No. 25-

IN THE

Supreme Court of the United States

WILLIAM JAMES WASHINGTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether venue is proper in a district court where the offense conduct touching the district was not reasonably foreseeable to the defendant and not in furtherance of the alleged crimes.

PARTIES TO THE PROCEEDING

Petitioner is William James Washington. Respondent is the United States of America. No corporate parties are involved in this case. The caption of this case contains the names of all parties.

RELATED CASES

This case arises from the following proceedings in the Southern District of New York and Second Circuit.

United States v. Williams (Washington), No. 21-603, United States District Court for the Southern District of New York.

United States v. Washington, No. 24-3173, United States Court of Appeals for the Second Circuit.

No other proceedings directly relate to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner William James Washington respectfully petitions for a writ of certiorari to review the below judgment of the United States Court of Appeals for the Second Circuit.

OPINION AND ORDERS BELOW

The Second Circuit's unreported order dated December 15, 2025 is available at 2025 WL 3628306 and reproduced at Appendix A. The unreported order denying panel rehearing and rehearing *en banc* was entered on February 25, 2026 and is reproduced as Appendix C. The District Court's judgment dated December 2, 2024 is reproduced as Appendix B.

STATEMENT OF JURISDICTION

The Second Circuit issued its judgment on December 15, 2025 and denied a timely rehearing petition on February 25, 2026. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III provides, as relevant:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed . . .

The Sixth Amendment provides, as relevant:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law . . .

18 U.S.C. § 371 provides, as relevant:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. . .

18 U.S.C. § 1343 provides, as relevant:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. . .

18 U.S.C. § 1347 provides, as relevant:

> Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud any health care benefit program; or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or

> control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. . .

18 U.S.C. § 1349 provides, as relevant:

> Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

INTRODUCTION

This case raises an important question relating to the government's evidentiary burden to establish venue: When can a criminal defendant reasonably foresee that his actions, when allegedly undertaken in furtherance of the charged offenses, place him within a district to establish venue?

A defendant has a constitutionally protected right to be tried in the State and district where the charged crimes were committed. U.S. Const. art. III, § 2, cl. 3; amend. VI; *see also* Fed. R. Crim. P. 18. Where a crime was committed, and thus where venue is proper, "must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States v. Cabrales,* 524 U.S. 1, 6–7 (1998) (quoting *United States v. Anderson*, 328 U.S. 699, 703 (1946)); *see also Travis v. United States,* 364 U.S. 631, 634 (1961). "In performing this inquiry, a court must initially identify the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts." *United*

States v. Rodriguez-Moreno, 526 U.S. 275, 279 (1999); *see also Abouammo v. United States*, No. 25-5146 (cert. granted).

The purpose of the Constitution's venue requirement is "to shield a federal defendant from 'the unfairness and hardship' of prosecution 'in a remote place.'" *United States v. Davis*, 689 F.3d 179, 185 (2d Cir. 2012) (quoting *United States v. Cores*, 356 U.S. 405, 407 (1958)). Such shielding necessitates that a defendant has "freely chosen" venue. *Id.* at 186 (citing *United States v. Reed*, 773 F.2d 477, 481 (2d Cir. 1985)).

If there is no evidence of intentionality or actual knowledge that an act allegedly in furtherance of the charged offense occurred in the district of venue, venue properly lies "where . . . it is foreseeable that such an act would occur in the district of venue." *United States v. Svoboda*, 347 F.3d 471, 483 (2d Cir. 2003); *see also Davis*, 689 F.3d at 186. Reasonable foreseeability is the bare minimum showing sufficient to establish that a defendant has "freely chosen" venue. While the burden to satisfy this preponderance standard is low, it is still a burden that the government must satisfy.

This standard was eroded beyond recognition in Petitioner's case. The Second Circuit erred in crediting the government's reliance at Petitioner's *pro se* trial on alleged telephone calls placed by Petitioner—who lived and worked in Seattle, some 2900 miles from Manhattan during the relevant period—to New York City telephone numbers, only one of which was exclusive to the Southern District of New York, as sufficient to establish that venue was proper in the Southern District.

