

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DAVANTAE LONDON,
Petitioner,

v.

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

In the decision below, the Fifth Circuit held that a general appeal waiver in a plea agreement prohibits an appeal that challenges the consecutive nature of a sentence, even if the appeal waiver does not specifically address such a claim. The Third, Seventh, Tenth, and D.C. Circuits hold the same view. In contrast, the First and Second Circuits hold that a general appeal waiver does not bar a challenge to the consecutive nature of a sentence. The Sixth Circuit takes a middle-ground approach, holding that a general appeal waiver does not bar a challenge to the consecutive nature of a sentence, unless the waiver cites to 18 U.S.C. § 3742.

This case also presents the same question for which this Court has granted certiorari in *Mason Hunter v. United States*, No. 24-1063 (Oct. 10, 2025): 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. As such, this petition should be held pending the final decision in *Hunter*, and addressed considering that decision. If the Court does not reach the question presented by *Hunter*, this petition should be granted.

The questions presented, therefore, are:

1. Whether a general appeal waiver that does not mention the right to challenge the consecutive nature of a sentence bars such a challenge.

2. 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.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. London*, No. 25-20102 (5th Cir.) (appeal dismissed based on appeal waiver).
- *United States v. London*, No. 4:20-CR-154-1 (S.D. Tex).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Davantae London petitions for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The Fifth Circuit’s order dismissing this case (Pet. App. 1a) is unreported.

JURISDICTION

The Fifth Circuit entered judgment on November 11, 2025. Pet. App. 1a. The deadline to file a petition for writ of certiorari is February 9, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT 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” U.S. CONST. AM. V.

STATEMENT OF THE CASE

This case presents an opportunity to resolve a circuit split concerning general appeal waivers in plea agreements, which thousands of defendants enter each year.

Below, the Fifth Circuit found that Mr. London’s general appeal waiver, which did not specifically waive a challenge to the consecutive nature of his sentence, prohibited Mr. London’s challenge to the consecutive nature of his federal sentence to his undischarged term of state incarceration. The same approach is applied by the

Third, Seventh, Tenth, and D.C. Circuits. Directly conflicting with this approach, the First and Second Circuits would have allowed Mr. London to challenge the consecutive nature of his sentence.

This is a question of importance because the federal criminal justice system “is for the most part a system of pleas, not a system of trials.” *Missouri v. Frye*, 566 U.S. 134, 143 (2012). Tens of thousands of defendants resolve their cases by plea each year, and many of those cases involve a broad and general appeal waiver that waives appeal of “the sentence.”

On March 4, 2020, while serving a 10-year state sentence based on a Texas robbery conviction, Mr. London was federally indicted in the United States District Court for the Southern District of Texas. ROA.18. Mr. London was brought from state prison to federal court for arraignment. ROA.28.

Through a later superseding indictment, Mr. London was charged with 13 counts: eight counts of robbery (Counts 1, 2, 4, 5, 7, 9, 10, and 12); three counts of brandishing a firearm in connection with a robbery (Counts 3, 11, and 13); and two counts of discharging a firearm in connection with a robbery (Counts 6 and 8). ROA.92-101.

A. The Plea Agreement and Sentencing.

On September 23, 2024, Mr. London and the government entered into a plea agreement in which Mr. London pleaded guilty to two counts of interference with

commerce by robbery and two counts of brandishing a firearm in relation to those robberies. ROA.216. The plea agreement contained an appeal waiver, which stated:

Defendant is aware that Title 28, United States Code, section 1291, and Title 18, United States Code, section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, section 2255, affords the right to contest or “collaterally attack” a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or “collaterally attack” the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, section 2255.

Pet.App.4a-5a.

The Presentence Investigation Report (PSR) recommended that Mr. London’s federal sentence run consecutively to his undischarged state term of incarceration. ROA.388 (PSR ¶ 85). Mr. London objected to this recommendation and argued that the federal sentence should run concurrently because the federal conduct was relevant to the state conduct. ROA.422-23.

At sentencing, the district court overruled the defense’s objection, finding that the state case and federal case were separate conduct. ROA.344-45. The court announced a total sentence of 20 months on the robbery counts. ROA.359. It imposed the mandatory minimum consecutive sentence of 84 months on each of the convictions for brandishing a firearm. ROA.360. The total term of imprisonment

was 188 months. ROA.360. It imposed the entire term of 188 months to run consecutively to Mr. London's undischarged state sentence. ROA.361.

