

No. 25-7428

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In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2025

Supreme Court, U.S. FILED MAR - 1 2026 OFFICE OF THE CLERK

NOEL SALGADO,

✓
UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF HABEAS CORPUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR HABEAS CORPUS

NOEL SALGADO

REG. NO. 72197-050

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I. QUESTION PRESENTED

SALGADO FILED TIMELY UNDER § 2255 RAISING CLAIMS PLAINLY DEBATABLE BY TURIST OF REASON. THE DISTRICT COURT DENIED THE MOTION AND IN THE SAME ORDER DENIED A COA WITHOUT EXPLANATION AND IN THE ABSENCE OF A RULING AT ALL ON CERTAIN CLAIMS. THAT COURT CLEARLY DID NOT FOLLOW THIS COURT'S PRECEDENT. THE THIRD CIRCUIT FILED AN UNEXPLAINED ORDER FOR A COA AND SIMPLY DENIED REHEARING. DID THESE COURTS ERROR IN NOT FOLLOWING BUCK WHERE THE ISSUES WERE, WITHOUT QUESTION DEBATABLE?

II TABLE OF CONTENTS

QUESTION PRESENTED 1

TABLE OF AUTHORITIES iii

OPINIONS BELOW 2

JURISDICTION 2

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2-6

REASON FOR GRANTING CERTIORARI 7-11

CONCLUSION 11

III. TABLE OF AUTHORITIES

BUCK v. DAVIS, 137 S.C.T. 759 10

BURRAGE v. UNITED STATES, 134 S.C.T. 881 (2014) 4, 5, 9

UNITED STATES v. EWING, 749 F.2d 317 (6TH Cir 2018) 9

UNITED STATES v. PIAGUASIO, 2019 U.S. Dist. Lexis 12402
(M.D. PA. July 25, 2019) 9

DUAN v. UNITED STATES, 142 S.C.T. 2370 (2022) 5

No.

IN THE
SUPREME COURT OF THE UNITED STATES

NOEL SALGADO,

v
UNITED STATES OF AMERICA

NOEL SALGADO ("SALGADO"), ACTING WITHOUT COUNSEL, MOVES FOR A WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT OF APPEALS VACATING AND REMANDING FOR MULTIPLE CERTIFICATES OF APPEALABILITY ("COA"), AND IN SUPPORT:

I. OPINIONS BELOW

THE DISTRICT COURT DENIED SALGADO'S § 2255 AND COA ON DECEMBER 27, 2024, SUBSEQUENTLY DENIED HIS RULE 59(a) ON MAY 28, 2025. THE THIRD CIRCUIT DENIED COA ON OCTOBER 8, 2025, AND REHEARING DECEMBER 8, 2025. ALL ATTACHED AT EXHIBIT-A.

II. JURISDICTION

THE COA WAS DENIED IN THE THIRD CIRCUIT OCTOBER 8, 2025, AND REHEARING/REHEARING EN BANC DECEMBER 8, 2025. THE PETITION FOR CERTIORARI WAS FILED FEBRUARY 15, 2026.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 802 (25)

21 U.S.C. § 846

21 U.S.C. § 841(a)(1)

21 U.S.C. § 841(b)(1)(C)

28 U.S.C. § 2253

28 U.S.C. § 2255

III STATEMENT OF THE CASE

SALGADO'S CASE BEGINS WITHIN THE NEW JERSEY DEPARTMENT OF CORRECTIONS. THAT IS, SALGADO HAS BEEN A TARGET OF THE FEDERAL GOVERNMENT FOR MANY YEARS. APPARENTLY, UNABLE TO ACQUIRE EVIDENCE FOR A FEDERAL INDICTMENT, IT ASSISTED THE STATE OF NEW JERSEY WITH 13 COUNTS FOR VIOLATING VARIOUS STATE STATUTES. ULTIMATELY, SALGADO WOULD PLED GUILTY TO THREE - COUNTS ALL SURROUNDING HIS ALLEGED TIES TO "NEIGHBORHOOD ROLLIN 20'S BLOOD" SET IN NEW JERSEY, JERSEY CITY. THIS INCLUDES "UNLAWFUL POSSESSION OF A HAND-GUN"; "PERSONS NOT PERMITTED TO POSSESS A FIREARM;" AND "UNLAWFUL PURPOSE OF A FIREARM." THE PLEA YIELD A TEN (10) YEAR SENTENCE.

