

No. 25-6731

IN THE

Supreme Court of the United States

KEITH LASHON BELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL BRIEF OF PETITIONER

Mr. Bell's petition raised a single question: "[w]hether general contract principles . . . apply to the enforcement of appellate waivers in plea agreement." Pet. Cert. at i (filed Jan. 30, 2026). The United States on Tuesday told this Court the answer to that question is "yes." Remand is therefore appropriate.

Pursuant to this Court's Rule 15.8, Petitioner Keith Bell respectfully notes the position of the United States expressed at oral argument in *Hunter v. United States*, No. 24-1063 (argued Mar. 3, 2026), and its effect on Mr. Bell's petition for writ of certiorari. Mr. Bell had raised contract defenses to the enforcement of the appeal waiver in his plea agreement, but the Fourth Circuit does not recognize such claims and declined to consider them below. Pet. App. 1a-6a. He petitioned for certiorari on whether contract principles apply to the enforcement of appellate waivers in plea agreements. Pet. Cert. at i. He asked that the Court hold the petition for *Hunter v. United States*, No. 24-1063, which concerns related issues. Pet. Cert. at 9, 23.

At oral argument in *Hunter*, the United States repeatedly stated its considered position that contract defenses *do* apply to plea agreements:

[Counsel]: Our position is not that contract defenses do not apply to plea agreements or to appeal waivers. It is that the contract defenses that Petitioner has raised here fail.

They fail because a subsequent sentence that a defendant receives under just ordinary principles of contract law, the ones that Petitioner has relied on here, do not make the agreement against public policy or unconscionable . . . or frustrated purpose

Hunter v. United States, No. 24-1063, Tr. Oral Arg. at 80.

Justice Gorsuch: [Y]our answers to Justice Jackson about the contract approach, as you're calling it, you argue you win under contract principles. You don't argue that they don't apply.

[Counsel]: Correct. Correct.

Tr. Oral Arg. at 85.

Justice Barrett: [L]et me ask you that, just as a matter of first principles, is it the government's position that this should be litigated as a contract case?

[Counsel]: I do think so. And I think that there's not really another source of law that Petitioner has identified to lodge this miscarriage of justice exception. It's not contract principles.

Justice Barrett: No, no, no, no, the government. Do you think of this, do you think the Petitioner is right to litigate this? Because you've gone along with it –

[Counsel]: Yes, yes.

Justice Barrett: -- and you've said if we're talking about contracts, it doesn't work.

But do you think of this challenge as something to which the contract analogy should apply?

[Counsel]: I do think that this type of argument is one to which the contract analogy should apply.

Tr. Oral Arg. at 93-94.

Justice Barrett: [. . .] So is your position that the contract analogy applies but none of the contract defenses work in this context?

[Counsel]: Correct.

Tr. Oral Arg. at 94.

Justice Gorsuch: And then with respect to contract in what you call contract world, you agree that, at least in principle, a defendant would have contract defenses, correct?

[Counsel]: Yes.

Tr. Oral Arg. 108-09. *See also* Tr. Oral Arg. at 96 (“If there are other defenses out there, it was on Petitioner to raise them[.]”).

Mr. Bell *did* raise traditional contract defenses in opposing the government’s motion to dismiss his appeal under the appellate waiver in the plea agreement. *United States v. Bell*, No. 23-4627 (4th Cir.), Doc. 39. The Fourth Circuit refused to consider them. Pet. App. 1a-6a. The United States’ concession in *Hunter* therefore directly addresses the question presented here. In light of the position of the United States established at argument in *Hunter*, the Court should vacate and remand Mr. Bell’s case to the Fourth Circuit to consider the contract claims on the merits in the first instance.

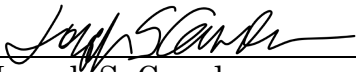
Remand would not be futile in Mr. Bell’s case. Unlike in *Hunter*, the contract defenses Mr. Bell asserted do not depend on the subsequent sentence he received, but relate to the construction, validity, and enforceability of the agreement as entered. Doc. 39 at 13-17. Therefore, under the position of the United States asserted at oral argument in *Hunter*, remand is appropriate for the Fourth Circuit, which did not pass on Mr. Bell’s contract claims, to consider those claims in the first instance.

It is within this Court’s discretion to grant, vacate, and remand in light of the position of the United States expressed in another case, and it has done so before. *See Alvarado v. United States*, 497 U.S. 543, 544 (1990) (“not unusual” to grant,

vacate and remand “in light of the representation made by the United States in this Court”) (citations omitted); *see also Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (cataloguing cases granted, vacated and remanded in light of, *inter alia*, “positions newly taken by the Solicitor General”). This policy is especially strong in criminal cases where a defendant “is subject to the continuing coercive power of the Government in the form of imprisonment” and “had no appellate review of his legal arguments against conviction and sentence[.]” *Stutson v. United States*, 516 U.S. 193, 194-95 & 196-97 (1996).

Respectfully submitted,

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