

No. 25-7348

IN THE
Supreme Court of the United States

JAQWON DAVONTE LUPE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITIONER'S SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, petitioner, Jaqwon Lupe, submits this supplemental brief. Petitioner's case currently is scheduled to be conferenced by this Court on September 28, 2026.

Petitioner seeks this Court's review of the Ninth Circuit motion panel's dismissal of petitioner's appeal based on the provision in petitioner's plea agreement that waived his right to challenge his conviction. On June 10, 2026, respondent recommended that this Court hold the certiorari petition pending this Court's decision in *Hunter v. United States*, No. 24-1063. See Memorandum for the United States, at 2 ("Because the Court's decision in *Hunter* may affect the proper disposition of the petition for a writ of certiorari, the petition in this case could be held pending the decision in *Hunter* and then disposed of as appropriate in light of that decision.").

On June 18, 2026, this Court rendered its decision in *Hunter*. It held "an appeal waiver is unenforceable when it would result in a miscarriage of justice" and that "[t]he waiver may be set aside only if the sentence is marred by the kind of egregious error that would bring the judicial system into disrepute." *Hunter v. United States*, 146 S. Ct. 1702, 1713 (2026).

After *Hunter*, this Court has refused to grant certiorari, vacate the lower court's judgment, and remand for reconsideration ("GVR") in light of *Hunter* in other cases where the petitioners only had challenged their *convictions* (as opposed to separately having challenged their *sentences*) on appeal. See *Jones v. United*

States, 609 U.S. ___, 2026 WL 1871495, at *1 (June 30, 2026) (Sotomayor, J., respecting the denial of certiorari); *Blaise v. United States*, No. 25-6627, 2026 WL 1855029 (June 29, 2026).¹

Although petitioner contends that this Court should grant certiorari and afford plenary review to the important merits issue raised in his petition concerning Indian Country, at the very least this Court should GVR his case in light of *Hunter*. Although there may be good reasons for distinguishing between *some* challenges to a criminal conviction and challenges to a criminal sentence with respect to *Hunter*’s “miscarriage of justice” exception, there is no reason to distinguish between the two in petitioner’s case. A defendant’s actual innocence of the offense of conviction unquestionably qualifies as a “miscarriage of justice” under any definition. See *Sawyer v. Whitley*, 505 U.S. 333, 360 (1992) (Stevens, J., concurring, joined by Blackmun & O’Connor, JJ., concurring in judgment) (“[T]he conviction of an innocent person [is] the archetypal case of a manifest miscarriage of justice....”); see also *McQuiggin v. Perkins*, 569 U.S. 383, 399 (2013); *Bousley v. United States*, 523 U.S. 614, 624 (1998); *Schlup v. Delo*, 513 U.S. 298, 327 (1995); *Kuhlmann v. Wilson*, 477 U.S. 436, 545 (1986).

¹ In *Blaise*, the Ninth Circuit dismissed the petitioner’s appeal challenging only one of his convictions based on an appellate waiver in his plea agreement. The United States responded to Blaise’s petition for certiorari in the same manner as it responded to petitioner’s petition. See Memorandum for the United States (No. 25-6627), at 2 (“Because the Court’s decision in *Hunter* could conceivably affect the proper disposition of the petition for a writ of certiorari, the petition in this case could be held pending the decision in *Hunter* and then disposed of as appropriate in light of that decision.”).

It is also significant that, in *Hunter*, this Court’s discussion of the “miscarriage of justice” standard employed the same language appearing in this Court’s “plain error” jurisprudence – in particular, the Court’s references to “obvious” errors and those “that would bring the judicial system into disrepute” or “undermine public confidence in the judiciary.” *Hunter*, 146 S. Ct. at 1713. According to the canonical definition, “plain errors” are “clear’ or ... ‘obvious’” errors raised for the first time on appeal that warrant correction if they “seriously affect the fairness, integrity or public reputation of judicial proceedings.” *United States v. Olano*, 507 U.S. 725, 734, 736 (1993) (emphasis added). Moreover, in *Olano*, this Court stated that the discretion to reverse convictions for plain error “should be employed in those circumstances in which a *miscarriage of justice* would otherwise result.” *Id.* at 736 (citations and internal quotation marks omitted) (emphasis added). This Court stated in *Olano* that a defendant’s “actual innocence” clearly satisfies the requirements for a reversal of his conviction under the plain error standard:

The court of appeals should no doubt correct a plain forfeited error that causes the conviction or sentencing of an actually innocent defendant, *see, e.g., Wiborg v. United States*, 163 U.S. 632 (1896), but we have never held that a Rule 52(b) remedy is only warranted in cases of actual innocence.

Id. at 736.

Regarding this Court’s GVR practice, this Court has stated that:

Where ... recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is, we believe, potentially appropriate.

Lawrence v. Chater, 516 U.S. 163, 167-168 (1996) (per curiam). In addition, this Court has stated that it is even more willing in criminal cases to afford relief by way of a GVR:

Finally, it is not insignificant that this is a criminal case. When a litigant is subject to the continuing coercive power of the Government in the form of imprisonment, our legal traditions reflect a certain solicitude for his rights, to which the important public interests in judicial efficiency and finality must occasionally be accommodated.

Stutson v. United States, 516 U.S. 193, 196 (1996) (per curiam).

This Court's decision in *Hunter* is such a recent development in petitioner's case warranting a GVR. If the Ninth Circuit reconsiders petitioner's appeal in light of *Hunter*, there is a reasonable probability that the Ninth Circuit will transfer petitioner's case from the motions panel to a merits panel to afford meaningful consideration to petitioner's substantial argument about the effect of *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), on Ninth Circuit precedent that had relied on the dicta in *Williams v. United States*, 327 U.S. 711, 713-14 (1946),² that this Court rejected in *Castro-Huerta*.

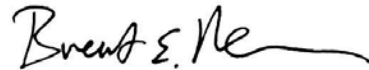
² See, e.g., *United States v. Smith*, 925 F.3d 410, 413-14 (9th Cir. 2019) (following *Williams* to conclude that Indian Country is generally within the special maritime and territorial jurisdiction of the United States).

CONCLUSION

For the foregoing reasons, at the very least this Court should grant certiorari, vacate petitioner's judgment, and remand petitioner's case to the Ninth Circuit to reconsider petitioner's appeal in light of *Hunter*.

June 20, 2026

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Brent E. Newton", written over a horizontal line.

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