23-5351

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

John P. Ramirez, M.D. — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOHN P. RAMIREZ, M.D.
(Your Name)

F.C.I. BIG SPRING, 1900 SIMLER AVE.
(Address)

BIG SPRING, TEXAS, 79720
(City, State, Zip Code)

N/A
(Phone Number)

## QUESTIONS PRESENTED

I. This case is one of more than a dozen Medicare fraud cases among varous circuits where physicians, like Dr. Ramirez, were convicted under multiple errors of law, presenting a substantial due process problem of national importance, which can only be resolved by this Court's supervisory power. Dr. Ramirez's post-conviction counsel failed to raise this claim in § 2255 petition. Dr. Ramirez raised this claim in his Pro Se 'Application for Issuance of Certificate of Appealability (COA)'. Whether the court below erred in procedurally denying to issue a COA for this purely legal claim, in direct conflict with this Court's opinion in Homel v. Helvering, 312 U.S. 552 (1941).

II, Dr. Ramirez's post-conviction counsel sufficiently presented a claim in § 2255 petition that the trial counsel was ineffective in conceding Dr. Ramirez's guilt over his repeated objections. Dr. Ramirez reinforced this claim with new argument in his Pro Se 'Application for Issuance of Certificate of Appealability' (COA). Whether the court below erred in procedurally denying to issue a COA, even though Dr. Ramirez presented only new argument (not a new claim) for the same claim of 'Ineffective Assistance of Counsel' that was presented to district court in § 2255 petition, in direct conflict with this Court's opinion in Citizen United v. FEC, 558 U.S. 310 (2010) and Yee v. Escondido, 503 U.S. 519 (1992).

III. Dr. Ramirez's post-conviction counsel sufficiently presented a claim in § 2255 petition that the trial counsel was ineffective in failing to investigate and understand Medicare law. Dr. Ramirez reinforeced this claim with new argument in his Pro Se 'Application for COA'. Whether the court below erred in procedurally denying to issue a COA, even though Dr. Ramirez presented only new argument (not a new claim) for the same claim of 'Ineffective Assistance of Counsel' that was presented to district court in § 2255 petition, in direct conflict with this Court's opinion in Citizen United v. FEC, 558 U.S. 310 (2010) and Yee v. Escondido, 503, U.S. 519 (1992).

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

## (CASES)

## OPINIONS BELOW

The opinion of the United States court of Appeals for the Fifth Circuit denying anApplication for Certificate of Appealability is unpublished: United States of America v. John P. Ramirez, M.D., No. 22-20500, USDC No. 4:21-CV-3288. (See enclosed copy - Appendix A).

## JURISDICTION

The court of Appeals for the Fifth Circuit's judgement was entered on March 29, 2023. A timely petition for Reconsideration and Rehearing En Banc was denied on May 18, 2023. The jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Const. Amdmt. V, and VI

18 U.S.C. § 1035
18 U.S.C. § 1349

## STATEMENT OF THE CASE

### A. PROCEDURAL HISTORY

On Jan. 29, 2019, after a jury trial, Dr. Ramirez was sentenced to 300 months and $26,726,041.39 in restitution, for one count of conspiracy to commit health care fraud in violation of 18 U.S.C. Section 1349 and three counts of false statements relating to healthcare matters in violation of 18 U.S.C. Section 1035.

On October 27, 2020, the United States Court of Appeals for the Fifth Circuit affirmed Dr. Ramirez sentence. No petition for certiorari was filed.

On August 12, 2022, the district court for Southern District of Texas denied Section 2255 petition. On August 22, 2022, the district court for Southern District of Texas denied motion for reconsideration of Section 2255 petition. On March 29, 2023, the court of Appeals for the Fifth Circuit denied the Application for Issuance of a Certificate of Appealability. On May 18, 2023, the court of Appeals for the Fifth Circuit denied a motion for Reconsideration and Rehearing En Banc (for a COA).

Dr. Ramirez seeks Certificate of Appealability to appeal district court's denial of his Section 2255 petition.

## B. STATEMENT OF FACTS

### 1. BACKGROUND

Dr. Ramirez is the eldest of the nine siblings who grew up in poverty. He has kept his humble roots close to his heart and dedicated his life in providing medical services for more than 30 years to the underserved areas (mainly east end of Houston). Dr. Ramirez was raised in a Christian environment and despite numerous obstacles, remains loyal to his faith. His belief system is based on several oaths that have the underpinnings of 'service to community'. His oath to God, the "Word", and the country, the Catholic faith, membership in Lakewood Non-denominational church, the Catholic doctor proclamation, an Eagle Scout, who still follows its teachings, his Hippocratic oath, all of which have taught him to serve in a trusting manner. Unfortunately, this world has wandered off the path of truth, loyalty, and trust, as it took advantage of such a caring doctor.

### 2. CONSULTANCY WITH AMEX

Dr. Ramirez primarily worked at Parkview Clinic (Parkview Medical Associates). He authorized only Parkview Clinic to bill using his NPI (National Provider Number Id.) by signing a 855R form (Reassignment of Benefits Statement), in accordance with 42 C.F.R. 424.73 and 42 C.F.R. 424.80.

Dr. Ramirez met Ann Shepherd, owner of Amex Clinic, through his deceased wife, Laura Garcia, shortly before she passed away. Shepherd wanted to set up a family clinic and dedicate it to Dr. Ramirez's deceased wife, while serving the underserved areas of Houston. See PSR (p. 19, para. 77).

Dr. Ramirez clarified to Shepherd that she cannot bill Medicare for his services (both Part A and Part B). Unbeknown to Dr. Ramirez, Shepherd was billing Medicare. This was corroborated by Calixto Barrero, "Barrero advised that Shepherd told him she was concerned [because] Ramirez had not authorized them to bill". PSR p. 18, para.75. Amex could bill because it forged Dr. Ramirez's signature and submitted a fraudulent 855R (Reassignment of Benefits Statement).

The office manager, Nichelle Brown, also corroborated that Shepherd was surreptitiously billing Medicare, "Ans.: At that point I knew he [Dr. Ramirez] didn't want Medicare to be billed. I don't know why, but he did not want Medicare to be billed. Question: Okay, and did Ann [Shepherd] bill Medicare? Ans.: Yes". Doc. 224, p. 170.

There is also evidence of Dr. Ramirez's written instructions in patient charts, that ascertains that he did not want Medicare to be billed, " ... Find PCP [Primary Care Physician] and forward to avoid non-compliance or problems with Medicare, since no billing under me ... " See Doc. 195-3, p. 15. This also shows Dr. Ramirez's efforts to keep Amex in compliance with Medicare rules and regulations.

## 3. GOVERNMENT'S OPENING STATEMENT

Government opened with many erroneous conclusions of law (Medicare rules and regulations) and the defense attorneys Paul Nugent and Heather Peterson (herein after, collectively called Nugent) did not object as they themselves did not understand the Medicare regulations.

The Government misstated, "Dr. Ramirez ... signed these Plans of Care forms for Medicare beneficiaries that certified and re-certified that these patients were under their care when in fact, these patients were not under their care". Doc. 223, p. 134.

And misstated, "The doctor see the patient treats the patient, and evaluates the patient, and then decides the patient needs home health services, to sign that patient up for them". Doc.223, p. 143.

But these are not the requirements established by the regulations. See C.F.R. 424.22 (a)(v)(A). In fact, the regulations provide that face-to-face encounters may be performed by physician assistants, nurse practioners, or clinical nurse specialist. Id.

Government also misstated the eligibility for home health services, "In order for Medicare to cover home health costs, it has -- a patient has to be qualified, which means a patient has to be confined to their home, also referred to as being homebound". Doc. 223. p. 131.

And misstated, "Medicare pays for something called home health services, and they're availiable to people who are really sick and who need medical services but are confined to the home". Doc. 223, p. 142.

But this is not true as home health services are provided to individuals who have difficulty leaving the home without assistance. These services are commonly provided to senior citizens. In fact, Medicare Program Integrity Manual gives examples of what is considered to be "confined to home" or "homebound".

"A quadriplegic beneficiary ... is confined to home even though he leaves home several times a week for personal reasons".

"A diabetic beneficiary with a severely broken leg is not healing well ... is confined to the home, even though he leaves home several times a week for personal reasons". Medicare Program Integrity Manual, Transmittal 23, March 18, 2002, Rev. 23.

Defense attorney, Nugent, did not object to Government's misstatement of law, as he himself, did not understand the Medicare regulations.

## 4. TESTIFYING GOVERNMENT WITNESSES

### (i) LISA GARCIA (MEDICARE NON-EXPERT)

The district court allowed testimony by Lisa Garcia, even though Garcia gave expert testimony, but had not been disclosed as an expert. In fact, the government conceded that Garcia is not an expert witness. "Prosecution: No. She is not an expert witness". Doc. 224, p. 8.

Garcia is a medical review manager of fraud investigations. She is not an employee of Medicare, but works for a private contractor that investigates Medicare fraud. Doc. 224, p. 14-15. Over multiple objections by defense (Doc. 224, p. 19, 49), Garcia testified in the form of opinions on a number of issues involving how Medicare functions and what Medicare would do in a number of hypothetical circumstances. Garcia herself conceded that her testimony was "based on ... scientific, technical, and specialized knowledge ..." Doc. 224, p. 102, which is within the scope of Fed. R. Evid. 702, but the district court permitted it under Rule 701.

