No. ____

In The
Supreme Court of The United States

Corey Myrick,

***Petitioner*,**

v.

United States of America,

***Respondent*.**

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

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Petition For A Writ Of Certiorari

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QUESTION PRESENTED

This Court has recognized that "no appeal waiver serves as an absolute bar to all appellate claims." *Garza v. Idaho*, 586 U.S. 232, 238 (2019). But the Court has "ma[de] no statement … on what particular exceptions [to appeal waivers] may be required." *Id.* at 238-39 & n.6.

In the absence of this Court's guidance, the circuits have been intractably split over what exceptions to recognize for general appeal waivers. The Eleventh Circuit falls on the side with only narrow exceptions to appeal waivers and refuses to acknowledge an exception for miscarriages of justice.

The Question Presented is as follows: Is one of the permissible exceptions to a general appeal waiver a miscarriage-of-justice exception?[1]

[1] This petition raises a similar question as *Hunter v. United States*, No. 24-1063, which is scheduled to be orally argued on March 3, 2026.

PARTIES TO THE PROCEEDING

Pursuant to SUP. CT. R. 14.1(b)(i), Mr. Myrick certifies that there are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

The following proceedings relate directly to the case before the Court:

United States v. Myrick, Nos. 25-10949, 25-10953, 2025 WL 3229267 (11th Cir. Nov. 19, 2025).

United States v. Myrick, No. 8:24-cr-00064-MSS-CPT (M.D. Fla.).

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered in case numbers 25-10949 and 25-10953, in that court on November 19, 2025. *United States v. Myrick*, Nos. 25-10949 & 25-10953, 2025 WL 3229267 (11th Cir. Nov. 19, 2025).

OPINION BELOW

The decision under review is unreported but available at 2025 WL 3229267 and is reproduced in the Appendix.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The court of appeals had jurisdiction under 28 U.S.C. § 1291. The decision of the court of appeals was entered on November 19, 2025. This petition is timely filed pursuant to SUP. CT. R. 13.1 and 13.3.

CONSTITUTIONAL PROVISION INVOLVED

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 presents the Court with an opportunity to resolve an entrenched, outcome-determinative circuit split regarding what appeal waiver exceptions exist, which affect thousands of criminal defendants every year. This recurring issue is of substantial importance and merits this Court's use of its certiorari jurisdiction.

Courts of appeal are deeply divided over the circumstances under which a defendant may appeal his sentence notwithstanding a general appeal waiver. There is baseline agreement that "no appeal waiver serves as an absolute bar to all appellate claims." *Garza v. Idaho*, 586 U.S. 232, 238 (2019). But this Court has "ma[de] no statement … on what particular exceptions [to appeal waivers] may be required." *Id.* at 238-39 & n.6. In the wake of this Court's silence, the circuits have badly fractured over which exceptions to recognize.

The Eleventh Circuit falls on the narrow side of the split, only acknowledging a very narrow set of circumstances wherein an appeal waiver does not apply. The Fifth, Sixth, and Tenth Circuits join the Eleventh Circuit in recognizing only a limited category of enumerated exceptions to general appeal waivers. None of these circuits recognize the exception relevant here: sentences that result in a miscarriage of justice.

By contrast, the First, Third, Fourth, Eighth, and Ninth Circuits have all recognized a miscarriage-of-justice exception to appeal waivers. Although these circuits use varying tests to identify the circumstances under which a defendant may appeal notwithstanding a general waiver, they all agree that exceptions to appeal

waivers are not limited to the narrow exceptions identified by the courts on the Eleventh Circuit's side of the split. Accordingly, Mr. Myrick requests this Court to step in and identify the exceptions to general appeal waivers.

STATEMENT OF THE CASE

In February 2024, a grand jury charged Mr. Myrick in a one-count indictment with knowingly possessing a firearm as a felon, in violation of 18 U.S.C §§ 922(g), 924(a)(8). Dist. Ct. Doc. 15. He entered into a plea agreement on that charge. Dist. Ct. Doc. 34.

The plea agreement contained an appeal waiver provision that stated that he "waive[d] the right to appeal [his] sentence on any ground," subject to four exceptions. *Id.* at 13. Those exceptions are:

> (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

Id.

Mr. Myrick pled guilty and was adjudicated as such by the district court. Dist. Ct. Doc. 40.

At sentencing, the district court determined that Mr. Myrick's "total offense level [was] properly scored at 25, with a Criminal History Category of IV." Dist. Ct. Doc. 80 at 54. The court then sentenced Mr. Myrick to 60 months' imprisonment. *Id.*

at 83-84.

On appeal, Mr. Myrick argued that his sentence was unreasonable for several reasons. He raised four arguments but primarily focused on the court's application of two guideline enhancements without any corresponding factual or legal findings to support those enhancements. He also explained that without those two enhancements, his offense level would go from 25 to 19, and his guideline imprisonment range would drop from 84 to 105 months to 46 to 57 months.

