

IN THE SUPREME COURT OF THE UNITED STATES

PATRICK EMEKA IFEDIBA, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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No. 22-6503

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Petitioner contends (Pet. 22-27) that the district court erred in its jury instructions on the mens rea requirement for finding a doctor guilty of unlawfully dispensing or distributing a controlled substance, in violation of 21 U.S.C. 841(a). Petitioner asks (Pet. 26) that this Court grant the petition for a writ of certiorari, vacate the decision of the court of appeals, and remand for further proceedings (GVR) in light of this Court's decision in Ruan v. United States, 142 S. Ct. 2370 (2022), which held that "once a defendant meets the burden of producing evidence that his or her conduct was 'authorized'" under Section 841(a),

"the Government must prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner." Id. at 2376.

That course is not warranted in this case. This Court's "traditional rule * * * precludes a grant of certiorari * * * when 'the question presented was not pressed or passed upon below.'" United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted); see, e.g., Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1, 8 (1993); Adickes v. S. H. Kress & Co., 398 U.S. 144, 147 n.2 (1970). Applying that rule here would preclude a grant of certiorari because petitioner did not challenge his conviction in the court of appeals on the ground that the jury instructions lacked the requisite mens rea. See Pet. App. A1-A16; see also generally Pet. C.A. Br.

This Court has sometimes entered a GVR order to allow a lower court to consider a previously unraised claim that acquired new vitality as a result of an "intervening" event. See Lawrence v. Chater, 516 U.S. 163, 167-168 (1996) (per curiam) (describing this Court's "intervening development" GVR practice); see also id. at 180-181 (Scalia, J., dissenting) (explaining that the Court's "intervening event" GVR practice involves "a postjudgment decision of this Court" or, occasionally, a decision of this Court that "preceded the judgment in question, but by so little time that the lower court might have been unaware of it") (emphasis omitted). Here, however, this Court decided Ruan on July 29, 2022, while

petitioner's direct appeal was pending, and petitioner had nearly four weeks to raise any Ruan-based contentions before the court of appeals rendered its decision on August 25, 2022. See Pet. App. A1. He failed to do so, and he then failed to seek panel rehearing or rehearing en banc in order to raise a belated Ruan-based claim before the mandate issued on September 23, 2022 -- eight weeks after Ruan was decided. See C.A. Doc. 61-1.

In these circumstances, nothing warrants a departure from this Court's ordinary practice of granting certiorari with regard only to claims that were pressed or passed upon below. And the Court has denied certiorari in cases with an analogous procedural history. See Mohr v. United States, 140 S. Ct. 961 (2020) (No. 19-6289) (denying petition for writ of certiorari invoking, inter alia, recent statutory-interpretation decision of this Court that was available but not brought to the attention of the court of appeals while petitioner's direct appeal remained pending); Leon v. United States, 139 S. Ct. 56 (2018) (No. 17-8008) (same). The Court should follow the same course here.*

Respectfully submitted.

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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.