No. 25-___

IN THE

Supreme Court of the United States

CEDRIC RAY JONES,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Natasha R. Khan
Brian Wolfman
Counsel of Record
GEORGETOWN LAW
APPELLATE COURTS
IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 661-6582
wolfmanb@georgetown.edu

QUESTION PRESENTED

The question presented here is the same as the first question presented in the petition in *Hunter v. United States*, No. 24-1063, which this Court granted for plenary review on October 10, 2025. In *Hunter*, the petitioner identified the decision of the Fifth Circuit below as evidencing one side of the circuit split that his petition sought to resolve. *See* Reply Br. in *Hunter v. United States*, No. 24-1063, at 3, 4 n.2, 5.

The question presented is:

Whether the only permissible exceptions to a general appeal waiver are for claims of ineffective assistance of counsel or that the sentence exceeds the statutory maximum.

RELATED PROCEEDINGS

Northern District of Texas

United States of America v. Cedric Ray Jones et al., No. 3:14-cr-300-B (underlying criminal proceeding)

Cedric Ray Jones v. United States of America, No. 3:18-cv-584-B-BT (post-conviction proceeding at issue in this petition)

U.S. Court of Appeals for the Fifth Circuit

United States of America v. Cedric Ray Jones, No. 21-10117 (appellate proceeding below), reported at 134 F.4th 831 (5th Cir. 2025), *reh'g denied* July 29, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

PETITION FOR A WRIT OF CERTIORARI

Petitioner Cedric Ray Jones respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The precedential opinion of the Fifth Circuit, Pet. App. 1a, is reported at 134 F.4th 831. The judgment of the United States District Court for the Northern District of Texas, Pet. App. 31a, is unpublished. That court's order accepting the findings and recommendation of the U.S. magistrate judge, Pet. App. 33a, is available at 2020 WL 7711910. The magistrate judge's findings, conclusions, and recommendation, Pet. App. 35a, are available at 2020 WL 7753718. The Fifth Circuit's order denying rehearing en banc, Pet. App. 49a, is unpublished.

JURISDICTION

The Fifth Circuit entered judgment on April 21, 2025, Pet. App. 1a, and denied petitioner's timely petition for rehearing en banc on July 29, 2025, Pet. App. 49a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fifth Amendment to the United States Constitution provides, in relevant part: "No person shall be … deprived of life, liberty, or property, without due process of law … ."

STATEMENT OF THE CASE

I. Factual background

In 2015, a grand jury charged petitioner Cedric Ray Jones in an eight-count federal indictment for robberies committed in 2014. Fifth Circuit Record on Appeal (ROA) 220-234. Count 1 charged conspiracy to interfere with commerce by robbery in violation of 18 U.S.C § 1951(a) (Hobbs Act robbery). ROA 220. Count 2 charged Jones with using, carrying, and brandishing a firearm in furtherance of a "crime of violence" in violation of 18 U.S.C. § 924(c)(1)(A)(ii). ROA 227. Section 924(c)'s residual clause defines the predicate "crime of violence" as a felony "that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." 18 U.S.C § 924(c)(3)(B). In indicting Jones, the Government used conspiracy to commit Hobbs Act robbery (Count 1) as the predicate crime of violence for Count 2, ROA 227, relying on Section 924(c)'s residual clause, Pet. App. 1a.

Jones pleaded guilty to six of the eight counts, including Counts 1 and 2. ROA 522. The plea agreement included an appeal waiver stating that "Jones waives his rights, conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to appeal from his convictions and sentences." ROA 528. Jones further waived "his right to contest his convictions and sentences in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255." *Id.*

Following a sentencing hearing, Jones was sentenced to 573 months' imprisonment, as follows:

189 months for each of Counts 1, 3, 5, and 7 to run concurrently, 84 months on Count 2 to run consecutively, and 300 months on Count 8 to run consecutively. Pet. App. 4a.

II. Procedural background

In 2018, Jones filed a motion to vacate his conviction under 28 U.S.C. § 2255, alleging that his trial and appellate counsel had been ineffective. Pet. App. 4a; ROA 2. Jones later amended the motion, seeking vacatur of his Count 2 Section 924(c) conviction following the Fifth Circuit's decision in *United States v. Davis*, 903 F.3d 483 (5th Cir. 2018) (per curiam), *aff'd in part, vacated in part on other grounds*, 588 U.S. 445 (2019). *See* ROA 75-76. In *Davis,* the Fifth Circuit first held that a conspiracy charge, like the one that served as the predicate offense for Jones's Section 924(c) conviction, could qualify as a crime of violence under only Section 924(c)'s residual clause. *Davis*, 903 F.3d at 485. It then held that Section 924(c)'s residual-clause definition of a crime of violence is unconstitutionally vague. *Id.* at 486. This Court affirmed the Fifth Circuit's vagueness holding decision in *United States v. Davis*, 588 U.S. 445 (2019). A "vague law," like Section 924(c)'s residual clause, this Court instructed, is "no law at all." *Id.* at 447.

