NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

MARCUS TREMAINE POWELL
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. 25-60534 Consolidated with
Fifth Circuit Case No. 60597

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(7), Petitioner Marcus Tremaine Powell 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 two counsels appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c)—one during pretrial and sentencing after entry of a plea of guilty in the United States District Court for the Southern District of Mississippi and one—the undersigned—for appeal to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted, October 26, 2026, by:

s/ Tommie Lee Stingley, Jr.
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Attorney for Defendant-Petitioner

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PETITION FOR WRIT OF CERTIORARI

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Attorney for Defendant-Petitioner

QUESTION PRESENTED FOR REVIEW

A. The overarching issue.

Whether the Fifth Circuit erred by dismissing Mr. Powell's appeal based on the waiver of appeal provision in his Plea Agreement.

B. The basis for relief from this Court.

The United States Court of Appeals for the Fifth Circuit dismissed Mr. Powell's appeal on July 30, 2026. Over a month earlier on June 18, 2026 this Court rendered its decision in *Hunter v. United States*, 146 S. Ct. 1702 (2026). *Hunter* establishes that the analysis of whether an appeal waiver contained in a plea agreement is enforceable should be considered under the "miscarriage of justice" standard. *Id.* at 1708. And an appeal waiver is unenforceable when it would result in a miscarriage of justice. This means "when it would leave in place the kind of egregious error that would bring the judicial system into disrepute." *Id*. at 1708. The holding in *Hunter* is contrary to prior Fifth Circuit precedent and in Mr. Powell's case, the Fifth Circuit failed to conduct the miscarriage of justice analysis that *Hunter* requires.

Therefore, we ask this Court to grant this Petition, vacate Mr. Powell's sentence, and remand the case to the Fifth Circuit to decide whether enforcing Mr. Powell's appeal waiver would result in a miscarriage of justice.

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

MARCUS TREMAINE POWELL, Petitioner-Defendant,

and

UNITED STATES OF AMERICA, Respondent

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APPENDIX A – Decision of the District Court

APPENDIX B – Unpublished Order of the Court of Appeals

I. OPINIONS BELOW

On October 23, 2024, a Federal Grand Jury for the Southern District of Mississippi returned a nine-count superseding indictment against Mr. Powell in the Case No. 25-60534 for (1) conspiracy to distribute and possess with intent to distribute cocaine, ecstasy, methamphetamine, a mixture and substance containing a detectable amount of methamphetamine, and marihuana in violation of 21 U.S.C. §§ 841(a)(1) and 846; (2) possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2; (3); and, use of a telephone to possess with intent to distribute a controlled substance in violation of 21 U.S.C. § 841(a)(1), 846, 843(b) and 18 U.S.C. § 2. Before the superseding indictment, on November 29, 2023 an indictment was returned against Mr. Powell in Case No. 25-60597 for conspiracy to distribute and possess with intent to distribute 500 grams or more of cocaine and marihuana, in violation of 21 U.S.C. § 841(a)(1) and 846. For purposes of entry of a plea, preparation of the plea agreement and presentence investigation report, and the sentencing hearing, and appeal, the two cases were consolidated.

On February 14, 2025, Mr. Powell appeared in the District Court for a change-of-plea hearing. Mr. Powell accepted responsibility for his actions by pleading guilty to count one of both indictments. The plea was made under a Plea

Agreement that contained an appeal waiver. Sentencing hearings were held on September 15, 2025 and September 18, 2025.

At the sentencing hearings, the District Court adopted the presentence investigation report. The District Court sentenced Mr. Powell to 360 months of imprisonment in the Bureau of Prisons for Case No. 25-60534 to run concurrently with Case No. 25-60597 to be followed by a 5-year term of supervised release to run concurrently with Case No. 25-60597. The District Court also ordered Mr. Powell to pay a $1,500.00 fine and a special assessment fee in the amount of $100.00. The District Court entered a Final Judgement on October 8, 2025. The Judgments are attached hereto as Appendix A.

Mr. Powell filed a timely Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on October 31, 2025. Mr. Powell's opening brief was filed on June 26, 2026. He challenged the 360-month prison sentence based on objections to several unreasonable enhancements imposed within the Sentencing Guidelines including: (1) unlawful inclusion of a drug amount as part of the converted drug weight based on double counting of a drug amount for two telephone calls between Mr. Powell and a codefendant, when the evidence shows that there was no agreement for the purchase of drugs and that no statements were made specifying the drug type; (2) lack of credible evidence to support the addition of two ounces of crack cocaine to Mr. Powell's total drug amount and

drug quantity; (3) assignment of a 3-level adjustment based on insufficient findings that Mr. Powell held a position of management or supervision involving five or more persons; (4) imposition of a 2-level adjustment for obstruction of justice based on fleeing from law enforcement officers; (5) denial of a 3rd-level acceptance of responsibility reduction; (6) denial of a variance downwardly based on the disparate treatment in the Sentencing Guidelines involving powder cocaine, crack cocaine, regular methamphetamine and actual methamphetamine or "Ice"; and, (7) a 2-level enhancement for a credible threat of violence or directed the use of violence.

