No. 24-1063

In the Supreme Court of the United States

MUNSON P. HUNTER, III, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly dismissed petitioner's appeal based on the appeal waiver in his plea agreement.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Tex.):

United States v. *Hunter*, No. 23-cr-85 (May 13, 2024)

United States Court of Appeals (5th Cir.):

United States v. *Hunter*, No. 24-20211 (Dec. 6, 2024)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is unreported but available at 2024 WL 5003582.

JURISDICTION

The judgment of the court of appeals was entered on December 6, 2024. On February 13, 2025, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including April 5, 2025, and the petition was filed on April 4, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Texas, petitioner was convicted on one count of aiding and abetting wire fraud affecting a financial institution, in violation of 18 U.S.C. 1343 and 2. Pet. App. 38a. The district court sentenced

petitioner to 51 months of imprisonment, to be followed by three years of supervised release. *Id.* at 40a-41a. The court of appeals dismissed petitioner's appeal in relevant part. *Id.* at 1a-3a.

1. Between 2013 and 2023, petitioner used fraudulently obtained Social Security numbers to open 14 bank accounts, acquire at least 18 credit cards, and apply for loans from the Small Business Administration. See Presentence Investigation Report (PSR) ¶¶ 28-31. Those fraudulent acts ultimately cost others nearly half a million dollars. PSR ¶ 36 (detailing $488,352.25 in losses); see Pet. App. 11a-12a (describing specific acts of fraud).

A grand jury in the Southern District of Texas returned a superseding indictment charging petitioner with one count of conspiring to commit bank fraud, in violation of 18 U.S.C. 1349; one count of bank fraud, in violation of 18 U.S.C. 1344; one count of conspiring to commit wire fraud, in violation of 18 U.S.C. 1349; and seven counts of wire fraud, in violation of 18 U.S.C. 1343. Superseding Indictment 1-20.

Petitioner later pleaded guilty, pursuant to a written plea agreement, to one count of aiding and abetting wire fraud. Pet. App. 4a. As part of that plea agreement, the United States agreed to dismiss the nine other charges. *Id.* at 8a. And the United States Attorney's Office for the Southern District of Texas agreed that it would not further prosecute petitioner "for the specific conduct described in the Superseding Indictment." *Id.* at 9a.

The plea agreement explicitly provided that petitioner "knowingly and voluntary waives the right to appeal or 'collaterally attack' the conviction and sentence, except that [petitioner] does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal" or collateral review. Pet. App. 6a. It specified

that if petitioner nonetheless tried to appeal his sentence, the United States would "assert its rights under this agreement and seek specific performance of these waivers." *Id.* at 7a.

The plea agreement underscored that "[i]n agreeing to these waivers," petitioner was "aware that a sentence has not yet been determined by the Court" and that the United States "does not make any promise or representation concerning what sentence the defendant will receive." Pet. App. 7a-8a. The agreement also affirmed that petitioner "understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement." *Id.* at 8a.

2. Following the parties' agreement, the district court held a rearraignment hearing. 4:23-cr-85 Docket entry No. 116 (Feb. 14, 2024). At that hearing, the court explained to petitioner the rights that he would be waiving by pleading guilty. D. Ct. Doc. 166, at 8 (July 29, 2024). The court further confirmed that petitioner understood that his supervised release would be subject to a number of conditions that would be monitored by a probation officer, and that he could face additional imprisonment if he violated those conditions. *Id.* at 8-9.

In response, petitioner assured the court that he had read the plea agreement, and understood its terms. D. Ct. Doc. 166, at 10-13. During that colloquy, the court specifically ensured that petitioner appreciated the appeal-waiver provisions of his plea bargain. *Id.* at 11-12. The court explained that petitioner was "[b]asically * * * agreeing to whatever sentence I impose." *Id.* at 11. Petitioner agreed. *Ibid.*

After the district court had gone over the terms of the plea agreement, petitioner entered his guilty plea to

the single agreed-upon count out of the ten charged. D. Ct. Doc. 166, at 14-15. Both petitioner and his counsel then signed the agreement. *Id.* at 15. The court found that petitioner's plea was "knowing and voluntary" and accepted it. *Ibid.*

3. Before sentencing, the Probation Office calculated petitioner's sentencing range under the advisory Sentencing Guidelines to be 63 to 78 months of imprisonment. PSR ¶ 91. The Probation Office also recommended that, as conditions of petitioner's supervised release, he participate in a mental-health treatment program and that he take any mental-health medications later prescribed by his physician. PSR App. 1.

