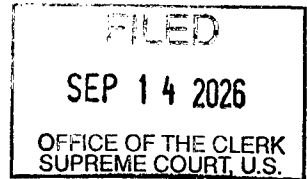


26-5757
No. 26A63

IN THE
SUPREME COURT OF THE UNITED STATES



WILLIAM JOHN EASTERLING — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT CASE NO. 25-1016
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William John Easterling, #22054-040

(Your Name)

Terre Haute - USP

P.O. Box 33

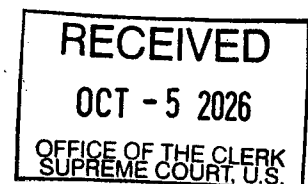
(Address)

Terre Haute, IN 47808-0033

(City, State, Zip Code)

None

(Phone Number)



Questions Presented

Whether a court of appeals denies due process and exceeds the limited certificate-of-appealability inquiry required by Slack v. McDaniel, 529 U.S. 473 (2000), and Buck v. Davis, 580 U.S. 100 (2017), when it denies a COA by conducting a full merits and prejudice review of a constitutional claim that the district court never adjudicated.

Whether the omission of an essential jurisdictional element from a federal indictment constitutes a structural defect requiring automatic reversal, rather than harmless-error or prejudice review, under the Fifth Amendment Grand Jury Clause and this Court's treatment of omitted-element cases, an issue this Court expressly left open in United States v. Resendiz-Ponce, 549 U.S. 102 (2007).

Whether the government must prove the federal nexus as a separate jurisdictional fact, where the Sixth Circuit's contrary reading treats mens rea for the offense as satisfying the interstate-commerce nexus in conflict with United States v. Terrell, 700 F.3d 755 (5th Cir. 2012), and violates the fair-warning, lenity, and federalism principles recognized in United States v. Lopez, 514 U.S. 549 (1995), and United States v. Morrison, 529 U.S. 598 (2000).

Whether a court of appeals may apply a prejudice or harmless-error standard to a conceded structural defect in a grand jury indictment, in tension with Stirone v. United States, 361 U.S. 212 (1960) and the rule adopted in other circuits.

Whether a court of appeals denies due process when it grants leave to file a supplemental en banc petition but fails to circulate it to active judges, denying full-court review.

Whether a court of appeals denies due process when a clerk withholds a timely § 455(a) recusal motion and the panel applies the stricter § 455(b) standard instead of addressing appearance of impropriety.

Whether a court of appeals may deny COA while ignoring or improperly foreclosing claims of ineffective assistance of trial and appellate counsel for failing to raise a conceded structural defect in the indictment.

List Of Parties

All parties to the proceeding in the Court whose judgment is sought to be reviewed are listed in the caption of this petition:

William John Easterling, Petitioner, and
United States of America, Respondent.

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Judicial Conference Guide to Judiciary Policy (Vo., SA, Ch.2)

Petition for a Writ of Certiorari

Petitioner William John Easterling respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit denying certificate of appealability (herein, COA). The case presents an important question under *Slack v. McDaniel* and *Buck v. Davis* about the limits of COA review, a serious circuit split on § 2251(a)'s jurisdictional element, a fair-warning, rule-of-lenity, and federalism issue, and a significant recusal/en-banc process defect that prevented fair consideration of Petitioner's supplemental rehearing submission.

Opinions Below

The Sixth Circuits December 18, 2025 single-judge order denying a certificate of appealability is unpublished and appears in Appendix A. The April 6, 2026 panel order denying recusal relief and rehearing-related relief is unpublished and appears in Appendix B. The April 21, 2026 panel order denying rehearing en banc is unpublished and appears in Appendix D.

Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 1254(1). On July 16, 2026, Circuit Justice Kavanaugh granted Petitioner's application for a 60-day extension of time to file a petition for a writ of certiorari, extending the deadline through September 18, 2026. This Petition is timely.

