

**NO:**

**IN THE  
SUPREME COURT OF THE UNITED STATES**

**JEANNE GERMEIL,**

*Petitioner,*

**v.**

**UNITED STATES OF AMERICA,**

*Respondent.*

**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED FOR REVIEW

I. Whether the United States Supreme Court's Decision in *Ruan v. United States* Warrants Certiorari Review of the Court's Refusal to Instruct the Jury on "Good Faith"?

II. Whether Certiorari Review is Warranted as a Result of Improper Government Expert Testimony and by Allowing the Government Expert to Testify Concerning All of Dr. Jeanne Germeil's Patients Based Upon a Random Sample of Ten Patient Files?

## **INTERESTED PARTIES**

Counsel for the Petitioner, Jeanne Germeil, certifies that the following persons and entities have or may have an interest in the outcome of this case:

1. A.S., Victim;
2. A.V., Victim;
3. B.T., Victim;
4. C.A., Victim;
5. Andy Camacho, Assistant U.S. Attorney;
6. Dianna E. Carames, Esq., Defense Counsel;
7. Michael Caruso, Federal Public Defender;
8. Jonathan D. Colan, Assistant U.S. Attorney;
9. C.S., Victim;
10. D.B., Victim;
11. Christian Dunham, Esq., Defense Counsel;
12. Daniel Ecarius, Assistant Public Defender;
13. Ariana Fajardo Orshan, Assistant U.S. Attorney;
14. Jeanne Germeil, Defendant/Petitioner;
15. Germeil Medical, Inc., Interested Party;
16. Benjamin Greenberg, Esq., Defense Counsel

17. G.W., Victim;
18. L.M.G., Victim;
19. Kurt Lunkenheimer, Assistant U.S. Attorney;
20. M.S., Victim;
21. N.M., Victim;
22. Nicole D. Mariani, Assistant U.S. Attorney;
23. Kenneth Noto, Assistant U.S. Attorney;
24. Honorable Alicia Otazo-Reyes, U.S. Magistrate Judge;
25. Honorable John J. O'Sullivan, U.S. Magistrate Judge;
26. Adrienne Rosen, Assistant U.S. Attorney;
27. Richard L. Rosenbaum, Esq., Counsel for Petitioner;
28. Laura Salyer, Assistant Public Defender;
29. Emily Smachetti, Assistant U.S. Attorney;
30. S.S., Victim;
31. S.T., Victim;
32. T.R., Victim;
33. Honorable Ursula Ungaro, U.S. District Judge;
34. Sabrina Vora-Puglisi, Esq., Defense Counsel;
35. Y.H., Victim;



36. Jason Wu, Assistant U.S. Attorney;
37. Counsel certifies that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

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**PETITION FOR WRIT OF CERTIORARI**

Jeanne Germeil respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Eleventh Circuit rendered and entered in Consolidated Case Nos: 19-14942-B and 19-14961-B on February 14, 2023, in *Jeanne Germeil v. United States*, which affirmed the Judgment and Commitment of the United States District

Court for the Southern District of Florida.

### **OPINION BELOW**

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the Judgment and Commitment of the United States District Court for the Southern District of Florida, is contained in Appendix (A-1). Also included in the Appendix is the Judgment imposing sentence (A-2); and the Indictment (A-3).

### **STATEMENT OF JURISDICTION**

The decision of the court of appeals was entered on February 14, 2023 (A-1). Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), Sup. Ct. R. 10.1 and Part III of the Rules of the Supreme Court of the United States. The district court had jurisdiction because Petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

### **STATUTORY AND OTHER PROVISIONS INVOLVED**

Petitioner relies upon the following constitutional provisions, treaties, statutes, rules, ordinances, and regulations:

- 1) Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; not shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; not shall private property be taken for public use without just compensation

2) Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

3) Rule 52(b), Fed.R.Crim.P.; and

4) Other case law specified herein including *Ruan v. United States*, 142 S.Ct. 2370 (2022)

## STATEMENT OF THE CASE

A. **Preliminary Statement and References to Docket Entries and Trial and Sentencing Transcripts**

Dr. Jeanne Germeil, a licensed Florida physician, was arrested and subsequently indicted for 14 Counts of unlawful dispensing controlled substances without a legitimate medical purpose following an investigation by the Drug

Enforcement Administration (hereinafter referred to as “DEA”), and execution of a Search Warrant at Germeil Medical, Inc. where Dr. Jeanne Germeil’s practice was located.