The presentence report stated that petitioner "suffers from symptoms of anxiety and depression" and "was diagnosed with both conditions when he was approximately 10 years old." PSR ¶ 80. It also stated that petitioner's "symptoms increased after [he] was sexually assaulted at the age of 14," but that he "has refused medication to treat his symptoms." *Ibid.* And it explained that the recommended conditions were "due to [petitioner's] self-reported history of mental health diagnoses," and "will assist the probation officer in providing services to [him] while on supervision." *Ibid.*

The district court held a sentencing hearing and sentenced petitioner to 51 months of imprisonment, to be followed by three years of supervised release. Pet. App. 35a. With respect to the conditions of his supervised release, the court asked petitioner whether he had any objections to what had been proposed in the presentence report. *Id.* at 23a-24a. Petitioner said that he "want[s] to take mental health programs, but I don't want to take any medication." *Id.* at 24a.

The district court responded by informing petitioner that "if you're going to participate in mental health treatment and the treatment provider prescribes drugs, you should take them." Pet. App. 24a. But the court added that "[i]f there's a dispute, you can address it to the probation officer" and "[i]f the probation officer can't resolve the dispute, you can address it to me." *Ibid.* The court ultimately ordered that petitioner "must participate in a mental health treatment program and follow the rules and regulations of the program." *Id.* at 35a. The court also stated that petitioner "must take all mental health medications that are prescribed by [his] treating physician." *Ibid.*

After the district court sentenced petitioner, the government moved to dismiss the remaining counts of the indictment, as specified in the plea agreement. Pet. App. 36a. At the conclusion of proceedings, the court remarked: "You have a right to appeal. If you wish to appeal, [current defense counsel] will continue to represent you." *Ibid.* The court asked if either counsel wished to say anything else and both parties declined to do so. *Ibid.*

4. Notwithstanding his appeal waiver, petitioner subsequently appealed. Among other things, petitioner raised a due-process claim challenging the condition of his supervised release that would require him to take any mental-health medications that might later be prescribed by a physician. Pet. C.A. Br. 9. Petitioner argued that his appeal waiver should not bar that claim, on the alternative theories that either (1) an appeal waiver does not extend to constitutional claims, or (2) an appeal waiver should not be enforced where the district court states that a defendant has the right to appeal and the government fails to object. *Id.* at 8-9.

Petitioner accepted, however, that both theories were foreclosed by circuit precedent. *Id.* at 9 nn.5 & 6.

Applying that precedent, the court of appeals dismissed petitioner's challenge in an unpublished per curiam opinion. Pet. App. 1a-3a. The court observed that petitioner's appeal waiver barred his claim. *Id.* at 2a. And the court cited its precedent rejecting the theories that "the right to challenge an unconstitutional sentence cannot be waived" and that "the district court's statement at the sentencing hearing that [petitioner] had a right to appeal * * * impact[ed] the validity of the appeal waiver. *Ibid.* (citing *United States* v. *Gonzalez*, 259 F.3d 355, 358 (5th Cir. 2001) and *United States* v. *Barnes*, 953 F.3d 383, 389 (5th Cir.), cert. denied, 141 S. Ct. 438 (2020)).

ARGUMENT

Petitioner agrees (Pet. 7) that his appeal is barred by the plain text of his waiver. But he contends (Pet. 20-26) that he should be excused from that provision of his plea agreement, on the theory that it is unenforceable. The court of appeals correctly rejected that contention, and its decision does not meaningfully conflict with any decision of this Court or another court of appeals. This Court has repeatedly denied certiorari in cases involving similar issues.[1] The petition should be denied.