There was no evidence presented at trial that Petitioner knew or reasonably foresaw that those conversations placed his alleged actions in the Southern District. Because the evidence was insufficient to establish that Petitioner knew or reasonably foresaw that his alleged acts in furtherance of the offenses placed him within the Southern District of New York, venue in that district was improper.

STATEMENT OF THE CASE

1. Petitioner, a resident of the State of Washington, was indicted in April 2022 in the Southern District of New York on allegations that he participated in a conspiracy to defraud the National Basketball Association ("NBA") Players' Health and Welfare Benefit Plan (the "Plan"). The Plan's administrator, ProFlex, is located in Williamsville, New York, which is within the Western District of New York. During the relevant time period, Petitioner lived and worked in Seattle, Washington.

2. The indictment alleged that Petitioner, from approximately 2019 to 2021, used his position as a physician to create and submit false invoices to the Plan for services to Plan participants that allegedly were never rendered. He was charged with one count of conspiracy to commit wire fraud and health care fraud (18 U.S.C. § 1349); conspiracy to make false statements relating to health care matters (18 U.S.C. § 371); health care fraud (18 U.S.C. §§ 1347 and 2); and wire fraud (18 U.S.C. §§ 1343 and 2).

3. In June 2024, Petitioner proceeded to trial *pro se*, with the undersigned counsel appointed as standby CJA trial counsel. Petitioner requested a jury charge on the issue of venue. The government's theory of venue relied on

telephone calls allegedly with an attorney located in Manhattan whose firm, Proskauer, had been hired by the NBA to investigate allegedly suspicious Plan invoices. The jury returned a guilty verdict on all counts.

4. Petitioner was sentenced in November 2024 to 60 months' imprisonment, with three years of supervised release. He filed a timely notice of appeal *pro se* on December 3, 2024. The undersigned was appointed as CJA counsel for the direct appeal.

5. Petitioner argued on appeal *inter alia* that venue in the Southern District of New York was improper. The government on appeal presented an additional theory of venue, arguing that Petitioner's alleged calls to a telephone number with a 917 area code, to an individual whom Petitioner thought was a Plan representative, was sufficient to establish venue in the Southern District. Petitioner argued that there was insufficient evidence presented at trial that Petitioner knew or could reasonably foresee that the calls with the NBA lawyer or the mistaken Plan representative at the 917 number placed his alleged actions in the Southern District. Further, he argued that nothing during those alleged conversations was in furtherance of the alleged offense.

6. Oral argument was held on December 8, 2025.

7. The panel affirmed the District Court's judgment on December 15, 2025. As relevant to this petition, the panel affirmed the finding of venue on two theories.

First, the panel concluded that "[t]he evidence at trial demonstrated that Washington made several calls in furtherance of the conspiracy to a worker for the

Plan's administrator, who was using a telephone with the 917 area code assigned to cellular telephones in New York City." App. 5a. According to the panel, "Washington testified on direct examination that he knew the 917 number he called 'was the [P]lan'—the very entity he was trying to defraud. . . . And the government proved that the Plan itself was administered '[i]n Manhattan.'" *Id.*

Second, the panel concluded that "Washington also initiated telephone calls to an attorney with the New York law firm that was representing the NBA in its investigation of the scheme to defraud the Plan," and, "[d]uring those calls, which were made to the law firm's 212 number and answered at the firm's 'Manhattan offices,' Washington made false statements concerning invoices that he had submitted to the Plan for medical services that he never actually performed[.]" *Id.* (internal citations omitted).

8. Based on those two theories of venue, the panel held that "the jury was justified in concluding by a preponderance of the evidence that Washington knew—or reasonably foresaw—that his calls would be answered in the Southern District of New York." *Id.* at 6a.

REASONS FOR GRANTING THE PETITION

I. The Court should grant review to decide whether Petitioner's acts allegedly in furtherance of the offense were reasonably foreseeable to Petitioner to have occurred in the Southern District of New York.

The decision below is wrong on two separate theories.

First, the Second Circuit erroneously determined that "the government proved that the Plan itself was administered '[i]n Manhattan.'" App. 5a.