Statement Of The Case

Petitioner was convicted on Count 3 of attempted sexual exploitation under 18 U.S.C. § 2251(a,e). The charge was for an inchoate offense because defendant was "unsuccessful in having the 15-year-old minor at issue in Count 3 produce a video."¹ Judge Bush decided, "whether a recording was produced is of no moment," App. A at 4. "The indictment omitted the interstate-commerce jurisdictional element for Count 3." App. A at 5. The jury instructions for Count 3, and the alternate attempt instructions in Counts 1 and 2, likewise omitted the element.² Importantly, the district court expressly directed the jury to rely on the written instructions for Count 3,² which mirrored the omission.³

The district court never directly addressed Petitioner's claim that the indictment was fatally defective. After years of Petitioner raising the defect, the district court stated, "nothing in the court's opinion and order denying defendant's second-amended § 2255 motion can be construed as agreeing that the indictment was missing a jurisdictional element."⁴

¹Case No. 1:20-cv-01125-PLM ECF No. 83 PageID 819

²Case No. 1:18-cr-00045-PLM ECF No. 81 PageID 799

³Id. at CR ECF No. 42 PageID 141

⁴Id. at CV ECF 126 PageID 990

By never admitting any defect existed, this allowed the district court to dismissively ignore Petitioner's primary § 2255 claim of ineffective assistance of trial counsel for failing to object to the defective indictment. In the COA appeal, Judge Bush expressly found that the district court "did not" address this argument and that the indictment "in fact" omitted the interstate-commerce element. App. A at 5. Despite this concession, the order applied a prejudice standard/analysis, and held that the intent to transfer a never-produced video to interstate hard drives satisfies jurisdiction. App. A at 6. The district court imposed the maximum 30-year sentence of Count 3 - - the only count challenged in this petition - - and ordered it to run consecutively with the other counts. Petitioner raised ineffective assistance of trial counsel for failing to object to the defective indictment that omitted the jurisdictional element in Count 3. Had trial counsel objected, the count would have been dismissed as a matter of law.⁵

⁵ United States v. Gatewood, 173 F.3d 983, 986 (6th Cir. 1999)
United States v. Du Bo, 186 F.3d 1177, 1180 (9th Cir. 1999)

Judge Bush addressed only the related appellate counsel IAC deeming it moot in light of his own merits resolution that Petitioner had not shown prejudice from the omitted jurisdictional element. Neither the district court, Judge Bush, nor the rehearing panel gave trial counsel IAC claim independent consideration. Petitioner also filed a timely § 455(a) recusal motion based on Judge Bush's pre-bench statements against LGBTQ+ and homosexuals raising questions of impartiality in this case involving a male victim. The motion was supported by pre-confirmation statements and positions compiled and presented by ** 27 national civil rights organizations ** opposing nomination. The Clerk refused to forward it for Chief Judge review as Petitioner requested. On April 6, 2026, a panel denied the recusal motion, stating: "Easterling has not shown that the judge held a personal belief or bias that would have rendered him unable to rule impartially on the issue presented in Easterling's COA application." The panel applied the stricter § 455(b) actual bias claim - - not the appearance-of-bias claim petitioner raised.

Additionally, the panel granted leave to file a supplement to the petition for rehearing en banc on April 20, 2026. The supplement raised the yet unaddressed and unresolved § 455(a) appearance-of-impropriety claim to the full court. The clerk entered the panel order denying the en banc petition without ordering circulation of the supplemented petition to the active judges. This procedural shortcut deprived Petitioner of access to full-court review.

Reasons For Granting The Petition

I. COA Misuse and Procedural Irregularities

The COA process is intended to be a modest threshold screen, not a full appeal on the merits. *Slack v. McDaniel* and *Buck v. Davis* make clear that a petitioner need only show that reasonable jurists could debate the district court's assessment of the constitutional claim. Here, the single-judge order went far beyond that limited role. It performed a complete merits and prejudice analysis on a claim the district court never actually decided. This misapplication of the COA standard, combined with the Clerk's withholding of Petitioner's timely § 455(a) recusal motion and the panel's evasion of the appearance-of-impropriety claim, deprived Petitioner of neutral, meaningful review and illustrates a recurring breakdown in how lower courts apply the COA gatekeeping function.

