No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LEDALE DEANTHONY SAWYER,

Petitioner,

versus

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

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QUESTION PRESENTED

1. Whether a defendant's appeal waiver bars appellate review of a clear sentencing error when the defendant preserved the exact legal argument below and the sentencing error resulted in the defendant receiving a longer sentence than he would have received absent the error?

2. Alternatively, whether this Court should hold this petition pending its decision in *Hunter v. United States*, No. 24-1063, which presents closely related questions about the scope of exceptions to appeal waivers, and then dispose of this petition as appropriate in light of *Hunter*.

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The opinion of the United States Court of Appeals for the Fifth Circuit dismissing petitioner's appeal is set forth at App. 001.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

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

STATEMENT OF THE CASE

This case presents an urgent question about the enforcement of appeal waivers in the face of clear, preserved sentencing errors subsequently vindicated by controlling precedent. Petitioner Ledale Sawyer raised the exact argument during his sentencing hearing that the Fifth Circuit later endorsed in *United States v. Abercrombie*—that Louisiana domestic abuse battery is not a crime of violence. The district court rejected his argument and imposed a sentence based on the erroneous classification. While Sawyer's appeal was pending, the Fifth Circuit decided Abercrombie, holding that a district court committed "clear or obvious error" in classifying Louisiana domestic abuse battery as a crime of violence. Nevertheless, the Fifth Circuit dismissed Sawyer's appeal without reaching the merits, enforcing his appeal waiver despite the manifest injustice.

I. The guilty plea and appeal waiver

On August 30, 2023, a federal grand jury returned an indictment charging Sawyer with possession of a firearm by a prohibited person under 18 U.S.C. § 922(g)(1) and § 922(g)(9). ROA.12. The indictment alleged that on or about July 16, 2023, Sawyer knowingly possessed a Wise Arms Model WA-15B AR-15 multicaliber rifle, knowing he had been previously convicted of crimes punishable by imprisonment exceeding one year and misdemeanor crimes of domestic violence. ROA.12. The parties entered into a written plea agreement under which Sawyer would plead to a superseding bill of information charging him with possession of a stolen firearm under 18 U.S.C. § 922(j) and the government would dismiss the pending indictment. ROA.282.

The plea agreement contained an appeal waiver providing that Sawyer "waive[d] the right to appeal or 'collaterally attack' the conviction and sentence," except "to raise a claim of ineffective assistance of counsel." ROA.289-90.

On January 8, 2025, Sawyer appeared for re-arraignment and entered a guilty plea to the superseding bill of information. ROA.194.

II. The clear sentencing error

Prior to sentencing, the probation office prepared a presentence investigation report (PSR) calculating Sawyer's base offense level of 26 under U.S.S.G. § 2K2.1(a)(1), based on the probation officer's belief that Sawyer's two prior Louisiana convictions for domestic abuse battery qualified as "crimes of violence" under U.S.S.G. § 4B1.2(a). ROA.302. Using the base offense level of 26 and incorporating

other specific offense characteristics not at issue in this appeal, the PSR calculated Sawyer's total offense level as 29. ROA.303. With a criminal history category of VI, Sawyer faced an advisory guideline range of 151 to 188 months, adjusted to 120 months due to the statutory maximum sentence under 18 U.S.C. § 922(j). ROA.318.

Sawyer objected to the classification of his prior convictions as crimes of violence, arguing that Louisiana domestic abuse battery convictions cannot qualify as crimes of violence under the categorical approach following *United States v. Garner*, 28 F.4th 678 (5th Cir. 2022), and *Borden v. United States*, 593 U.S. 420 (2021). ROA.322-26. Specifically, Sawyer argued that because Louisiana domestic abuse battery is a general intent crime under *State v. Gatewood*, 103 So.3d 627 (La. App. 5th Cir. 2012), and general intent crimes in Louisiana can be satisfied by reckless or negligent conduct per *Garner*, these convictions cannot categorically qualify as crimes of violence. ROA.322-26. Sawyer submitted that removing the crime of violence enhancements would result in a total offense level of 23 and a guideline range of 92 to 115 months. ROA.326.

At the May 1, 2025 sentencing hearing, the court heard argument from both parties on the objection. Counsel for Sawyer specifically cited and relied upon *State v. Gatewood*, arguing that it established Louisiana domestic abuse battery as a general intent crime. ROA.249. Counsel for Sawyer argued that Gatewood was "an actual case" demonstrating that Louisiana domestic abuse battery is a general intent crime that can be satisfied with reckless or negligent conduct. ROA.249-52.