Contrary to this conclusion, the evidence presented at trial established that the Plan was administered by Pro-Flex Administrators located in Williamsville, New York, which is in the Western District of New York. The government's witness, Jennifer Moore, testified that Pro-Flex Administrators, the company that she worked for, "was the administrator of the [P]lan" during the alleged offense conduct. A396 at 25:20–22; *see also* A395 at 4–14. Pro-Flex forms admitted as evidence during trial use an address located in Williamsville, New York. *See, e.g.*, A1234 (listing the Williamsville address on a "reimbursement request form"); A1292 (listing the same Williamsville address on an authorization form).

Yet the panel's conclusion relied on Moore's testimony that the Plan's Board of Trustees met in Manhattan quarterly.

There was no evidence presented at trial that Petitioner knew or could have reasonably foreseen that the Plan's Board of Trustees had a connection to Manhattan. The government could have asked Petitioner during cross examination this question; they did not. Further, there was no evidence presented at trial that the Board played an administrative role in the Plan, or that the Board's governance of the Plan equated to administration of the Plan. Nor was there evidence presented at trial that the Board was made aware of the alleged scheme involving the Plan. The government could have asked Moore those questions, but it declined to do so. Petitioner could not have known or reasonably foreseen that the Board—which was a governing body for the Plan, not the administrator of the Plan—met in Manhattan.

The Second Circuit used this erroneous conclusion in its analysis of the government's 917 theory.

That Petitioner made what amounts to chance telephone calls to a 917 number thinking it was the Plan cannot alone support venue when the evidence presented showed that Petitioner believed the Plan was located in Williamsville, New York, within the Western District of New York. There was no evidence otherwise presented at trial regarding what took place on the alleged 917 calls that could have furthered the alleged scheme and placed Petitioner's actions within the Southern District. *See United States v. Rommy*, 506 F.3d 108, 124 (2d Cir. 2007) (suggesting that a "chance use of a telephone" could be insufficient to establish venue without additional evidence connecting the defendant to the district); *see also United States v. Tang Yuk*, 885 F.3d 57, 94–95 (2d Cir. 2018) (dissent) (indicating that "chance" telephone calls between co-defendants, some of whom were out of state, initiated from the Southern District at the direction of a government agent, could not satisfy the foreseeability prong).

Further, 917 is an area code associated with New York City, not just Manhattan and the Bronx (which are in the Southern District of New York). And there was no evidence presented at trial that Petitioner knew or could have reasonably foreseen that 917 is an area code associated with the Southern District. The government could have asked Petitioner on cross about his knowledge of area code 917's connection to the Southern District; it declined to do so.

Cases in the Second Circuit where telephone calls are relied on to prove venue require more than the mere existence of a possible in-district call to show a defendant's knowledge or reasonable foreseeability. For example, in *United States v. Mosquero-Prado*, a non-precedential opinion, a defendant gave a "[confidential] informant a telephone number for a potential drug buyer in New York" that "began with an area code that was within the Southern District of New York." 554 F. App'x 54, 55–56 (2d Cir. 2014). The Second Circuit did not alone rely on the in-district area code to conclude that venue in the Southern District was proper. Rather, the Second Circuit also looked to evidence establishing that the defendant knew that the orchestrated drug buy was to be within the district. *See id.*; *see also Davis*, 689 F.3d at 189–90 (holding that venue was proper in the Southern District where the defendant telephoned someone in the Bronx, at her residence); *Rommy*, 506 F.3d at 124 (same, where the confidential informant "effectively told [the defendant] that he was in Manhattan by noting that, as they spoke, he was looking at the site of the recently collapsed World Trade Center"); *United States v. Naranjo*, 14 F.3d 145, 146–47 (2d Cir. 1994) (same, where a co-conspirator's calls with an undercover agent in Manhattan was sufficient to establish venue when the co-conspirator knew that the agent was in Manhattan, with one call made to the agent at a Manhattan pay-phone). This consideration in the venue analysis is amplified in the age of widespread cell phone reliance by a transient populace, where dialing an area code associated with multiple districts may not equate to a person answering the call in the venue district, or otherwise may not cause an act in the area code's district.

