

No. 25-6389

IN THE SUPREME COURT OF THE UNITED STATES

KINGSLEY ITA, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 15-24) that he should be permitted to appeal his sentence notwithstanding a provision in his plea agreement waiving that right, subject to certain exceptions not applicable here. See Pet. App. A1-A2; Plea Agreement ¶ 13. The petition for a writ of certiorari should either be denied as untimely or held pending this Court's decision in Hunter v. United States, cert. granted, No. 24-1063 (oral argument scheduled for Mar. 3, 2026).

As an initial matter, the petition for a writ of certiorari is untimely and could be denied on that ground alone. The court

of appeals dismissed petitioner's appeal on August 21, 2025, Pet. App. A1-A2, and the 90-day deadline for filing a petition for a writ of certiorari began to run on that date. See Sup. Ct. R. 13.1, 13.3. Accordingly, petitioner's deadline for filing a petition for a writ of certiorari was November 19, 2025. Petitioner did not file his petition until December 8, 2026. This Court has discretion to consider an untimely petition for a writ of certiorari in a criminal case if "the ends of justice so require." Schacht v. United States, 398 U.S. 58, 64 (1970); see id. at 63-65; Bowles v. Russell, 551 U.S. 205, 212 (2007). But the Court recently denied an out-of-time petition raising a similar question presented. See Anderson v. United States, cert. denied, No. 25-5900 (Jan. 20, 2026). This Court may therefore choose not to entertain the petition.

If the Court does not deny the petition as untimely, it should be held pending the decision in Hunter, supra. In that case, this Court is considering, inter alia, the potential circumstances under which a defendant may appeal his sentence notwithstanding an appeal waiver in his plea agreement. Because the Court's decision in Hunter could conceivably affect the proper disposition of the petition for a writ of certiorari, the petition in this case could

be held pending the decision in Hunter and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.