No. 26–_____

In the
Supreme Court of the United States

William Jimenez,

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 the Court should grant certiorari, vacate, and remand for further consideration in light of *Hunter v. United States*, 608 U.S. 713 (2026).

PARTIES TO THE PROCEEDING

The petitioner is William Jimenez.

The respondent is the United States of America.

LIST OF RELEVANT PROCEEDINGS

United States v. Jimenez, 2d Cir. 24-1661, Judgment entered Feb. 25, 2026, and amended May 12, 2026.

United States v. Jimenez, S.D.N.Y. 20-cr-122, Judgment entered June 17, 2024.

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INTRODUCTION

The Second Circuit affirmed the district court's refusal on remand to correct a concededly unlawful sentence on the ground that petitioner's original plea agreement waived his right to appeal a sentence within the stipulated Guidelines range — where that range was rendered unlawful by an intervening Circuit decision. The Circuit acknowledged that the district court had the authority to correct the error on remand but held that petitioner's argument on appeal was precluded by the appellate waiver and that he "may not attempt to circumvent the force of that waiver" by challenging the district court's refusal to correct the error at resentencing. The Circuit's decision was issued before *Hunter v. United States*, 608 U.S. 713 (2026), and it ignored the injustice that its ruling produces. The Circuit denied rehearing en banc in a one-line order that did not acknowledge the intervening *Hunter* decision. The Second Circuit's insistence that a defendant is precluded from seeking correction of an unlawful sentence at a resentencing — and that he therefore must serve the unlawfully long sentence — because the original plea agreement waived his right to appeal the prison term is just the kind of decision that "bring[s] the judicial system into disrepute" and constitutes a "miscarriage of justice" under *Hunter*. *Id.* at 728. This Court should grant the petition, vacate the decision below with respect to the waiver, and remand for reconsideration in light of *Hunter*. *See Johnson v. United States*, 146 S.Ct. 2779 (June 29, 2026), vacating and remanding, in light of *Hunter*, *United States v.*

Johnson, 2025 WL 2375233 (5th Cir. 2025) (enforcing appeal waiver to bar claim that the career offender Guideline was unlawful).

OPINIONS BELOW

The Second Circuit's amended opinion is reported at 175 F.4th 341 and appears at Pet.App.1a. The order denying *en banc* review appears at Pet.App.39a. The district court's oral ruling appears at Pet.App.40a.

JURISDICTION

The Second Circuit entered judgment on February 25, 2026, issued an amended opinion on May 12, 2026,[1] and denied rehearing on August 14, 2026. The district court had jurisdiction under 18 U.S.C. § 3231; the Second Circuit did under 28 U.S.C. § 1291; and this Court does under § 1254(1).

STATEMENT OF THE CASE

1. Petitioner pled guilty to possessing ammunition following a felony conviction, in violation of 18 U.S.C. § 922(g)(1), pursuant to a written plea agreement with the government. Pet.App.3a,5a. This agreement calculated an advisory Sentencing Guidelines range of 84 to 105 months. Pet.App.5a. Petitioner's plea agreement included a waiver of his right to appeal or collaterally challenge "any sentence within or below the Stipulated Guidelines Range of 84 to 105 months' imprisonment," and stated that any appeal of his sentence "not foreclosed by this provision will be limited to that portion of the sentencing calculation that is

[1] The amended opinion made no changes to that portion of the opinion affirming the district court's refusal to correct the prison term, the issue raised here.

inconsistent with (or not addressed by) the above stipulation." Pet.App.5a; C.A.App.26. The parties reserved the right to argue for a sentence outside of this range. At sentencing, the government sought a sentence of 105 months' imprisonment, while the defense advocated for 48 months. C.A.App.69, 81. On April 28, 2022, after finding a Guidelines range of 84 to 105 months, the district court sentenced Jimenez to 105 months' prison and three years of supervised release with "standard" and "special" conditions. Pet.App.5a, C.A.App.69, 85.