Following return of the Superseding Indictment charging Dr. Jeanne Germeil with 16 Counts of violating Title 18, U.S.C. Section 841(a)(1) and a forfeiture allegation, and entry of a not guilty plea, the case proceeded to a trial by jury.

**B. Course of Proceedings and Disposition in the Court Below**

**Case No: 18-20768-CR-Ungaro  
(Allegations of Physician Dispensing Medication Without Medical Necessity)**

Dr. Jeanne Germeil, a licensed Florida physician, was arrested pursuant to an Indictment returned by the Grand Jury in the Southern District of Florida. (18-DK 1). Specifically, Dr. Germeil was initially charged in Counts I – XIV with violating the Controlled Substance Act by knowing and intentionally dispensing a controlled substance in violation of Title 21 U.S.C. Section 841(a)(1) and Title 18 U.S.C. Section 2. Additionally, a forfeiture allegation was lodged in the Indictment.

The Defendant was arraigned, and a not guilty plea entered on her behalf. (18-DK 4). Bond was set in the amount of a \$250,000 personal surety bond co-



signed by Dr. Germeil's husband, daughter, and a third party along with other special conditions. (18-DK 4). Once the bond was posted, the Defendant was released from custody. (18-DK 6). Thereafter, a bond review hearing was conducted and Dr. Jeanne Germeil ordered to participate in a mental health assessment and received follow-up treatment, if necessary. (18-DK 24).

The Government filed a pre-trial Notice of Intent to Utilize Expert Testimony of Dr. Ruben Hoch<sup>1</sup>, MD, PA. (18-DK 27). Additionally, the Government filed a Motion in Limine Re: Inextricably Intertwined Evidence, 404(b) Evidence, and Summary Charge Pursuant to FRE 1006. (18-DK 33).

In the Motion in Limine, the Government sought to admit evidence of 13,000 prescriptions written by the doctor given to patients, and pills dispensed as a result of those prescriptions, as "inextricably intertwined" with the charged offenses. (R 18-DK 33-1-15) Specifically, the Government contended that the evidence of Dr. Jeanne Germeil's prescribing controlled substances without a legitimate medical purpose between February, 2016 and September, 2017, arose out of the same series of transactions as the charged offenses, was necessary to complete the story of the crimes, and was inextricably intertwined to the charged offenses. Alternatively, the Government asserted that evidence of Dr. Germeil's

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<sup>1</sup> Dr. Hoch's testimony is the subject of Issue II, *supra*.

prescribing controlled substances without a legitimate medical purpose between February 2016 and September 2017, should be admitted at trial to demonstrate proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Finally, because of the voluminous records from Dr. Germeil's patient files and associated prescriptions, the Government argued it should be permitted pursuant to Fed. R. Evid. 1006 to admit summary records of Dr. Germeil's prescribing Oxycodone, Hydromorphone and Oxycodone-Acetaminophen between February 2017 and September 2017. (DK 33)

The Defendant was ordered to file her response to the Government's motion. (18-DK 34). The defense filed a Response to Government's Motion in Limine, arguing that the evidence should not be admitted based upon several reasons and factors. (18-R 36).

The Defendant filed her own pre-trial Motion in Limine and Corrected Motion in Limine. (18-DK 38; 39). In the Motion, the Defendant argued that she anticipated the Government calling confidential informants YH and LMG, along with several of Dr. Jeanne Germeil's former patients, during its case-in-chief. The defense sought to limit the testimony and evidence that referenced the patients either having difficulty obtaining the medications prescribed by Dr. Jeanne

Germeil or that certain pharmacies would not accept prescriptions written by Dr. Jeanne Germeil. The defense argued that the testimony amounted to admissible hearsay evidence and infringed on the Defendant's Confrontation Clause rights. Further, the Defendant asserted that the Government should be prohibited from introducing the evidence under Rules 401, 402 and 403, FRE. (18-DK 39-1-5).

