

United States Court of Appeals
for the Fifth Circuit

No. 23-30454

United States Court of Appeals
Fifth Circuit

FILED

September 18, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DEVIN CHANEY,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CR-16-1

ON REMAND FROM
THE SUPREME COURT OF THE UNITED STATES

Before SMITH, CLEMENT, and HIGGINSON, *Circuit Judges*.

JERRY E. SMITH, *Circuit Judge*:

Devin Chaney pleaded guilty of Hobbs Act Robbery in violation of 18 U.S.C. § 1951(a) and Armed Bank Robbery in violation of 18 U.S.C. § 2113(a) and (d). In the plea agreement, Chaney waived his right to appeal, except to appeal a sentence above the statutory maximum or to claim ineffective assistance of counsel. In exchange, the government dropped the remaining nine counts in the eleven-count indictment.

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Despite the waiver, Chaney appealed his sentence on the ground that the district court improperly designated him as a career offender under U.S.S.G. § 4B1.1. We granted the government’s motion to dismiss the appeal because Chaney’s waiver was “knowing and voluntary” and “applie[d] to the circumstances at issue.” *United States v. Chaney*, 120 F.4th 1300, 1303 (5th Cir. 2024).¹ In so doing, we rejected Chaney’s argument that his plea agreement would result in a “miscarriage of justice” because this circuit had “not adopted a miscarriage-of-justice exception for appeal waivers.” *Id.*

In light of *Hunter v. United States (Hunter I)*, 146 S. Ct. 1702 (2026), however, the Supreme Court granted Chaney’s petition for a writ of certiorari, vacated our judgment, and remanded. *Chaney v. United States*, No. 24-6543, 2026 WL 1855041, at *1 (U.S. June 29, 2026). The Court in *Hunter I* declared 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.” 146 S. Ct. at 1708.

Because Chaney has identified no such egregious error in his own sentence or sentencing process, we once again enforce his appeal waiver and dismiss the appeal.

I.

The Supreme Court described its new “miscarriage of justice” exception as “a high bar,” *id.* at 1713, meant to operate only as a “safety valve for extreme cases,” *id.* at 1714. “The error must be obvious—not one a judge could reasonably make.” *Id.* at 1713. The Court offered several examples of

¹ Quoting *United States v. Keele*, 755 F.3d 752, 754 (5th Cir. 2014) (quoting *United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005)).

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cases that could meet the high bar:

First, a defendant may appeal a sentence exceeding what the relevant statute allows—most commonly, a term of years above the maximum prescribed. Second, a defendant may appeal a sentence that is infected with a blatant constitutional error, such as when a judge takes account of a constitutionally impermissible factor (like race) or imposes a constitutionally infirm condition of supervised release (like barring a defendant from becoming pregnant). And third, a defendant may appeal if his sentence was imposed without some minimum of civilized procedure, as in, yes, the [trial by] twelve orangutans case—or less extravagantly, one in which the judge refused to hold a hearing consonant with basic principles of law.

Id. at 1714 (internal quotation marks and citations omitted).

On the other hand, the Court distinguished cases in which the “errors asserted are uncertain or ordinary.” *Id.* For example, because “[s]entencing is a complex affair in our criminal justice system, involving ... the detailed calculation of a Sentencing Guidelines range and the mandatory consideration of multiple sentencing factors . . . , it is unfortunate but inevitable mistakes will occur.” *Id.* at 1713. “Such standard-fare errors in misapplying sentencing law cannot cancel an appeal waiver.” *Id.*

II.

On remand, Chaney again asserts that the miscarriage-of-justice exception applies because the court erred by classifying him as a career offender under U.S.S.G. § 4B1.1. Chaney posits that his 2019 Louisiana conviction of distribution of a controlled dangerous substance does not qualify as a predicate controlled substance under § 4B1.1, given that the state marijuana offense included a prohibition on hemp and the federal marijuana offense did not. Chaney also maintains that the district court summarily overruled his objection without fairly adjudicating the issue. Neither

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asserted error, however, meets the high bar for miscarriage of justice set by *Hunter I*.

A.