Despite being a seemingly clear-cut issue, the district court ultimately overruled the objection, finding that Louisiana domestic abuse battery necessarily requires the intentional use of force or violence and cannot be committed through recklessness or negligence. ROA.260. The court also rejected *State v. Gatewood* as an actual case example supporting Sawyer's argument. ROA.263. The court adopted the probation office's erroneous guideline calculation, resulting in a total offense level of 29 and criminal history category VI, yielding a guideline range of 120 months imprisonment. ROA.265.

The district court sentenced Sawyer to a within-Guideline sentence of 120 months imprisonment, three years supervised release, and a $100 special assessment. ROA.272-73.

III. The intervening decision in *Abercrombie*

On May 5, 2025, Sawyer filed a timely notice of appeal. ROA.215.

On August 13, 2025—after Sawyer's sentencing but before his opening brief was due—the Fifth Circuit decided *United States v. Abercrombie*, No. 24-30483, 2025 WL 2336106 (5th Cir. Aug. 13, 2025) (unpublished). *Abercrombie* addressed the exact issue Sawyer had preserved below: whether Louisiana domestic abuse battery constitutes a crime of violence under U.S.S.G. § 4B1.2(a).

The Abercrombie Court relied on the same case Sawyer had cited below—*State v. Gatewood*. The Fifth Circuit held:

> Like the offense at issue in *Garner*, Louisiana domestic abuse battery is a general intent crime. Accordingly, it is an offense that can be

> committed recklessly, or even negligently, placing it beyond the ambit of § 4B1.2(a)'s crime of violence definition.

Id. at *5 (citing *Gatewood* and *Garner*). The court concluded:

> Louisiana domestic abuse battery is a general intent crime that can be committed recklessly or negligently. We therefore conclude **that it is clear or obvious error to classify it as a crime of violence** under § 4B1.2(a).

Id. at *6 (emphasis added).

IV. The appeal and dismissal

In his opening brief filed August 19, 2025, Sawyer argued that the district court's classification of his Louisiana domestic abuse battery convictions as crimes of violence was error under *Abercrombie*. Sawyer acknowledged his appeal waiver but argued that *Abercrombie* confirmed the "clear or obvious error" in his sentence and that the government should exercise its discretion not to enforce the waiver under the circumstances.

The government nevertheless moved to dismiss, arguing solely that the appeal waiver barred review. The government did not address the merits of Sawyer's *Abercrombie* argument.

Sawyer opposed the motion, presenting several arguments: (1) the government should exercise prosecutorial discretion and decline to enforce the waiver given *Abercrombie*; (2) the appeal waiver was inherently unknowing and voluntary because how could Sawyer waive a *future error* he could not have known at the time he entered into the plea agreement (acknowledging this argument was foreclosed in the Fifth Circuit); and (3) dismissing the appeal would result in a miscarriage of justice.

On September 22, 2025, the Fifth Circuit dismissed the appeal in a one-paragraph order, stating simply: "IT IS ORDERED that Appellee's opposed motion to dismiss the appeal is Granted." Judge Higginson would have denied the motion or carried it with the case "to get full Government briefing to confirm that Mr. Sawyer is not unlawfully imprisoned as a consequence of our intervening decision in *United States v. Abercrombie*."

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari for two independent reasons. First, this case presents a compelling vehicle for addressing the scope of exceptions to appeal waivers when a defendant has preserved a meritorious legal argument that is subsequently vindicated by controlling precedent during the appeal. Second, at a minimum, this Court should hold this petition pending its decision in the closely related case of *Hunter v. United States*, No. 24-1063, and then dispose of this petition as appropriate.

I. The Fifth Circuit's dismissal of Sawyer's appeal exemplifies the fundamental unfairness of the Circuit's rigid approach to appeal waivers

This case starkly illustrates why the Fifth Circuit's approach to appeal waivers—which recognizes only two exceptions: ineffective assistance of counsel and sentences exceeding the statutory maximum—is untenable. Sawyer did everything right: he preserved his objection, he cited the correct authority (*Gatewood*), he made the exact legal argument that the Fifth Circuit later endorsed in *Abercrombie*. Yet he sits in prison serving a sentence that is admittedly, unquestionably wrong because of

a rigid rule that permits no exception for clear, preserved errors subsequently confirmed by controlling precedent.

