No. _____

IN THE
Supreme Court of the United States

CHAUNCEY ALLEN WHITE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Hunter v. United States*, 608 U.S. 713, 727 (2026), this Court recognized that an appeal waiver may not be enforced if its application would result in a miscarriage of justice, but it did not list what types of errors constitute such a miscarriage. This case raises the question of whether the miscarriage-of-justice exception applies to a non-harmless objected-to error in calculating the Sentencing Guidelines.

LIST OF PARTIES

The parties to the proceeding are:

Chauncey Allen White (Petitioner)

United States of America (Respondent)

RELATED PROCEEDINGS

United States v. Chauncey Allen White, No. 1:24-cr-10027, United States District Court for the District of South Dakota. Judgment entered August 29, 2025.

United States v. Chauncey Allen White, No. 25-2762, United States Court of Appeals for the Eighth Circuit. Judgment entered June 29, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Chauncey Allen White respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit (App. 1a-3a) is unreported but is available at 2026 WL 1862548. The district court's ruling is unpublished.

JURISDICTION

The court of appeals entered judgment on June 29, 2026. App. 1a. White received an extension of time to file a petition for rehearing. The court of appeals denied White's timely petition for panel rehearing and rehearing *en banc* on August 19, 2026. App. 4a. This petition is timely filed under Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 3742(a)(2):

> A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—
>
> (2) was imposed as a result of an incorrect application of the sentencing guidelines.

INTRODUCTION

A criminal defendant has a statutory right to appeal from a sentence that "was imposed as a result of an incorrect application of the sentencing guidelines." 18 U.S.C. § 3742(a)(2). Although this right to appeal may be waived pursuant to a plea agreement, an appeal waiver is unenforceable if its enforcement would result in a "miscarriage of justice." *Hunter v. United States*, 608 U.S. 713, 727 (2026). A miscarriage of justice occurs if the error is "obvious" and is the type of error that would "undermine public confidence in the judiciary." *Id*. *Hunter* did not provide a list of what type of guideline errors could result in a miscarriage of justice by enforcement of an appeal waiver.

Here, the Eighth Circuit declined to consider White's argument that the district court erred in applying the cross reference under USSG § 2A3.2(c) because it enforced the appeal waiver. The appellate court concluded that the alleged guideline calculation error did not implicate the miscarriage-of-justice exception to a valid appeal waiver. App. 2a-3a.

This petition presents an important and recurring question of federal law that can only be settled by this Court: Whether the *Hunter* miscarriage-of-justice exception to a valid appeal waiver applies to alleged sentencing guideline calculation errors where, as here, such non-harmless errors were brought to the attention of the district court. This Court should grant certiorari and resolve this important and recurring issue.

STATEMENT OF THE CASE

Guilty plea and appeal waiver.

Pursuant to a plea agreement, White agreed to and subsequently pleaded guilty to two counts of sexual abuse of a minor (Counts 2 and 4) in violation of 18 U.S.C. §§ 2243(a), 2246(2)(A), and 1153.[1] Dist. Ct. Dkt. 84, at 2-3; Dist. Ct. Dkt. 86; Plea Tr., at 14-15. Count 2 pertained to S.R.C. (Victim 1) and Count 4 pertained to C.O. (Victim 2) Dist. Ct. Dkt. 1. White pleaded guilty to engaging in a sexual act with Victim 1 and Victim 2 when they were under the age of 16 and he was at least four years older than them. Dist. Ct. Dkt. 1, at 1-2; Dist. Ct. Dkt. 86; Plea Tr., at 14-15. Under the plea agreement, two counts of sexual abuse (Counts 1 and 3) in violation of 18 U.S.C. §§ 2242(2) and 2246(2) were to be dismissed. Dist. Ct. Dkt. 84, at 2-3; *see* Dist. Ct. Dkt. 1, at 1-2.[2]

The plea agreement contained an appeal waiver. Dist. Ct. Dkt. 84, at 10. The waiver barred an appeal except for "any decision by the Court to depart upward pursuant to the United States Sentencing Guidelines" and an appeal of "the length of sentence for a determination of its substantive reasonableness should the Court

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[1] All citations to "Dist. Ct. Dkt." are to the docket in *United States v. White*, No. 1:24-cr-10027 (D.S.D.). The transcript for the June 9, 2025 change of plea hearing (Dist. Ct. Dkt. 124) will be referenced as Plea Tr., and the redacted transcript for the June 9, 2025 sentencing hearing (Dist. Ct. Dkt. 131) will be referenced as Sent. Tr.

