No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ARTHUR RAFFY ASLANIAN,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

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Appointed Under the Criminal Justice Act of 1964

QUESTIONS PRESENTED FOR REVIEW

- Whether a post-trial waiver of appeal is unknowing and involuntary, and therefore invalid under the Fifth Amendment, where petitioner was not fully advised of the consequences of the post-trial agreement and the nature of his appellate rights.
- Whether an appeal waiver applies when the district court's advisals during the courtroom colloquy suggested that the defendant was not waiving his right to appeal his convictions and sentence on all counts.

STATEMENT OF RELATED PROCEEDINGS

The proceedings identified below are directly related to the above-captioned case in this Court.

- United States v. Arthur Raffy Aslanian, No. 22-CR-445-JGB, U.S. District Court for the Central District of California. Judgment entered May 15, 2024.
- United States v. Arthur Raffy Aslanian, No. 24-3172, U.S. Court of Appeals for the Ninth Circuit. Order issued October 8, 2025.

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The opinion of the court of appeals, as well as the district court's judgment of conviction and sentence, are unreported but reprinted in the Appendices to the Petition.

JURISDICTION

On October 8, 2025, the Court of Appeals entered its order dismissing the petitioner's appeal in light of the appeal waiver, thus affirming his conviction and sentence for use of interstate commerce facilities in the commission of murder-for-hire in violation of 18 U.S.C. § 1958(a), conspiracy to commit arson of a building used in interstate commerce in violation of 18 U.S.C. § 844(n), as well as one count of attempted arson of a building used in interstate commerce and one count of arson of a building used in interstate commerce in violation of 18 U.S.C. § 844(i). This Court has jurisdiction under 28 U.S.C. § 1254(1).

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 …."

INTRODUCTION

This case involves two issues concerning appellate waivers which are closely related to those raised in another case currently pending before this Court in *United States v. Hunter*, Case Number 24-1063, 2024 WL 5003582 (5th Cir. 2024); *cert granted by Hunter v. United States*, 2025 WL 2885281 (October 10, 2025). Specifically, petitioner challenges the Ninth Circuit's dismissal of his appeal based on a broad general appeal waiver in a post-trial agreement where the district court's statements at the hearing conflicted with the written document. The appellate waiver was enforced despite a brief colloquy lasting just a few minutes which did not contain basic inquiry into petitioner's understanding of the agreement.

In *Hunter*, which has been briefed and is scheduled for argument in eight weeks, this Court will address the exceptions to a general appeal waiver, as well as the effect of a district court's pronouncements in court concerning the waiver. Given the circuit split on these issues, this Court should grant the petition for writ of certiorari in petitioner's case, or, alternatively, hold the case pending the decision in *Hunter*.

STATEMENT OF THE CASE

A. District Court Proceedings

On July 7, 2023, a jury convicted Arthur Raffy Aslanian of five counts related to murder-for-hire and arson.

The murder-for-hire counts concerned an alleged plot to murder two people:

Mark Young, Mr. Aslanian's former bankruptcy attorney, and Shahram Elyaszdeh, Mr. Aslanian's former adversary in a civil case. Specifically, Count One charged conspiracy and use of interstate commerce facilities in the commission of murder-for-hire of both Elyaszadeh and Young in violation of 18 U.S.C. § 1958(a), while Count Two charged use of interstate commerce facilities in the commission of murder-for-hire of Elyaszadeh in violation of 18 U.S.C. § 1958(a).

The arson counts concerned Mr. Aslanian's alleged attempts to burn down an apartment building he owned which he planned to develop into a multi-story residential rental complex. Specifically, Count Three charged Mr. Aslanian alone with conspiracy to commit arson in violation of 18 U.S.C. §§ 844(i) and 844(n); Count Four charged attempted arson in violation of 18 U.S.C. §§ 844(i), 2(a), (b); while Count Five charged arson in violation of 18 U.S.C. §§ 844(i), 2(a), (b).

Much of the government's case relied on the testimony of cooperating co-defendant Sesar Rivera, as well as the recorded phone calls of confidential informant Gaspar Pacheco who had absconded and was a fugitive at the time of trial.

