result is a confusing and inconsistent patchwork of appellate-waiver frameworks, with each court engaging in different analysis from the next. Even among those courts that have adopted a "miscarriage-of-justice" analysis, there is discrepancy and uncertainly. After surveying the law, Judge Selya of the First Circuit observed that the exception itself is "infinitely variable" and that the term "is more a concept than a constant." *Teeter*, 257 F.3d at 25 & n.9.

The Fifth Circuit has refused to address the issue dozens of times—meaning, scores of defendants who would have received meaningful consideration of enforceability in other circuits have been wholesale denied such consideration.[3] The internal fractures over this issue within the circuit emerged in a recent order denying rehearing en banc to review appellate waivers in the context of restitution awards. *United States v. West*, No. 22-11001, 2025 WL 1465120 (5th Cir. May 21, 2025). In the denial order, Fifth Circuit jurists disagreed sharply over the role of appellate review when faced with waiver provisions. Judge Higginson urged against "an ironclad rule which prevents appellate correction of unanticipated, material

[2] Derek Teeter, *supra* note 1.

[3] *See, e.g.*, *United States v. Kelly*, No. 22-10300, 2023 WL 314299 (5th Cir. Jan. 19, 2023); *United States v. Contreras*, No. 22-11102, 2024 WL 1156540 (5th Cir. Mar. 18, 2024); *United States v. Goodwin*, No. 23-20455, 2024 WL 3082337 (5th Cir. June 21, 2024); *United States v. Pruett*, 251 F. App'x 897 (5th Cir. 2007); *United States v. Marrufo*, No. 22-50189, 2023 WL 2573915 (5th Cir. Mar. 20, 2023).

sentencing errors." *Id.* at *2 (Higginson, J., concurring). He explained: "No one—not defendants, not the government, and not judges who impose punishment—would draw confidence from, much less favor, an inflexible regime that deprives courts of the power to correct unanticipated and materially wrong sentences." *Id*. In so urging, Judge Higginson confirmed the Fifth Circuit's "reluctance to confirm what the great majority of other circuit courts have held, . . . namely that, regardless of party contracts to resolve criminal cases, there *always* remains judicial authority to correct 'miscarriages" of justice, regardless of an appeal waiver." *Id.* at *4. Judge Oldham, by contrast, took the position that appellate courts should not just decline to intervene when faced with a waiver, but that those waivers *deprive appellate courts of jurisdiction*. *Compare id.* at *10 (Oldham, J., dissenting) ("*[W]aived* errors are completely off the table. We cannot reach them even if we want to." (emphasis in original)), *with id.* at *3 (Higginson, J., concurring) ("Appeal waivers do *not* deprive courts of jurisdiction. They are creatures of contract that, at most, *allow* courts, in our discretion, to decline to consider arguments that a defendant has voluntarily and knowingly contracted not to contest." (emphasis in original)).

Notably, even the Department of Justice recognizes the difficulty of this issue, specifically instructing prosecutors that they "should consider electing to disregard" an appeal waiver "in a case involving an egregiously incorrect sentence," because "[t]hat would avoid confronting the court of appeals with the difficult decision of enforcing a sentencing appeal waiver that might result in a miscarriage of justice." *See* U.S. Dep't of Just., Criminal Resource Manual § 626. Absent intervention from

this court, however, that "difficult decision" will persist.

B. The government does not deny the importance of this question.

Another non-denial of note in the government's opposition: It does not dispute the critical importance of this issue. Nor could it. Plea bargaining "is not some adjunct to the criminal justice system; it *is* the criminal justice system." Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 Yale L.J. 1909, 1912 (1992) (emphasis in original). In the Eastern District of Louisiana, that "bargain" mandates, as a prerequisite, the waiver of appellate rights. But the proliferation of appeal waivers is not unique to the Eastern District. One study found that, among a sample of 971 randomly selected cases, defendants waived their appellate rights in nearly two-thirds of cases settled by a plea agreement. Nancy J. King and Michael E. O'Neill, *Appeal Waivers and the Future of Sentencing Policy*, 55 Duke L.J. 209 (2005).

As Judge Higginson warned in *West*: "The vast majority of [the] criminal docket arises from guilty pleas, meaning that issues of criminal punishment have great significance. Yet appeal waivers, confected by parties, seek to contract around judicial review of those issues." 2025 WL 1465120 at *2 (Higginson, J., concurring). Thus, the enforcement of appeal waivers absent well-defined exceptions threatens to consume the role of appellate courts in the criminal process entirely: "[T]he reality [is] that appeal waivers—a recent, prosecutorial imperative—themselves are the exception that, if too rigidly applied, can swallow our statutory role of reviewing criminal sentences for correctness." *Id.* at *2.

In other words, there's no denying that the proliferation of appeal waivers is of critical importance to the administration of the federal criminal system. And,

regardless of one's view on the wisdom of this practice, the ubiquity of appeal waiver provisions demands, at the very least, a clear and consistent framework for governing their enforcement.

II. This case is an ideal vehicle for this Court to address this long-neglected issue.

Mr. Chaney's case presents an ideal opportunity to finally reach this issue. His plea agreement contained the broadest possible waiver of appellate rights—one that is non-negotiable in the Eastern District of Louisiana. The government, in its opposition, does not dispute that he is now serving a sentence *six years longer* than he should be because enforcement of that provision barred appellate correction. This was not a run-of-the-mill Guidelines error. Both its character and magnitude set Mr. Chaney's case apart. Indeed, the error insulated from correction was not only tremendously impactful, but the district court below eschewed its duty to meaningfully address Mr. Chaney's objection. The government's various attempts to suggest vehicle-related defects are unpersuasive.