[2] At the sentencing hearing, district court granted the government's motion to dismiss Counts 1 and 3 and dismissed those counts. Sent. Tr., at 102.

impose an upward departure or an upward variance pursuant to 18 U.S.C. § 3553(a)." *Id.*

Alleged guidelines cross reference error and sentencing.

A draft presentence investigation report ("PSR") was filed before sentencing. Dist. Ct. Dkt. 94. For Count 4 (relating to Victim 2), the draft PSR applied a cross reference to USSG § 2A3.1(a)(2) under USSG § 2A3.2(c)(1).[3] Dist. Ct. Dkt. 94 ¶ 23. Before sentencing, White objected to this cross reference.[4] Dist. Ct. Dkt. 95, at 1-2. White argued that this cross reference was inapplicable as Victim 2 was neither unconscious nor incapable of appraising the nature of the sexual encounter, and even if she was, there was no evidence that White knew she was incapable of appraising the nature of the sexual encounter. *Id.*

Victim 2 testified at the sentencing hearing that she drank alcohol the night she had intercourse with White and she smoked marijuana, but she did not testify

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[3] USSG § 2A3.2(c) provides that if the offense involved criminal sexual abuse as defined in 18 U.S.C. §§ 2241 or 2242, the court should apply § 2A3.1. As relevant here, § 2242(2) defines sexual abuse to include engaging in a sexual act with another person if that person is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act. 18 U.S.C. § 2242(2). In the Eighth Circuit, the government must prove that the defendant knew the victim was incapacitated or incapable of consent. *United States v. Bruguier*, 735 F.3d 754, 760-61 (8th Cir. 2013) (en banc). Here, the draft PSR alleged that Count 4 involved sexual activity while Victim 2 was passed out from alcohol. Dist. Ct. Dkt. 94 ¶ 8. Application of the cross reference increased the adjusted offense level for Count 4 from 18 to 32. *Compare* USSG § 2A3.2 *with* Dist. Ct. Dkt. 94 ¶¶ 23-28.

[4] White also objected to the cross reference as applied to Count 2, but on appeal he only challenged the application of the cross reference as to Count 4. Appellant's Br., at 10-14; Appellant's Reply Br., at 6-10.

as to how much of each substance she consumed, nor to how much of each substance White knew she consumed. Sent. Tr., at 35-36. She only testified to feeling intoxicated. *Id.* at 38. She testified she woke up while she was lying on the couch and her pants and underwear were off and White had his penis inside her vagina. *Id.* at 37-38. She testified she was unsure whether she was conscious or unconscious when the sexual activity began, and that she was unsure if she was awake when her clothes were being removed. *Id.* at 40, 44. She testified that during intercourse she told White to get off and he did. *Id.* at 39.

White testified that he engaged in sexual intercourse with C.O. and that he knew she was underage. Sent. Tr., at 68-69, 71-73. He confirmed he met Victim 2 one time, and that they had sexual intercourse on the couch. *Id.* at 72. He stated Victim 2 took her own pants off and he stated that he did not believe Victim 2 was drunk and passed out because she only had "like one beer." *Id.* at 68, 72.

The district court overruled White's objection to the application of the sexual abuse guideline noting that Victim 2 was incapacitated. Sent. Tr., at 94. The court found that White attempted to mislead the court regarding whether the sexual abuse of Victim 2 and Victim 1 occurred on the same night as indicated in the factual basis statement, and that this was further support of the finding of forceable rape. *Id*. at 95.