In response, the prosecution filed a Motion to Enforce Appeal Waiver on July 16, 2026. The prosecution argued that Mr. Powell's waiver in the plea agreement should be enforced and the appeal should be dismissed. Responding to the Government's Motion, Mr. Powell argued that under this Court's decision in *Hunter v. United States*, 146 S. Ct. 1702 (2026), an agreement not to appeal a sentence is unenforceable when it would result in a miscarriage-of-justice. On July 29, 2026, the prosecution filed a Reply to Mr. Powell's Response.

In spite of the this Court's instruction concerning the miscarriage-of-justice rule, the Fifth Circuit granted the Government's Motion with an Unpublished Order on July 30, 2026 without any discussion of the miscarriage-of-justice rule. The Fifth Circuit's Order is attached hereto as Appendix B.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed its Order on July 30, 2026 dismissing Mr. Powell's appeal. 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 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[.]" 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. Powell for count one of an indictment involving conspiracy with others to possess and to distribute various drugs including cocaine, methamphetamine, and marihuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846. The Court of first instance was the United States District Court for the Southern District of Mississippi. That Court had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge imposed against Mr. Powell arose from the laws of the United States of America.

B. Statement of material facts.

As stated above, Mr. Powell accepted responsibility for his actions by pleading guilty to conspiracy to possess and distribute various drugs. The statutory maximum term of imprisonment for the crimes in count one of the indictment involving cocaine and methamphetamine is not more than 40 years in prison and for the crimes in count one of the indictment involving methylenedioxymethamphetamine and/or marihuana is not more than 20 years in prison. The District Court sentenced Mr. Powell to a 360-month prison term.

C. The Plea Agreement and the Waiver of Appeal provision.

Mr. Powell's guilty plea was made based on Plea Agreements entered into by the Government and him. The Plea Agreements contain an appeal waiver provision that requires in relevant part the following:

> Defendant, knowing and understanding all of the matters aforesaid, including the maximum possible penalty that could be imposed, and being advised of Defendant's rights to remain silent, to trial by jury, to subpoena witnesses on Defendant's own behalf, to confront the witnesses against Defendant, and to appeal the conviction and sentence, in exchange for the U.S. Attorney entering into this plea agreement and accompanying plea supplement, hereby expressly waives the following rights . . . the 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 . . .

Based on this provision, the prosecution filed a Motion to Enforce Appeal Waiver. The Fifth Circuit granted the Motion and this Petition for Writ of Certiorari followed.

V. ARGUMENT:

The Court should grant this Petition, vacate Mr. Powell's sentence, and remand the case to the Court of Appeals for the Fifth Circuit to consider whether enforcing the appeals waiver provision results in a miscarriage of justice.

The merits of Mr. Powell's case were never reached by the Fifth Circuit. Rather, it dismissed the appeal by issuing an unpublished order that states simply "IT IS ORDERED that Appellee's opposed motion to dismiss the appeal is GRANTED."

The Fifth Circuit did not provide any discussion or elaboration whatsoever for the reason(s) for its decision. In *Hunter*, this Court provided a blueprint for Circuit Courts to use when making a determination of whether or not an appeal may proceed when an appeal waiver exists. An agreement not to appeal a sentence is unenforceable when it would result in a miscarriage of justice. *Hunter*, at 1708. The Fifth Circuit did not determine whether the appeal waiver in Mr. Powell's case resulted in a miscarriage of justice, but *Hunter* mandates that such analysis be completed which, contemplates that Circuit Courts will elaborate in their orders on the grounds underlying whether miscarriage-of-justice applies. *Hunter*, at 1713.

This Court is "a court of review, not of first view . . . [so] it is therefore now up to the Fifth Circuit to decide whether enforcing [Mr. Powell's] appeal waiver would result in a miscarriage of justice." *Hunter*, at 1715. Accordingly, we ask this Court to grant certiorari, vacate Mr. Powell's sentence, and remand the case to

the Fifth Circuit to review the waiver of appeal issue under the miscarriage of justice standard established in *Hunter*.

