

In the Supreme Court of the United States

ZENIA CHAVEZ, *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

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QUESTION PRESENTED

Whether an appeal waiver, that waives “the right to appeal the . . . sentence on any ground, including . . . term of supervision and conditions,” bars a claim that a written judgment conflicts with a sentencing judge’s oral pronouncement of the sentence imposed.

PARTIES TO THE PROCEEDINGS

Pursuant to Sup. Ct. R. 14.1(b)(i), the parties to the proceedings in the court whose judgment is sought to be reviewed are:

Petitioner Zenia Chavez, the defendant in the district court and appellant below.

Respondent United States of America, the plaintiff in the district court and appellee below.

No nongovernmental corporations are parties to this proceeding.

RELATED PROCEEDINGS

United States District Court for the Western District of Texas:

United States v. Chavez, No. 3:21-cr-01489-DCG (July 3, 2024)

United States Court of Appeals for the Fifth Circuit:

United States v. Chavez, No. 24-50548 (Jan. 15, 2026)

TABLE OF CONTENTS

Question presented.....	i
Related proceedings	ii
Table of contents.....	iii
Table of authorities	iv
Opinion below	1
Jurisdiction	1
Constitutional and statutory provisions involved	2
Statement	2
A. Proceedings in the district court.....	2
B. Proceedings in the court of appeals.....	5
Reasons for granting the petition.....	5
I. The courts of appeals are deeply divided over whether a waiver of the right to appeal a sentence bars a criminal defendant’s argument that aspects of the sentence—here imposition of terms of supervised release—were not pronounced at sentencing.....	5
II. This case is an ideal vehicle for addressing this question, it illustrates why the Fifth Circuit’s view is wrong, and it shows that this is an important and recurring question. ..	8
III. Alternatively, this Court should hold the petition pending the outcome of <i>Hunter v. United States</i> because it presents a distinct though overlapping question about the reach of an appeal waiver.....	14
Conclusion.....	15
Appendix, court of appeals opinion (Jan. 15, 2026)	1a

TABLE OF AUTHORITIES

Cases

<i>Hunter v. United States</i> , Case No. 24-1063 (cert. granted, Oct. 10, 2025).....	iii, 14, 15
<i>United States v. Diggles</i> , 957 F.3d 551 (5th Cir. 2020).....	8, 9, 10
<i>United States v. Fields</i> , 977 F.3d 358 (5th Cir. 2020)	12
<i>United States v. Harris</i> , 51 F.4th 705 (7th Cir. 2022)	6, 7
<i>United States v. Higgins</i> , 739 F.3d 733 (5th Cir. 2014)	5, 7
<i>United States v. Hunt</i> , 843 F.3d 1022 (D.C. Cir. 2016).....	7
<i>United States v. Lomas</i> , 643 F. App'x 319 (5th Cir. Feb. 10, 2016).....	13
<i>United States v. Martinez</i> , 47 F.4th 364 (5th Cir. 2022).....	10, 12, 13
<i>United States v. Shaw</i> , 139 F.4th 548 (6th Cir. 2025)	6, 7
<i>United States v. Singletary</i> , 984 F.3d 341 (4th Cir. 2021).....	6

Constitutional Provisions

U.S. Const. amend. V	2, 8
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Statutes

18 U.S.C. § 3583(d).....	3, 9, 12
--------------------------	----------

28 U.S.C. § 1254(1)	1
---------------------------	---

Other Authorities

Standing Order, Conditions of Probation and Supervised Release (W.D. Tex. Nov. 28, 2016)	4, 12
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Zenia Chavez, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Fifth Circuit's unpublished opinion is reproduced at *Appendix*, at 1a–2a.

JURISDICTION

The court of appeals's judgment was entered on January 15, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS 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” U.S. Const. amend. V.

STATEMENT

A. Proceedings in the district court.

Zenia Chavez was charged with twenty-seven counts related to a scheme by which her company, Nursemind, fraudulently enrolled Medicare patients to receive hospice care, though they neither qualified for nor received hospice care. Some portion of that scheme involved illegally paying remunerations for referring the patients to Nursemind to receive hospice care. Chavez pleaded guilty, with a written plea agreement, to count sixteen: conspiracy to pay illegal remunerations regarding Medicare. As part of the plea agreement, Chavez “waive[d] the right to appeal the conviction or sentence on any ground[.]” C.A. ROA 271.

After Chavez pleaded guilty, a probation officer prepared a report. The report concluded that one to three years of supervised release were authorized. The report referred to “mandatory and standard conditions of supervision adopted by the court” before recommending four special conditions: (1) provision of financial

information, (2) no new credit charges or lines of credit, (3) payment of any financial penalty on a schedule, and (4) submit to searches. C.A. ROA 317–18. The report also found mandatory restitution in the amount of \$4,234,652. C.A. ROA 319.

