

No. _____
IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES BARRETT,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, the U.S. Court of Appeals for the Ninth Circuit erred in allowing the government to admit evidence of prior uncharged allegations of sexual assault from three (3) different witnesses pursuant to Federal Rule of Evidence 413.

PARTIES TO THE PROCEEDING

All parties are listed in the caption of the case.

RELATED PROCEEDINGS

U.S. v. Charles Barrett, (9th Cir.) No. 24-3546

U.S. v. Charles Barrett, USDC No. 1:22-cr-00213-
JAM-BAM-1

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OPINIONS BELOW

The Memorandum filed on December 8, 2025 affirming the conviction by the United States Court of Appeals for the Ninth Circuit of the Petitioner in the U.S. District Court. Appendix A at 1a. Judgment in a Criminal Case, United States District Court, Eastern District of California, June 4, 2024, Appendix B at 5a. The United States Court of Appeals for the Ninth Circuit, Order denying Rehearing, on January 7, 2026. Appendix C at 24a.

Petitioner, CHARLES BARRETT, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

JURISDICTION

Certiorari is sought to review the Order entered on December 8, 2025 by the United States Court of Appeals for the Ninth Circuit which affirms the conviction of the Petitioner in the U.S. District Court.

A Petition for Rehearing was denied on January 7, 2026.

Under 28 U.S.C. 1257, this Court has certiorari jurisdiction to review the affirming of the Petitioner's criminal conviction by a United States Court of Appeals.

This petition contends that the District Court and Court of Appeals should have excluded evidence of prior uncharged allegations of sexual assault from three (3) different witnesses pursuant to Federal Rule of Evidence 413.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1257; 28 U.S.C. § 1254(10); 18 U.S.C. § 2241(a)(1); 28 U.S.C. § 2241(b).

STATEMENT OF THE CASE

Petitioner CHARLES BARRETT is serving a life sentence in federal custody following his conviction on two counts of aggravated sexual abuse in violation of 18 U.S.C. § 2241(a)(1) and one count of abusive sexual contact in violation of 18 U.S.C. §2241(b).

The trial began on February 5, 2024 and was completed on February 13, 2024. On February 13, 2024 the jury returned verdicts of guilty against the Petitioner with respect to the three (3) charged counts.

On June 4, 2024 the district court sentenced the Petitioner to life imprisonment on each of counts 1 & 3 and a term of 24 months on count 2, all to be served concurrently for a total term of imprisonment for life. The Petitioner filed a timely notice of appeal on June 6, 2024.

The victim, K.G., testified that she met the Petitioner online after which they started communicating through a series of texts beginning in August/September, 2015. In or about August 13, 2016, K.G. was at Yosemite National Park for a weekend of hiking. She messaged the Petitioner to request hiking recommendations. The Petitioner, who was in the area, met with K.G. and with a group of friends after she had completed her hike. That evening, at the gathering, the Petitioner invited her

to watch a meteor shower with him and his friends later that night. She agreed.

K.G. testified that she met up with the Petitioner but not also with his friends. At a spot in the woods according to K.G. the Petitioner forcibly penetrated her, both vaginally and anally, without her consent.

After the first sexual assault, according to K.G.'s testimony, she and the Petitioner went back to an employee cabin. They stayed together, in the same bed, but according to K.G., she could not move and was terrified of him.

The next day, the Petitioner went to work and K.G. went on a hike. Later, she and the Petitioner hiked and swam in a river. At that location, K.G. testified, the Petitioner forcibly digitally penetrated K.G. without her consent. This was the second assault.

Later, the third assault occurred at the showers located in the housing unit where they were staying. This assault happened when the Petitioner penetrated her vaginally (she believes) and anally without her consent.

On cross-examination, K.G. testified that she was drinking wine along with the Petitioner when they went to see the meteor shower. She stated that she "was awake and that she wasn't completely

sober.” The Petitioner, who was also drinking wine, “stumbled” as he walked, and “speaking kind of gibberish under his breath.”

K.G. further testified on cross-examination that the next day, after the Petitioner went to work, K.G. went on a hike and spoke to other hikers on the trail. K.G. did not tell any of the hikers about the assault and did not ask for help. She called him after he finished work and they went on a hike ending up at the river and then the showers at the employee housing. (The second and third assaults).

By the time they ended up at the showers, the Petitioner appeared intoxicated...he was “passing out” “mumbling” and “slurring words.” The next day before leaving to go home, she had breakfast at a restaurant with the Petitioner. After the weekend with the Petitioner, K.G. texted friends within several days describing her stay at Yosemite as “beautiful” and peaceful.”

