

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

RASHON JERMAINE HARRIS
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 25-60017

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit erred by dismissing Mr. Parker's appeal based on the waiver of appeal provision in his Plea Agreement.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

On April 15, 2024, the prosecution filed an Information against Mr. Harris in the Southern District of Mississippi. The Information charged possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). The district court case number is 2:24cr14-KS-MTP.

On April 16, the day after the prosecution filed the Information, Mr. Harris waived his right to a grand jury indictment proceeding. On the same day, he entered a guilty plea.

The district court conducted a sentencing hearing on September 19, 2024. The court ordered Mr. Harris to serve 240 months in prison, followed by three years of supervised release. It also ordered a \$5,000 fine. The court entered a Judgment on September 24, 2024. The Judgment is attached hereto as Appendix 1.

On October 4, 2024, Mr. Harris filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit case number is 25-60017. He filed Appellant's Brief with the Fifth Circuit on October 3, 2025. Rather than file a brief on the merits of the case, the prosecution filed a Motion to Dismiss Appeal based on the waiver of appeal provision in the Plea Agreement.

The Fifth Circuit entered an Order granting the Motion to Dismiss Appeal on December 24, 2025. It filed a Judgment on the same day. The Fifth Circuit's Order and Judgment are attached hereto as composite Appendix 2. The Opinion

was not designated for publication, but it is available via Westlaw at 2025 WL 3725066. The Westlaw rendition of the Opinion is attached hereto as Appendix 3.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on December 24, 2024. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL PROVISION INVOLVED

“No person shall be ... deprived of life, liberty, or property, without due process of law[.]” U.S. Const. amend. V, Due Process Clause.

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction entered against Mr. Harris for selling illegal drugs in violation of 21 U.S.C. § 841. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Harris arose from the laws of the United States of America.

B. Statement of material facts.

On appeal to the Fifth Circuit, Mr. Harris argued that the district court erred by enhancing his sentence under three provisions of the United States Sentencing Guidelines. However, the Fifth Circuit never reached the merits of Mr. Harris' arguments because it granted the prosecution's Motion to Dismiss Appeal based on the waiver of appeal provision of his Plea Agreement. Therefore, the issue before this Court is limited to whether the Fifth Circuit erred by dismissing the appeal under the waiver provision.

The waiver provision at issue states, "Defendant ... hereby expressly waives ... the right to appeal the conviction and sentence imposed in this case, or the manner in which that sentence was imposed ... on any grounds whatsoever[.]" The only right reserved to Mr. Harris was the right "to pursue a claim of ineffective assistance of counsel." Ineffective assistance of counsel is not at issue in this

Petition. At issue is whether Mr. Harris “knowingly” entered into the Plea Agreement.

Mr. Harris signed the Plea Agreement and pled guilty to the subject charge on April 16, 2024, which is the same day that he initially appeared on charge. It is highly unusual for a defendant to be arraigned, sign a plea agreement, and plead guilty all on the same day. The temporal relationship between these events supports Mr. Harris’ argument that he unknowingly entered into the Plea Agreement containing the waiver of appeal provision. It is difficult to conceive how someone could knowingly make a life altering decision in that short period of time.

V. ARGUMENT

A. Review on certiorari should be granted in this case.

At issue is whether the Fifth Circuit erred by dismissing Mr. Harris' appeal based on the waiver of appeal provision in his Plea Agreement. This is an important issue that affects the great majority of criminal defendants in the federal court system. As the Fifth Circuit recently pointed out in *West*, "98% of convictions are secured by plea deals." *United States v. West*, 138 F.4th 357, 362 (5th Cir. 2025). (Oldham, J, dissenting in denial of rehearing *en banc*). Further, the Fifth Circuit recognized that "written plea agreements often include appeal waivers." *Id.* (citation altered).

The large number of cases that involve plea agreements containing waiver of appeal provisions justifies granting certiorari in this case. Lower courts and attorneys practicing criminal law will benefit from guidance on defining the allowable parameters of appeal waiver provisions.

Further, a significant circuit split exists on the issue of whether a "manifest injustice" or "miscarriage of justice" inquiry applies when courts rule on the enforceability of an appeal waivers. The Second, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuit Courts all strictly construe appeal waivers in favor of enforcing them. In each of those six circuits, defendants are prohibited from seeking collateral relief even if a subsequent retroactively applicable change in law brings their

convictions under question. *See Cook v. United States*, 84 F.4th 118, 120 (2d Cir. 2023), *United States v. Jones*, 134 F.4th 831, 834 (5th Cir. 2025); *Portis v. United States*, 33 F.4th 331, 335 (6th Cir. 2022); *Oliver v. United States*, 951 F.3d 841, 845 (7th Cir. 2020); *United States v. Goodall*, 21 F.4th 555, 562 (9th Cir. 2021); *King v. United States*, 41 F.4th 1363, 1370 (11th Cir. 2022). The concept of “manifest injustice” or “miscarriage of justice” obviously does not apply to the appeal waiver analysis in these six circuit courts.

