

26 - 5560 ORIGINAL
No.

**IN THE
SUPREME COURT OF THE UNITED STATES**

EHAB SADEEK,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Supreme Court, U.S. FILED SEP - 6 2026 OFFICE OF THE CLERK
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**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether a defendant's waiver of the Sixth Amendment right to a jury trial is knowing, intelligent, and voluntary when the defendant executes the waiver only after specific aggravating allegations are proposed by the Government, rejected by the defendant, and removed from the stipulated factual basis for the bench trial, but those same allegations are later relied upon to substantially increase the defendant's advisory Guidelines range.

II. Whether the Fifth Circuit misapplied the certificate-of-appealability standard under 28 U.S.C. § 2253(c) and *Slack v. McDaniel*, 529 U.S. 473 (2000), by concluding that Petitioner's constitutional claims were not debatable among reasonable jurists.

LIST OF PARTIES

All parties appear in the caption of this petition. Ehab Sadeek was the applicant in the court of appeals. The United States of America was the appellee.

RELATED PROCEEDINGS

United States v. Sadeek, No. 2:20-cr-00853, U.S. District Court for the Southern District of Texas. Judgment entered May 9, 2022; amended judgment entered June 9, 2022.

United States v. Sadeek, No. 22-40332, U.S. Court of Appeals for the Fifth Circuit. Judgment entered August 8, 2023.

Sadeek v. United States, No. 23-6005, Supreme Court of the United States. Certiorari denied February 20, 2024.

Sadeek v. United States, Nos. 2:25-cv-00057 and 2:20-cr-00853, U.S. District Court for the Southern District of Texas. Memorandum opinion and order entered September 2, 2025; final judgment entered October 9, 2025.

United States v. Sadeek, No. 25-40581, U.S. Court of Appeals for the Fifth Circuit. Certificate of appealability denied March 16, 2026; rehearing and rehearing en banc denied June 12, 2026.

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

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

OPINIONS AND ORDERS BELOW

The Fifth Circuit's unpublished order denying a certificate of appealability is reproduced at App. 1-2. The district court's unpublished memorandum opinion and order denying relief under 28 U.S.C. § 2255 is reproduced at App. 3-24, and its final judgment is reproduced at App. 25. The Fifth Circuit's unpublished order denying panel rehearing and rehearing en banc is reproduced at App. 26.

JURISDICTION

The Fifth Circuit denied a certificate of appealability on March 16, 2026. App. 1-2. Petitioner timely sought panel rehearing and rehearing en banc, which the Fifth Circuit denied on June 12, 2026. App. 26. This petition is timely under Rule 13.3 because it is filed within 90 days after the denial of rehearing. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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."

The Fifth Amendment provides in relevant part that no person shall "be deprived of life, liberty, or property, without due process of law."

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

Section 2253(c)(2) of Title 28 provides: "A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right."

STATEMENT OF THE CASE

A. Trial and sentencing

A federal grand jury charged Petitioner with enticing a minor to engage in sexual activity, traveling with intent to engage in illicit sexual conduct, and transferring obscene material to a minor. Petitioner pleaded not guilty. Rather than plead guilty, he proceeded through a stipulated bench trial, thereby preserving appellate and collateral-review rights while waiving a jury's determination of guilt.

The stipulated-facts procedure followed negotiations over the factual presentation. Earlier Government drafts included aggravating allegations that Petitioner rejected, including allegations of force and repeated sexual conduct. The parties continued negotiating, and those allegations were removed. The final stipulation was filed on November 16, 2021. App. 28-35. Two days later, Petitioner executed a written jury waiver and confirmed in court that he wished to proceed through a stipulated bench trial. App. 27. The district court found him guilty on all counts. App. 36-37.

At sentencing, however, the presentence report and the Government relied on the excluded allegations. The court applied the cross-reference to the criminal-sexual-abuse Guideline based on a finding of force and applied a five-level enhancement for a pattern of prohibited sexual conduct. The resulting total offense level of 41 and criminal-history category I produced an advisory range of 324 to 405 months. The

court imposed 405 months. On direct appeal, the Fifth Circuit affirmed the conviction and prison sentence while vacating one special assessment. *United States v. Sadeek*, 77 F.4th 320 (5th Cir. 2023). This Court denied certiorari. *Sadeek v. United States*, No. 23-6005 (Feb. 20, 2024).

