

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

JOSE RIGOBERTO MEJIA-CUBIAS
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 25-60437

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit erred by dismissing Mr. Mejia-Cubias's (hereinafter "Mr. Mejia") appeal based on the waiver of appeal provision in his Plea Agreement.

PARTIES TO THE PROCEEDING

Following are the parties to this proceeding:

- 1) JOSE RIGOBERTO MEJIA-CUBIAS; and
- 2) UNITED STATES OF AMERICA.

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I. OPINIONS BELOW

On February 20, 2025, the grand jury returned an Indictment against Mr. Mejia in the Southern District of Mississippi. The Indictment charged unlawful deportation of an alien after a prior deportation or removal, in violation of 8 U.S.C. § 1326(a)(1) and (2). The district court case number is 3:25cr35-KHJ-ASH.

Mr. Mejia accepted full responsibility for the crime by entering a plea of guilty on May 2, 2025. The sentencing hearing followed on August 6, 2025. The court sentenced Mr. Mejia to a 24 month prison term, “to run consecutively to Madison County Circuit Court Docket Number 2025-0014.” The court also ordered a one-year term of supervised release upon completion of the prison sentence. August 8, 2025. The district court’s judgment is attached hereto as Appendix 1.

On August 18, 2025, Mr. Mejia filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit case number is 25-60437. He filed Appellant’s Brief with the Fifth Circuit on November 12, 2025. Rather than file a brief on the merits of the case, on November 20, 2025, the prosecution filed a Motion to Dismiss Appeal based on the waiver of appeal provision in the Plea Agreement.

The Fifth Circuit entered a two-page Order granting the Motion to Dismiss Appeal on July 21, 2026. The court's Mandate followed August 11, 2026.¹ The Fifth Circuit's Order is attached hereto as Appendix 2.

¹ Other than the filing date, the Fifth Circuit's Order and its Mandate are identical.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order in this case on July 21, 2026. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Order, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL PROVISION INVOLVED

“No person shall be ... deprived of life, liberty, or property, without due process of law[.]” U.S. Const. amend. V, Due Process Clause.

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction entered against Mr. Mejia for illegally reentering the United States after a prior deportation, in violation of 18 U.S.C. § 1326. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Mejia arose from the laws of the United States of America.

B. Material facts.

Mr. Mejia “illegally entered” the United States on July 8, 2010. He was arrested the same day and deported the following month. He “returned to the United States illegally in 2014 and has remained in the United States since.”

Local authorities charged Mr. Mejia with sexual battery and tampering with physical evidence for an incident that occurred in January 2025. They alerted immigration officials, who determined that Mr. Mejia was present in the United States illegally after having been previously removed. Mr. Mejia eventually pled guilty in state court to the sexual battery charge. He was sentenced to 30 years, with 5 years suspended and 5 years post-release supervision.

C. Indictment and guilty plea.

The grand jury returned an Indictment charging Mr. Mejia with one count of illegal reentry after deportation or removal in violation of 8 U.S.C. § 1326(a)(1) and (a)(2). Specifically, Mr. Mejia-Cubias was charged with being “found in the United States” on or about January 30, 2025.

Mr. Mejia pled guilty to the Indictment pursuant to a Plea Agreement. The Plea Agreement included a section entitled “Waivers,” along with two subsections relevant here.

Under the first relevant subsection, Mr. Mejia waived his “right to appeal the conviction and sentence imposed in this case, or the manner in which that sentence was imposed, on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatsoever.”

Under the second relevant subsection, Mr. Mejia acknowledged and agreed that “any factual issues regarding the sentencing” would be “resolved by the sentencing judge under a preponderance of the evidence standard.” He also acknowledged that the district court could “consider any relevant evidence” to accomplish this factfinding.

D. The Presentence Investigation Report.

Before sentencing, the U.S. probation office prepared a presentence investigation report (hereinafter “PSR”). The PSR assessed a total offense level of

15 and a criminal history category of II. The Sentencing Guidelines imprisonment range was 21 to 24 months.

E. Sentencing hearing.

The sentencing hearing lasted about 15 minutes. The court adopted the PSR in its entirety as the court's finding of fact.

The court heard argument from the parties. Mr. Mejia pressed the court to run his federal sentence concurrently with his state sentence. The court analyzed the factors set forth in 18 U.S.C. § 3553(a). It recounted the facts of Mr. Mejia offense. It described biographical data about Mr. Mejia's history and characteristics. And it acknowledged Mr. Mejia-Cubias' state sexual battery conviction.

Of particular importance here, the district court explained that it had to "make sure, in formulating a sentence, whatever sentence that is imposed reflects the seriousness of the offense and provides a just punishment, and also the sentence needs to promote respect for the law." In relating those factors to Mr. Mejia, the court noted that this was "not the first time that" Mr. Mejia-Cubias had "returned to the United States illegally."

After analyzing the § 3553(a) factors, the court sentenced Mr. Mejia to twenty-four months in prison to be served consecutively to his state sentence, one year of supervised release, and a special assessment of \$100.

Mr. Mejia objected to the sentence as “procedurally and substantively” unreasonable “under the guidelines and under [the §] 3553(a) factors.” He specifically objected to the “consecutive nature” of the sentence. The court responded that it “st[ood] by its ruling given the [§] 3553(a) factors. Again, not only the nature and circumstances of the offense, but also the history and characteristics of the defendant and to promote respect for the law.”