Garcia misstated that a doctor certifying a patient for home health services and this patient, would know each other, "Question: In your experience, would the patient know their doctor? Ans.: Yes. Question: Would they recognize them? Ans.: Yes" Doc. 224, p. 38-39. But this is not a requirement established by the regulations. See 42 C.F.R. 424.22 (a)(v)(A). In fact, the regulations provide that face-to-face encounters may be performed by physician assistants, nurse practitioners, or clinical nurse specialist. Id.

Even the Medicare Program Integrity Manual, which describes the items on form CMS-485 (Home Health Certification and Plan of Care), expounds the physician certification (item #26) as, "This statement serves to verify that the physician has reviewed the POC (Plan of Care) and certifies to the need of their services".

The defense attorney, Nugent, did not object to Garcia's testimony, who repeated this misstatement of Medicare regulations and misled the jury. See Doc. 224, p. 49, p. 56.

### (ii) NICHELLE BROWN (OFFICE MANAGER OF AMEX)

Nichelle Brown, a paid informer for the Government (Doc.224, p. 237), admitted that she knowingly committed healthcare fraud at Amex (Doc. 224, p. 154) but she didn't receive any benefits from the Government, "I haven't received anything" (Doc. 224, p. 218). "The [Government] have not helped me, though" (Doc. 224, p. 219), then said that she got cash, "Maybe about $3,000". (Doc. 224,p. 227) and finally admitted that Government paid her $37, 896.68 (Doc. 224, p. 237) in cash, for which she did not pay taxes. (Doc. 225, p. 12) to testify.

Brown also admitted that Government allowed her to smoke marijuana (Doc. 224, p. 224) and keep her passport so that she can go to Bahamas for vacation (Doc. 224. p. 220-221). She admitted she stole from Amex (Doc. 225, p. 11). Brown also had a prior conviction for substance abuse in 2008, for which she got probation. However, she violated probation and spent 8 months in a state jail.

Brown admitted that she conspired with Ann Shepherd, the owner of Amex to commit healthcare fraud. "Question: Okay. So who was doing all your instructions when you started, or within the first month of starting to work at Amex? Ans.: I was only instructed by Ann [Shepherd]". Doc. 224, p. 138.

Brown testified that Anne Shepherd instructed her to falsify patient records but she did not implicate Dr. Ramirez, "Question: And who would you sometimes have to fill out and makeup diagnoses to get this out quickly ... THE WITNESS: Yes. Question: And who instructed you to do that? Answer: Ms. Ann [Shepherd] would instruct me that ... Question: Okay, And at that time or anytime did Dr. Ramirez know that you are filling these out yourself? Answer: I can't say that -- he knew that." Doc. 224, p. 163-164.

Brown also testified that Dr. Ramirez, "didn't want Medicare to be billed ... Question: Okay, And did Ann [Shepherd] bill Medicare? Answer: Yes." Doc. 224, p. 170. Brown also testified that Dr. Ramirez was not part of the conspiracy. "Question: All right. No, was Dr. Ramirez - did you ever talk to him about the price of these forms that Ann [Shepherd] was selling them for? Answer: No. Question: Did you have discussions with him at all? Answer: No." Doc 224, p. 206.

Brown testified that Amex was using foreign medical graduates (FMG's) to see patients without the supervision of a doctor. "just foreign medical graduates and no doctor" Doc. 224, p. 134. Amex clinic on Wednesbury street was not established yet and that is why Dr. Ramirez specifically instructed Shepherd not to bill Medicare. Government did not provide any evidence that Dr. Ramirez was aware of Amex using FMG's and billing Medicare using Dr. Ramirez's NPI. A FMG, Calixto Barrero, confirmed that Shepherd was secretly billing, "Shepherd told him she was concerned [because] Ramirez had not authorized them to bill" PSR p. 13, para 75. Shepherd forged Dr. Ramirez's signature and submitted a fraudulent 855R form (Reassignment of benefits statement) Doc. 193-2, p. 4.

Brown propagated the Government's misapprehension of law that Dr. Ramirez did not see the patients but signed 485's (Plans of Care), "Dr. Ramirez was working but Dr. Ramirez was not there" Doc 224, p. 142. But this is not a requirement established by the regulations. See C.F.R. 424.22 (a)(v)(A).

Defense Attorney, Nugent, failed to cross examine Brown about forgeries with 855R (Reassignment of Benefits Statement) and Plans of Care (485's) and failed to clarify the Government's misapprehension of law, as he himself, did not understand Medicare regulations.

### (iii) MICHAEL HUNT (FBI TASK FORCE OFFICER)

Hunt actually testified that doctors at Amex, like Dr. Ramirez were not aware of Amex's conspiracy to commit health care fraud, "The only reason you guys are even allowed back here right now is because the actual doctor is not here, because if he saw you, he would be, like, 'What the hell is going on?' " Doc. 225, p. 89. This is what Yvette Nwoko said to Hunt and his FBI agents, who pretended to be patients needing home health certification, where she allowed them to roam around exam rooms at Amex. Defense Attorney, Nugent, did not cross-examine Hunt: "No questions, your Honor". Doc. 225, p. 111. Nugent failed to cross examine and establish that Amex clinic was non-operational and that there were no computers in the clinic to do billing, to reinforce that Dr. Ramirez did not want Medicare

to be billed and that he was not aware of the fact that Shepherd was secretly billing from her home computer.

Defense Attorney, Nugent, failed to stress that Hunt's testimony and three pretend patients (FBI: Michael Sutton, William Morgan, and Ralph Harp) had nothing to do with Dr. Ramirez because they were certified (POC's) by Dr. Abou-Ghali (not Dr. Ramirez). See Doc. 225, p. 58, 150). Moreover, Nugent forfeited a great opportunity to cross-examine Hunt to show that there was no evidence that Dr. Abou-Ghali was aware that Amex in conjunction with Home Health Agencies was falsifying the information on the Plans of Care (485's) to make patients eligible for Home Health care when they were not, letting the jury know that the doctors at Amex were not aware that 485's were being falsified.

### (iv) POLLACHI SEVAKUMARRAJ, M.D. (PCP OF PATIENT FILMA FAGAN)

Dr. Selvakumarraj misstated the Medicare law that only a PCP (Primary Care Physician) can order Home Health services, "Question: Doctor, based on your training and experience, who is the only person who can certify someone for home health services? Answer: The treating physician" Doc 225, p. 157. This is not a requirement established by the Medicare regulations that the doctor be the patient's primary care physician (PCP) in order for the patient to be under their care. See 42 C.F.R. § 424.22 (a)(v)(A).

Dr. Selvakumarraj misstated the law, when asked, "Doctor, would you ever sign a patient up for Home Health services who you have never seen in your life? ... Why not? Answer: Because it's not proper medicine and obviously, it's not legal". It is legal! See id. Any attending doctor can certify a patient based on information in a Plan of Care (485), which is filled out by an OASIS nurse, after she has a face-to-face encounter with the patient.

The defense attorney, Nugent, did not object to Dr. Selvakumarraj's misstatement of law, which misled the jury. Moreover, Nugent did not cross-examine this witness at all, "MR. NUGENT: I have no questions. Thank you sir". Doc 225, p. 164.

When the Government showed the Plan of Care(485) of the patient Filma Fagan (Doc 225, p. 162), Nugent failed to point out that the scribble on this form was not a signature that meets the physician requirements per Medicare Integrity Manual, CMS Manual Pub. 100-08, Transmittal 604 7-24-15 Signature Guidelines p. 4-7.

Nugent also failed to cross-examine Dr. Selvakumarraj, whether he would have certified that Plan of Care based on the falsified data on the Filma Fagan's Plan of Care (485) (which was falsified to make her eligible for home health care).

### (v) CHANSEYA DAVIS, M.D. (PCP OF PATIENT WILLIE BROOKS)

Dr. Davis misstated the Medicare law that a doctor needs to see and evaluate a patient in order to sign a Plan of Care (POC) for home health servies and misled the jury, "Question: Doctor, in your training and experience, do you ever sign a Plan of Care for a patient you have never seen? Answer: No. Question: Doctor, in your training and experience, do you ever sign a Plan of Care for a patient you haven't evaluated? Answer: No." Doc 225, p. 170. This is not a requirement established by Medicare regulations. 42 C.F.R. § 424.22 (a)(v)(A). Any attending doctor (without seeing nor evaluating) can certify a patient based on the information provided in a Plan of Care (POC) (485), which is filled out by an OASIS nurse, after she has a face-to-face encounter with the patient. Id.

The defense attorney, Nugent, did not object to Dr. Davis' misstatement of law. Moreover, Nugent did not cross-examine this witness at all. "MR. NUGENT: I have not questions, Your Honor ... " Doc 225, p. 175.

When the Government showed the Plan of Care (485) of the patient Willie Brooks (Doc 225, p. 173-175), Nugent failed to point out that he scribble on this form was not a signature that meets the signature requirements per Medicare Integrity Manual, CMS Manual Pub. 100-08, Transmittal 604 7-24-15 Signature Guidelines p. 4-7).

Nugent, the defense attorney, also failed to cross-examine Dr. Davis as to whether she would have certified that Plan of Care, based on the falsified data on the Willie Brooks' Plan of Care (485), which was falsified to make him eligible for home health care.