At sentencing, the district court sentenced Chavez to 46 months' imprisonment and three years of supervised release, stating:

I'm gonna follow that with three years of supervised release under standard conditions which this Court adopts. These will include that you commit no crime against the United States, any state of the United States, or any local government. I'll include the special condition that you submit to up to one year of intermittent confinement as directed by the Court pursuant to law. And [defense counsel], are you familiar with the special conditions set out in paragraph 140 of the report?

Defense counsel: Yes, Judge. No objection.

The district court: All right. The Court would impose the special conditions set out in paragraph 140 of the report. Include them in the judgment as if I'd fully articulated them into the record.

C.A. ROA 260–61.

In the judgment, that pronouncement of supervised release was expanded to four sets of conditions of supervised release.

First, the mandatory conditions, C.A. ROA 149, which mirror the conditions required by 18 U.S.C. § 3583(d).

Second, a set of “standard conditions,” C.A. ROA 150, which were referred to but not described in the presentence report, C.A. ROA 317, and are a verbatim recitation of sixteen of the seventeen “standard conditions” in the district court’s standing order called, “Conditions of Probation and Supervised Release.” Standing Order, Conditions of Probation and Supervised Release (W.D. Tex. Nov. 28, 2016) *available at* <https://www.txwd.uscourts.gov/wp-content/uploads/2022/12/Conditions-of-Probation-and-Supervised-Release.pdf> (“Standing Order”).

Third, four “special conditions,” C.A. ROA 151, that were recommended and defined in the presentence report, C.A. ROA 317–18, and adopted by the district court at sentencing, C.A. ROA 261.

Fourth, an “additional conditions of supervised release,” C.A. ROA 152, that was absent from the presentence report, C.A. ROA 317–18, absent from the Standing Order, and referred to at sentencing only as “the special condition that you submit to up to one year of intermittent confinement as directed by the Court pursuant to law.” C.A. ROA 261.

Chavez did not object to the sentence as pronounced, C.A. ROA 261–63, but she did appeal. C.A. ROA 154.

B. Proceedings in the court of appeals.

On appeal, Chavez urged that the district court erred by imposing “standard” conditions of supervised release and the “intermittent confinement” condition of supervised release without adequately pronouncing them or articulating the reasons for them.

The Fifth Circuit dismissed the appeal due to the government’s invocation of the appeal waiver. *Appendix*, at 2a (citing *United States v. Higgins*, 739 F.3d 733, 736 (5th Cir. 2014)). The Fifth Circuit reaffirmed its precedent that an appeal waiver that waives the right to appeal the “sentence,” “unambiguously includes S[upervised] R[elease] and its conditions as a matter of law,” including challenges to a failure to pronounce a term of supervised release that is ultimately included in the judgment. *Higgins*, 739 F.3d at 738–39.

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are deeply divided over whether a waiver of the right to appeal a sentence bars a criminal defendant’s argument that aspects of the sentence—here imposition of terms of supervised release—were not pronounced at sentencing.

There is an entrenched split over whether an appeal waiver that waives the right to challenge a sentence bars a defendant’s challenge that the written judgment conflicts with the orally pronounced sentence. The Sixth Circuit has held that waivers of

the right to challenge the sentence do not bar an argument that the written judgment conflicts, writing:

[W]hen a defendant argues on appeal that the written judgment and the oral sentence conflict, he is not challenging his *sentence*. Rather, he is seeking to avoid enforcement of the written judgment, which is *not* the sentence and which may very well be a nullity.

United States v. Shaw, 139 F.4th 548, 552 (6th Cir. 2025) (emphasis original, quotations omitted).

The Fourth and Seventh Circuits similarly hold that a defendant’s challenge to the enforcement of the written judgment, as unpronounced, is not a challenge to the sentence. *United States v. Harris*, 51 F.4th 705, 720 (7th Cir. 2022) (“[I]n the case of a discrepancy between a written judgment and an unambiguous oral pronouncement, the oral pronouncement is the real sentence and a defendant who seeks to impose the sentence is not ‘challenging’ the district court’s sentence.”); *United States v. Singletary*, 984 F.3d 341, 345 (4th Cir. 2021) (holding that an appeal waiver did not bar a claim that supervised release conditions appeared “for the first time in a written judgment” because such a claim “made the more elementary contention that certain conditions in his written judgment were not part of his sentence at all”).

