

NO. _____

SUPREME COURT OF THE UNITED STATE

CARLOS CARDENAS-RAMIREZ

Petitioner,

V.

THE UNITED STATES OF AMERICA

Respondent.

**On Petition for Writ of Certiorari to the
United States Fifth Circuit Court of Appeals**

**PETITION FOR WRIT OF CERTIORARI
(Corrected2)**

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QUESTIONS PRESENTED

This case arises from a one-day drug investigation in which the jury acquitted petitioner Carlos Petitioner of possessing with intent to distribute the very cocaine later used to support his sentence yet convicted him of conspiracy based on the same events. The Fifth Circuit affirmed because it concluded that *United States v. Watts*, 519 U.S. 148 (1997), bound it to permit consideration of acquitted conduct, while separately holding that the jury could infer knowledge and foreseeable drug quantity from sealed, opaque speaker boxes, their weight, their value, a car swap, and a false identification during a traffic stop.

The questions presented are:

1. Whether the Fifth and Sixth Amendments permit a federal sentencing court to rely on conduct underlying a charge of which the jury acquitted the defendant when that conduct supplies the factual basis for the punishment imposed, or whether *United States v. Watts* should be overruled or limited.¹

2. Whether, in a § 846 drug-conspiracy prosecution triggering § 841(b)(1)(A)'s ten-year mandatory minimum, a general guilty verdict may be treated as an individualized drug-quantity finding where the verdict form contains no separate quantity finding, the alleged drugs were concealed inside sealed, opaque

¹ Candor requires the Undersigned to point out that the jury instructions in the conspiracy count one requires the jury to make findings that are also contained in count two possession charge.

containers, and the jury acquitted the defendant of possessing with intent to distribute those same drugs.

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Petitioner Carlos Cardenas-Ramirz was the defendant-appellant below. Respondent, the United States of America was the plaintiff-appellee. There are no other parties to the proceeding. No corporate-disclosure statement is required. See Sup. Ct. R. 29.6.

Related proceedings:

United States v. Petitioner, No. 7:20-CR-886-2 (S.D. Tex.) (judgment entered Oct. 29, 2024).

United States v. Petitioner, No. 24-40692 (5th Cir.) (unpublished opinion entered Feb. 24, 2026) No. 24-40692, 2026 U.S. App. LEXIS 5496, 2026 WL 509046 at *5 (5th Cir. 2026).

United States v. Petitioner, 170 F.4th 936 (5th Cir. 2026) (published opinion denying the petition for rehearing *en banc*) entered March 24, 2026.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Carlos Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

United States v. Petitioner, No. 7:20-CR-886-2 (S.D. Tex.) (judgment entered Oct. 29, 2024). Pet. App.: 39D-44D.

United States v. Petitioner, No. 24-40692 (5th Cir.) (unpublished opinion entered Feb. 24, 2026) No. 24-40692, 2026 U.S. App. LEXIS 5496, 2026 WL 509046 (5th Cir. 2026). Pet. App. 1A-23A.

United States v. Petitioner, 170 F.4th 936 (5th Cir. 2026) (published opinion denying the petition for rehearing en banc) entered March 24, 2026. Pet. App.: 24B-25B.

JURISDICTION

The court of appeals entered its merits judgment on February 24, 2026. A timely petition for rehearing was denied on March 24, 2026 by a published opinion. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is filed within ninety days of the order denying rehearing. See Sup. Ct. R. 13.1, 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The Fifth Amendment provides in relevant part: “No person shall....be deprived of life, liberty, or property, without due process of law....” Pet. App.: 45e.