II. Structural Error/Resendiz-Ponce Open Question

The Bush Order concedes the indictment "in fact" omitted the jurisdictional element yet applied prejudice review. This directly implicates the open question in *United States v. Resendiz-Ponce*, 549 U.S. 102 (2007). Justice Scalia, in dissent, explained that this was the precise structural-error question the Court had granted certiorari to decide, but the majority "dodged the bullet" by resolving the case on the other grounds.

Scalia wrote:

My dissenting view that the indictment was faulty puts me in the odd position of being the sole Justice who must decide the question on which we granted certiorari: Whether a constitutionally deficient indictment is structural error. It should come as no surprise that I would find the error to be structural.

This case squarely presents the question Scalia said the Court would "undoubtedly have to speak on another day." Further, it's a question this court expressly left open in United States v. Cotton, whether indictment errors are structural.

535 U.S. 625, 632-633 (2002). The Sixth Circuit's application of a prejudice standard to a conceded grand jury defect provides a clean vehicle for the Court to resolve this important constitutional issue.

Moreover, Neder v. United States, 527 U.S. 1 (1999), does not save the Sixth Circuit's analysis. In Neder, the parties agreed that the omitted element (materiality) had been overwhelmingly proven at trial and that no new facts would be presented on retrial.

Here, the jurisdictional element was ** never charged, never instructed, and never litigated ** to the jury for Count 3. On retrial with a proper indictment and instructions, there would be a substantial new record devoted to proof or rebuttal of federal jurisdiction. This fact pattern falls outside Neder's narrow holding and reinforces that the combined grand jury and petit jury defects are structural. At minimum, a structural charging defect should not be transformed into a harmlessness contest at the COA⁶ stage.

⁶ It should be noted that the holding does not comport with the mens rea requirement of § 2251(a,e). Specifically, a "general intent" to transfer "any video created" to a hard drive is in conflict with the statutory requirement that the government prove that defendant "specifically, intended to create child pornography." United States v. Sims, 708 F.3d 832, 835 (6th Cir. 2013). See also United States v. Jakits, (6th Cir. 2025) (conviction for attempt requires the government to prove the defendant had the specific intent to "create a lascivious image.")

III. Clear Circuit Split On The Jurisdictional Element

The Bush Order held that Petitioner's intent to transfer a never-produced video satisfied the jurisdictional element, stating:

Whether a recording was produced is of no moment [].
Easterling intended to transfer any video created by minor
2 to those hard drives, providing the requisite nexus to
interstate commerce.

App. A. at 4-6.

Notwithstanding that this contravenes the statutory requirement that the instant offense is a specific intent crime,⁶ this case presents a clear and important circuit split on the interpretation of the jurisdictional element of 18 USC §2251(a). The Fifth Circuit held that the courts must not apply the mens rea of the statute to federal jurisdictional elements. See United States v. Terrell, 700 F.3d 755, 759 (5th Cir. 2012) ("Courts have been consistent in not applying mens rea of statutes to federal elements.") Moreover, this Court forbids applying mens rea to jurisdictional elements. See United States v. Yermian, 486 US 63 (1984). The Sixth Circuit's approach is squarely at odds with the statutory text.

The interstate nexus element of § 2251(a) requires that the video depiction "was produced using [interstate] materials." Congress specifically used the past tense in this jurisdictional prong. Congress' deliberate choice of tenses - - for example,

In another prong, it uses future tense - - demonstrates that it intended different requirements for each prong. The Fifth Circuit respected the textual distinction. The Sixth Circuit's unpublished order in this case did not. It held that Petitioner's bare intent to transfer a never-produced video to an interstate hard drive satisfies nexus to interstate commerce, which it does not. This conflict is certworthy. The Supreme Court routinely grants review to resolve splits that create conflicting rules within the federal system. This case is therefore a strong vehicle for clarifying that the jurisdictional element cannot be collapsed into mens rea of the offense.

