

No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

October Term, 2025

FREDRICK DONTAE SLADE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. IS A DEFENDANT'S RIGHT TO DUE PROCESS OF LAW VIOLATED WHEN THE GOVERNMENT REQUIRES AN APPEAL WAIVER AS PART OF A PLEA AGREEMENT?

LIST OF PARTIES

All parties to this case appear in the caption of cases on the cover page.

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The Petitioner, Fredrick Dontae Slade, respectfully requests that a writ of certiorari issue to review the Order of the United States Court of Appeals for the Fourth Circuit announced on October 16, 2025, dismissing Petitioner's appeal, finding that he had previously waived his right to appeal his sentence.

OPINIONS BELOW

A Panel of the Fourth Circuit Court of Appeals dismissed Petitioner's appeal by Order filed October 16, 2025, a copy of which appears as Appendix A.

JURISDICTION

This petition is filed within 90 days of the decision of the Court of Appeals and is therefore timely. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part, no person in any criminal case shall be “deprived of life, liberty or property, without due process of law;...”

STATEMENT OF THE CASE

On March 28, 2023, a Grand Jury sitting in the Middle District of North Carolina returned a three-count indictment charging Petitioner with one count of possession with intent to distribute a mixture and substance containing a detectable amount of cocaine base in violation of 21 U.S.C. § 841(a)(1), one count of possession of a handgun in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c) and one count of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g). On June 5, 2024, Petitioner entered a plea of guilty to one count of possession with intent to distribute cocaine base and one count of possession of a firearm by a felon. Petitioner's plea of guilty was pursuant to a written plea agreement filed with the Court. The presentence investigation report, revised on December 19, 2024, determined Petitioner's total offense level to be twenty-seven with a criminal history category of III. The resulting guideline imprisonment range was 87-108 months. The court then sentenced Petitioner to a term of 108 months to be followed by a term of three years of supervised release. The remaining count of the indictment was dismissed.

On appeal the Fourth Circuit Court of Appeals granted the government's motion and dismissed Petitioner's appeal based on an appeal waiver included in Petitioner's plea agreement.

STATEMENT OF THE FACTS

Petitioner had previously been convicted in the United States District Court for the Middle District of North Carolina in August 2010. On March 23, 2022, Alamance County officers conducted surveillance at 702 Elizabeth Street in Burlington, North Carolina, alleged to be appellant's residence. Petitioner was observed leaving the residence in a 2007 Dodge Caliber. He was the only person in the vehicle. Petitioner travelled to 209 Bland Boulevard, where he got out of his car and dropped something into the mailbox at that home. Officers, believing that Petitioner had just put drugs in the mailbox, left a surveillance car to watch the mailbox, but other officers proceeded to follow appellant to 118 Bland Boulevard, a laundromat. Petitioner went into the laundromat, but after a few minutes, left and got back into the driver's seat of the Dodge Caliber. At that point, he was approached by two officers from the Alamance County Sheriff's Office, who informed him that they had observed him driving on a suspended license. They asked Petitioner to get out of the vehicle. Petitioner did not, and officers feared that he was going to drive away. Officers directed him not to drive the vehicle and then opened the driver's side door to remove appellant. Petitioner then placed the car in reverse and accelerated. One of the officers was dragged as they attempted to subdue the Petitioner while the car was in motion. Petitioner's vehicle was blocked by another law enforcement officer's vehicle. Petitioner's vehicle had moved approximately 35 feet before it came to a stop.

Petitioner was removed from the vehicle while continuing to resist arrest. A small baggie was observed sticking out of his jacket pocket, which was later secured

and analyzed and determined to contain 8.02 grams of cocaine base. A subsequent search of his vehicle disclosed that on the front seat was a “ghost gun,” similar to a Glock 9x19 that had a 50 round drum magazine attached to it. The magazine contained 13 rounds of 9mm ammunition. The firearm also appeared to contain an auto-sear, commonly known as a Glock switch. A subsequent search of the mailbox at 209 Bland Boulevard revealed that 4.9 grams of suspected cocaine base was located in the mailbox.