First, the government is wrong to suggest that the issue raised before this Court is somehow unpreserved. Opp. at 15. As explained in Mr. Chaney's petition, Probation incorrectly applied the Guidelines' harsh career-offender enhancement based on a prior Louisiana marijuana conviction that did not qualify as a "controlled substance offense" under the Sentencing Guidelines. *See* C.A. ROA.320. In particular, Probation incorrectly relied on an inapposite Fifth Circuit's case finding no "clear and obvious" under existing caselaw for the purpose of plain-error appellate review. C.A. ROA.326 (citing *United States v. Belducea-Mancinas*, No. 20-50929, 2022 WL

1223800 (5th Cir. Apr. 26, 2022)). As Mr. Chaney pointed out, that had no bearing on the correctness of his objection, the merits of which needed to be resolved by the district court. C.A. ROA.3741. At sentencing, the district court nonetheless eschewed its duty to decide the issue, adopting Probation's incorrect refusal to engage in meaningful analysis. C.A. ROA.255. Thus, the government's focus on preservation is unfounded.

Moreover, the government misunderstands the import of the defective sentencing process in this case. The question of preservation is distinct from the question of whether the circumstances here warrant appellate intervention under a "miscarriage of justice" framework. The district court's abdication of its duties at sentencing sets Mr. Chaney's case apart from those involving standard Guidelines miscalculations. Not only did the district court commit error, but the *manner* in which the court committed that error could not have been anticipated at the time of Mr. Chaney's plea. Certainly, all parties expect, at the very least, meaningful adjudication of error by the sentencing judge, even if appellate review of that decision may be waived. That did not happen here.

Relatedly, the government urges that, "regardless of whether petitioner anticipated that a *particular* sentencing error might occur, he knowingly waived the right to appeal *any* alleged error." Opp. at 12 (emphasis in original). Of course, most circuits have rejected this argument, holding that, regardless of a blanket waiver like this one, at least *some* errors must be reviewed and corrected. As the Fourth Circuit has explained: "[A] defendant who executes a general waiver of the right to appeal

does not subject himself to being sentenced entirely at the whim of the district court." *United States v. Singletary*, 75 F.4th 416, 422 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 519 (2023) (internal quotation marks and citations omitted). Moreover, the premise of appeal waivers is that defendants, while giving up *review* of most errors by a court of appeals, will receive meaningful adjudication by the district court to begin with.

Second, the government incorrectly suggests that, regardless of circuit conflict, Mr. Chaney's case "would not implicate any disagreement on that issue." Opp. at 14. True, any chance of relief would be hopeless in the Eleventh Circuit. There, like the Fifth Circuit, Mr. Chaney's request for relief would simply be dismissed. *See, e.g.*, *Rudolph v. United States*, 92 F.4th 1038, 1048 (11th Cir. 2024). Not so in other circuits, which apply multi-factor frameworks to enforce the "miscarriage of justice" concept. For example, the gravity of the error—here, a substantial six-year swing—is a central consideration in many circuits. *See, e.g.*, *Teeter*, 257 F.3d at 25-26; *United States v. Banks*, 743 F.3d 56, 58-59 (3d Cir. 2014); *United States v. Goodman*, 165 F.3d 169, 174 (2d Cir. 1999). The "character" of the error matters in those circuits too. *Teeter*, 257 F.3d at 25-26; *Banks*, 743 F.3d at 58-59. Thus, the Fourth Circuit, for example, has specifically highlighted defective sentencing *process* as a ground for declining to enforce a waiver. *See, e.g.*, *United States v. Smith*, 134 F.4th 248, 262 (4th Cir. 2025); *United States v. Attar*, 38 F.3d 727, 732 (4th Cir. 1994). In other words, far from a vehicle defect, application of the circuits' conflicting approaches to Mr. Chaney's case reveals the disparate and unfair results caused by the status quo—exactly why this Court should review this issue.

Third, the government insists that review is not appropriate because, "[i]n exchange for petitioner's plea and waiver of his rights to appeal," prosecutors agreed to dismiss some of the counts against him. Opp. at 10. The government appears to suggest that Mr. Chaney is not worthy of relief because he specifically chose to bargain away his appellate rights for some grand benefit. Of course, the frameworks adopted by most circuits necessarily reject this line of reasoning, which, if accepted, would bar consideration of *any* waiver-barred appellate claim merely because a defendant received a benefit in a plea agreement (which should always be the case). Thus, the Second Circuit, for example, considers the benefit received by the defendant as part of its enforcement analysis. *See, e.g.*, *United States v. Rosa*, 123 F.3d 94, 101 (2d Cir. 1997); *Goodman*, 165 F.3d at 174.

More fundamentally, the government is wrong that, in Mr. Chaney's case, his appeal waiver was a bargained-for exchange. Opp. at 13. To the contrary, Mr. Chaney's plea agreement was a contract of adhesion: The U.S. Attorney's Office for the Eastern District of Louisiana requires that *all* plea agreements contain this same, broad waiver. Inclusion of that language is not in exchange for a particular benefit to the defendant, but instead mandated as a matter of course. Defendants cannot negotiate away that provision—it is automatic in every case. The fact that Mr. Chaney "acknowledg[ed]" that provision before pleading guilty is not evidence of any bargain for it. Opp. at 13.

Ultimately, the government's opposition does not deny that Mr. Chaney is serving a prison sentence that is years longer than it should be because of his appeal

waiver. Enforcement of that waiver insulated the error in his case from correction, thus implicating the "difficult decision of enforcing a sentencing appeal waiver that might result in a miscarriage of justice." *See* U.S. Dep't of Just., Criminal Resource Manual § 626. This Court should grant Mr. Chaney's petition to address that difficult issue—a question that long has been the source of widespread confusion and conflict among the circuit courts, to the great detriment of fairness, consistency, and predictability in the administration of criminal appeals.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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