

No. 22-6503

Supreme Court of the United States

PATRICK EMEKA IFEDIBA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

REPLY MEMORANDUM OF PETITIONER IFEDIBA

Patrick Emeka Ifediba
Petitioner
35822-001
P.O. Box 1032
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MEMORANDUM

Petitioner Patrick Ifediba, a medical doctor, has filed a petition for writ of certiorari asking that the Court grant certiorari, vacate the decision of the Court of Appeals for the Eleventh Circuit which affirmed his conviction and sentence on 8-25-22¹ and remand (“GVR”) for reconsideration in light of *Ruan v. United States*, 142 S. Ct. 2370, 213 L. Ed. 2d 706 (7-29-22). The grounds are that his conviction is unlawful in light of this Court’s decision in *Ruan*, a decision which was not briefed or considered in the lower court.

The Solicitor General has responded with an argument that the Court should not rule on an issue which was not “pressed or passed upon below”. But this argument is foreclosed by a plethora of prior decisions by this Court.²

The Solicitor General also argues that, since the Eleventh Circuit decision in this case postdated the judgment in *Ruan* by a little over 3 weeks, this Court’s history indicates it should decline the invitation to GVR.

¹ *United States v. Ifediba*, 46 F.4th 1225 *; 2022 U.S. App. LEXIS 24078 ** (11th Cir. 8-25-22).

² *Wood v. Georgia*, 450 U.S. 261, 264-66, 101 S. Ct. 1097, 1100 (1981) (GVR issued where a possible due process violation is apparent on the particular facts of a case, Court is empowered to consider the due process issue even though not considered below. Moreover, for prudential reasons, it is preferable for us to remand for consideration of this issue, rather than decide a novel constitutional question that may be avoided”). See also *Hector Rios v. United States*, 128 S. Ct. 876; 169 L. Ed. 2d 717; 2008 U.S. LEXIS 14 (2008); *Carroll Holt v. United States*, 125 S. Ct. 1418; 161 L. Ed. 2d 180; 2005 U.S. LEXIS 2040 (2-28-05); *Robert Flarida v. United States*, 125 S. Ct. 1051; 160 L. Ed. 2d 997; 2005 U.S. LEXIS 1016 (1-24-05); *James Oliver v. United States*, 125 S. Ct. 1950; 161 L. Ed. 2d 766; 2005 U.S. LEXIS 3516 (4-25-05); *Benjamin Watts v. United States*, 125 S. Ct. 1048; 160 L. Ed. 2d 1040; 2005 U.S. LEXIS 1245 (1-24-05); *Miguel Nava Rivas v. United States*, 125 S.Ct. 1713; 161 L.Ed. 2d 520; 2005 U.S. LEXIS 2767 (3-28-05); *Robert Abbott v. United States*, 2005 U.S. LEXIS 1142 (1-24-05); *Donald Fields v. United States*, 125 S.Ct. 1876; 161 L.Ed. 2d 720; 2005 U.S. LEXIS 3309 (4-18-05); *Ernesto Alvarado v. United States*, 125 S.Ct. 1712; 161 L.Ed. 2d 519; 2005 U.S. LEXIS 2766 (3-28-05); *Sergio Chavez v. United States*, 125 S.Ct. 1075; 160 L.Ed. 2d 1055; 2005 U.S. LEXIS 1322 (1-24-05); *Darian Terrence Harris v. United States*, 125 S. Ct. 2531; 161 L. Ed. 2d 1108; 2005 U.S. LEXIS 4357 (5-31-05); *Marcus Robinson v. United States*, 125 S.Ct. 1711; 161 L. Ed. 2d 519; 2005 U.S. LEXIS 2761 (3-28-05); *Rapier v. United States*, 123 S. Ct. 69; 2002 U.S. LEXIS 5396 (2002)

In fact, this Court's history and precedent indicates the opposite. *Stutson v. United States*, 516 U.S. 193, 196, 116 S. Ct. 600, 602-03 (1-8-96). In *Stutson*, the Court was presented a case similar to Dr. Ifediba's where attorney error prevented appellate review of the case of a prisoner serving an extensive period of incarceration³. Upon review, this Court issued a GVR in light of *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113 S. Ct. 1489 (3-24-93), a case decided about 3 years earlier where the Court was of the opinion that there was a "reasonable probability that the Court of Appeals will reach a different conclusion on remand". *Id.*⁴

³ Dr. Ifediba is serving a sentence of 360 months incarceration which is 5 years *more extensive* than that of the petitioner in *Stutson*.

⁴ See also: *Robinson v. Story*, 469 U.S. 1081, 105 S. Ct. 583 (12-10-84) (GVR of *Stanton v. Robinson*, 734 F.2d 8 (3d Cir. 4-18-84) in light of *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 104 S. Ct. 900 (1-23-84)); *Webster v. Cooper*, 558 U.S. 1039, 130 S. Ct. 456 (11-30-09) (GVR of *Webster v. Cooper*, No. 08-30435 (5th Cir. 3-16-09) in light of *Jimenez v. Quartermar*, 555 U.S. 113, 129 S. Ct. 681, 172 L. Ed. 2d 475 (1-13-09)); *Lawrence v. Chater*, 516 U.S. 163, 187, 116 S. Ct. 604, 133 L. Ed. 2d 545 (1-8-96) (GVR rejecting Justice Scalia's contentions that "traditional practice" and "the Constitution and laws of the United States" impose "implicit limitations" on [GVR] power)(Collecting cases).

CONCLUSION

For all of the foregoing reasons, as well as those set forth in his petition for writ of certiorari, Petitioner Patrick Emeka Ifediba respectfully prays that this Court **GRANT** certiorari, **VACATE** the order affirming his direct appeal and **REMAND** to the court of appeals for reconsideration in light of *Ruan v. United States*, 142 S. Ct. 2370, 213 L. Ed. 2d 706 (7-29-22).



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