After trial, the district court granted petitioner's motion for a new trial pursuant to Fed. R. Crim. P. 33 based on the possibility that the jury's verdict on the Count One conspiracy charge rested on an agreement between Mr. Aslanian and cooperating co-defendant Rivera after Rivera had started to work as a government informant. The court earlier had rejected the defense's request that the jury be instructed that "[t]here can be no conspiracy when the only person with whom the

defendant allegedly conspired was a government informant who secretly intended to frustrate the conspiracy." *See Sears v. United States*, 343 F.2d 139, 142 (5th Cir. 1965) ("there can be no indictable conspiracy with a government informer who secretly intends to frustrate the conspiracy"); *United States v. Escobar de Bright*, 742 F.2d 1196, 1198-1200 (9th Cir. 1984) (same). The district court found "that, in failing to give the *Sears* instruction, the Court deprived the jury of the opportunity to consider Defendant's theory, which it could have adopted." *Id*. at 16. The district court thus granted Mr. Aslanian's new trial motion as to Count One only. The government filed a notice of appeal of the district court's ruling.

Mr. Aslanian and the government then entered into an unusual written "Post-Trial Agreement and Waiver of Rights." Pursuant to this document, Mr. Aslanian agreed:

- He would waive his right to appeal his convictions for Counts Two through Five. He would not challenge the district court's order denying his motion for judgment of acquittal and denying his new trial motions on Counts Two through Five, nor would he file any post-trial motions.
- He would not file a notice of appeal and agreed that doing so would constitute a material breach of the Agreement.
- He would give up any right to bring a post-conviction collateral attack on the convictions or any sentence imposed, except for one based on a claim of ineffective assistance of counsel.
- He would waive the appeal of his sentence provided he received no more than

292 months of imprisonment.

- Notwithstanding the district court's granting his new trial motion as to Count One, he would pay full restitution to the victims of the counts for which he was convicted, including Count One.

In return, the government would recommend a term of imprisonment of no more than 292 months and would waive appeal provided that the sentence was no less than 240 months of imprisonment. The government would dismiss its appeal of the district court's order granting the new trial motion as to Count One, but Mr. Aslanian agreed that the district court could consider the conduct underlying Count One in determining the guidelines and the sentence imposed.

Furthermore, the parties agreed to advisory sentencing guidelines calculations. Mr. Aslanian could argue for a sentencing range outside the guidelines as long as it was above the statutory mandatory minimum. The government could argue for any sentence up to and including 292 months. Mr. Aslanian agreed that he understood the district court was not bound by the terms of the Agreement and would be free to exercise its discretion to impose any sentence between the statutory mandatory minimum and maximum sentences for the counts of conviction.

On May 6, 2024, the district court put Mr. Aslanian under oath to ask if he agreed to be bound by the post-trial agreement. Mr. Aslanian agreed that he had read and signed the agreement that was filed on the court's docket; he had discussed the agreement with his lawyer and had been given the opportunity to ask

questions before he signed it; he felt that he understood the agreement; and he understood the district court was not a party to the agreement.

The district court then asked Mr. Aslanian if he understood that by signing the agreement, he was waiving his right to appeal his convictions on Counts 3 to 5 and the sentence "subject to certain conditions set forth in this same agreement."[1] He agreed that he had. When asked if he entered into the agreement voluntarily, he answered, "Well, considering the idea that we are driving towards resolve, Your Honor, and to secure benefits thereto, I am trying to participate in resolution. So, yes, I … agree with that. I just want to be on the record on that.". He was satisfied with the performance of his attorney. He also understood that he would make restitution payments to the victim charged in Count One, who was no longer a party to the agreement. After briefly questioning defense counsel, the district court found that "Mr. Aslanian has voluntarily agreed to and signed this agreement and agreed to be bound by its provisions and that the provisions contained in the agreement … voluntarily bind both parties."