THESE COUNTS WERE NOTHING MORE THAN TO REMOVE SALGADO FROM THE STREETS OF JERSEY CITY. WHILE SERVING THE STATE SENTENCE AT BAYSIDE STATE PRISON WITH THE FEDERAL GOVERNMENT AS A KIBITZER DURING SALGADO'S INCARCERATION. THE FEDERAL GOVERNMENT'S PILGRIMAGE LEFT THE STATUS AS AN UNCOOKED WHEN MICHAEL RATTERTY ("RATTERY") SUPPOSEDLY FELL OUT FROM SOME TYPE OF SPIRIT. THIS SPAWNED A FEDERAL INDICTMENT ALLEGING FROM BETWEEN OCTOBER 17, 2015 AND OCTOBER 19, 2015, SALGADO AND RODGERICK GARRETT "GARRETT" VIOLATED TWO FEDERAL CONTROLLED SUBSTANCE STATUTES. FIRST, 21 U.S.C. § 842 FOR VIOLATING § 841(a)(1); AND THEN FOR THE SAME CONDUCT UNDER 21 U.S.C. § 841(e)(1), (d)(1)(C). THE SECOND HAD A CAVEAT OF "SERIOUS BODY INJURY" UNDER 18 U.S.C. § 802(25) WHICH WAS NOT CHARGED IN THE INDICTMENT, THAT IS, THAT SPECIFIC STATUTE.

SALGADO AND GARRETT WOULD PROCEED TO TRIAL. SALGADO WITH ATTORNEY MICHAEL KERIBANICS ("KERIBANICS"). KERIBANICS NEVER INVESTIGATED THE NUMBER, IF ANY, OF OTHER PRISONERS WHO WERE PROSECUTED BY THE UNITED STATES WHILE SERVING SENTENCES IN THE NEW JERSEY DEPARTMENT OF CORRECTIONS. SINCE "SERIOUS BODY INJURY" ENHANCED SALGADO'S SENTENCING EXPOSURE AND RATTERTY WAS ON THE WITNESS LIST HE PRESSED WHAT CONSTITUTES "SERIOUS BODY INJURY." EVEN THOUGH SALGADO HAD MANY CONCERNS REGARDING § 802(25), HE WAS LIVID WHEN KERIBANICS REQUESTED THE TRIAL JUDGE TO STRIKE THE LAST SENTENCE REQUIRING THE GOVERNMENT TO PROVE THAT "SERIOUS BODY INJURY" RESULTED FROM THE USE OF A CONTROLLED SUBSTANCE. SALGADO HAS ATTACHED THE TRANSCRIPT AND LATER ARGUMENTS

Pertinent Here At Exhibit-B. When Salgado Inquired As To Why His Lawyer Make Such An Absurd Request Koribanics Responded: "Burrage [v. United States, 134 S.Ct. 881 (2014)] Does Not Apply To "Serious Bodily Injury" Only Where Death Results.

The Trial Ensued With No Readiness Regarding: What Objective Measures Were Taken To Confirm Oxygen Deprivation? Is Loss Of Consciousness Alone Sufficient To Establish A "Substantial Risk Of Death"? Can Morphine Appear In Toxicology Results Without Heroin Injection? Was Heroin-Specific Metabolite Testing Performed? InTAMARIA WITH THE FACT THAT Heroin Itself Is Rarely Detected, That Is 6-MAM Is The Only Heroin-Specific Metabolite, Koribanics Was Unable To Test The Government's Because If 6-MAM Is Absent, The Toxicology Does Not Conclusively Prove Heroin Ingestion. This Is Critical Under The Burrage Holding.

The Necessity Of Specificity Of The Drug Has To Be The Burrage, Not Per, Cause Of The Over-dose And Therefore Required For "Serious Bodily Injury." For Salgado's Case Since There Is No Conclusive Proof Of Any Factors Under 21 U.S.C. § 802(25), And Simple Temporary Loss Of Consciousness Does Not Establish A Substantial Risk Of Death Or Prolonged Impairment There Is No "Serious Bodily Injury."

