

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DARLINGTON AKPORUGO,
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

An appeal waiver in a plea agreement may be set aside if the sentencing hearing was conducted without a minimum of civilized procedure or involved a blatant constitutional violation. Petitioner was sentenced based on factual allegations that were not disclosed before the sentencing hearing. The court of appeals dismissed petitioner's appeal based on the appeal waiver in his plea agreement.

The question presented is: Whether the failure to provide adequate notice of the factual basis for a sentence constitutes a miscarriage of justice sufficient to set aside an appeal waiver.

LIST OF PARTIES

Pursuant to Supreme Court Rule 14.1(b)(i) counsel states that the parties to this case in the United States Court of Appeals for the Fifth Circuit are Darlington Akporugo and the United States of America. No stock ticker symbols are associated with the parties.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Akporugo*, No. 25-20274 (5th Cir.).
- *United States v. Akporugo*, No. 4:24-CR-9-1 (S.D. Tex.).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Darlington Akporugo petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The Fifth Circuit’s order dismissing this case (Pet. App. 1a) is unreported.

JURISDICTION

The Fifth Circuit entered judgment on July 30, 2026. Pet. App. 1a. The deadline to file a petition for writ of certiorari is October 28, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

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. AM. V.

STATEMENT OF THE CASE

Akporugo entered into a plea agreement with the government in the United States District Court for the Southern District of Texas. He pleaded guilty to one count of conspiracy to commit wire fraud and one count of wire fraud arising from a “romance scam” involving the use of online relationships to obtain money under false pretences. C.A. ROA.77. The plea agreement contained the following appeal waiver:

Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, Section 2255, affords the right to contest or “collaterally attack” a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or “collaterally attack” the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, Section 2255.

C.A. ROA 79.

At sentencing, the court calculated a Sentencing Guideline range of 121 to 151 months of incarceration. C.A. ROA 334.

At the same hearing, the government called four individuals who provided unsworn statements. Both the court and prosecutor acknowledged that the testimony included new information that was not disclosed in the Presentence Investigation Report (“PSR”) or in discovery. Specifically, at the conclusion of the testimony, the court told the prosecutor that it was “not holding” him to the Guideline recommendation made in his sentencing memorandum because that recommendation was made “before you heard the full scope of the statements today.” C.A. ROA 364. The prosecutor responded that he would no longer oppose a sentence above the Guideline range:

[G]iven what we’ve heard today, and there was *information that I was unaware of* that come out on the stand today that was shocking even to my battered sensibilities.

C.A. ROA.364 (emphasis added).

The new information included several inflammatory and surprising allegations. For example, the husband of one victim testified that Akporugo threatened his wife with imprisonment during their online relationship. C.A. ROA.343. He alleged that Akporugo coerced his wife to send nude pictures and speculated that they were “probably” for “blackmail.” C.A. ROA.352. He testified that Akporugo obtained money from his wife and spent it on trips to New York, furniture, and expensive meals. ROA.349-50. He called Akporugo a “demented parasite,” C.A. ROA. 351, and a “contemptable bastard,” C.A. ROA. 352. Finally, he discussed an online account with over \$1.6 million that had not been described in the PSR. C.A. ROA. 353. The prosecutor eventually interrupted and asked the witness to get “back on track.” C.A. ROA. 353.

The court also heard from the daughter of a separate victim, who claimed that Akporugo drove her mother to the bank to withdraw money, C.A. ROA. 338, and that Akporugo personally came to her mother’s apartment to steal gold coins, C.A. ROA. 339. Another victim claimed that she lost almost twice the amount alleged in the PSR—a claimed amount of \$120,000. C.A. ROA.341. In response, the prosecutor acknowledged that the victim was claiming a higher loss amount than could be proven. C.A. ROA.341-42.

In announcing the sentence, the court found that the Guideline range was insufficiently low. C.A. ROA.368. The court relied, at least in part, on the new information presented at the hearing. It specifically referred to the victim impact statements, C.A. ROA 368, and identified “extortion” as an aggravating factor not accounted for by the Guidelines, C.A. ROA.369. The court described the conduct as “outrageous” and “beyond the pale.” C.A. ROA.368-69. And that it was “very close” to imposing the statutory maximum sentence of 240 months, but ultimately imposed a sentence of 188 months—an upward variance of 37 months from the top of the Guideline range. C.A. ROA.369-70.

Akporugo appealed the sentence to the United States Court of Appeals for the Fifth Circuit. He argued that the sentence violated his due process right to receive notice concerning the factual basis for the sentence. The government moved to dismiss the appeal based the appeal waiver. *See United States v. Akporugo*, No. 25-20274 (5th Cir.), Mtn. to Dismiss (D.E. 42). Akporugo responded that dismissal would result in a “miscarriage of justice,” and identified the then-pending circuit split to be addressed by this Court in *Hunter v. United States*, 608 U.S. 713 (2026).

After *Hunter* held that an appeal waiver resulting in a miscarriage of justice can be set aside, the court of appeals ordered additional briefing. Akporugo maintained that enforcing the appeal waiver would result in a miscarriage of justice.

United States v. Akporugo, No. 25-20274 (5th Cir.), App. Letter Br. (D.E. 61). The government disagreed. *Id.*, Gov. Letter Br. (D.E. 63).

On July 30, 2026, the Fifth Circuit dismissed the appeal. Pet.App. 1a.

REASON TO GRANT THE PETITION

The petition should be granted because the Fifth Circuit “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” SUP. CT. R. 10(a).

In *Hunter*, this Court held that an appeal waiver may be set aside when enforcement would result in a miscarriage of justice. 608 U.S. at 727. *Hunter* did not attempt to identify every circumstance that would constitute a “miscarriage of justice,” but two examples are: (1) when a sentence is “infected with a blatant constitutional error,” and (2) when a sentence is imposed without “some minimum of civilized procedure,” such as where “the judge refused to hold a hearing consonant with basic principles of law.” *Id.* at 728. This case implicates both.

The information presented at sentencing was not disclosed in the PSR or in discovery. As the prosecutor stated, “there was information *that I was unaware of* that came out on the stand today that was shocking.” C.A. ROA. 364 (emphasis added). And the court relied on that new information when it imposed a sentence that was 37 months higher than the top of the Guideline range. The court specifically

referred to the victim impact statements and the extortive conduct described in those statements. C.A. ROA 368-69.

Using previously undisclosed information to increase a defendant's sentence is "a blatant constitutional error" and is inconsistent with a sentencing hearing "consonant with basic principles of law." *Hunter*, 608 U.S. at 728. "Due process requires that a criminal defendant have adequate notice of, and an opportunity to contest, the facts used to support his criminal penalty." *United States v. Plasencia*, 886 F.3d 1336, 1343 (11th Cir. 2018). Disclosure for the first time during the sentencing hearing does not satisfy that requirement. Instead, due process requires disclosure "prior to sentencing" so that the defendant can be "timely advise[d]" of the pertinent facts. *United States v. Figaro-Benjamin*, 100 F.4th 294, 301 (1st Cir. 2024). After all, the right to object to inaccurate information "means very little" if the defendant is not first permitted to know the information that is being used against him. *United States v. Millan-Isaac*, 749 F.3d 57, 70 (1st Cir. 2014).

The sentence therefore was imposed after a blatant constitutional error and a hearing that was inconsistent with basic principles of law. The Fifth Circuit departed from *Hunter* when it refused to set aside the appeal waiver. Pet.App. 1a.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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