In support of his theory that the district court committed egregious error, Chaney primarily relies on two non-precedential Fifth Circuit decisions that post-date Chaney's sentencing. *See United States v. Kimmons*, No. 25-30371, 2026 WL 1587522 (5th Cir. June 3, 2026) (unpublished); *United States v. Hill*, No. 24-30669, 2025 WL 2222989 (5th Cir. Aug. 5, 2025) (unpublished).

In both of those cases, the parties conceded—and the respective panels recognized—that the application of the career-offender enhancement to the same Louisiana offense was clear error. *Kimmons*, 2026 WL 1587522, at *3; *Hill*, 2025 WL 2222989, at *2. *Kimmons*, for example, held that “the district court clearly erred by applying the career-offender enhancement” to the defendant. *Kimmons*, 2026 WL 1587522, at *3.

But several details make those cases inapposite. First, neither opinion was on the books when the district court classified Chaney as a repeat offender under the guidelines. “As a general matter, an error is clear or obvious only if it is apparent under *controlling law* and does not require an extension of precedent.” *United States v. Hunter (Hunter II)*, 183 F.4th 416, 420 (5th Cir. 2026) (emphasis added).

Second, both decisions are unpublished, meaning that neither binds this panel. *Id.*

Third, this court's plain-error standard (as referenced by *Kimmons*) is not the same as *Hunter I*'s newly announced “miscarriage of justice” standard. *Hunter I*, 146 S. Ct. at 1713. Our panel opinions in the wake of *Hunter I* have said as much. Though “plain-error cases can provide a helpful

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starting point” and “can inform the obviousness inquiry, [] they do not define *Hunter P*’s distinct waiver standard.” *United States v. Nyandoro*, No. 23-10579, 2026 WL 2619961, at *5 (5th Cir. Sept. 4, 2026) (citing *Hunter II*, 183 F.4th at 420, 423 (analogizing to plain-error cases)).

The same goes for the less burdensome “clear or obvious error” prong of the plain-error rubric (as referenced by *Hill*). Compare *Hunter II*, 183 F.4th at 420 (“[A]n error is clear or obvious only if it is apparent under controlling law and does not require an extension of precedent.”), with *Hunter I*, 146 S. Ct. at 1713–14 (defining a “miscarriage of justice” as implicating errors that are “extreme,” “egregious,” and “not one[s] a judge could reasonably make”).

So, even if, *arguendo*, the district court committed *clear* or *plain* error by misclassifying Chaney under the federal sentencing regime, that error does not amount to the kind of “extreme,” “obvious,” or “egregious error that would bring the judicial system into disrepute.” *Hunter I*, 146 S. Ct. at 1708, 1713–14. Indeed, the Supreme Court contemplated this very kind of claim when it discussed “unfortunate but inevitable” mistakes that may occur in “the detailed calculation of a Sentencing Guidelines range” and “multiple sentencing factors.” *Id.* at 1713. The Court explained that such a mistake does not meet the “high bar” of the new miscarriage-of-justice exception. *Id.*

The two unpublished Fifth Circuit opinions that Chaney cites fail to change that consequence. “The paucity of authorities on the challenge [Chaney] makes in this case is a substantial strike against his assertion that the district court committed ‘blatant’” error. *Hunter II*, 183 F.4th at 420.

It is also far from obvious that the district court erred at all by classifying Chaney as a career offender. Indeed, as the government pointed out in its initial brief, there is a current 7–3 circuit split over whether to define state-

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law “controlled substance” offenses in § 4B1.2(b) by reference to the federal definition.²

Although the Fifth Circuit has defined the term “drug trafficking offense,” as used in U.S.S.G. § 2L1.2, by comparing state and federal drug-trafficking offenses, *United States v. Gomez-Alvarez*, 781 F.3d 787, 793–94 (5th Cir. 2015), it has never, in a controlling opinion, adopted the same approach for § 4B1.2(b)’s “controlled substance” definition. Again, “an error is clear or obvious,” let alone egregious, “only if it is apparent under controlling law and does not require an extension of precedent.” *Hunter II*, 183 F.4th at 420.³

B.

