

No. _____

In the Supreme Court of the United States

ALAN HOWELL PARROT,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

In an Assault on an Officer prosecution brought pursuant to 18 U.S.C. § 111, is a mistake of fact jury instruction warranted by virtue of *United States v. Feola* where an accused is aware of the identity of federal law enforcement officers but where federal law enforcement officers fail to identify their purpose, misrepresent their purpose, attempt to enter a domicile without announcing their purpose, and the accused uses force to prevent an entry into the accused's domicile?

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IV. OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit was issued on March 21, 2025, and is reported at 133 F.4th 46.

A Petition for Panel Rehearing was filed by Appellant, and an Order denying that Petition for Hearing was issued by the First Circuit on June 5, 2025, is unreported but available in Court of Appeals Docket # 24-1563.

V. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the First Circuit issued its decision on March 21, 2025. A timely Petition for Panel Rehearing was filed by Mr. Parrot, and it was denied by the First Circuit on June 5, 2025. This timely Petition followed, and this Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

VI. STATEMENT OF CASE

On June 22, 2023, Alan Howell Parrot (“Parrot”) was at his home in Hancock County, Maine, when he was confronted in the early morning hours by three special agents with the Federal Bureau of Investigation (“FBI”). Parrot knew that these three individuals were federal law enforcement officers. He was told by these FBI agents that they were having an “unofficial conversation.” He was

also told by these FBI agents that they were not there to serve him with any “legal paperwork.”

This conversation went on for approximately an hour and a half and covered all sorts of topics—none of which involved an official reason for the FBI agents’ presence, let alone that their true purpose in being there was to execute a search warrant. In fact, the FBI agents materially misrepresented their purpose in engaging Parrot, and moments after telling Parrot specifically that they were not there to serve “legal paperwork,” Parrot attempted to end the conversation and directed them to his lawyer. Despite this, and with Parrot still unaware of any warrant or lawful authority to enter his home, the FBI agents forced their way into his home, applied some degree of physical force on Parrot. Parrot responded to what he perceived to be an unlawful entry by pushing an FBI agent with the flat of his foot. All of this occurred without announcing the existence of a search warrant.

As a result, Parrot was arrested and charged with the felony crime of Assault on an Officer pursuant to 18 U.S.C. § 111.

A one-day jury trial was held on November 28, 2023, at the United States District Court in Bangor, Maine. At the outset of the trial, Parrot requested that the District Court instruct the jury on a mistake of fact instruction that was based on this Court’s decision in *United States v. Feola*, 420 U.S. 671, 686 (1975). The District Court declined to issue this mistake of fact instruction, explaining that it would

be “improper, because, as we discussed this morning and previously, Section 111, as other circuits have recognized, is a general intent crime.”

Following the close of evidence and closing arguments of counsel, the jury was instructed and retired to deliberate. They came back to the District Court, asking if “an FBI agent or agents have the lawful right to enter the home when they have a warrant but have not announced that to defendant.” Still, they were not given the benefit of the mistake of fact instruction Parrot had sought. The jury went back to deliberate and came back deadlocked. However, after an *Allen* charge, the jury found Parrot guilty of Assault on an Officer, and he was later sentenced to two years of probation.

Parrot appealed the District Court’s decision not to instruct the jury on mistake of fact. After briefing and oral argument, the United States Court of Appeals for the First Circuit held that Parrot’s proposed instruction was not “substantively correct” because it did not “refer[] to circumstances where a defendant has made a significant and ‘honest mistake of fact.’” Accordingly, it affirmed the District Court’s ruling.

A Petition for Panel Rehearing was then requested by Parrot, where he (again) conceded that Section 111 is a general intent crime and that the proposed instruction the First Circuit relied upon was not “substantively correct.” However, as articulated in his Petition, the proposed instruction relied upon by the First Circuit was not Parrot’s

proposed mistake of fact instruction, but the proposed instruction on intent as an element of the crime. For this reason, Parrot requested the First Circuit panel to reconsider its decision by applying his proposed mistake of fact instruction, not the other proposed instruction that did not relate to mistake of fact and *Feola*.

The First Circuit summarily denied his Petition for Panel Rehearing on June 5, 2025, and this timely Petition for a Writ of Certiorari followed.

VII. ARGUMENT IN SUPPORT OF GRANTING PETITION FOR WRIT OF CERTIORARI

18 U.S.C. § 111 prohibits individuals from assaulting federal law enforcement officers; Congress's legislative purpose of this criminal statute is to provide maximum protection to federal law enforcement officers. These propositions are undisputed for purposes of this Petition, and they are not the subject of any divergence among the United States Circuit Courts of Appeal.

