

No. 25-7544

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS ISAAC BARRIENTOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 6-9) that he should be permitted to challenge on appeal whether the prohibition on possessing machineguns in 18 U.S.C. 922(o) exceeds Congress's power under the Commerce Clause and violates the Second Amendment, notwithstanding a provision in his plea agreement waiving the right to raise that claim on appeal, on the ground that his conviction under that statute violates the Constitution. Pet. 7. He further contends (Pet. 8-9) that he should be permitted to appeal because the district court advised him during sentencing that he had a right to appeal and the government did not object.

In Hunter v. United States, 146 S. Ct. 1702 (2026), this Court addressed whether an appeal waiver was “unenforceable in the sentencing context.” Id. at 1708. The Court rejected a defendant’s claim that a district court’s statement at sentencing that the defendant had a right to appeal, and the government’s subsequent nonobjection to that statement, did not foreclose the government from enforcing the defendant’s knowing and voluntary appeal waiver. Id. at 1710-1711. But the Court held that a defendant’s knowing and voluntary “agreement not to appeal a sentence is unenforceable when it would result in a miscarriage of justice -- meaning, when it would leave in place the kind of egregious error that would bring the judicial system into disrepute.” Id. at 1708.

Petitioner, who filed his petition for a writ of certiorari while Hunter was still pending before this Court, has suggested that the decision in Hunter could provide a basis for granting the petition for a writ of certiorari, vacating the judgment below, and remanding in his case. See, e.g., Pet. 6. But that course is not warranted. As a threshold matter, Hunter’s holding that an appeal waiver is enforceable notwithstanding a district court’s unobjected statement about a defendant’s putative appellate rights, see 146 S. Ct. at 1710-1711, undermines petitioner’s argument that such a statement entitled him to appeal his conviction here. And this Court has denied other petitions raising

similar claims. See Martin v. United States, No. 25-6142 (June 29, 2026); Tavares v. United States, No. 25-7103 (June 29, 2026).

With respect to petitioner's claim seeking an exception to his appeal waiver, this Court has also since Hunter denied several petitions for writs of certiorari where the defendant attempted to appeal his conviction -- rather than just his sentence -- notwithstanding an appeal waiver. See Jones v. United States, 146 S. Ct. 2547, 2547 (2026) (Sotomayor, J., respecting the denial of certiorari) (observing that "Hunter addressed the enforceability of appeal waivers specifically 'in the sentencing context,' whereas this petition concerns when a collateral-review waiver is enforceable against a challenge to a defendant's conviction") (citation omitted); Jones v. United States, No. 25-6136 (June 30, 2026); Blaise v. United States, No. 25-6627 (June 29, 2026). Because petitioner challenges the constitutionality of a statute under which he was convicted without raising any sentencing claims, see Pet. 4, this Court should follow the same course here.*

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.