### (vi) FILMA FAGAN, ROBERT TOLDER, AND WILLIE BROOKS (PATIENTS WHO WERE BRIBED TO SIGN UP FOR HOME HEALTH SERVICES)

Under the misapprehension of Medicare law, the Government called three patient witnesses to prove that Dr. Ramirez never met or saw these patients, but that he allegedly certified them for Home Health Services (even though the Plans of Care-485's) did not have a valid signature, but just a scribble) to justify three counts of charges against Dr. Ramirez, for allegedly making false healthcare statements under 18 U.S.C. Section 1035.

Filma Fagan, Robert Tolder, and Willie Brooks testified that they never met Dr. Ramirez, "I never seen the guy, and I never visited him". Doc 225, p. 182. " ... Have you ever met a Dr. Ramirez? Answer: No". Doc 226, p. 18. But, it is not a requirement established by the Medicare regulations as any Attending Doctor (without seeing or evaluation) can certify a patient based on the data or information presented in a Plan of Care form (485), which is filled out by an OASIS nurse or a physician assistant after a face-to-face encounter with the patient. 42 C.F.R. § 424.22 (a)(v)(A).

Robert Tolder, a 77 year old, had severe hearing loss, couldn't testify and the court allowed prosecution to lead this witness( Doc 225, p. 176-178). However, Tolder testified that he did have home health services (not related to Amex) Doc 225, p 183.

Filma Fagan testified that she received a bribe of $75. and groceries to sign-up for Home Health care, Doc 226, p. 10-11. Notably, Government didn't charge Home Health agencies in this case with violation of kickback statute under 42 U.S.C. § 1320.

The defense attorney, Nugent, did not cross-examine these three patients to refute Government's misapprehension of law, which resulted in the conviction of Dr. Ramirez for 3 counts of false healthcare statements under 18 U.S.C. § 1035.

**(vii) STELLA DURA (OWNER OF ANOINTED HOME HEALTH CARE)**

Duru, a Government witness who pled guilty of committing Medicare fraud, admitted that she falsified patient information in the OASIS forms and Plans of Care (485's), "Answer: OASIS is the patient's information. We fill it in the --- in the OASIS. Question: Does OASIS have information about the patient's health and condition? Answer: Yes, Sir. Question: And does it have information about why they're confined to the home? Answer: Yes, Sir. Question: Would you put the truth in these OASIS forms? Answer: No, Sir. Question: Would you make the patients -- would you make the patients look worse than they actually were? Answer: Yes, Sir." Doc 226, p. 34-35.

Duru implicated Ann Shepherd, Nichelle Brown, and Yvette Nwoko but she did not implicate Dr. Ramirez. Duru admitted that she was falsifying the patient data on the Plans of Care (485s) so that doctors like Dr. Ramirez would certify these Plans of Care. Doc 226, p. 35.

Duru also clarified that about 40 % of the Plans of Care (485s) were falsified, " Question: So, 40% were not confined to the home? Answer: Yes, Sir". Doc 226, p. 35. She also testified that the doctors denied some of the forms because patients didn't qualify, even though she was falsifying the patient data to make them qualify, "Question: Okay. You stated in your testimony earlier that some of the face-to-face forms were denied by Amex, correct? Answere: Yes, Sir. Question: Because the clients did not qualify? Answer: Uh-Huh [Yes]". Doc 226,p. 52.

Nugent, the defense attorney, failed to question Duru that her Home Health care agency billed Medicare under Dr. Ramirez's NPI (national provider number, which anyone can google), even though Dr. Ramirez never signed a 855R (re-assignment of benefits statement) and never authorized any billing under his credentials to Amex or to any Home Health Agency.

**(viii) MAGDALENE AKHARAMEN (OWNER OF TEXAS TENDER CARE HOME HEALTH AGENCY)**

Akharamen, a Government witness who pled guilty of committing Medicare fraud, even while she was on pretrial release (Doc 226, p. 65-66), admitted that she falsified medical documents and forged doctors' signatures, "Question: Did you falsify medical documents? Answer: Yes, Sir." (Doc 226, p. 69), "Question: And you have actually forged doctor's signatures, right? Answer: Yes, Sir." (Doc 226, p. 91).

Akharamen admitted that her home health agency committed Medicare fraud since 2010 and made $500,000. per month, for a total of $48 million dollars until 2018 (Doc 226, p. 111-112). She hired marketers to recruit patients, but notably, the Government did not charge her for violating kickback statute under 42 U.S.C. § 1320.

Akharamen admitted that she was falsifying the patient data on plans of care, "Question: Why did you not do a thorough assessment? Answer: Because I just wanted to get paid on them." Doc 226, p. 84.

The defense attorney, Nugent failed to question Akharamen that her Home Health Care Agency billed Medicare under Dr. Ramirez's NPI (National Provider Number), even though Dr. Ramirez never signed a 855R (Re-assignment of benefits statement) to Amex or to any Home Health Care Agency. In fact, Dr. Ramirez assignment of benefits statement was assigned only to Parkview Medical Associates, and Parkview legally took care of Dr. Ramirez billing from the latter part of April 2010 til August 15, 2015. Parkview's 855R was never terminated during the period these unauthorized clinics or homehealth agencies committed this crime.

**(ix) PAUL NIXON (FBI AGENT)**

Nixon misstated the eligibility for Home Health services and misled the jury, "It is a program that is paid for by Medicare that provides severely ill patients with healthcare services they could otherwise not access because they can't leave their home", Doc 226, p. 31. As expounded in Argument I.B(4), infra, this is not true as home health services are provided to individuals who have difficulty leaving the home without assistance (i.e., it is taxing for a patient to leave home). These servies are commonly provided to senior citizens. The defense attorney, Nugent, failed to object and clarify this.

Government showed a blank face-to-face form, which allegedly had a doctor's signature on it. Doctors routinely sign blank pre-orders, which is filled up later by a Nurse. This is not a Plan of Care (For 485), which an OASIS nurse or a physician assistant has to fill it out first after a face-to-face encounter with the patient. The Government did not produce any evidence that any doctor at Amex signed a blank Plan of Care (485) form. A blank face-to-face pre-order signed by a doctor to facilitate the administration of healthcare services is, at worst, a Standard of Care issue and is not illegal. The defense attorney, Nugent, failed to clarify this to the jury. Even signing a blank Plan of Care form (485) is a Standard of Care issue and is not illegal to use for verbal order, especially if the doctor is nout of clinic or working part-time for the clinic. Doc 226, p. 136. Nixon found no blank 485's or Plans of Care, at Amex. See Doc 226, p. 178.

Government showed an exhibit where Dr. Ramirez wrote, "patient must see PCP for routine medical", something, "home health certifications only". Doc 226, p. 140. This is not a crime. Dr. Ramirez is actually complying with Medicare rules as he was the attending doctor at Amex, who could certify Home Health certifi-

-cations and Amex clinic was not established yet;the patient has to see their PCP for medical exams. Government misrepresented this note and misled the jury and the defense attorney, Nugent, failed to object. See Doc 226, p. 140-141. This is a common sense approach in healthcare, where a specialist doctor will refer a patient back to PCP for routine medical needs.

Government also made much ado about a sticky note, "Need two more doctor signers. More than 500 patients brings up red flag with Medicare." Doc 226, p. 145. This was just a reminder that Dr. Ramirez wanted to discuss with Ann Shepherd that doctors need to audit at least 10% of the monthly patient charts, as Shepherd was trying to re-establish family clinic at Amex using Physician Assistants and/or Nurse Practioners to see patients under a Medical Director. In order to remain compliant with Medicare, at least 10% of patient charts need to be audited by a doctor, at a clinic operating with Nurse Practioner's or Physician Assistant's. This audit is a tedious process for one doctor alone, who must review these charts and sign off on them. This note had nothing to do with the Home Health certifications. To the contrary, this note shows that Dr. Ramirez was doing his job to re-establish Amex as a family clinic, in compliance with Medicare rules and regulations.

## (X) GOVERNMENT'S CLOSING ARGUMENT

Government closed with many erroneous conclusions of law (Medicare rules and regulations) and the defense attorney did not object.

The Government misstated, "you saw plans of care for three patients, three totally different patients: Filma Fagan, Willie Brooks, and Robert Tolder. Each of them said, "I have no idea, no idea who John Ramirez is". Doc 228, p. 41. But, this is not a requirement established by Medicare regulations. An attending doctor like Dr. Ramirez, doesn't have to see the patient. See 42 C.F.R. 424.22(a)(v)(A). Medicare regulations routinely provide that face-to-face encounters may be performed by physician assistants, nurse practitioners or clinical nurse specialists.

## REASONS FOR GRANTING THE PETITION

### I. Medicare Fraud cases Being Prosecuted and Affirmed under Multiple Errors of Law in All circuits.

#### A. Home Health Care For The Elderly And Medicare

Title XVIII of the Social Security Act provides for reimbursement of home health care services for the elderly. See 42 U.S.C. § 1395 (a)(3). The remedial purpose of the Medicare program requires that it be broadly construed. Gartman v. Secretary of U.S. Dept. of Health, 633 F. Supp. 671, 679 (E.D.N.Y. 1986) ("Care must be taken 'not to disentitle old, chronically ill and basically helpless, bewildered, and confused people ... from the broad remedy which Congress intended to provide our senior citizens." Id (quoting Ridgely v. Secretary of the Dep't (D. Md. 1972), aff'd, 475 F. 2d 1222 (4th Cir. 1973).

#### B. Misapprehension of Medicare Regulations (Errors of law)

United States Government is prosecuting physicians, like, Dr. Ramirez, under the following four errors of law and the district and appellate courts are affirming convictions under this same misapprehension of law.