But that is not what the present case is about. This is a case where Parrot was not permitted to bring to bear his most compelling argument to the jury.

It has long been held that a defendant in a criminal trial is entitled to a jury instruction on any recognized defenses for which there exists evidence sufficient for a reasonable jury to find in his favor,

such as the mistake of fact defense. *Matthews v. United States*, 485 U.S. 58, 63 (1988). A trial court's failure to do so raises serious constitutional concerns about a defendant's right to a fair trial – especially when the basis for declining such an instruction is inconsistent with this Court's jurisprudence.

In this case, Parrot was not allowed to argue that his honest mistake of fact about a federal law enforcement officer's purpose in entering his home and applying physical force against him negated any mens rea with regard to his subsequent conduct. The United States District Court for the District of Maine refused to instruct the jury on this mistake of fact instruction, which was premised on this Court's ruling in *United States v. Feola*, and it critically hampered his ability to defend himself at trial. The District Court's explanation for denying this jury instruction was simply that section 111 is a general intent crime. But, again, that is not what this case – or Parrot's jury instruction – was based on.

This Court's decision in *United States v. Feola* explained that, although Section 111 is a general intent crime:

We are not to be understood as implying that the defendant's state of knowledge is never a relevant consideration under § 111. The statute does require a criminal intent, and there may well be circumstances in which ignorance of the official status of the person assaulted or resisted negates the very existence of

mens rea. For example, where an officer fails to identify himself *or his purpose*, his conduct in certain circumstances might reasonably be interpreted as the unlawful use of force directed either at the defendant or his property.

420 U.S. 671, 686 (1975) (emphasis added). It is worth noting that, similarly, the First Circuit’s decision in this case prudently recognized that “[t]here may be situations in which a person’s lack of knowledge about facts in the world makes a conviction under § 111 improper – even where the assailant is aware that his victim is a federal officer.”

Parrot submits that this Court was careful in its use of the above block-quoted language; it is not merely dicta—as the Government argued in the proceedings below—and it is not unavailable to an accused simply because he is charged with a general intent crime.

Other circuits have allowed defendants to present this mistake of fact defense in similar cases.

In *United States v. Hillsman*, the United States Court of Appeals for the Seventh Circuit, like other courts in subsequent cases, held that “[i]f the defendant made an honest mistake of fact with respect to the agent’s status and the defendant’s use of force would have been justified against a private citizen, then he cannot be held criminally liable under § 111.” *United States v. Hillsman*, 522 F.2d 454, 460 (7th Cir. 1975). To hold otherwise, the

Seventh Circuit noted, would “create a situation where legitimate conduct becomes unlawful solely because of the identity of the individual or agency effect.” *Id.* (quotation marks omitted). The Seventh Circuit referred to this mistake of fact defense as “a *Feola* mistaken-belief defense.” *See id.* at 463.

Further, in *United States v. Evans*, 74 F.4th 597 (4th Cir. 2023), the United States Court of Appeals for the Fourth Circuit considered a case involving a defendant starting a fire on land that, unknown to the defendant, was owned by the government. The defendant asserted consistently that he did not know this and was acting under a good-faith belief that he was acting on family land with authority from the owner. The Fourth Circuit vacated the conviction, holding that although the Government did not need to prove that the defendant knew he was on federal land under 18 U.S.C. § 1855, the Government still needed to prove that the defendant acted willfully, and a defendant was permitted to attempt to demonstrate that an honest mistake of fact negates that intent. *See id.* at 609. In so deciding, the Fourth Circuit relied on *Feola* and referred to Section 111:

A mistake-of-fact defense may negate criminal intent even though the Government need not prove any *mens rea* regarding the federal-ownership element. The Supreme Court reached a similar conclusion in *Feola*. There, the Court held that to obtain a conviction for assault of a federal officer under 18

U.S.C. § 111, the Government did not have to prove the defendant knew the assault victim was federally employed. Nevertheless, *the Court kept open the possibility that a defendant's mistake concerning the victim's identity could be a defense to criminal liability*. For example, “where an officer fails to identify himself *or his purpose*, his conduct in certain circumstances might reasonably be interpreted as the unlawful use of force directed either at the defendant or his property.” In that situation, the defendant “might be justified in” resisting, and the defendant’s “honest mistake of fact” concerning the officer’s identity “would not be consistent with criminal intent.” As here, the lack of a scienter component within the statute’s jurisdictional element did not foreclose a defendant from using a factual mistake regarding the same knowledge as a defense to the statute’s general intent requirement.