REASONS FOR GRANTING THE WRIT

As part of the plea agreement in this case, Petitioner was required to waive his appellate rights. While the appeal waiver allowed Petitioner to appeal on the basis of ineffective assistance of counsel or prosecutorial misconduct, the waiver specifically required Petitioner to waive his right to appeal the sentence imposed. He also waived his right to contest his conviction or sentence in post-conviction proceedings, including proceedings under 28 U.S.C. § 2255. The District Court used specific facts to establish Appellant’s guideline range as required by sentencing guidelines. In determining the appropriate sentence within that range, the Court considered these factors a second time and emphasized them in determining that Appellant should receive a sentence at the high end of the range. On appeal, Appellant argued the use of sentencing factors to both establish a guideline range, and then to determine a sentence within that range effectively amounts to impermissible double counting and renders the sentence unreasonable.

Petitioner sought to challenge the District Court’s ruling by right of appeal.

The government moved to dismiss Petitioner's appeal. That motion was allowed by the Fourth Circuit based on Petitioner's appeal waiver in his plea agreement.

Petitioner asserts that the appeal waiver violates his right to due process of law for a variety of reasons. When considering appeal waivers, other courts have found them to be problematic for a variety of reasons. First, as noted in *U.S. v. Melancon*, 972 F.2d 566, 571 (5th Cir. 1992) (Parker, J., concurring specially), an appeal waiver can never be knowingly and intelligently entered into.

As an initial matter, I do not think that a defendant can ever knowingly and intelligently waive, as part of a plea agreement, the right to appeal a sentence that is yet to be imposed at the time he or she enters into the plea agreement; such a "waiver" is inherently uninformed and unintelligent.

U.S. v. Melancon, 972 F.2d 566, 571 (5th Cir. 1992) (Parker, J., concurring specially).

Further, appeal waivers have been found to undermine the very purpose of the sentencing guidelines:

The very purpose of the Sentencing Guidelines was to assume more uniformity in criminal sentencing. That was the intent of Congress and the intent of the Guidelines. See 28 U.S.C. §§ 991(b)(1)(B), 994(f); United States Sentencing Commission, Guidelines Manual, Chapter One – Introduction, Part A at 2 (Nov. 1997); S. Rep. No. 225 at 150-51 (1984), reprinted in U.S.C.C.A.N. 3182, 3334; *United States v. Ready*, 82 F.3d 551, 556 (2d Cir. 1996). What the government seeks to do through the appeal waiver provision is inconsistent with the goals and intent of Congress and the goals and intent of the Sentencing Commission. It will insulate from appellate review erroneous factual findings, interpretations and applications of the Guidelines by trial judges and thus, ultimately, it will undermine uniformity. The integrity of the system depends on the ability of appellate courts to correct sentencing errors, but the waiver provision at issue here inevitably will undermine the important role of the courts of appeals to correct errors in sentencing, a role that Congress has specifically set out for them.

U.S. v. Raynor, 989 F. Supp. 43, 48 (D.D.C. 1997).

Additionally, other courts have found that the power of the government to extract appeal waivers in the plea bargain process is inherently unfair to defendants and results in an unconstitutional shift of the power to the prosecutor's side.

Finally, the Court is unwilling to accept the specific waiver of appeal rights provision offered to the defendant because the same plea agreement does not limit the government's right to appeal a sentence. This glaring inequality strengthens the conclusion that this kind of plea agreement is a contract of adhesion. As a practical matter, the government has bargaining power utterly superior to that of the average defendant if only because the precise charge or charges to be brought and thus the ultimate sentence to be imposed under the guidelines scheme – is up to the prosecution. See *United States v. Roberts*, 726 F. Supp. at 1363. To vest in the prosecutor also the power to require the waiver of appeal rights is to add that much more constitutional weight to the prosecutor's side of the balance.

U.S. v. Johnson, 992 F. Supp. 437, 439 (D.D.C. 1997).

As in *Johnson*, the appeal waiver in this case only limits Petitioner's right to appeal and not the government's right to appeal. Accordingly, Petitioner contends that the plea agreement he entered into was a contract of adhesion. Petitioner asserts that when defendants enter into plea agreements that amount to contracts of adhesion, which cannot by definition be knowingly and intelligently entered into, it necessarily violates the defendants' due process rights as guaranteed by the Fifth Amendment to the United States Constitution.

This Court should use this case as a vehicle to address the government's inherently unfair use of appeal waivers as part of the plea negotiation process. Appeal waivers have become commonplace in various jurisdictions across the country. The

time has come for this Court to determine the constitutionality of appeal waivers.

CONCLUSION

For reasons set forth above, Petitioner requests this Court grant a writ of certiorari to review the United States Court of Appeals for the Fourth Circuit judgment below to answer this important question of constitutional law.

Respectfully submitted this the 9th day of January 2026.

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