With Each Witness The Left The Stand, And Koribanics' Silence Regarding These Issues, The Concrete Hardened In Salgado's Faith. In The End, Garret Walked Free, And Salgado Stood Convicted. A Rule 29 And 33 Were Filed. Both Were Denied. Prior To Koribanics Submitting His Opening Brief

SALGADO CONTACTED KORIBANICS INQUIRING AS TO THE ISSUES THAT WILL BE RAISED. WHEN IT BECAME APPARENT KORIBANICS WAS NOT PRESENTING CLAIMS AS SALGADO REQUESTED A SUPPLEMENTAL BRIEF WAS FILED. SALGADO EXPLAINED IN HIS BRIEF HIS CONCERNS REGARDING PROCEDURAL DEFAULTS IF HE LATER RAISED THEM UNDER § 2255. IN ADDITION, SALGADO ARGUED THE APPLICABILITY OF BOTH ROAN V. UNITED STATES, 142 S. CT. 2370 (2022), AND BURRAGE V. UNITED STATES, 134 S. CT. 881 (2014). THE THIRD CIRCUIT DID NOT HEAR THE ISSUE EVEN THOUGH KORIBANICS MOVED TO WITHDRAW IN LIGHT OF AN ATTACHED MOTION TO MOVE KORIBANICS TO AMICUS AND APPOINT SALGADO COUNSEL OF RECORD.

AS SALGADO ANTICIPATED KORIBANICS' BRIEF RESULTED IN HIS APPEAL BEING NOTHING MORE THAN AN EMPTY FORMALITY. THE THIRD CIRCUIT TOOK NOTICE OF HOW POORLY KORIBANICS BRIEFED THE ISSUES REGARDING THE DISTRICT COURT'S DECISION REGARDING THE RULE 29 AND 33 MOTIONS. NOW PROCEEDING WITHOUT COUNSEL SALGADO PREPARED HIS SECTION 2255 A SUBSEQUENT MOTIONS TO AMEND. SALGADO RAISED SIX COMPREHENSIVE CLAIMS ADDRESSING ARGUMENTS OVER-COMING ANY PROCEDURAL DEFAULTS, NEW DECISIONS FROM THIS COURT AND KORIBANICS'S UNREASONABLE PERFORMANCE.

FOR INSTANCE, SALGADO PRESENTED A MULTI-FACETED CLAIM ABOUT "SERIOUS BODILY INJURY'S" FACTORS BEGINNING WITH 21 U.S.C. § 802(25), AND THE REQUISITE FACTORS INCLUDING HEROIN METABOLITES, BLOOD OXYGEN LEVEL, SATURATION CRITICAL TO WHETHER PATTERTY'S UNCONSCIOUSNESS COULD BE TIED TO "SERIOUS BODILY INJURY" REGARDING SALGADO'S INVOLVEMENT.

In fact, in the Government's Opposition To Salgado's §2255
In Acknowledges: "Even though there might have been a
Benefit associated with introducing expert analysis and witness
testimony regarding the specific drugs within Ratterty's
bloodstream at the time of the incident, there was ample
evidence at each stage to link the chain of events from
Salgado's authorization of the distribution of heroin to
Ratterty to Ratterty's subsequent serious bodily injury."

Id. at *32. Pure conjecture. The Government even concedes
that "such an analysis was impossible given a blood sample
was not taken from the victim at the time of the overdose."

Id. That alone should have doomed §802(25). In that, every
point presented regarding whether there was serious bodily
injury centered on the lack of a blood draw and the facets
that would have come from the information gathered from
Ratterty's blood. The information, in fact, would have associated
any purported evidence linked to Ratterty's ostensible
overdose ("serious bodily injury").

Following Salgado's direct appeal which did not address
his pro se brief, a §2255 was filed. Even though the government
attempted to touch on Salgado's claims the district never properly
addressed them or made not even a passing mention on certain
issues. The district judge denied the motion and COA in the same
order disregarding this court's precedent. Salgado moved for a
COA in the third circuit which was met with a boiler-plate
non-informational denial. Rehearing failed no better. Salgado's
now seeks this court's intervention.