Following this Court's decision in *Davis*, the magistrate judge recommended that the district court deny Jones's motion to vacate. Pet. App. 48a. The magistrate judge noted the Government's acknowledgement that Jones's Section 924(c) conviction was "problematic" because conspiracy to

commit Hobbs Act robbery did not qualify as a predicate crime of violence. Pet. App. 42a. But she found that Jones could not challenge that conviction because the appeal waiver accompanying his plea bargain barred it. Pet. App. 44a-46a. The district court adopted the magistrate judge's recommendation. Pet. App. 33a.

Jones appealed to the Fifth Circuit. As relevant here, Jones argued that (1) his appeal waiver was insufficient to waive his right not to be convicted for conduct that is not a criminal offense, and (2) even if his waiver would otherwise bar his challenge, the Fifth Circuit should adopt a miscarriage-of-justice exception and decline to enforce Jones's waiver. Jones CA5 Opening Br. 6-7.

The panel majority affirmed, holding that general appeal waivers may prevent defendants from challenging illegal and unconstitutional sentences, Pet. App. 7a-8a, even when a defendant has not "understood all the possible eventualities that could … have allowed him to challenge his conviction," *id.* at 10a-11a (quoting *United States v. Barnes*, 953 F.3d 383, 388 (5th Cir. 2020)). The panel majority also declined to recognize a miscarriage-of-justice exception. Pet. App. 21a.

Judge Dennis dissented, observing that "[a]ll agree that Jones is currently serving a sentence for a crime held to be unconstitutional under Supreme Court precedent." Pet. App. 22a (Dennis, J., dissenting). He then explained that Jones's challenge was not barred by his appeal waiver because, in his view, binding precedent "dictate[d] that an indictment's failure to charge a valid predicate offense

is a defect that cannot be waived by the general language of Jones's collateral review waiver." Pet. App. 22a-23a (citation omitted). He would have thus allowed Jones to pursue his *Davis*-based challenge. Pet. App. 23a. Judge Dennis also noted the "force of" Jones's argument for a "miscarriage-of-justice exception" to appeal-waiver enforceability, remarking that the majority "commit[ted] a regrettable error" by refusing to adopt that exception "as most of our sister circuits have done." Pet. App. 23a n.1.

The Fifth Circuit denied Jones's petition for rehearing en banc. Pet. App. 49a-50a.

REASONS FOR GRANTING THE WRIT

This petition presents the same question as the first question presented in the petition in *Hunter v. United States*, No. 24-1063, which this Court granted for plenary review on October 10, 2025. Accordingly, this Court should hold this petition while *Hunter* is pending and then dispose of it in accordance with the decision in *Hunter*.

I. The courts of appeals are deeply divided.

As more fully described in the petition for a writ of certiorari in *Hunter v. United States*, No. 24-1063 (*Hunter* Pet.), at 8-13, the courts of appeals are deeply divided over when a criminal defendant who agrees to a general appeal waiver may still challenge his sentence. The Fifth Circuit recognizes "only two exceptions" to a general appeal waiver: "ineffective assistance of counsel" and "a sentence exceeding the statutory maximum." *United States v. Barnes*, 953 F.3d 383, 388-89 (5th Cir. 2020); *see* Pet. App. 13a. Based solely on that court's restrictive precedent, the

Fifth Circuit refused to allow Jones to challenge his Section 924(c) conviction, Pet. App. 13a-16a, which "all agree" is "unconstitutional under Supreme Court precedent." Pet. App. 22a (Dennis, J., dissenting).

A. Like the Fifth Circuit, the Sixth, Seventh, Tenth, and Eleventh Circuits hold that defendants who enter into general appeal waivers may appeal their sentences only in very narrow circumstances.

The Sixth and Eleventh Circuits allow defendants to appeal in only one additional circumstance beyond the Fifth Circuit's *Barnes* exceptions: when they allege that the sentence was imposed based on a constitutionally impermissible factor (such as the defendant's race). *See Portis v. United States*, 33 F.4th 331, 335, 339 (6th Cir. 2022); *King v. United States*, 41 F.4th 1363, 1367 (11th Cir. 2022). Under that approach, the Sixth Circuit rejected a challenge to a Section 924(c) conviction like Jones's. *Portis*, 33 F.4th at 339. The Tenth Circuit recognizes that exception and one other: "the waiver itself is unlawful because of some procedural error or because no waiver is possible." *United States v. Holzer*, 32 F.4th 875, 886 (10th Cir. 2022) (citation omitted).

