No. _____

IN THE
Supreme Court of the United States

LUCAS TAVARES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented here is the same as the second question presented in the petition for certiorari in *Hunter v. United States*, No. 24-1063, which this Court granted for plenary review on October 10, 2025.

The question presented is:

Whether an appeal waiver applies when the sentencing judge advises the defendant that he has a right to appeal and the government does not object.

LIST OF PARTIES

The parties to the proceeding are:

Lucas Tavares (Petitioner)

United States of America (Respondent)

RELATED PROCEEDINGS

United States v. Tavares, No. 3:24-cr-152-PDW, United States District Court for the District of North Dakota. Judgment entered April 15, 2025.

United States v. Tavares, No. 25-1840, United States Court of Appeals for the Eighth Circuit. Judgment entered October 16, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Lucas Tavares respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The judgment of the court of appeals dismissing the appeal (App. 1a) is unreported. The district court's judgment (App. 2a) is also unreported.

JURISDICTION

The court of appeals dismissed Mr. Tavares's appeal and entered judgment on October 16, 2025. Mr. Tavares received an extension of time to file a petition for rehearing. The court of appeals denied his timely petition for rehearing by the panel or *en banc* on December 30, 2025. This petition is timely filed under Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

FEDERAL RULES INVOLVED

Federal Rule of Criminal Procedure 32 provides in relevant part:

. . . .

(j) Defendant's Right to Appeal.

(1) Advice of a Right to Appeal.

(A) Appealing a Conviction. If the defendant pleaded not guilty and was convicted, after sentencing the court must advise the defendant of the right to appeal the conviction.

(B) Appealing a Sentence. After sentencing--regardless of the defendant's plea--the court must advise the defendant of any right to appeal the sentence. . . .

INTRODUCTION

The federal courts of appeals are squarely divided on what happens when a sentencing judge tells a defendant he has the right to appeal, but the defendant has previously agreed to an appeal waiver. The Ninth Circuit has held that a defendant may appeal when the district court advises him he has the right to appeal and the government does not object. The other courts of appeals, including the Eighth Circuit, have rejected this rule. Here, the Eighth Circuit enforced Mr. Tavares's appeal waiver over his argument that he should be able to rely on the district court's statements to him that he could appeal the calculation of his guideline range.

This Court has already agreed to address this issue. It granted certiorari in *Hunter v. United States*, No. 24-1063. The second question presented in *Hunter* is the same question presented in this case: whether an appeal waiver applies when the sentencing judge advises the defendant that he has a right to appeal and the government does not object.

The Court should hold this case pending disposition of *Hunter*, then dispose of the petition as appropriate in light of that decision. If the Court does not reach the second question presented in *Hunter*, this case is an ideal vehicle to address it.

STATEMENT OF THE CASE

Petitioner Lucas Tavares pleaded guilty to one count of interference with commerce by robbery in violation of 18 U.S.C. § 1951. App. 2a. He did so by way of a

written plea agreement. App. 10a. The plea agreement contained an appeal waiver provision. App. 16a-17a.

At Mr. Tavares's sentencing hearing, the parties disputed the application of a guideline adjustment. *See* Sent. Tr., at 5-6.[1] The government argued that the district court should apply a four-level upward adjustment because the robbery offense involved the use of a dangerous weapon. *Id.* at 6; *see* USSG § 2B3.1(b)(2)(D). Mr. Tavares argued that the adjustment should not apply. Sent. Tr., at 6-7. After hearing evidence and argument, the district court found the adjustment applied. *Id.* at 74-75.

Although the district court applied the adjustment, it indicated it believed its ruling would be subject to appellate review. The district court referenced the appeals process four times during the sentencing hearing. First, when describing how it was applying the guidelines, the district court stated, "I'm trying to be mindful of what the Eighth Circuit is going to say, and -- when they review this case, and I suspect that they will be reviewing this case." *Id.* at 72. Second, the district court told Mr. Tavares's attorney, "You can maintain those objections, Defense Counsel, and like I said, the Eighth Circuit can sort this out *when* they see it." *Id.* at 74-75 (emphasis added). Third, when defense counsel expressed confusion at the district court's application of the guidelines, the court noted, "it's possible that that would then be unclear to the United States and/or to the record and/or to

[1] All references to "Dist. Ct. Dkt." are to the docket in *United States v. Tavares*, No. 3:24-cr-152-PDW (D.N.D.). All citations to the sentencing transcript ("Sent. Tr.") are to the redacted transcript available at Dist. Ct. Dkt. 50.

the Eighth Circuit, so I'm going to make it clear." *Id.* at 88. Fourth, at the conclusion of the hearing, the district court told Mr. Tavares, "[y]ou have two weeks to appeal this." *Id.* at 97. The district court's repeated references to an appeal demonstrate it expected Mr. Tavares could—and would—appeal his sentence. The government did not object to any of these statements. *See id.* at 72, 75, 88, 97.