The district court then turned to the sentencing portion of the hearing, ultimately agreeing with the guideline calculations set forth in the Post-Trial Agreement. Finding the government's recommended 292-month sentence excessive, the court reduced the sentence to 240 months custody – 120 months on Count 2, and 240 months on Counts 3, 4, and 5, all terms to be served concurrently. The court also imposed 3 years of supervised release, a $200,000 fine, restitution to Young in

[1] The written agreement called for waiver of appeal of Counts 2 to 5. The government did not object.

the amount of $15,371.62, and a $400 special assessment. The government moved to dismiss Count One, and the motion was granted.

At the conclusion of the hearing, the district court stated: "Mr. Aslanian, I've imposed a sentence on you. By your agreement, you've waived your right to appeal the sentence. If you feel that regardless of your waiver you need to appeal, then you must file a notice of appeal within 14 days of the entry of the judgment." Mr. Aslanian indicated that he understood and also that he planned to appeal. *Id*. He mailed a *pro se* Notice of Appeal that same day, which was filed on May 13, 2024.

On May 7, 2024, the government filed a motion for voluntary dismissal of the appeal of the new trial motion as to Count One, which was granted by the Ninth Circuit. *See* Ninth Circuit Case No. 23-2963, Docket Nos. 6-7.

B. Ninth Circuit Proceedings

Mr. Aslanian' filed a brief in the Ninth Circuit challenging the appellate waiver in his post-trial agreement and raising substantive challenges to his convictions. He acknowledged that his written post-trial agreement contained a broad appellate waiver of critical claims that had been preserved at trial as well as a waiver of sentencing claims as long as his sentence was 292 months or less. He noted this Court's recognition in *Garza v. Idaho* that "no appeal waiver serves as an absolute bar to all appellate claims." *See* 586 U.S. 232, 238 (2019). That is, defendants retain the right to challenge whether an appellate waiver is valid and enforceable, particularly whether it was made knowingly and voluntarily. *Id*. at 239. Given deficiencies in the district court's colloquy regarding the waiver, he

argued the appellate waiver was invalid because it was not made knowingly and voluntarily.

Furthermore, he argued that regardless of this, because the district court only advised him that he was waiving his right to appeal his convictions on Counts Three to Five, and the government did not object, he retained his right to appeal Count Two. The district court also told him only that he had waived his right to appeal his sentence at the conclusion of the colloquy.

The government filed a motion to dismiss the appeal based on the appellate waiver in the Post-Trial Agreement, and Mr. Aslanian filed an Opposition.

On October 8, 2025, the Ninth Circuit granted the government's motion to dismiss the appeal "in light of the valid appeal waiver." *See* Order, Ninth Circuit Case No. 24-3172 (October 8, 2025). The Court found that "[t]he record reflects that appellant understood and voluntarily accepted the agreement's terms, and received the benefit of his bargain." The district court's comments at the conclusion of the hearing did not affect his appellate rights. *Id.*

REASONS FOR GRANTING THE PETITION

On October 10, 2025, this Court granted the petition for writ of certiorari in *Hunter v. United States*, Case Number 24-1063. That case raises similar issues to those in petitioner's case – specifically as to the scope of permissible exceptions to a general appeal waiver and how a district court's advisals which are inconsistent with the written waiver affect its application when the government does not object. The briefs on the merits in *Hunter* have now been filed, and the case is set for

argument on March 3, 2026.

As the *Hunter* petition points out, "courts of appeal are deeply divided over the circumstances under which a defendant may appeal his sentence notwithstanding a general appeal waiver." *See* Hunter Pet. for Cert. at 2. The Fifth Circuit only allows two circumstances under which a defendant who signs a general appeal waiver may nevertheless appeal, while other circuits, including the Ninth, have additional exceptions. *Id.* at 2-3. More specifically, the Fifth, Sixth, Tenth, and Eleventh Circuits take a narrow approach, allowing exceptions to a general appeal waiver only in a very limited number of situations. *See, e.g., United States v. Barnes*, 952 F.3d 383, 388-89 (5th Cir. 2020); *Portis v. United States,* 33 F.4th 331, 335, 339 (6th Cir. 2022); *United States v. Holzer*, 32 F.4th 875, 886 (10th Cir. 2022). In contrast, the First, Second, Fourth, and Ninth Circuits take a broader approach with more exceptions. *See, e.g., United States v. Boudreau,* 58 F.4th 26, 33 (1st Cir. 2023); *United States v. Riggi,* 649 F.3d 143, 147 (2d Cir. 2011); *United States v. Wells*, 29 F.4th 580, 587-88 (9th Cir. 2022).