This judicial expansion also raises profound federalism concerns. That a defendant's subjective intent to use interstate materials is enough to satisfy the jurisdictional element collides with the commerce clause. The commerce clause does not permit Congress to federalize purely local, inchoate criminal conduct. See United States v. Lopez, 514 U.S. 549 (1995); United States v. Morrison, 529 U.S. 598 (2000). The jurisdictional element in § 2251(a) exists precisely to maintain that constitutional boundry.

In Yermian this Court forbids applying mens rea to jurisdictional elements. It shows that jurisdictional elements are distinct from the substantive evil Congress seeks to prevent. Courts cannot erase the jurisdictional element by merging it into mens rea, collapsing the commerce nexus into intent. Moreover, by replacing that objective limit with subjective intent, the Sixth Circuit has interpreted § 2251(a) to reach any attempted solicitation, obliterating the distinction between federal and state criminal jurisdiction and encroaching the states' traditional police powers. It also deprives ordinary people of fair notice about what conduct becomes a federal offense, which violates due-process principles recognized in Bouie and Rogers, and runs against the rule of lenity when the statute is ambiguous.

IV. Prejudice Versus Structural on Conceded Fatal Defect

The Bush Order's prejudice analysis on a conceded fatal defect -- the omission of the interstate commerce element -- conflicts with *Stirone*, the Federal Rules of Criminal Procedure, and the rule adopted in other circuits.

Omission of the interstate commerce element is critical since the federal government's jurisdiction of this crime rests on the assumption that interstate commerce is affected. United States v. Stirone, 361 US 212, 218 (1960). Moreover, there is a "substantial right to be tried only on charges presented in an indictment returned by a grand jury [which] deprivation is far too serious to be dismissed...as harmless error." *Id* at 217.

The Sixth Circuit stands alone requiring a showing of prejudice for post-verdict challenges of fatal defects in the indictment. United States v. West, 371 F.App'x 625,630 (6th Cir. 2010). It holds the extreme view that the mere "citation to the statute is adequate." United States v. Hart, 640 F.2d 856, 858 (6th Cir. 1981). This means no indictment is vulnerable to attack post-verdict in the Sixth Circuit because the statute is always referenced in it.

This runs afoul of the Federal Rules of Criminal Procedure. In an advisory note to FRCP Rule 7(c), it says, "The law at present regards citations to statutes as not part of the indictment." Something not part of the indictment cannot be part of a liberal construction of the indictment to construe it to state an offense and charge a crime. Moreover, Rule 7(c) requires a separate statement of essential facts "that is controlling" -- not the statutory citation.

United States v. Wuco, 535 F.2d 1200, 1202 n.1 (9th Cir. 1976). With the omission of an essential element, there's the omission of essential facts required to give notice. Furthermore, the Sixth Circuit's rule runs contrary to the canon that statutory citations cannot supply the missing element in an indictment.

The Sixth Circuit's Prejudice Standard also conflicts with the rule adopted by the sister circuits. See, for example, United States v. Laureano-Perez, 797 F.3d 45, 60 (4th Cir. 2015) (Language describing elements, not a simple citation to the statute, for sufficiency); United States v. Berlin, 472 F.2d 1002, 1007 (2nd Cir. 1973) (Deficiency not cured by fact each count cited the statute); United States v. Beard, 414 F.2d 1014 (3rd Cir. 1969) (No prejudice required because the failure to allege essential element renders the count a nullity);

United States v. Daniels, 973 F.2d 272,274 (4th Cir. 1992) (Inclusion of the reference to the statute will not cure failure to include every essential element); United States v. Medley, 972 F.3d 399,407 (4th Cir. 2020)(Same); United States v. Cabrena-Teran, 168 F.3d 141,145 (5th Cir. 1999)(Statutory citations may not stand in place of the inclusion of an element of the crime); United States v. Wabaunsee, 528 F.2d 1,4 (7th Cir. 1975)(mere citation to the statute cannot rectify failure to allege essential element); United States v. Maez, 960 F.3d 949 (7th Cir. 2020)(Same); United States v. Prentiss, 206 F.3d 960 (10 Cir. 2000)(Requires the necessary facts; Mere citation to the statute is insufficient); Robinson v. United States, 263 F.2d 911 (10th Cir. 1959)(fatal defect cannot be disregarded as harmless error); but see, United States v. Graham, 572 F.3d 954, 956 (8th Cir. 2009)(adequately alleged the necessary elements of the crime by including reference to the statute); United States v. James, 980 F.2d 1314, 1318 (9th Cir. 1992)(Reference to the statute cures some defects, but defendant must have been given adequate knowledge of the missing elements in order to satisfy due process).