On March 7, 2025, a judgment reflecting the pronounced sentence was entered. ROA.243-48. Mr. London filed a notice of appeal on March 21, 2025. ROA.253.

B. The Appeal.

Mr. London challenged the consecutive nature of his sentence on appeal, arguing that, because the basis for the state term of incarceration was relevant to the federal case, the Sentencing Guidelines recommended a concurrent sentence. *See* U.S.S.G. § 5G1.3(b). In response, the government argued that the waiver of appeal in Mr. London's plea agreement included his challenge to the consecutive nature of the sentence. *See United States v. London*, No. 25-20102 (5th Cir. Oct. 29, 2025), Doc. 42. Mr. London responded that the waiver did not bar the appeal because (1) it was a general waiver that did not address the consecutive nature of the sentence, and (2) enforcing the waiver would result in a miscarriage of justice. *See United States v. London*, No. 25-20102 (5th Cir. Nov. 6, 2025), Doc. 43.

On November 11, 2025, the Fifth Circuit issued an order granting the government's motion to dismiss. Pet. App. 1a.

REASONS FOR GRANTING THE PETITION

A. The Circuits are split on whether a general appeal waiver bars a challenge to the consecutive nature of a sentence.

This petition should be granted because this case presents a circuit split on whether a general appeal waiver prohibits a challenge to the consecutive nature of a sentence. U.S. SUP. CT. R. 10(a). This “important matter” needs to be resolved. U.S. SUP. CT. R. 10(a).

The Second Circuit holds that a general waiver of appeal does not prohibit a challenge to the consecutive nature of a sentence. *United States v. Williams*, 260 F.3d 160, 164-65 (2d Cir. 2001). The Second Circuit has “routinely held” that general waivers prohibit only a challenge to the length of the sentence, not a challenge to whether the sentence is consecutive. *United States v. Rivera-Santiago*, 834 F. App'x 630, 632 (2d Cir. 2020) (collecting cases); *Williams*, 260 F.3d at 164-65; *United States v. Brown*, 232 F.3d 44, 48 (2d Cir. 2000). The First Circuit agrees and holds that, unless the waiver specifically refers to the consecutive nature of the sentence, it does not waive such a challenge. *United States v. Santiago-Burgos*, 750 F.3d 19, 23 (1st Cir. 2014).

Meanwhile, the Third, Fifth, Seventh, Tenth, and D.C. Circuits hold that, unless the consecutive nature of the sentence is specifically mentioned in a waiver, a general appeal waiver bars such a challenge. *See United States v. Banks*, 743 F.3d

56, 59 (3d Cir. 2014); *United States v. Ortiz*, 784 F. App'x 285, 286 (5th Cir. 2019) (unpublished); *United States v. Lacy*, 813 F.3d 654, 657 (7th Cir. 2016); *United States v. Belcher*, 637 F. App'x. 515, 516–17 (10th Cir.2016) (unpublished); *United States v. Jackson*, 26 F.4th 994, 1000 (D.C. Cir. 2022).

The D.C. Circuit has stated that an appeal waiver that addresses the length of a sentence includes an appeal to the consecutive nature of the sentence because, “whether a sentence runs consecutively or concurrently to another sentence is inherently determinative of the duration of that sentence.” *Jackson*, 26 F.4th at 1000. That position directly conflicts with the Second Circuit, which holds that a defendant’s waiver of his right to appeal the “length of his sentence,” does not address the consecutive nature of the sentence. *United States v. Stearns*, 479 F.3d 175, 178 (2d Cir. 2007).

Finally, the Sixth Circuit takes a different approach. *See United States v. Callier*, 565 F. App'x 423, 425 (6th Cir. 2014) (unpublished) (discussing various cases). Like the First and Second Circuits, a general waiver that does not address the consecutive nature of a sentence does not prohibit such a challenge. *Id.* (discussing *United States v. Bowman*, 634 F.3d 357 (6th Cir. 2011)). But if the waiver refers to 18 U.S.C. § 3742, which grants defendants the right to appeal a sentence, then the right to appeal the consecutive sentence is waived. *Callier*, 565 F. App'x at 425 (discussing *United States v. Darby*, 549 Fed.App'x. 499, 500–01 (6th Cir. 2014)).