B. Collateral proceedings

Petitioner timely moved under 28 U.S.C. § 2255. As relevant here, he argued that the Government's use at sentencing of aggravating allegations removed during negotiation rendered his decision to proceed through stipulated adjudication unknowing and involuntary and denied due process. He also raised Fourth Amendment and ineffective-assistance issues and sought an evidentiary hearing.

The district court denied relief without a hearing. App. 3-24. It reasoned that Petitioner's sworn waiver and signed stipulation established voluntariness, and that the stipulation neither restricted relevant conduct in the presentence report nor imposed sentencing obligations on the Government or court. App. 9-11. It separately held that the standalone Fourth Amendment claim was barred on collateral review. App. 20-21. The court concluded that the existing record conclusively resolved the motion and denied a certificate of appealability. App. 22-24.

The Fifth Circuit likewise denied a certificate of appealability. App. 1-2. Its order listed Petitioner's stipulation, due-process, ineffective-assistance, Fourth Amendment, probation-officer, confrontation, and related claims, recited Slack's reasonable-jurist standard, and stated that Petitioner had not made the required showing. App. 1-2. The court denied rehearing and rehearing en banc. App. 26. This petition followed.

REASONS FOR GRANTING THE PETITION

I. The Court Should Resolve Whether Negotiated Factual Circumstances Bear Upon the Constitutional Validity of a Jury-Trial Waiver

A. This case presents an unresolved application of this Court's established waiver principles

This case presents a narrow constitutional question arising from a documented sequence. The Government proposed a stipulated factual basis containing specific aggravating allegations. Petitioner rejected those allegations. The parties negotiated until the allegations were removed. Only then did Petitioner waive his Sixth Amendment right to a jury and proceed by stipulated bench trial on the negotiated factual presentation. Those same allegations were later relied upon at sentencing to support a substantially higher advisory Guidelines range.

The constitutional question is not whether sentencing courts may consider relevant conduct. It concerns an earlier event: formation of the jury-trial waiver itself.

This Court has long held that relinquishment of a fundamental constitutional right must be knowing, intelligent, and voluntary, and must be evaluated in light of the circumstances surrounding the defendant's decision. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); *Brady v. United States*, 397 U.S. 742, 748 (1970). Those decisions establish the governing principles. They do not answer their application to this sequence: the affirmative negotiation and removal of aggravating allegations as the condition for a stipulated-facts adjudication, followed by later reliance on those same allegations to increase the advisory range.

The question is whether circumstances deliberately negotiated immediately before—and forming the factual framework for—a stipulated adjudication may be

treated as constitutionally irrelevant when determining whether the resulting jury waiver was knowing and intelligent.

B. The stipulated-facts procedure gives the negotiations constitutional significance

This was not an ordinary trial in which the parties stipulated to one evidentiary fact while witnesses testified, evidence was contested, and the Government otherwise presented its case through the ordinary adversarial process. Petitioner waived a jury and proceeded by stipulated bench trial. The negotiated stipulation therefore supplied the factual presentation upon which guilt was adjudicated after Petitioner relinquished the jury-trial right.

Those negotiations were not collateral to the waiver. They formed part of the circumstances immediately preceding and producing it. Under Johnson, those circumstances cannot be excluded from the constitutional inquiry merely because sentencing occurred later.

C. This is not a failure-to-warn claim, and Ruiz does not resolve it

The claim does not depend on a freestanding constitutional duty to predict or explain every possible sentencing consequence before a defendant may waive a jury. The alleged defect arises from the objective negotiated circumstances surrounding the waiver, not from a generalized failure to advise Petitioner about federal sentencing law.

United States v. Ruiz, 536 U.S. 622 (2002), confirms that constitutional waiver does not require complete knowledge of every circumstance, evidentiary matter, or consequence that might affect a defendant's decision. Petitioner accepts that

principle. He does not claim a constitutional entitlement to advance knowledge of every fact that might later be considered at sentencing.