The district court imposed the statutory maximum sentence of 180 months on each count, with 20 months on each count to run concurrently for a total sentence of 320 months. Sent. Tr., at 95-96; Dist. Ct. Dkt. 117, at 2. The district court chose to

run the 320-month sentence in this case consecutively to the 32-month sentence imposed in another case. Dist. Ct. Dkt. 117, at 2; Sent. Tr., at 97-98.

Appeal.

On appeal, White argued *inter alia* that the district court erred in applying the cross reference under USSG § 2A3.2(c) as to Victim 2. Appellant's Br., at 10-15; Appellant's Reply Br., at 6-10. More specifically, White argued the court erred when it found the cross reference applied to Victim 2 as it found White *knew* Victim 2 was incapacitated, and that it made no specific finding as to how or why the court believed White knew Victim 2 was incapacitated. Appellant's Br., at 9-15. White also argued that even if the court discredited White's testimony as misleading, the government did not prove White knew that Victim 2 was incapable of appraising the nature of the conduct on Victim 2's testimony alone. Appellant's Br., at 10-15. Had the cross-reference not applied, the total offense level would have been 35 instead of 37, and the advisory guideline range would have been 292 to 360 months instead of 324 to 360 months. Sent. Tr., at 88-89; *see also* USSG, Ch. 5, Pt. A.[5]

[5] Had the cross reference not applied, there would have been no multiple count adjustment under the 2024 guideline calculations. *See* USSG § 3D1.4(c) (2024). Pursuant to the then applicable multiple count adjustment rules, had the cross reference not applied, the adjusted offense level of 18 for Count 4 (involving Victim 2) would have been at least nine levels lower than the adjusted offense level of 32 for Count 2 (involving Victim 1), indicating no increase in offense levels. USSG §§ 2A3.2(a), 3D1.4(c); *see* Dist. Ct. Dkt. 94 ¶¶ 29-32. Thus, had the cross reference not applied the offense level would have remained at 35 rather than 37, and with a criminal history category of V he would have had a guideline range of 262 to 327 months rather than 324 to 360 months. Sent. Tr., at 89; *see also* USSG, Ch. 5, Pt. A.

White argued that an error in calculating the guideline range alone is enough to establish a reasonable probability that the district court would have imposed a different sentence. Appellant's Br., at 14-15. The district court's total sentence of 320 months resulted in a sentence four months below the increased guideline range. Four months below the correct guideline range of 262 to 327 months would have resulted in a total sentence of 258 months.

In response to the government's argument on appeal that the circuit court should enforce the appeal waiver, White argued that the government did not prove that enforcement of the appeal waiver would result in a miscarriage of justice. Appellant's Reply Br., at 4-6.

On June 18, 2026, after this case was fully briefed in the circuit court, this Court decided *Hunter v. United States*, 608 U.S. 713 (2026). *Hunter* held that an appeal waiver is unenforceable when it would result in a miscarriage of justice. *Id.* at 727. *Hunter* explicitly stated it would not provide an exhaustive list of examples of miscarriages of justice. *Id.* at 728. On June 29, 2026, the circuit court enforced the appeal waiver and dismissed White's appeal. App. 1a-3a. The circuit court cited *Hunter* and Eighth Circuit precedent and concluded that this case did not trigger the miscarriage-of-justice exception so as to render the appeal waiver unenforceable. App. 2a-3a. On August 19, 2026, the circuit court denied White's petition for rehearing. App. 4a.

REASONS FOR GRANTING THE PETITION

I. The question of whether a non-harmless and objected-to guideline calculation error can preclude enforcement of an appeal waiver under the miscarriage of justice exception recognized in *Hunter v. United States*, 608 U.S. 713 (2026) is an important question that should be settled by this Court.