IV. REASON FOR GRANTING CERTIORARI

THE QUESTION[S] IN THIS CASE ARE REOCCURRING AND UNLESS THIS COURT INTERVENS COURTS WILL CONTINUE TO IMPOSE ARBITRARY MANDATORY MINIMUM PENALTIES. WHAT IS MORE, CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL REGARDING WHAT CONSTITUTES "SERIOUS BODILY INJURY" UNDER § 802(25). THE FACTS OF FACTORS INCLUDE, BUT ARE LIMITED TOO, WHAT MEASURES ARE REQUIRED TO ESTABLISH "SERIOUS BODILY INJURY" SUCH AS UNCONSCIOUSNESS WITHOUT A BLOOD-OXYGEN-TEST. AFTER ALL TRANSIENT UNCONSCIOUSNESS ALONE DOES NOT SATISFY THE STATUTORY DEFINITION OF SERIOUS BODILY INJURY ACCORDING TO H.J.S.A. 22:11-1.

THE TERM "SERIOUS BODILY INJURY" MEANS BODILY INJURY WHICH INVOLVES:

(A) A SUBSTANTIAL RISK OF DEATH; OR

(B) PROTRAYED AND OBVIOUS DISFIGUREMENT; OR

(C) PROTRAYED LOSS OR IMPAIRMENT OF THE
FUNCTION OF A BODILY MEMBER, ORGAN, OR
MENTAL FACULTY.

21 U.S.C. § 802(25). THE ONLY SECTION OF THE STATUTE IS SUBSECTION "A" "A SUBSTANTIAL RISK OF DEATH." SALGADO POSITS THAT HIS ATTORNEY FAILED TO CONDUCT BASIC RESEARCH INTO THE FACTS OF "SERIOUS BODILY INJURY." THIS WAS UNREASONABLE UNDER THE UNIQUE FACTS IN THIS CASE. THAT IS, SALGADO WAS HOUSED

with inmate Michael Raftery ("Raftery"). After purchasing Heroin from someone other than Salgado, Raftery was found unconscious in his cell. From the discovery the government was set to convict Salgado for Raftery's purported overdose. The record showed Raftery was drug addicted. Inmates who seek out drugs in prison most always find multiple sources and Korbaniacs knew or should have known this.

Researching these facets would have led any reasonable attorney during trial to challenge the absence of objective medical evidence. That is, medical records contain no documented oxygen saturation readings, no arterial blood gas testing, and no quantified evidence of hypoxia. Despite this absence, the government asserted life-threatening respiratory compromise. Competent lawyering would have challenged such theories by arguing that conclusions regarding hypoxia or life-threatening objective clinical data, not speculation. This is just one facet of many that constitutes an essential element that must be charged in the indictment and proved beyond a reasonable doubt. Where Korbaniacs failed to research and argue the absence of this facet relieved the government of its duty to prove the elements attached to mandatory minimums.

In addition, since this case purportedly involved a "substantial risk of death" Korbaniacs should have known in the absence of a specific metabolite (6-MAM) the presence of morphine or opiate does not conclusively show Raftery ingested Heroin. This, therefore, requires not just that Raftery ingested Heroin, but the same Heroin that Salgado

SUPPOSEDLY RECEIVED FROM HUMPHREY. IN OTHER WORDS, ANY REASONABLE ATTORNEY WOULD HAVE CHALLENGED THE SUFFICIENCY AND RELIABILITY OF THIS EVIDENCE BY ARGUING THAT, ABSENT HEROIN-SPECIFIC METABOLITES, THE TOXICOLOGY RESULTS DO NOT CONCLUSIVELY ESTABLISH THAT MORPHINE ALONE CANNOT RELIABLY DISTINGUISH HEROIN USE FROM OTHER OPIATES.

EACH FACET ARGUED HEROIN MUST HAVE EVIDENCE TO AMOUNT TO "A SUBSTANTIAL RISK OF DEATH. ANY LESS IS SIMPLE SPECULATION AND PERMITTED THE GOVERNMENT TO OBTAIN A CONVICTION BY UNPROVEN FACTUAL PREMISE. SALGADO'S CLAIMS WERE MORE THAN DEBATABLE, IN THAT, A REVIEW OF UNITED STATES V. PIAGUADIO, 15-CR-249, 2019 U.S. DIST. LEXIS 12402 (M.D.P.A. JULY 25, 2019), REFLECTS THE MEDICAL TECHNICIAN DOUGLAS PARSELL IMMEDIATELY OBSERVED THAT HIS PATIENT HAS A PULSE BUT BREATHING SHALLOWLY AND WAS UNRESPONSIVE. UNDER SUCH CIRCUMSTANCES PARSELL USED A PULSE OXIMETRY AND RECORDED THAT THE VICTIM HAD A BLOOD OXYGEN SATURATION LEVEL A 75% THEN, AND ONLY THEN, DETERMINED THE VICTIM'S CONDITION WAS LIFE-THREATENING. PIAGUADIO PLAIN DEMONSTRATES THAT SERIOUS BODILY INJURY TAKES MORE THAN MERELY UNCONSCIOUSNESS.