##### 1. Error of Law: A Certifying Physician Needs To Meet or See The Elderly Patient

The process for receiving home health care services begins when a physician or allowed practioner (a physician assistant, nurse practioner, or clinical nurse specialist as defined in 42 C.F.R. § 484.2) identifies a patient as an eligible candidate. See 42 C.F.R. § 424.22. Then a nurse from a Home Health Agency, goes to the patient's home to assess if she/he is homebound, completing an Outcome and Assessment Information Set (OASIS). Medicare payment could not be made absent of the OASIS in the record. See 42 C.F.R. 484.35.

Each patient must receive, and [a home health agency ("HHA")] must provide, a patient-specific, comprehensive assessment that accurately reflects the patient's current health status. 42 C.F.R. § 484.55. During this initial assessment, the home health agency must determine the immediate care and support of the patient, and, for Medicare patients, determine eligibility for the Meciare home health benefit, including homebound status. Id.

The nurse develops a plan of care (Form 485) based on the OASIS data. In addition, an addendum form is prepared which documents the fact that nurse practitioner or the physician assistant had a face-to-face encounter with the patient. 42 C.F.R. 484.22 (a)(v)(A), (a)(v)(C). "The face-to-face patient encounter

must be performed by the certifying physician or allowed practitioner". Id. Allowed practitioner means a physician assistant, nurse practitioner, or clinical nurse specialist as defined in 42 C.F.R. § 484.2.

Thus, Medicare law is clear that a referring doctor, like Dr. Ramirez, doesn't have to see or meet the elderly patient in order to certify or sign a plan of care (Form 485). Even the Medicare Program Integrity Manual, which describes the items of Form 485 (Plan of Care), describes the item n. 28 - "physician certification' as "This statement serves to verify that the physician had reviewed the POC [Plan of Care] and certifies to the need of these services."

In this case, the trial was infected with nine Government witnesses testifying under erroneous conclusions of law that Dr. Ramirez conspired to commit Health Care Fraud because he signed the Plans of Care (Form 485) even though he never met the patient. But Dr. Ramirez doesn't have to meet the patients as per clearly defined Medicare regulations. See 42 C.F.R. § 424.22 (a)(v)(A).

Based on this erroneous conclusion of law, Dr. Ramirez was convicted for three counts of False Statements (18 U.S.C. § 1035) as three patients testified that they never met Dr. Ramirez. This error of law was the material evidence of Dr. Ramirez's guilt.

Moreover, this error of law is prevalent among more than a dozen cases in all circuits. Here are some examples:
United States v. Turner, 620 Fed. Appx. 249, 251 (11th Cir. 2015) ("Medicare reimburses costs of home-health services only if the services are ordered by a doctor who has examined the patient").
United States v. Nerey, 877 F. 3d 956, 963 (11th Cir. 2017) ("For home health agencies to properly bill Medicare, their patients must have a prescription for home health care. Patients must meet with a physician and establish a Plan of Care in order to legitimately receive a prescription").
United States v. Echols, 574 Fed. Appx. 350, 352 (5th Cir. 2014) ("Echols authorized home health care for patients he had not seen or treated").
United States v. Chickere, 751 Fed.Appx. 456, 458 (5th Cir. 2018) ("To get home health care, patients must meet with physician who can determine whether the patient is eligible for home health care.").
United States v. Vega, 813 F. 3d 386, 399 (1st Cir. 2016) ("Finding evidence of the defendant's knowing complicity in healthcare fraud where she "allowed" her company to seek Medicare reimbursement for services "prescribe[d] [by a doctor] for patients he did not see.")

United States v. Suburban Home Physicians, No. 14-CV-02793, 2017 U.S. Dist. LEXIS 73150 (N. D. Okla. 2017) ("The doctor at the Home Defendants then "affixed a physician signature to the backdated Form 485 for patient J.R. ... without having seen the patient during the requisite 90/30 day period").
United States v. Dailey, 868 F. 3d 322, 329 (5th Cir. 2017) ("... every patient for whom Dailey certified home health care who testified stated that he or she did not know Dailey ... ").
United States v. Ezukanma, 756 Fed. Appx. 360, 367 (5th Cir. 2018) ("At trial, witnesses testified that patient encounters must be face-to-face, and the indictment stated that home health care may only be ordered by a physician who had face-to-face contact and treated the beneficiary.")
United States v. Ramirez, 979 F. 3d 276, 278 (5th Cir. 2020) ("Ramirez signed hundreds of these certifications. But he did so without meeting the patients, much less evaluating them").
This is Dr. Ramirez's direct appeal, where the 5th Circuit affirmed under this same misapprehension of law.
United States v. Galatis, 849 F. 3d 455, 461 (1st Cir. 2017) ("Dr. Wilking testified that he had routinely certified at the weekly staff meetings that patients were eligible under Medicare, even though he had not actually met with or examined the patients ...".
Shmushkovich v. Home Bound Healthcare, No. 12C2924, 2015 U.S. Dist. LEXIS 155057 (N. D. Ill, Nov. 17, 2015) ("To certify a patient for home health care, a physician must have a "face-to-face encounter" with the patient").

### 2. Error of Law: Certifying Physician Needs To be a Primary Care Physician (PCP)

As expounded, supra, any physician or allowed practitioner (a physician assistant, nurse practitioner, or clinical nurse specialist as defined in 42 C.F.R. § 484.2) can sign or certify a Plan of Care (POC) in order to certify a patient for home health servides. See C.F.R. § 484.22. Medicare regulations do not require the certifying physician to be a primary care physician. Id.

Here, the trial was infected with nine Government witnesses testifying under erroneous conclusions of law that Dr. Ramirez conspired to commit Health Care Fraud because he signed the Plans of Care (Form 485) even though he was not the patient's primary care physician (PCP).

A home health agency receives its Medicare patients via referrals and Medicare Part A or Part B pays for home health services only if a physician or allowed practitioner (a physician assistant, nurse practitioner, or clinical nurse specialist as defined in 42 C.F.R. § 484.2) certifies and recertifies the patient's eligibility for and entitlement to those services. 42 C.F.R. § 424.22. The request or establishment of Plan of Care by a physician which includes the provision of designated health

service [like Home Health Service] constitutes a "referral" by a "referring physician". 42 U.S.C.§1395nn(h)(5)(B). See 42 U.S.C. § 1395 nn(h)(6)(1) (defining "designated health service"); 42 U.S.C. § 1395nn(h)(5)(B) (defining "referral"); 42 C.F.R. § 411.351 (defining "referral"). This includes an "operating or attending physician" or designated on form "UB-92" and submitted to Medicare and Medicaid. 42 U.S.C.S. § 13951(q).

This misapprehension of law is also prevalent among various circuits. Here are some examples:

United States v. Patel, 778 F. 3d 607, 610 (7th Cir. 2015) ("Form 485 is a standardized Medicare form that certifies that home care is medically necessary and outlines a patient's diagnosis, medication, treatment plans, and goals. After filling out this information, providers must procure the signature of the patient's primary care physician on each Form 485 before the provider can bill medicare.")

United States v. Troisi, 849 F. 3d 490, 495 (1st Cir. 2017) ("orders prescribing Home Health services to Holyoke patients had seen by Dr. Wilking who had not seen the patients, rather than by the patient's primary care physician").

United States v. Ex Rel. Shutt v. Cmty. Home & Health Care Servs, No. CV-04-02075mmm(SSx), 2006 U.S. Dist. LEXIS 103804 (9th Cir. 2006) ("billing home health services to Medicare patients when these services ... had not been certified or medically necessary by patient's treating physician".)

**3. Error of Law: An elderly patient needs to be "under the care" of a certifying physician before the physician can certify that patient for home health services.**

Medicare regulation is clearly defined that when a physician or allowed practitioner (a physician assistant, nurse practitioner, or clinical nurse specialist as defined in 42 C.F.R. § 484.2) certifies a patient for home health care, then that patient comes under the care of that physician or allowed practioner. 42 C.F.R. § 409.42(b).

Here , the trial was infected with nine Government witnesses testifying under erroneous conclusions of law that Dr. Ramirez conspired to commit Health Care Fraud because he signed the Plans of Care (Form 485) even though the patients were not under his care. As expounded, supra, any referring or attending physician can certify a patient for home health care and the patient comes under the certifying doctor for that 60-day episode of home health care. A beneficiary is "under the care of a physician" when the treating physician has determined that home health care is necessary. United States v. Eghobar, 812 F. 3d 352, 356 (5th Cir. 2015).

This misapprehension of law is prevalent among various circuits. Here are some examples:

United States v. Dailey, 868 F. 3d 322, 329 (5th Cir. 2017) ("every patient for whom Dailey certified Home Health Care who testified stated that he or she did not know Dailey and was not under his care".).

United States v. DeHaan, 876 F. 3d 798, 803 (7th Cir. 2018) (" ... defendant certified that the patients listed in Exhibit 94C were under his care ..., even though there is no record of him providing any medical care to those patients.").

United States v. Crinel, No. 15-61 Section"E"(2), 2018 U.S. Dist. LEXIS 144909 (E. D. of LA, Aug. 27, 2018) ("The doctors agreed to sign 485's for patients who were not under their care").

United States ex. rel. Marshall v. Univ. of TN Med. Ctr. Home Care Servs. LLC, 2021 U.S. Dist. LEXIS 159167 (Aug. 23, 2021) ("The patients of home health agencies are referred for home health services by their physicians who are required to certify that the respective patients are under their care".).