A criminal defendant has a statutory right to appeal from a sentence that "was imposed as a result of an incorrect application of the sentencing guidelines." 18 U.S.C. § 3742(a)(2). Although the sentencing guidelines are advisory, they remain the "framework for sentencing" and act as the anchor for a district court's sentencing decision. *Peugh v. United States*, 569 U.S. 530, 542, 549 (2013); *see also Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016) (same). This Court has noted the following regarding the important role the guidelines play when a federal a judge fashions a sentence:

> [T]he Guidelines are not only the starting point for most federal sentencing proceedings but also the lodestar. The Guidelines inform and instruct the district court's determination of an appropriate sentence. In the usual case, then, the systemic function of the selected Guidelines range will affect the sentence.

Molina-Martinez, 578 U.S. at 200. Thus, an improper calculation of the recommended sentencing guidelines range usually affects the imposed sentence.

Although the right to appeal from an incorrect application of the sentencing guidelines is an important statutory right, the right to appeal may be waived pursuant to a plea agreement; however, an appeal waiver is unenforceable if its enforcement would result in a "miscarriage of justice." *Hunter v. United States*, 608 U.S. 713, 727 (2026). *Hunter* recognized that a miscarriage of justice occurs if the

error is "obvious" and is the type of error that would "undermine public confidence in the judiciary." *Id*. *Hunter* did not provide an exhaustive list of what type of guideline errors could result in a miscarriage of justice by enforcement of an appeal waiver.

However, Justice Gorsuch's concurring opinion identified that guideline errors could be classified as miscarriages of justice, and noted that even a failure to correct a plain non-harmless guideline range error affects the integrity of judicial proceedings:

> Consider also aspects of sentencing that can require a degree of judicial discretion: the application of the advisory sentencing guidelines, the imposition of supervised release conditions within statutory and constitutional bounds, and the weighing of 18 U.S.C. § 3553(a)'s sentencing factors. I appreciate that "standard-fare" errors in those areas will not often clear the "high bar" the Court sets today. But some errors may. For example, and as we have held, the failure to correct a plain and nonharmless error in calculating an advisory guidelines range ordinarily "will seriously affect the fairness, integrity, and public reputation of judicial proceedings." Indeed, "what reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors of their own devise that threaten to require individuals to linger longer in federal prison than the law demands?"

Hunter, 146 S. Ct. at 1720-21 (Gorsuch, J., concurring) (citations omitted). Here, the error in White's guideline calculation is not harmless.

White objected to the application of the cross reference under USSG § 2A3.2(c)(1) as to Count 4. Dist. Ct. Dkt. 95. The district court overruled this objection. Sent. Tr., at 94. Had the cross reference not applied to this count, then there would have been no multiple count adjustment under USSG § 3D1.4(c), and White would have had a guideline range of 262 to 327 months rather than 324 to

360 months. *See supra* footnotes 3 & 5; *see also* Sent. Tr., at 88-89; USSG, Ch. 5, Pt. A. Because the circuit court enforced the appeal waiver contained within the plea agreement, it did not consider White's argument that the district court miscalculated the guideline sentencing range. App. 1a-3a. Pertinent here, the circuit court concluded that the alleged guideline calculation error did not implicate the miscarriage-of-justice exception to a valid appeal waiver. App. 2a-3a. The court erred in so holding.

Despite the fact that *Hunter* did not provide an exhaustive list of what type of guideline errors could result in a miscarriage of justice by enforcement of an appeal waiver, it did offer guidance. *Hunter*, 146 S. Ct. at 1727-28. A miscarriage of justice occurs if the error is "obvious" and is the type of error that would "undermine public confidence in the judiciary." *Id.* at 727. Here, the error was obvious. The government failed to prove that White knew Victim 2 was incapable of appraising the nature of the conduct as White testified that he did not believe Victim 2 was drunk and as there was insufficient evidence to otherwise prove he had knowledge of her purported incapacity. Sent. Tr., at 32-39, 68-72. Moreover, the error was obvious because White objected to the district court and made the error known to the court. Dist. Ct. Dkt. 95. Additionally, the error undermines public confidence in the judiciary. District court judges are presumed to know and apply the law. *United States v. Jawher*, 85 F.4th 868, 871 (8th Cir. 2023). When a court misapplies the sentencing guidelines and in so acting overrules objections which put the court on notice as to the proper application of the law, public confidence in the judiciary is

undermined. Finally, the error here is not harmless. As noted by the concurrence in *Hunter*, a non-harmless error in calculating an advisory guidelines range ordinarily seriously affects the fairness, integrity, and public reputation of judicial proceedings. *Hunter*, 146 S. Ct. at 1720-21.

