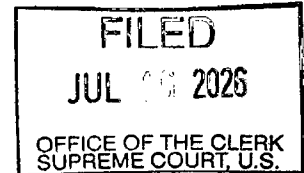


26-5141

No. _____

ORIGINAL
FILED

In The
Supreme Court of the United States



JULY TERM, 2026

ALI F. ELMEZAYEN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Ninth Circuit erred when it denied petitioner a certificate of appealability by applying Slack's procedural-dismissal standard, even though the District Court denied petitioner's § 2255 constitutional claims on the merits and did not dismiss the motion on any independent procedural ground.

PARTIES TO THE PROCEEDING

Petitioner Ali F. Elmezayen ("Elmezayen") was the defendant in the criminal proceedings, the movant in the § 2255 proceedings, and the appellant below.

Respondent United States of America ("United States") was the plaintiff in the criminal proceedings, the respondent in the § 2255 proceedings, and the appellee below.

RELATED PROCEEDINGS

United States v. Elmezayen, No. 21-50057, United States Court of Appeals for the Ninth Circuit. The Ninth Circuit affirmed Elmezayen's convictions on direct appeal on January 19, 2023.

Elmezayen v. United States, United States District Court for the Central District of California. The District Court denied Elmezayen's motion under 28 U.S.C. § 2255 on January 14, 2025, and denied reconsideration on March 20, 2025.

United States v. Elmezayen, No. 25-3554, United States Court of Appeals for the Ninth Circuit. The Ninth Circuit denied a certificate of appealability on February 26, 2026, and denied panel rehearing and rehearing en banc on April 23, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Elmezayen respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit denying a certificate of appealability in this case.

OPINIONS BELOW

The Ninth Circuit's order denying a certificate of appealability was entered on February 26, 2026, and is reproduced at Appendix A.

The Ninth Circuit's order denying panel rehearing and rehearing en banc was entered on April 23, 2026, and is reproduced at Appendix B.

The District Court's order denying Elmezayen's § 2255 motion and denying a certificate of appealability was entered on January 14, 2025, and is reproduced at Appendix C.

The District Court's order denying reconsideration was entered on March 20, 2025, and is reproduced at Appendix D.

JURISDICTION

The Ninth Circuit denied a certificate of appealability on February 26, 2026. Elmezayen timely sought panel rehearing and rehearing en banc. The Ninth Circuit denied rehearing on April 23, 2026.

This Court has jurisdiction under 28 U.S.C. § 1254(1). See *Hohn v. United States*, 524 U.S. 236, 253 (1998) (*holding that this Court has jurisdiction to review a court of appeals' denial of a certificate of appealability*).

This petition is timely under Supreme Court Rule 13.3 because it is filed within 90 days of the Ninth Circuit's order denying rehearing.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part:

"No person shall ... be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment to the United States Constitution provides, in relevant part:

"In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense."

28 U.S.C. § 1254(1) provides:

"Cases in the courts of appeals may be reviewed by the Supreme Court by ... writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

28 U.S.C. § 2253(c) provides, in relevant part:

"Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from ... the final order in a proceeding under section 2255."

Section 2253(c)(2) further provides:

"A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right."

28 U.S.C. § 2255(b) provides, in relevant part:

"Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall ... grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto."

STATEMENT OF THE CASE

A. The Criminal Case and Direct Appeal

Elmezayen was prosecuted in the District Court for fraud and money-laundering offenses arising from an alleged life-insurance scheme. The United States' theory was that Elmezayen obtained insurance policies on the lives of his domestic partner, Rabab Diab ("Diab"), and their two disabled children, intentionally caused the deaths of the children, and then collected insurance proceeds. Although the charged offenses sounded in fraud and money laundering, the United States' theory depended on proving far more than a conventional financial-fraud scheme. The United States presented the case as one in which the alleged fraud was carried out through the intentional killing of Elmezayen's children.