The Government filed a Response in Opposition to the Defendant's Motion in Limine. (18-DK 47). The Defendant's Corrected Motion in Limine was granted by the Court. (18-DK 44).

On January 15, 2019, a Superseding Indictment was returned charging Dr. Jeanne Germeil in 16 Counts with unlawfully dispensing controlled substances, together with forfeiture allegations. (18-DK 43). The Defendant was arraigned and a Not Guilty plea entered on Dr. Jeanne Germeil's behalf. (18-DK 48).

Prior to jury selection, both the Government and Defendant submitted Exhibit Lists, Witness Lists, and proposed Jury Instructions. (18-DK 50, 55, 56, 59).

Trial commenced on January 25, 2019. During voir dire the Court questioned the potential jurors concerning opiates and each assured the Court that they could be fair and impartial in a case involving that subject. (T 66)

The Government argued in it's opening statement that "[t]his case is about easy money. It is about a doctor who abused her title and position to prescribe controlled substances to patients who did not need it for money." (T 122). The Prosecutor repeatedly termed the case as one about "cash for prescriptions." (T 123; 124; 126; 127; 130; 131).

Trial continued on January 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup> and February 1, 2019. Ten witnesses were presented by the Government. (T 142-618). Seven witnesses were presented by the defense. (T 625-757). During trial, the Defendant submitted her Memorandum of Law in Support of Entrapment Instruction. (18-DK 64, 66). The Defendant asked for a Good Faith Instruction and objected when the Court refused to give the Instruction to the Jury. Following jury instructions and closing arguments, the Jury returned verdicts of guilt, as charged, as to Counts I-V; IX; X; and XIII-XVI of the Superseding Indictment. (18-DK 72). Dr. Jeanne Germeil was acquitted on the remaining Counts.

A Pre-Sentence Investigation Report was ordered, and a pre-sentence investigation conducted by the United States Probation Office. A draft disclosure was made to the parties. (18-DK 82). The Defendant filed objections to the Pre-Sentence Investigation Report. (18-DK 83).

On April 19, 2019, Dr. Jeanne Germeil failed to appear for sentencing. A Warrant was issued and the Court placed the case in Fugitive Status. (18-DK 87; 88).

On July 26, 2019, Dr. Jeanne Germeil was apprehended and her Initial Appearance conducted thereafter. A Probable Cause determination was waived and Dr. Jeanne Germeil's pre-trial release was revoked. (18-DK 90-91).

Objections to the PSI were lodged on behalf of the defense. (18-DK 3; 103; 114). The Government filed its Response to the Objections to the Pre-Sentence Investigation Report. (18-DK 117).

### **Sentencing**

Sentencing was conducted on both of Jeanne Germeil's cases on November 26, 2019. Judgment was entered and Jeanne Germeil was sentenced to be imprisoned for a term of 188 months as to all Counts to be served concurrently, with a 3-year term of supervised release to follow. (18-DK 121). A Notice of Appeal was filed December 11, 2019. (18-DK 124).

### **Case No: 19-20474-CR-Ungaro**

On July 26, 2019, a Criminal Complaint was filed against Jean Renee Foureu. (19-R 1). Thereafter, on August 2, 2019, a two Count Indictment was returned charging Jeanne Germeil in Count I with Failure to Appear contrary to

Title 18 U.S.C. Section 3146(a)(1) and Jeanne Germeil and her husband, Jean-Renee Foureu<sup>2</sup>, with Contempt of Court contrary to Title 18 U.S.C. Section 401(3) by willfully disobeying and resisting a lawful Order and command as a result of a violation of a condition of Jeanne Germeil's Appearance Bond. Jeanne Germeil was arraigned on August 6, 2019, and a plea of not guilty entered on her behalf. (19-DK 6). Dr. Jeanne Germeil invoked her right to silence and counsel, and filed an Unopposed Motion to Consolidate Cases. (19-DK 7, 8).