Later, after several months, she texted another friend telling him that, referring to the Petitioner, “he’s probably pretty angry at me right now just based on how I left things.”

K.G., before she made an official police report, contacted S.F. (whom she had met through a survey). S.F., who was an uncharged victim who testified in the case, was contacted by K.G. so that the latter could prepare the report.

When K.G. spoke to law enforcement, she stated that in one of the text exchanges, the Petitioner, stated “I didn’t rape you. You wanted it and you liked it.”

Three different witnesses also testified for the government regarding prior uncharged allegations of assault by the Petitioner.

S.F. testified that in 2010 she visited her friend in Bishop, California for a climbing trip. After climbing and eating dinner, she returned to her friend’s home and met the Petitioner, who was staying in a spare bedroom. They talked briefly and S.F. wanted to sleep in the den. Later, she woke up and Petitioner was touching her breasts and genitals. The Petitioner grabbed her and pushed his erect penis against her body. At some point, the Petitioner stopped and left the room.

E.B., another government witness, was called to testify as to a prior uncharged allegation of sexual assault. E.B., met the Petitioner at a climbing gym in 2016 and thereafter began a romantic relationship with the Petitioner involving consensual sex. The Petitioner, according to E.B., became emotionally unstable during the relationship and E.B. ended the relationship. At some point, the Petitioner threatened suicide and also made threats against E.B. The Petitioner, according to E.B., at one of the times he showed up at E.B.’s house, forced her to have

sex. He was drunk and had passed out before the assault.

J.V., the third government witness who testified regarding an uncharged prior sexual assault, stated that she met the Petitioner on a Tinder dating app. After meeting at a climbing gym, the two of them returned to the group home where J.V. was staying. The Petitioner was too intoxicated to drive and J.V. agreed to let the Petitioner stay over as long as there was no sex. They began kissing each other but the Petitioner thereafter forced sex with her by vaginally penetrating her with his penis. Thereafter, they stayed together at her home for about 3 months and they had consensual sex. J.V. testified that she felt sympathetic toward the Petitioner and therefore allowed him to stay at her home.

On cross-examination, J.V. stated that Petitioner, during the time they were together, was in a panic occasionally and was suicidal.

Asher Wolf, a government witness, has been a friend of K.G. for many years. In August, 2016, he received a call from K.G. while she was driving home from Yosemite. She sounded distraught on the call and told him that she had been raped.

Jennifer Markowitz, a forensic nursing consultant, was called by the government as an expert. She had reviewed the evidence in the case as well as being present during the trial testimony of

K.G. She concluded that K.G.'s description of her injuries was consistent with K.G.'s reported history of sexual assault and rape. Dr. Markowitz also was of the opinion that K.G. had symptoms of strangulation.

Mindy Mechanic, a government witness, is a clinical and forensic psychologist and testified that there are accepted explanations for a victim of sexual assault to stay in the physical presence of the person who assaulted the victim. Also, established reasons exist for lack of disclosure of the assault.

Prior to trial, the government moved to admit evidence of Petitioner's sexual assaults of S.F., J.V. and E.B. under Federal Rules of Evidence 413, which allows a court to admit evidence that the defendant committed any other sexual assault for any matter to which it is relevant.

Before admitting any such evidence a court must insure that under Federal Rule of Evidence 403 the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

Here, the District Court allowed the admission of the prior sexual assaults and the Court of Appeals found it was not an abuse of discretion to do so.

The Petitioner seeks certiorari relief from this Court because he contends that his criminal conviction and resulting life sentence is as a result of

the error committed in allowing evidence of the uncharged prior sexual assaults to be admitted at his trial.

REASONS FOR GRANTING THE WRIT

Federal Rule of Evidence 413 permits the government to admit evidence of a sexual assault in order to prove the defendant's propensity to commit another sexual assault. Courts need not make a finding that the government has proven the existence of an uncharged sexual assault to allow evidence of it at trial. See *United States v. Redlightning*, 624 F.3d 1090 (9th Cir. 2010). The trial court must find, after reviewing the evidence of the prior acts, that a jury could reasonably find that the uncharged sexual assault occurred. See *United States v. Norris*, 428 F.3d 907, 914 (9th Cir. 2005); *Huddleston v. United States*, 485 U.S. 681, 690 (1988). This requires the trial court to examine all the evidence and determine if a jury could reasonably find, using the preponderance of evidence standard, that the uncharged sexual assault occurred.