The identity of the driver was therefore central to the United States' theory. The United States alleged that Elmezayen was driving the vehicle when it entered the water. If Elmezayen intentionally drove the vehicle into the water, the United States could argue that the crash was the means by which he executed the insurance-fraud scheme. But if Diab was driving, or if the evidence created reasonable doubt as to who was driving, the core premise of the United States' theory would have been materially undermined. The alleged financial motive, the alleged intent to kill, and the later collection of insurance proceeds all depended on the United States' ability to connect Elmezayen personally to the act of driving the vehicle into the water.

The United States' case relied heavily on circumstantial evidence, financial evidence, and the testimony of Diab. Diab was not a peripheral witness. She was

central to the United States' narrative of motive, intent, and premeditation. Through Diab and other evidence, the United States sought to portray Elmezayen as a calculating participant in an insurance-fraud scheme who used the deaths of his children to obtain money. Diab's credibility, bias, and potential motives were therefore critical issues for the jury.

Following a nine-day jury trial, Elmezayen was convicted of mail fraud, wire fraud, aggravated identity theft, and money laundering offenses. The District Court sentenced him to a term of 212 years' imprisonment.

At trial, the defense did not meaningfully present the theory Elmezayen later raised in his § 2255 motion: that Diab, not Elmezayen, was driving the vehicle when it entered the water. Instead, the defense proceeded principally on a "pedal misapplication" theory, contending that the crash was accidental rather than intentional. That theory accepted, or at minimum did not meaningfully contest, the premise that Elmezayen was the driver. The distinction was critical. A defense that the crash resulted from pedal misapplication challenged intent; a defense that Diab was driving would have challenged the factual foundation of the United States' entire theory.

Elmezayen appealed. On direct appeal, the Ninth Circuit affirmed the judgment. The Ninth Circuit considered several trial-related claims, including challenges to voir dire, opinion testimony concerning credibility, the exclusion of certain hearsay testimony from a treating physician, testimony from a United States witness, the denial of a continuance to obtain testimony from proposed Egyptian

witnesses, and cumulative error. Although the Ninth Circuit identified certain trial errors, it concluded that reversal was not warranted and affirmed Elmezayen's convictions.

This Court denied certiorari on direct review on May 22, 2023.

B. The § 2255 Proceedings

Elmezayen thereafter filed a timely motion under 28 U.S.C. § 2255. In that motion and supporting filings, he raised constitutional claims that included ineffective assistance of counsel and a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Those claims were not abstract or purely legal. They were fact-based claims directed at counsel's alleged failure to investigate and present available evidence, the United States' alleged failure to disclose favorable impeachment evidence, and the District Court's refusal to permit factual development through an evidentiary hearing.

The ineffective-assistance claim centered on the conduct of Elmezayen's appointed trial counsel, Cuauhtémoc Ortega ("Ortega"). Elmezayen alleged that he repeatedly informed Ortega that he was not driving the vehicle when it entered the water. According to Elmezayen, Diab was driving. Elmezayen further alleged that this was not a bare or unsupported assertion. Rather, he identified specific evidence and investigative leads that, if pursued, could have corroborated the defense theory.

Those leads included potential surveillance footage from the last location the family visited before the incident, as well as cameras at major intersections and along the route the vehicle allegedly traveled before entering the water. Elmezayen also

alleged that an eyewitness had reported that a woman appeared to be driving the vehicle. In addition, he pointed to physical evidence—photographs showing Diab's shoes on the driver's side floorboard—that he contended supported the claim that Diab, not Elmezayen, was positioned on the driver's side.

Elmezayen alleged that Ortega failed to investigate these leads. According to Elmezayen, Ortega did not obtain or attempt to obtain the relevant surveillance footage, did not locate or develop the eyewitness evidence, and did not meaningfully investigate the physical evidence concerning the driver's side of the vehicle. Elmezayen argued that this failure was constitutionally significant because the identity of the driver went to the heart of the United States' theory of guilt. The mail fraud, wire fraud, aggravated identity theft, and money laundering counts all depended on the United States' assertion that Elmezayen intentionally caused the deaths as part of an insurance-fraud scheme. Evidence that someone else was driving would have directly challenged that theory.

