

No. 21-6736

IN THE SUPREME COURT OF THE UNITED STATES

STEVEN R. HENSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 29-33) that a physician may be found guilty of illegally distributing or dispensing a controlled substance, in violation of 21 U.S.C. 841, only if the jury makes analytically separate findings that he both prescribed the controlled substance without “a legitimate medical purpose” and did so outside the scope of his “professional practice.” 21 C.F.R. 1306.04(a). On November 5, 2021, this Court granted the petition for a writ of certiorari in Kahn v. United States, No. 21-5261 (oral argument scheduled for Mar. 1, 2022), to consider, inter alia, that issue. See Pet. 1, Kahn, supra (No. 21-5261); see also

Ruan v. United States, No. 20-1410 (consolidated case). Because the Court's decision in Ruan and Kahn may affect the proper disposition of the petition for a writ of certiorari, the petition in this case should be held pending the decision in Ruan and Kahn and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

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* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.