Second, according to the Second Circuit, Petitioner "initiated telephone calls to an attorney with the New York law firm that was representing the NBA in its investigation" of the alleged scheme, and those calls "were made to the law firm's 212 number and answered at the firm's 'Manhattan offices[.]'" App. 5a. The panel concluded that Petitioner "made false statements concerning invoices" during those calls, and thus venue in the Southern District of New York was proper. *Id.* This conclusion was erroneous.

The first call in December 2019 does not establish venue.

As to foreseeability, the Proskauer attorney testified that Petitioner called him at work in December 2019. The government presented no evidence at trial of a reason why Petitioner would know or could reasonably foresee that calling the Proskauer attorney back at work would be a call to the Southern District. Proskauer is an international law firm, with many offices, including one in New York City. The Proskauer attorney did not testify that he told Petitioner on the call where he was located, and the government did not ask him.

The government on appeal tried to piece it together by using Petitioner's phone records from December 2019 showing a call to a 212 number. However, the government did not establish at trial that the 212 number in the phone records was a number at Proskauer. The government could have asked the Proskauer attorney whether the 212 telephone number in the phone records was associated with Proskauer, but it did not. The government could have asked Petitioner if he knew

whether the 212 telephone number in the phone records was associated with Proskauer, it did not.

Even assuming that the evidence established that the December 2019 call to Proskauer involved a 212 number, which Petitioner disputes, for the reasons discussed above the Second Circuit has historically required an indication of something more than just an area code or in-bound call to an area code associated with the district to connect the defendant to the district for the purpose of venue. It is unreasonably speculative to conclude that the mere existence of a 212 outbound call from Petitioner means that Petitioner, living on the other side of the country, would understand that 212 is a number associated with the Southern District.

As to the in furtherance prong, the Summary Order suggests that Petitioner lied on the call about the accuracy of his invoices to keep the alleged scheme going, thus satisfying venue's in-furtherance prong. App. 5a. This does not track with what the government proved at trial. The Proskauer attorney testified that the "goal" of the call was to have Petitioner "describe what invoices from his practice would look like." A823 at 452:19–23. The Proskauer attorney could not recall if he said anything to Petitioner about the Plan specifically. *See* A830 at 459:19–21. What he could recall was limited to asking Petitioner administrative questions about his billing practices. For example, he testified that Petitioner "described the logo" on his invoice to him. A824 at 453:6–7. No specific patients were discussed. No specific invoices were discussed. Not even the Plan was discussed. The Proskauer attorney did not present Petitioner with any invoice to confirm its

accuracy. The testimony shows that this was a call led by a junior associate about how Petitioner's typical billing practices worked administratively. The government did not unpack the call any further. There were no alleged lies on the call that could have furthered the conspiracy.

The March 2020 call likewise does not support venue.

As to the reasonable foreseeability prong, the Proskauer attorney testified that Proskauer initiated the call in March 2020. The Proskauer attorney could not even recall what phone number was used to call Petitioner in March 2020, or whether that phone was a work or cell phone belonging to him or one of his colleagues. The was no evidence presented at trial that this call was even from a phone number associated with the Southern District. Further, there was no evidence presented at trial that the Proskauer attorneys told Petitioner that they were in Manhattan during the call. The government at trial did not question the Proskauer attorney or Petitioner about this.

As to the in furtherance prong, the Second Circuit erroneously credited the government's appellate argument that Petitioner lied during the March 2020 call when asked if several alleged co-conspirators, Melvin Ely and Milton Palacio, were his patients. Mr. Ely as a witness for the government testified that he spoke to Petitioner on the phone, during which Petitioner gave him medical advice for a pre-existing knee problem, including to ice, elevate, and rest it. Regardless of anything else he testified too, this established that Petitioner rendered medical advice from physician to patient. Mr. Palacio did not testify.

* * *

The Second Circuit's reliance on those two theories as establishing venue discredits the "freely chosen" requirement embedded in the Constitution's venue provisions. This Court should grant review to make clear the reasonable foreseeability standard for constitutional venue purposes. The decision below is wrong.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Dated: May 21, 2026
New York, New York

Respectfully submitted,

/s/ David Esseks

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APPENDIX

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APPENDIX A

24-3173
United States v. Washington

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of December, two thousand twenty-five.