2. The Sixth Amendment provides in relevant part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury” Pet. App.: 46f

3. Section 1B1.3(c) of the United States Sentencing Guidelines provides:

Relevant conduct . . . does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction. Pet. App.: 50f-51f

4. The relevant provisions of 21 U.S.C. §§ 841(b)(1)(A)(ii)

In the case of a violation of subsection (a) of this section involving ... 5 kilograms or more of a mixture or substance containing a detectable amount

of ... cocaine ... such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life App. G:47-48

5. The relevant provision of 21 U.S.C. §§ 846 are reproduced at E-2.

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Pet. App.:49h

STATEMENT OF THE CASE

1. The charges and trial.

Petitioner Carlos Petitioner was charged in the Southern District of Texas with two counts arising from a single day: April 23, 2019. Count One charged conspiracy to possess with intent to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A). Count Two charged possession with intent to distribute the same cocaine, in violation of 21 U.S.C. § 841(a)(1), § 841(b)(1)(A), and 18 U.S.C. § 2. The district court had jurisdiction under 18 U.S.C. § 3231. Pet. App.:47G-48G; Pet. App.:49H.

The Government's proof came from a DEA investigation focused on Cesar Herrera, described at trial as a cell leader who used speaker boxes to transport narcotics. The evidence did not show that Petitioner was a target of the long-term investigation before April 23, 2019. On that day, agents followed Herrera to a Dollar General parking lot. A white Nissan Sentra driven by Petitioner arrived and parked next to Herrera. Agents observed Herrera transfer two items from his vehicle into the back seat of the Sentra. The items were later determined to be speaker boxes. The speaker boxes were sealed and opaque; agents later testified that they could not see inside them until they were opened with tools.

Agents followed the Sentra to a second Dollar General approximately two and one-half miles away. There, Petitioner got out, opened the rear doors, and appeared

to adjust something in the back seat. According to the Government, the cocaine added approximately 15 to 20 pounds to the weight of the speaker boxes, and the net weight of the cocaine later found inside the boxes was 14.07 kilograms. But that fact was not visible to Petitioner from the exterior of the sealed boxes. The Government also relied on the later-estimated value of the cocaine, more than \$300,000, but that value likewise was not known from visual inspection of the boxes.

At the second Dollar General, another driver arrived in a Volkswagen Atlas. Petitioner switched vehicles with that driver. The Sentra then went to a residence, backed into a garage, and left. Agents later searched the garage with consent. A K-9 alerted to two speaker boxes in the garage. After the boxes were transported to a DEA office and opened, agents found cocaine inside.

When officers stopped Petitioner in the Volkswagen Atlas, he produced identification in the name Sergio Anaya. When Petitioner was arrested approximately three years later, he consented to a search of his phone and apartment. Agents found no drugs, ledgers, or large amounts of cash in his apartment. His recorded interrogation was played to the jury. He largely corroborated the agents' observations but stated that he had been asked to pick up speakers, that he did not know what was inside them, that the speakers were too heavy, and that he refused to move the Sentra further because he did not want to be involved or have problems.

2. The jury charge, verdict form, and sentencing.

The jury charge is critical to the issue presented here. As to Count Two, possession with intent to distribute, the court instructed the jury that it could convict only if the Government proved beyond a reasonable doubt that petitioner knowingly possessed a controlled substance, that the substance was cocaine, that he possessed it with intent to distribute it, and that the quantity was 14.07 kilograms or more of cocaine. The jury acquitted petitioner on Count Two.

As to Count One, conspiracy, the court instructed the jury that it could convict only if the Government proved beyond a reasonable doubt five elements. The fourth element required proof that the overall scope of the conspiracy involved five kilograms or more of cocaine. The fifth element required proof that petitioner knew or reasonably should have known that the scope of the conspiracy involved at least five kilograms of cocaine. The charge therefore submitted drug quantity and individualized foreseeability to the jury as elements of Count One.

The verdict form, however, did not ask the jury to state what quantity it found, nor did it ask whether the threshold quantity was individually known to, or reasonably foreseeable to, petitioner. The form recorded only: 'Guilty' as to Count One and 'Not Guilty' as to Count Two, 'as charged in the Second Superseding Indictment.' The quantity finding supporting the ten-year mandatory minimum is

therefore an implied finding from the general Count One verdict, not an express special verdict.

The district court sentenced petitioner to the ten-year mandatory minimum. At sentencing, petitioner objected that the court could not constitutionally use the factual predicate of Count Two, a count on which the jury acquitted him, to determine punishment. The objection was preserved. The district court rejected that argument and sentenced petitioner to 120 months' imprisonment.