2. Petitioner timely appealed several of the supervision conditions imposed, an appeal not barred by this limited appellate waiver. Pet.App.6a. By summary order dated March 18, 2024, the Second Circuit vacated certain of the challenged conditions and remanded to the district court "for further proceedings consistent with this order." *See* Pet.App.6-7a; *United States v. Jimenez*, No. 22-1022, 2024 WL 1152535 (2d Cir. 2024) (summary order).

3. While petitioner's first appeal was pending, after his original sentencing but before his resentencing, the Second Circuit issued two precedential opinions that made clear that petitioner should have been subject to a significantly lower Guidelines range. In accordance with prevailing Second Circuit law in 2022, petitioner's Guidelines range had started with a base offense level of 24 under U.S.S.G. § 2K2.1(a)(2), because he had two prior "felony convictions of either a crime of violence or a controlled substance offense": a 2011 robbery conviction and a 2015 conviction under New York Penal Law § 220.39(1). C.A.App.69. *See, e.g.*, *United States v. Hendricks*, 921 F.3d 320, 325-26 (2d Cir. 2019) (New York Penal

Law § 220.39(1) qualifies as a "controlled substance" offense under Sentencing Guidelines career offender provision); *United States v. Sadler*, 765 F. App'x 627, 630-31 (2d Cir. 2019) (summary order) (same). But after petitioner's first sentencing, the Second Circuit held that New York Penal Law § 220.39(1) is not categorically a "controlled substance" offense for purposes of the relevant Sentencing Guidelines. *United States v. Gibson*, 55 F.4th 153, 155 (2d Cir. Dec. 6, 2022), *reh'g denied*, *United States v. Gibson*, 60 F.4th 720 (2d Cir. Feb. 21, 2023); *United States v. Minter*, 80 F.4th 406 (2d Cir. Sept. 6, 2023) (holding similarly that § 220.39(1) offenses do not qualify as "serious drug offenses" for purposes of the Armed Career Criminal Act).

Thus, by the time of petitioner's resentencing on June 14, 2024, it was clear that the district court's prior calculation of his Sentencing Guidelines was wrong: after *Gibson*, petitioner's correct Sentencing Guidelines calculation would begin with a base offense level of 20 under U.S.S.G. § 2K2.1(a)(4)(A). Assuming the same further adjustments to the offense level, petitioner would have a final offense level of 21 and a Sentencing Guidelines range of 57 to 71 months—not the range of 84 to 105 months relied upon by the district court. C.A.App.110; U.S.S.G. § 5A1.1.

4. At his resentencing, petitioner reported *Gibson* and *Minter* to the district court and asked the judge to reconsider his prison sentence. C.A.App.103,108-10,137. He explained that Second Circuit law allowed a district court to resentence a defendant outside the scope of an otherwise limited remand if there is a "clear and compelling reason" for a broader resentencing, including an "intervening change in

controlling law" after the original sentencing, or "the need to correct a clear error of law or to prevent a manifest injustice." C.A.App.109. But the district court ruled that it could not resentence Jimenez because this was "not part of the remand," and any resentencing would violate "the terms of the parties' [plea] agreement ... and the waiver of the right to appeal." C.A.App.111,115-16. The district court thus left petitioner's unlawful prison sentence in place.

5. Petitioner again appealed to the Second Circuit. In addition to challenging the reimposition of certain supervision conditions, he argued that the district court had erred and misapprehended the scope of its own discretion in ruling that it could not resentence him on the prison term. C.A.Br.46-51. He asked the Circuit to hold that the district court did have authority to resentence him and that the plea agreement's waiver of appeal did not bar either the district court from considering a change in the law on remand or bar petitioner from raising that issue on remand. *Id*. at 49-52. In an opinion dated February 25, 2026, amended May 12, 2026, the Circuit affirmed, leaving his erroneously calculated sentence in place. Pet.App.1-38a.