In contrast, at least six circuit courts factor the “manifest injustice” or “miscarriage of justice” analysis into their appeal waiver decisions. They include the First, Third, Fourth, Eighth, Tenth, and the D.C. Circuit Courts. *See United States v. Teeter*, 257 F.3d 14, 25-26 (1st Cir. 2001); *United States v. Khattak*, 273 F.3d 557, 563 (3d Cir. 2001); *United States v. Adams*, 814 F.3d 178, 183 (4th Cir. 2016); *United States v. Andis*, 333 F.3d 886, 891-92 (8th Cir. 2003); *United States v. Hahn*, 359 F.3d 1315, 1327 (10th Cir. 2004); *United States v. Guillen*, 561 F.3d 527, 531 (D.C. Cir. 2009).

This circuit split on the appeal waiver issue justifies granting certiorari. *See* Supreme Court Rule 10(a) (stating certiorari is warranted when “a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter[.]”

B. Further justification for granting certiorari.

The dissenting opinion in *Melancon*, a Fifth Circuit case, highlights the inherent problem with appeal waiver provisions. *Melancon* involved the same issue now before this Court – whether a waiver of appeal provision in a plea agreement is enforceable. *United States v. Melancon*, 972 F.2d 566, 567 (5th Cir. 1992). On the prosecution’s motion to dismiss the appeal, the *Melancon* Court held, “a defendant may, as part of a valid plea agreement, waive his statutory right to appeal his sentence.” *Id.* at 568. Accordingly, the Court granted the prosecution’s motion to dismiss Melancon’s appeal. *Id.*

Judge Parker authored a lengthy and well-reasoned concurring opinion in *Melancon*. See 972 F.2d at 570-80. He began by stating, “I concur specially because I cannot dissent. This panel is bound by the unpublished, *per curiam* opinion, *United States v. Sierra*, No. 91-4342 (5th Cir. Dec. 6, 1991) [951 F.2d 345 (Table)].” *Id.* at 570. He went on to state, “I write separately to express why I think the rule embraced by this Circuit in *Sierra* is illogical and mischievous – and to urge the full Court to examine the ‘*Sierra* rule,’ and to reject it.” *Id.*

Judge Parker reasoned that “[t]he rule articulated in *Sierra* is clearly unacceptable, even unconstitutional policy: the ‘*Sierra* rule’ manipulates the concept of knowing, intelligent and voluntary waiver so as to insulate from appellate review the decision-making by lower courts in an important area of the

criminal law.” *Melancon*, 972 F.2d at 571. “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 has yet to be imposed at the time he or she enters into the plea agreement; such a ‘waiver’ is inherently uninformed and unintelligent.” *Id.*

Judge Parker acknowledged that waivers can be valid in a number of scenarios in criminal cases. However,

[i]n the typical waiver cases, the act of waiving the right occurs at the moment the waiver is executed. For example: one waives the right to silence, and then speaks; one waives the right to have a jury determine one’s guilt, and then admits his or her guilt to the judge. In these cases, the defendant knows what he or she is about to say, or knows the nature of the crime to which he or she pleads guilty.

Melancon, 972 F.2d at 571 (citations omitted). But “[t]he situation is completely different when one waives the right to appeal a Guidelines-circumscribed sentence before the sentence has been imposed. What is really being waived is not some abstract right to appeal, but the right to correct an erroneous application of the Guidelines or an otherwise illegal sentence.” *Id.* at 572. “This right cannot come into existence until after the judge pronounces sentence; it is only then that the defendant knows what errors the district court has made – i.e., what errors exist to be appealed, or waived.” *Id.* (emphasis added; citation omitted).

For the reasons thoughtfully articulated by Judge Parker, this Court should grant certiorari and consider whether Mr. Harris’ waiver of the right to appeal was

made unknowingly. The unknowing nature of the appeal waiver represents a solid reason to grant certiorari.

Another reason to grant certiorari is Judge Parker's constitutional concerns implicated by blanket waiver of appeal provisions. He opined that the rule adopted by the majority "reflects the imposition of an unconstitutional condition upon a defendant's decision to plead guilty." *Melancon*, 972 F.2d at 577.

Unconstitutional conditions occur "when the government offers a benefit on condition that the recipient perform or forego an activity that a preferred constitutional right normally protects from governmental interference. The 'exchange' thus has two components: the conditioned government benefit on the one hand and the affected constitutional right on the other."

Id. (quoting Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 Harv.L.R. 1415, 1421-1422 (1989) (emphasis in original)). "With a '*Sierra Waiver*,' the government grants to the criminal defendant the benefit of a plea agreement only on the condition that the defendant accept the boot-strapped abdication of his or her right to appeal." *Melancon*, 972 F.2d at 578 (emphasis in original). "This is at least unacceptable, even if the government may withhold the benefit (i.e., the plea agreement) altogether." *Id.* (citation omitted).

Judge Parker recognized that to create the constitutional issue described in the previous paragraph of this Response, a constitutional right must exist. "The right to appeal is a statutory right, not a constitutional right." *Melancon*, 972 F.2d at 577 (citation omitted). However,

[e]ven if the Due Process and Equal Protection Clauses of the Constitution do not require the government to create a statutory system of appellate rights, these constitutional clauses do require the government, once it has decided voluntarily to create such a system (as it has), to allow unfettered and equal access to it.