3. The Fifth Circuit's panel opinion.

The Fifth Circuit affirmed. On sufficiency, the court held that the evidence supported a conspiracy. It reasoned that a tacit agreement could be inferred from concert of action, including Petitioner pulling up next to Herrera, waiting while Herrera transferred items, and exchanging encrypted messages with the driver involved in the car swap. Pet. App: 1a-12a.

The court assumed without deciding that, because the contraband was concealed in sealed, opaque speaker boxes, the Government was required to present additional suspicious circumstantial evidence of guilty knowledge. Pet. App. 6a-7a. It held that requirement satisfied by the false identification, the value of the cocaine, and petitioner's admission that he suspected contraband because the boxes were heavy. Pet. App. 7a.

On drug quantity, the court treated the general Count One verdict as incorporating the fourth and fifth elements in the charge. It held that the jury could infer petitioner knew or reasonably should have known the conspiracy involved at least five kilograms of cocaine from Herrera's body movement while lifting the boxes, the 15-to-20-pound added weight, petitioner's manipulation of the boxes at the second Dollar General, his statement that they were heavy, and photographs of the boxes. Pet. App. 9a-10a.

On acquitted conduct, the Fifth Circuit acknowledged that several Justices of this Court have questioned acquitted-conduct sentencing. Pet. App. 10a. But it held that it remained bound by *United States v. Watts*, 519 U.S. 148 (1997), and by circuit precedent reading *Watts* to foreclose challenges like petitioner's. Pet. App. 10a-11a. The court also noted that the 2024 amendment to U.S.S.G. § 1B1.3(c) excludes acquitted conduct from relevant conduct but declined to decide whether it applied because the issue was raised at oral argument. Pet. App. 11a.

4. The denial of rehearing.

The Fifth Circuit issued a published opinion denying rehearing. Chief Judge Elrod wrote for the panel that, '[l]ike many judges,' the court was 'deeply troubled by the use of acquitted conduct in sentencing.' Pet. App. 13a. The court recognized that acquitted-conduct sentencing raises 'serious constitutional issues and fundamental questions of fairness.' Pet. App. 13a. Nonetheless, it held that it was

bound by *Watts* and, as an inferior court, could not grant the relief petitioner sought. Pet. App. 13a-14a.

The court further stated that the overlapping nature of petitioner's acquitted possession charge and convicted conspiracy charge complicated the inquiry, citing the 2024 Guidelines amendment's exception for conduct that also establishes the instant offense of conviction. Pet. App. 14a. The court concluded: 'One day, the proper court may reconsider acquitted-conduct sentencing and the issues it raises in the right case.... This is not that day, not that court, and not that case.' Pet. App. 14a. This petition follows.

REASONS FOR GRANTING THE PETITION

I. The acquitted-conduct question is important, recurring, and unresolved after *McClinton* and the 2024 Guidelines amendment.

This Court should grant certiorari because the judgment below rests on a constitutional question that lower courts cannot answer under existing precedent: whether a sentencing court may use conduct rejected by a jury's acquittal to support punishment. The Fifth Circuit candidly acknowledged the problem. It stated that acquitted-conduct sentencing raises serious constitutional issues and fundamental fairness concerns but concluded that only this Court can provide relief because *Watts* binds inferior courts. Pet. App.:13a-14a.

That admission is a compelling reason to grant review. Rule 10 recognizes review where a court of appeals decides an important federal question that should be settled by this Court or decides such a question in conflict with this Court's decisions. This case presents both concerns. The Fifth Circuit understood that the constitutional premise of acquitted-conduct sentencing has been undermined by modern jury-right and due-process doctrine, but it believed *Watts* compelled affirmance.

The issue has not gone away. In *McClinton v. United States*, 143 S. Ct. 2400 (2023), several Justices emphasized that the use of acquitted conduct to alter a defendant's Guidelines range and sentence raises important questions about fairness,

perceived fairness, and the jury's role. Justice Sotomayor explained that juries historically served as a bulwark between the State and the accused and that an acquittal reflects the jury's refusal to authorize punishment for the alleged crime. *Id.* at 2401-02. Justice Kavanaugh, joined by Justices Gorsuch and Barrett, stated that the denial of certiorari in *McClinton* should not be misread, but that it was appropriate to await action from the Sentencing Commission. *Id.* at 2403.

