

No. _____

**IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA**

October Term, 2025

JOSEPH DOMINICK SANTORA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

**John D. Bryson
Counsel of Record
211 West Lexington Ave., Ste. 103
High Point, NC 27262
(336) 882-8190
john@johndbryson.com**

Counsel for Petitioner

QUESTION PRESENTED

1. IS A DEFEDANT'S RIGHT TO DUE PROCESS OF LAW VIOLATED WHEN THE GOVERNMENT REQUIRES AN APPEAL WAIVER AS PART OF A PLEA AGREEMENT?

LIST OF PARTIES

1. Joseph Dominick Santora (has no stock ticker symbol)
2. United States of America (has no stock ticker symbol)

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The Petitioner, Joseph Dominick Santora, respectfully requests that a writ of certiorari issue to review the Order of the United States Court of Appeals for the Fourth Circuit announced on December 23, 2025, dismissing Petitioner’s appeal, finding that he had previously waived his right to appeal his sentence.

OPINIONS BELOW

A Panel of the Fourth Circuit Court of Appeals dismissed Petitioner’s appeal by Order filed December 23, 2025, a copy of which appears as Appendix A.

JURISDICTION

This petition was filed within 90 days of the decision of the Court of Appeals. Petitioner was granted a 60 extension to correct a clerical deficiency on March 27, 2026 and is therefore timely. The jurisdiction of this Court is invoked pursuant to

28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part, no person in any criminal case shall be “deprived of life, liberty or property, without due process of law;...”

STATEMENT OF THE CASE

On October 28, 2024, a Federal Grand Jury for the Middle District of North Carolina returned a six-count superseding indictment against Petitioner. Petitioner was charged with 2 counts of production of child pornography in violation of 18 U.S.C. § 2251(a) and (e), one count of receipt of child pornography in violation of 18 U.S.C. § 2252A(a)(2)(A), one count of distribution of child pornography in violation of 18 U.S.C. § 2252A(a)(2)(A), one count of enticement of a minor in violation of 18 U.S.C. § 2422(b) and one count of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). Petitioner pled guilty to one count of production of child pornography and one count of receipt of child pornography on February 5, 2025, pursuant to a plea agreement

Petitioner’s draft presentence investigation report was filed on March 17, 2025. In the draft presentence report Petitioner received a four-level specific offense characteristic enhancement for an offense involving material that portrays sadistic or masochistic conduct or other depictions of violence under U.S.S.G. § 2G1.1(b)(4) for Count 5. Petitioner objected to this enhancement. The government filed its own separate objection alleging that Petitioner should receive a 5 level enhancement

under U.S.S.G. § 4B1.5(b)(1) for engaging in a pattern of prohibited sexual conduct. The parties then filed position papers regarding the appropriate guideline calculations.

At the sentencing hearing, the parties disagreed about the appropriateness of the enhancements under U.S.S.G. §§ 2G1.1(b)(4) and 4B1.5(b)(1). The court heard the arguments of counsel but did not conduct an evidentiary hearing. The Court overruled Petitioner's objection but ruled in favor of the government's objection. The court ultimately imposed a sentence of 600 months, 240 months on Count 2 to be followed by a consecutive term of 360 months for Count 5. The court also imposed ten years of supervised release.

STATEMENT OF THE FACTS

On January 26, 2024, the North Carolina State Bureau of Investigations received a Cybertip from the National Center for Missing and Exploited Children. The Cybertip indicated that an Instagram user was receiving material containing apparent child pornography. It was subsequently determined that the IP address for the Instagram user belonged to Petitioner who resided at an address in High Point, North Carolina. On April 26, 2024, High Point Police officers executed a search warrant at the Petitioner's residence. During the search they seized Petitioner's phone and multiple other digital devices. A review of Petitioner's phone indicated it contained multiple videos which constituted child pornography.

During a manual review of the Petitioner's phone by the FBI, it was discovered Petitioner had engaged in numerous conversations with underage females between

the ages of 12 and 16 that occurred between November of 2022 and April of 2024. In these conversations the defendant engaged in sexually explicit conversations, requested and received multiple self-produced child pornography images and videos from minors and occasionally arranged or attempted to arrange meet ups for sexual activity with them.

A review of the Petitioner's phone also revealed that he had engaged in sexually explicit conversations with an individual identified as Minor 8. During these communications it was observed that Petitioner had requested Minor 8 to send him images and videos of herself exposing her genitalia and masturbating. During one exchange Minor 8 sent the defendant a 10 second in length video of herself masturbating using an orange hairbrush in which she inserted the handle of the hairbrush into her vagina. This formed the factual basis for Count 5.

Petitioner was arrested on April 26, 2024, the same date as the execution of the search warrant and remained in state custody during this federal prosecution pursuant to unrelated state charges.

REASONS FOR GRANTING THE WRIT

As part of the plea agreement in this case, Petitioner was required to waive his appellate rights. While the appeal waiver allowed Petitioner to appeal on the basis of ineffective assistance of counsel or prosecutorial misconduct, the waiver specifically required Petitioner to waive his right to appeal the sentence imposed. He also waived his right to contest his conviction or sentence in post-conviction proceedings,

including proceedings under 28 U.S.C. § 2255.