These varying approaches call for intervention by this Court. They present an “important matter,” U.S. SUP. CT. R. 10(a), because 97% of federal criminal cases are resolved by guilty plea. U.S. SENT. COMM’N, *Sourcebook of Federal Sentencing Statistics* (2025) at 30. In 2024, 59,922 out of 61,678 federal criminal cases were resolved by a guilty plea. *Id.*

There is little doubt that most of these cases involved a plea agreement. U.S.S.G. Ch. 1, Pt. A (stating “many of the[] cases [resolved by a guilty plea] involve some form of plea agreement”); *Missouri v. Frye*, 566 U.S. 134, 143 (2012). This Court has explained that plea bargaining is “not some adjunct to the criminal justice system; it is the criminal justice system.” *Frye*, 566 U.S. at 143-44.

And there is little doubt that most plea agreements contain appeal waivers. Such waivers have “become the norm.” *Cook v. United States*, 111 F.4th 237, 254 (2d Cir. 2024) (Robinson, J., dissenting from denial of reh’g *en banc*). A nationwide study from 2005 found that 65.2% of defendants who entered plea agreements waived appellate rights. Nancy J. King & Michael E. O’Neill, *Appeal Waivers and the Future of Sentencing Policy*, 55 DUKE L.J. 209, 231 (2005). “There is no reason to suspect that these numbers would be lower today;” they may be higher. *Cook*, 111 F.4th at 254 (Robinson, J., dissenting). Appeal waivers are involved in tens of thousands of criminal cases each year.

The sample appeal waiver provided by the Department of Justice prohibits the defendant from “appeal[ing] any sentence within the maximum provided in the statute(s) of conviction.” U.S. DEP’T OF JUST., CRIM. RES. MANUAL § 626 (2024). As the law stands today, this language, prohibiting appeal of a sentence within the statutory maximum, would prohibit an appellate challenge to the consecutive nature of a sentence in some parts of the nation, but not in others. *Compare, Stearns*, 479 F.3d at 177, 178 (similar language did not prohibit challenge), *with, Lacy*, 813 F.3d at 657 (opposite).

This circuit split on an “important matter” is squarely presented for review by this case. U.S. SUP. CT. R. 10(a). Mr. London challenged the consecutive nature of the sentence, both in district court and on appeal. The Fifth Circuit dismissed the appeal based on the appeal waiver. Pet.App.1a. The appeal waiver in this case is general in nature and does not specifically mention the consecutive nature of the sentence. Pet. App.4a-6a. It states that Mr. London “knowingly and voluntarily waives the right to appeal or ‘collaterally attack’ the conviction and sentence” Pet.App.5a. The circuits are split on whether such language waives Mr. London’s challenge to the consecutive nature of his sentence. And this case presents an opportunity to resolve that split.

B. This case presents an issue that will be addressed by this Court in *Hunter v. United States*.

Second, this case presents an issue currently under review by this Court in *Mason Hunter v. United States*, No. 24-1063 (Oct. 10, 2025). In *Hunter*, this Court granted certiorari to resolve a circuit split concerning 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.

Within this issue, this Court will likely address the validity of an approach taken by some circuits that allow an exception to an appeal waiver when enforcing the waiver presents a “miscarriage of justice.” *See e.g. United States v. Andruchuk*, 122 F.4th 17, 23 (1st Cir. 2024); *United States v. Wells*, 29 F.4th 580, 587-88 (9th Cir. 2022).

Imposing an unjustified consecutive sentence—as in this case—is a miscarriage of justice. *See United States v. Marsanico*, 61 F.3d 666, 668 (8th Cir. 1995) (agreeing with parties that failure to properly apply U.S.S.G. § 5G1.3 pertaining to consecutive sentences, “would result in miscarriage of justice”). Thus, this petition should be held pending the final decision in *Hunter* and disposed of as appropriate in light of that decision. In the event that the Court does not reach the question presented in *Hunter*, this petition should be granted.

CONCLUSION

This petition for a writ of certiorari should be granted to address the first question: whether a general appeal waiver bars a challenge to the consecutive nature of the sentence. Additionally, the petition should be held pending the final decision in *Hunter* and addressed considering that decision. If the Court does not reach the question presented by *Hunter*, this petition should be granted based on the second question presented.

Respectfully submitted,

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