The Fifth Circuit disagrees. The Fifth Circuit has held that a sentencing appeal waiver bars the “contention that the written

judgment conflicts with the oral pronouncement.” *Higgins*, 739 F.3d at 738. That view rests entirely on the premise that the oral pronouncement and the written judgment “are both considered the sentence.” *Id.* at 739. Thus, “an appeal regarding a potential conflict between the two sentences is an appeal of the sentence.” *Id.* The Sixth and the Seventh Circuit have both explicitly held that their approaches are in conflict with the Fifth Circuit’s. *Shaw*, 139 F.4th at 553 (“The Fifth Circuit’s opinion does not address this established principle [that the written judgment is not the sentence but merely evidence of the sentence], so we decline to follow it.”); *Harris*, 51 F.4th at 720 (“We are not persuaded by the government’s request to instead adopt the Fifth Circuit’s contrary view in *United States v. Higgins*.”).

The District of Columbia Circuit has taken a slightly different approach. The District of Columbia Circuit finds the Fifth Circuit’s interpretation of a waiver of the right to appeal “the sentence” to be “[o]ne reasonable interpretation” *United States v. Hunt*, 843 F.3d 1022, 1027–28 (D.C. Cir. 2016). But, in *Hunt*, the District of Columbia Circuit ultimately concluded that the waiver did not bar the challenge to supervised release conditions because additional provisions of the plea agreement permitted other, more limited interpretations of the waiver. *Id.* at 1028–29.

Three circuits have permitted a defendant to challenge his written judgment when it includes conditions of supervised release that were not adequately pronounced at his sentence, despite an appeal waiver; whereas the Fifth Circuit bars such a challenge when a defendant waives the right to appeal “the sentence.” This Court should intervene to resolve that split.

II. This case is an ideal vehicle for addressing this question, it illustrates why the Fifth Circuit’s view is wrong, and it shows that this is an important and recurring question.

This case is important because it goes to the core of the Fifth Amendment due process right. U.S. Const. amend. V. “The presence of a defendant is a condition of due process to the extent that a fair and just hearing would be thwarted by his absence” *United States v. Diggles*, 957 F.3d 551, 558 (5th Cir. 2020) (en banc); *see also* Fed. R. Crim. P. 43(a)(3) (requiring “the defendant must be present at sentencing”). The Fifth Circuit approach violates that right by permitting a district court to impose written conditions of supervised release without needing to pronounce them at sentence, provided the defendant has waived the right to challenge the sentence.

Further, this is a recurring question because it goes to a defendant’s ability to challenge the conditions of supervised release

imposed by a written judgment—an issue that recurs in most criminal cases. “Supervised release assists individuals in their transition to community life. To promote that reintegration and protect the public from further crimes, courts often impose conditions on a releasee.” *Id.*

The statute authorizing supervised release, 18 U.S.C. § 3583(d), groups supervised release conditions into two categories: “required and discretionary conditions.” *Diggles*, 957 F.3d at 558. “Section 3583(d) first lists conditions the court ‘shall’ impose (some for all offenses, others for certain offenses).” *Id.* (quoting § 3583(d)). “The statute then says that a court ‘may’ impose other conditions that are ‘reasonably related’ to certain statutory sentencing factors, ‘involve no greater deprivation of liberty than is reasonably necessary’ to accomplish certain sentencing objectives, and are consistent with the Sentencing Guidelines.” *Id.* (quoting § 3583(d)).

Whether conditions are required or discretionary controls the requirement for the district court to pronounce them at sentencing. “If a condition is required, making an objection futile, the court need not pronounce it. If a condition is discretionary, the court must pronounce it to allow for an objection.” *Id.* at 559. Required conditions need not be pronounced at sentencing because “when a

condition is mandatory, there is little a defendant can do to defend against it.” *Id.* at 558. But, “when the imposition of a condition is discretionary,” the district court must pronounce its imposition of the condition “because then the defendant can dispute whether it is necessary or what form it should take.” *Id.* For example, the district court can give defendants notice when the presentence report outlines proposed conditions, and the district court tells a defendant it is adopting the report’s proposed conditions. *Id.* at 560. Regardless of the precise method, at sentencing the district court must “expressly” “identify” and “adopt” the “specific” supervised release conditions it imposes on the defendant. *United States v. Martinez*, 47 F.4th 364, 368 (5th Cir. 2022).

This case presents an ideal vehicle to resolve the split because, here, the district court imposed both mandatory and discretionary conditions but did not adequately pronounce most of the discretionary conditions it included in the written judgment.

Here, the written judgment imposed a three-year term of supervised release. C.A. ROA 149–152. It included “mandatory conditions” of supervised release, which the district court need not have pronounced because “when a condition is mandatory, there is little a defendant can do to defend against it.” *Diggles*, 957 F.3d at 558. Then, the district court included three additional groups of

conditions, all of which were discretionary. *Id.* at 559 (citing 18 U.S.C. § 3583(d)). The district court labeled them: “standard conditions of supervised release,” C.A. ROA 150, “special conditions of supervised release,” C.A. ROA 151, and “additional conditions of supervised release,” C.A. ROA 152.