F. Appeal to the Fifth Circuit.

Mr. Mejia timely appealed to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit case number is 25-60437.

On appeal to the Fifth Circuit, Mr. Mejia argued that the district court plainly erred by basing the sentence on a clearly erroneous fact about the number of times that he had illegally returned to the United States. However Fifth Circuit never reached the merits of Mr. Mejia’s arguments because it granted the prosecution’s Motion to Dismiss Appeal based on the waiver of appeal provision of his Plea Agreement. Therefore, the issue before this Court is limited to whether the Fifth Circuit erred by dismissing the appeal under the waiver provision.

V. ARGUMENT:

Review on certiorari should be granted in this case.

In *Hunter v. United States*, 608 U.S. 713 (2026), this Court addressed the force and effect of waiver of appeal provisions in plea agreements. The Court held that “an 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 717.

Enforcing the appeal waiver in Mr. Mejia’s case would result in a miscarriage of justice, as envisioned by this Court in *Hunter*. The district court committed an obvious and egregious error when it sentenced Mr. Mejia-Cubias based on a misapprehension that he had illegally returned to the United States more than once.

In the context of plain-error review, the Fifth Circuit has held that such errors “implicate[] constitutional due process concerns—the exact type of error that affects the fairness, integrity, or public reputation of criminal proceedings.” *See United States v. Ibarra*, No. 24-20071, 2024 WL 5118485, at *3 (5th Cir. Dec. 16, 2024). Other courts of appeal agree. *See United States v. Gonzalez-Castillo*, 562 F.3d 80, 83 (1st Cir. 2009) (“[B]asing a substantial criminal sentence on a non-existent material fact threatens to compromise the fairness, integrity, or public reputation of the proceedings.”); *United States v. Wilson*, 614 F.3d 219, 225–26

(6th Cir. 2010) (quoting *Gonzalez-Castillo*, 562 F.3d at 83) (same); *United States v. Corona-Gonzalez*, 628 F.3d 336, 342–43 (7th Cir. 2010) (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993)) (When a district court sentenced a defendant based on a factual misapprehension, “allowing the ... sentence to stand without a reassessment would affect the ‘fairness, integrity or public reputation of [the] proceedings.’”).

At issue is whether the Fifth Circuit erred by dismissing Mr. Mejia’s appeal based on the waiver of appeal provision in his Plea Agreement. This is an important issue that affects the great majority of criminal defendants in the federal court system. As the Fifth Circuit recently pointed out in *West*, “98% of convictions are secured by plea deals.” *United States v. West*, 138 F.4th 357, 362 (5th Cir. 2025). (Oldham, J, dissenting in denial of rehearing *en banc*). Further, the Fifth Circuit recognized that “written plea agreements often include appeal waivers.” *Id.* (citation altered).

The undersigned recognizes that Under Rule 10 of the Supreme Court Rules, review on certiorari “is not a matter of right, but of judicial discretion” and “will be granted only for compelling reasons.” The fact that about 98% of criminal convictions arise from plea agreements, and the fact that many of those plea

agreements contain waiver of appeal provisions, offers a “compelling reason” to grant certiorari.²

² Since this Court decided *Hunter*, the Fifth Circuit has not found a “miscarriage of justice” in any of the eight waiver of appeal related cases that it has decided. See *United States v. Nyandoro*, No. 23-10579, 2026 WL 2619961 (5th Cir. Sept. 4, 2026); *United States v. Brann*, 187 F.4th 216 (5th Cir. 2026); *United States v. West*, ___ F.4th ___, 2026 WL 2532253 (5th Cir. 2026); *United States v. Rice*, No. 25-60498, 2026 WL 2517639 (5th Cir. Aug. 26, 2026); *United States v. Pride*, No. 25-40759, 2026 WL 1906871 (5th Cir. July 2, 2026); *United States v. Kirkwood*, 182 F.4th 468 (5th Cir. 2026); *United States v. Hunter*, 183 F.4th 416 (5th Cir. 2026); *United States v. London*, 186 F.4th 884 (5th Cir. 2026). While the facts of these cases are distinguishable from Mr. Mejia’s case, this imbalance could be viewed as an indication that the Fifth Circuit is reluctant to abide by *Hunter* and change its view of appeal waivers.

VI. CONCLUSION

Based on the arguments presented above, Mr. Jose R. Mejia-Cubias asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted October 14, 2026, by:

s/ Michael L. Scott

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CERTIFICATE OF SERVICE

I, Michael L. Scott, appointed under the Criminal Justice Act, certify that today, October 14, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed *In Forma Pauperis* was served by enclosing a copy of each in an envelope and delivering it to FedEx, a third-party commercial carrier for delivery within three calendar days to:

The Honorable D. John Sauer
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.

s/ Michael L. Scott

Michael L. Scott

Senior Litigator

Office of the Federal Public Defender

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**MOTION FOR LEAVE TO PROCEED
*IN FORMA PAUPERIS***

Pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), Petitioner Jose Mejia Cubias requests leave to file the accompanying Petition for Writ of Certiorari from the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), in the United States District Court for the Southern District of Mississippi and on appeal to the United States Court of Appeals for the Fifth Circuit.

Date: October 14, 2026.

Respectfully submitted,

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