KORIBANICS INCOMPETENCE IS FURTHER EXACERBATED WITH A REVIEW OF UNITED STATES V. EWING, 749 F.2D APPX 317 (6TH CIR. 2018) (EWING I). IN EWING I, IT WAS ARGUED THAT THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE "DEATH RESULTS" CONVICTION. UNDER BURRAGE V. UNITED STATES, 134 S. CT. 134 (2014) AND ITS SIXTH CIRCUIT PROGENY, THE GOVERNMENT HAD TO PROVE (1) "KNOWING OR INTENTIONAL DISTRIBUTION OF HEROIN (AND FENTANYL)", AND (2) USE OF THE DISTRIBUTED DRUG BY THE DEFENDANT WAS "A BUT-FOR CAUSE OF

THE VICTIM'S DEATH." 571 U.S. AT 210. THE SIXTH CIRCUIT HELD THAT THE GOVERNMENT FAILED TO SHOW THAT EWING SOLD THE DRUGS THAT CAUSED DEATON'S DEATH, REASONING: "THE ABSENCE OF HEROIN OR HEROIN METABOLITES [L-MAM] IN DEATON'S BLOOD AND THE LACK OF ANY EVIDENCE OF TESTIMONY TO EXPLAIN ITS ABSENCE LEAVES US UNABLE TO CONCLUDE THAT THE JURY'S VERDICT AS TO THE DEATH RESULTS [PROVISION] IS SUPPORTED BY SUFFICIENT EVIDENCE." EWING, 749 Fed. App'x AT 330. IT IS PELLUCID THAT SALGADO'S ARGUMENTS ARE DEBATABLE BY JURIS. OF REASON. INSTEAD, THE COURTS BELOW NOT ONLY DISREGARDED SALGADO'S CLAIMS, THEY WERE SILENT ON THE MERITS AND THEN DENIED COA CONTRARY TO BUCK v. DAVIS 137 S.Ct. 759 (2012).

A REVIEW OF THE RECORD CLEARLY SHOWS THE DISTRICT COURT REMOVED THE "BUT-FOR" CAUSE FROM THE JURY INSTRUCTIONS WITH KORIBANICS' SUPPORT. KORIBANICS FAILED TO CHALLENGE THE ABSENCE OF SUFFICIENT EVIDENCE WHICH SHOWED ONLY A GENERIC CLASS OF SUBSTANCE, I.E., "OPIATES", THEREBY FAILING TO IDENTIFY A SPECIFIC SUBSTANCE, PROVIDES NO DOSE OR TIMING, AND OFFERS NO MEDICAL OPINION THAT THE ALLEGED OUTCOME WOULD NOT HAVE OCCURRED BUT FOR A DRUG ATTRIBUTED TO SALGADO. UNDER STRICKLAND v. WASHINGTON, 446 U.S. 668 (1984), KORIBANICS' CONDUCT WAS UNREASONABLE AND PREJUDICED SALGADO'S DEFENSE.

THE GOVERNMENT CONVICTED SALGADO WITH THE TERM: "A SUBSTANTIAL RISK OF DEATH" WITH NO EVIDENCE THAT BATTERY'S UNCONSCIOUSNESS WAS THE RESULT OF ANY SUBSTANCE ALLEGEDLY PROVIDED BY SALGADO.

CONCLUSION

SALGADO REALIZES THIS COURT IS GENERALL NOT A COURT OF FIRST IMPRESSION. THAT SAID, A CERTIFICATE OF APPEALABILITY IS WARRANTED. THIS COURT SHOULD GRANT CERTIORARI, AND EITHER GRANT A COA DE REMANDO W/ INSTRUCTIONS TO GRANT A COA.

FILED UNDER THE PENALTY OF PERJURY THIS 1ST DAY OF MARCH 2024

Soel Salgado