II. The Court should act to resolve the question presented.

The opinion below shows that this Court's guidance is needed. Although *Hunter* recognized the miscarriage-of-justice exception to the rule that voluntary appeal waivers are enforceable, it did not set out a specific list regarding when such an injustice exists. As noted above, the guidelines place a crucial role in rendering a fair and just sentence. As recognized by the concurrence in *Hunter*, a non-harmless error in calculating an advisory guidelines range typically seriously affects the fairness, integrity, and public reputation of judicial proceedings. *Hunter*, 146 S. Ct. at 1720-21. This Court should clarify that where, as here, the guideline miscalculation error was objected to and was not proven to be harmless, the miscarriage-of-justice exception is applicable.

Post *Hunter*, circuit courts from other circuits have generally concluded that sentencing guideline miscalculations do not fall under the miscarriage of justice exception to appeal waivers recognized in *Hunter*. *See United States v. Matos*, 187 F.4th 36, 39 (2d Cir. 2026)[(holding that the miscarriage of justice exception does not "extend to run-of-the-mill challenges to a district court's allegedly erroneous calculation of a Guidelines range, or to other such Guidelines errors"); *United States v. Harris*, No. 25-60017, 2026 WL 3256011, at *3 (5th Cir. Oct. 29, 2026); *United*

States of America v. Yesmin Miseal Medina Vargas, No. 25-3671, 2026 WL 3269621, at *2 (9th Cir. Oct. 30, 2026) (claim that the district court erred by applying a guidelines enhancement did not meet the miscarriage of justice exception to appeal waivers recognized in *Hunter*); *United States v. Bethea*, No. 26-11148, 2026 WL 3373227, at *1 (11th Cir. Nov. 6, 2026) (per curiam) (enforcement of appeal waiver did not result in a miscarriage of justice based on record for a sentencing guidelines enhancement for obstruction of justice). The circuit courts' general refusal to apply the miscarriage-of-justice exception to appeal waivers for sentencing guideline issues demonstrates the need for this Court's action to clarify that, in some circumstances, this exception applies to objected-to guideline calculation errors.

This petition presents an important, recurring, and unresolved question of federal law that can only be settled by this Court: Whether the *Hunter* miscarriage-of-justice exception to a valid appeal waiver is applicable to alleged non-harmless sentencing guideline miscalculation errors where, as here, such errors were brought to the attention of the district court. This Court should resolve this important question.

III. This case is an ideal vehicle for the question presented.

This case is an ideal vehicle for the question presented. White squarely raised the guideline calculation issue below. Dist. Ct. Dkt. 95; Sent. Tr., at 6, 82-87. White's objection was overruled. Sent. Tr., at 93. As a result of the guideline calculation error, White was sentenced pursuant to a higher recommended guideline sentencing range of 324 to 360 months rather than the proper range of

262 to 327 months. Sent. Tr., at 89; *see also* USSG, Ch. 5, Pt. A. Pursuant to *Hunter*, a "miscarriage of justice" occurs if the error is "obvious" and is the type of error that would "undermine public confidence in the judiciary." *Hunter*, 608 U.S. at 727. The error here was obvious and it undermines the public confidence in the judiciary because it was not established to be harmless.

The Court should grant certiorari to ensure that, where obvious non-harmless guideline calculation errors occur, the circuit courts will not enforce appeal waivers, as to do so undermines the public confidence in the judiciary. The petition for a writ of certiorari should be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated this 13th day of November, 2026.

Respectfully submitted,

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