

AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF DEFENDANT MARCUS ELLIS

The American Civil Liberties Union (ACLU) submits this brief as *amicus curiae* in support of Marcus Ellis, a federal defendant who challenges the adequacy of his court-appointed counsel pursuant to the Sixth Amendment of the U.S. Constitution. The ACLU has long advocated for the protection of defendants' rights to competent legal representation, especially for indigent individuals navigating complex federal prosecutions.

This case presents a disturbing but not uncommon example of how indigent defendants can suffer profound disadvantage when appointed counsel fails to meet minimal constitutional standards. Mr. Ellis was charged with six felony counts under the Lacey Act—a complicated federal statute governing the transport and sale of protected wildlife. Despite the legal complexity and the severity of the penalties involved, Mr. Ellis was assigned an attorney who had no experience in federal wildlife trafficking cases and who, by every meaningful measure, failed to provide adequate representation.

The Supreme Court's decision in *Strickland v. Washington*, 466 U.S. 668 (1984), requires that a defendant receive (1) representation that meets an objective standard of reasonableness and (2) a fair trial free from outcome-altering deficiencies. Mr. Ellis's counsel, Mr. Kearns, failed both prongs.

First, Mr. Kearns's representation fell well below any reasonable professional standard. He failed to thoroughly review or share discovery materials, did not investigate potential mitigating evidence such as Mr. Ellis's mental health history, and made no effort to obtain letters of support or expert evaluations. His communication with Mr. Ellis was sporadic and superficial, denying his client both transparency and agency in his own defense. Tellingly, Mr. Kearns discouraged trial based on fear—not on any rigorous review of the evidence or legal defenses. Such passive and uninformed advocacy undermines the adversarial system.

Second, the prejudice to Mr. Ellis is clear. He was sentenced to 48 months in federal prison without the court ever hearing about his anxiety disorder, his claimed lack of intent, or his efforts to comply with legal guidelines. More competent counsel could have explored whether certain animals were misclassified or whether valuations were inflated—common issues in Lacey Act cases. The record shows that other similarly situated defendants received probation or significantly lighter sentences when their attorneys actively litigated these issues.

The ACLU submits this brief to emphasize that systemic underperformance by appointed counsel remains a persistent threat to due process in the criminal justice system. Mr. Ellis's case is not a story of strategic misjudgment; it is a story of neglect. When the government prosecutes individuals under statutes as arcane and technical as the Lacey Act, it must ensure the defense is equally equipped to mount a challenge.

For these reasons, the ACLU respectfully urges this Court to find that Mr. Ellis did not receive effective assistance of counsel and to remand for resentencing or such other relief as justice may require.

Respectfully submitted,
American Civil Liberties Union
Washington, D.C.

Vocabulary:

Amicus curiae- someone who is not directly involved in a case but offers information and/or expertise to help the court make a decision

Indigent- very poor or not having enough money to afford basic needs (like a lawyer in court)

Mitigating- making something less severe, serious, or painful (in court mitigating circumstances are facts that may lessen the punishment of a crime)

Transparency- being open, honest, and clear about actions and decisions

Arcane- something that is secret, mysterious, or hard to understand

AMICUS CURIAE BRIEF OF THE UNITED STATES ATTORNEY’S OFFICE IN SUPPORT OF THE GOVERNMENT’S POSITION

The United States Attorney’s Office respectfully submits this amicus curiae brief in support of the government’s position that Marcus Ellis received constitutionally sufficient legal representation in accordance with the Sixth Amendment and the standard articulated in *Strickland v. Washington*, 466 U.S. 668 (1984).

This Court is asked to second-guess a final conviction and sentence resulting from a negotiated plea agreement in a complex federal prosecution involving repeated violations of the Lacey Act. The record does not support the assertion that Mr. Ellis’s counsel was ineffective or that his conviction was unjust. In fact, the process afforded to Mr. Ellis reflects the very core of the American criminal justice system: due process, a meaningful opportunity to be heard, and the right to counsel—all of which were satisfied.

Under *Strickland*, claims of ineffective assistance require a two-part showing: first, that counsel’s performance fell below an objective standard of reasonableness, and second, that but for that deficiency, the result would have been different. Mr. Ellis has failed to meet either prong.

