

SUPREME COURT OF THE UNITED STATES

No. 90-1599

UNITED STATES, PETITIONER v.
FRANK DENNIS FELIX

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT
[March 25, 1992]

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins, concurring in part and concurring in the judgment.

While I join Parts I and II of the Court's opinion, I do not join Part III because I do not think there is "considerable justification," *ante*, at 9, for the Court of Appeals' conclusion that the Double Jeopardy Clause, as interpreted in *Grady v. Corbin*, 495 U. S. 508 (1990), bars prosecution of Felix for the conspiracy charge contained in count 1 of the indictment. In *Grady*, we held that "the Double Jeopardy Clause bars a subsequent prosecution if, to establish an essential element of an offense charged in that prosecution, the government will prove conduct that constitutes an offense for which the defendant has already been prosecuted." 495 U. S., at 510. But as the dissenting opinion of the Court of Appeals explained, "the overt acts at issue here did not meaningfully 'establish' an essential element of the conspiracy" because there is no overt act requirement in the federal drug conspiracy statute and the overt acts did not establish an agreement between Felix and his coconspirators. 926 F. 2d 1522, 1536 (CA10 1991) (Anderson, J., dissenting). I would thus reverse for the reasons explained in Parts I and II of the Court's opinion, *ante*, at 2-8, and Part III(B) of the dissenting opinion of the Court of Appeals, 926 F. 2d, at 1536-1539.