The United States responded that Ortega's performance was constitutionally adequate and that the decision to pursue a pedal-misapplication theory was a reasonable trial strategy. The United States also argued that any theory that Diab was driving was contradicted by Elmezayen's prior statements to law enforcement indicating that he had been the driver. Elmezayen countered that counsel's duty to investigate was not eliminated by an uncounseled statement made in the immediate aftermath of a traumatic event. He argued that counsel could not make a reasonable

strategic decision to abandon a defense theory without first investigating the specific, verifiable evidence supporting it.

Elmezayen also alleged that Ortega failed to adequately investigate and present impeachment evidence concerning Diab. Diab was central to the United States' presentation of motive and intent. According to Elmezayen, available evidence could have been used to challenge Diab's credibility, including evidence concerning her financial interests, her alleged use of insurance proceeds, and her alleged purchase of property in Egypt. Elmezayen contended that this evidence would have allowed the defense to argue that Diab had a personal and financial motive to testify in a manner favorable to the United States and damaging to him.

The § 2255 motion also raised a Brady claim. Elmezayen alleged that the United States failed to disclose favorable impeachment evidence bearing on Diab's credibility, bias, and motive. The most significant alleged undisclosed evidence concerned whether Diab received, expected, or benefitted from favorable treatment in connection with immigration-related matters as a result of her cooperation or testimony. Elmezayen argued that any such benefit would have been powerful impeachment evidence because it would have given Diab an additional reason to align herself with the United States and to testify against him.

The United States denied that any immigration-related benefit had been promised, offered, or provided to Diab. In support, the United States relied on a declaration from Special Agent Matthew Parker ("Parker"), who stated that no government representative had offered, promised, or provided Diab any consideration

or benefit in connection with an immigration-related matter. Elmezayen argued that the District Court could not resolve that material factual dispute merely by accepting the United States' denial on paper, particularly where the alleged benefit concerned impeachment evidence that, by its nature, would not necessarily be reflected in the trial record.

The District Court denied Elmezayen's § 2255 motion without an evidentiary hearing. The District Court did not dismiss the motion as untimely, successive, waived, procedurally defaulted, or barred by any jurisdictional rule. Instead, it rejected the constitutional claims on the merits.

As to Brady, the District Court credited the United States' position that Diab had not been promised or provided immigration-related consideration or benefits. Relying on the United States' submission, the District Court concluded that the United States had complied with its Brady obligations. As to ineffective assistance of counsel, the District Court concluded that Ortega had investigated the case, retained experts, engaged in pretrial litigation, discussed the evidence and consequences of trial with Elmezayen, and presented a vigorous defense. The District Court further concluded that certain defenses Elmezayen claimed should have been presented were contradicted by the evidence, while others had been presented at trial. The District Court also relied on the strength of the United States' evidence in finding no prejudice.

The District Court therefore denied the § 2255 motion and denied a certificate of appealability. In doing so, the District Court resolved the constitutional claims on the merits. It did not identify any independent procedural ground for denying relief.

Elmezayen moved for reconsideration. He argued that the District Court had not fully addressed the factual basis for his constitutional claims and had denied relief shortly after his combined memorandum and reply were filed. He further argued that his claims required meaningful review because they involved specific factual allegations of ineffective assistance of counsel and prosecutorial misconduct.

The motion for reconsideration emphasized that Elmezayen was proceeding *pro se* and incarcerated, with limited access to legal materials and resources. It also emphasized that the § 2255 claims were supported by factual allegations concerning Ortega's failure to investigate surveillance footage, eyewitness testimony, forensic and physical evidence, and impeachment evidence concerning a key United States witness. Elmezayen argued that reconsideration was necessary to ensure that those constitutional claims were fully and fairly adjudicated.

On March 20, 2025, the District Court denied reconsideration. Elmezayen then filed a notice of appeal.

