

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2025

DAVID WALTER MCCAULEY, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

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I. QUESTION PRESENTED

Whether the Government may enforce an appellate waiver in a plea agreement after failing to object when the district court advised the defendant that he had a right to appeal?

II. PARTIES TO THE PROCEEDING

Mr. David McCauley is the Petitioner. The United States of America is the Respondent in this matter.

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Federal Statutes:

<i>28 U.S.C. § 1254</i>	6
<i>18 U.S.C. § 2251</i>	8
<i>18 U.S.C. § 2252A</i>	8
<i>18 U.S.C. § 3553</i>	9

Other:

Federal Rule of Appellate procedure 27	10
Supreme Court Rule 13	8

OPINIONS BELOW

The order issued by the United States Court of Appeals for the Fourth Circuit, *United States v. McCauley*, No. 25-4352 (Feb. 26, 2026), is reproduced at Appendix A. The judgment of the United States Court of Appeals for the Fourth Circuit is reproduced at Appendix B. The final judgment order of the United States District Court for the Northern District of West Virginia is unreported and reproduced at Appendix C.

VI. JURISDICTION

This Petition seeks review of an order of the United States Court of Appeals for the Fourth Circuit, decided on February 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). No petition for rehearing was filed, and this petition is timely under Supreme Court Rule 13.

VII. STATUTORY 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....”

VIII. STATEMENT OF THE CASE

A. Proceedings before the district court.

This case involved photographs and video taken during a relationship between McCauley and B.A, a seventeen-year-old student from Upshur County, West Virginia. J.A. 253.¹ In June 2021, McCauley, a lawyer, professor and local political figure, and B.A. began a platonic relationship to discuss support for the local track team and B.A.'s options for becoming an emancipated minor. J.A. 179-180, 273. Eventually, McCauley and B.A.'s relationship became romantic. J.A. 180, 273-274. B.A. sent McCauley nude photos and recorded video of them engaging in sexual activity. J.A. 180, 274. Once, McCauley held B.A.'s phone and created an image of B.A. performing oral sex. J.A. 180, 254.

On October 1, 2024, a grand jury sitting in the Northern District of West Virginia returned an indictment charging McCauley with two counts of production of child pornography, and one count of possession of child pornography, in violation of 18 U.S.C. §§ 2251(a) & (e) and 2252A(a)(5)(B) and (b)(2). J.A. 10-12.

McCauley appeared for a guilty plea hearing on December 5, 2024, before United States Magistrate Judge James Mazzone. J.A. 22-65, 270. McCauley waived his right to an Article III district court judge and, pursuant to a written plea agreement, entered a guilty plea to count three of the indictment, charging possession of child pornography, in violation of 18 U.S.C. §§ 2252(a)(5)(B) and 2252A(b)(2). J.A.

¹ References to "J.A." indicates the joint appendix of the parties submitted in connection with the direct appeal to the Fourth Circuit.

6, 14-21, 23, 26, 39. Magistrate Judge Mazzone advised McCauley that the statutory maximum sentence for this offense is a prison sentence of not more than 120 months. J.A. 49. And he noted the plea agreement contains a waiver of appellate rights, which the Government has the right to invoke in these proceedings if it deems such action appropriate and in the interest of justice. J.A. 17-18, 54-55.

A final version of the presentence investigation report was disclosed on June 6, 2025. J.A. 267. The United States Probation Officer specifically mentioned in Part E of the report that there were no “factors that would warrant a departure from the applicable sentencing guideline range” and there were no “aggravating factors in this case relevant to the defendant’s personal history, characteristics or the offense conduct that would impact the sentence, pursuant to Title 18 U.S.C. § 3553.” J.A. 303.

The parties appeared on June 12, 2025, for a sentencing hearing before the Honorable Thomas Kleeh, Chief United States District Judge, sitting in Clarksburg, West Virginia. J.A. 67-163, 273. After accepting McCauley’s guilty plea, the district court determined an advisory guideline range of 135 to 168 months, which exceeded the statutory maximum, based on a total offense level of 33, and a criminal history category I. J.A. 327.