On August 29, 2019, a Factual Proffer Statement was filed on behalf of Jeanne Germeil. (19-DK 14). A Change of Plea hearing as to these charges and Defendant changed her plea to one of guilty to the charges.

A Pre-Sentence Investigation Report was prepared and Objections thereto filed on behalf of Dr. Jeanne Germeil. (19-DK 23). Thereafter, the Court entered an Order granting the Defendant's Motion for a Revised Pre-Sentence Investigation Report to reflect recalculated the drug quantities. (19-DK 28).

### **Sentencing**

Sentencing was conducted on both cases on November 26, 2019. With regards to the "bond jumping" case, Judgment was entered ordering that Dr. Jeanne Germeil be imprisoned for a term of 10 months as to Count I and a

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<sup>2</sup> On August 16, 2019, Jean-Renee Foureu's case was transferred to Fugitive Status.

consecutive term of 10 months as to Count II, together with a mandatory consecutive sentence of 2 months pursuant to the enhancement under Title 18 U.S.C. Section 3147. The term of imprisonment was ordered to be served consecutively to the term of imprisonment imposed in Case No: 18-20768-CR-Ungaro. (19-DK 36).

Jeanne Germeil's total sentence imposed is 210 months followed by a term of supervised release.

***Germeil v. United States*, 11<sup>th</sup> Cir. Case Nos: 19-14942 & 19-14961**

A Notice of Appeal was timely filed. (19-DK 40, 43). After full briefing and supplemental briefing following this Court's Opinion in *Ruan v. United States*, 142 S.Ct. 2370 (2022), the 11<sup>th</sup> issued its 39 page unpublished Opinion in this case affirming the Judgment, Conviction and Sentence imposed. This Petition for Writ of Certiorari follows.

Jeanne Germeil remains incarcerated at FCI Dublin in Dublin, CA.

**STATEMENT OF THE FACTS**

In February 2016, members of the DEA began investigating Dr. Jeanne E. Germeil and Germeil Medical, Inc. whose medical office was located at 951 NE 167th Street, Suite 234, North Miami Beach, Florida. DEA had received "anonymous complaints" regarding Dr. Germeil allegedly overprescribing

controlled substances and complaints from the North Miami Beach Police Department concerning encounters with unruly patients at Dr. Germeil's medical office. (T 138-146). DEA had also received information that local pharmacies were refusing to fill prescriptions written by Dr. Germeil due to the high volume of controlled substance prescriptions written, including Oxycodone, Percocet, and other opioid-based substances.

To further the investigation, DEA directed paid confidential informants and undercover officers to schedule appointments with Dr. Germeil's office and pose as new patients with pain management needs. (T 153)

Agent Gene Grafenstein of the DEA, Tactical Diversion Squad testified as the case agent. (T 144). The Agent testified that the Tactical Diversion Squad was created to focus on opioids. (T 145). While working at DEA, the Agent became familiar with Dr. Jeanne Germeil. (T 145). The Agent testified that Dr. Jeanne Germeil "came on his radar" after the agency received anonymous tips and information from local police departments concerning Dr. Jeanne Germeil. (T 146). The Agent and other members of DEA sought to corroborate and confirm that the information they received was accurate and worth investigating further. Accordingly, a determination was made to send undercover officers as well as confidential informants into the medical office to pose as patients in need of



opiates. (T 146-147). Three confidential sources were used. (T 147). In this case, each informant was paid for his/her "services." (T 148). Video and/or audio recordings were made of the patients' interactions with the doctor.