In response, the government moved to dismiss Mr. Myrick's appeal pursuant to the appeal waiver in his plea agreement. Mr. Myrick responded, arguing that the Eleventh Circuit should finally formally adopt a miscarriage-of-justice exception that mirrored the exception in the First Circuit. He then explained why this case satisfied the miscarriage-of-justice exception articulated in the First Circuit.

In a one-sentence dismissal, the Eleventh Circuit granted the government's motion to dismiss Mr. Myrick's appeal pursuant to the appeal waiver. *United States v. Myrick*, Nos. 25-10949 & 25-10953, 2025 WL 3229267, at *1 (11th Cir. Nov. 19, 2025).

This petition follows.

REASONS FOR GRANTING THE PETITION

The Question Presented represents a deeply entrenched circuit split regarding the recognized exceptions to general appeal waivers. The Eleventh Circuit falls on the narrow side of the split recognizing very few exceptions to appeal waivers. The Eleventh Circuit has erected a strict bar to appellate review for cases with appeal waivers and enforces that bar through short, cursory, one-sentence orders.

In comparison, five circuits recognize a miscarriage-of-justice exception to general appeal waivers. While those circuits have varying tests, in those five circuits, Mr. Myrick would at least be allowed the opportunity to show why his appeal presents a miscarriage of justice supporting appellate review. He was denied that opportunity by the Eleventh Circuit. What is even more concerning, the Eleventh Circuit did not even acknowledge his argument regarding the miscarriage-of-justice exception. Thus, not only has the Eleventh Circuit closed the courtroom doors to defendants with appeal waivers, but it has closed those doors without any explanation or assurance of due consideration.

This Court can and should step in to answer once and for all what exceptions exist for general appeal waivers. It should especially do so in a case such as this where the Eleventh Circuit seemingly gave no consideration to Mr. Myrick's presented arguments relating to a miscarriage-of-justice exception. Thus, this Court's intervention is needed.

I.

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

In the decision below, the Eleventh Circuit (presumably)[2] reaffirmed its narrow approach to appeal waivers and refused to acknowledge any exception for a miscarriage of justice. Three other circuits apply similarly narrow tests with no recognition of an exception for miscarriages of justice. But five circuits have embraced a broader approach that permits defendants to raise challenges that present miscarriages of justice. Absent this Court's intervention, this split will continue to fester and produce unequal results based solely on geography.

A. The Narrow Approach that does not recognize an exception for miscarriages of justice.

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. The Eleventh Circuit has consistently refused to adopt any miscarriage-of-justice exception to appeal waivers, allowing deeply unjust and unfair sentences to remain. *King v. United States*, 41 F.4th 1363, 1368 n.3 (11th Cir. 2022). Further, the Eleventh and the Sixth Circuits take similarly limited approaches to appeal waivers. Both circuits only recognize three general exceptions to appeal

[2] As Mr. Myrick notes later in this petition, the Eleventh Circuit's dismissal was a cursory, one-sentence dismissal with no analysis regarding the miscarriage-of-justice exception. *See infra* p. 7-8. Thus, it is only through conjecture that he concludes that the court below has once more rejected the request to adopt a miscarriage-of-justice exception to appeal waivers.

waivers: claims of ineffective assistance of counsel, when the sentence is over the statutory maximum, and when the sentence is 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*, 41 F.4th at 1367 (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"). The two 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); *see also United States v. Johnson*, 2024 WL 5480549, at *2 (6th Cir. Dec. 18, 2024).

To make the Eleventh Circuit's narrow approach even worse, it also dismisses appeal waiver cases with cursory one-sentence orders. This Court has stated that "[t]he Constitution recognizes higher values than speed and efficiency." *Stanley v. Illinois*, 405 U.S. 645, 656 (1972). Yet the Eleventh Circuit elevates efficiency over rights: while refusing to acknowledge any exception for miscarriages of justice, it commits its own miscarriage of justice by exhibiting a desire for speed and efficiency above all else with its one-sentence orders. This case is a prime example of the Eleventh Circuit's practice of issuing one sentence orders that contain no mention of the arguments raised by the parties or provide any instruction to the public about why that disposition was appropriate. Mr. Myrick asked the Eleventh Circuit to consider recognizing a miscarriage-of-justice exception in light of the serious and grievous errors in this case as

well as the granted certiorari petition in *Hunter v. United States*, No. 24-1063. *See* 11th Cir. Dkt., Case No. 25-10949,[3] Doc. 27 at 5-10. In dismissing his appeal, the Eleventh Circuit made no mention of that argument or request. *United States v. Myrick*, Nos. 25-10949 & 25-10953, 2025 WL 3229267, at *1 (11th Cir. Nov. 19, 2025). It issued a one-sentence order followed by a string cite with no mention of Mr. Myrick's miscarriage-of-justice argument. *Id.*

In short, the Eleventh Circuit is seemingly so deeply against addressing any exceptions to appeal waivers that it does not meaningful engage with the arguments presented by the parties when it dismisses cases pursuant to appeal waivers—making this Court's intervention all the more necessary.