Id. (citing *Griffin v. Illinois*, 351 U.S. 12 (1956) (holding that government has a due process duty not to limit the opportunity of a statutorily created direct appeal in a criminal case)). In other words, once the statutory right to appeal is established, due process and equal protection bar the government from infringing on the right in an improper manner.

The Fifth Circuit decided *Melancon* in 1992, about 34 years ago. But the waiver of appeal issue still divides the court as recently as year 2025. The latter case is *United States v. West*, 138 F.4th 357 (5th Cir. 2025). The *West* opinion addresses a petition for rehearing *en banc*. *Id.* at 357 At issue was a waiver of appeal provision in the context of a defendant challenging a restitution judgment. *Id.* at 357-58. Seven judges voted in favor of granting rehearing *en banc* and ten judges voted against rehearing. *Id.* at 357.

The seven to ten vote meant that the case was not reheard *en banc*. Judge Higginson voted with the majority. *West*, 138 F.4th at 358. But that was not because he was satisfied with the status quo regarding Fifth Circuit precedent on the appeal waiver issue. Instead, he voted against rehearing *en banc* because he did not believe that appeal waivers in the fact specific restitution context provided a

scenario through which the court could establish law covering the broader issue of appeal waivers in general. *Id.* at 359-60 (Judge Higginson stating, “I would favor *en banc* review in an appropriate case to correct our court’s reluctance to confirm what the great majority of other circuit courts have held, ... namely that, regardless of party contracts to resolve criminal cases, there always remains judicial authority to correct ‘miscarriages’ of justice, regardless of an appeal waiver.”). In his concurring opinion, Judge Higginson expresses his concerns about appeal waivers, many of which are the same concerns voiced by Judge Parker 34 years earlier in *Melancon*.

Judge Higginson opined that appeal waivers, “if to rigidly applied, can swallow up our statutory role of reviewing criminal sentences for correctness.” *West*, 138 F.4th at 359 (Higginson, J. concurring). That is problematic because “our criminal justice system now largely incarcerates defendants based on disputes that arise and get resolved *much later*, at sentencing or after, and often based on uncharged facts identified by probation officers well after any guilty plea.” *Id.* (emphasis in original). Because a district court’s sentencing decisions are often based uncharged facts that a defendant has not pled guilty to, “[w]e should not cement more *non*-reviewability into our criminal justice system.” *Id.* at 360 (emphasis in original).

“No one—not defendants, not the government, and not judges who impose punishment—would draw confidence from, much less favor, an inflexible regime that deprives courts of the power to correct unanticipated and materially wrong sentences.” *West*, 138 F.4th at 359 (Higginson, J. concurring). Therefore, in Judge Higginson’s well-reasoned opinion, there always remains judicial authority to correct ‘miscarriages’ of justice, regardless of an appeal waiver.” *Id.* (emphasis in original).

The dissent in *Melancon* and the concurring opinion in *West* highlight the negative impact that strictly construing appeal waivers has on the criminal justice system. We ask the Court to grant certiorari to address the concerns articulated by Judge Parker and Judge Higginson in those two cases.

C. Alternative relief – grant, vacate and remand.

On October 10, 2025, this Court granted certiorari in *Hunter v. United States*, No. 24-1063. Like Mr. Harris’ case, *Hunter* focuses on enforcement of appeal waivers. The Court conducted oral argument on March 3, 2026. To date, no opinion has been entered.

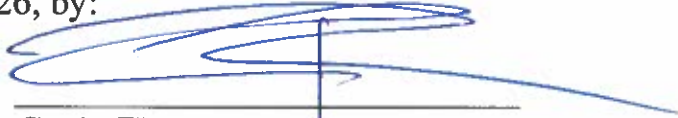
As an alternative to granting certiorari and hearing the merits of Mr. Harris’ case, we ask the Court to hold the instant Petition and grant, vacate, and remand if the *Hunter* opinion affects Fifth Circuit law on the appeal waiver issue. *See Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 166 (1996); *Stutson v.*

United States, 516 U.S. 163, 181 (1996) (“We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be ‘GVR’d’ when the case is decided.”) (Scalia, J., dissenting) (emphasis in original).

VI. CONCLUSION

Based on the arguments presented above, Mr. Rashon Harris asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted March 23, 2026, by:



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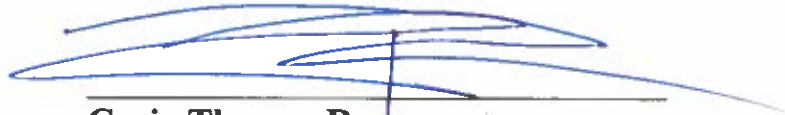
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CERTIFICATE OF SERVICE

I, Craig T. Rose, appointed under the Criminal Justice Act, certify that today, March 23, 2026, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. 889878034324, addressed to:

The Honorable D. John Sauer
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
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I further certify that all parties required to be served with this Petition and the Motion have been served.



Craig Thomas Rose
Assistant Federal Public Defender