The Sentencing Commission has now acted. Effective November 1, 2024, § 1B1.3(c) provides that relevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction. The Commission's action confirms that acquitted conduct is unique and that reliance on such conduct threatens respect for the law and the perceived legitimacy of criminal sentencing.

But the Commission's amendment does not answer the constitutional question. It does not overrule *Watts*. It does not bind sentencing courts outside the Guidelines calculation in the same way a constitutional rule would. It expressly preserves the possibility that overlapping conduct can be considered when it also establishes the offense of conviction. And it does not decide what the Constitution requires when, as here, the acquitted conduct and convicted conspiracy arise from the same one-day event.

That is precisely why this case matters. The Fifth Circuit relied on *Watts* to reject the constitutional challenge, then relied on the amendment's overlap language to say that this case was not a proper vehicle. But if overlap between a substantive possession count and a conspiracy count defeats review, then the exception risks swallowing the rule in many drug-conspiracy prosecutions. Prosecutors frequently charge conspiracy and substantive counts based on the same drugs, the same transfer, and the same alleged knowledge. A rule that permits courts to relabel acquitted possession conduct as conspiracy conduct leaves the jury's acquittal with little practical force.

II. Watts should not control the constitutional question presented by modern Sixth Amendment sentencing doctrine.

Watts should not bar review here. *Watts* was a short per curiam decision addressing double jeopardy and the preponderance standard at sentencing. 519 U.S. at 154-57. It preceded *Apprendi*, *Blakely*, *Booker*, *Southern Union*, and *Alleyne* decisions recognizing that facts that expose a defendant to greater punishment are not mere sentencing details but constitutional facts for the jury.

Under *In re Winship*, 397 U.S. 358 (1970), due process requires proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. Under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013), facts that increase the statutory maximum or mandatory minimum must

be found by the jury beyond a reasonable doubt. Those cases rest on a principle inconsistent with treating an acquittal as inconsequential at sentencing: the government must persuade the jury before it may increase a defendant's authorized punishment.

Booker made the Guidelines advisory, but it did not make jury verdicts advisory. Nor did it authorize a sentencing court to treat a rejected charge as though the Government had won it. To the contrary, the post-*Apprendi* cases protect the jury's structural role. That role is diminished when a defendant wins an acquittal on one count, only for the same factual predicate to be used to sustain or support punishment on another count.

This case illustrates the constitutional problem. The jury was instructed on possession with intent to distribute, and acquitted petitioner. Yet the sentencing argument and appellate affirmance treated the same cocaine, the same speaker boxes, the same brief possession-like conduct, and the same April 23, 2019, events as available to establish punishment. If an acquittal does not prevent use of the same facts to support punishment, the jury's verdict does not function as a meaningful constitutional constraint.

The Fifth Circuit could not address that problem because it considered itself bound. This Court should grant certiorari to decide whether *Watts* survives modern

Sixth Amendment doctrine, whether it should be limited to its double-jeopardy context, or whether it should be overruled.

III. The overlap rationale used below warrants review because it risks making the acquitted-conduct limitation illusory in conspiracy cases.

The Fifth Circuit's rehearing opinion identified overlap as the reason this case supposedly was not the right vehicle. Pet. App. 14a. Respectfully, that conclusion underscores why review is needed. The question is not whether overlap exists. It often will. The question is what constitutional consequence follows when the Government charges two overlapping counts, the jury acquits on one, and the sentencing court uses the same factual predicate to support punishment on the other.

The overlap problem is especially acute in drug cases. A conspiracy count often incorporates the same narcotics, the same delivery, the same vehicle, and the same alleged knowledge as a substantive possession count. If a court may always say that acquitted possession conduct also establishes conspiracy, then the acquittal becomes functionally irrelevant. That approach allows the Government to preserve the punishment value of a count it failed to prove beyond a reasonable doubt by attaching the same facts to a conspiracy conviction.

