

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 #2 OF PETITIONER IFEDIBA

**Patrick Emeka Ifediba
Petitioner
35822-001
P.O. Box 1032
Coleman, FL 33521**



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 Court of Appeals.

The Solicitor General initially responded with an argument that the Court should not rule on an issue which was not “pressed or passed upon below”. This argument is, of course, foreclosed by a plethora of prior decisions by this Court as set forth in Dr. Ifediba’s initial reply brief, note #2.

The Solicitor General also relied on the dissenting opinion of Justice Scalia in this Court’s decision in *Lawrence v. Chater*² for the proposition that due to the fact that *Ruan v. United States*, 142 S. Ct. 2370, 213 L. Ed. 2d 706 (6-27-22) was decided about 3 weeks before Dr. Ifediba’s appellate decision, this Court should deny certiorari instead of remanding to allow the Court of Appeals to consider the applicability of *Ruan* in the first instance.

In response, Dr. Ifediba argued that this Court should follow the holding, instead of the dissenting opinion, in *Lawrence v. Chater*. Dr. Ifediba further argued that his case was controlled by *Stutson v. United States*, 516 U.S. 193, 196, 116 S. Ct. 600, 602-03 (1-8-96). Dr. Ifediba pointed out that, 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

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

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".

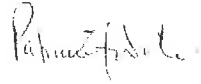
In the current (second) reply by the Solicitor General, they have basically just repeated their arguments from their first reply. Consequently, Dr. Ifediba repeats his arguments from his initial counter response as set forth above and asks this Court to grant him the remedy the Court granted in *Ruan v. United States*, 142 S. Ct. 2370, 213 L. Ed. 2d 706 (6-27-22).

² *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)

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

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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Date: 5-9-23