Mr. Tavares appealed and challenged his sentence, including the calculation of his guideline range. Appellant's Br., *United States v. Tavares*, No. 25-1840 (8th Cir. Aug. 28, 2025). The government moved to dismiss the appeal based on the appeal waiver. Appellee's Mot. to Dismiss, *United States v. Tavares*, No. 25-1840 (8th Cir. Aug. 28, 2025). The court of appeals granted the motion to dismiss. App. 1a.

Mr. Tavares petitioned for rehearing by the panel or *en banc*. He argued the court of appeals should reconsider his case because it presents the same question as this Court agreed to hear in *Hunter v. United States*, No. 24-1063. Appellant's Pet. for Reh'g., *United States v. Tavares*, No. 25-1840 (8th Cir. Dec. 5, 2025). Mr. Tavares argued the court of appeals should adopt a rule that permits defendants to appeal when the district court advises them they have the right to appeal and the government does not object. *Id.* at 7. The court of appeals denied the petition for rehearing. App. 9a. This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

This case presents the same question as the second question in *Hunter v. United States*, No. 24-1063: whether an appeal waiver applies when the sentencing

judge advises the defendant that he has a right to appeal and the government does not object. The Court should therefore hold this petition for a writ of certiorari pending its decision in *Hunter*, and then dispose of the petition as appropriate in light of that decision.

If the Court resolves *Hunter* without addressing this question, it should nevertheless grant this petition because this is an important and recurring question that has divided the courts of appeals.

A. The courts of appeals are divided on the question presented.

The courts of appeals are divided on this question. On one side, the Ninth Circuit has repeatedly held that, when a district court advises a defendant he has a right to appeal, the defendant has "a reasonable expectation that he [can] appeal his sentence." *United States v. Buchanan*, 59 F.3d 914, 917 (9th Cir. 1995). In *Buchanan*, the sentencing judge twice advised the defendant he had the right to appeal the district court's findings. *Id.* The Ninth Circuit noted that the defendant's affirmative answers demonstrated that he expected he had the right to appeal and that he misunderstood his plea agreement's waiver of that right. *Id.* at 917-18. And because the government did not object to the court, the defendant "could have no reason but to believe that the court's advice on the right to appeal was correct." *Id.* at 918.

The Ninth Circuit emphasized the defendant's reliance on statements by the sentencing judge. *Id.* It noted that, "[l]itigants need to be able to trust the oral pronouncements of district court judges." *Id.* Therefore, because the sentencing

judge advised the defendant he had the right to appeal, he understood that advice, and the government did not object, the court found that the sentencing judge's statements controlled. It refused to enforce the appeal waiver. *Id.*

The Ninth Circuit has continued to enforce this rule and refused to enforce appeal waivers when the district court advises a defendant he has the right to appeal, and the government does not object. *See United States v. Felix*, 561 F.3d 1036, 1041 (9th Cir. 2009); *United States v. Otis*, 127 F.3d 829, 834 (9th Cir. 1997) (per curiam); *United States v. Zink*, 107 F.3d 716, 718 (9th Cir. 1997).

The other courts of appeals have rejected the Ninth Circuit's approach. *See United States v. Teeter*, 257 F.3d 14, 25 (1st Cir. 2001); *United States v. Fisher*, 232 F.3d 301, 304 (2d Cir. 2000); *United States v. Gonzalez*, 259 F.3d 355, 358 (5th Cir. 2001); *United States v. Fleming*, 239 F.3d 761, 765 (6th Cir. 2001); *United States v. Ogden*, 102 F.3d 887, 888-89 (7th Cir. 1996); *United States v. Michelsen*, 141 F.3d 867, 872 (8th Cir. 1998); *United States v. Atterberry*, 144 F.3d 1299, 1301 (10th Cir. 1998); *United States v. Bascomb*, 451 F.3d 1292, 1297 (11th Cir. 2006).

In *Michelsen*, for example, the Eighth Circuit held that the sentencing judge's statements could not affect a prior appeal waiver. 141 F.3d at 872. The court found that, in determining the validity of the waiver, it should look only to the circumstances of the plea agreement, not the district court's later statements. *Id.* Judge Bright dissented. *See id.* at 874 (Bright, J., dissenting). Judge Bright would have held that the sentencing judge "expressly nullified" the defendant's appeal waiver. *Id.* Specifically, the sentencing judge stated "reasons for the sentence, which

were contrary to the recommendation of the prosecutor." *Id.* at 875. Considering those statements, and the sentencing judge's advisement that the defendant "may appeal," Judge Bright would have held that the sentencing judge "recognized that the defendant should have the right to an appeal in this unusual case." *Id.*

The courts of appeals are firmly divided on this issue. Only this Court can resolve this split.

