

No. _____

In the
Supreme Court of the United States

Michael Huffman,

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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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 a broadly worded appeal waiver bars a claim that the district court imposed a more severe sentence in the written judgment than it orally pronounced.

PARTIES TO THE PROCEEDING

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

RELATED PROCEEDINGS

- *United States v. Huffman*, No. 4:25-CR-00136-P, U.S. District Court for the Northern District of Texas. Amended Judgment entered on December 4, 2025.
- *United States v. Huffman*, No. 25-11298, U.S. Court of Appeals for the Fifth Circuit. Order entered on June 8, 2026.

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceeding	ii
Related Proceedings.....	ii
Table of Contents	iii
Appendices	iv
Table of Authorities	v
Petition for a Writ of Certiorari	1
Opinions Below	1
Jurisdiction	1
Provisions Involved.....	1
Statement of the Case	2
I. Factual Background	2
II. Proceedings in District Court.....	2
III. Proceedings on Appeal.....	3
Reasons For Granting This Petition	3
I. Under <i>Hunter</i> , the deprivation of the right to be present is an error of sufficient gravity to constitute a miscarriage of justice.....	3
A. The Court acknowledged the existence of a miscarriage of justice exception in <i>Hunter</i>	4
II. The Circuits are split on whether an appeal waiver bars an appeal of a written judgment conflicting with the oral sentence.	7
Conclusion	9

APPENDICES

Appendix A	Order, <i>United States v. Huffman</i> , No. 25-11298 (5th Cir. June 8, 2026)	
		a1
Appendix B	Amended Judgment and Sentence, <i>United States v. Huffman</i> , No. 4:25- CR-00136- (N.D. Tex. Dec. 4, 2025)	a24

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Anderson Nat. Bank v. Lueckett</i> , 321 U.S. 233 (1944)	6
<i>Hunter v. United States</i> , No. 24-1063 (U.S. Oct. 10, 2025)	3, 4, 5, 6
<i>Lawrence on Behalf of Lawrence v. Chater</i> , 516 U.S. 163 (1996)	4
<i>Stutson v. United States</i> , 516 U.S. 163, 181 (1996)	4
<i>United States v. Barnes</i> , 953 F.3d 383 (5th Cir. 2020)	5, 6
<i>United States v. Buchanan</i> , No. 23-12879, 2025 WL 2911209 (11th Cir. Oct. 14, 2025)	7
<i>United States v. Clark</i> , 816 F.3d 350 (5th Cir. 2016)	9
<i>United States v. Diggles</i> , 957 F.3d 551 (5th Cir. 2020)	8, 9
<i>United States v. Erwin</i> , 277 F.3d 727 (5th Cir. 2001)	9
<i>United States v. Frater</i> , 735 F. App'x 467 (9th Cir. 2018)	7
<i>United States v. Harris</i> , 51 F.4th 705 (7th Cir. 2022)	7
<i>United States v. Hatcher</i> , 668 F. App'x 177 (8th Cir. 2016)	7
<i>United States v. Higgins</i> , 739 F.3d 733 (5th Cir. 2014)	8
<i>United States v. Huffman</i> , No. 4:25-CR-00136-P (N.D. Tex. Dec. 4, 2025)	1

<i>United States v. Hunter</i> , No. 24-20211, 2024 WL 5003582 (5th Cir. Dec. 6, 2024)	4, 5
<i>United States v. Mireles</i> , 471 F.3d 551 (5th Cir. 2006)	8
<i>United States v. Moree</i> , 928 F.2d 654 (5th Cir. 1991)	9
<i>United States v. Pineda</i> , 988 F.2d 22 (5th Cir.1993)	9
<i>United States v. Shaw</i> , 139 F.4th 548 (6th Cir. 2025).....	7
<i>United States v. Singletary</i> , 984 F.3d 341 (4th Cir. 2021)	7