As for the Fifth Circuit, it 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). The Fifth Circuit has adhered to this cramped view even

[3] Because there were two appeal dockets, all of Mr. Myrick's case filings are duplicated in Case No. 25-10953, but with different document numbers. His response to the government's motion to dismiss is document 26 in case number 25-10953 but is otherwise identical to the response in case number 25-10949.

while acknowledging that caselaw in other circuits "runs counter to ours" on this issue. *Barnes*, 953 F.3d at 389.

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) (quotation 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)).

These four circuits have allowed unjust sentences to persist by clinging to appeal waivers. In a plea-bargaining system that already so heavily favors the government, these four circuits have guaranteed that criminal defendants must suffer under broad appeal waivers with functionally no chance at relief from unjust sentences.

B. The Broad Approach that does recognize a miscarriage-of-justice exception to general appeal waivers.

In direct contrast, the First, Third, Fourth, Eighth, and Ninth Circuits all recognize a miscarriage-of-justice exception to appeal waivers. The First Circuit has arguably the most instructive and well-established standard for when an error should be reviewed even when there is an appeal waiver. In order to fit within the miscarriage-of-justice exception in the First Circuit, the First Circuit looks to "the clarity of the alleged error, its character and gravity, its impact on the defendant, any possible prejudice to the government, and the extent to which the defendant acquiesced in the result." *United States v. Gil-Quezada*, 445 F.3d 33, 37 (1st Cir. 2006). Further, at least one other circuit (the Third Circuit) has endorsed the First Circuit's guidance for the

miscarriage-of-justice exception. *See, e.g.*, *United States v. Khattak*, 273 F.3d 557, 563 (3rd Cir. 2001).

The First and Third Circuit's exception would allow defendants like Mr. Myrick to raise blatant errors in spite of an appeal waiver because no one is served by clear and grievous errors going unchecked. The government, the public, the judiciary, and criminal defendants all have an interest in ensuring that blatant errors that have a large effect on the outcome of a case are corrected.

In the First and Third Circuits, Mr. Myrick would have at least had the opportunity to be heard. What's more, it is likely that the miscarriage-of-justice exception articulated in the First Circuit would apply to him. As for the clarity of the error, the district court clearly failed to make any requisite factual findings (or clear ruling) on two sentencing enhancements, and it is well established that courts have to make such findings before applying an enhancement. *See generally* Dist. Ct. Doc. 80; *United States v. Johnson*, 451 F.3d 1239, 1242 (11th Cir. 2006) (discussing the need for a district court's sentencing record to provide enough information "sufficient for meaningful appellate review," and the failure to do so constituting procedural error). Further, these errors are serious procedural errors that accounted for nearly a quarter of Mr. Myrick's offense level, and Mr. Myrick vigorously opposed the application of these enhancements at sentencing. There is also no real prejudice to the government because the government gave up essentially nothing in exchange for this plea agreement (i.e. no charges were dropped, no assistance reduction was sought, etc.). Mr. Myrick's appeal

should have been permitted to persist, and the First and Third Circuits likely would have allowed it to persist or would have at least given him his day in court.

Similarly, the Fourth Circuit has recognized a miscarriage-of-justice exception to appeal waivers. *See, e.g.*, *United States v. Smith*, 134 F.4th 248, 261 (4th Cir. 2025). The Fourth Circuit has held that procedural sentencing errors similar to the ones presented here are concerning and serious. *See id.* at 262-63 (collecting cases). The Fourth Circuit also noted that a defendant who agrees to a general appeal waiver does not also agree to be "sentenced entirely at the whim of the district court." *Id.* at 263 (quoting *United States v. Singletary*, 75 F.4th 416, 422 (4th Cir. 2023)) (quotation marks omitted).

The Eighth and Ninth Circuits do not go as far with their miscarriage-of-justice exceptions, but the exceptions still exist and offer defendants an avenue to try and correct unjust sentences. *See United States v. Andis*, 333 F.3d 886, 891 (8th Cir. 2003); *United States v. Wells*, 29 F.4th 580, 587-88 (9th Cir. 2022).

In all of these circuits, Mr. Myrick would have had the opportunity to be heard on whether his sentence was a miscarriage of justice, but that is not the reality in the Eleventh Circuit. In a cursory, one sentence opinion, the Eleventh Circuit seemingly once more declined to adopt a miscarriage-of-justice exception or even meaningfully engage with Mr. Myrick's argument that his sentence is in fact a miscarriage of justice.