Id. at 608 (emphasis added) (internal citations omitted); *see also United States v. Ettinger*, 344 F.3d 1149, 1157 (11th Cir. 2003) (distinguishing between criminal intent that was “knowing and willful” versus actions that were the “result of an honest mistake of fact or justified resistance that would not be consistent with criminal intent.”); *United States v. Quarrell*, 310 F.3d 664, 675-676 (10th Cir. 2002).

This Court, in footnote 19 of *Feola*, cited with approval to earlier cases in the Third and Fifth Circuits that are instructive:

First, in *United States v. Goodwin*, 440 F.2d 1152 (3rd Cir. 1971), the United States Court of Appeals for the Third Circuit held that proof of scienter is not required in order to obtain a conviction under Section 111. *Id.* at 1156. But the Third Circuit similarly explained:

In holding that specific knowledge of the victim's status as a federal officer is not an essential element of the crimes enumerated in Section 111, we do not mean to indicate that a defendant is precluded from showing that his use of force was defensible and justified. Since the statute does not encompass those types of 'public welfare offenses' that have abolished the requirement of mens rea, a mistake of fact that negates the existence of the necessary criminal intent will constitute a defense. Thus, a defendant may cast a reasonable doubt upon the existence of mens rea by showing that, under the circumstances, he reasonably believed the facts to be other than they were and that his actions would have been innocent had his belief been correct. In order to sustain its overall burden of proof, the Government must, of course, remove this doubt by offering rebuttal evidence to disprove the mistake.

Any distinction between those acts which would be criminal regardless of the victim's identity and those which

would not is nothing more than the recognition that a mistake of fact may negate the existence of mens rea in some situations and not in others. One who commits [a]n unprovoked assault, for example, cannot claim he lacked criminal intent simply because he did not know that his victim was a law enforcement officer. If he acts in resistance to an arrest, on the other hand, he may justifiably use reasonable force in self-defense if he neither knows nor should know that he is being arrested and reasonably believes that he is being subjected to a hostile attack against his person.

Id. (footnote and internal citations omitted).

Second, in *United States v. Young*, 464 F.2d 160 (5th Cir. 1972), the United States Court of Appeals for the Fifth Circuit vacated a conviction because the trial court improperly instructed the jury that it was immaterial whether Young knew that the victims were federal agents or not. *See id.* The Fifth Circuit explained that:

When there is no doubt of the defendant's unlawful intention, knowledge of the official capacity of the victim is invariably unnecessary; the assailant takes his victim as he finds him. But if the defendant asserts a lack of intention or wilfulness based upon

ignorance of the identity of the victim and *ignorance of the victim's official privilege to interfere with the defendant's person or freedom of movement*, the jury must be allowed to consider the defendant's evidence tending to show that he was ignorant of the official capacity of the victim. For only then can the jury give fair consideration to whether the "assault" was "an intentional act wilfully done without legal excuse.

Id. at 163 (emphasis added).

In the present case, it is undisputed that the three FBI agents identified their capacity as federal law enforcement officers, but they then proceeded to engage in a conversation with Parrot on topics unrelated to the search warrant and specifically told Parrot multiple times that they did not have any "legal paperwork" to serve him. At all times prior to the incident that resulted in Parrot being charged with violating Section 111, Parrot only knew that there were three special agents with the FBI on his property, that they were having an unofficial conversation with him, and that they were *not* there to serve legal paperwork, and that they tried to enter him home without properly informing him of their authority to do so. *See* 18 U.S.C. § 3109 ("The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, *after notice of his*

authority and purpose, he is refused admittance” (emphasis added)).

Notwithstanding this, Parrot was not permitted by the District Court to present his *Feola* based mistake of fact instruction in this prosecution under Section 111.

This Petition presents an opportunity for this Court to solidify its decision in *Feola* to ensure that trial courts do not continue to conflate general intent statutes with an accused’s right to present their mistake of fact defense, when the instruction is generated, of course. *Saenz v. Roe*, 526 U.S. 489, 498 (1999) (“Although the decision of the Court of Appeals is consistent with the views of other federal courts that have addressed the issue, we granted certiorari because of the importance of the case.”); *Crawford-El v. Britton*, 523 U.S. 574, 584 (1998) (granting certiorari due to the importance of the underlying issues presented in the case and “[d]espite the relative unimportance of the facts of this particular case.”); *Hagen v. Utah*, 510 U.S. 399 (1994) (granting certiorari “to resolve the continuing confusion over the existence and scope of the § 10(b) aiding and abetting action.”).

VIII. CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

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