The district court correctly imposed the “special conditions of supervised release.” The report set out the conditions and the reasons justifying them based on the facts and circumstances of the case, C.A. ROA 317–18, the district court explicitly adopted them, C.A. ROA 261, and they were included verbatim in the judgment, C.A. ROA 151. The district court did not follow that procedure for the other discretionary conditions it imposed: the “standard conditions of supervised release” and the “additional conditions of supervised release.”

The district court imposed “standard” conditions of supervised release. C.A. ROA 150. The standard conditions are sixteen mandates that Chavez do an array of things—from maintaining 30 hours per week of employment to permitting unscheduled visits to “her home or elsewhere.” The record contains only two references to “standard” conditions outside of the judgment: (1) in a prefatory clause in the presentence report, ROA.38 (“in addition to the mandatory and standard conditions of supervision adopted by the

Court, . . .”), and (2) when, at sentencing, the district court said, “I’m gonna follow [your sentence of imprisonment] with three years of supervised release under standard conditions which this Court adopts.” C.A. ROA 260.

Both the reference to standard conditions in the report and the district court’s adoption of that reference were insufficient to meet the pronouncement requirement. True, the standard conditions the court ultimately included in the judgment, C.A. ROA 150, are a verbatim recitation of sixteen of the seventeen conditions set forth in the district court’s standing order. *See* Standing Order, *supra*. “Nevertheless, the district court erred in failing to clarify ‘the standard conditions’ to which it referred at the sentencing hearing [and in the presentence report] or to expressly locate, identify, and adopt by reference a specific written list of conditions. The ‘standard conditions’ listed in the judgment are not mandatory under § 3583(d) and were not ‘included in the oral pronouncement. It necessarily follows that the standard conditions must be stricken.’” *Martinez*, 47 F.4th at 367–68 (quoting *United States v. Fields*, 977 F.3d 358, 366 (5th Cir. 2020)).

Further, the district court did not adequately pronounce the “additional conditions of supervised release.” C.A. ROA 152. That condition required that “The defendant shall remain in the custody

of the Federal Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation or supervised release as directed by the Court.” C.A. ROA 152.

That condition is not one of the standard conditions in the Western District of Texas’s Standing Order. It was also not mentioned in the presentence report. Instead, at sentencing, the district court briefly stated, “I’ll include the special condition that you submit to up to one year of intermittent confinement as directed by the Court pursuant to law.” That pronouncement was inadequate to “expressly” “identify” and “adopt” the “specific” supervised release condition it ultimately included in the judgment. *Martinez*, 47 F.4th at 367; *see United States v. Lomas*, 643 F. App’x 319, 324 (5th Cir. Feb. 10, 2016) (unpublished) (“[I]t is hard to see how Lomas could have objected at sentencing to the wording of the condition—the basis of his challenge on appeal—when he did not encounter that wording until he received his written judgment.”).

The district court’s failure to pronounce the standard and additional conditions of supervision at sentencing made it impossible for Chavez to object to them. Chavez sought to challenge them on appeal, but the Fifth Circuit enforced her waiver of her right to

appeal her sentence. Thus, this case perfectly presents the issue of whether an appeal waiver bars a challenge that the district court's written judgment varied from its pronouncement of the sentence.

III. Alternatively, this Court should hold the petition pending the outcome of *Hunter v. United States* because it presents a distinct though overlapping question about the reach of an appeal waiver.

This Court has granted a petition for a writ of certiorari in *Hunter v. United States*, Case No. 24-1063 (cert. granted, Oct. 10, 2025). In that case, the petitioner identified the questions presented as: “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 advises the defendant that he has a right to appeal and the government does not object.”

This case presents a distinct issue from *Hunter* because *Hunter* involved a supervised release condition that was pronounced at sentencing, objected to, but unaddressed by the Fifth Circuit because the government sought to enforce a similar appeal waiver.

But, if the Court reverses the judgment in *Hunter*, it may require reversal in this case, as *Hunter* deals with the extent to which appeal waivers can be enforced.

Accordingly, Chavez urges the Court to grant her petition and consider separately the issue of whether she can challenge an aspect of her sentence, included in the written judgment, as not orally pronounced at her sentencing, despite an appeal waiver. But, if the Court is not inclined to take that issue and reverses in *Hunter*, Chavez urges the Court to grant, vacate, and remand for further consideration in light of *Hunter*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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April 15, 2026