

No. 25-5620

IN THE SUPREME COURT OF THE UNITED STATES

TERRY DUANE QUALLS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

**PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF
CERTIORARI**

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PETITION FOR REHEARING

Petitioner Terry Duane Qualls respectfully petitions under Rule 44.2 for rehearing of the order entered June 29, 2026, denying his petition for a writ of certiorari. Petitioner asks the Court to grant rehearing, vacate the June 29 denial, grant the petition, vacate the judgment of the United States Court of Appeals for the Eighth Circuit, and remand for further consideration in light of *Hunter v. United States*, 608 U.S. ____ (2026).

This request is narrow. Petitioner does not ask the Court to revive the argument that the District Court's appeal-rights statement and the prosecutor's silence, standing alone, voided the appeal waiver. Hunter rejected that argument. Instead, rehearing is warranted because Hunter adopted a different and controlling rule: an appeal waiver is unenforceable when enforcing it would result in a miscarriage of justice.

That rule matters here. Petitioner's appeal was dismissed on the Government's motion without consideration of whether enforcing the waiver would leave in place a sentence on Count 6 that exceeds the lawful non-ACCA maximum. The Court should remand so the Eighth Circuit may apply Hunter in the first instance.

GROUND FOR REHEARING

I. Hunter created a substantial and controlling ground that was not presented as the question in the certiorari petition.

The petition presented the question whether an appeal waiver applies when the sentencing judge advises the defendant that he has a right to appeal and the Government does not object. Pet. 2. The petition asked to be held for, or merged with, Hunter. Pet. 11. The United States agreed that Hunter could affect the proper disposition of this case and requested that the petition be held pending Hunter and then disposed of as appropriate. Mem. for United States 2.

Hunter's final decision resolved more than the oral-advisement question. The Court held that the District Court's statement at sentencing did not modify the written appeal waiver and that the Government did not forfeit its enforcement right by remaining silent at sentencing. But the Court also rejected automatic enforcement of appeal waivers. It approved a miscarriage-of-justice limit on appeal-waiver enforcement and vacated and remanded because the court of appeals had not applied that standard.

That controlling ground was not the ground on which Qualls's petition was framed. Qualls's certiorari question was tied to Hunter's oral-advisement issue. But Hunter now makes clear that the more important question is whether enforcing the waiver would create a miscarriage of justice. The Eighth Circuit dismissed Qualls's appeal without reaching that question. Rule 44.2 permits rehearing because Hunter supplies a substantial and controlling basis for a GVR that was not previously presented as the ground for relief requested here.

II. Qualls's claim falls within the category Hunter identified as a paradigmatic miscarriage-of-justice issue.

Hunter identified as the first example of a miscarriage-of-justice issue a sentence exceeding what the relevant statute allows, most commonly a term of years above the statutory maximum. *Hunter*, 608 U.S. ___, slip op. 12.

This case presents that kind of issue. Qualls's judgment imposed 262 months of imprisonment on Count 6, the 18 U.S.C. §§ 922(g)(1) and 924(e) count. The offense conduct for Count 6 ended on November 23, 2021. Without the ACCA enhancement, the statutory maximum for that count was 120 months. The petition explained that Qualls sought to challenge the ACCA enhancement because the PSR counted two Arkansas convictions for possession of marijuana with intent to deliver - one from 2005 and one from 2011 - as ACCA serious-drug-offense

predicates even though Qualls objected that those Arkansas offenses were categorically overbroad. Pet. 8-9.

The sentencing record, as described in the petition, shows the issue was preserved. Defense counsel objected in writing to the 2011 Arkansas marijuana predicate, then objected at sentencing to the 2005 Arkansas marijuana predicate. The District Court overruled the objections, recognized that the issue was ultimately for the Eighth Circuit and this Court, and later advised Qualls that he could appeal if he believed the sentence was contrary to law. Pet. 8-9.

Qualls does not ask this Court to decide the Arkansas-predicate question in the first instance. Hunter itself declined to decide whether the defendant's appeal satisfied the new standard because this Court is a court of review, not first view. The same course is appropriate here. If Qualls is correct that the ACCA predicates fail, the appeal waiver would leave standing a 262-month sentence on Count 6 despite a 120-month statutory maximum. Hunter requires the Eighth Circuit to decide whether enforcing the waiver in those circumstances would result in a miscarriage of justice.

III. Rehearing would put Qualls in the same procedural posture as other Hunter-held petitions.

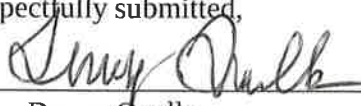
On the same June 29, 2026 order list, the Court granted, vacated, and remanded multiple petitions for further consideration in light of Hunter. One of those cases, *Morrison v. United States*, No. 25-6385, was from the Eighth Circuit. Qualls's petition had likewise been held after the Government advised that Hunter could affect the disposition and was redistributed for the June 25, 2026 conference after Hunter was decided.

A GVR would not require the Court to decide whether Qualls's ACCA argument ultimately succeeds. It would simply allow the Eighth Circuit to apply Hunter's new miscarriage-of-justice standard to the appeal-waiver dismissal in the first instance. Because Hunter directly addresses the enforcement of appeal waivers and because Qualls's appeal involved a claimed sentence above the lawful maximum on Count 6, the Court should grant rehearing and dispose of this case as it did other held Hunter cases.

CONCLUSION

The petition for rehearing should be granted. The Court should vacate the order denying certiorari, grant the petition for a writ of certiorari, vacate the judgment of the Eighth Circuit, and remand for further consideration in light of *Hunter v. United States*, 608 U.S. ____ (2026).

Respectfully submitted,



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IN THE SUPREME COURT OF THE UNITED STATES

RULE 44.2 CERTIFICATE

I, Terry Duane Qualls, certify that this petition for rehearing is restricted to the grounds specified in Supreme Court Rule 44.2, including intervening circumstances of substantial or controlling effect and other substantial grounds not previously presented. I further certify that this petition is presented in good faith and not for delay.

Executed on July 12, 2026.

Terry Duane Qualls
Terry Duane Qualls
Petitioner, Pro Se

No. 25-5620

IN THE SUPREME COURT OF THE UNITED STATES

CERTIFICATE/DECLARATION OF SERVICE AND INMATE MAILING

I, Terry Duane Qualls, declare under penalty of perjury under 28 U.S.C. § 1746 that I am the petitioner in this case and am confined at FCI Oakdale I.

On July 12, 2026, I deposited the original Petition for Rehearing of Order Denying Petition for a Writ of Certiorari in No. 25-5620 in the institution's internal/legal mail system, addressed to:

Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

I also certify that on the same date I served one copy of the Petition for Rehearing by depositing it in the institution's internal/legal mail system, with first-class postage prepaid, addressed to counsel for respondent:

D. John Sauer
Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001
Telephone: (202) 514-2217

Counsel for Respondent United States of America

First-class postage has been prepaid for both mailings. I am proceeding pro se and in forma pauperis.

Executed on July 12, 2026.

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