

No. _____

In the
Supreme Court of the United States

Carlos Isaac Barrientos,
Petitioner,

v.

United States of America,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Adam Nicholson
Assistant Federal Public Defender

Federal Public Defender's Office
Northern District of Texas
525 S. Griffin Street, Suite 629
Dallas, TX 75202
214.767.2746
Adam_Nicholson@fd.org

QUESTIONS PRESENTED

1. Whether the only permissible exceptions to a general appeal waiver are for claims of ineffective assistance of counsel or that the sentence exceeds the statutory maximum.

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

PARTIES TO THE PROCEEDING

Petitioner is Carlos Isaac Barrientos, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS.....	iii
INDEX TO APPENDICES	iv
TABLE OF AUTHORITIES	v
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION.....	1
PROVISIONS INVOLVED.....	1
LIST OF PROCEEDINGS BELOW	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THIS PETITION.....	6
I. The Court should hold the instant petition until it decides the two issues presented, on which it recently granted certiorari review.....	6
CONCLUSION.....	10

INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the
Northern District of Texas

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Lawrence on Behalf of Lawrence v. Chater</i> , 516 U.S. 163 (1996)	6
<i>United States v. Barnes</i> , 953 F.3d 383 (5th Cir. 2020)	4, 8
<i>United States v. Gonzalez</i> , 259 F.3d 355 (5th Cir. 2001), <i>on reh'g en banc sub nom. United States v. Longoria</i> , 298 F.3d 367 (5 th Cir. 2002)	4, 5
<i>United States v. Hunter</i> , No. 24-20211, 2024 WL 5003582 (5th Cir. Dec. 6, 2024)	7
<i>United States v. Hunter</i> , No. 4:23-cr-00085 (N.D. Tex. May 13, 2024)	6
Federal Statutes	
18 U.S.C. § 922(g)(3)	7
18 U.S.C. § 922(o).....	3, 4
18 U.S.C. § 2251(a)	3
28 U.S.C. § 1254(1)	1
Rules	
Fed. R. App. P. 4	8
Fed. R. Crim. P. 32.....	8
Constitutional Provisions	
U.S. Const. amend. II	4
U.S. Const. amend. V.....	1
Other Authorities	
Petition for Writ of Certiorari, <i>Hunter v. United States</i> , No. 24-1063 (U.S. Oct. 10, 2025).....	6, 7, 8, 9

Petition for Writ of Certiorari, <i>Nyandoro</i> , 146 F.4th 448 (No. 25-6218)	8
Petition for Writ of Certiorari, <i>United States v. Hemani</i> , No. 24-1234 (U.S. Oct. 20, 2025).....	6
Reply Brief of the Petitioner, <i>Hunter v. United States</i> , 2025 (No. 24- 1063).....	7

PETITION FOR A WRIT OF CERTIORARI

Petitioner Carlos Isaac Barrientos seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals was not published but is available at *United States v. Carlos Isaac Barrientos*, No. 25-10912, 2026 WL 661999 (5th Cir. Mar. 9, 2026) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on March 9, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides, “No person shall be . . . deprived of life, liberty, or property, without due process of law;

LIST OF PROCEEDINGS BELOW

1. *United States v. Carlos Isaac Barrientos*, 4:25-CR-75-O, United States District Court for the Northern District of Texas. Judgment and sentence entered on July 24, 2025. (Appendix B).
2. *United States v. Carlos Isaac Barrientos*, No. 25-10912, 2026 WL 661999 (5th Cir. March 9, 2026) (unpublished), Court of Appeals for the Fifth Circuit. Judgment affirmed on March 9, 2026. (Appendix A).

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

Appellant Carlos Isaac Barrientos pleaded guilty to one count of possessing a machinegun under 18 U.S.C. §922(o), and to one count of violating 18 U.S.C. §2251(a). *See* ROA.39-42. His “factual resume” admitted that he possessed two semi-automatic pistols, both equipped with a machinegun conversion device, commonly referred to as a “Glock Switch.” *See* ROA.39-42. It made no admission regarding the provenance of the firearms or the machinegun conversion device. *See* ROA.39-42. In a plea agreement, the government agreed to dismiss and forego all charges to which Appellant did not plead guilty. *See* ROA.162-163. The defendant agreed to a waiver of appeal, save for sentences exceeding the statutory maximum, arithmetic error, ineffective assistance of counsel, or involuntary pleas. *See* ROA.163-164. When he pleaded guilty, the court discussed his waiver of appeal. *See* ROA.112-113.