C. The Certificate-of-Appealability Proceedings

Because the appeal arose from the denial of a § 2255 motion, Elmezayen was required to obtain a certificate of appealability under 28 U.S.C. § 2253(c).

On February 26, 2026, the Ninth Circuit denied a certificate of appealability. The Ninth Circuit stated that the appeal was from the denial of Elmezayen's § 2255

motion and his motion for reconsideration. It then denied a certificate of appealability because Elmezayen had not shown that jurists of reason would find it debatable whether the § 2255 motion stated a valid claim of the denial of a constitutional right and whether the District Court was correct in its procedural ruling.

That formulation is the procedural-dismissal standard from Slack v. McDaniel. But the District Court had not dismissed Elmezayen's § 2255 motion on a procedural ground. It had reached and rejected his Brady and ineffective-assistance claims on the merits. Thus, the Ninth Circuit's order required Elmezayen to satisfy an additional procedural-ruling prong even though there was no independent procedural ruling to challenge.

Elmezayen timely filed a petition for panel rehearing and rehearing en banc. On April 23, 2026, the Ninth Circuit denied rehearing and stated that no further filings would be entertained in the closed case.

This petition follows.

REASONS FOR GRANTING THE PETITION

This case presents a narrow but important certificate-of-appealability issue. The District Court denied Elmezayen's § 2255 constitutional claims on the merits. It did not dismiss the motion as untimely, successive, waived, procedurally defaulted, or barred by any independent procedural rule. Yet the Appellate Court denied a certificate of appealability by applying the procedural-dismissal standard from *Slack v. McDaniel*, 529 U.S. 473 (2000). That standard applies only when the district court denies relief on procedural grounds without reaching the constitutional claims.

The reviewing court's order required Elmezayen to show not only that reasonable jurists could debate whether his § 2255 motion stated a valid constitutional claim, but also that reasonable jurists could debate whether the District Court was correct in its "procedural ruling." There was no such procedural ruling. Because the District Court denied relief on the merits, Elmezayen was required to satisfy only the merits-denial standard under *Slack*: whether reasonable jurists could debate the District Court's assessment of his constitutional claims.

The petition should be granted, or at minimum granted, vacated, and remanded, so that Elmezayen's request for a certificate of appealability may be considered under the correct standard.

I. The Appellate Court Applied the Wrong Certificate-of-Appealability Standard.

Section 2253(c) permits a certificate of appealability to issue when the applicant has made "a substantial showing of the denial of a constitutional right." 28

U.S.C. § 2253(c)(2). In *Slack*, this Court explained that the showing required depends on the nature of the district court's ruling.

When the district court rejects constitutional claims on the merits, the standard is straightforward. A movant must show that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *Slack*, 529 U.S. at 484. By contrast, when the district court denies relief on procedural grounds without reaching the constitutional claims, the movant must make two showings: that reasonable jurists could debate whether the motion states a valid constitutional claim and that reasonable jurists could debate whether the district court's procedural ruling was correct. *Id.*

This case falls in the first category, not the second. The District Court did not dispose of Elmezayen's § 2255 motion on a procedural ground. The District Court reached the Brady claim and rejected it on the ground that the United States had complied with its disclosure obligations. The District Court reached the ineffective-assistance claims and rejected them on the ground that Ortega's performance was constitutionally adequate and that Elmezayen could not show prejudice. The District Court also denied an evidentiary hearing because it concluded that the record refuted the claims.

Those are merits determinations. They may be correct or incorrect, but they are not procedural rulings. The District Court did not find the motion untimely. It did not find the motion successive. It did not hold that Elmezayen had waived his

claims. It did not rely on procedural default. Nor did it identify any jurisdictional or procedural barrier that prevented review of the constitutional claims.

The Appellate Court nevertheless denied a certificate of appealability by applying the procedural-dismissal formulation from *Slack*. Its order stated that Elmezayen had not shown that jurists of reason would find it debatable whether the § 2255 motion stated a valid constitutional claim and whether the District Court was correct in its procedural ruling. That was the wrong standard.