The Agent directed the confidential informants to contact Germeil Medical and schedule an appointment as a new patient. Each did as requested, and were advised that an MRI and verifiable medical diagnosis was needed before the doctor's office would schedule an appointment. The initial informant, Yanexi Hernandez, had an MRI from a previous doctor that was under investigation on a case she was involved in, so she made an appointment with GM Medical and went to visit. The second confidential informant, Lebrak Gomez, did not have an MRI and when he went in and advised he did not have an MRI, was told he would not be seen. Although MRIs are not required by the State before prescribing pain medications, Dr. Germeil and her office needed the patient to have a prescription to obtain the imaging. The confidential informant found a facility that would see him without an MRI, and once he received the MRI, he returned to Germeil Medical to make an appointment. (T 149). The third informant was unable to obtain an appointment at Germeil Medical because he did not have an MRI.

Before the appointments for both of the informants, members of the Task Force met with the confidential informants and briefed them about the goals of the

operation. In this case, the goal was "...receiving the prescription without a valid medical necessity." (T 150). The informants were each given money for the office visits and audio/video devices. After each appointment a meeting would be conducted with law enforcement and the informant would be debriefed.

Agent Grafenstein testified that there were 13 office visits involved in this investigation; 8 with Yanexi Hernandez and 5 with Mr. Gomez. (T 152). Specifically, confidential source 1 (CS1) was treated by Dr. Germeil a total of eight (8) times, including on March 22, 2016 (Count I). Confidential source 2 (CS2) was treated by Dr. Germeil a total of five (5) times, including on July 25, 2016.

Undercover officers were likewise used in the operation against Germeil Medical. (T 153). The first undercover officer, Task Force Officer Phil Archer, was unsuccessful in getting an appointment with Dr. Germeil as he did not have an MRI. (T 153-154). The other two were successful – Agent Derrick Maxey (using the false name of Derrekk Buco) as well as Task Force Officer Dannel Guell (using the false name Alex Vega). Agent Maxey went to Germeil Medical on three occasions and was given a prescription on one occasion. (T 263-298). Dannel Guell went into Germeil Medical two times. On the first occasion, he provided an MRI, but after examining the MRI, Dr. Jeanne Germeil informed him that there

was nothing wrong with the MRI and she could not see him. (T 154; 300-322; 374-388). He returned a couple of months later, provided the same MRI, and received a prescription for Oxycodone. *Id.*

DEA retained a pain management doctor to testify as an expert, Rueben M. Hoch, MD PA, who is Board Certified in Anesthesiology with additional qualifications in Pain Medicine from the American Board of Anesthesiologists. Dr. Hoch testified that his private practice was dedicated to both the practice of Anesthesiology and Pain Medicine for over 20 years. Dr. Hoch testified that he reviewed patient records, audio/video undercover recordings from the confidential informant and undercover agents' visits to Dr. Germeil, and records of 10 patients<sup>3</sup> who received prescriptions from Dr. Germeil with a date range of March 2016 to November 2017. As reflected in the expert report disclosed to the defense, Dr. Hoch's expert opinion was that Dr. Germeil did not have a legitimate medical purpose for prescribing controlled substances to the CSs, UCs and patients listed in the Superseding Indictment.

On September 26, 2017, members of the DEA executed a federal search warrant at Germeil Medical, Inc. Subsequently, the DEA executed a search warrant

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<sup>3</sup> Without prescreening or evaluating the patient files, DEA selected only 10 patient files based on a date range of when patients received treatment from Dr. Germeil, and turned over the files to Dr. Hoch for evaluation and examination.

on Practice Fusion, Inc., a cloud-based electronic health record provider, for Dr. Germeil's patient files including the CS, UC and patients listed in Counts I-XIV of the Indictment.

Testimony established that the State of Florida has a prescription drug monitoring program (PDMP<sup>4</sup>). Since 2011, Florida's PDMP monitors dispensers of controlled substances. Each time Dr. Germeil's patients filled a controlled substance prescription at a Florida pharmacy, that pharmacy was required to report the filling of the prescription to the State of Florida. Law enforcement agencies have access to the system for information to assist in investigation of active cases. Charts were prepared from the data reported to the State of Florida for controlled substance prescriptions written by Dr. Germeil and filled by a pharmacy in Florida. Those same records of prescriptions given to patients was stored by Dr. Germeil at Practice Fusion.