V. § 455(a) Recusal Evasion

The April 6 panel applied the stricter § 455(b) standard and sidestepped the § 455(a) appearance-of-impropriety claim. This deprived Petitioner of the neutral tribunal guaranteed by due process. The panel's April 6 order spoke in terms whether the judge had a personal belief or bias that would prevent impartiality -- not the claim Petitioner's motion expressly argued, whether the judge's impartiality might reasonably be questioned. The motion was backed by the pre-confirmation statements and positions compiled and presented by ** 27 national civil rights organizations **. The Clerk's handling of the motion ensured the recusal issue was not properly routed through the ordinary and neutral channels petitioner requested.

VI. En Banc Supplement Procedural Violation

An irregularity in the en banc process here is though the motion for leave to file a supplement is granted, the en banc coordinator does not then order it to be circulated.⁸ In the April 21 denial order,⁹ the panel does not refer to the circulation of the supplemental petition. That means the panel's procedural handling effectively buried the supplement. The supplement was aimed at the unresolved § 455(a) issue, the non-neutral routing, and the panel's use of § 455(b)-style reasoning. Since the supplemental petition was not circulated to the active judges, the full court never had a fair chance to consider the very issue Petitioner was trying to bring before it.

⁸See Appendix C

⁹See Appendix D

VII. Ineffective Assistance of Counsel

Petitioner's primary § 2255 claim was ineffective assistance of trial counsel for failing to object to the defective indictment that omitted the jurisdictional element in Count 3. Had counsel objected, the count would have been dismissed as a matter of law.⁷ Judge Bush never addressed this claim independently. Instead, he resolved the underlying defect on the merits and used that ruling to sideline the IAC claim. Given Bush's concession that the element was "in fact" omitted, this IAC claim carries strong per se prejudice under Strickland. The appellate-counsel claim falls with the same defect. Once the court conceded the indictment omitted the element, appellate counsel's failure to raise the issue cannot be dismissed as harmless or moot. The claim was independently substantial, and it was wrong to sideline it by resolving the underlying defect on the merits at the COA stage. The failure to address it provides an independent basis for certiorari.

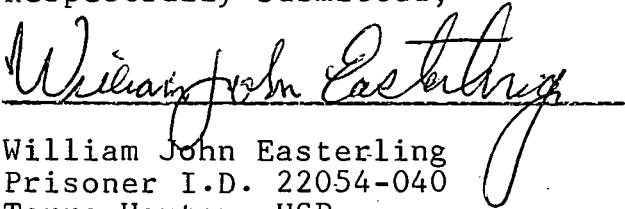
⁷United States v. Gatewood, 173 F.3d 983, 986 (6th Cir. 1999)
United States v. Du Bo, 186 F.3d 1177, 1180 (9th Cir. 1999)

Conclusion

The judgment of the court of appeals is the product of a cascade of confessed constitutional and procedural errors. It rests on a structural indictment defect that the court conceded but refused to remedy; a violation of this Court's COA precedents; an inter-circuit conflict over melding federal nexus and jurisdiction; an inter-circuit split over standard of review for a fatal defect in the indictment challenged post-verdict; and unadjudicated claims of ineffective assistance of counsel that the court's own findings prove. This systemic breakdown of the federal habeas process requires this Court's supervision. The petition for a writ of certiorari should be granted. At a minimum, this Court should call for views of the Solicitor General.

The Petition for a Writ Of Certiorari should be granted.

Respectfully Submitted,



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DATE: September 14, 2026