McCauley’s counsel addressed the district court and requested a downward variance, in writing and orally, and a sentence below 120 months. J.A. 115-120, 175-199. This request was based on: (1) advanced age; (2) serious medical problems; (3) mental and emotional problems at the time of the offense; (4) a lifetime of professional

accomplishments and public service; (5) lack of prior criminal history; (6) McCauley's low rate of recidivism; (7) the collateral consequences of a conviction and sentence; and (8) a finding by an expert that McCauley does not have a sexual interest in children and is not a pedophile. J.A. 115-120, 175-199.

The Government opposed McCauley's request for a prison sentence below 120 months. J.A. 128-129. The district court imposed 120 months – the statutory maximum sentence, denying the motion for a downward sentence. J.A. 253.

The Judgment Order was entered on June 13, 2025. J.A. 165-172. The Statement of Reasons was filed the same day, indicating that the district court “adopts the presentence investigation report without change (I)(A),” J.A. 327, and that the district court imposed a sentence “within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months (IV)(D).” J.A. 328.

B. The United States Court of Appeals for the Fourth Circuit.

On June 23, 2025, McCauley filed his notice of appeal. J.A. 8, 173. He filed an opening brief with the Fourth Circuit on November 11, 2025, raising the issue whether the imposition of a 120-month sentence was substantively unreasonable, in light of the mitigating factors presented at sentencing.

The Government moved to dismiss the appeal citing Federal Rule of Appellate procedure 27 and Local Rule of Appellate Procedure 27(f) due to the presence of a waiver provision in the plea agreement.

On December 19, 2025, McCauley responded that he should be permitted to proceed with his appeal. The issue presented by the Government's motion to dismiss – whether the Government may enforce an appellate waiver after failing to object to the district court's advisement of appellate rights – is precisely the same issue pending before this Court in *Hunter v. United States*, 24-1063, since the prosecutor handling McCauley's case before the district court did not object to the district court's statement about McCauley's right to appeal, as the prosecutor failed to do in *Hunter*.

The response explained that (1) Hunter's case arises out of the Fifth Circuit; (2) Hunter filed a Petition for a Writ of Certiorari on April 4, 2025; (3) this Court granted the petition on October 10, 2025, 2025 WL 2885281; and (4) Hunter's case has not been decided.

In an Order issued on February 26, 2026, the Fourth Circuit failed to address *Hunter*, simply stating:

The Government has moved to dismiss the appeal as barred by McCauley's waiver of the right to appeal included in the plea agreement. Upon review of the record, we conclude that McCauley knowingly and voluntarily waived his right to appeal and that the issue McCauley seeks to raise on appeal fall squarely within the scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

Appendix A at p. 1.

IX. REASONS FOR GRANTING THE WRIT

The outcome of this case depends upon this Court's resolution of the issue presented in *Hunter v. United States*. This case presents the same question and involves similar facts. In both cases, the defendants entered a plea agreement containing a general appellate waiver, the district court told the defendant he had the right to appeal, the Government did not object, and the court of appeals later enforced the waiver to dismiss the appeal.

In connection with his appeal to the Fourth Circuit, McCauley made the same argument advanced in *Hunter*—that the Government's failure to object forfeits its ability to enforce the waiver. The Fourth Circuit rejected it in a summary order.

The Court's decision in *Hunter* will resolve this case. If the Court holds that the Government cannot enforce an appellate waiver under these circumstances, the judgment below cannot stand and McCauley's appeal must be reinstated. If not, further review is unnecessary. There is nothing about this case that complicates that analysis.

Therefore, this is a case this Court should hold and then remand after *Hunter*. The Fourth Circuit dismissed the appeal solely on the waiver and never reached the merits. There is nothing about McCauley's case that would prevent this Court from applying whatever it decides in *Hunter*. The Court should hold this petition pending *Hunter* and, if appropriate, grant, vacate, and remand.

X. CONCLUSION

For these reasons, McCauley respectfully requests that his petition for a writ of certiorari be held pending the decision in *Hunter v. United States* and, if appropriate, granted, vacated and remanded.

Respectfully submitted,

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