Defense counsel argued in opening statements that Dr. Jeanne Germeil is "not a criminal" and was "not a drug dealer." Instead, she was a loving, caring,

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<sup>4</sup> The Florida Prescription Drug Monitoring Program, known as E-FORCSE (Electronic-Florida Online Reporting of Controlled Substance Evaluation Program), was created by the 2009 Florida Legislature in an initiative to encourage safer prescribing of controlled substances and to reduce drug abuse and diversion within the state of Florida. Controlled substance dispensing information is submitted to the database by dispensers and made available for consultation by prescribers.

compassionate physician who treated real people, with real injuries, with real pain. The defense maintained that all of the prescriptions issued were medically necessary and appropriate under the circumstances.

A question arose as to the scope of the defense cross examination of Agent Grafenstein. The Agent was under investigation, and had been accused of dishonesty. The Court stated “I’m not going to allow it to become a giant feature of the trial. I’ll allow you to bring out the fact that he’s been accused of dishonesty, that there’s been an investigation that was found against him and, you know, the basic facts of the incident and that it’s recent.” (T 174; 175).

When questioned concerning the incident, the Court characterized the incident as “an evening of raucousness in Coral Gables.” (T 164). Ultimately, the Court allowed the defense to question the Agent concerning his dishonesty, but stated that she would not allow the evidence to be “the feature of trial.” (T 174-175). The Agent testified and admitted that he had pending allegations against him concerning the unauthorized use of a vehicle, failure to timely report an incident, and lack of candor. (T 183).

The Agent testified that the Government seized random civilian patient files from GM Medical for a specific time frame. See Government Exhibits 33-39. (T

177). DEA was looking for documentation concerning prescription pain medication dispensed.

Agent Grafenstein explained that he directed undercover agents and confidential informants to go to the medical center, as well as what occurred surrounding execution of a Search Warrant for Germeil Medical on September 26, 2017. (T 185). The Agent testified that cash was seized, as well as patient files. (T 190).

Via the Agent, the Government introduced evidence that Dr. Jeanne Germeil signed a *Miranda* Rights Wavier form and spoke with the agents at her medical center. (T 193). The Agent testified that all patient records were stored on a program called Practice Fusion. (T 196). According to the Agent, in 2012, GM Medical converted mostly to pain management, requiring a physical examination and a urinalysis for drugs. Prescriptions were written electronically. (T 198-199). If the doctor learned that the patient was selling any of the pills she prescribed, the patient was immediately discharged. (T 200-201).

According to the Agent, GM Medical issued prescriptions on an individual basis. Patients were charged \$120 for the first visit and \$100 thereafter. In 2016, the price was raised to \$150 for the first visit and \$120 for each follow-up. (T 200). The Agent estimated that 2016, GM Medical deposited between \$30,000 and

\$50,000 in 4 to 6 weeks. The Agent testified that approximately 55% of the patients were pain patients, and the medical center examined 30 to 40 patients per day. (T 202). Via the Agent, the Government introduced an Excel spreadsheet, Government Exhibit 54, containing information from the patient files. (T 220). For example, the program indicated that Yanexi Hernandez received 8 prescriptions from GM Medical, Government Exhibits 15-22, admitted without objection. (T 222).

The Agent testified that Dr. Ruben Hoch was requested to review patient files, and reviewed 10 random samples from 14 patient files. (T 204). According to Practice Fusion, the doctor spent 16 minutes in her encounters with the patients, charted her notes and vitals, and kept the same in electronic patient files. (T 207). The doctor's expert opinion was that Dr. Jeanne Germeil unlawfully dispensed controlled substances.

Mr. Foureu testified concerning Germeil Medical and its opening in 2011. (T 626). GM Medical accepted cash payments or insurance. They accepted Medicare. Mr. Foureu testified that most of their patients were socioeconomically challenged. (T 630).