PRESENT:

DENNY CHIN,
RICHARD J. SULLIVAN,
MARIA ARAÚJO KAHN,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. No. 24-3173

WILLIAM JAMES WASHINGTON,

Defendant-Appellant,

ANTHONY ALLEN, ALAN ANDERSON, DESIREE ALLEN, SHANNON BROWN, WILLIAM BYNUM, RONALD GLEN DAVIS, CHRISTOPHER DOUGLAS-ROBERTS, MELVIN ELY, JAMARIO MOON, DARIUS MILES, MILTON PALACIO, RUBEN PATTERSON, EDDIE ROBINSON, GREGORY SMITH, SEBASTIAN TELFAIR, CHARLES WATSON, JR., ANTOINE WRIGHT, ANTHONY WROTEN, AAMIR WAHAB, KEYON DOOLING, SOPHIA CHAVEZ, PATRICK KHAZIRAN, TERRENCE WILLIAMS, RASHAD SANFORD,

Defendants.[*]

For Defendant-Appellant:	ELIZABETH M. SULLIVAN (Eugene E. Ingoglia, *on the brief*), Esseks Ingoglia PLLC, New York, NY.
For Appellee:	QAIS GHAFARY (Rebecca Rose Delfiner, Rushmi Bhaskaran, Justin V. Rodriguez, and Nathan Rehn, *on the brief*), Assistant United States Attorneys, *for* Jay Clayton, United States Attorney for the Southern District of New York, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Valerie E. Caproni, *Judge*).

[*] The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the December 2, 2024 judgment of the district court is **AFFIRMED**.

William James Washington, a licensed medical doctor who participated in a scheme with retired basketball players to defraud the National Basketball Association ("NBA") Players' Health and Welfare Benefit Plan (the "Plan"), appeals from a judgment of conviction following a jury trial at which he was found guilty of wire and healthcare fraud and conspiracy to make false statements relating to healthcare matters and to commit wire and healthcare fraud in violation of 18 U.S.C. §§ 1349, 1347, 1343, 371, and 2. On appeal, Washington challenges the sufficiency of the venue evidence introduced at trial, as well as the procedural and substantive reasonableness of his sentence. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

I. Venue

Because venue is not an element of a crime, "the government need only establish venue by a preponderance of the evidence." *United States v. Smith*, 198 F.3d 377, 384 (2d Cir. 1999). "We review the sufficiency of the evidence as to

venue in the light most favorable to the government, crediting every inference that could have been drawn in its favor." *United States v. Tzolov*, 642 F.3d 314, 318 (2d Cir. 2011) (internal quotation marks omitted). We must review venue count-by-count, and "[w]here, as here, the facts are not in dispute, venue challenges raise questions of law, which we review *de novo*." *Id.* For conspiracy counts, "venue is proper in any district in which an overt act in furtherance of the conspiracy was committed by any of the coconspirators." *United States v. Svoboda*, 347 F.3d 471, 483 (2d Cir. 2003) (alterations accepted and internal quotation marks omitted). And for healthcare fraud, "all of the places that *any* part of [the healthcare fraud] took place" are "appropriate" venues. *United States v. Rutigliano*, 790 F.3d 389, 396 (2d Cir. 2015) (emphasis added) (quoting *United States v. Rodriguez-Moreno*, 526 U.S. 275, 282 (1999)). Similarly, venue for wire fraud "lies where a wire in furtherance of a scheme begins its course, continues[,] or ends." *Id.* at 397. Finally, the government need not "show that a defendant had actual knowledge that particular acts would occur in a particular district[;] [r]ather, [we] ask[] whether the acts' occurrence in the district of venue would have been reasonably foreseeable to the defendant." *United States v. Davis*, 689 F.3d 179, 186 (2d Cir. 2012) (alterations accepted and internal quotation marks omitted).