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[1] See, *e.g.*, *Jones* v. *United States*, No. 24-6505 (June 6, 2025); *Allen* v. *United States*, 144 S. Ct. 859 (2024) (No. 23-6405); *Rivers* v. *United States*, 144 S. Ct. 215 (2023) (No. 23-5121); *Jimenez* v. *United States*, 143 S. Ct. 1745 (2023) (No. 22-536); *Harper* v. *United States*, 143 S. Ct. 582 (2023) (No. 22-5111); *Sanchez* v. *United States*, 142 S. Ct. 410 (2021) (No. 21-5712); *Zamarripa* v. *United States*, 141 S. Ct. 2571 (2021) (No. 20-6668); *Goldston* v. *United States*, 141 S. Ct. 828 (2020) (No. 20-5862). Similar issues are also raised in *Chaney* v. *United States*, No. 24-6543 (filed Feb. 6, 2025), and

1. a. This Court has recognized that a defendant may knowingly and voluntarily waive constitutional or statutory rights—including appellate rights—as part of a plea agreement. See, *e.g.*, *Garza* v. *Idaho*, 586 U.S. 232, 238-239 (2019) (waiver of right to appeal); *Ricketts* v. *Adamson*, 483 U.S. 1, 8-10 (1987) (waiver of right to raise a double-jeopardy defense); *Town of Newton* v. *Rumery*, 480 U.S. 386, 389 (1987) (waiver of right to file an action under 42 U.S.C. 1983). As a general matter, statutory rights are subject to waiver in the absence of an "affirmative indication" to the contrary by Congress. *United States* v. *Mezzanatto*, 513 U.S. 196, 201 (1995). Likewise, even the "most fundamental protections afforded by the Constitution" may be waived. *Ibid.*

In accord with those principles, the courts of appeals have uniformly recognized that a defendant's voluntary and knowing waiver in a plea agreement of the right to appeal is enforceable.[2] As those courts have explained, appeal waivers benefit defendants by providing them with "an additional bargaining chip in negotiations with

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Aquino v. *United States*, No. 25-79 (filed June 6, 2025), both of which are currently pending.

[2] See *United States* v. *Teeter*, 257 F.3d 14, 21-23 (1st Cir. 2001); *United States* v. *Riggi*, 649 F.3d 143, 147-150 (2d Cir. 2011); *United States* v. *Khattak*, 273 F.3d 557, 560-562 (3d Cir. 2001); *United States* v. *Marin*, 961 F.2d 493, 495-496 (4th Cir. 1992); *United States* v. *Melancon*, 972 F.2d 566, 567-568 (5th Cir. 1992); *United States* v. *Toth*, 668 F.3d 374, 377-379 (6th Cir. 2012); *United States* v. *Woolley*, 123 F.3d 627, 631-632 (7th Cir. 1997); *United States* v. *Andis*, 333 F.3d 886, 889-891 (8th Cir.) (en banc), cert. denied, 540 U.S. 997 (2003); *United States* v. *Navarro-Botello*, 912 F.2d 318, 320-322 (9th Cir. 1990), cert. denied, 503 U.S. 942 (1992); *United States* v. *Hernandez*, 134 F.3d 1435, 1437-1438 (10th Cir. 1998); *United States* v. *Bushert*, 997 F.2d 1343, 1347-1350 (11th Cir. 1993), cert. denied, 513 U.S. 1051 (1994); *United States* v. *Guillen*, 561 F.3d 527, 529-532 (D.C. Cir. 2009).

the prosecution." *United States* v. *Teeter*, 257 F.3d 14, 22 (1st Cir. 2001); see, *e.g.*, *United States* v. *Elliott*, 264 F.3d 1171, 1174 (10th Cir. 2001). In turn, appeal waivers benefit the government and the courts by enhancing the finality of judgments and sentences, and discouraging meritless appeals. See, *e.g.*, *United States* v. *Guillen*, 561 F.3d 527, 530 (D.C. Cir. 2009); *United States* v. *Andis*, 333 F.3d 886, 889 (8th Cir.) (en banc), cert. denied, 540 U.S. 997 (2003); *Teeter*, 257 F.3d at 22-23.

This case illustrates the mutual benefits of appeal waivers. In exchange for petitioner's plea and waiver of his rights to appeal and collaterally attack his conviction and sentence on one count, the government agreed to dismiss nine other counts. Pet. App. 8a. Those dismissed counts included one count of conspiring to commit bank fraud, one count of bank fraud, one count of conspiring to commit wire fraud, and six additional counts of wire fraud (five of which were part of the same scheme to which petitioner pleaded guilty). Superseding Indictment 1-20. The government further agreed not to criminally prosecute petitioner in the Southern District of Texas for the specific conduct described in the Superseding Indictment. Pet. App. 9a.

