

26-5935

No. 24-6773

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

1150
OCT 09 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

GABRIEL ANTONE EBERHARDT,

(Your Name) — PETITIONER

vs.

UNITED STATES OF AMERICA
_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GABRIEL ANTONE EBERHARDT

(Your Name)

FCI-- Edgefield

(Address)

P.O. Box 725,

(City, State, Zip Code)

Edgefield, SC 29824

(Phone Number)

QUESTION(S) PRESENTED

WHETHER APPEAL WAIVER STOP [DIRECT APPEAL] WHEN JUDGE SAYS
THE DEFENDANT CAN APPEAL ANYWAY AS IN HUNTER V. UNITED
STATES NO. 24-1063 ORAL ARGUMENTS MAR. 3, 2026.

LIST OF PARTIES

- [X] All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. GABRIEL ANTONE EBERHARDT
2. UNITED STATES OF AMERICA

RELATED CASES

HUNTER V. UNITED STATES, No. 24-1063(Oral Argument Mar. 3, 2026)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A ~~United States v. Gabriel Antone--Eberhardt~~, No. 24-6773(9th Cir. 12-23-25)

APPENDIX B ~~United States v. Gabriel Antone--Eberhardt~~, No. 24-6773(9th Cir. 3-31-26)

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Hunter v. United States, no. 24-1063 Oral Argument(3-3-26).	
Anders v. California, 386 U.S. 738(1967).....	
Penson v. Ohio, 488 U.S. 75, 80(1988).....	
US v. Watson, 582 F.3d 974, 986-88(9th Cir. 2009).....	
United States v. Gabriel Antone-Eberhardt, No. 24-6773(9th Cir. 12-23-25).	
United States v. Gabriel Antone-Eberhardt, No. 24-6773(9th Cir. 3-31-26).	
Class v. United States, 583 U.S. 128 S.Ct. 798, 200 L.Ed. 2d 37(2018).	
Alleyne v. United States, 133 S.Ct. 2151 No. 11-9355(June 17, 2013).	
US v. Atherton, 134 F.4th 1009(9th Cir. 2025).....	
US v. Torres-Oliva, 2026 U.S. App. Lexis 4249; 2026 LX 80348 No. 25-10728 (5th Cir. Feb. 11, 2026).....	

STATUTES AND RULES

28 U.S.C. § 1254(1)	
28 U.S.C. § 1257(a)	
21 U.S.C. § 841(a)(1), *b)(1)(A)(i), (vi)(viii) and 846	
18 U.S.C. § 924(c)(1)(A)	
18 U.S.C. § 2 and 922 (g)(1)	

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at United States v. Antone Eberhardt No. 24-6773; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Dec. 23, 2025.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Mar. 31, 2026, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the Constitution of the United States provides:

Excessive bail shall not be required, nor excessive fine imposed. nor cruel and unusual punishment inflicted.

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by impartial jury of the state and district wherein the crime shall have been committed.

STATEMENT OF THE CASE

On or about Dec. 23, 2025 Ninth Circuit Court Of Appeals denied Direct Appeal Anders v. California, 386 U.S. 738(1967) As Mr. Eberhardt appeals from the District Court's Judgment and his guilty-plea conviction and aggregate 360 month sentence for conspiracy to distribute controlled substance in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(i),(vi),(viii), and 846; possession of a firearm in Furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A); and felon in possession of a firearm in violation of 18 U.S.C. § 2 and 922(g)(1). Eberhardt's counsel filed a brief under Anders v. California, 386 U.S. 738(1967), stating that there are no non-frivolous arguments for appeal. Eberhardt has not filed a pro se supplemental brief. In the plea agreement, Eberhardt waived his right to appeal the conviction and sentence.

Our independent review of the record, *Penson v. Ohio*, 488 U.S. 75, 80(1988), disclose no non-frivolous issue as to whether the appeal waiver is enforceable. See (*United States v. Watson*, 582 F.3d 974, 986-88(9th Cir. 2009)). We therefore dismiss the appeal. See *id.* at 988. Counsel's motion to withdraw is granted. DISMISSED.

REASONS FOR GRANTING THE PETITION

Petitioner's follow in his reason why it should GVR Remand Back To Ninth Circuit Court In Light of Pending Supreme Court Decision Hunter v. United States, Oral Arguments argued on (Mar. 2, 2026)

QUESTION PRESENTED I.

Whether Appeal Waiver Stop [Direct Appeal] When Judge Says
The Defendant Can Appeal Anyway As In Hunter v. United States,
No. 24-1063 Oral Arguments Mar. 3, 2026,

Petitioner direction is directed at Hunter v. United States, No. 24-1063 Oral Arguments on (Oct. 10, 2025) (Whether the only permissible exceptions to general appeal waiver are for claims of in-effective 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. Furthermore Petitioner position is also directed at Class v. United States, 583 U.S. 138 S.Ct. 798, 200 L.Ed. 2d 37 (2018) (Guilty plea, by itself, did not bar federal criminal defendant from challenging constitutionality of conviction on direct appeal). Petitioner will turn to the Supreme Court ruling in Alleyne v United States, 133 S.Ct. 2151 No. 11-9355 (June 17, 2013). Petitioner now suffer from illegal sentence under mandatory minimum as under 18 U.S.C. § 924(c)(1)(A) count impedes a sentence that went over eight years on mandatory minimum sentence that met a threshold of 10 years.

Petitioner his reason to lower proceeding which he was never afforded the right to move to Pro-Se Briefing Schedule as the record was oppose to dismiss his appeal under Anders v. California, 386 U.S. 738 (1967), is misplace and the facts Petitioner was never afforded the any response. See (US v Atherton, 134 F.4th 1009 (9th Cir. 2025) (Granted Stay under Hunter v. United States, No. 24-1063); See (US v. Torres-Oliva, 2026 U.S. App. Lexis 4249; 2026 LX 80348 No. 25-10728 (5th Cir. Feb. 11, 2026) (Granted Stay under Hunter v. United States, No. 24-1063). Petitioner approach is to move on

with his reasons to why Granting the petition is warranted as if the Supreme Court come down with Hunter v. United States, Oral Arguments argued on Mar. 2, 2026) that will turn to the decision in June Term of 2026 ruling in his favor a GVR remand is warranted to follow in this petition under Gabriel Antone Eberhardt.

Wherefore Mr. Eberhardt prays Honorable Supreme Court Judge's GRANTED Writ of Certiorari or GRANT GVR Remand In Light Of Hunter v. United States, No. 24-1063. See (Class v. United States, 138 S.Ct. 798(2018)); See (Alleyne v. United States, 133 S.Ct. 2151 No. 11-9355(June 17, 2013)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Sept. 30, 2026