II.

The question presented is exceptionally important and recurring, and this case presents no vehicle issues.

The scope of a defendant's ability to challenge his sentence notwithstanding a general appeal waiver is a question of exceptional importance. Whether people like them

or not, appeal waivers are incredibly common in the federal criminal legal system. *See* Nancy J. King, *Appeal Waivers and the Future of Sentencing Policy*, 55 Duke L.J. 209, 221, 231 (2005). This is especially true when guilty pleas account for ninety-seven percent of all federal convictions—the overwhelming majority of which are by plea agreement. *See* Vera Inst. of Just., *In the Shadows: A Review of the Research on Plea Bargaining*, at 1 (Sept. 2020).[4] Such agreements—tens of thousands of which are entered into each year—almost always contain appeal waivers. Indeed, many U.S. attorneys' offices "*require* [appeal waivers'] inclusion in every plea agreement offered, and many more follow this approach as a matter of practice if not policy." Quin M. Sorenson, *Appeal Rights Waivers: A Constitutionally Dubious Bargain*, 65 Fed. Law 32, 33 (Oct./Nov. 2018) (emphasis added); *accord* Susan R. Klein, *et al.*, *Waiving the Criminal Justice System: An Empirical and Constitutional Analysis*, 52 Am. Crim. L. Rev. 73, 85-87 & App. H (2015); Catherine M. Goodwin, *Federal Criminal Restitution* § 14:7 (West 2024) ("It is common practice for the plea agreement to include some version of the defendant's agreement to waive appeal.").

What's more, appeal waivers tend to be extraordinarily broad. Consider, for example, the sample waiver provided by the Department of Justice to U.S. Attorneys' Offices: it prohibits the defendant from "appeal[ing] *any* sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was

[4] https://vera-institute.files.svdcdn.com/production/downloads/publications/in-the-shadows-plea-bargaining.pdf?dm=1599594940.

determined) … on any ground." U.S. Dep't of Just., Crim. Res. Manual § 626 (emphasis added).[5] The Department of Justice also has a policy that so long as the appeal waiver includes an exception for ineffective assistance of counsel, the appeal waiver can be as broad as possible. *See* U.S. Dep't of Just., Crim. Just. Manual § 9-27.420 (2018).

Given the prevalence of broad appeal waivers, the extent to which courts can impose safeguards around them is deeply important. Plea agreements are offered at the discretion of prosecutors and negotiated behind closed doors. *See* Vera Inst. of Just., *supra* p.12, at 1. That behind-the-scenes "horse trading," this Court has observed, is what "determines who goes to jail and for how long"—"[i]t is not some adjunct to the criminal justice system; it *is* the criminal justice system." *Missouri v. Frye*, 566 U.S. 134, 143-44 (2012) (citation and quotation marks omitted).

If courts cannot impose sufficient guardrails on broad appeal waivers, perverse consequences would (and do) follow. For example, absent exceptions, broad appeal waivers could allow (if not encourage) sentences that are constitutionally and procedurally deficient, without any recourse for defendants. The United States has warned of such results, noting appeal waivers could "encourage a lawless district court to impose sentences in violation of the guidelines." U.S. Dep't of Just., Crim. Res. Manual § 626. Without specific guardrails in place, defendants who plead guilty pursuant to a

[5] https://www.justice.gov/archives/jm/criminal-resource-manual-626-plea-agreements-and-sentencing-appeal-waivers-discussion-law

plea agreement are purely at the mercy of the sentencing court with no opportunity to correct grievous errors.

Other systemic consequences attach to the enforcement of broad appeal waivers in the face of miscarriages of justice. For example, the appeal waiver in this case undercut the Eleventh Circuit's ability to guide and standardize the sentencing decisions of district judges by allowing a grievous procedural error to go unchecked. *See* King, *Appeal Waivers, supra* p.11-12, at 252-53.

Further, the Eleventh Circuit's narrow approach to appeal waiver exceptions is exacerbated by its cursory one sentence opinions that offer no assurances to the parties or the public that it has considered the arguments raised by the parties. This Court can and should step in to not only set out exceptions to general appeal waivers but also to require the Eleventh Circuit to at least acknowledge arguments raised by the parties.

This case also presents no vehicle issues as Mr. Myrick consistently challenged the application of the enhancements, did not ask the district court to abandon its role as the factfinder, and requested the Eleventh Circuit recognize this instance as a miscarriage of justice.

CONCLUSION

The time has come for this Court to step in and answer what exceptions exist for general appeal waivers. Mr. Myrick asks this Court to grant his petition. Alternatively, the Court should hold the petition pending its decision in *Hunter*, No. 24-1063, and then dispose of it as it deems appropriate.

Respectfully submitted,

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