A Criminal-Law Ruling Commercial Litigants Should Watch

***Hunter v. United States*, No. 24-1063 (June 18, 2026)**

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Arbitration clauses, forum-selection provisions, appeal limitations — these contractual waivers of procedural rights are standard features of commercial agreements. On June 18, 2026, the U.S. Supreme Court announced a rule that could put them at risk.

In *Hunter v. United States*, the Supreme Court held 8-1 that a knowing and voluntary waiver is unenforceable when enforcement would produce a "miscarriage of justice." The case involved a criminal plea agreement, but the majority's reasoning — that courts have an inherent institutional interest in refusing to enforce waivers that would discredit the judicial system — has no obvious limiting principle confining it to the criminal context.

The Case

Hunter pleaded guilty to wire fraud under a plea agreement containing a broad appeal waiver. At sentencing, the district court imposed a condition requiring Hunter to take any mental-health medications prescribed by his physician. Hunter objected on due process grounds; the court overruled the objection but then erroneously told him he had "a right to appeal." The U.S. Court of Appeals for the Fifth Circuit dismissed his appeal, enforcing the waiver.

The Holding

Writing for the eight-justice majority, Justice Kagan vacated and remanded. As the Supreme Court held, even a valid, knowing, and voluntary waiver has limits: courts may refuse to enforce it when doing so would result in a "miscarriage of justice." Notably, the majority bypassed the contract-law defenses Hunter had urged — unconscionability, frustration of purpose, public policy — without addressing them on the merits. Instead, it grounded the rule in the

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judiciary's institutional interest in the integrity of proceedings it administers. Because courts approve plea agreements and control waiver enforcement, they are "too enmeshed" in the process "to escape responsibility" for egregious errors. Automatic enforcement, the Supreme Court concluded, may "risk institutional harm."

The standard is high. The error must be obvious and must undermine public confidence in the judiciary. Routine mistakes will not suffice. But the Supreme Court identified categories that would: sentences exceeding statutory limits; sentences tainted by constitutionally impermissible factors; or proceedings lacking "some minimum of civilized procedure."

The Concurrences: A Roadmap and a Warning

The 8-1 vote masks a significant internal tension about the decision's reach. Two concurrences point in opposite directions — and both matter for anyone with contractual waivers to enforce or challenge.

The expansive read (Justice Gorsuch, joined by Justices Sotomayor and Jackson): Justice Gorsuch's concurrence reads less like a gloss on the majority and more like a blueprint for extending *Hunter* into civil litigation. He cataloged the Supreme Court's precedents invalidating prospective waivers of statutory rights in non-criminal settings — employee rights under Title VII and the FLSA, Section 1983 claims, and most directly relevant to commercial disputes, the right to pursue statutory remedies in arbitration (*Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)). His conclusion: there is "no colorable explanation" why a criminal defendant's statutory appeal right should receive less protection than these civil rights.

For any business that relies on arbitration agreements, forum-selection clauses, or contractual appeal limitations, that sentence is the one to circle in red.

It gives litigants opposing enforcement a direct Supreme Court citation — from three sitting justices — for the proposition that prospective waivers of statutory procedural rights are inherently suspect, regardless of the civil or criminal label.

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The narrow read (Justice Kavanaugh, joined by Justices Alito and Barrett): Justice Kavanaugh joined the majority "in full" but wrote separately to push back against exactly the kind of expansive reading Justice Gorsuch invites. He stressed that the miscarriage-of-justice standard applies only in "extreme cases" involving errors that are "egregious" and "obvious," and stated directly that Justice Gorsuch's concurrence "may not be entirely consistent with the Court's opinion" because it would "set a lower bar." For companies defending contractual waivers, Justice Kavanaugh's concurrence is the critical counterweight: it signals that at least three justices view the decision as a narrow safety valve, not a broad license to second-guess bargained-for contractual provisions.

A third justification: Justice Barrett concurred separately to ground the holding in "longstanding waiver principles" — procedural common law "settled by tradition or emergent consensus" — rather than supervisory power. This framing matters because it supplies a doctrinal basis for courts to develop analogous limits on civil waivers through evolving common-law principles, without needing a statute or a claim of supervisory authority. It is a quieter opinion than Justice Gorsuch's, but potentially the most consequential for civil-side development of the law.

Lone dissent: Justice Thomas, dissenting alone, argued the majority created what he called a "free-floating" exception without any identifiable source of law, warning that miscarriages of justice "will always be easy to allege," even if hard to prove. Parties enforcing civil waivers will cite this dissent heavily.

The Extension Argument Writes Itself

Courts lend their institutional authority to civil waivers every time they confirm arbitration awards, enforce forum-selection clauses, or approve class-action settlements. In each setting, a court asked to enforce a waiver is giving operative effect to the result — the same dynamic *Hunter* identifies in the plea context. The natural counterargument is that the majority stressed courts are "too enmeshed" in plea agreements specifically, because they must approve those agreements before they take effect — a gatekeeping

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role with no direct analog in private contracts. Whether lower courts read "enmeshed" as plea-specific or as a broader principle about judicial complicity in unjust outcomes is the critical open question.

What This Means for Businesses

It is unusual for an 8-1 criminal-law decision to have meaningful implications for commercial contracts. But *Hunter*'s reasoning — rooted in judicial institutional interests rather than criminal-specific doctrine — makes it an outlier worth watching. The full scope of the decision's influence will emerge as lower courts begin to apply it, but businesses should not wait to respond.

- **Waiver provisions deserve a fresh look.** Broad waivers of appeal rights, jury-trial rights, or other procedural protections are now more vulnerable to challenge. The more one-sided a provision, the greater the risk that a court invokes *Hunter*'s logic to refuse enforcement.
- **Arbitration clauses face new headwinds.** Parties resisting arbitration now have a fresh Supreme Court citation — and three justices' explicit endorsement — for the proposition that prospective waivers of statutory procedural rights are inherently suspect. Agreements that arguably eliminate a party's ability to vindicate statutory claims are the most exposed.
- **The contract-law back door remains open.** The majority bypassed Hunter's contract-law theories — unconscionability, frustration of purpose, public policy — without rejecting them. Those doctrines are the standard toolkit for challenging civil contractual provisions, and the Supreme Court left them fully available for future litigants.
- **Tailor, don't blanket.** *Hunter* involved a waiver of virtually all challenges. Narrowly drawn provisions that preserve specific categories of review are far more defensible than broad, undifferentiated ones.
- **Follow the remand.** The Fifth Circuit must now apply the miscarriage-of-justice standard to Hunter's mandatory-medication condition, giving it the first opportunity to

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interpret the new rule's boundaries.

- **Watch for civil migration.** The broader question is whether lower courts adopt an aggressive reading of *Hunter*'s institutional-interest rationale in civil disputes. If they do, the decision will reshape the enforceability landscape for arbitration agreements, forum-selection clauses, and contractual appeal limitations.

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