The error was not merely semantic. The procedural-dismissal standard imposes an additional burden. It requires the movant to identify and challenge a procedural ruling that prevented merits review. Where, as here, the District Court reached the merits, imposing that additional requirement makes the certificate-of-appealability gateway narrower than Congress and this Court permit.

II. The Error Matters Because the Certificate-of-Appealability Inquiry Is a Threshold Inquiry, Not a Merits Appeal.

This Court has repeatedly emphasized that the certificate-of-appealability inquiry is a threshold inquiry. It is not the full appeal. It does not require a movant to prove that he will ultimately prevail. It asks only whether reasonable jurists could debate the district court's resolution of the constitutional claims or conclude that the issues deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Buck v. Davis*, 580 U.S. 100, 115 (2017).

That distinction is especially important in § 2255 proceedings. A federal prisoner cannot obtain appellate review of the denial of constitutional claims unless a certificate of appealability issues. If the court of appeals applies the wrong

certificate-of-appealability standard, the error occurs at the gateway to review and may prevent any appellate consideration of claims that would otherwise satisfy the correct threshold.

That is what happened here. Elmezayen's § 2255 motion raised fact-based claims of ineffective assistance of counsel and Brady error. Those claims concerned Ortega's alleged failure to investigate evidence that Diab, not Elmezayen, was driving the vehicle; Ortega's alleged failure to develop impeachment evidence concerning Diab; and the United States' alleged failure to disclose favorable evidence bearing on Diab's credibility, bias, and motive. Elmezayen also challenged the District Court's refusal to hold an evidentiary hearing despite those fact-based allegations.

The question at the certificate-of-appealability stage was not whether Elmezayen was entitled to § 2255 relief. Nor was it whether Elmezayen would ultimately prevail after full appellate review. The question was whether reasonable jurists could debate the District Court's merits resolution of the constitutional claims. The reviewing court did not apply that standard. Instead, it required Elmezayen to satisfy an additional procedural-ruling prong even though the District Court had not dismissed the motion on procedural grounds.

That error deprived Elmezayen of the correct threshold review required by § 2253(c) and Slack.

III. This Case Is a Clean Vehicle to Correct the Error.

This case is an appropriate vehicle because the error is apparent from the face of the orders below. The District Court denied the § 2255 motion on the merits. The

Appellate Court then denied a certificate of appealability using the procedural-dismissal formulation from Slack. The mismatch between the District Court's ruling and the reviewing court's standard presents a clean legal issue that does not require this Court to decide the ultimate merits of Elmezayen's ineffective-assistance or Brady claims.

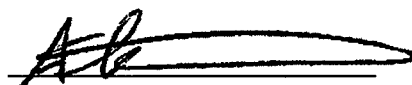
The case also comes to this Court in the proper procedural posture. Elmezayen sought a certificate of appealability from the Ninth Circuit. The court of appeals denied it. Elmezayen then timely sought panel rehearing and rehearing en banc, and the Ninth Circuit denied rehearing. This Court has jurisdiction to review a court of appeals' denial of a certificate of appealability. Hohn v. United States, 524 U.S. 236, 253 (1998).

The relief requested is limited. Elmezayen does not ask this Court to decide in the first instance whether he is entitled to § 2255 relief. Nor does he ask this Court to resolve disputed factual questions concerning Ortega's investigation, Diab's credibility, or the alleged Brady evidence. He asks only that the Ninth Circuit be required to apply the correct certificate-of-appealability standard. At minimum, the Court should grant the petition, vacate the judgment below, and remand for the Ninth Circuit to reconsider Elmezayen's request for a certificate of appealability under the proper merits-denial standard.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Alternatively, the Court should grant the petition, vacate the judgment below, and remand for the Ninth Circuit to reconsider Elmezayen's request for a certificate of appealability under the correct merits-denial standard.

Respectfully submitted,



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