The Second Circuit recognized the change in law between petitioner's original sentencing and resentencing. Pet.App.34-35a. The Circuit also acknowledged that "an intervening change in controlling law" allowed the district court to reconsider issues outside of the limited remand and that "the posture of this case enables Jimenez to avail himself of the law permitting district courts to reach issues outside the scope of their limited remand based on subsequent changes in the law."

Pet.App.35-37a. But it concluded that petitioner's original "appeal waiver nevertheless precludes his argument." Pet.App.36-38a. Despite the unusual circumstances, unlikely to recur often, the Circuit fretted that correcting petitioner's sentence "would create an unwarranted exception to an otherwise enforceable appeal waiver whenever a case is remanded for resentencing." Pet.App.37a. Thus, the Circuit held that "where a defendant has pled guilty and agreed to an appeal waiver, the defendant may not attempt to circumvent the force of that waiver by asking a district court on remand to consider arguments that would have been foreclosed had they been raised on appeal." Pet.App.38a.

6. Petitioner sought rehearing en banc of the Circuit's enforcement of the appeal waiver to preclude correction of his sentence. While the petition was pending, this Court held that "an appeal waiver is unenforceable when it would result in a miscarriage of justice." *Hunter*, 608 U.S. at 727. On July 22, 2026, Petitioner filed with the Second Circuit a letter pursuant to Fed. R. App. P. 28(j), informing it of the *Hunter* decision and arguing that leaving in place an unlawful sentence because of an appeal waiver was just "the kind of egregious error that would bring the judicial system into disrepute" and that enforcement of the waiver was a "miscarriage of justice" under *Hunter*, 608 U.S. at 727-28. On August 14, 2026, the Second Circuit denied rehearing, stating only: "It is hereby ordered that the petition is denied." Pet.App.39a.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari, vacate Section B of the Second Circuit's decision enforcing the appeal waiver, and remand for reconsideration in light of *Hunter*, 608 U.S. 713. The Second Circuit's decision was issued before *Hunter* was decided and there is no indication in its one-line order summarily denying rehearing that it applied *Hunter*'s miscarriage-of-justice standard. Proper application of the *Hunter* standard would require vacatur of petitioner's sentence and a remand for resentencing. Enforcing the waiver to "cement in place" an "obvious" error in petitioner's sentence that was easily correctable on remand "would bring the judicial system into disrepute" and "result in a miscarriage of justice." *Id.* at 725-27. An order granting, vacating, and remanding in light of *Hunter* would accord with this Court's treatment of similar pre-*Hunter* opinions. *E.g.*, *Johnson v. United States*, 146 S.Ct. 2779 (GVR in light of *Hunter* where Fifth Circuit enforced appeal waiver against a claim that application of the career offender Guideline was unlawful). *See also Obyeis v. United States*, No. 26-5156 (U.S.) (Oct. 5, 2026); *Ochoa v. United States*, 25-7569 (U.S.) (Oct. 13, 2026) (GVRs of Fourth and Eleventh Circuit decisions enforcing appeal waivers in light of *Hunter*).

The district court's original sentence of 105 months was based on the conclusion that petitioner's prior New York drug offense qualified as a "controlled substance" offense, which increased his base offense level under U.S.S.G. § 2K2.1(a)(2) and therefore his Guidelines range significantly — from 57 to 71 months to 84 to 105 months. This conformed to Second Circuit law at the time. But

after petitioner's sentence, before his case was remanded for reconsideration of the supervised release conditions imposed, the Second Circuit held in two cases that petitioner's prior drug offense did not qualify as a "controlled substance offense" under the Guidelines. *United States v. Gibson*, 55 F.4th 153, 155 (2d Cir. Dec. 6, 2022), *reh'g denied*, *United States v. Gibson*, 60 F.4th 720 (2d Cir. Feb. 21, 2023); *United States v. Minter*, 80 F.4th 406 (2d Cir. Sept. 6, 2023). His lawful Guidelines range was therefore much lower. And a sentence at the top of the lawful Guidelines range was 71 months instead of 105 months. The district court ruled that it nonetheless could not correct the unlawful sentence because to do so would be outside the mandate (which ordered reconsideration of the conditions of supervision) and because petitioner had waived his right to appeal a sentence within the now incorrect guidelines range.