At sentencing, the district court imposed a sentence of 324 months for violation of §2251(a) and 81 months for violation of §922(o), run consecutively. *See* ROA.147. Just before the end of the sentencing hearing, the following exchange occurred:

THE COURT: . . . Now, you have the right to appeal this sentence. You also have the right to apply for leave to appeal in forma pauperis if you are unable to pay the cost of an appeal. And if you decide to appeal, your notice must be filed within 14 days. Please instruct your counsel on how you wish to proceed in that regard. Please follow your client's instructions on that issue. Anything else from the government?

MS. MONTE: Your Honor, at this time the government would request the Court dismiss Counts II and III of the indictment.

THE COURT: That's granted. Anything else from the defense?

MR. LEHMANN: No, Your Honor.

ROA.148-149. The defendant signed a notice of right to appeal, which did not mention the waiver of appeal or any exceptions. *See* ROA.62-63.

B. Appellate Proceedings

On appeal, Petitioner first argued that the waiver of appeal contained in his plea agreement did not bar his appeal for two reasons. First, he argued that the waiver contained an implied exception for constitutional errors of a fundamental nature. Second, he argued that the appeal waiver was invalidated by the combination of the district court's unreserved statement at sentencing that Petitioner had a right to appeal and the government's failure to object to that statement. He acknowledged that both claims were foreclosed by Fifth Circuit precedent in *United States v. Barnes*, 953 F.3d 383, 389 (5th Cir. 2020) and *United States v. Gonzalez*, 259 F.3d 355, 358 (5th Cir. 2001), *on reh'g en banc sub nom. United States v. Longoria*, 298 F.3d 367 (5th Cir. 2002).

In addition, Petitioner submitted two additional arguments to the Court of Appeals. First, he argued that 18 U.S.C. §922(o) exceeds Congressional powers under the Commerce Clause as applied to machinegun conversion devices. Second, he argued that the statute violates the Second Amendment because it forbids possession of a weapon now in common use for self-defense. He acknowledged, however, that both claims were foreclosed by rulings of the Fifth Circuit.

The Fifth Circuit affirmed in an unpublished opinion, deciding that Barrientos's challenges were barred by his appeal waiver and concluding that his argument was foreclosed by *United States v. Barnes*, 953 F. 4th 383, 388-89 (5th Cir.

2020), and *United States v. Gonzalez*, 259 F.3d 355, 358 (5th Cir. 2001). [App. A at *2]. Because it concluded that the challenges were barred by the appeal waiver, the court declined to address Petitioner's remaining issues. *Id.* at *3.

REASONS FOR GRANTING THIS PETITION

I. The Court should hold the instant petition until it decides the two issues presented, on which it recently granted certiorari review.

“Where intervening developments, or 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,” this Court may grant certiorari, vacate the judgment below, and remand for redetermination in light of the intervening event. *Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167–68 (1996). *See also Stutson v. United States*, 516 U.S. 163, 181 (1996) (Scalia, J., dissenting) (emphasis in original) (“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.”). Barrientos respectfully requests that the Court hold his instant petition pending the Court’s decisions in *Hunter v. United States*, No. 24-1063 (U.S. Oct. 10, 2025); and *United States v. Hemani*, No. 24-1234 (U.S. Oct. 20, 2025).

In *Hunter v. United States*, the district court convicted and sentenced Munson P. Hunter, III for aiding and abetting wire fraud to 51 months imprisonment and three years of supervised release. Judgment 1–2, *United States v. Hunter*, No. 4:23-cr-00085 (N.D. Tex. May 13, 2024). During the term of supervised release, the district court ordered Hunter to “take all mental-health medications” prescribed. *Hunter* Judgment 4. Hunter appealed this condition because it “infringe[d] on his

fundamental due process liberty interest.” *United States v. Hunter*, No. 24-20211, 2024 WL 5003582, at *1 (5th Cir. Dec. 6, 2024). The Government defended the appeal by invoking Hunter’s appeal waiver. *Id.*