Chaney next urges that the “manner in which the court committed” the sentencing error constitutes a miscarriage of justice. That is so, Chaney reasons in a supplemental letter brief, because the district court “fail[ed] to

² Compare *United States v. Lewis*, 58 F.4th 764, 771 (3d Cir. 2023) (holding that “[i]t is therefore irrelevant that the [state] statute under which Lewis was convicted defined ‘marijuana’ more broadly than federal law”), and *United States v. Dubois*, 94 F.4th 1284, 1296 (11th Cir. 2024), *vacated on other grounds*, 145 S. Ct. 1041, *reinstated*, 139 F.4th 887, 889 (11th Cir. 2025) (same), and *United States v. Jones*, 81 F.4th 591, 599 (6th Cir. 2023) (same), and *United States v. Jones*, 15 F.4th 1288, 1292 (10th Cir. 2021) (same), and *United States v. Henderson*, 11 F.4th 713, 718 (8th Cir. 2021) (same), and *United States v. Ward*, 972 F.3d 364, 370–74 (4th Cir. 2020) (same), and *United States v. Ruth*, 966 F.3d 642, 651–52 (7th Cir. 2020) (same), with *United States v. Townsend*, 897 F.3d 66, 71 (2d Cir. 2018) (holding that “a ‘controlled substance’ under § 4B1.2(b) must refer exclusively to those drugs listed under federal law—that is, the CSA”), and *United States v. Fulcar*, 181 F.4th 63, 78–79 (1st Cir. 2026) (same), and *United States v. Bautista*, 989 F.3d 698, 702 (9th Cir. 2021) (same),

³ Quoting *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009) (“We ordinarily do not find plain error when we have not previously addressed an issue. Even where the argument requires only extending authoritative precedent, the failure of the district court to do so cannot be plain error.” (internal citations and quotation marks omitted)).

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apply sentencing law at all” and “summarily overruled his objection based solely on a Probation Officer’s . . . assertion that it was wrong.”

Hunter I did identify procedural deficiency as a potential avenue for a miscarriage-of-justice exception, but only where the “sentence was imposed without some minimum of civilized procedure.” *Hunter I*, 146 S. Ct. at 1714 (internal quotation marks omitted). The alleged procedural error that Chaney asserts, even if so, does not come close to clearing that bar.

Chaney was given the opportunity to object to his sentencing classification and to provide a justification for that objection. Ultimately, the district court disagreed. The fact that the court quickly came to a conclusion that Chaney considers erroneous does not mean that the sentencing process was done “without some minimum of civilized procedure.” *Id.* (internal quotation marks omitted).⁴ This is not one of those rare cases that would “bring the judicial system into disrepute[,]” “undermine public confidence in the judiciary[,]” or threaten the “basic integrity” of the judicial system. *Id.* at 1713–14.

III.

Hunter I set a demanding standard for the Supreme Court’s newly announced “miscarriage of justice” exception to appeal waivers. It described that standard as a “high bar” reserved only for “extreme[,]” “obvious[,]” and “egregious” errors. *Id.* In the wake of *Hunter I*, we have had several opportunities to determine just how high that bar really is. Each time, we have emphasized the same point the *Hunter I* majority did: Run-of-the-

⁴ See *Wright v. Admin. Rev. Bd.*, U.S. Dep’t of Lab., 836 F. App’x 248, 257 (5th Cir. 2020) (“Insisting upon haste in judicial proceedings is generally not indicative of prejudicial bias.”); *N.Y. Times Co. v. United States*, 403 U.S. 713, 749 (1971) (BURGER, C.J., dissenting) (“But prompt judicial action does not mean unjudicial haste.”).

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mill or “standard-fare” errors in sentencing don’t make the cut.⁵

Under *Hunter I* and this court’s decisions that have followed, this case isn’t even close. We once again enforce Chaney’s appeal waiver and DISMISS the appeal.



**Certified as a true copy and issued
as the mandate on Sep 18, 2026**

Attest:

Styl W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

⁵ See *Hunter II*, 183 F.4th at 418–20 (applying the new miscarriage-of-justice exception on remand and dismissing the appeal); *United States v. London*, No. 25-20102, 2026 WL 2452236, at *1 (5th Cir. Aug. 21, 2026) (same); *Nyandoro*, 2026 WL 2619961, at *6–7 (same).