Federal Statutes

18 U.S.C. § 109.....	3
18 U.S.C. § 2252A(a)(2)	2
18 U.S.C. § 2252A(a)(5)(B)	2
18 U.S.C. § 2252A(b)(1)	2
18 U.S.C. § 2252A(b)(2)	2
18 U.S.C. § 3014.....	2, 3, 8, 9
18 U.S.C. § 3014(a)(2024)	2
18 U.S.C. § 3582 (c).....	8
28 U.S.C. § 1254(1)	1
Pub. L. 119–37, Div. F, Title I, § 6101(e), Nov. 12, 2025, 139 Stat. 629.....	3
Pub.L. 119-75, Div. I, § 5012, Div. J, Title IV, § 6401(e), Feb. 3, 2026, 140 Stat. 630, 687	3

Rules

Fed. R. Crim. P. 35(a)	8, 9
Fed. R. Crim. P. 43.....	1, 8

Fed. R. Crim. P. 43(b)(4).....	8
Supreme Court Rule 13.3	1

Constitutional Provisions

U.S. Const. amendment V	1, 8
-------------------------------	------

Other Authorities

Judgment, <i>United States v. Hunter</i> , No. 4:23-cr-00085 (N.D. Tex. May 13, 2024).....	4
Pet. for Cert., <i>Hunter v. United States</i> , No. 24-1063 (U.S. Apr. 4, 2025)	5
Reply Br. of Pet'r, <i>Hunter v. United States</i> , No. 24-1063 (U.S. Sept. 10, 2025).....	5

PETITION FOR A WRIT OF CERTIORARI

Michael Huffman seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's unpublished order in *United States v. Huffman* is reprinted in Appendix A. The district court's amended judgment and sentence in *United States v. Huffman*, No. 4:25-CR-00136-P (N.D. Tex. Dec. 4, 2025), is reprinted in Appendix B.

JURISDICTION

The Fifth Circuit entered its order on June 8, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) and Supreme Court Rule 13.3.

PROVISIONS INVOLVED

U.S. Const. amend. V:

No person shall be * * * deprived of life, liberty, or property,
without due process of law; * * *

Fed. R. Crim. P. 43:

- (a) When Required. Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at:
- (1) the initial appearance, the initial arraignment, and the plea;
 - (2) every trial stage, including jury impanelment and the return of the verdict; and
 - (3) sentencing.

STATEMENT OF THE CASE

I. Factual Background

Appellant Michael Huffman pleaded guilty to one violation of 18 U.S.C. §2252A(a)(2) and (b)(1) and one violation of 18 U.S.C. §2252A(a)(5)(B) and (b)(2). A plea agreement waived his right to appeal.

II. Proceedings in District Court

At sentencing, the district court imposed 152 months imprisonment on each count, run concurrently, plus an onerous ten-year term of supervised release. The court also imposed various financial penalties. At first, it included among these penalties two special assessments under 18 U.S.C. §3014 totaling \$10,000 (\$5,000 per count of conviction). The government then told the district court in reference to the §3014 that the \$5,000 assessment was not in effect for Mr. Huffman because of the lapsing of the statute. The court accepted this correction and struck the assessment under §3014.

The court entered a written judgment five days later, omitting a special assessment under §3014. However, nine days later, on the 14th day after the sentencing hearing, the district court entered an amended written judgment, now including two assessments of \$5,000 (for a total of \$10,000) under §3014. Nothing in the record shows notice, a hearing, or any other opportunity to be heard before the amendment.

Parallel to these proceedings, Congress was changing §3014, which may shed some light on these events. At the time of Appellant's offense (April 22, 2025), §3014 stated that it would expire on September 30, 2025. *See* 18 U.S.C. §3014(a)(2024).

This restriction was possibly limited by 18 U.S.C. §109. However, on November 12, 2025, Congress changed the statute’s expiration date to January 6, 2026. *See* Pub. L. 119–37, div. F, title I, § 6101(e), Nov. 12, 2025, 139 Stat. 629. The sentencing hearing occurred on November 20, 2025, eight days after this change. The first written judgment issued November 25, 2025; the amended judgment issued December 4, 2025. On February 3, 2026, Congress eliminated the temporal restriction on §3014 entirely. *See* Pub.L. 119-75, Div. I, § 5012, Div. J, Title IV, § 6401(e), Feb. 3, 2026, 140 Stat. 630, 687.