However, the Ninth Circuit has been clear that because this type of evidence is so prejudicial, the trial court must consider whether Federal Rule of Evidence 403 requires the exclusion of prior acts evidence. *United States v. Le May*, 260 F.3d 1018, 1022 (9th Cir. 2001, see also *Doe v. Glanzer* 9th Cir.) 232 F.2d 1258 (uncharged allegations excluded). According to Rule 403, evidence is not to be admitted

if its probative value is substantially outweighed by a danger of unfair prejudice. In *Le May*, the Ninth Circuit stated that Rule 413 is not a “blank check” which allows the government to introduce any evidence it decides is relevant. Rule 403 allows a court to exclude relevant evidence if its probative value is a substantially outweighed by a danger of one or more of the following, in addition to unfair prejudice: confusing the issues, misleading the jury, undue delay, wasting time or needlessly presenting cumulative evidence. A district court has wide discretion under Rule 403 to admit or exclude evidence. *United States v. Hans*, 738 F.2d 88, 91 (3d Cir. 1984). The rule, by its terms, favors admissibility, since relevant evidence may be excluded only if its probative value is substantially outweighed by countervailing factors. *United States v. Hankey*, 203 F.3d 1160, 1172, (9th Cir. 2000).

If a party seeks to exclude an otherwise relevant piece of evidence by claiming that it is prejudicial, the evidence must be unfairly prejudicial. *Hankey*, at 1172.

Here, in the case at bar, the admission of the uncharged allegations of sexual assault by three witnesses was unfairly prejudicial as well as confusing and misleading to the jury. Federal Rule of Evidence 403(b).

The trial court, in weighing prior sexual misconduct evidence for admissibility, according to

the Ninth Circuit, must consider the following factors: (1) the similarity of the other acts to the acts charged; (2) the closeness in time of the prior acts to the acts charged; (3) the frequency of the prior acts; (4) whether there are intervening circumstances; and (5) the necessity of the prior acts testimony. See *Le May*, 260 F.3d at 1027-28.

In the case at bar, the District Court and U.S. Court of Appeals found the prior act allegations of the three witnesses to be similar to the acts charged. However, both E.B. and J.V. had consensual sex with the Petitioner. Regarding J.V., she testified that, after the assault, she felt bad for the Petitioner and allowed him to lie with her for several months, during which time she had consensual sex with the Petitioner.

As to E.B., she and the Petitioner met at a climbing gym after which they began a romantic relationship involving consensual sex. After they broke up, she alleged he assaulted her.

The allegations relating to S.F. involve an attempt to have sex by the Petitioner in a forceful manner. The Petitioner, according to S.F., stopped at some point and left the room they were in before any rape occurred.

In sum, the testimony of S.F., J.V., and E.B., involved alleged sexual assaults which are not similar to the charged conduct as testified to by K.G. To

admit these instances of prior acts was highly prejudicial and the evidence lacked substantial probative value. The District Court and Court of Appeals erred when it found that the uncharged conduct was substantially similar to the conduct at issue in this case. In its analysis of *Le May* factors, it erroneously found physical restraint, conduct which escalated during the encounter, and shared characteristics of the victims as proof and/or evidence of similarity. Simply put, this similarity does not exist based upon the testimony of the three sexual assault witnesses. The Ninth Circuit, in this case determined that the District Court appropriately considered the factors set forth in *Le May* and did not abuse its discretion in admitting the evidence of prior uncharged conduct under Rules 413 & 403.

The charged conduct in *Le May* occurred in 1997 involving the sexual abuse of two children. The prior acts evidence took place in 1989 when the defendant also sexually abused two children and admitted the sexual abuse to the mother of the children. In a subsequent juvenile adjudication, the defendant was found guilty of rape. (In both 1989 and 1997, the defendant was baby-sitting for the children when the acts occurred.)

In *Le May*, the seminal case in this area of the law (i.e., admissibility of prior sex acts in a criminal trial) the Ninth Circuit held it was not an abuse of discretion to admit evidence admitted to by the

defendant which also was the basis of a juvenile rape conviction.

This is far different from the Petitioner's case and *Le May* was simply not followed in the trial and appellate decisions in this case. Here, based on *Le May*, the prior sex acts evidence should have been excluded from the trial.

Petitioner seeks a determination by this Court that the prior sex acts evidence under Rule 413 must have more robust requirements of reliability, such as conduct admitted to by a defendant and/or a prior conviction for such prior sexual assault evidence.

Here, the admission of prior acts evidence in Petitioner's trial was a violation of Petitioner's right to a fair trial and due process pursuant to the 5th and 14th Amendments.

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant the within Petition and reverse his conviction and/or remand the matter to the District Court for further proceedings.

Dated: March 13, 2026

Respectfully submitted,
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