The district court miscalculated Petitioner's guideline range in two ways. First the court misapplied guideline U.S.S.G. § 2G1.1(b)(4) when it assessed Petitioner a 4 level specific offense characteristic enhancement for involvement in an offense that portrayed "sadistic or masochistic conduct or other depictions of violence." The only evidence to support this enhancement was when a 12 year old girl who, having previously reported herself to be someone who engages frequently in masturbation, at Petitioner's request for videos of her, sent him a video of her masturbating, inserting a hair brush handle into her vagina, the hair brush being her self-initiated idea. This is insufficient to constitute evidence for application of U.S.S.G. § 2G1.1(b)(4).

Further the district court misapplied U.S.S.G. § 4B1.5(b)(1) when it assessed the Petitioner a 5 level enhancement for having engaged in a pattern of prohibited sexual conduct. Here the district court specifically overruled the probation department's determination that under U.S.S.G. § 4B1.5, comment (n.4(A) evidence from Count 2 could not be considered. Further the court ignored the limitation on relevant conduct as required by the guidelines as it relates to Count 5, as Count 5 is specifically excluded from the offenses that are to be grouped under U.S.S.G. § 3D1.2(d).

Petitioner sought to challenge the District Court's ruling by right of appeal. The government moved to dismiss Petitioner's appeal. That motion was allowed by the Fourth Circuit based on Petitioner's appeal waiver in his plea agreement.

Petitioner asserts that the appeal waiver violates his right to due process of

law for a variety of reasons. When considering appeal waivers, other courts have found them to be problematic for a variety of reasons. First, as noted in *U.S. v. Melancon*, 972 F.2d 566, 571 (5th Cir. 1992) (Parker, J., concurring specially), an appeal waiver can never be knowingly and intelligently entered into.

As an initial matter, 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 is yet to be imposed at the time he or she enters into the plea agreement; such a “waiver” is inherently uninformed and unintelligent.

U.S. v. Melancon, 972 F.2d 566, 571 (5th Cir. 1992) (Parker, J., concurring specially).

Further, appeal waivers have been found to undermine the very purpose of the sentencing guidelines:

The very purpose of the Sentencing Guidelines was to assume more uniformity in criminal sentencing. That was the intent of Congress and the intent of the Guidelines. See 28 U.S.C. §§ 991(b)(1)(B), 994(f); United States Sentencing Commission, Guidelines Manual, Chapter One – Introduction, Part A at 2 (Nov. 1997); S. Rep. No. 225 at 150-51 (1984), reprinted in U.S.C.C.A.N. 3182, 3334; *United States v. Ready*, 82 F.3d 551, 556 (2d Cir. 1996). What the government seeks to do through the appeal waiver provision is inconsistent with the goals and intent of Congress and the goals and intent of the Sentencing Commission. It will insulate from appellate review erroneous factual findings, interpretations and applications of the Guidelines by trial judges and thus, ultimately, it will undermine uniformity. The integrity of the system depends on the ability of appellate courts to correct sentencing errors, but the waiver provision at issue here inevitably will undermine the important role of the courts of appeals to correct errors in sentencing, a role that Congress has specifically set out for them.

U.S. v. Raynor, 989 F. Supp. 43, 48 (D.D.C. 1997).

Additionally, other courts have found that the power of the government to extract appeal waivers in the plea bargain process is inherently unfair to defendants

and results in an unconstitutional shift of the power to the prosecutor's side.

Finally, the Court is unwilling to accept the specific waiver of appeal rights provision offered to the defendant because the same plea agreement does not limit the government's right to appeal a sentence. This glaring inequality strengthens the conclusion that this kind of plea agreement is a contract of adhesion. As a practical matter, the government has bargaining power utterly superior to that of the average defendant if only because the precise charge or charges to be brought and thus the ultimate sentence to be imposed under the guidelines scheme – is up to the prosecution. See *United States v. Roberts*, 726 F. Supp. at 1363. To vest in the prosecutor also the power to require the waiver of appeal rights is to add that much more constitutional weight to the prosecutor's side of the balance.

U.S. v. Johnson, 992 F. Supp. 437, 439 (D.D.C. 1997).

As in *Johnson*, the appeal waiver in this case only limits Petitioner's right to appeal and not the government's right to appeal. Accordingly, Petitioner contends that the plea agreement he entered into was a contract of adhesion. Petitioner asserts that when defendants enter into plea agreements that amount to contracts of adhesion, which cannot by definition be knowingly and intelligently entered into, it necessarily violates the defendants' due process rights as guaranteed by the Fifth Amendment to the United States Constitution.

Additionally, given this Court's recent grant of certiorari review in *Munson P. Hunter, III v. United States*, No. 24-1063 on October 10, 2025, which will directly address the scope and validity of appeal waivers, this Court should, at a minimum, wait for its decision in *Hunter* as it may have an impact on Petitioner's case.

This Court should use this case as a vehicle to address the government's inherently unfair use of appeal waivers as part of the plea negotiation process. Appeal waivers have become commonplace in various jurisdictions across the country. The

time has come for this Court to determine the constitutionality of appeal waivers.

CONCLUSION

For reasons set forth above, Petitioner requests this Court grant a writ of certiorari to review the United States Court of Appeals for the Fourth Circuit judgment below to answer this important question of constitutional law.

Respectfully submitted this the 22nd day of May 2026.

/s/ John D. Bryson

John D. Bryson

Counsel for Petitioner

211 West Lexington Ave., Ste. 103

High Point, NC 27262

Telephone: (336) 882-8190

Email: john@johdbryson.com