The evidence at trial demonstrated that Washington made several calls in furtherance of the conspiracy to a worker for the Plan's administrator, who was using a telephone with the 917 area code assigned to cellular telephones in New York City. *See* App'x at 1006:17–25, 1007:1–18, 1010:11–12, 1013:11–25. In fact, Washington testified on direct examination that he knew the 917 number he called "was the [P]lan" – the very entity he was trying to defraud. *Id.* at 1009:24–25, 1010:1. And the government proved that the Plan itself was administered "[i]n Manhattan." *Id.* at 398:3–4; *contra* Reply Br. at 7 n.3. Washington also initiated telephone calls to an attorney with the New York law firm that was representing the NBA in its investigation of the scheme to defraud the Plan. App'x at 822:14–15. During those calls, which were made to the law firm's 212 number and answered at the firm's "Manhattan offices," *id.* at 820:20, 820:24–25, 822:11, Washington made false statements concerning invoices that he had submitted to the Plan for medical services that he never actually performed, *see id.* at 824–25, 828:1–10.

We have held that "[p]hone calls" to plan or cover up a crime "can constitute overt acts in furtherance of a conspiracy." *United States v. Naranjo*, 14 F.3d 145,147 (2d Cir. 1994). Drawing "every inference" in the government's favor, *Tzolov*, 642

F.3d at 318 (internal quotation marks omitted), the jury was justified in concluding by a preponderance of the evidence that Washington knew – or reasonably foresaw – that his calls would be answered in the Southern District of New York. Consequently, we see no error in the district court upholding Washington's conviction as it relates to venue.

II. Sentencing Challenges

"We review a district court's sentencing decision for procedural and substantive reasonableness, using a deferential abuse-of-discretion standard." *United States v. Vargas*, 961 F.3d 566, 570 (2d Cir. 2020) (internal quotation marks omitted). That standard "incorporates *de novo* review of questions of law (including interpretations of the Guidelines) and clear-error review of questions of fact." *Id.* (internal quotation marks omitted). "When a party properly objects to a sentencing error in the district court, we review for harmless error." *United States v. Villafuerte*, 502 F.3d 204, 207 (2d Cir. 2007). By contrast, we review issues not raised in the district court for plain error. *Id.*; *see* Fed. R. Crim. P. 52(b).

A. Procedural Reasonableness

"A district court errs procedurally when it fails to calculate (or improperly calculates) the Sentencing Guidelines range, treats the Sentencing Guidelines as

mandatory, fails to consider the [section] 3553(a) factors, selects a sentence based on clearly erroneous facts, or fails adequately to explain the chosen sentence." *United States v. Alvarado*, 720 F.3d 153, 157 (2d Cir. 2013) (internal quotation marks omitted).

Washington argues that the district court improperly denied him a three-level reduction for acceptance of responsibility pursuant to section 3E1.1(b) of the Sentencing Guidelines. In particular, he contends that denial of the reduction unconstitutionally punished him for exercising his right to stand trial because the Guidelines provide for a one-point reduction for those defendants who accept their responsibility before "the government . . . prepar[es] for trial." U.S.S.G. § 3E1.1(b). Because Washington did not make this argument in the district court, our review is for plain error.

This argument is doomed from the start by the fact that the one-level reduction contemplated under U.S.S.G. § 3E1.1(b) is limited to defendants who have already qualified for a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a). *See* U.S.S.G. § 3E1.1(b) ("*If* the defendant qualifies for a decrease under subsection (a) [and other criteria are met] . . . decrease the offense level by 1 additional level." (emphasis added)). Washington has not asserted –

either below or in his brief on appeal – that he is entitled to a two-level reduction under subsection (a). *Id.* Consequently, he is foreclosed from arguing that by standing trial he was unconstitutionally denied a one-level reduction under section 3E1.1(b).

But even if Washington had received a two-level reduction under section 3E1.1(a), his argument that he was *punished* by not receiving an additional one-level reduction under section 3E1.1(b) would still fail. We have long recognized that "[a] show of lenience to those who exhibit contrition by admitting guilt does not carry a corollary that the [j]udge indulges a policy of penalizing those who elect to stand trial." *United States v. Araujo*, 539 F.2d 287, 292 (2d Cir. 1976) (internal quotation marks omitted); *see also United States v. DiMassa,* 117 F.4th 477, 484 n.1 (2d Cir. 2024) ("[W]ithholding leniency for defendants who have declined to accept responsibility does not give rise to an impermissible punishment." (alteration accepted and internal quotation marks omitted)).