United States v. Robinett, No. 3:15-CR-559-D(6), 2018 U.S. Dist. LEXIS 58026 (N.D. Tex, April 5, 2018) ("Robinett would falsely certify that beneficiaries qualifed for home health care ... despite the fact the beneficiaries were not under his care").

**4. Error of Law: Elderly patient has to be literally confined to home to qualify For Home Health Certification**

Under the Medicare Act, an individual is considered to be "confined to [her] home" if she has a condition "that restricts [her] ability ... to leave ... her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving ... her home is medically contraindicated." 42 U.S.C. § 1395f(a). The patient "does not have to be bedridden to be considered 'confined to home,' " but she should have a "normal inability to leave home," and leaving home should require "a considerable and taxing effort." Id. Absences from the home for medical purposes, including the receipt of health care or therapeutic treatment, do not disqualify a claimant from being considered "confined to home." Id. Moreover, non-medical absences which are "infrequent or of relatively short duration" do not disqualify a claimant from being considered "confined to home." Id;See also Burgess v. Shalala, No. 2:92-CV-158, 1993 U.S. Dist. LEXIS 21230, 1993 WL 327764, at *4 (D. Vt. June 10, 1993);Labossiere v. Sullivan, No. 90-CV-150, 191 U.S. Dist. LEXIS 21729, 1991 WL 531922, at *4 (D. Vt. July 24, 1991).

Reimbursement for home health services is contingent upon a showing that the patient is "confined to the home" or "homebound".42 C.F.R. § 409.42(a). However, it does not comport with layman's definition of 'confined to the home', which the Government in this case and numerous cases in all circuits, used to prosecute physicians.

Congress considered the "confined to home" designation to include elderly patients who had to leave home for medical purposes as well as those "who could ... leave home for such non-medical purposes as an infrequent family dinner, an occasional drive or walk around the block, or a church service'. The obvious thrust is that the definition of 'confined to home' should not serve to imprison the elderly by creating a penalty of loss of Medicare benefits for heroic attempts to live a normal life." Burgess v. Shalala, No.-2:92-CV-158, 1993 U.S. Dist. LEXIS 21230 at *11 (quoting H.R. Rep. No. 100-391(1),100th Cong., 1st Sess., reprinted in, 1987 U.S.C.C.A.N. 2313-228).

The fact that home health care has stabilized an elderly patient's health does not render that level of care unnecessary: "an elderly claimant need not risk a deterioration of his fragile health to validate the continuing requirement for skilled care." Follan v. Sullivan, No. 90-348, slip. op. at 12-13 (D. vt. July 6, 1992) (Report and Recommendation).

In this case, Government and its nine witnesses testified under this misapprehension of law: "In order for Medicare to cover home health costs, it has -- a patient has to be qualified, which means a patient has to be confined to their home, also referred to as being homebound." Doc. 223, p. 131. "Medicare pays for something called home health services, and they're available to people who are really sick and who need medical services, but are confined to the home." Doc. 223, p. 142.

This error of law is prevalent among various circuits. Here are some examples:

United States v. Veasey, 843 Fed. Appx. 555, 558 (5th Cir. 2021) ("To qualify for home health, a beneficiary must essentially be confined to home").

Apollo Med. Inc. v. Sebelius, 2010 U.S. Dist. LEXIS 52452 (8th Cir. 2010)(Beneficiary could perform many independent activities, such as grooming and toileting himself, dressing himself with minimal assistance or use of an assistive device, and riding in a car driven by another person. Such abilities suggest that the beneficiary was not homebound."

United States v. Mathew, 916 F. 3d 510, 522 (5th Cir. 2019) ("Another patient rode the bus to some of her doctor appointments, strongly indicating that she was not homebound").

**C. No Direct Evidence of Conspiracy To commit Health Care Fraud or False Statements Related to Health Care Matters.**

**The above four errors of law was the only direct and material evidence against Dr. Ramirez.**

**1. No Evidence of Conspiracy (18 U.S.C. § 1349)**

Government did not produce any evidence that Dr. Ramirez actually knew of or joined in the conspiracy. No witness testified that he or she told Dr. Ramirez about the conspiracy or witnessed someone else doing so. No witness testified that Dr. Ramirez joined the conspiracy. No witness testified that he or she told Dr. Ramirez of falsified Plans of Care (Form 485).

The only circumstantial evidence that Government produced is that their star witness, Nichelle Brown, saw Dr. Ramirez sign Plans of Care even though he never met them (patients). But, as expounded above, Dr. Ramirez can sign Plans of Care even though he did not see the patients, per Medicare regulations. See 42 C.F.R. § 424.22 (a)(v)(A).

To the contrary, there is evidence that Dr. Ramirez took affirmative acts inconsistent with goals of the conspiracy.

Justice Scalia wrote, "the essence of conspiracy is 'the combination of minds in an unlawful purpose' Smith v. United States, 133 S. Ct. 714, 719 (2013) (quoting United States v. Hirsch, 100 U.S. 33, 34 (1879) ). The burden is on the defendant to prove that she took unequivocal affirmative acts inconsistent with goals of the conspiracy, Smith v. United States, 133 S. Ct. 714, 718 (2013).

Dr. Ramirez, since the day he started working as a consultant with Amex, clarified to Anne Shepherd that she cannot bill Medicare for his services (for both Medicare Part A (HH certifications) and Medicare Part B (patient visits)) as Amex clinic was not established yet. Unbeknown to Dr. Ramirez, Ann Shepherd submitted a fraudulent 855R form (Re-assignment of Benefits Statement) and was billing Medicare using Dr. Ramirez's NPI (Doc. 193-2, p.4). This was corroborated by Calixto Barrero, "... Shepherd told him she was concerned [because] Ramirez had not authorized them to bill" PSR, p. 18, para. 75. This is inconsistent with the goals of the conspiracy to commit Medicare fraud.

The office manager, Nichelle Brown, also corroborated that Shepherd was surreptitiously billing Medicare using Dr. Ramirez's NPI (National Provider Number), "Ans. At that point I knew he [Dr. Ramirez] didn't want Medicare to be billed. I don't know why, but he did not want Medicare to be billed. Question: Okay. And did Ann [Shepherd] bill Medicare? Ans. Yes" Doc. 224, p. 170.

There is also evidence of Dr. Ramirez's efforts to keep Amex in compliance with Medicare regulations, "... Find PCP (Primary Care Physician) and forward to avoid non-compliance or problems with Medicare since no billing under me ..." See his written instructions - Doc. 195-3, p. 15, which is inconsistent with the goals of conspiracy to commit Medicare fraud.

On 08/20/2013, Sergeant Mike Murphy. a Texas Medicaid Fraud agent contacted Dr. Ramirez (See App. 04 ), inquiring about any shady business at Amex. Dr. Ramirez denied any knowledge of it, but he offered to immediately resign from Amex, but Sergeant Murphy dissuaded Dr. Ramirez from resigning from Amex as he didn't want Dr. Ramirez to "spook his Medicaid investigation". Dr. Ramirez wanted to take an affirmative action of resigning from Amex, which is inconsistent with the goals of conspiracy to commit Medicare fraud.

In United States v. Ganji, 880 F. 3d 760,767, Fifth Circuit stated "'a verdict may not rest on mere suspicion, speculation, or conjecture, or an overly attenuated piling of inference on inference.' United States v. Pettigrew, 77 F. 3d 1500, 1521 (5th Cir. 1996). Although, the jury may make factually based inferences "a conviction cannot rest on an unwarranted inference, the determination of which is a matter of law." United States v. Fitzharris, 633 F. 2d 416, 422 (5th Cir. 1980)."

In this case, as expounded above, the Government misled the jury, under misapprehension of law and propagated this misunderstanding through more than 10 witnesses that Dr. Ramirez conspired to commit Medicare fraud because he certified them for home health services even though he did not see, meet, or evaluate the patients and he was not their PCP (Primary Care Physician). From this misinformation, the jury could have inferred an agreement on the part of Dr. Ramirez to join the conspiracy.

To support a conviction under 18 U.S.C. § 1349, the Government must prove beyond a reasonable doubt that: "(1) two or more persons made an agreement to commit health care fraud; (2) that the defendant knew the unlawful purpose of the agreement; and (3) that the defendant joined in the agreement ... with the intent to further the unlawful purpose." United States v. Eghobar, 812 F. 3d 352, 362 (5th Cir. 2015) (quoting United States v. Grant, 633 F. 3d 639, 643 (5th Cir. 2012) ).

An agreement is a necessary element of conspiracy, and as such, "the Government must prove [its existence] beyond a reasonable doubt." United States v. Arrendo-Morales, 624 F. 2d 681, 683 (5th Cir. 1980) (citing Patterson v. New York, 432 U.S. 197, 210, 97 S. Ct. 2319, 53 L. Ed 2d 281 (1977).

Here, none of the Government witnesses implicated that Dr. Ramirez agreed or joined to conspire Medicare fraud. In fact, the Government's star witness, Nichelle Brown, who admitted conspiring with Ann Shepherd (owner of Amex) admitted, "I was only instructed by Ann [Shepherd]" Doc. 224, p. 138.

Further, Brown testified that Ann Shepherd instructed her to falsify patient records, but she did not implicate Dr. Ramirez, "Question: Okay. So would you sometimes have to fill out and make up diagnoses ... [Answer] Yes. Question: And who instructed you to do that? Answer: Ms. Ann [Shepherd] would instruct me that; ... Okay. And at that time or anytime did Dr. Ramirez know that you are filling these out yourself? Answer: I can't say that -- he knew that." Doc. 224, p. 163-164.