To the first, Mr. Ellis’s court-appointed attorney, John Kearns, was a licensed practitioner with over 15 years of experience in criminal law. While he may not have specialized in Lacey Act prosecutions, generalist criminal attorneys regularly—and capably—represent clients in federal court. Mr. Kearns reviewed discovery, consulted with his client, and successfully negotiated a plea agreement that resulted in the dismissal of half the charges. That agreement spared Mr. Ellis exposure to additional years of incarceration. It is unreasonable to hold that merely because a lawyer did not pursue every conceivable mitigation argument or expert witness, he performed deficiently.

To the second prong, the claim that the sentence would have been meaningfully different is speculative. The government possessed overwhelming evidence of Mr. Ellis’s illegal importation and sale of protected species, including written correspondence and audio recordings. His intent and knowledge were contradicted by his own communications with foreign suppliers. Even if additional mitigation had been presented, there is no reason to believe the judge—who already sentenced Mr. Ellis to a mid-range term—would have imposed a significantly lower sentence. The suggestion that expert testimony or mental health claims would have reversed a years-long pattern of criminal conduct strains credulity.

More broadly, this case reflects the importance of finality and the integrity of plea agreements. Defendants must not be allowed to revisit settled cases based on the subjective view that their lawyer “could have done more.” The Sixth Amendment guarantees a fair trial—not a perfect one—and certainly not a defense that exhausts every possible avenue at taxpayer expense.

The United States Attorney’s Office urges this Court to affirm Mr. Ellis’s conviction and sentence and reject the claim that he was denied effective assistance of counsel.

Respectfully submitted,

Office of the United States Attorney

District of Arizona

Vocabulary:

Amicus curiae- someone who is not directly involved in a case but offers information and/or expertise to help the court make a decision

Mitigating- making something less severe, serious, or painful (in court mitigating circumstances are facts that may lessen the punishment of a crime)

Integrity- being honest and doing the right thing. True to values/principles

Contradicting- saying or doing something that goes against what someone else has said, or even what you said earlier

AMICUS CURIAE BRIEF OF THE INNOCENCE PROJECT IN SUPPORT OF DEFENDANT MARCUS ELLIS

The Innocence Project respectfully submits this amicus curiae brief in support of Marcus Ellis, who challenges his conviction and sentence on the grounds that he was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution.

The Innocence Project is a nonprofit legal organization dedicated to exonerating individuals who have been wrongfully convicted and reforming the criminal justice system to prevent future injustices. While much of our work centers on factual innocence, we have found that **ineffective assistance of counsel (IAC)** is a recurring root cause in wrongful and excessive convictions—especially for low-income defendants like Mr. Ellis who depend on appointed legal representation.

This case presents a textbook example of constitutionally deficient legal defense under the standards established in *Strickland v. Washington*, 466 U.S. 668 (1984). The record demonstrates that Mr. Ellis’s attorney, Mr. John Kearns, failed to meet even the baseline expectations for competent representation in a serious federal case.

Despite facing six felony counts under the Lacey Act—a complex federal statute with evolving definitions and international enforcement intricacies—Mr. Ellis’s court-appointed counsel had **no experience** with wildlife trafficking law and made no meaningful attempt to acquire subject-matter expertise or consult those who did. He neglected to investigate key legal and factual issues, such as whether certain animals were accurately classified as protected under federal law or whether valuations of those animals were inflated to trigger harsher penalties.

Perhaps more concerning is Mr. Kearns’s failure to explore **critical mitigating evidence** related to Mr. Ellis’s mental health, financial circumstances, and intent. Though Mr. Ellis had been receiving counseling for anxiety and depression—conditions that could have influenced both his decision-making and his ability to comprehend the legal process—no psychological evaluation was conducted, no records were submitted, and no expert testimony was presented. Likewise, despite Mr. Ellis requesting assistance in gathering letters of support, his attorney made no effort to contact family or community members.

These omissions are not strategic decisions; they are symptoms of a broader systemic failure where overburdened, underprepared defense attorneys manage cases by steering clients toward plea deals with minimal advocacy. That Mr. Ellis ultimately signed a plea agreement does not cure these failings. Pleas made without access to discovery, full understanding of the law, or proper counsel are neither voluntary nor informed.