In the panel opinion, the Fifth Circuit first rejected that “the district court’s statement at the sentencing hearing that Hunter had a right to appeal . . . impact[ed] the validity of the appeal waiver.” *Id.* Citing *United States v. Barnes*, 953 F.3d 383, 389 (5th Cir. 2020), the Fifth Circuit also “rejected Hunter’s suggestion that the right to challenge an unconstitutional sentence cannot be waived.” *Id.* The Court of Appeals thus enforced the waiver and dismissed Hunter’s appeal. *Id.*

Hunter then sought certiorari review, advocating for an exception to general appeal waivers for appeals of unconstitutional sentences. Pet. for Cert. 3, 21, *Hunter v. United States*, No. 24-1063 (U.S. Apr. 4, 2025). *See also* Reply Br. of Pet’r 5, *Hunter v. United States*, No. 24-1063 (U.S. Sept. 10, 2025) (pointing to Fifth Circuit’s recent refusal to adopt a “miscarriage-of-justice” exception as a reason to grant certiorari review). Hunter also argued that the Court should honor an unobjected-to statement of appellate rights voiced by the district court over the appeal waiver. *Hunter* Pet. for Cert. 25–26.

The decision in *Hunter* can prove outcome determinative in this case.

Barrientos contended that, because § 922(g)(3) is unconstitutional, his plea agreement’s appeal waiver did not bar his appeal because that agreement “contain[ed] an implied exception for alleged constitutional errors of a fundamental nature” and “it [was] invalidated by the district court’s statement at sentencing that

he had a right to appeal[.]” [App. A at 1-2]. Thus, Barrientos argued his § 922(g)(o) conviction failed to meet Rule 11’s requirements that a “plea rest[] on a sufficient factual basis and that the defendant understand[] the nature of the charge.” *United States v. Nyandoro*, 146 F.4th 448, 457 (5th Cir. 2026), *petition for cert. filed*, No. 25-6218 (U.S. Feb. 26, 2026). As in *Hunter*, the government invoked the appellate waiver. United States’ Unopposed Mot. For Summ. Aff., *United States v. Barrientos*, No. 25-10912, at 3-4 (5th Cir. Dec. 4, 2025). And as in *Hunter*, *Barnes* was cited to enforce the waiver. *Id.* at 3 (citing *Barnes*, 953 F.3d at 388-89 (5th Cir. 2020)). Again, as in *Hunter*, the Fifth Circuit enforced the appeal waiver against Barrientos’s constitutionally based claims. App. A. at 2-3. Thus, the enforcement of general appeal waivers against claims like Barrientos’s is precisely the question the Court will decide in *Hunter*.

Additionally, Barrientos’s case presents the second issue on which the Court granted review in *Hunter*. On the day of sentencing, the district court provided Barrientos with a notice of appellate rights that parroted the rights to appeal under Federal Rule of Criminal Procedure 32 and Federal Rule of Appellate Procedure 4, but which made no mention of Barrientos’s appeal waiver. ROA.62. In open court, the district court also informed Barrientos:

THE COURT: . . . Now, you have the right to appeal this sentence. You also have the right to apply for leave to appeal in forma pauperis if you are unable to pay the cost of an appeal. And if you decide to appeal, your notice must be filed within 14 days. Please instruct your counsel on how you wish to proceed in that regard.

ROA.148. The Government did not object. ROA.148-49. Nonetheless, the Fifth Circuit concluded that this argument, also, was barred by the plea agreement's appeal waiver. App. A at *2-3.

In short, the Fifth Circuit found that Barrientos's "constitutional challenges to his convictions are barred by the appeal waiver." *Id.* at 2. It did so on the basis of the same line of precedent that this Court will review in *Hunter*. Thus, the outcome in *Hunter* may prove outcome-determinative. If the Court adopts an exception to general appeal waivers for constitutionally based challenges to sentences, the Fifth Circuit must address the merits of Barrientos's appeal. Given the importance of *Hunter* to the outcome here, the Court should hold this petition and take the necessary action after it issues its decision in *Hunter*.

CONCLUSION

Petitioner respectfully submits that this Court should either hold his petition or grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 1st day of June, 2026.

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Adam Nicholson
Adam Nicholson
Assistant Federal Public Defender
Federal Public Defender's Office
525 S. Griffin Street, Suite 629
Dallas, Texas 75202
Telephone: (214) 767-2746
E-mail: Adam_Nicholson@fd.org

Attorneys for Petitioner