The distinction is that the allegations here were not merely unknown information. They were already known. They were proposed by the Government. They were rejected by Petitioner. They were affirmatively removed from the stipulated factual presentation. Only then was the jury waiver executed. Ruiz establishes that complete knowledge is unnecessary. It does not establish that circumstances deliberately negotiated immediately before surrender of a fundamental constitutional right are irrelevant to whether that surrender was knowing and intelligent.

Under Brady, the waiver must be made with sufficient awareness of the relevant circumstances and likely consequences. Petitioner was aware that the aggravating allegations had been removed from the stipulated factual basis. The waiver record does not indicate that this negotiated removal was treated as limited to adjudication and irrelevant to sentencing. That gap is constitutionally significant because the same allegations later supported a substantially more severe advisory range.

Boykin v. Alabama, 395 U.S. 238 (1969), reinforces the importance of an adequate record when fundamental trial rights are surrendered. Petitioner does not ask the Court to convert Boykin into a requirement that every potential sentencing consequence be expressly discussed during a jury-waiver colloquy. The silence of the waiver record is relevant only as context: nothing in that record dispels the constitutional significance of the immediately preceding negotiations in which the

very allegations later relied upon to increase punishment had been proposed, contested, and removed.

D. Relevant-conduct doctrine answers a different question

Petitioner does not contend that a factual stipulation automatically restricts the sentencing court. Assume that the district court remained legally authorized to consider relevant conduct. That proposition does not answer the antecedent constitutional question.

A sentencing court may possess authority to consider additional information. A stipulation may impose no contractual restriction upon that authority. And the negotiated removal of particular allegations immediately before a defendant relinquishes a fundamental trial right may nevertheless bear upon whether that relinquishment was knowing and intelligent. Those propositions are not mutually exclusive. The Government's sentencing authority cannot substitute for analysis of the constitutional validity of the waiver that preceded sentencing.

E. The question is narrow and this case is an appropriate vehicle

Petitioner does not assert a demonstrated circuit conflict on this precise factual sequence, nor an unsupported claim that the sequence frequently recurs. Review is warranted because the Fifth Circuit's disposition leaves unresolved an important question of federal constitutional law that this Court has not addressed: how established waiver principles apply when negotiated factual narrowing immediately precedes and structures a stipulated-facts adjudication, and the same excluded allegations are later relied upon to materially increase the advisory Guidelines range. See Sup. Ct. R. 10(c).

The case permits resolution without reconsidering relevant-conduct doctrine, deciding the truth of the aggravating allegations, or establishing a general duty to advise defendants of every possible sentencing consequence. The negotiation history is documented in successive drafts. The waiver colloquy is silent on the significance of the removal. The claim was pressed below and rejected on grounds that treat the formal execution of the waiver, and the absence of a contractual limit on relevant conduct, as dispositive. Those grounds do not answer the constitutional question. The substance of the waiver-validity question was raised and passed upon below.

II. The Fifth Circuit's Denial of a Certificate of Appealability Independently Warrants Review

A. Section 2253(c) establishes a gateway, not a merits determination

Under 28 U.S.C. § 2253(c)(2), a prisoner seeking appellate review must make a “substantial showing of the denial of a constitutional right.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), holds that when the district court rejects a constitutional claim on the merits, the applicant satisfies that threshold when reasonable jurists could find the district court’s assessment debatable or wrong.

Miller-El v. Cockrell, 537 U.S. 322 (2003), makes the distinction fundamental: the COA inquiry concerns the debatability of the constitutional claim, not ultimate resolution of that debate. *Buck v. Davis*, 580 U.S. 100 (2017), again emphasized that § 2253 establishes a two-stage process—first determining whether a claim is reasonably debatable and, if so, allowing an appeal in the ordinary course. This Court has previously granted certiorari to review a Fifth Circuit COA denial in *Miller-El* and reversed.

Petitioner does not contend that the Fifth Circuit failed to recite the correct standard, or that its short order was inadequate merely because it was short. The issue is application: whether constitutional claims presenting an unresolved legal question and material factual disputes could properly be characterized as beyond reasonable judicial debate.

B. The jury-waiver claim was at least debatable

The district court could ultimately be correct that Petitioner's waiver remained constitutionally valid. That was not the question confronting the Fifth Circuit at the COA stage. The question was whether reasonable jurists could debate it.