The Seventh Circuit has recognized only a "few narrow and rare" grounds for not enforcing an effectively counseled waiver of direct appeal or collateral review. *United States v. Campbell*, 813 F.3d 1016, 1018 (7th Cir. 2016). They include "if a district court relied on a 'constitutionally impermissible factor' like race or gender; if the sentence exceeded the statutory maximum; or if the proceedings lacked a 'minimum of civilized procedure.'" *Oliver v. United States*, 951 F.3d 841, 844 (7th Cir. 2020) (citation

omitted). The Seventh Circuit, like the Sixth, has thus refused to allow a challenge to a Section 924(c) conviction like Jones's. *Id.* at 846-48.

B. On the other side of the split, the First, Second, Fourth and Ninth Circuits permit defendants to bring a wide range of constitutional challenges despite the presence of general appeal waivers. In the Ninth Circuit, defendants can appeal to "challenge that the sentence violates the Constitution," so long as they "did not expressly waive [appeal as to the] specific constitutional right." *United States v. Wells*, 29 F.4th 580, 587 (9th Cir. 2022). Likewise, the First Circuit considers the "clarity," "gravity," and "character" of the error, "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. 2023), *cert. denied*, 144 S. Ct. 229 (2023). The Second Circuit also permits appeals in a broader range of circumstances, particularly where the issue on appeal concerns "a fundamental right." *United States v. Riggi*, 649 F.3d 143, 147 (2d Cir. 2011).

Similarly, in the Fourth Circuit, a general appeal waiver is unenforceable where the "sentencing court violated a fundamental constitutional or statutory right." *United States v. Carter*, 87 F.4th 217, 225 (4th Cir. 2023) (citation omitted). The Fourth Circuit has also recognized that the "criminal justice system … must ferret out and vacate improper convictions" notwithstanding appeal waivers and thus has applied the miscarriage-of-justice exception when a defendant is actually innocent of the charges against him. *United States v. Adams*, 814 F.3d 178, 183-85 (4th Cir. 2016).

It has applied this approach to uphold a defendant's challenge to his plea-bargained Section 924(c) conviction predicated on conspiracy to commit Hobbs Act robbery. *United States v. McKinney*, 60 F.4th 188, 192-93 (4th Cir. 2023). In other words, the Fourth Circuit has set aside an appeal waiver under circumstances identical to those presented by Jones here. Thus, if Jones had challenged his Section 924(c) conviction in the Fourth Circuit, that conviction (and the resulting sentence) would have been set aside.

And under the tests applied in any of the less-restrictive circuits, Jones likely would have succeeded in his constitutional challenge to his Section 924(c) conviction and sentence. Because he was sentenced in the Fifth Circuit, however, he could not.

II. The question presented is important and recurring, and this case presents an excellent vehicle for reviewing it.

A. When and under what circumstances a defendant may challenge his sentence notwithstanding a general appeal waiver presents a question of exceptional importance that affects thousands of criminal defendants. As explained in the *Hunter* petition, "guilty pleas account for ninety-seven percent of all federal convictions—the overwhelming majority of which are by plea agreement." *Hunter* Pet. 15-16 (citation omitted). Presumably, this Court recognized the importance of the issue by granting the petition in *Hunter*.

B. This case presents an excellent vehicle for review. Both the district court and the Fifth Circuit squarely ruled on the question presented, Pet. App.

13a-16a, 33a, 44a-46a, and the Fifth Circuit's stringent circuit precedent was the sole basis for rejecting Jones's appeal, *see supra* at 5.

III. The Fifth Circuit's decision is wrong.

As described more fully in the petition in *Hunter v. United States*, No. 24-1063, the narrow understanding of permissible exceptions to the enforceability of appeal waivers—exemplified by the Fifth Circuit's ruling below—is wrong. *See Hunter* Pet. 20-24.

Prevailing principles of contract interpretation require that a plea agreement, like other contracts, be construed against the government, *cf. United States v. Seckinger*, 397 U.S. 203, 210 (1970), and include the implicit assumption that a defendant's plea-bargained sentence is constitutional, *see United States v. Lajeunesse*, 85 F.4th 679, 694 (2d Cir. 2023). The Fifth Circuit's rule, however, prevents defendants from challenging sentences for "crime[s] held to be unconstitutional," Pet. App. 22a (Dennis, J., dissenting), including those, like Jones's Section 924(c) conviction, that rest on "a vague law [that] is no law at all," *United States v. Davis*, 588 U.S. 445, 447 (2019).

Moreover, courts generally refuse to enforce contracts with oppressive or unconscionable terms. *See Hunter* Pet. 21-22. Yet under the Fifth Circuit's approach, courts countenance unfair surprise to defendants like Jones, who expect to be lawfully sentenced and instead are sentenced based on conduct that does not violate the law.

CONCLUSION

This petition for a writ of certiorari should be held pending this Court's resolution of *Hunter v. United States*, No. 24-1063, and then disposed of in accordance with the disposition in *Hunter*.

Respectfully submitted,

Natasha R. Khan
Brian Wolfman
Counsel of Record
GEORGETOWN LAW
APPELLATE COURTS
IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 661-6582
wolfmanb@georgetown.edu

October 2025