The court of appeals correctly enforced petitioner's appeal waiver. As petitioner emphasizes (Pet. 20-21), plea agreements are contractual in nature. But the first rule of contracts is that parties must be held to the benefits—and burdens—of their bargain. See, *e.g.*, *Albrecht* v. *United States*, 329 U.S. 599, 603 (1947) (applying principle that a party to a contract "stand[] upon its terms to enforce them for his own advantage, he cannot at the same time successfully disavow those terms so far as he conceives them to be to his disadvantage"). And the terms are set by "the text of the contract."

United States v. *Gebbie*, 294 F.3d 540, 545 (3d Cir. 2002); see *United States* v. *Hahn*, 359 F.3d 1315, 1324-1325 (10th Cir. 2004) (en banc) (per curiam); *Margalli-Olvera* v. *INS*, 43 F.3d 345, 351 (8th Cir. 1994). Here, the plea agreement included an express waiver of the right to "appeal or 'collaterally attack' the conviction and sentence," except as to two narrow grounds—an ineffective-assistance claim, or one challenging an above-maximum sentence. See Pet. App. 6a. The agreement also specified that if petitioner did in fact try to appeal his sentence, the United States "will assert its rights under this agreement and seek specific performance of these waivers." *Id.* at 7a.

Petitioner does not dispute that his challenge to a condition of his supervised release falls squarely within the scope of the text of his appeal waiver. See Pet. 19-20. Nor does, or could, petitioner argue that he did not knowingly and voluntarily agree to that provision at the time the plea agreement was entered. At the rearraignment, the district court walked petitioner through his plea agreement, including its appeal waiver; petitioner affirmed that he understood that provision; and then he signed the plea agreement along with his attorney, affirming once more that he appreciated its terms. See pp. 3-4, *supra*. The court of appeals correctly held petitioner to the terms of the deal he accepted and rightly dismissed his appeal.

b. Notwithstanding voluntarily entering into a plea agreement that allowed for an appeal only in certain delineated circumstances, petitioner now asserts that his appeal waiver is unenforceable because his appeal raises a constitutional challenge. Pet. 20-24. That assertion lacks merit. As a threshold matter, the actual right that petitioner has waived—the right to appeal—is not itself

guaranteed by the Constitution; it is instead purely statutory. See *Abney* v. *United States*, 431 U.S. 651, 656 (1977). But even if the subject of a potential appeal, rather than the right to appeal, were the proper focus, this Court has made clear that "many of the most fundamental protections afforded by the Constitution" may be waived, including as part of a plea agreement. See, *e.g.*, *Mezzanatto*, 513 U.S. at 201. Thus, under this Court's cases, there is no doubt that petitioner had the power to bargain away his appellate rights as part of obtaining a deal from the government. Because petitioner wielded that power knowingly and voluntarily here, his appeal is foreclosed.

Petitioner maintains that holding him to the letter of his plea agreement is "oppressive" or may lead to "unfair surprise," because it may involve subjecting him to an illegal sentence. Pet. 21-24. But the defendant's belief that his sentence may be illegal is not a valid basis for disregarding an appeal waiver. The entire point of an appeal waiver is for a defendant to waive the right to challenge a sentence he believes is illegal—be it on statutory or constitutional grounds. See *Guillen*, 561 F.3d at 529. By design, the bargaining chip is that the defendant is "giving up all appeals, no matter what unforeseen events may happen." *United States* v. *Goodall*, 21 F.4th 555, 562 (9th Cir. 2021), cert. denied, 142 S. Ct. 2666 (2022). A "plea agreement is no different in this respect from any other contract in which someone may have buyer's remorse after an unforeseen future event —the contract remains valid because the parties knowingly and voluntarily agreed to the terms." *Ibid.*

Moreover, in the circumstances of this case, petitioner's particular claim to "unfair surprise" is especially misplaced. The district court expressly warned

petitioner that the "most frequent basis for an appeal is complaining [about the] sentence," and that petitioner was giving this up—"[b]asically * * * agreeing to whatever sentence I impose." D. Ct. Doc. 166, at 11. Nor was the supervised-release condition that he seeks to challenge at all unforeseeable. Petitioner admitted, at the time of his plea, that he suffered from mental-health problems. *Id.* at 5. And Congress has long authorized courts to impose, as a condition of supervised release, that defendants "undergo available medical, psychiatric, or psychological treatment * * * as specified by the court." 18 U.S.C. 3563(b)(9); see Sentencing Guidelines § 5D1.3(d)(5) (2023).