Petitioner's claim applied this Court's established waiver jurisprudence to a documented sequence: proposal, rejection, negotiated removal, jury waiver, stipulated adjudication, and later sentencing reliance upon the same allegations. The district court's reasoning substantially relied upon the formal execution of the waiver and the absence of a contractual restriction upon relevant-conduct sentencing. A reasonable jurist could accept both propositions and nevertheless conclude that neither necessarily resolves whether the negotiated circumstances preceding the waiver bear upon its constitutional validity.

Whether that claim ultimately succeeds is the merits question. Whether reasonable judges could debate it is the COA question. The latter does not require the former.

C. The Kimmelman claim and undeveloped record reinforce debatability

Petitioner also sought a COA on a distinct Sixth Amendment claim concerning trial counsel's failure to investigate and litigate potential Fourth Amendment

violations. That claim remains supporting rather than dominant, but it reinforces the threshold issue.

Attorney Neil Tassel averred that trial counsel had not provided him all discovery; that Tassel reviewed some body-camera evidence; that he identified a potential Fourth Amendment concern involving Petitioner's extended detention; and that he communicated that concern to trial counsel. Petitioner separately alleged that trial counsel failed to investigate and pursue suppression. Tassel did not aver that trial counsel refused to file a suppression motion, nor did he establish that any particular search was unconstitutional. His affidavit matters because another attorney involved in the defense independently identified a potential Fourth Amendment issue and communicated it to trial counsel.

Petitioner further alleged that law enforcement entered his hotel room without a warrant and seized a laptop that supplied significant evidence, and that counsel failed to investigate or litigate suppression. The absence of a warrant does not establish the ultimate Fourth Amendment issue; a recognized exception could justify a warrantless search. But *Kimmelman v. Morrison*, 477 U.S. 365 (1986), establishes that *Stone v. Powell*'s limitation on standalone Fourth Amendment collateral claims does not eliminate a distinct ineffective-assistance claim based on counsel's failure competently to litigate a meritorious Fourth Amendment issue.

Petitioner therefore did not need to establish at the COA stage that suppression necessarily would have succeeded. He needed to establish reasonable debatability concerning the constitutional claim.

D. The request for an evidentiary hearing strengthens the threshold argument

Before judgment, Petitioner requested an evidentiary hearing to develop unresolved constitutional and factual issues. That request identified matters the Government's § 2255 response allegedly had not addressed, including aspects of the stipulation negotiations, Fourth Amendment allegations, and related ineffective-assistance issues.

The Government's silence did not establish those allegations as true. Its significance is that material matters remained unresolved. Petitioner sought factual development. No evidentiary hearing occurred. The Fifth Circuit then denied a COA and declined to reach the hearing issue because no COA had issued.

That sequence matters: unresolved material allegations, a request for factual development, no hearing, denial of a COA, and foreclosure of appellate review of the hearing issue by the COA denial. The absence of factual development cannot establish Petitioner's constitutional claims. But unresolved factual questions make it more difficult, not less, to characterize the related constitutional claims as incapable of reasonable judicial debate.

E. Petitioner does not overread Buck

Petitioner does not contend that the Fifth Circuit visibly performed the same extensive merits adjudication condemned in *Buck*. The order here was brief. The claim is not that the court wrote too much or too little. It is that, given the constitutional questions and unresolved record actually before it, the conclusion that none was reasonably debatable cannot be reconciled with the deliberately limited

gateway established by Slack, Miller-El, and Buck. Correctly articulating the COA standard does not eliminate the requirement to apply the threshold as a threshold.

F. The Court can resolve Question II without deciding either constitutional claim

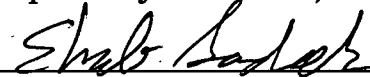
The disposition requested on Question II is narrow. The Court need not hold that Petitioner's jury-trial waiver was unconstitutional. It need not decide that any search violated the Fourth Amendment. It need not determine that trial counsel rendered ineffective assistance. And it need not resolve factual disputes that were never developed below.

The Court need determine only whether at least one constitutional claim crossed § 2253(c)'s threshold of reasonable debatability. If so, appellate review—not denial at the gateway—is the proper mechanism for deciding the ultimate constitutional question. That is precisely the distinction this Court's COA precedents protect.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: Sept. 6, 2024