The Second Circuit acknowledged that its law had changed in a way that significantly lowered petitioner's Guidelines range and held, contrary to the district court's view, that "the posture of this case" did allow the district court to correct the sentence on remand. Pet.App.35-37a. The Circuit's sole reason for leaving in place the erroneously long sentence was petitioner's waiver of his right to appeal a sentence within the incorrect Guidelines range — before anyone knew it was incorrect.

Without little to no reasoning — and without addressing whether this would result in a "miscarriage of justice"— the Circuit held that the earlier appeal waiver barred petitioner's challenge to the district court's refusal to consider the change in

the law at resentencing. The Circuit assumed the waiver was applicable, Pet.App.36a, and ruled that it was enforceable because appeal waivers are generally enforceable. Pet.App.36-37a. The Circuit stated that "to hold otherwise would create an unwarranted exception to an otherwise enforceable appeal waiver whenever a case is remanded for resentencing," without explaining why such an exception would be "unwarranted." Pet.App.37a. The result is strikingly perverse: because of a fluke of timing, petitioner agreed to the incorrect Guidelines range in effect at his plea and sentencing, but his argument to be sentenced under the correct law was just "an attempt to circumvent the force of that waiver." *Id*. at 38. As though trying to correct an unlawful sentence is somehow nefarious.

For this result to stand would be a miscarriage of justice under *Hunter*. The error in petitioner's sentence is "obvious— not one a judge could reasonably make" under the current, correct law. *Hunter*, 608 U.S. at 727. It isn't "uncertain or ordinary." *Id*. at 729. And requiring petitioner to serve a longer, concededly erroneous sentence because of an accident of timing is just the kind of "egregious error" that "would bring the judicial system into disrepute." *Hunter,* 608 U.S. at 727, 728. *See id*. at 740 (Gorsuch, J., concurring) (noting that "the failure to correct a plain and nonharmless error in calculating an advisory guideline range" seriously affects "the public reputation of judicial proceedings").

Moreover, the usual justifications for enforcing an appeal waiver don't apply here. The interest of "finality" was not in play because the case had already been remanded for resentencing and the sentence could easily have been corrected

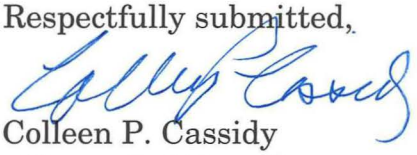
without "imposing excessive burdens on either the appeals courts or the Government." *Id.* at 729. A case involving a remand for resentencing as to one issue and an intervening change in the law affecting a previously waived issue is a relative rarity, so non-enforcement of the waiver here would open no "floodgates" to "waived appeals." *Id.* at 729. Nor would such a one-off induce the government to find appeal waivers less useful and offer "fewer concessions to a defendant." *Id.* at 728.

In sum, there is no just reason for enforcing the waiver here and the Second Circuit did not offer one. The Circuit failed to address the miscarriage-of-justice standard announced in *Hunter* because its decision was issued before *Hunter*. At the time it affirmed petitioner's sentence, the Circuit was enforcing appeal waivers that did not fit into one of five rigid categories, *United States v. Cook*, 84 F.4th 118, 122 (2d Cir. 2023), the opposite of *Hunter's* flexible standard, which eschews any "exclusive" list. 608 U.S. at 728. When informed of the *Hunter* decision during the pendency of petitioner's rehearing petition, the Circuit said nothing. But the judiciary's insistence that petitioner serve an unlawfully imposed sentence that could easily have been corrected "would call into doubt the judicial system's very attachment to law." *Hunter*, 608 U.S. at 726. This Court should vacate Section B of the opinion below, which enforced the appeal waiver, and remand the case to the Circuit to apply *Hunter*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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