

IN THE SUPREME COURT OF THE UNITED STATES

ZENIA CHAVEZ, 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

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QUESTION PRESENTED

Whether the appeal waiver in petitioner's plea agreement precludes her appellate challenge to the conditions of her supervised release.

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No. 25-7651

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-2) is available at 2026 WL 116671.

JURISDICTION

The judgment of the court of appeals was entered on January 15, 2026. The petition for a writ of certiorari was filed on April 15, 2026. 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 Western District of Texas, petitioner was convicted on one

count of conspiring to pay healthcare kickbacks, in violation of 18 U.S.C. 371. Judgment 1. The court sentenced her to 46 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1-2.

1. Petitioner was an owner and president of Nursemind Home Care, Inc., a company in El Paso, Texas, that provided home health and hospice care. Plea Agreement 3. In 2013, Nursemind was approved as a Medicare provider. Ibid. Beginning in 2017, the Federal Bureau of Investigation and the Inspector General for the Department of Health and Human Services discovered that Nursemind had paid various individuals for referring patients to be enrolled by Nursemind as hospice patients. Ibid.

Most of the referred patients did not qualify for hospice care, but Nursemind nevertheless billed and was paid by Medicare for hospice services for them. Plea Agreement 3. Petitioner had personally directed employees of Nursemind to offer and make the referral payments, knowing that such payments were illegal. Id. at 3-6. The total loss to Medicare exceeded \$4 million. D. Ct. Doc. 125, at 3 (Dec. 18, 2023).

2. A grand jury in the Western District of Texas returned a superseding indictment charging petitioner with one count of conspiring to commit healthcare fraud, in violation of 18 U.S.C. 1349 and 1347; 14 counts of healthcare fraud, in violation of 18 U.S.C. 1347; one count of conspiring to pay healthcare kickbacks,

in violation of 18 U.S.C. 371; and 11 counts of paying healthcare kickbacks, in violation of 42 U.S.C. 1320a-7b(b)(2) and 18 U.S.C. 2. Superseding Indictment 1-10.

Petitioner pleaded guilty to the healthcare-kickback conspiracy count. Judgment 1. In exchange for dismissing the other charges and additional promises in the plea agreement, petitioner agreed (inter alia) to waive her right to appeal her conviction or sentence "on any ground," including "any challenges to the determination of any * * * term of supervision and conditions" and "any other claim based on rights conferred by 18 U.S.C. § 3742 or 28 U.S.C. § 1291." Plea Agreement 8. The only exceptions to the appeal waiver were for claims based on "ineffective assistance of counsel or prosecutorial misconduct of constitutional dimension." Id. at 9.

The Probation Office's presentence report recommended four "[s]pecial" conditions of supervision "[i]n addition to the mandatory and standard conditions of supervision adopted by the Court": (a) petitioner would provide her probation officer with access to any requested financial information; (b) petitioner would be prohibited from incurring new credit charges or opening additional lines of credit without the approval of the probation officer; (c) petitioner would pay any financial penalty ordered in the judgment and notify the court of any changes in economic circumstances that might affect her ability to pay; and

(d) petitioner would submit to searches by a probation officer. Presentence Investigation Report (PSR) ¶ 140.

At the sentencing hearing, the district court imposed a sentence of 46 months of imprisonment, to be followed by three years of supervised release "under standard conditions which this Court adopts," including that petitioner commit no further crimes. 7/3/24 Sent. Tr. (Sent. Tr.) 33-34. The court further announced a "special condition that [petitioner] submit to up to one year of intermittent confinement as directed by the Court pursuant to law." Id. at 34; see 18 U.S.C. 3563(b)(10), 3583(d). The court also asked whether petitioner's counsel was familiar with the "special conditions" set forth in paragraph 140 of the presentence report, to which counsel responded "[y]es" and stated there was "[n]o objection" to those special conditions. Sent. Tr. 34. The court then imposed those special conditions. Ibid.