Furthermore, as this Court is aware, the number of exonerations stemming from plea deals continues to grow. Defendants who accept pleas under pressure from ineffective counsel may waive trial but still suffer disproportionate sentences or unwarranted convictions. The fact that similarly situated defendants received probation or significantly lower sentences when represented by engaged counsel highlights the prejudice Mr. Ellis suffered.

The Innocence Project urges this Court to grant Mr. Ellis the relief necessary to remedy this breakdown in the adversarial process—either through resentencing with adequate counsel or by allowing him to withdraw his plea.

Respectfully submitted,
The Innocence Project
New York, NY

Vocabulary:

Amicus curiae- someone who is not directly involved in a case but offers information and/or expertise to help the court make a decision

Exonerating- proving that someone is not guilty of a crime or clearing them of blame

Mitigating- making something less severe, serious, or painful (in court mitigating circumstances are facts that may lessen the punishment of a crime)

Disproportionate- too big or too small in comparison to something else (unequal or unfair)

Adversarial- involving conflict, opposition, or competition. In a courtroom, it describes a system where two sides (defense and prosecution) argue against each other to present their case

AMICUS CURIAE BRIEF OF THE HERITAGE FOUNDATION IN SUPPORT OF THE UNITED STATES

The Heritage Foundation respectfully submits this *amicus curiae* brief in support of the United States and urges this Court to uphold the conviction and sentence of Marcus Ellis. The Heritage Foundation is a public policy research institute committed to the principles of limited government, individual responsibility, and the rule of law.

It is in this spirit that we submit this brief to affirm that Mr. Ellis’s constitutional rights were fully respected and that his challenge under the Sixth Amendment lacks merit.

The Sixth Amendment guarantees a defendant the right to “the assistance of counsel for his defense.” In *Strickland v. Washington*, 466 U.S. 668 (1984), the Supreme Court established that to succeed on an ineffective assistance of counsel (IAC) claim, a defendant must prove both that (1) counsel’s performance was deficient, and (2) this deficiency prejudiced the defense. The burden is high by design. Courts must apply a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.

In this case, Mr. Ellis was represented by a licensed attorney with over a decade of criminal defense experience. Mr. Kearns secured a plea agreement that dropped half of the felony charges and avoided trial risk in a case where the government had substantial evidence, including audio recordings and documentation of Mr. Ellis’s transactions. Whether or not Mr. Kearns presented every conceivable mitigation point is irrelevant; the Constitution does not guarantee the best defense money can buy—it guarantees a fair one.

There is a growing and troubling tendency to weaponize IAC claims as a means of relitigating cases that defendants now regret pleading. Mr. Ellis, like thousands of federal defendants every year, voluntarily chose to enter into a plea deal after conferring with his counsel. Nothing in the record suggests coercion, incompetence, or constitutional deprivation. To overturn this conviction would be to further erode the finality of convictions and undermine public trust in the plea bargaining system that enables the efficient operation of our criminal justice system.

Additionally, the expansion of the IAC doctrine to cover every missed strategy or unpursued argument risks incentivizing endless post-conviction litigation. Courts should not be in the business of second-guessing tactical decisions with the benefit of hindsight. Mr. Kearns’s focus on negotiating a favorable plea—rather than pursuing a risky trial in a case with strong prosecutorial evidence—was well within reason.

The Heritage Foundation supports a legal system grounded in personal accountability, fidelity to constitutional text, and restraint in judicial review. Mr. Ellis’s rights were respected, and the interests of justice were served through his guilty plea and sentencing. This Court should reject attempts to broaden the definition of ineffective counsel in a way that weakens the integrity and efficiency of the criminal justice process.

Respectfully submitted,
The Heritage Foundation
Washington, D.C.

Vocabulary:

Amicus curiae- someone who is not directly involved in a case but offers information and/or expertise to help the court make a decision

Mitigating- making something less severe, serious, or painful (in court mitigating circumstances are facts that may lessen the punishment of a crime)

Integrity- being honest and doing the right thing. True to values/principles

Coercion- forcing someone to do something by using threats, pressure, or fear