"[P]roof of an agreement to enter a conspiracy is not to be lightly inferred." United States v. Johnson, 439 F. 2d 855, 888 (5th Cir. 1971). "Mere similarity of conduct among various persons and the fact that they have associated with or are related to each other" is insufficient to prove an agreement." Ganji, 880 F. 3d 760, 765 (5th Cir. 2018).

**2. No knowledge that patients were not homebound - 3 counts of False Healthcare Statements (18 U.S.C. § 1035)**

Government called three patients (Filma Fagan, Robert Tolder, and Willie Brooks), who were bribed by Home Health agencies to sign up for Home Health certification. These three patients testified that they never met Dr. Ramirez. This is not required per Medicare regulations. See United States v. Ganji, 880 F. 3d, 760, 778 (5th Cir. 2018) ("The Government contends that a doctor must be a patient's primary care physician in order for the patient to be under their care. This is not a requirement established by the regulations. See 42 C.F.R. § 424.22 (a)(v)(A). In fact, the regulations provide that face-to-face patient encounters may be performed by physician assistants, nurse practioners or clinical nurse specialists. See id.").

It is the OASIS nurse or the physician assistant that is attesting that she/he had a face-to-face encounter with patient, who should be responsible for falsifying the plans of care (485's). Referring or attending physicians like Dr. Ramirez, make sure in good faith that the information presented in the Plan of Care (Form 485) renders the patient to have difficulty in leaving the home without assistance (i.e., it is taxing) and if so, signs the Plan of Care (485), i.e., certifies it. See United States v. Ganji, 880 F. 3d, 760, 764 (5th Cir. 2018) ("Home health services are those skilled nursing or therapy services provided to individuals who have difficulty leaving the home without assistance. These services are commonly provided to senior citizens").

18 U.S.C. § 1035 has a mens rea of "knowingly and willfully". The Government did not even provide evidence that Dr. Ramirez "knew" that these three patients were not homebound.

Here, Nichelle Brown from Amex testified that she was falsifying the forms, but she did not implicate that Dr. Ramirez knew that she was falsifying, "I can't say that -- he [Dr. Ramirez] knew that." Doc. 224, p. 163-164.

Also, Stella Duru from Anointed Home Health Care Agency, testified that she would falsify the plans of care (485's) so that they qualify for Home Health Certification, i.e., any attending doctor who reviews this falsified plan of care, would certify it, "would you make the patients look worse than they actually were? Yes, Sir." Doc. 226, p. 34-35.

Also, Magdalene Akharamen, owner of Texas Tender Care Home Health Agency, testified that she would falsify the plans of care (485's) so that they qualify for Home Health Certification, i.e., any attending doctor who reviews this falsified plan of care, would certify it, "Question: Why did you not do a thorough assessment ? Answer: Because I just wanted to get paid on them." Doc. 226, p. 84. She also testified that she forged doctor's signatures, "Question: And you have actually forged doctor's signatures, right? Answer: Yes, Sir." Doc. 226, p. 91.

There was insufficient evidence to prove that Dr. Ramirez certified them knowing that they were not homebound. See United States v. Ganji, 880 F. 3d 760, 777 (5th Cir. 2018) ("Dr. Ganji asserted that there was insufficient evidence to prove that she certified Carolyn Stewart knowing that she was not homebound. The Government contends that Stewart was not homebound. Stewart's primary care physician testified that Stewart's mobility was not restricted. Nevertheless, the Government must provide evidence that the accused doctor executed a fraudulent scheme with knowledge that the patient was not homebound. See 18 U.S.C. § 1347 (a); United States v. Jackson, 220 F. App'x 317, 323-24 (5th Cir. Mar. 2, 2007)." Similarly, in this case, the Government contends that these three patients (Filma Fagan, Robert Tolder, and Willie Brooks) were not homebound. Filma Fagan's PCP, Dr. Selvakumarray and Willie Brooks' PCP Dr. Davis, testified that their patients were not homebound. Nevertheless, the Government must provide evidence that Dr. Ramirez knew that these patients were not homebound.

See United States v. Ganji, 880 F. 3d 760, 777 (5th Cir. 2018) ("It [Government] presented evidence of Stewart's primary care physician's knowledge but it failed to present any evidence imputing that knowledge to Dr. Ganji. The evidence allowed the jury to infer that Stewart was not homebound, but it cannot stretch that into a second inference that Dr. Ganji knew Stewart was not homebound.")

Similarly, here, the Government presented evidence of Filma Fagan's and Willie Brooks' primary care physicians' knowledge but it failed to present any evidence imputing that knowledge to Dr. Ramirez. The evidence allowed the jury to infer that Filma Fagan and Willie Brooks were not homebound, but it cannot stretch that into a second inference that Dr. Ramirez knew these patients were not homebound.

Moreover, there is no evidence that Dr. Ramirez willfully made false statements, i.e., there is no evidence that Dr. Ramirez acted with knowledge that certifying these patients was unlawful.

Thus, there is insufficient evidence that Dr. Ramirez knowingly and willfully made false statements.

**D. Evidence of Forgeries**

Dr. Ramirez signed 855R (Re-assignment of Benefits Statement) with Parkview Medical Clinic only, where he was working full-time. Parkview Medical Clinic was not under federal investigation. A health care facility needs a physician to sign a 855R in order to bill Medicare. Dr. Ramirez never signed a 855R with Amex clinic authorizing it to bill Medicare. Amex clinic forged Dr. Ramirez's signature and submitted a fraudulent 855R unbeknown to Dr. Ramirez. However, these forgeries were so obvious, Government redacted Dr. Ramirez's signature on his Driver License so that jury cannot see and identify the forgeries as they were discernible by naked eye.

Dr. Ramirez signed only few plans of care and the rest were forged by Ann Shepherd, Nichelle Brown, and home health care agencies. Most of these forged plans of care (Form 485) had a scribble that does not meet the stringent rules of Medicare.

Magdalene Akharamen, owner of Texas Tender Care Home Health Agency testified that doctor's signatures were being forged "Question: And you have actually forged doctor's signatures, right? Answer: Yes, sir" Doc. 226, p. 91. She also testified that she falsified plans of care so that a certifying doctor would sign it by making patients eligible for home health care when they were not "Question: Why did you not do a thorough assessment? Answer: Because I just wanted to get paid on them." Doc. 226, p. 84.

Stella Duru from Anointed Home Health Care Agency testified that she falsified plans of care (Form 485) "Would you make patients look worse than they actually were? Answer: Yes, sir." Doc. 226, p. 34-35.

Government Star witness, Nichelle Brown, testified that she falsified the plans of care (Form 485) to make patients eligible for home health care, when they were not, but did not implicate Dr. Ramirez "I can't say that -- he [Dr. Ramirez] knew that." Doc. 224, p. 163-164.

**E. Government Did Not "Follow The Money"**

Government in this case failed to "follow the money" even though the home health care agencies defrauded millions of dollars out of Medicare.

Magdalene Akharamen, owner of Texas Tender Care, defrauded Medicare about $500,000/month for eight years for a grand total

of $48 million dollars (Doc. 226, p. 111-112).

Dr. Ramirez was never paid anything other than a salary of $45,110. for his work or a consultant from November 22, 2011 to August 26, 2015 (three and a half years), which is about $1,000. per month.

Here, Health care agencies defrauded $26 million and Dr. Ramirez's salary of $45,110, which is 0.17%. Dr. Ramirez did not knowingly and willfully participate in a conspiracy to commit Medicare fraud. Lack of compensation corroborates Dr. Ramirez's innocence. See United States v. Nora, 988 F. 3d 823, 826 (5th Cir. 2021) ("Notably, Nora remained salaried throughout his employment at abide and the Government points to no evidence that he received other compensation").

Dr. Abreu's conviction was also reversed based on lack of compensation other than salary. See United States v. Willner, 795 F. 3d 1297, 1306 (11th Cir. 2015) ("American Therapeutic never paid her anything but her $66,400. salary").

**F. Circumstantial Evidence**

Government did not have any direct evidence that Dr. Ramirez joined the conspiracy to commit health care fraud. Not only did the Government mislead the jury with multiple errors of law, as elucidated above, but it emphasized the circumstantial evidence of Dr. Ramirez refusing to write a prescription for a patient, as a 'smoking gun': "Dr. Ramirez saying, whew, I am not going to write a prescription for that patient." Doc. 228, p. 43. Government failed to understand that this was exculpatory information as Dr. Ramirez was not a primary care physician for that patient and he rightfully referred that patient to contact the primary care physician, who prescribed the medication(s).

Government also ignored exculpatory evidence of Dr. Ramirez's written instructions in multiple patient charts: "Find PCP and forward to avoid non-compliance or problems with Medicare since no billing under me ... " Doc. 195-3,p 15. This clearly shows Dr. Ramirez's efforts to keep Amex in compliance with Medicare rules and regulations.