III. Proceedings on Appeal

Huffman raised two issues on appeal: whether a broadly worded appeal waiver bars a claim that the district court imposed a more severe sentence in the written judgment than it orally pronounced, and whether the district court may add a special assessment to the judgment that it explicitly declined to impose at the sentencing hearing. The government filed a motion to dismiss the appeal based on Mr. Huffman’s appellate waiver based upon the fact that the Fifth Circuit had never recognized any “implied exception” to the appellate waiver. Petitioner responded to the motion to dismiss and noted the pending decision in *Hunter*, 146 S.Ct. 1702 (2026). The Fifth Circuit granted the motion to dismiss in an unpublished order. App.’x A.

REASONS FOR GRANTING THIS PETITION

I. Under *Hunter*, the deprivation of the right to be present is an error of sufficient gravity to constitute a miscarriage of justice.

“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.”). Huffman respectfully requests that the Court grant the petition in order for the Court to consider his arguments against enforcement of the appeal waiver now, since *Hunter* is decided and recognized a miscarriage of justice exception to appeal waivers such as his.

A. The Court acknowledged the existence of a miscarriage of justice exception in *Hunter*.

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.

This Court recently decided in *Hunter* that there is a miscarriage-of-justice exception for appeal waivers. 146 S.Ct. 1702 (2026). This exception “stems from the special, and indeed pivotal, role of the judiciary in approving and implementing appeal waivers.” *Hunter*, 146 S.Ct. at 1712. Appeal waivers “implicate[] the interests not only of the agreement’s parties, but also of the judiciary.” *Id.* And thus, automatic enforcement, regardless of the error could leave egregious mistakes uncorrected and

call “the judicial system’s integrity . . . into question.” *Id.* The error must be both “obvious” and “of the type that would undermine public confidence in the judiciary.” *Id.* at 1713.

The decision in *Hunter* can prove outcome determinative in this case. Huffman contended that the deprivation of a defendant’s right to be present at sentencing is an error of sufficient gravity to merit an implied exception to the appeal waiver, as it sounds in the constitutional right of due process, offending the most basic right of the defendant to be present at any sentencing proceeding that makes his punishment more onerous. As it occurred here, it deprived Mr. Huffman of the most fundamental requisite of due process: notice and a chance to be heard. *See Anderson Nat. Bank v. Lueckett*, 321 U.S. 233, 246 (1944). He in no sense acquiesced in the error, as he had no chance to object to it before it occurred. And the district court’s failure to follow settled law about the defendant’s right to be present was not reasonably anticipated at the time of the plea agreement.

As in *Hunter*, the government invoked the appellate waiver. And as in *Hunter*, *United States v. Barnes* was cited to enforce the waiver. 953 F.3d 383, 389 & n.11 (5th Cir. 2020). (“The appellant admits that (1) he knowingly and voluntarily waived his right to appeal, and (2) this Court has already decided that the issue he raises is barred by that waiver. However, he asks the Court to bypass the waiver based on some ‘implied exception.’ This Court has never recognized any such amorphous exception, and it should dismiss the appeal as waived in accordance with the parties’ negotiated agreement and binding Fifth Circuit precedent.”) Again, as in *Hunter*, the

Fifth Circuit enforced the appeal waiver against Huffman’s constitutionally-based claims.

In short, in dismissing his appeal based on his appeal waiver, the Fifth Circuit found that his constitutional claims were barred by that waiver, and no implied exception existed. It did so on the basis of the same line of precedent that this Court reviewed in *Hunter*. Thus, the outcome in *Hunter* may prove outcome-determinative. This Court adopted an exception to general appeal waivers for constitutionally-based challenges to sentences, and thus, the Fifth Circuit must address the merits of Huffman’s appeal.

II. The Circuits are split on whether an appeal waiver bars an appeal of a written judgment conflicting with the oral sentence.