Petitioner's general concern (Pet. 24) about the effect of appellate waivers on constitutional rights is not implicated here. Petitioner cites no case where a court has agreed with his view that the Due Process Clause categorically precludes possible mandatory mental-health treatments during supervised release. Nor does he explain why most of his parade of horribles (*e.g.*, "pillory," "public flogging," "mandatory sterilization") could not be addressed in the Fifth Circuit, see *ibid.*, given its exception for sentences that are in excess of statutory authorization. At minimum, to the extent those extreme hypotheticals present themselves, this Court could address them in the exceedingly unlikely event they arise.

c. Petitioner errs in suggesting (Pet. 8-15) that other courts of appeals would necessarily have reached a different result in the circumstances of this case. Petitioner is incorrect in asserting (Pet. 11-13) that a number of circuits have a categorical rule that voids appeal waivers reaching constitutional claims. The Second Circuit, for example, agrees that a defendant can waive

"elemental constitutional and statutory rights" when he pleads guilty. *United States* v. *Riggi*, 649 F.3d 143, 148 (2011) (citation omitted) (cited at Pet. 12). And although that court may decline to enforce a waiver of "a right that has an overriding impact on public interests," or that would preclude a challenge "to unanticipated matters at sentencing," *ibid.* (citation omitted), it continues to recognize that a defendant may validly waive an appellate claim on a constitutional issue. Indeed, in two of the cases cited by petitioner, the Second Circuit found that an appellate waiver did in fact bar the claims at issue. *Id.* at 147-149; see *United States* v. *Arevalo*, 628 F.3d 93, 98-100 (2010), cert. denied, 563 U.S. 976 (2011). And in the third, the court simply determined that the appellate waiver at issue did not reach challenges to supervised release. See *United States* v. *Burden*, 860 F.3d 45, 53-55 (2d Cir. 2017) (per curiam).

Likewise, petitioner asserts that the Fourth Circuit deems an appeal waiver unenforceable where the "sentencing court violated a fundamental constitutional or statutory right." Pet. 12 (quoting *United States* v. *Carter*, 87 F.4th 217, 225 (4th Cir. 2023)). But petitioner omits the second half of the quote: the right must also be "firmly established at the time of sentencing." *Carter*, 87 F.4th at 225 (citation omitted). That exception includes only a "narrow class of claims." *United States* v. *Singletary*, 75 F.4th 416, 422-423 (4th Cir.), cert. denied, 144 S. Ct. 519 (2023) (citation omitted) (cited at Pet. 13). But this case does not fit within that narrow class: the supervised-release condition at issue is specifically authorized by Congress, and there is no colorable argument it is "firmly established" that such a condition is unlawful.

Petitioner's reliance on caselaw from the First Circuit is similarly misplaced. That court has adopted a narrow miscarriage-of-justice exception to appeal waivers for "egregious cases" where the sentencing condition is "so lacking in rationality or so wholly unrelated to legitimate sentencing purposes as to necessitate invalidating the waiver of appeal." *United States* v. *Boudreau*, 58 F.4th 26, 33 (1st Cir.), cert. denied, 144 S. Ct. 229 (2023) (brackets and citations omitted). But the court below has "declined explicitly either to adopt or to reject" such an exception. *United States* v. *Barnes*, 953 F.3d 383, 389 (5th Cir), cert. denied, 141 S. Ct. 438 (2020); see *United States* v. *Jones*, 134 F.4th 831, 841-842 (5th Cir. 2025). And petitioner did not ask it to adopt the exception in his case. Accordingly, he has failed to preserve any claim that such an exception should be applied to this case. Indeed, the First Circuit decision on which petitioner relies itself rejected a challenge to a "mental health treatment condition" of supervised released on the ground that the defendant had "waived" it by failing to sufficiently explain why it would "result in a miscarriage of justice." *United States* v. *Del Valle-Cruz*, 785 F.3d 48, 54 (2015) (cited at Pet. 12).