VI. CONCLUSION

The Fifth Circuit's decision adhered to its old precedent, but it failed to explain whether the miscarriage-of-justice rule applies in this case. This Court's subsequent decision in *Hunter* modified the test that all Circuit Courts must satisfy in the analysis of whether an appeal waiver should be enforced. Accordingly, Mr. Powell's case should be remanded to the Fifth Circuit and directing review of the enforceability issue in accordance with the miscarriage of justice standard established in *Hunter*.

Submitted October 26, 2026, by:

s/ Tommie Lee Stingley, Jr.
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Fifth Circuit Case No. 25-60534 Consolidated with
Fifth Circuit Case No. 25-60597

CERTIFICATE OF SERVICE

As required under Supreme Court Rule 29.3, I certify that on October 26, 2026, I served copies of the enclosed Petition for a Writ of Certiorari and Motion for Leave to Proceed *in Forma Pauperis* on all parties required to be 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 Avenue, 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.

Respectfully submitted, October 26, 2026.

s/ Tommie Lee Stingley, Jr.
Tommie Lee Stingley, Jr. (MSB #8329)
Stingley Law Firm, PLLC
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Attorney for Defendant-Petitioner

AO 245B(Rev. 09/19) Judgment in a Criminal Case

OT/ml

UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA
v.
MARCUS TREMAINE POWELL

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:23CR118HTW-ASH-001

USM Number: 95908-510

Sidney E. Lampton
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the superseding Indictment

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 846 and 841(b)(1)(B)	Conspiracy to PWITD Cocaine, Methylenedioxymethamphetamine, Methamphetamine, a Mixture and Substance Containing a Detectable Amount of Methamphetamine and Marijuana	10/23/2024	1s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) 1, 2, 2s, 5 through 11, and 5s through 11s and 13 ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 18, 2025
Date of Imposition of Judgment

Henry T. Wingate
Signature of Judge

The Honorable Henry T. Wingate U.S. District Judge
Name and Title of Judge

14 October 2025
Date

A

25-60534.22

Case: 25-60534 Document: 51 Page: 50 Date Filed: 01/08/2026

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR118HTW-ASH-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

360 months as to Count 1s, to run concurrently with Count 1 of Docket Number 3:23cr117.

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case: 25-60534 Document: 51 Page: 69 Date Filed: 07/09/2025

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR118HTW-ASH-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

5 years as to Count 1s, to run concurrently with Count 1 of Docket Number 3:23cr117.

Case: 25-60534 Document: 51 Page: 30 Date Filed: 01/06/2026

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

Case: 25-60534 Document: 51 Page: 91 Date Filed: 01/06/2026

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR118HTW-ASH-001

SPECIAL CONDITIONS OF SUPERVISION

1. You shall pay the fine imposed by the Court.

2. You shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless in compliance with the installment payment schedule.

3. You shall provide the probation office with access to any requested financial information and inform the Court of any changes in your economic circumstances which may impact your payment of the fine.

4. You shall submit your person, property, house, residence, vehicle, electronic communication devices, papers, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

5. You shall participate in a program of testing and outpatient treatment (and inpatient treatment if approved by the Court during the term of supervised release) for alcohol/drug abuse as directed by the probation office. When enrolled in an alcohol/drug treatment program, either inpatient or outpatient, you shall abstain from consuming alcoholic beverages during treatment and shall continue abstaining for the remaining period of supervision. You shall contribute to the cost of treatment in accordance with the probation office co-payment policy.

6. You shall not possess, ingest, or otherwise use, a synthetic cannabinoid, or other synthetic narcotic.

7. In the event that you reside in or visit a jurisdiction where marijuana or marijuana products have been approved, legalized, or decriminalized, you shall not possess, ingest, or otherwise use marijuana or marijuana products.

Case: 25-60534 Document: 51 Page: 92 Date Filed: 01/06/2026

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR118HTW-ASH-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$	$ 1,500.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☑ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Case: 25-60534 Document: 51 Page: 93 Date Filed: 07/08/2026

AO 245B(Rev. 09/19) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

Judgment — Page 7 of 7

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR118HTW-ASH-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☑ Payment to begin immediately (may be combined with ☐ C, ☑ D, or ☑ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☑ Payment in equal monthly *(e.g., weekly, monthly, quarterly)* installments of $ 50.00 over a period of xxxx *(e.g., months or years)*, to commence 60 days *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:
In the event the fine is not paid in full prior to the termination of supervised release, you are ordered to enter into a written agreement with the Financial Litigation Program of the U.S. Attorney's Office for payment of the remaining balance. Additionally, the value of future discovered assets may be applied to offset the balance of criminal monetary penalties. You may be included in the Treasury Offset Program allowing qualified federal benefits to be applied to offset the balance of criminal monetary penalties.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Case: 25-60534 Document: 51 Page: 94 Date Filed: 01/06/2026