B. This is an important issue and the Court should resolve the split to permit defendants to appeal when the district court advises them they may appeal.

This Court should address the circuit split and should find that when a district court advises a defendant he has a right to appeal, he may appeal, regardless of the existence of an appeal waiver.

Judges must address the right to appeal at every federal sentencing hearing. Rule 32 requires that, after sentencing, "the court must advise the defendant of any right to appeal the sentence." Fed. R. Crim. P. 32(j)(1)(B). Even when a defendant's plea agreement includes an appeal waiver, "no appeal waiver serves as an absolute bar to all appellate claims." *Graza v. Idaho*, 586 U.S. 232, 238 (2019). Thus, at every sentencing hearing, the district court must explain to the defendant his right to appeal. This explanation should be clear and accurate at every sentencing hearing.

Second, the Court should adopt a rule that permits litigants to rely on the legal pronouncements of the district courts. "Litigants need to be able to trust the oral pronouncements of district court judges." *Buchanan*, 59 F.3d at 918. This is particularly true when the sentencing judge's statements are not mere "slips of the

tongue," but intentional advisements of the right to appeal. *See Michelsen*, 141 F.3d at 875 (Bright, J., dissenting). Because the right to appeal is discussed at every sentencing, the advice should be accurate and reliable. Such statements drive decision-making, including the decision regarding whether to appeal. And, when making that decision, a criminal defendant should not be faced with a discrepancy between the advice of his attorney and the pronouncement of a federal judge. The advice should be clear and accurate and, if it is not, the government should object to correct the statement.

Third, the majority rule calls into question the validity of plea agreements. When the district court advises a defendant that he has the right to appeal, and the defendant agrees with that advice, his agreement demonstrates that he does not understand the nature of his plea agreement's appeal waiver. *See Buchanan*, 59 F.3d at 918. An appeal waiver that is not entered knowingly and voluntarily is not valid. *See Garza*, 586 U.S. at 239. The Court should adopt a rule that does not enforce a provision of a plea agreement that the defendant does not clearly understand. Such a rule would permit a defendant to appeal when the district court advises him he has that right.

Nearly every federal court of appeals has had to address the effect of a judge's statement regarding the right to appeal on an appeal waiver. This demonstrates it is an issue where sentencing judges can make mistakes. Sentencing judges should be incentivized to give the correct legal advice. And the government should be incentivized to correct any misstatements. Those incentives do not exist under a

rule that a judge's erroneous statement is of no consequence. The Court should adopt a rule that when a district court advises a defendant he has a right to appeal his sentence, does not qualify or condition that advice, and the government does not object, the defendant may rely on the advice and may appeal.

C. This case is an ideal vehicle for the question presented.

If the Court does not resolve this question in *Hunter*, this case is an ideal vehicle to address it. This petition does not present any other question that would resolve this case. This case squarely presents the issue of how the district court's statements regarding appeal affect a defendant's appeal waiver.

The Eighth Circuit's enforcement of the appeal waiver resolved this case. The government moved to dismiss Mr. Tavares's appeal because he had waived his right to appeal. Appellee's Mot. to Dismiss, *United States v. Tavares*, No. 25-1840 (8th Cir. Aug. 28, 2025). The court of appeals granted that motion. App. 1a. But, if this case had been litigated in the Ninth Circuit instead, it would not have been dismissed. At sentencing, the district court did not address Mr. Tavares's waiver or limit its statements regarding his right to appeal. *Cf. United States v. Arias-Espinosa*, 704 F.3d 616, 618-19 (9th Cir. 2012) (discussing cases enforcing waivers when the district court addressed the waiver or qualified its advice). Instead, the district court referenced Mr. Tavares's right to appeal four times during the sentencing hearing, without any government objection. Sent. Tr., at 72, 74-75, 88, 97. These repeated statements unambiguously demonstrate the district court's expectation that Mr. Tavares could—and would—appeal. Under the Ninth Circuit's

rule, Mr. Tavares could rely on the district court's unambiguous statements of the law and could appeal its calculation of his guideline range. This Court should adopt that rule.

CONCLUSION

This petition for a writ of certiorari should be held pending this Court's resolution of *Hunter v. United States*, No. 24-1063, and then disposed of in accordance with the disposition in *Hunter*.

Dated this 20th day of March, 2026.

Respectfully submitted,

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