Government made much ado about two different sticky notes they found at Amex, which Government consolidated on a single paper and redacted exculpatory information from it. See Doc. 226, p. 145. It is discernible to the naked eye that it shows two different hand writings. Nonetheless, even assuming that Dr. Ramirez wrote, "More than 500 patients brings up red flag with Medicare, Need two more doctor, signers". It shows Dr. Ramirez is trying to keep Amex in compliance with Medicare rules and regulations as Amex was trying to establish as a family clinic, at least 10% of the patient charts need to be audited by

a doctor every month (a tedious process), Dr. Ramirez was suggesting to hire more doctors to audit monthly patient charts, since Ann Shepherd, owner of Amex clinic, expressed a desire to operate her clinic using Physician Assistants and or Nurse Practioners, in order to keep professional costs down. This note has nothing to do with home health certifications. To the contrary, it shows that Dr. Ramirez was doing his job to re-establish Amex as a family clinic, in compliance with Medicare rules and regulations, unaware that Amex was committing Medicare fraud.

The fact that Dr. Ramirez did not want Medicare to bill under his NPI (National Provider Number, Id) was further corroborated by Government's star witness, Nichelle Brown, who testified that Ann Shepherd, owner of Amex clinic, was surreptitiously billing Medicare: "Answer: At that point I knew he [Dr. Ramirez] didn't want Medicare to be billed. I don't know why, but he did not want Medicare to be billed. Question: Okay. And, did Ann [Shepherd] bill Medicare? Answer: Yes." Doc. 224, p. 170.

Further, Calixto Barrero confirmed this: "Barrero advised that Shepherd told him she was concerned Ramirez had not authorized them to bill." PSR p. 18, para. 75.

Dr. Ramirez never terminated his assignment of benefits with Parkview clinic, since Parkview successfully billed Medicare for Dr. Ramirez from April 2010 to August 2015. Per Medicare rules, a clinic can only bill using one Tax I.D. Number. Dr. Ramirez never re-assigned benefits to Amex clinic. That is why he kept insisting to Amex that they cannot bill Medicare using his NPI (National Provider Number, Id.) Ann Shepherd, owner of Amex clinic, did fraud billing using computers set up at her home, unbeknown to Dr. Ramirez.

### G. Lax Practices Do Not violate Healthcare Fraud Statute

Government showed a blank face-to-face encounter, which was allegedly signed by Dr. Ramirez, even though, it just had a scribble and no doctor log or attest statement per medicare signature rules and regulations;Many witnesses for the government testified that they forged doctor's signatures. Even assuming Dr. Ramirez signed a blank face-to-face, it is a standard of care issue and not illegal as doctors routinely sign blank pre-orders/verbal orders, which is filled up later by a nurse. Here, Agent Nixon testified that he did not find any blank signed Form 485's (Plans of Care) at Amex. See Doc. 226, p. 178.

Even though "Dr. Ganji signed blank certification forms [485's]", United States v. Ganji, 880 F. 3d at 771, Fifth Cir. found that Dr. Ganji did not commit Medicare fraud as this is just a Standard of care issue, "We acknowledge that the Government presented evidence of Dr. Ganji's participation in lax

practices. However, Dr. Ganji was not convicted of patient negligence, keeping subpar files, or haphazardly conducting her business." United States v. Ganji, 880 F. 3d at 777.

**H. The Decision below is Incorrect.**

The court below erred in procedurally denying to issue a COA for this purely legal claim. In Singleton v. Wulff, 423 U.S. 106, 96 S. Ct. 2868, 49 L. Ed. 2d 826 (1976), this Court stated that a federal appellate court would certainly be justified in resolving an issue that was not passed on below "where the proper resolution [was] beyond any doubt ... or where 'injustice might otherwise result". 428 U.S. at 121, 96 S. Ct. at 2877 (citations omitted);See also Martinez v. Mathews, 544 F. 2d 1233, 1237 (5th Cir. 1976) ("rule requiring issues to be raised below "can give way when a pure question of law is involved and a refusal to consider it, would result in a miscarriage of justice").

As expounded above, Dr. Ramirez was convicted based on multiple errors of law. These erroneous conclusions of law have adversely affected more than a dozen cases that questions the fairness and integrity of judicial proceedings.

As this claim is a purely legal one, it does not require fact development at the district court level and thus the Government will not be prejudiced by the inability to present evidence to that court. On the other hand, failing to consider this claim would result in a plain miscarriage of justice - namely, allowing multiple conclusions of law to stand that are clearly in error.

This court has referred the procedural rule - that a federal appellate court does not consider an issue not passed upon below - is not jurisdictional;it is a "practice" and a "rule of procedure". Hormel v. Helvering, 312 U.S. 552, 557, 85 L. Ed. 1037, 61 S. Ct. 719 (1941). Deviations are permitted in "exceptional cases or particular circumstances", Id., or when the rule would produce "a plain miscarriage of justice." Id. at 558. This is such an exceptional case. Thus, this Court should remand back to the court below to issue a COA for this claim.

## II. Dr. Ramirez Sufficiently Presented in His § 2255 Petition that Trial Counsel Conceded Guilt.

### A. Trial Counsel Conceded Guilt

When a client expressly asserts that the objective of "his defense" is to maintain innocence of the charged criminal acts, his lawyer must abide by that objective and may not override it by conceding guilt. U.S. Const., Amdt. 6 (emphasis added);See ABA Model Rule of Professional Conduct 1.2(a)(2016) (a "lawyer shall abide by a client's decisions concerning the objectives of the representation"). McCoy v. Louisiana, 138 S. Ct. 1500, 200 L. Ed. 2d 821 (2018).

Dr. Ramirez maintained his innocence from the beginning of the case and let his trial attorney, Nugent, know about the forgery of his signature in 'Reassignment of Benefits Statement' (Form 855R) and Plans of Care (Form 485) and the falsification of Plans of Care (485), which was admitted at trial by various Government witnesses. See PSR (page 33, para. 156), (Doc. 226, p. 91, 93). Moreover, Dr. Ramirez had a Medicare expert provide extensive information about Medicare rules and regulations to clarify the misapprehension of law that is pervasive in this case. Despite this, trial attorney conceded guilt during closing arguments, "I am not saying Dr. Ramirez is innocent ..." (Doc. 228, p. 65).

This is a structural error that is not subject to harmless-error analysis. See McCoy v. Louisiana, 138 S. Ct. at 1502 ("counsel's admission of a client's guilt over the client's express objection is error structural in kind. Such an admission blocks the defendant's right to make fundamental choices about his own defense. And the effects of the admission would be immeasurable, because a jury would almost certainly be swayed by a lawyer's concession of his client's guilt").

### B. Dr. Ramirez Sufficiently Presented This Argument in § 2255 Petition

Dr. Ramirez, in his Section 2255 petition, under the claim of 'Ineffective assistance of trial counsel' sufficiently presented the argument that the trial counsel conceded Dr. Ramirez's guilt. See Doc. 361, p. 18 ("Nugent actually said during closing, "I am not saying Dr. Ramirez is innocent". Nugent reinforced the jury's delibeation of guilt. Then he told the jury that they were supposed to think of arguments that he hadn't made, and make them for him. A defense attorney could not say anything more incompetent, reckless, and damaging to his client. Those comments are Nugent's confession to the jury that he is truly "winging it", that he has not investigated and prepared adequately for this case and that he has no confidence in his client's innocence of the charges".)

Dr. Ramirez, in his Pro Se application for issuance of a COA, raised this same argument, under a separate header. (Doc. 46, p. 21)

The same Fifth Circuit authority cited by the panel supports the argument that Dr. Ramirez sufficiently raised this argument in his Section 2255 petition. See Black v. Davis, 902 F. 3d 541, 546 (5th Cir. 2018). ("In one case, the habeas petitioner alleged that "[h]ad defense counsel physically examined the ballistics - related evidence, or engaged competent experts to do so, "facts contradictory to those presented at trial would have been discovered. Soffar v. Dretke, 368 F. 3d 441, 469 (5th Cir. 2004), amended on reh'g in part, 391 F. 3d 703 (5th Cir. 2004). Soffar made that allegation in the context of claiming Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2nd 215 (1963) was violated by the State's "failing to disclose certain evidence, including evidence that only four spent bullets had been recovered from the crime scene". Id at 468-69. "Although th[e] specific allegation is found under [the petitioner's] third ground for habeas relief, i.e., his Brady claim, there is nothing in our habeas jurisprudence that requires a party to raise a constitutional issue on appeal under a particular heading". Id at 469. We therefore concluded that he had sufficiently claimed ineffective assistance of counsel" as it relates to defense counsel's failure to identify and develop the ballistics evidence." Id.")

Similarly, in this case, Dr. Ramirez raised the same argument that was fairly presented in his Section 2255 petition that trial counsel was ineffective in conceding Dr. Ramirez's guilt, although he raised it under a new "header" in his application for a COA, where he reinforced the argument by citing case law.

Nevertheless, the Supreme Court clarified that a party can make new arguments on appeal supporting the claim they raised below. See Yee v. Escondido, U.S. 519, 534, 118 L. Ed. 2d 153, 112 S. Ct. 1522 (1992) ("once a federal claim is properly presented, a party can make any argument in support of that claim;parties are not limited to the precise arguments they made below".) See also United States v. Williams, 504 U.S. 36, 41, 118 L. Ed. 2d 352, 112 S. Ct. 1735 (1992). Thus, this court has jurisdiction to consider the argument that trial counsel conceding Dr. Ramirez's guilt during closing argument is objectively unreasonble performance where the prejudice is presumed. See McCoy v. Louisiana, 138 S. Ct. 1500, 1502 ("counsel's admission of a client's guilt over the client's express objection is error structural in kind. Such an admission blocks the defendant's right to make fundamental choices about his own defense. And the effects of admission would be immeasurable, because a jury would almost certainly be swayed by a lawyer's concession of his client's guilt").