AO 245B(Rev. 09/19) Judgment in a Criminal Case

OT/ml

UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA v. **MARCUS TREMAINE POWELL**	JUDGMENT IN A CRIMINAL CASE Case Number: 3:23CR117HTW-ASH-001 USM Number: 95908-510 Sidney E. Lampton Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 846 and 841(b)(1)(B)	Conspiracy to PWITD 500 Grams of Cocaine and Marijuana	11/29/2023	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) 2 ☑ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

September 18, 2025
Date of Imposition of Judgment

Henry T. Wingate
Signature of Judge

The Honorable Henry T. Wingate U.S. District Judge
Name and Title of Judge

08 October 2025
Date

Case: 25-60597 Document: 51 Page: 50 Date Filed: 01/06/2026

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR117HTW-ASH-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

360 months as to Count 1, to run concurrently with Count 1s of Docket Number 3:23cr118.

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case: 25-60597 Document: 51 Page: 51 Date: 01/09/2026

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR117HTW-ASH-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

5 years as to Count 1, to run concurrently with Count 1s of Docket Number 3:23cr118.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

Case: 25-60597 Document: 51 Page: 30 Date: 07/09/2025

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

Case: 25-60597 Document: 51 Page: 99 Date Filed: 01/09/2026

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR117HTW-ASH-001

SPECIAL CONDITIONS OF SUPERVISION

1. You shall pay the fine imposed by the Court.

2. You shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, unless in compliance with the installment payment schedule.

3. You shall provide the probation office with access to any requested financial information and inform the Court of any changes in your economic circumstances which may impact your payment of the fine.

4. You shall submit your person, property, house, residence, vehicle, electronic communication devices, papers, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

5. You shall participate in a program of testing and outpatient treatment (and inpatient treatment if approved by the Court during the term of supervised release) for alcohol/drug abuse as directed by the probation office. When enrolled in an alcohol/drug treatment program, either inpatient or outpatient, you shall abstain from consuming alcoholic beverages during treatment and shall continue abstaining for the remaining period of supervision. You shall contribute to the cost of treatment in accordance with the probation office co-payment policy.

6. You shall not possess, ingest, or otherwise use, a synthetic cannabinoid, or other synthetic narcotic.

7. In the event that you reside in or visit a jurisdiction where marijuana or marijuana products have been approved, legalized, or decriminalized, you shall not possess, ingest, or otherwise use marijuana or marijuana products.

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AO 245B(Rev. 09/19) Judgment in a Criminal Case

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR117HTW-ASH-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$	$ 1,500.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☑ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MARCUS TREMAINE POWELL
CASE NUMBER: 3:23CR117HTW-ASH-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☑ Payment to begin immediately (may be combined with ☐ C, ☑ D, or ☑ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☑ Payment in equal monthly *(e.g., weekly, monthly, quarterly)* installments of $ 50.00 over a period of xxxx *(e.g., months or years)*, to commence 60 days *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:
In the event the fine is not paid in full prior to the termination of supervised release, you are ordered to enter into a written agreement with the Financial Litigation Program of the U.S. Attorney's Office for payment of the remaining balance. Additionally, the value of future discovered assets may be applied to offset the balance of criminal monetary penalties. You may be included in the Treasury Offset Program allowing qualified federal benefits to be applied to offset the balance of criminal monetary penalties.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

July 30, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-60534 consolidated with 25-60597
USA v. Powell
USDC No. 3:23-CR-118-1
USDC No. 3:23-CR-117-1

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Nina M. Fernandez, Deputy Clerk
504-310-7630

Ms. Jennifer Case
Ms. Carla J. Clark
Mr. Thomas Lee Stingley Jr.

United States Court of Appeals for the Fifth Circuit

25-60534
CONSOLIDATED WITH
25-60597

United States Court of Appeals
Fifth Circuit
FILED
July 30, 2026
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARCUS TREMAINE POWELL,

Defendant—Appellant.

Appeals from the United States District Court
for the Southern District of Mississippi
USDC No. 3:23-CR-118-1
USDC No. 3:23-CR-117-1

UNPUBLISHED ORDER

Before ELROD, *Chief Judge*, and RICHMAN and DUNCAN, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that Appellee's opposed motion to dismiss the appeal is GRANTED.

IT IS FURTHER ORDERED that Appellee's opposed motion for summary affirmance is DENIED AS MOOT.