A. Sawyer's case presents the paradigmatic example of when an appeal waiver should not be enforced

The circumstances here make enforcement of the appeal waiver particularly unjust. Sawyer preserved his objection below—he did not forfeit or waive the issue. He argued extensively that Louisiana domestic abuse battery is a general intent crime under *Gatewood* and therefore not a crime of violence under *Garner* and *Borden*. ROA.322-26. At sentencing, defense counsel presented oral argument specifically citing and relying on *Gatewood*, arguing it was "an actual case" establishing that Louisiana domestic abuse battery is a general intent crime. ROA.249-52. The district court considered and rejected this argument. ROA.260, 263. Sawyer's argument was correct. Just months after his sentencing, the Fifth Circuit decided *Abercrombie*, which adopted Sawyer's position in its entirety, citing the very same case (*Gatewood*) that Sawyer had cited below. *Abercrombie* held that classifying Louisiana domestic abuse battery as a crime of violence is "clear or obvious error." 2025 WL 2336106, at *6.

The error was not foreseeable when Sawyer entered his plea agreement. At the time he pleaded guilty (January 8, 2025), no Fifth Circuit precedent addressed whether Louisiana domestic abuse battery qualified as a crime of violence. Sawyer had no reason to anticipate that the district court would make what *Abercrombie* later confirmed was "clear or obvious error."

The error had substantial consequences. Because of the erroneous classification, Sawyer received a sentence of 120 months, which was 28 months above the bottom of the correctly calculated range (92 months) and 5 months above the top of the correctly calculated range (115 months). ROA.326.

Finally, correcting the error would serve important systemic interests. Allowing Sawyer's appeal would permit proper application of *Abercrombie* and ensure uniformity in sentencing. As Judge Higginson recognized, there is a serious question whether Sawyer is "unlawfully imprisoned" under *Abercrombie*. App. 001.

B. The Fifth Circuit's rule creates perverse incentives and undermines confidence in the criminal justice system

The Fifth Circuit's rigid approach to appeal waivers creates a system where defendants are punished for making correct legal arguments. Sawyer made exactly the right argument at sentencing—the same argument that *Abercrombie* endorsed three months later. But because he made that argument *before* the published decision rather than *after*, he has no remedy.

The rule also means that sentencing judges have no incentive to get the law right. If a district court knows that its legal errors cannot be corrected on appeal due to appeal waivers, there is less pressure to carefully consider novel legal arguments or wait for clarification from the court of appeals. This directly undermines the quality of district court decision-making in cases where defendants have signed appeal waivers.

Moreover, the Fifth Circuit's approach stunts the development of sentencing law. When defendants with preserved, meritorious legal arguments cannot obtain

appellate review, courts of appeals lack opportunities to clarify unsettled legal questions and provide guidance to district courts. The result is that errors persist and compound across cases because the appellate courts cannot perform their normal error-correction and law-clarification functions.

The rule also treats similarly situated defendants differently. A defendant who goes to trial or pleads without an appeal waiver can challenge an erroneous guidelines calculation. But a defendant like Sawyer who accepts a plea agreement is stuck with the same error. This arbitrary distinction based solely on whether a defendant signed a waiver—not on the merits of the legal claim or the severity of the error—cannot be squared with basic notions of equal justice under law.

C. The circuits are sharply divided regarding the exceptions to general appeal waivers

In the decision below, the Fifth Circuit reaffirmed its precedent holding that there are two—and only two—circumstances under which a defendant who agrees to a general appeal waiver may still appeal his sentence. Three other circuits apply similarly narrow tests. But four circuits have embraced a broader approach that permits defendants to raise constitutional challenges to their sentences when doing so is necessary to avoid manifest injustice or protect fundamental rights. Absent this Court's intervention, this split will continue to fester and produce unequal results based solely on geography. As explained in the petition for writ of certiorari filed in *Munson P. Hunter, III, v. United States*, No. 24-1063:

1. The narrow approach

On one side of the split, the Fifth, Sixth, Tenth, and Eleventh Circuits all hold that defendants who enter into general appeal waivers may appeal their sentence only in a very narrow category of cases. Under their stringent standards, none of these circuits would permit the appeal here.