Finally, petitioner asserts that the Ninth Circuit has considered the merits of challenges largely similar to his claim. See Pet. 11. But after petitioner filed this petition, the Ninth Circuit granted the government's petition for rehearing en banc in one of the primary decisions upon which he relies. See *United States* v. *Atherton*, 134 F.4th 1009 (2025). And in that petition, the government asked the Ninth Circuit to also reconsider two other decisions that petitioner invokes (Pet. 11)—*United States* v. *Wells*, 29 F.4th 580, cert denied., 143 S. Ct. 267 (2022), and *United States* v. *Bibler*, 495

F.3d 621, cert. denied, 552 U.S. 1052 (2007). Accordingly, to the extent there is any tension between the Ninth Circuit's approach and that of any other court of appeals, this Court's intervention would be premature.

2. Petitioner separately contends that his appeal waiver should not be enforced because, months after he had entered into the plea agreement, the sentencing judge briefly stated that he could file an appeal, and the government did not immediately object. See Pet. 13-15. That contention does not warrant this Court's review.

Except for the Ninth Circuit, every court of appeals to expressly address the issue has correctly recognized that a misstatement by a district judge made months after the defendant entered into a plea agreement does not undermine the knowing and voluntary nature of the defendant's appeal waiver. See *United States* v. *Melancon*, 972 F.2d 566, 568 (5th Cir. 1992); *Teeter*, 257 F.3d at 25; *United States* v. *Fisher*, 232 F.3d 301, 304 (2d Cir. 2000); *United States* v. *Fleming*, 239 F.3d 761, 765 (6th Cir. 2001); *United States* v. *Ogden*, 102 F.3d 887, 888-889 (7th Cir. 1996); *United States* v. *Michelsen*, 141 F.3d 867, 872 (8th Cir.), cert. denied, 525 U.S. 942 (1998); *United States* v. *Atterberry*, 144 F.3d 1299, 1301 (10th Cir. 1998); *United States* v. *Bascomb*, 451 F.3d 1292, 1297 (11th Cir. 2006); see also *United States* v. *Guzman*, 457 Fed. Appx. 223, 225 (4th Cir. 2011) (per curiam).

Any disagreement between the Ninth Circuit's approach and the approaches of other circuits does not warrant this Court's review in this case. Among other things, it is far from clear that petitioner's claim would succeed even in the Ninth Circuit. Contrary to petitioner's suggestion (Pet. 13-14), that court does not apply a mechanistic rule that vitiates every appeal waiver in the face of any judicial misstatement that goes

uncorrected. Instead, that court conducts a case-specific examination of the "court's statement" and "the defendant's reasonable expectations about his rights." *United States* v. *Arias-Espinosa*, 704 F.3d 616, 618-619 (9th Cir. 2012). And here, at the time of petitioner's guilty plea, the district court was clear—and petitioner confirmed that he "underst[ood]"—that "[b]asically you're agreeing to whatever sentence I impose." D. Ct. Doc. 166, at 11; see *id.* at 12 (petitioner's affirmation that he also understood that he was "giving up [his] right to appeal and to collaterally attack [his] conviction and sentence").

Although the district court many months later—well after petitioner became bound by the plea agreement, see Fed. R. Crim. P. 11(d) and (e)—referred to petitioner's "right to appeal," Pet. App. 13a, that comment is unlikely to have "create[d] 'confusion,' * * * or a 'reasonable expectation' of a right to appeal," *Arias-Espinosa*, 704 F.3d at 619 (citations omitted), which would affect its enforceability. Petitioner does not cite any example of the Ninth Circuit refusing to enforce an appellate waiver where that court had specifically explained the terms of the waiver to the defendant before he formally accepted it.

3. At all events, this case would be a poor vehicle for addressing the question presented. Even if petitioner were to prevail in this Court, it would be in service of a due-process claim that would be barred in the courts below. As petitioner himself has acknowledged (Pet. C.A. Br. 8 n.4), his challenge to a condition of his future supervised release is unripe under binding Fifth Circuit precedent. It is not clear whether petitioner will be prescribed any medication at all—and even if he is prescribed such medication years from now (and even if he

still does not want to take it), "he may petition the district court for a modification of his conditions." *United States* v. *Ellis*, 720 F.3d 220, 227 (5th Cir.) (per curiam), cert. denied, 571 U.S. 1074 (2013). And the district court emphasized that "[i]f there's a dispute, you can address it to the probation officer" and "[i]f the probation officer can't resolve the dispute, you can address it to me." Pet. App. 24a. Accordingly, even though he waived his direct appeal, petitioner has other avenues for relief from the supervised-release condition that he sought to challenge on appeal.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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