The 2024 Guidelines amendment recognizes the difficulty but does not resolve it. Application Note 10 states that courts are in the best position to decide whether overlapping conduct establishes the offense of conviction. But a discretionary

parsing exercise cannot answer the constitutional question whether a jury's acquittal must be given substantive effect. Nor can it prevent inconsistency among courts in deciding when overlap permits continued use of acquitted conduct.

This case cleanly presents the overlap issue. The possession count and the conspiracy count arose from the same day, the same speakers, the same cocaine, and the same alleged knowledge. The jury acquitted on possession. The Fifth Circuit nevertheless affirmed by reasoning that the same transfer and car swap supplied conspiracy, knowledge, and foreseeable quantity. If that is constitutionally permissible, then acquitted-conduct protection will be weakest in precisely the cases where the risk is greatest: cases involving multiple counts built from one indivisible transaction.

IV. The general verdict did not cure the insufficiency of the individualized drug-quantity finding.

The second question is sharpened by the jury charge and verdict form. This is not a case in which drug quantity was omitted from the jury charge. The Count One instruction required the Government to prove beyond a reasonable doubt that the overall scope of the conspiracy involved five kilograms or more of cocaine and that Cardenas-Ramirez knew or reasonably should have known that the scope of the conspiracy involved at least five kilograms of cocaine. But the verdict form contained no special interrogatory asking the jury to state any drug quantity or any

individualized quantity attributable to Cardenas-Ramirez. It recorded only a general verdict: guilty on Count One and not guilty on Count Two.

That matters because the only quantity finding supporting § 841(b)(1)(A)'s mandatory minimum is an implied finding from a general conspiracy verdict. Under *Alleyne*, facts that increase a mandatory minimum must be found by the jury beyond a reasonable doubt. 570 U.S. at 103. A general verdict may ordinarily incorporate the elements described in a proper charge, but it cannot save a conviction or mandatory minimum when the evidence is insufficient as to a required element. The reviewing court still must ask whether any rational juror could find the individualized quantity element beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

No rational juror could do so here without speculation. The Government did not prove that petitioner saw inside the speaker boxes. The boxes were sealed and opaque. Agents needed a K-9 alert and tools to discover the cocaine. The later-estimated \$300,000 value of the cocaine was known only after law enforcement opened the boxes and identified the contents. The later-determined net weight of cocaine was likewise not apparent from the exterior. Petitioner's statement that the speakers were heavy may support suspicion that something was wrong; it does not prove beyond a reasonable doubt that he knew or reasonably should have foreseen at least five kilograms of cocaine.

The verdict structure reinforces the constitutional concern. Count Two required the jury to find possession with intent to distribute cocaine and, as charged to the jury, that the quantity was 14.07 kilograms or more. The jury acquitted on that count. Count One required the jury to find an agreement involving five kilograms or more and petitioner's knowledge or reasonable foreseeability of that threshold amount. The Government therefore obtained the ten-year mandatory minimum through an implied quantity finding on conspiracy, while the same jury rejected the substantive possession count built on the same speaker boxes, the same cocaine, and the same April 23, 2019, transaction.

The Government may argue that the Count One instruction is enough because jurors are presumed to follow instructions. But that presumption does not answer the sufficiency question. Nor does it answer the due-process concern created when a general verdict, with no separate drug-quantity interrogatory, is used to impose a mandatory minimum based on hidden-container evidence and the very conduct rejected in the possession acquittal. This Court should grant review, or at minimum vacate and remand, so that the lower court may decide the case without treating the general verdict as a substitute for constitutionally sufficient proof of individualized drug quantity.

CONCLUSION

This petition for a writ of certiorari should be granted. In the alternative, the Court should grant the petition, vacate the judgment, and remand for reconsideration in light of *McClinton*, the 2024 amendment to U.S.S.G. § 1B1.3(c), the jury charge and general verdict form in this case, and this Court's modern jury-trial and due-process sentencing precedents.

Respectfully submitted,

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