The Fifth Circuit applies the most stringent standard. It "ha[s] recognized 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). The Fifth Circuit has consistently "decline[d]" to adopt a broader standard for appeal waivers that would permit defendants to raise other constitutional infirmities in their sentences. *See United States v. Chaney*, 120 F.4th 1300, 1303 (5th Cir. 2024), *pet. for cert. filed*, No. 23-30454 (Feb. 6, 2025). The Fifth Circuit has adhered to this cramped view even while acknowledging that caselaw in other circuits "runs counter to ours" on this issue. *Barnes*, 953 F.3d at 389. Thus, in the Fifth Circuit, constitutional challenges to sentences are frequently left unheard and unremedied. And here, the Fifth Circuit rejected Sawyer's challenge to the clear and obvious sentencing error based solely on the court's restrictive precedents. App. 001.

The Sixth and Eleventh Circuits take a similarly limited approach, adding just one more exception to the Fifth Circuit's list: claims alleging that the sentence was imposed based on a constitutionally impermissible factor (such as the defendant's race). *See, e.g., Portis v. United States*, 33 F.4th 331, 335, 339 (6th Cir. 2022) (citing

United States v. Ferguson, 669 F.3d 756, 764 (6th Cir. 2012)) (listing three "possibilities"); *King v. United States*, 41 F.4th 1363, 1367 (11th Cir. 2022) (citing *United States v. Bushert*, 997 F.2d 1343, 1350 n.18 (11th Cir. 1993); *United States v. Howle*, 166 F.3d 1166, 1169 n.5 (11th Cir. 1999)) (listing three "narrow substantive exceptions"), *cert. denied*, 143 S. Ct. 1771 (2023); *United States v. Windham*, 2025 WL 18584, at *7 (11th Cir. Jan. 2, 2025) (per curiam) (applying the exceptions). Like the Fifth Circuit, the Sixth and Eleventh Circuits acknowledge that their approach differs from the broader standards applied by "[s]ome of [their] sister circuits." *Rudolph v. United States*, 92 F.4th 1038, 1048 (11th Cir. 2024), *cert. denied*, 2025 WL 76523 (U.S. Jan. 13, 2025); *see also United States v. Johnson*, 2024 WL 5480549, at *2 (6th Cir. Dec. 18, 2024), *petition for cert. filed*, No. 23-5854 (Mar. 17, 2025).

For its part, the Tenth Circuit recognizes one additional, but equally limited, exception: "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) (marks omitted) (quoting *United States v. Sandoval*, 477 F.3d 1204, 1208 (10th Cir. 2007)); *id.* (waiver unenforceable "only in one of four situations" (citation omitted)).

2. The broad approach

In direct contrast, the First, Second, Fourth, and Ninth Circuits permit defendants to bring a wide range of constitutional challenges to their sentences, notwithstanding a general appeal waiver.

In the Ninth Circuit, for example, defendants who waived their general right to appeal can nonetheless 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. Well*s, 29 F.4th 580, 587-88 (9th Cir. 2022); *United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007). As the Ninth Circuit has explained, it would be a "miscarriage of justice" to enforce the waiver in the face of an unconstitutional sentence. *Wells*, 29 F.4th at 583-84 (citation omitted).

The First Circuit takes a similarly expansive approach. 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 allows defendants to bring constitutional challenges beyond those permitted by the courts on the Fifth Circuit's side of the split, particularly where the issue on appeal concerns "a fundamental right." *United States v. Riggi*, 649 F.3d 143, 147 (2d Cir. 2011). The Second Circuit sometimes does so by reading appeal waivers narrowly, so as "to properly safeguard defendants' rights." *United States v. Burden*, 860 F.3d 45, 53-55 (2d Cir. 2017) (per curiam); *see also United States v. Arevalo*, 628 F.3d 93, 99 (2d Cir. 2010) (due process violation may "void an appeal waiver").

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, 225-26 (4th Cir. 2023) (quoting *United States v. Archie*, 771 F.3d 217, 223 (4th Cir. 2014)). The Fourth Circuit has applied this

exception to permit review of claims that a defendant's due process rights were violated at sentencing. *See, e.g., United States v. Singletary*, 75 F.4th 416, 421-23 (4th Cir.), *cert. denied*, 144 S. Ct. 519 (2023). The Fifth Circuit's side of the split would prohibit that claim.

D. Basic principles of contract law and constitutional law support an exception in these circumstances

Basic contract principles support recognizing exceptions to appeal waivers beyond the two the Fifth Circuit acknowledges. These principles apply with particular force in Sawyer's case.