"Reasonable jurists would find that the district court's assessment of the ineffective assistance of counsel is at least debatable or wrong". Slack v. McDaniel, 529 U.S. 473, 484 (2000). Also see Graves v. Cockrell, 351 F. 3d 143, 150 (5th Cir. 2003), cert. denied, 541 U.S. 1057 (2004) ("Any doubt regarding whether to grant a COA is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination".)

Thus, this Court should remand back to the court below to issue a COA for this claim.

## III. Dr. Ramirez sufficiently Presented in His § 2255 Petition that Trial Counsel Failed to Research and Understand Medicare Law

### A. Trial Counsel Failed to Understand and Research Medicare Law

Dr. Ramirez gave extensive information about Medicare rules and regulations to Nugent, before the trial, explaining that Government is pursuing the case under the misapprehension of Medicare law. However, Nugent did not read and understand the Medicare law.

The defense attorney, Nugent failed to achieve rudimentary understanding of Medicare law. See Smith v. Dretke, 417 F. 3d 438, 442 (5th Cir. 2005) ("[Defense attorney] Bruder failed to achieve a rudimentary understanding of the well-settled law of self-defense in Texas. By doing so, he neglected the central issue in his client's case. Failing to introduce evidence of a misapprehension of the law is a classic example of deficiency of counsel. See, e.g. Williams v. Taylor, 29 U.S. 362, 395, 120 S. Ct. 1495 (2000)".

Nugent, under the misapprehension of law, allowed the Government to call witnesses, whom the Government conceded were not experts (Doc. 224, p. 8), testify under erroneous conclusions of law that Dr. Ramirez conspired to commit Medicare fraud because he signed the Plans of Care even though (1) Dr. Ramirez is not a primary care physician, and (2) Dr. Ramirez never met the patients. But, this is not a requirement established by the regulations. See 42 C.F.R. § 424.22 (a)(v)(A). Under this same erroneous conclusions of law, the jury convicted Dr. Ramirez for 3 counts of false statements, as 3 patients testified that they never met Dr. Ramirez.

Nugent failed to be a counsel by failing to understand and clarify the Medicare laws and regulations, and his performance was objectively unreasonable. Dr. Ramirez was obviously prejudiced as he was convicted under the misapprehension of law because of Nugent's deficient performance.

### B. Dr. Ramirez Sufficiently Presented This Argument in § 2255 Petition

Dr. Ramirez's, in his Section 2255 habeas petition, raised the argument that trial counsel was ineffective as he failed to investigate and understand Medicare law. See Doc. 361, p. 9 ("C. Inadequate Investigation and Preparation by Defense Counsel - Opening"), Doc. 361, p. 12-13 ("Nugent failure to hold Dr. Selvakumarraj's feet to the fire about his mis-representative testimony about Medicare law and regulations, coupled with Nugent's failure to present testimony from an available bonafide Medicare expert to correct the misreprestations demonstrated a

failure to reasonably investigate and prepare for trial"), Doc. 361, p. 16 ("Nugent did not correct numerous DOJ misrepresentations in their closing, because they had not sufficiently investigated and prepared for trial.").

Dr. Ramirez, in his Pro Se application for issuance of a COA, refined and raised this argument under the same consistent claim of ineffective assistance of counsel (Doc. 46, p. 22) and also separately under a new claim (Doc. 46, p. 10).

See Citizen United v. FEC, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d. 753 (2010) ("Concluding that the argument that a case" should be overruled is 'not a new claim'," but instead, "it-is-at most-'a new argument to support what has been a consistent claim: that the FEC did not accord Citizens United the rights it was obliged to provide by the First Amendment" (cleaned up)").

Simlarly, in this case, Dr. Ramirez raised the argument in His Pro Se application for a COA (Doc. 46, p. 23, Argument IV B) - "failed to research and understand Medicare law") under the same consistent claim that the trial counsel provided ineffective assistance. See (Doc. 24, p. 33) ("Nugent, under the misapprehension of law, allowed the Government to call witnesses, whom the Government conceded were not experts (Doc. 224, p. 8), testify under erroneous conclusions of law that Dr. Ramirez conspired to commit Medicare fraud because he signed the Plans of Care (Form 485), even though (1) Dr. Ramirez is not a primary care physician, and (2) Dr. Ramirez never met the patients. But, this is not a requirement established by the regulations. See 42 C.F.R. §424.22 (a)(v)(A). Under this same erroneous conclusions of Medicare law(s), the jury convicted Dr. Ramirez for 3 counts of false statements, as 3 patients testified that they never met Dr. Ramirez.").

Nevertheless, the Supreme Court clarified that a party can make new arguments on appeal supporting the claim they raised below. See Yee v. Escondido, 503 U.S. 519, 534, 118 L. Ed. 2d. 153, 112 S. Ct. 1522 (1992) ("Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments made below."). Also, see United States v. Williams, 504 U.S. 36, 41, 118 L. Ed. 2d. 352, 112 S. Ct. 1735 (1992).

Thus, this court has jurisdiction to consider the argument that trial counsel's failure to investigate and understand Medicare law, infected the trial with erroneous conclusions of law as nine Government witnesses propagated the erroneous conclusions of law and misled the jury and Nugent failed to be a counsel, which resulted in a trial bereft of rudimentary demands of a fair procedure, which resulted in a miscarriage of justice. See Reed v. Farley, 512 U.S. 339, 114 S. Ct. 2291, 2290-3000, 129 L. Ed. 2d 277 (1994).

Nugent failed to be a counsel by failing to understand and clarify the Medicare law, and his performance was objectively unreasonable. Dr. Ramirez was obviously prejudiced as he was convicted under the misapprehension of law because of Nugent's deficient performance.

"Reasonable jurists would find that the district court's assessment of the ineffective assistance of trial counsel is at least debatable or wrong." Slack v. McDaniel, 329 U. S. 473, 484 (2000). Also, see Graves v. Cockrell, 351 F. 3d. 143, 150 (5th Cir. 2003), cert. denied, 541 U.S. 1057 (2004) ("Any doubt regarding whether to grant a COA is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination.")

Thus, this Court should remand back to the court below to issue a COA for this claim.

## CONCLUSION

This case is just one of more than a dozen health care fraud cases that the United States Government prosecuted under the fundamental errors of law. Various district and appellate courts are affirming convictions under this same misapprehension of law.

In direct violation of Medicare regulations, the following four fundamental errors of law have adversely affected more than a dozen cases: (1) A patient needs to meet the certifying physician for the physician to certify that patient for home health services; (2) To certify a patient for home health services, the certifying physician needs to be a Primary Care Physician (PCP) or a treating physician; (3) A patient needs to be "under the care" of a certifying physician before that physician can certify the patient for home health services; and (4) Patient needs to be literally confined to home to qualify for home health services.

This misapprehension of Medicare law was the only material evidence against Dr. Ramirez to convict him for conspiracy to commit health care fraud (18 U.S.C. § 1349) and three counts of false statement relating to health care matters (18 U.S.C. § 1035) as the Government had three patients testify that Dr. Ramirez was not their PCP (Primary Care Physician) and that they never met Dr. Ramirez, which is not required per 42 C.F.R. § 424.22 (a)(v)(A).

Dr. Ramirez's trial attorney failed to object to these erroneous conclusions of law that infected the trial. Dr. Ramirez's appellate and post-conviction counsel failed to raise this claim in direct appeal and Section 2255 petitions respectively. Dr. Ramirez raised this claim in his Pro Se 'Application for Issuance of various Certificate of Appealability (COA)', but the court below (5th Circuit) procedurally denied to issue a COA as this claim was not raised in Section 2255 petition. The court below erred as this is a purely legal question, which does not need any facts to be developed at the district court level, in conflict with this Court's opinion in Homel v. Helvering, 312 U.S. 552 (1941). Failing to address this claim will result in fundamental miscarriage of justice as Dr. Ramirez is factually innocent (not just legally innocent).

This issue is of exceptional national importance as this Court's supervisory power is needed to preclude further propagation of the aforementioned erroneous conclusions of law among courts in order to ensure proper functioning of criminal justice system.

In addition, Dr. Ramirez sufficiently presented in his Section 2255 habeas petition that his trial counsel was ineffective for conceding guilt in closing argument over Dr. Ramirez's objection and for failing to research and understand Medicare law. The court below erred, hung up on lack of headers clearly dilineating these claims in Section 2255 petition, in procedurally denying to issue a COA for these two claims, in conflict with this Court's opinion in Citizen United v. FEC, 558 U.S. 310 (2010) and Yee v. Escondido, 503 U.S. 519 (1992).

There was no direct evidence that Dr. Ramirez conspired to commit health care fraud. Even considering the circumstantial evidence most favorable to the prosecution to be true, per

Medicare regulations, Dr. Ramirez's conduct, at worst, could be construed as lax medical practice, but his conduct did not violate health care fraud statute.

This Court should issue a COA for each of these claims as jurists of reason will find district court's denial of constitutional claims debatable or wrong.

For the foregoing reasons, the writ of Certiorari should be granted.

I declare under the penalty of perjury that the foregoing is true and correct.

Respectfully submitted on August 4, 2023.

John P. Ramirez, M.D.

John P. Ramirez, M.D.
Reg. No. 14886479
F.C.I. Big Spring
1900 Simler Ave.
Big Spring, Texas 79720