

United States Appeals Court
for the District of Columbia
Case No. 25 - 3022

25-6742

In the
Supreme Court of the United States

FILED
DEC 10 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

GEZO G. EDWARDS,
Petitioner,

v.

United States of America,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the District of Columbia

PETITION FOR WRIT OF CERTIORARI

GEZO G. EDWARDS
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QUESTIONS PRESENTED

1. Whether an indictment charging conspiracy to distribute a controlled substance under 21 USCS 846 and 841(a) fails to state an offense where it places the adverb "knowingly" in the future-tense which grammatically did not allege that the defendant was aware of the nature of the substance.
2. Whether trial and appellate counsel were constitutionally ineffective under Strickland v. Washington, 466 US 668 (1984) for failing to object to this defective indictment, the missing mens rea instruction, and denial of due process, and whether the lower courts misapplied Slack v. McDaniel, 529 US 473 (2000) by refusing a Certificate of Appealability on this debatable constitutional question.
3. Whether courts may uphold indictments that grammatically misplace the mens rea term, omitting the controlled-substance knowledge element, on the rationale that the indictment "tracked the statute," contrary to Russell v. United States, 369 US 749 (1962) and United States v. Resendiz-Ponce, 549 US 102 (2007).

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix F to the petition and is

reported at 2025 U.S. App. L. EXIS 20140; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix E to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

I can't find it on LEXIS and don't know if it's designated for publish.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

STATEMENT OF JURISDICTION

Jurisdiction is invoked under 28 USCS 1254(1). The court of appeals denied Petitioner's request for a Certificate of Appealability on August 8, 2025 and denied rehearing on October 17, 2025. This petition is timely under Supreme Court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. V (Grand Jury Clause; Due Process)

U.S. Const. amend. VI (Notice of charges; Right to jury trial)

21 USCS 841(a)(1)

21 USCS 846

28 USCS 2255

Fed.R.Civ. P. 15(c)

Strickland v. Washington, 466 US 668 (1984)

Slack v. McDaniel, 529 US 473 (2000)

STATEMENT OF THE CASE

In April 2011, Petitioner (EDWARDS) was arrested and charged with Conspiracy to Distribute Five Kilograms or More of Cocaine and Possession of a Firearm, in violation of 21 USCS 846/841(a) and 924(c).

In November 2012, EDWARDS was found guilty of count one, the conspiracy charge (ECF 651), and, in 2014, was sentenced to life imprisonment with a ten-year term of supervised release (ECF 878).

The Appeals Court for the District of Columbia affirmed EDWARDS'S conviction on direct appeal on July 8, 2016. United States v. Williams, 827 F.3d 1134, 1166 (D.C. Cir. 2016). This Court denied certiorari on January 9, 2017. Edwards v. United States, 580 US 1083 (2017).

On December 26, 2017, EDWARDS filed, pursuant to 28 USCS 2255, a pro se motion to vacate, set aside, or correct his sentence, which was based on multiple allegations of ineffective assistance of counsel (ECF 975). Relevant claims, here, which was contested by EDWARDS was a failure to challenge the sufficiency of the superseding indictment, and the cumulative effects of the alleged instance of ineffective assistance of counsel (id. at 1-42).

On November 21, 2019, the district court denied EDWARDS'S 2255 motion and declined to grant a COA (ECF 1044; ECF 1045; see United States v. Edwards, 2019 WL 6219955 (D.D.C. Nov. 21, 2019)). EDWARDS sought to appeal that decision on December 9, 2019 (ECF 1046). On August 7, 2020, the appeals court declined to grant a COA and dismissed EDWARDS'S appeal of the denial of his 2255 motion. United States v. Edwards, No. 19-3096, 2020 WL 4932319 (D.C. Cir. Aug. 7, 2020).

On May 18, 2023, EDWARDS filed a Fed.R.Civ.P. 15(c) motion which was misconstrued as a second pro se 2255 (ECF 1085). EDWARDS challenged his trial and appellate

counsels' effectiveness in failing to prove the requisite mens rea to convict him -- namely, his knowledge that the controlled substance was cocaine (id. at 17-34).

There were a number of filings by EDWARDS between October to December 2023, whereby EDWARDS attempted to supplement and assuage the seeming confusion of the district court, as to the claims being raised.

On January 8, 2024, EDWARDS filed a motion for reconsideration of the denial of his rule 15(c) motion which was misinterpreted as a second or successive 2255 motion (ECF 1090 and 1091). In that motion for reconsideration, EDWARDS clarified that he was filing a request to amend under rule 15(c), in relation back to his original, first, 2255 motion.

On November 7, 2024, the district court denied EDWARDS'S motions (ECF 1094).

On February 2024, EDWARDS filed a notice of appeal.

On March 31, 2025, EDWARDS moved the appeals court for a COA, which was denied.

On August 8, 2025, the appeals court denied EDWARDS'S COA request. EDWARDS filed a request for panel rehearing which was also denied on October 17, 2025.

EDWARDS has exhausted his lower court remedies, and as discussed below, this Honorable Court should grant his petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT

I. The Indictment Fails to State an Offense Under sections 846 and 841(a)

A. "To Knowingly distribute" cannot express present knowledge.

The phrase "to knowingly distribute" was placed in the future-tense. Grammatically, the adverb "knowingly" does not modify the direct objects "cocaine and controlled substance. Because of the misplacement, it cannot describe an existing state of mind. Thus the indictment alleges an agreement to distribute and possess cocaine without the necessary knowledge of the nature of the substance to be distributed or possessed.. Appx. A and C.