1. Frustration of purpose and unfair surprise

Under contract law, a party may be excused from performance when the hopes, purposes, or objects of the entire contract or one of the parties have been frustrated by supervening events. According to the Restatement (Second) of Contracts § 265 (1981), frustration of purpose occurs when "after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made." When such an event occurs, performance under the contract is excused "unless the language or circumstances [of the contract] indicate the contrary." *Id.*

Here, Sawyer entered the plea agreement with the understanding that he would receive a sentence free from clear and obvious errors in its calculation. The district court's commission of what *Abercrombie* later confirmed was "clear or obvious error" frustrated that basic expectation. This is not a case where Sawyer challenges a discretionary sentencing decision or disagrees with the court's weighing of the §

3553(a) factors. Rather, the district court applied the wrong legal rule in calculating the advisory guidelines range—a mechanical determination that *Abercrombie* confirms was erroneous. This type of clear legal error was not contemplated by the parties and exceeds the risk that defendants assume when entering appeal waivers.

2. Public policy concerns

The public policy defense to contract enforcement applies when "the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms." Restatement (Second) of Contracts § 178 (1981). Here, the public's interest in accurate application of the sentencing guidelines and proper implementation of *Abercrombie* outweighs the government's interest in enforcing the waiver.

3. The implied covenant of good faith

Every contract "imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." Restatement (Second) of Contracts § 205 (1981). That duty is violated when enforcement would contravene "the justified expectations of the other party." *Id.* § 205 cmt. a. The duty of good faith emphasizes fairness and consistency with the justified expectations of the other party.

When Sawyer entered his plea agreement, he justifiably expected that the district court would correctly apply the law in calculating his guidelines range. The commission of "clear or obvious error" in that calculation violated Sawyer's justified expectations. Moreover, enforcing the waiver to prevent correction of that error would violate the duty of good faith. The rationale behind this doctrine is that there is an

implied term of the contract that extraordinary circumstances—such as a clear legal error subsequently confirmed by controlling precedent—will not occur.

E. This case is an ideal vehicle for review

This case cleanly presents the question of whether appeal waivers should be enforced when a defendant has preserved a correct legal argument that is subsequently vindicated by controlling precedent. There are no vehicle problems. The issue was fully briefed below, and the Fifth Circuit's dismissal rested solely on the appeal waiver. The correctness of Sawyer's underlying argument is not disputed—*Abercrombie* confirms it was correct. The case is final and ripe for review.

Moreover, the case presents the issue in a particularly compelling posture. The intervening precedent (*Abercrombie*) is from the same circuit and is controlling. The intervening precedent explicitly holds the district court's ruling was "clear or obvious error." The defendant preserved the identical argument below and cited the same authority (*Gatewood*) that *Abercrombie* relied upon. The timing demonstrates the unfairness: sentencing occurred before *Abercrombie*, but the appeal was still pending when *Abercrombie* issued.

II. Alternatively, This Court should hold this petition pending its decision in *Hunter*

Even if the Court is not inclined to grant plenary review in this case, it should hold this petition pending its decision in *Hunter v. United States*, No. 24-1063, and then dispose of the petition as appropriate in light of *Hunter*. In *Hunter*, this Court granted certiorari on the question 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. That question directly implicates the issue presented here: whether the Fifth Circuit's recognition of only two exceptions to appeal waivers is correct. Depending on how this Court resolves *Hunter*, Sawyer's case may need to be remanded for the Fifth Circuit to reconsider whether the circumstances here—preserved error subsequently confirmed as "clear or obvious" by controlling precedent—fall within a recognized exception.

Holding this petition would promote judicial economy by avoiding duplicative briefing on overlapping questions, would ensure consistency in how this Court addresses exceptions to appeal waivers, and would preserve Sawyer's rights while the Court resolves the closely related issues in *Hunter*. Moreover, Sawyer's case presents unique circumstances—intervening controlling precedent confirming that the district court committed "clear or obvious error" on a fully preserved issue—that may warrant recognition of an exception even under a framework that does not broadly expand appealable claims. Judge Higginson's statement demonstrates that the Fifth Circuit itself recognizes serious questions about enforcing Sawyer's waiver. At a minimum, the Fifth Circuit should have an opportunity to reconsider its dismissal in light of whatever framework this Court announces in *Hunter*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this December 22, 2025,

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