The courts of appeals are also divided as to how a district court's instruction that a defendant has the right to appeal affects an otherwise valid appeal waiver. Compare *United States v. Arias-Espinosa,* 704 F.3d 616, 618 (9th Cir. 2012) (appeal is permissible despite written waiver where district court unequivocally, clearly, and without qualification states at sentencing that appellant has the right to appeal his conviction and government does not object); *United States v. Fleming*, 239 F.3d 761, 765 (6th Cir. 2001) (rejecting approach of Ninth Circuit); *United States v.*

Teeter, 257 F.3d 14, 25 (1st Cir. 2001) (same); *United States v. Ogden*, 102 F.3d 887, 888-89 (7th Cir. 1996) (same).

Petitioner's case illustrates the injustice in strict enforcement of an appeal waiver, particularly when the terms of the agreement are complex, require profound concessions with little benefit to the defendant, and the district court spends only minutes inquiring into the defendant's understanding of its terms. Here, Mr. Aslanian's written plea agreement contained broad waivers as to critical appellate claims that had been preserved at trial, including a myriad of issues raised in his motions for judgment of acquittal and new trial litigated in the district court. Although the ostensible benefit to him was that he was proceeding to sentencing only on Counts Two through Five, under the contract he agreed that the facts underlying Count One could be considered in determining his sentence and that he would pay restitution to the victim who was charged only in Count One.

The sentencing guidelines to which Mr. Aslanian agreed called for an upward adjustment for multiple-counts that was not required under the Guidelines. And the maximum sentence which the government could request under the guidelines was above the statutory maximum of any one count and would require stacking to accomplish.

Little of this, however, was addressed during the district court's colloquy in accepting the agreement. The district court did not review the statutory maximums or the fact that they could be stacked, nor was the mandatory minimum addressed. The district court did not review the agreed-upon guidelines (which were disputed

by the probation officer), how they could be achieved given the statutory maximums, and at what sentence Mr. Aslanian and the government would each lose their appellate rights. The district court did not review the specific appellate issues that Mr. Aslanian was waiving such as his new trial and sufficiency arguments, and did not review that the facts underlying Count One would be considered in arriving at the sentence. Nor did the district court review the severe, one-sided penalties for a so-called "breach" of the contract by Mr. Aslanian which could be triggered by the filing of a motion or notice of appeal.

The Agreement required enormous concessions by Mr. Aslanian without advisal. Given the consequences of such waivers – which implicated fundamental Due Process rights – the error was plain and affected Mr. Aslanian's substantial rights. But for this error, he would not have entered into the Post-Trial Agreement which had little benefit to him. The Ninth Circuit's cursory order dismissing the appeal ignored the profoundly unfair colloquy which led to this draconian result.

In addition, the district court gave contradictory and misleading advisals as to what appellate rights petitioner was waiving, and the government did not object to these pronouncements. Specifically, the district court asked Mr. Aslanian if he understood he was waiving his right to appeal his convictions on Counts Three through Five, and he assented. The terms of the written plea agreement, however, called for waiver of appeal on Counts Two through Five. Later, at the conclusion of the hearing, the district court advised Mr. Aslanian merely that he had waived his right to appeal the sentence, suggesting he retained the right to appeal his

convictions. The government remained silent. Nonetheless, the Ninth Circuit found that these statements were not sufficiently unequivocal to affect the written appeal waiver.

Given the circuit split as to the scope of appeal waiver exceptions and the effect of the district court's pronouncements which conflict with the written waiver, this Court should grant the petition for writ of certiorari as it did in the *Hunter* case, or hold the case pending the decision in *Hunter*.

CONCLUSION

On the basis of the foregoing, the Court should grant the petition for writ of certiorari and, along with the decision in the *Hunter* case, resolve these important federal questions that have divided the appellate courts. Alternatively, petitioner requests that this Court hold the petition pending the outcome of the *Hunter* case.

Date: January 5, 2026

Respectfully Submitted,

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