An appeal waiver that forgoes appeal of “the sentence” does not bar an appeal of a written judgment conflicting with the oral sentence. This is the conclusion of the Fourth, Sixth, Seventh, Eighth, Ninth and Eleventh Circuits. *See United States v. Singletary*, 984 F.3d 341, 345 (4th Cir. 2021); *United States v. Shaw*, 139 F.4th 548, 552 (6th Cir. 2025); *United States v. Harris*, 51 F.4th 705, 710 (7th Cir. 2022); *United States v. Hatcher*, 668 F. App’x 177, 178 (8th Cir. 2016); *United States v. Frater*, 735 F. App’x 467, 468 (9th Cir. 2018)(unpublished); *United States v. Buchanan*, No. 23-12879, 2025 WL 2911209, at *3 (11th Cir. Oct. 14, 2025)(unpublished). The orally imposed sentence is “the sentence,” while the written judgment is merely evidence of the sentence. *See Shaw*, 139 F.4th at 552. An appeal raising a written/oral conflict accordingly does not appeal the sentence – it seeks to restore it. *See Harris*, 51 F.4th

at 710. The Fifth Circuit rejected the argument in *United States v. Higgins*, 739 F.3d 733, 738 (5th Cir. 2014). Petitioner submits that *Higgins* was wrongly decided.

“The district court must orally pronounce a sentence to respect the defendant’s right to be present for sentencing.” *United States v. Diggles*, 957 F.3d 551, 556 (5th Cir. 2020). That right comes from Federal Rule of Criminal Procedure 43, as well as the Fifth Amendment. *See id.* at 556-557. And because of this right, “[i]f the in-court pronouncement differs from the judgment that later issues, what the judge said at sentencing controls.” *Id.* at 557.

Sometimes, this Court will permit a district court to use the written judgment to clarify an ambiguous pronouncement at sentencing. *See United States v. Mireles*, 471 F.3d 551, 558 (5th Cir. 2006). But here, there is no ambiguity -- the final written judgment conflicts directly with the oral pronouncement of sentence. The district court at sentencing said that it would not impose a special assessment under 18 U.S.C. §3014, citing the lapse of statutory authority. Presumably after learning that Congress had restored that authority, the court amended the judgment and added the special assessment after all. This is as clear a conflict between the oral and written judgment as may be imagined – the court said that there would be no special assessment under §3014 at sentencing, but then said the opposite in the amended judgment. This is no mere clarification.

By its terms, Rule 43 states that a defendant need not be present when “[t]he proceeding involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. §3582 (c).” Fed. R. Crim. P. 43(b)(4). We may assume that the district court acted

pursuant to its authority under Federal Rule 35(a) of Criminal Procedure to “correct a sentence that resulted from arithmetical, technical, or other clear error.” However, courts have restricted the right to modify a sentence outside the defendant’s presence to those corrections that do not make a sentence more onerous. *See United States v. Clark*, 816 F.3d 350, 355–56 (5th Cir. 2016) (citing *United States v. Moree*, 928 F.2d 654, 655–56 (5th Cir. 1991)); *id.* at 357 (citing *United States v. Erwin*, 277 F.3d 727, 730 (5th Cir. 2001), and *United States v. Pineda*, 988 F.2d 22 (5th Cir.1993)). Here, the amended judgment plainly made the sentence more onerous. As orally pronounced (and in the original judgment), the sentence omitted a special assessment under 18 U.S.C. §3014. The amended judgment, however, included this financial penalty.

When the district court adds a term to the written judgment that it omitted at the live sentencing, the proper remedy is to remand to strike the mistake from the judgment. *See Diggles*, 957 F.3d at 563 (“Our caselaw does not generally give the district court that second chance when it fails to pronounce a condition, even though conditions have salutary effects for defendants, victims, and the public.”). Instead of following this, the Fifth Circuit automatically dismissed Mr. Huffman’s appeal based upon his appeal waiver, without consideration of this Court’s recent opinion in *Hunter* and how that opinion might change the outcome for Mr. Huffman.

CONCLUSION

Petitioner Michael Huffman respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 8th day of September, 2026.

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