At most, we have only said that it is improper for a sentencing court to "[*a*]*ugment*[]" a sentence because a defendant invoked his right to stand trial. *Araujo*, 539 F.2d at 292 (emphasis added); *see also United States v. Duffy*, 479 F.2d 1038, 1039 (2d Cir. 1973) (vacating sentence because "the Magistrate imposed the

relatively heavy fine on Duffy as a consequence of his refusal to plead guilty."). Here, by contrast, the district court expressly held that it would have imposed the same sentence regardless of whether Davis had accepted responsibility. *See* App'x at 1583:15–17 ("Let me note that even if I gave you acceptance points and so that your guideline would be 23, I would still impose the same sentence."). As a result, Davis cannot show that his sentence was "[a]ugment[ed]" for standing trial, since he would have received the same sentence irrespective of his choice to plead guilty or go to trial. *Araujo*, 539 F.2d at 292. And that is especially true on plain-error review. *See United States v. Arigbodi*, 924 F.2d 462, 464 (2d Cir. 1991) (emphasizing that a district court does not commit plain error where a "defendant could have received exactly the same sentence in the absence of the alleged error").

Applying those precedents here, we conclude that the district court did not err – much less plainly err – in declining to *sua sponte* grant Washington a one-level reduction pursuant to section 3E1.1(b).

B. Substantive Reasonableness

Washington also challenges the substantive reasonableness of his within-Guidelines sixty-month sentence. A sentence is substantively unreasonable if it is "shockingly high, shockingly low, or otherwise unsupportable as a matter of

law." *United States v. Rigas*, 583 F.3d 108, 123 (2d Cir. 2009). In demonstrating that a sentence is substantively unreasonable, defendants "bear[] a heavy burden because our review of a sentence for substantive reasonableness is particularly deferential." *United States v. Broxmeyer*, 699 F.3d 265, 289 (2d Cir. 2012).

Washington contends that the district court improperly under-weighed mitigating factors, such as his attempts to return some of the proceeds of the fraud and his victimization by other co-defendants in this scheme. But the district court clearly considered these facts, *see* App'x at 1561–64, 1605, and we have repeatedly held that "[t]he particular weight to be afforded aggravating and mitigating factors under 18 U.S.C. § 3553(a) is a matter firmly committed to the discretion of the sentencing judge," *United States v. Martinez*, 110 F.4th 160, 177–78 (2d Cir. 2024) (alterations adopted and internal quotation marks omitted). Indeed, the district court walked through each of the objectives of sentencing set forth in section 3553(a), App'x at 1602–11, and considered those objectives in light of the facts developed at trial and in connection with sentencing. On this record, we cannot say that the district court put more weight on any one factor than it could reasonably bear.

Washington also argues that the shorter sentences imposed on his co-defendants who were also medical professionals demonstrates the substantive unreasonableness of his sentence. But a district court need not take disparities between co-defendants into account when fashioning an appropriate sentence. *United States v. Johnson*, 567 F.3d 40, 54 (2d Cir. 2009) (reiterating that "a district court may – but is not required to – consider sentencing disparity among co-defendants"). In any event, the district court expressly found that – *unlike* the two other defendants who were medical professionals – Washington had not "accepted responsibility," App'x at 1607:6–8, and had in fact perjured himself at trial, *id.* at 1587:24–25, 1588:1–3. And unlike one of the other co-defendant medical professionals, Washington "never tried to extricate himself" from the conspiracy. *Id.* at 1587:13. Indeed, when Washington's efforts to defraud the Plan "hit a roadblock, he tried to find a way around it," by among other things, "instruct[ing]" his clinics' office manager to "annotate" false receipts. *Id.* at 1409, 1587:17–19 (government's statement at sentencing); *accord id.* at 1589 (defendant's statement at sentencing acknowledging that he "did obviously ask [his clinics' office manager] to do things on [his] behalf."). These differences reasonably

justified Washington's higher sentence. We therefore see no error in the district court's imposition of a within-Guidelines sentence of sixty months.