The subsequent written judgment included nine "mandatory conditions" and sixteen "standard conditions" of supervised release. Judgment 3-4 (capitalization omitted). It also included the four "special conditions" described in paragraph 140 of the presentence report. Judgment 5. And it included one "additional condition[]," namely, that petitioner "shall remain in the custody of the Federal Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense," for "the

first year of the term of probation or supervised release as directed by the Court.” Judgment 6.

3. Petitioner appealed, and the court of appeals dismissed the appeal based on the appeal waiver in petitioner’s plea agreement. Pet. App. 1-2. The court rejected petitioner’s theory that claims that the district court failed to sufficiently orally pronounce or explain certain conditions in her written judgment constituted an argument that her sentence exceeded the statutory maximum that would fall outside the scope of her explicit waiver of her right to appeal. Id. at 2.

ARGUMENT

Petitioner contends (Pet. 8-14) that she should be permitted to appeal certain conditions of supervised release notwithstanding a provision in her plea agreement waiving that right, on the theory that the district court did not adequately pronounce the conditions or explain or the reasons for imposing them at sentencing. She requests that the Court either grant certiorari to determine whether an appeal waiver is enforceable when a defendant claims that the written judgment conflicts with the oral pronouncement of the sentence, or alternatively grant the petition, vacate the judgment of the court of appeals, and remand (GVR) for further consideration in light of Hunter v. United States, 146 S. Ct. 1702 (2026). See Pet. 8-15. Although plenary review is not warranted,

a GVR for further consideration in light of Hunter would be appropriate.

In Hunter, this Court held that a defendant's "agreement not to appeal a sentence is unenforceable when it would result in a miscarriage of justice -- meaning, when it would leave in place the kind of egregious error that would bring the judicial system into disrepute." 146 S. Ct. at 1708. The Court declined to apply its holding to the facts of that case, instead allowing the court of appeals to decide in the first instance whether enforcement of the appeal waiver would amount to a miscarriage of justice under the "hard-to-meet standard," id. at 1714, described in the Court's opinion. Consistent with this Court's treatment of other petitions challenging the enforceability of appeal waivers for sentencing claims, see, e.g., Myrick v. United States, No. 25-6860 (June 29, 2026), it would be appropriate to GVR for further consideration in light of Hunter, supra.

But grant of plenary review, as opposed to a GVR, would not be warranted. While petitioner suggests (Pet. 5-14) that the Court could review whether a defendant can appeal an aspect of the written judgment that is inconsistent with the oral pronouncement of the sentence notwithstanding a sentencing appeal waiver, no such inconsistency exists in this case. The standard conditions included in the written judgment were listed since 2016 in a Western District of Texas standing order of which petitioner is aware, Pet. 4, 11-12; mentioned in the presentence report, PSR

¶ 140; and then orally incorporated by reference at sentencing, Sent. Tr. 33. And the district court also specifically orally pronounced that it would “include the special condition that [petitioner] submit to up to one year of intermittent confinement as directed by the Court pursuant to law,” id. at 34 -- a pronouncement consistent with the written judgment’s inclusion of such a condition, which tracks the statutory language of 18 U.S.C. 3563(b)(10). See Judgment 6.

The decisions that petitioner (Pet. 5-8) cites in claiming a circuit conflict confirm that he is not entitled to relief. In two of the decisions, the defendant was denied appellate relief because -- as with the conditions here -- the written judgments clarified, rather than conflicted with, the oral pronouncement. See United States v. Shaw, 139 F.4th 548, 553-555 (6th Cir. 2025); United States v. Harris, 51 F.4th 705, 721-722 (7th Cir. 2022), cert. denied, 143 S. Ct. 1033 (2023). And the third decision granted a remand where the court was “left without any objective indication” from the oral pronouncement that “the district court actually imposed” the challenged conditions, United States v. Singletary, 984 F.3d 341, 346 (4th Cir. 2021) (citation omitted), which is not the case here. And the decision also recognized “a district court may incorporate by reference a condition or set of conditions during a hearing,” ibid., as the district court did

with the standard conditions here. A GVR in light of Hunter, rather than plenary review, is the appropriate course.

Respectfully submitted.

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