This is not wordplay, it is the difference between alleging intent and alleging knowledge. Under McFadden, the government must prove that the defendant knew the substance was controlled. Appx. B.

The defective indictment neither alleged that EDWARDS had the necessary knowledge to enter into an unlawful agreement, nor did it describe an unlawful plan. This defect is rooted in the omission of the controlled-substance-mens-rea element. Germane to the foremost mentioned defect, there was no accusation made that EDWARDS had any present knowledge of the nature of the substance. And the latter, described a plan to distribute cocaine without knowlege of the controlled nature of the substance. Simply put, knowldege cannot exist in advance of awareness; one cannot "plan to know" something, and EDWARDS was never charged with a crime.

B. Russell and Resendiz-Ponce require precise allegation of each element.

This Court has long required that an indictment "fully, directly, and expressly" state every element. 369 US at 763. "Tracking the statute" is acceptable only when the statutory language is used correctly. 549 US at 108. Misplacing the mens rea

adverb "knowingly" destroys the required allegation.

The government does not have the authority to ignore the grammatical and syntactical rules of the English language. Adherence to the linguistic rules of our language is mechanical and non-discretionary. It is a requirement and duty of the government to draft the indictment and jury instructions in ordinary language so that ordinary people can understand its meaning. This minimum requirement was purposefully ignored.

Not only does the indictment fail to allege an essential element of the offense, it also accuses EDWARDS, literally, of an impossible crime. That is it alleges that EDWARDS had the skill or ability to know future facts, thereby being able to form a plan with future knowledge not yet possessed. This defies common sense and logic.

Because the government's language renders the charge linguistically impossible, the indictment fails the constitutional test of clarity and notice.

C. The defect is structural.

The absence of an essential element infected the entire proceeding:

The grand jury never considered whether EDWARDS knew the substance was controlled. Further, it is clear that the grand jury did not have genuine assent to endorse the true-bill. Therefore, the indictment is void from its inception.

EDWARDS was never given notice. During pre-trial, EDWARDS was placed and a severe disadvantage during plea negotiation because the government broadened their requirements to convict EDWARDS.

During trial, the lack of notice did not afford EDWARDS the opportunity to mount a proper defense against all the elements of the offense.

Finally, the trial jury was not informed or instructed to find that EDWARDS was aware the substance to be distributed was controlled. Appx. D.

The verdict and judgment rest on a non-offense.

Structural error requires reversal without harmless-error review.

II. Ineffective Assistance, Relation Back, and COA Error

A. Counsels' omissions were constitutionally deficient.

Reasonable counsel would have objected to an indictment that omitted a required element, requested a correct instruction, and preserved the issue. Failure to do so violated Strickland.

B. The district court misapplied Rule 15(c).

EDWARDS'S amendment asserted on continuous claim: ineffective assistance as "cause" excusing procedural default of the mens rea issue. See Appx. H at 6 - 8. By splitting the claim, the court ignored facts and dismissed on a procedural fiction. See Appx. E at 6.

The district court's ruling is in conflict with this Court's holding in Mayle v. Felix, 545 US 644 (2005). The lower court found that EDWARDS'S mens rea claim related back to his original 2255 motion, yet held that EDWARDS'S claim was untimely. Seemingly, in support of its erroneous finding, the lower court misrepresented the facts. For example, the district court stated that EDWARDS'S case became final in 2014, and was affirmed by the Appeals Court in July 2016. But EDWARDS had not filed his first 2255 motion until December 2017. For purposes of 2255 time limit EDWARDS'S conviction became "final" upon the Supreme Court's denial of certiorari i.e., January 2017. United States v. Hicks, 283 F.3d 380, 387 (D.C.Cir. 2002).

C. The COA denial conflicts with Slack.

Under Slack, a COA must issue if reasonable jurists could debate either the constitutional claim or the procedural ruling. Given the clear linguistic impossibility and McFadden's holding, reasonable jurists could debate both. The summary

denial contradicts Slack and undermines appellate review standards.

III. The Question Is Recurring and Nationally Important

Federal indictments in drug cases almost uniformly employ the same flawed phraseology "to knowingly distribute." Courts have repeatedly upheld this wording as adequate. The defect therefore affects thousands of prosecutions each year.

Beyond legal technicality, the public now recognizes this problem. Advocates, families, and defendants have identified that federal indictments often ignore the ordinary rules of English grammar that define how knowledge and intent are expressed. This realization has eroded confidence in the justice system's fairness.

No amount of legal reasoning can assuage that loss of confidence.

When liberty is at stake, the government cannot escape the rules of grammar. Words matter. The Constitution requires charges stated in "plain, ordinary, and concise language." Grammar is not optional it is the vehicle through which due process speaks.

The government's continuing disregard for linguistic precision undermines both the appearance and the reality of justice. This Court's intervention is necessary to restore faith that words in federal indictments mean what they say.

CONCLUSION AND PRAYER FOR RELIEF

For the reasons above, Petitioner respectfully requests that this Court:

Grant the Petition for Writ of Certiorari;

Reverse the judgment of the court of appeals;

Hold that the indictment failed to allege the controlled-substance mens rea element required by section 841(a);

Hold that counsel was constitutionally ineffective under Strickland; and

Remand for further proceedings consistent with this Court's opinion.

Respectfully submitted,

BY: *Gezo G. Edwards*

Date: 12-8-2005

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