* * *

We have considered Washington's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

AO 245B (Rev. 09/19) Judgment in a Criminal Case Sheet 1 (Form modified within District on October 3, 2024)

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.
William Washington

JUDGMENT IN A CRIMINAL CASE

Case Number: S9 21 CR 603-021 (VEC)

USM Number: 98140-509

Pro Se/Eugene Edward Ingoglia (Standby Counsel)
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☑ was found guilty on count(s) 1,2,3,4 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1349	Conspiracy to Commit Health Care Fraud and Wire Fraud	10/31/2021	1
18 U.S.C. § 371	Conspiracy to Make False Statements Relating to Health Care Matters	10/31/2021	2

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) open and underlying ☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/25/2024
Date of Imposition of Judgment

Valerie Caproni
Signature of Judge

Valerie Caproni, U.S.D.J.
Name and Title of Judge

12.2.24
Date

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1A

DEFENDANT: William Washington
CASE NUMBER: S9 21 CR 603-021 (VEC)

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1347	Health Care Fraud	10/31/2021	3
18 U.S.C. § 1343	Wire Fraud	10/31/2021	4

AO 245B (Rev. 09/19) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: William Washington
CASE NUMBER: S9 21 CR 603-021 (VEC)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Sixty (60) months for each count to be served concurrently.

☑ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant be designated in a facility in the Seattle, Washington area to facilitate family visits.

☐ The defendant is remanded to the custody of the United States Marshal.

☑ The defendant shall surrender to the designated facility. If no facility is designated by then, defendant shall surrender to the USMS in the Western District of Washington:

☑ at 12:00 ☐ a.m. ☑ p.m. on 1/22/2025 .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: William Washington
CASE NUMBER: S9 21 CR 603-021 (VEC)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Three (3) years on each count to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☑ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: William Washington
CASE NUMBER: S9 21 CR 603-021 (VEC)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 3D — Supervised Release

DEFENDANT: William Washington
CASE NUMBER: S9 21 CR 603-021 (VEC)

SPECIAL CONDITIONS OF SUPERVISION

Defendant must provide the Probation Officer with access to any requested financial information.

Defendant must not incur new credit charges or open additional lines of credit w/o approval of PO unless you are in compliance with the installment payment schedule.

Defendant must submit to a search of your person, property, residence, office, vehicle, papers, computers (as defined by 18 U.S.C. § 1030(e)(1)), cell phones, and other devices or media used for electronic communications, data storage, cloud storage, or network storage. The probation officer may conduct a search under this condition only when there is reasonable suspicion that you have violated a condition of your supervision and that the areas to be searched contain evidence of the violation. The search must be conducted by a United States Probation Officer, although other law enforcement officers may assist the probation officer. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The defendant must report to the nearest Probation Office within 72 hours of release.

Defendant shall be supervised by the district of residence.

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: William Washington
CASE NUMBER: S9 21 CR 603-021 (VEC)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 400.00	$ 475,042	$ 20,000.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
see Order dated 12/2/2024			

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☑ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: William Washington
CASE NUMBER: S9 21 CR 603-021 (VEC)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 400.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance with ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:
Defendant must pay at least 10% of his monthly gross income towards his financial obligations after his release. While in custody he must make payments in accordance with BOP's Inmate Financial Responsibility Program.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☑ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
Terrence Williams 1:21-cr-00603-VEC-1	475,042.00	475,042.00	

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
$475,042 (see Order dated 11/25/2024

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: William Washington
CASE NUMBER: S9 21 CR 603-021 (VEC)

ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
Melvin Ely 1:21-cr-00603-VEC-9	$216,080.00	$216,808.00	
Milton Palacio 1:21-cr-00603-VEC-12	$13,000.00	$13,000.00	

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of February, two thousand twenty-six.

United States of America,

Appellee,

v.

William James Washington,

Defendant - Appellant,

Anthony Allen, Alan Anderson, Desiree Allen, Shannon Brown, William Bynum, Ronald Glen Davis, Christopher Douglas-Roberts, Melvin Ely, Jamario Moon, Darius Miles, Milton Palacio, Ruben Patterson, Eddie Robinson, Gregory Smith, Sebastian Telfair, Charles Watson, Jr., Antoine Wright, Anthony Wroten, Aamir Wahab, Keyon Dooling, Sophia Chavez, Patrick Khaziran, Terrence Williams, Rashad Sanford,

Defendants.

ORDER

Docket No: 24-3173

Appellant, William James Washington, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc.*

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk