

25-949(L)
United States v. Ceasar

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

August Term 2025

(Argued: May 21, 2026 Decided: September 25, 2026)

Nos. 25-949(L); 25-997(CON); 25-998(CON)

UNITED STATES OF AMERICA,

Appellee,

-v.-

SINMYAH AMERA CEASAR,

Defendant-Appellant.

Before: SACK, LIVINGSTON, and CARNEY, *Circuit Judges.*

Defendant-Appellant Sinmyah Amera Ceasar appeals her conviction and sentence for failure to appear in violation of 18 U.S.C. § 3146(a)(1). Ceasar waived the argument that her conduct does not fall within the scope of § 3146, and her sentence pursuant to both 18 U.S.C. §§ 3146 and 3147 does not violate the Constitution's Double Jeopardy Cause. Accordingly, we **DISMISS** the appeal in part and otherwise **AFFIRM** the judgment of the district court.

FOR APPELLEE:

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on the brief), Assistant United States

Attorneys, *for* Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Brooklyn, NY.

FOR DEFENDANT-APPELLANT:

COLLEEN P. CASSIDY, Assistant Federal Defender, Federal Defenders of New York, Inc., New York, NY.

DEBRA ANN LIVINGSTON, *Circuit Judge*:

Defendant-Appellant Sinmyah Amera Ceasar (“Ceasar”) appeals from the judgment of the United States District Court for the Eastern District of New York (Matsumoto, J.), entered on April 9, 2025, upon Ceasar’s guilty plea, and sentencing her principally to a total of 230 months’ imprisonment: 34 months for failure to appear (in violation of 18 U.S.C. § 3146(a)(1)), plus an additional two months pursuant to § 3147 for committing this offense while on release under Chapter 207; 192 months for conspiracy to provide material support to a designated foreign terrorist organization (in violation of 18 U.S.C. §§ 2339B(a)(1) and (d)); and 45 months for obstruction of an official proceeding (in violation of 18 U.S.C. § 1512(c)(1)), plus two additional months pursuant to § 3147 for committing this offense while on Chapter 207 release.¹ Ceasar appeals only the § 3146

¹ The district court specified that the 45-month sentence for obstruction of an official proceeding would run concurrently with Ceasar’s 192-month sentence for material support. Ceasar’s sentence for failure to appear and her sentences pursuant to § 3147 are to run consecutively to all other terms, for a total of 230 months’ imprisonment.

conviction and her two-month § 3147 sentence for violating § 3146 while on release under Chapter 207. For the following reasons, we dismiss Ceasar's appeal in part and otherwise affirm the district court's judgment.

In 2017, Ceasar pleaded guilty to one count of conspiracy to provide material support to the Islamic State of Iraq and Syria ("ISIS") and, two years later, she pleaded guilty to obstruction of an official proceeding. *See United States v. Ceasar*, 10 F.4th 66, 68 (2d Cir. 2021). Initially sentenced to 48 months' imprisonment for both offenses, Ceasar was discharged from prison in 2020 and placed on supervised release. Ceasar soon violated her supervision conditions, however, and she thereafter pleaded guilty to two violations. While Ceasar was awaiting sentence on these violations, this Court determined that Ceasar's sentence of 48 months' imprisonment on the underlying convictions "was shockingly low and unsupportable as a matter of law" and we vacated the judgment, remanding for resentencing. *Ceasar*, 10 F.4th at 70. Ceasar then absconded, but was apprehended.

Negotiations with the Government commenced after Ceasar's rearrest, and Ceasar agreed to plead guilty to one count of failing to appear while on release under the Bail Reform Act, in violation of 18 U.S.C. § 3146. During negotiations

Cesar's counsel raised with the Government a potential legal argument that Cesar's conduct did not fall under § 3146 on the theory that she was not released pursuant to the Bail Reform Act. Cesar abandoned this argument, however, after the Government explained both its basis for concluding that Cesar's conduct fell within the Act and its willingness to have Cesar instead plead to an additional obstruction of justice charge, one that carried a higher sentence. Cesar thereafter pleaded guilty to violating § 3146 pursuant to a plea agreement in which she waived, *inter alia*, her "right to raise on appeal or on collateral review any argument that . . . [her] admitted conduct does not fall within the scope of the statute[]." More than two years later, however, Cesar sought to withdraw her plea, pressing the very argument she had earlier abandoned. The district court rejected her plea withdrawal motion.

On appeal, Cesar first argues that the district court abused its discretion in denying the plea withdrawal motion because it should have accepted her argument that her conduct falls outside the scope of § 3146. We conclude that Cesar waived this argument. Cesar's second argument—expressly preserved in her plea agreement—is that the consecutive two-month term of imprisonment she received pursuant to 18 U.S.C. § 3147 violates the Double Jeopardy Clause when

applied to a § 3146 conviction.² We disagree. Every court of appeals to consider the question has held that § 3147 does not violate the Double Jeopardy Clause when applied to a failure to appear under § 3146, and we agree that Congress has unambiguously mandated the additional penalty in § 3147 for § 3146 offenses.

Because Ceasar's arguments are all waived or unmeritorious, we **DISMISS** Ceasar's appeal in part and otherwise **AFFIRM** the judgment of the district court.³

BACKGROUND

I. Factual Background

Beginning in January 2016, Ceasar "conspired to provide material support to the Islamic State of Iraq and Syria ('ISIS'), in violation of 18 U.S.C. § 2339B(a)." *Ceasar*, 10 F.4th at 68 (citation modified). Using social media and Telegram, an encrypted messaging application, she "expressed her support for ISIS, encouraged others to join ISIS abroad, and helped individuals in the United States contact ISIS members overseas," who "then facilitated U.S.-based ISIS supporters' travel to ISIS-controlled territory." *Id.* Ceasar used her contacts with ISIS facilitators to

² Section 3147 provides, in relevant part, that "[a] person convicted of an offense committed while released under [Chapter 207] shall be sentenced, in addition to the sentence prescribed for the offense, to [] a term of imprisonment of not more than ten years if the offense is a felony A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment." 18 U.S.C. § 3147(1).

³ Accordingly, we also **GRANT** the Government's pending motion to dismiss Ceasar's appeal as to her § 3146 conviction.

help at least four people join ISIS abroad, before deciding herself “to travel to ISIS territory by way of Sweden, where she planned to marry another ISIS supporter.”

Id. In November 2016, Ceasar was arrested at John F. Kennedy International Airport, at the start of her anticipated journey. She thereafter entered into a cooperation agreement with the Government. Pursuant to its terms, Ceasar pleaded guilty to one count of conspiring to provide material support to a designated foreign terrorist organization, in violation of 18 U.S.C. §§ 2339B(a)(1) and (d). In April 2018, in response to her claim that her health was deteriorating in confinement, the district court (Weinstein, J.) ordered her released on bail.

Ceasar then breached her cooperation agreement and repeatedly violated her conditions of presentence release, which “prohibited her from contacting individuals or organizations affiliated with foreign terrorist groups.” *Id.* She took steps to hide from law enforcement her efforts to contact individuals “known to be supporters of ISIS or other extremist groups,” and she lied to the Federal Bureau of Investigation (“FBI”) about her conduct. *Id.* at 69. The district court revoked her release, and she pleaded guilty to obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(1). At the June, 2019 sentencing, the district court nonetheless expressed the view that Ceasar was “well on her way towards

rehabilitation” and varied downward from the Sentencing Guidelines range of 30 to 50 years in prison, imposing a 48-month prison term, to be followed by eight years’ supervised release. *Ceasar*, 10 F.4th at 77. The Government appealed the sentence as substantively unreasonable.

In July 2020, while the Government’s appeal was pending, Ceasar was released from the custody of the Bureau of Prisons and began her eight-year term of supervised release. Although Ceasar was subject to strict release conditions, she began almost immediately to violate them: she downloaded unauthorized mobile applications, withheld account login credentials, and knowingly corresponded with felons. The Probation Department (“Probation”) submitted a report to the district court detailing three separate violations and, on November 20, 2020, Ceasar pleaded not guilty at a virtual arraignment before Judge Matsumoto.⁴ At the conclusion of the hearing, the court addressed Ceasar:

So, Ms. Ceasar, you must continue to report to your Probation officer as directed. Please, given these charges let me caution you that you should not open any new accounts or access the internet using any accounts. If you are planning to do so, you need to disclose that to your officer, do you understand that, ma’am?

⁴ The case was assigned to Judge Matsumoto after Judge Weinstein passed away. The Government did not seek detention at arraignment, but indicated that the violations were concerning because of their similarity to the conduct underlying the offenses to which Ceasar had pleaded guilty, and that it would revisit the question of Ceasar’s release after further investigation.

App'x 84. Ceasar confirmed that she understood.

At another virtual hearing at little over six weeks later, on January 5, 2021, Ceasar pleaded guilty to two of the charged violations pursuant to an agreement with the Government. On consent of both parties, the district court “continue[d] the condition of [her] home confinement with location monitoring up until the date of sentencing.” App'x at 110. In the intervening months, Ceasar repeatedly sought and obtained delays of the final revocation hearing at which she would be sentenced, while the Government repeatedly highlighted her continued noncompliance with the conditions of her release.

Then, before sentencing on the release violations had taken place, a panel of this Court held on August 18, 2021, that the original sentence “was shockingly low and unsupportable as a matter of law” because it “placed more emphasis on Ceasar’s need for rehabilitation than that sentencing factor could bear, and failed adequately to weigh § 3553(a) factors that balance the needs and circumstances of an individual defendant against, among other things, the goals of protecting the public, deterring criminal behavior, and engendering respect for the law.” *Ceasar*, 10 F.4th at 70. *See also* 18 U.S.C. § 3553(a)(2). The panel vacated the judgment and

remanded for resentencing, and the Government moved in the district court that Ceasar be detained. *Ceasar*, 10 F.4th at 70, 87; *see also* App'x at 116-23.

On August 24, Probation submitted a supplemental violation of supervised release report ("VOSR") to Judge Matsumoto, detailing evidence that in the months following Ceasar's November 2020 appearance, she had continued to violate multiple conditions of her supervised release. That same day, the district court entered an order on the docket reminding the parties that they were to appear for a status conference scheduled for the next day.

On August 25, 2021, Ceasar removed her monitoring device and absconded, failing to appear at the scheduled conference. Ceasar later said she intended to flee the United States for Russia, or another country that would not extradite her, motivated at least in part by a desire to eventually travel to Afghanistan and continue her support for ISIS. On August 27, after what the government called "a nationwide fugitive investigation," FBI agents took Ceasar into custody in New Mexico. App'x at 131. In September 2021, Probation filed additional charges of supervised release violations in connection with Ceasar's flight to New Mexico. The parties commenced plea negotiations to resolve both the outstanding

violations and the new criminal conduct committed by Ceasar in her effort to abscond.

In an email exchange with defense counsel in September 2022, the Government proposed resolving the potential new charges against Ceasar by having her waive indictment and plead guilty to 18 U.S.C. § 3146, which carries a ten-year maximum term.⁵ Defense counsel replied:

I . . . need to do some digging into the question of whether [Ceasar] was actually on bail at the time of her flight (or just on supervised release) and somewhat relatedly, whether as a technical matter she was on supervised release once her original sentence was vacated

App'x at 256. Later that month defense counsel stated that counsel was “still digging in but it doesn't look like she was ever released on bail so as to trigger the bail jumping statute. Let me know if you have a different view on that issue.” *Id.* at 255. The Government replied as follows:

Fed. R. Crim. P. 32.1(a)(6) provides that at the defendant's initial appearance for violation of supervised release “The magistrate judge may release or detain the person under 18 U.S.C. § 3143(a)(1) pending further proceedings.” Ceasar made her initial appearance before

⁵ Section 3146, part of the Bail Reform Act, provides in relevant part as follows:

- (a) Offense. – Whoever, having been released under this chapter knowingly –
 - (1) fails to appear before a court as required by the conditions of release; or
 - (2) fails to surrender for service of sentence pursuant to a court order;shall be punished as provided in subsection (b) of this section.

Judge Matsumoto on the VOSR on 11/20/2020 and was released. Pursuant to Rule 32.1(a)(6) that release was “under 18 U.S.C. § 3143(a)(1)” which, as you know, is within Chapter 207, making Ceasar a person “released under this chapter” for purposes of 18 U.S.C. § 3146.

Id. In the same email, the Government advised defense counsel that “if you prefer,” the Government would also accept a plea to an obstruction of justice offense that carried a higher maximum sentence.

Thereafter, on October 14, 2022, the Government filed a one-count information charging Ceasar with failure to appear in violation of 18 U.S.C. §§ 3146(a)(1), (b)(1)(A)(i), (b)(2), 3147, and 3551. That same day, pursuant to a superseding plea agreement, Ceasar waived indictment and pleaded guilty to the failure-to-appear count.⁶ The plea agreement stated that the failure-to-appear count carried a maximum sentence of 10 years and noted that, “[a]dditionally, pursuant to 18 U.S.C. § 3147(1), because the defendant committed the Obstruction Offense and the Failure to Appear Offense while on pretrial release, the government believes that the defendant will face additional terms of imprisonment of up to ten years for each offense.” App’x at 147–48.

⁶ Pursuant to the plea agreement, Ceasar also allocuted to committing two additional violations of supervised release lodged by Probation in August and September 2021, for a total of four violations, including those to which she pleaded guilty in January 2021.

In the plea agreement, Ceasar “reserve[d] the right to argue at sentencing and on appeal that 18 U.S.C. § 3147(1) does not apply to her commission of the Failure to Appear Offense.” *Id.* at 151. But Ceasar “agree[d] not to file an appeal or otherwise challenge, by petition pursuant to 28 U.S.C. § 2255 or any other provision, the conviction or sentence imposed for the Material Support Offense, Obstruction Offense or Failure to Appear Offense in the event that the Court imposes a total term of imprisonment of 386 months or below for the Material Support Offense, Obstruction Offense, Failure to Appear Offense and 18 U.S.C. § 3147(1).” *Id.* And Ceasar “further waive[d] the right to raise on appeal or on collateral review any argument that . . . the admitted conduct does not fall within the scope of the statutes.” *Id.* at 152. In exchange, the Government agreed, *inter alia*, not to bring additional charges for Ceasar’s failure to appear and for her obstructive conduct during her August 2021 flight from New York.⁷

During the plea hearing on October 14, 2022, the district court confirmed that Ceasar understood the charges and the rights she was giving up by pleading guilty, that her “mind [was] clear,” that she pleaded guilty “voluntarily and of [her] own free will,” and that her counsel had no doubt “as to whether or not Ms.

⁷ In the earlier email exchange with Ceasar’s defense counsel, the Government had advised that these other potential charges included not only obstruction of justice, but conspiracy.

Cesar [was] competent to plead at [the] time” of the proceeding. App’x at 159–60, 181. The court confirmed that Cesar had read the plea agreement, that she had discussed it with her counsel, and that she understood the agreement and, in particular, the appeal waiver—that she had “given up [her] right to bring an appeal for a sentence if it is 386 months or less.” *Id.* at 167, 177. Cesar also confirmed that she understood she could not withdraw her guilty plea were she to “receive a sentence that is not what [she] would hope for or what [she] would expect.” *Id.* at 180.

The district court specifically inquired of Cesar’s counsel whether counsel knew “of any reason why your client should not plead guilty to the information,” or “of any viable legal defenses that are causing you to counsel Ms. Cesar not to plead guilty,” to which counsel responded, “No.” *Id.* at 181. Counsel was also asked, “[A]re you satisfied that your client understands her waiver of appellate rights?”, and responded, “Yes.” *Id.* at 178.

After making inquiry of Cesar to ensure that her plea was entered “voluntarily and of [her] own free will,” the district court asked Cesar to describe what she did. She stated:

THE DEFENDANT: While my violations of supervised release were pending, I was released on supervision with . . . electronic

monitoring. I knew I had a court appearance scheduled for August 25th, 2021 in the Eastern District of New York. I removed my GPS monitoring device without permission from Probation or the Judge. I knowingly failed to appear in court as required.

THE COURT: All right. So you knew that because of the prior violations of supervised release, you had been permitted to remain on release with certain conditions; is that correct?

THE DEFENDANT: Yes.

THE COURT: And you knew one of those conditions involved returning to court when ordered, correct?

THE DEFENDANT: Yes.

THE COURT: And you also knew that you were wearing a GPS device that would assist the Probation Department with monitoring your whereabouts, correct?

THE DEFENDANT: Yes.

THE COURT: And you knew that on August 25th, or approximately that date, you had a court date here in this courthouse; is that correct?

THE DEFENDANT: Yes.

THE COURT: Yet you decided to remove your bracelet, your anklet, and knowingly did not appear in court on the day as ordered; is that correct?

THE DEFENDANT: Yes.

Id. at 182–83. The Government confirmed Ceasar did not need to add anything to her allocution, saying that it “believe[s] that satisfies the elements of the offense.”

Id. at 183–84. Defense counsel said there was nothing needed “to add to clarify.”

Id. at 184. The district court then accepted Ceasar’s plea. Ceasar awaited

sentencing on the failure-to-appear charge and the four violations of supervised release, as well as resentencing on the material support and obstruction charges.

II. Procedural History

A sentencing proceeding was scheduled for December 12, 2024. On December 9, Probation requested to withdraw all the violations of supervised release, on the ground that the August 2021 panel decision vacating the judgment had “essentially nullif[ied] the custodial and supervised release sentence,” rendering “the violation of supervised release . . . void.”⁸ *Id.* at 189. The district court directed the parties to address Probation’s filing. In a letter to the district court on December 12, Ceasar for the first time informed the district court of her view that “there is real reason to question whether her conduct in traveling to New Mexico on August 25, 2021, rather than appearing by video for a status conference constitutes a ‘failure to appear’ within the meaning of 18 U.S.C. § 3146.” *Id.* at 192. Ceasar requested an adjournment of the sentencing.

Ceasar thereafter moved to withdraw her guilty plea, arguing that there was a fair and just reason for withdrawal pursuant to FED. R. CRIM. P. 11(d)(2)(B)

⁸ Ceasar contends that this motion was “based on the Fifth Circuit’s recent decision in *United States v. Lipscomb*, 66 F.4th 604, 612 (5th Cir. 2023),” Ceasar Br. at 15–16, but Probation did not cite the case in its motion.

because, among other things, the plea “lacked a factual basis for three reasons: first, because she was never released under Chapter 207 (as required for conviction); second, because the Court did not set ‘conditions of release’ requiring her to appear; and third, because her conviction would impermissibly give effect to a vacated sentence.” *Id.* at 236. The Government opposed the motion and also provided the district court with its September 2022 email exchange with defense counsel.

On April 1, 2025, the district court denied Ceasar’s motion to withdraw her guilty plea.⁹ The district court observed that the factors affecting whether a defendant has a “fair and just” reason to withdraw a plea include: “(1) the amount of time between the guilty plea and motion to withdraw; (2) whether the defendant asserted legal innocence in the motion to withdraw; and (3) whether withdrawal would prejudice the Government.” App’x at 312 The district court determined that the timing and prejudice factors weighed against Ceasar because

⁹ As to the violations, the district court determined that it would not sentence Ceasar on the violations “because they arise from a supervised release term included in a vacated judgment.” App’x 297. The district court denied a motion by Ceasar to withdraw the VOSR reports, however, and to preclude consideration of her post-release conduct, noting that it “can and must consider Ms. Ceasar’s conduct during her supervised release term in determining her sentences,” and that Ceasar’s conduct in contacting an apparent ISIS supporter to obtain money, downloading and using applications to contact known ISIS members and supporters, and then deleting many of her communications to prevent detection, all while on supervised release, raised “concerns about her deterrence, respect for the law, and rehabilitation.” App’x at 301, 305–06.

of the two-plus years between her guilty plea and her motion and “because the passage of time risks that witnesses’ memories may fade and evidence may be lost or destroyed.” *Id.* at 312–13, 315.

As for the legal innocence factor, the district court interpreted Ceasar’s supposed factual basis argument “as an argument asserting legal innocence.” *Id.* at 313. It then rejected each of Ceasar’s three arguments on the merits. The district court determined that Ceasar *was* on release under the Bail Reform Act at the time of her flight to New Mexico; that the district court had issued multiple orders requiring her appearance on August 25, 2021, and Ceasar’s “own sworn statements following her failure to appear . . . establish that she knew she had to appear in court on August 25, 2021, and chose not to do so”; and that vacatur of the judgment did not “require[] that the Court ignore Ms. Ceasar’s conduct as if it simply did not occur.” App’x at 318, 330–31, 333.

The following week, on April 9, 2025, the district court sentenced Ceasar to 230 months in prison, which included 36 months (running consecutively) for failure to appear under § 3146, two months of which were under the § 3147 enhancement.

Cesar timely appealed. The Government moved to dismiss the appeal as barred by the appeal waiver, which Cesar opposed. The Government then moved to withdraw its motion as to Cesar's § 3147 challenge and to consolidate its reply to Cesar in its merits brief. An applications judge of this Court granted the motion to withdraw and referred the remaining portion of the motion to dismiss to this merits panel.

DISCUSSION

On appeal, Cesar argues that the district court abused its discretion in failing to grant her plea withdrawal motion because her conduct does not fall within the scope of § 3146's failure-to-appear provision. She also argues that the mandatory consecutive sentence imposed by § 3147 cannot apply to her § 3146 conviction without violating the Double Jeopardy Clause.

We reject both arguments. Cesar waived her current challenge to the § 3146 conviction by agreeing in her plea agreement not to raise it. As to § 3147, Congress unambiguously authorized multiple punishments for defendants convicted of failing to appear in violation of § 3146, so imposing both the § 3147 consecutive sentence and the § 3146 sentence does not violate the Double Jeopardy Clause.

We review the denial of a motion to withdraw a guilty plea for abuse of discretion. *United States v. Overton*, 24 F.4th 870, 874 (2d Cir. 2022); see FED. R. CRIM. P. 11(d)(2). But we do not review a defendant’s arguments at all when they have been waived. “A defendant’s knowing and voluntary waiver of the right to appeal or collaterally attack his conviction and/or sentence is enforceable.” *Sanford v. United States*, 841 F.3d 578, 580 (2d Cir. 2016) (citation omitted). We decline to enforce appeal waivers “only in certain exceptional circumstances that ‘occupy a very circumscribed area of our jurisprudence,’” because if waivers are not generally enforced, “‘the covenant . . . becomes meaningless and would cease to have value as a bargaining chip in the hands of defendants.’” *United States v. Matos*, No. 22-1561, 2026 WL 2339567 at *5 (2d Cir. Aug. 13, 2026) (first quoting *United States v. Borden*, 16 F.4th 351, 354–55 (2d Cir. 2021); and then quoting *United States v. Yemitan*, 70 F.3d 746, 748 (2d Cir. 1995)); accord *United States v. Hunter*, 146 S. Ct. 1702, 1713 (2026) (permitting “standard-fare errors” to “cancel an appeal waiver” could cause “the utility of waivers in plea negotiations” to “plummet,” resulting in “fewer concessions to a defendant”). We have thus upheld appellate waivers “even in circumstances where the sentence was conceivably imposed in an illegal fashion or in violation of the [Sentencing] Guidelines, but yet was still

within the range contemplated in the plea agreement.” *United States v. Gomez-Perez*, 215 F.3d 315, 319 (2d Cir. 2000).

We conclude that the appellate waiver in Ceasar’s plea agreement bars this appeal of her § 3146 conviction. In addition to agreeing “not to file an appeal or otherwise challenge” her failure-to-appear conviction in the event the district court imposed a total term of imprisonment of 386 months or less, Ceasar expressly “waive[d] the right to raise on appeal or on collateral review any argument that . . . the admitted conduct does not fall within the scope of the statutes” pursuant to which she was charged. App’x at 151–52. But this is precisely the argument she now raises, on appeal, as to why the district court abused its discretion in denying her plea withdrawal motion.¹⁰ *See* Ceasar Br. at 28 (“Most importantly, the court incorrectly held that Ceasar’s conduct satisfied the elements of § 3146 . . .”). Because Ceasar knowingly and voluntarily agreed not to bring this argument on appeal, she is held to that agreement. *See Sanford*,

¹⁰ Ceasar argues that her “plea agreement did not unambiguously waive her right to move to withdraw her plea before sentencing on the ground that her admitted conduct did not legally violate the failure to appear statute.” Ceasar Br. at 55. But even assuming *arguendo* that her plea agreement does not prohibit a motion to withdraw a plea, its terms do cover “any *argument* [on appeal] that . . . the admitted conduct does not fall within the scope of the statutes.” App’x at 152 (emphasis added). The agreement on its face thus precludes her from relying on this argument as a basis for asserting on appeal that the district court abused its discretion in denying the plea withdrawal motion.

841 F.3d at 580. *See also In re Sealed Case*, 40 F.4th 605, 607 (D.C. Cir. 2022) (dismissing appeal where appeal waiver contained express provision “waiv[ing] any argument that . . . [appellant’s] admitted conduct [did] not fall within the scope of the statute,” precluding “his ability to present the exact claim he now seeks to raise on appeal”).

Cesar raises two arguments to avoid this result. She first suggests she fits within an exception to the presumption of the enforceability of appeal waivers on the theory that the district court supposedly failed to establish a factual basis for the plea pursuant to Rule 11(b)(3) of the Federal Rules of Criminal Procedure. Alternatively, she argues that the appellate waiver is unenforceable “as a miscarriage of justice in this case,” because she allegedly “pled guilty to an act that did not satisfy the elements of the offense.” Cesar Br. at 57. We disagree on both points.

As to her first argument, Cesar relies principally on *United States v. Adams*, 448 F.3d 492 (2d Cir. 2006), for the proposition that “a challenge to a plea’s factual basis survives an appellate waiver.” Cesar Br. at 57. But Cesar misreads *Adams*. In *Adams*, this Court entertained Adams’s appeal and vacated his conviction despite Adams having signed an appeal waiver, reasoning that review of “all of

the evidence that existed on the record at the time of the plea,” including the Rule 11 colloquy, revealed no evidence that “it was at least reasonably foreseeable to Adams,” who had allocuted to participating in a conspiracy to distribute marijuana, “that he was involved in a conspiracy to distribute at least five kilograms of cocaine.”¹¹ 448 F.3d at 501–02. We concluded that the lack of factual basis in that case was not a technical defect, but “a substantial defect” of a type “so fundamental as to cast serious doubt on the voluntariness of the plea.” *Id.* at 502 (quoting *Godwin v. United States*, 687 F.2d 585, 591 (2d Cir. 1982)).

To be sure, “[i]f we are not assured that a defendant’s plea was voluntary and knowing, we will not enforce any waivers provided in the related plea agreement.” *United States v. Lloyd*, 901 F.3d 111, 118 (2d Cir. 2018); *see also Sanford*, 841 F.3d at 580 (recognizing circumstance where “waiver was not made knowingly, voluntarily, and competently” as an exception to the “presumption of the enforceability” of appeal waiver) (quoting *United States v. Gomez-Perez*, 215 F.3d 315, 319 (2d Cir. 2000)).¹² But *Adams* is not applicable here. In her allocution,

¹¹ As the *Adams* panel noted, the marijuana conspiracy to which Adams allocuted carried “no mandatory minimum and a maximum of no more than five years imprisonment,” while the cocaine conspiracy carried “a mandatory minimum sentence of no less than ten years and a maximum of life imprisonment.” *Id.* at 499.

¹² We “have recognized only five circumstances where we will not enforce” an appeal waiver:

Cesar affirmed that, while “released on supervision,” she “knowingly failed to appear in court as required.” App’x at 182. She “knew [she] had a court appearance scheduled for August 25th, 2021 in the Eastern District of New York” and yet “knowingly did not appear in court . . . as ordered.” App’x at 182–83. In other words, and despite Cesar’s argument to the contrary, there was *ample* factual basis for her plea. The record confounds at the start any argument that her plea was not knowing, voluntary, and competent.

Cesar challenges the factual basis for her plea as a backdoor way in which to urge that her conduct does not fall within the Bail Reform Act on the theory that she did not knowingly fail to appear “having been released” under its provisions. 18 U.S.C. § 3146(a). But, to satisfy Rule 11, the district court need not rely exclusively on a defendant’s allocution to conclude that her admitted conduct falls within the scope of the statute to which she is pleading guilty. *See United States v. Smith*, 160 F.3d 117, 121 (2d Cir. 1998) (noting that a plea’s factual basis “need not

“(1) where the waiver was not made knowingly, voluntarily, and competently; (2) where the sentence was based on constitutionally impermissible factors, such as ethnic, racial[,] or other prohibited biases; (3) where the government breached the agreement containing the waiver, . . . (4) where the district court failed to enunciate any rationale for the defendant’s sentence,” and (5) where the waiver “was unsupported by consideration.”

Cook v. United States, 84 F.4th 118, 122 (2d Cir. 2023) (citation modified). In addition, as discussed *infra*, we have recently recognized, following the Supreme Court’s decision in *Hunter*, that when a miscarriage of justice would result, “an appeal waiver is unenforceable.” *Matos*, 2026 WL 2339567 at *5 (quoting *Hunter*, 146 S. Ct. at 1713).

be drawn directly from the defendant,” and that the judge “may look,” *inter alia*, “to answers provided by counsel for the defense and government”). And Ceasar’s counsel was specifically asked by the district court whether counsel knew “of any reason why your client should not plead guilty to the information” or of “any viable legal defenses,” to which counsel responded, “No.” App’x at 180-81. The district court was entitled to rely on those answers, in determining that there was a factual basis for the plea.

More to the point, the argument that Ceasar actually makes—that her admitted conduct does not fall within the Act’s scope—is the argument expressly prohibited by the provision in the plea agreement in which Ceasar “waive[d] the right to raise on appeal . . . any argument that . . . [her] admitted conduct does not fall within the scope of the statutes” to which she pleaded guilty. App’x at 152. This case is thus analogous to *In re Sealed Case*, in the D.C. Circuit, in which a defendant, having stipulated to the very same waiver, nonetheless sought to argue on appeal that his conviction could not be “sustained under the relevant statutes because shipping chemicals intending or knowing that they will stop in the United States on their way to South America does not constitute importation into the

United States (or knowledge of such importation).” 40 F.4th at 607. As Chief Judge Srinivasan concluded in that case:

In his “Appeal Waiver,” appellant “waive[d] any argument that . . . his admitted conduct does not fall within the scope of the statute” to “which he is pleading guilty.” Plea Agreement ¶ 7. J.A. 257. Appellant thereby expressly waived his ability to present the exact claim he now seeks to raise on appeal.

Appellant contends that, while his appeal waiver precludes him from disputing the nature of his admitted conduct, it does not bar him from making a purely interpretive argument about the scope of the applicable statutes. That reading contradicts the plain terms of appellant’s appeal waiver. The waiver takes “his admitted conduct” as a given and bars any claim alleging that the conduct falls outside the relevant statutes. That is precisely what appellant seeks to do.

In re Sealed Case, 40 F.4th at 607–08. So, too, with respect to Ceasar’s argument on appeal.

Ceasar next argues that even assuming *Adams* is inapposite, the appellate waiver here is unenforceable “as a miscarriage of justice . . . because Ceasar pled guilty to an act that did not satisfy the elements of the offense.” Ceasar Br. at 57. We disagree. The record is clear that in correspondence before Ceasar signed the plea agreement, her counsel expressed the view that “it doesn’t look like she was ever released on bail so as to trigger the bail jumping statute.” App’x at 255. The Government then explained why it concluded the statute covered Ceasar’s conduct, but offered to switch out the failure-to-appear charge for an obstruction

charge “if you prefer.” *Id.*; see also *id.* at 256 (offering to highlight in the plea agreement “the other charges [Ceasar] is avoiding by pleading guilty to [failure to appear],” including “obstruction and conspiracy”). Ceasar thereafter signed the plea agreement, gaining the benefit of avoiding an obstruction charge that would have carried a higher sentence, while expressly waiving the chance to press a potential argument that the failure-to-appear statute did not apply. She asserts now that “there is no evidence that [she] was aware of [the] *email exchange*” between the Government and defense counsel. Reply Br. at 11 (emphasis added). Notably, however, Ceasar has never asserted that she lacked knowledge of counsel’s *negotiations* on her behalf.

The Supreme Court said in *Hunter* that the miscarriage of justice limit on the enforceability of appeal waivers “sets a high bar,” necessitating that a waiver be set aside only in the face of “egregious error that would bring the judicial system into disrepute.” 146 S. Ct. at 1713. “The error must be obvious – not one a judge could reasonably make.” *Id.* This “hard-to-meet standard” does not extend to errors that are “uncertain,” but operates as “a safety valve for extreme cases – a way out of a waiver when the justice system’s basic integrity is at stake.” *Id.* at 1714.

Simply put, that is not this case. Ceasar refrained from litigating a potential legal defense and in exchange for giving up her right to do so, she obtained a favorable plea arrangement. She complains on appeal that “at the time of the plea agreement and plea, the legal support” for her claim, which she identifies as *United States v. Lipscomb*, 66 F.4th at 604, a Fifth Circuit case, “had not yet come down.” Reply Br. at 11. But a Fifth Circuit case is not binding in this Circuit. And even if it were, intervening precedent that may strengthen an argument does not transform enforcement of a knowing, voluntary, and competent waiver into a miscarriage of justice—particularly given that Ceasar *invoked* the very same argument in plea negotiations she now suggests was unavailable prior to this decision.

In sum, Ceasar waived the argument she now makes on appeal. And she offers no sound reason that her appeal waiver should not be enforced. The argument that Ceasar makes on appeal for why the district court should have granted the plea withdrawal motion is that “her conduct did not violate the elements of 18 U.S.C. § 3146.” Ceasar Br. at 2. We do not reach the merits of this argument but conclude, instead, that it is foreclosed by the appeal waiver and by Ceasar’s express agreement to “waive the right to raise on appeal . . . any argument

that . . . [her] admitted conduct does not fall within the scope of the statute[].” App’x at 152.

II

Cesar did preserve her second argument, that “the mandatory consecutive sentence pursuant to § 3147 does not apply to failure to appear,” requiring both vacatur of her two-month consecutive sentence for violating this provision, and resentencing.¹³ Cesar Br. at 58. We review sentences for abuse of discretion, *see Gall v. United States*, 552 U.S. 38, 51 (2007), a standard that “incorporates de novo review of questions of law,” such as those presented here. *United States v. Bonilla*, 618 F.3d 102, 108 (2d Cir. 2010) (quoting *United States v. Legros*, 529 F.3d 470, 474 (2d Cir. 2008)).

The failure-to-appear offense in § 3146 provides that its penalty “shall be consecutive to the sentence of imprisonment for any other offense.” 18 U.S.C. §§ 3146(b)(2). Section 3147 provides that the penalty for any offense committed while on Chapter 207 release (including violation of § 3146) carries an additional potential sentence, which “shall be consecutive to any other sentence of

¹³ Cesar further contends that the district court erred in imposing a three-level enhancement under the U.S. Sentencing Guidelines that is applicable when a statutory sentencing enhancement under 18 U.S.C. § 3147 applies. Cesar Br. at 58. Cesar’s Guidelines argument rises or falls with her statutory argument. Given our rejection of her statutory argument here, we need not further address this purported Guidelines error.

imprisonment.” 18 U.S.C. § 3147. Ceasar argues that interpreting § 3147 to apply in the context of a violation of § 3146 provides “separate consecutive punishments for the same offense,” implicating the Double Jeopardy Clause; that for this reason, “a clear statement of Congressional intent to impose double punishment” is required; and that the statute is “at least ambiguous on this point,” so that “the rule of lenity should preclude application of § 3147 to an offense under § 3146.” Ceasar Br. at 59 (citing *Rutledge v. United States*, 517 U.S. 292, 297 (1996)). We disagree.

Our inquiry begins—and indeed ends—with § 3147’s plain and unambiguous language. As the First Circuit said in *United States v. Chuoun Van Duong*, “Section 3147 provides, without exception, that a defendant ‘convicted of an offense committed while released under [Chapter 207] shall be sentenced, in addition to the sentence prescribed for that offense to . . . a term of imprisonment for not more than ten years if the crime is a felony.’”¹⁴ 665 F.3d 364, 366–67 (1st Cir. 2012) (emphases omitted). Failure to appear under § 3146 constitutes “an offense” and, by definition, it is “committed while released” under Chapter 207. Consistent with at least six courts of appeals to have considered the question, we

¹⁴ The provision then goes on to make clear that “[a] term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.” 18 U.S.C. § 3147.

discern no ambiguity in this provision. *See id*; *see also United States v. Benson*, 134 F.3d 787, 788 (6th Cir. 1998); *United States v. Clemendor*, 237 F. App'x 473, 478 (11th Cir. 2007) (per curiam); *United States v. Fitzgerald*, 435 F.3d 484, 487 (4th Cir. 2006); *United States v. Dison*, 573 F.3d 204, 208 (5th Cir. 2009); *United States v. Rosas*, 615 F.3d 1058, 1064 (9th Cir. 2010).

Cesar relies primarily on *United States v. Tavares*, 166 F.Supp.2d 903, 907 (S.D.N.Y. 2001), to argue that despite § 3147's plain language, the rule of lenity "precludes application of § 3147 to an offense under § 3146." Cesar Br. at 59. But this is incorrect. The rule of lenity, as we have said before, "has no application where the meaning of the provision at issue is clear." *United States v. Gitten*, 231 F.3d 77, 81 (2d Cir. 2000). *See also Pulsifer v. United States*, 601 U.S. 124, 152–53 (2024) (noting that where a provision is not "genuinely ambiguous," the rule of lenity has "no role . . . to play"); *Shular v. United States*, 589 U.S. 154, 165 (2020) (rule of lenity has no application where "we are left with no ambiguity for the rule . . . to resolve"). In fact, it applies "only if, 'after considering text, structure, history and purpose, there remains a grievous ambiguity or uncertainty in the statute such that [a court] must simply guess as to what Congress intended.'" *Abramski v.*

United States, 573 U.S. 169, 188 n.10 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). That is simply not this case.

To the extent that Ceasar claims that subjecting her to punishment pursuant to § 3147 would violate the Double Jeopardy Clause, moreover, this argument, too, is unavailing, and has been rejected by at least four courts of appeals. *See, e.g., United States v. Fitzgerald*, 435 F.3d at 487; *United States v. Dison*, 573 F.3d at 208; *United States v. Rojas*, 615 F.3d at 1064; *United States v. Clemendor*, 237 F. App'x at 478–79. Section 3147, as the Fifth Circuit held in *Dison*, is a “sentence enhancement,” 573 F.3d at 208 & n.21, and with respect to cumulative sentences imposed in a single proceeding, the Supreme Court has affirmed that “the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended.” *Missouri v. Hunter*, 459 U.S. 359, 366 (1983); *see Dison*, 573 F.3d at 208 (applying this precept to § 3147); *accord United States v. Fitzgerald*, 435 F.3d at 487 (noting the Supreme Court “has ‘[h]istorically . . . found double jeopardy protections inapplicable to sentencing proceedings’ and has refused to construe sentence enhancements as additional punishments” (alterations in original) (quoting *Monge v. California*, 524 U.S. 721, 728 (1998))).

And even assuming *arguendo* that § 3147 should not be construed as a sentencing enhancement, and that §§ 3146 and 3147 involve the same offense under *Blockburger v. United States*, 284 U.S. 299 (1932), Ceasar’s argument would still fail. Here, there is “a clear manifestation of Congress’s intent to authorize more than one punishment.” *Barrett v. United States*, 607 U.S. 128, 139 (2026). Congress mandated penalties under § 3147 “*in addition to* the sentence prescribed.” 18 U.S.C. § 3147 (emphasis added). And “such ‘in addition to’ language,” the Supreme Court has held, is “‘crystal clear’ evidence of a legislature’s intent to overcome *Blockburger*.” *Barrett*, 607 U.S. at 140 (quoting *Hunter*, 459 U.S. at 368). Like the Fifth Circuit, “we too are persuaded by Congress’s unambiguous language to conclude that a defendant who commits the offense of failure to appear is subject to the § 3147 enhancement for committing that offense while on release.” *Dison*, 573 F.3d at 207.

CONCLUSION

For the foregoing reasons, we **DISMISS** the appeal in part and otherwise **AFFIRM** the district court’s judgment.