Mr. Foureu described the procedure utilized with patients at GM Medical. Patients were required to submit an MRI which the doctor reviewed before any

appointments were set. He explained that any non-compliance with the medications prompted the patient's discharge. (T 639-640).

Following her conviction, Jeanne Germeil did not appear for sentencing and was later extradited from Haiti. The failure to appear also caused an Indictment to be issued in the following case.

**Case No: 19-20474-CR-Ungaro**

Jeanne Germeil filed a Factual Proffer with the Court agreeing and admitting that on September 21, 2018, she was indicted on 14 Counts of illegally dispensing a controlled substance without legitimate medical need. On September 26, 2018, Dr. Jeanne Germeil was granted a \$250,000 Personal Surety Bond co-signed by three people, including her husband. The bond was filed with the Court. As a condition of that bond, Dr. Jeanne Germeil was "required to appear in court at all times as required by Notice given by the Court." She was not allowed to leave the Middle District of Florida where she lived, or the Southern District of Florida without written permission, and had a 9:00 pm curfew. (18-R 4;6).

Dr. Jeanne Germeil admitted in the proffer that she went to trial on the Superseding Indictment, and on January 31, 2019, was found guilty of 11 of 16 Counts. After the guilty verdicts were read, the Court allowed Dr. Jeanne Germeil to remain on bond until her sentencing scheduled for April 19, 2019.



Dr. Jeanne Germeil admitted that on March 30, 2019, she cut off her electronic monitoring bracelet and fled from her last known residence in Naples, FL. The following day, Collier County Sheriff's deputies conducted a welfare check at Dr. Jeanne Germeil's residence. The deputies found the door of the residence wide open, and most of the personal items from the residence had been removed. Dr. Jeanne Germeil was not present at the residence.

On April 19, 2019, Dr. Jeanne Germeil did not appear for sentencing before the Court. The Court issued a bench warrant for her arrest. On July 18, 2019, Dr. Jeanne Germeil was later taken into custody in Haiti and brought back to the United States. (DK 14-1-2).

### **Sentencing**

A consolidated sentencing hearing was conducted in front of Judge Ursula Ungaro on November 26, 2019. The defense requested a downward variance from the United States Sentencing Guidelines because there was strong evidence that a number of the prescriptions written by Dr. Jeanne Germeil were medically necessary and legitimate and that the doctor was providing care to down trodden patients who needed access to medications for their pain. The defense requested a downward variance to 120 months. (18-S 5-3).

Defense counsel argued that Dr. Jeanne Germeil is “an extraordinary woman.” (R 5-5). Dr. Jeanne Germeil grew up in Haiti and wanted to become a doctor since she was a little girl. She grew up speaking Creole and French and in order to enroll in medical school, moved to Mexico to study Spanish. She obtained her medical degree in Mexico. Thereafter, Dr. Jeanne Germeil learned English so that she could come to the United States and participate in a residency program. She practiced medicine for approximately 15 years without incident.

Dr. Jeanne Germeil’s husband, Jean-Renee Foureu, encouraged her to become a pain management doctor. He was the General Manager of the practice, and was in charge of all business for the office. (R 5-4). Dr. Jeanne Germeil believed that her mission was to address the pain needs of patients in marginalized communities.

Counsel argued that there is a history of undertreatment of pain in marginalized communities. (R 5-5). Dr. Jeanne Germeil located her practice in North Miami Beach because that was the patient population that she was looking to address. Defense counsel argued that Dr. Jeanne Germeil was offered an Agreed Disposition in front of the Medical Board which would have resulted in suspension of her license, but reinstatement thereafter after she paid a fine. Instead, she followed her husband’s advice and fought the charges.

Defense counsel argued that Dr. Jeanne Germeil was at the lowest point in her life while her case was being litigated. (R 5-6). She was suicidal, and had posted suicidal thoughts on a medical blog.

Defense counsel represented that Jean-Renee Foureu admitted to counsel that it was his idea for he and his wife, Jeanne Germeil, to escape to Mexico. (R 5-6). He planned to escape to Mexico, go to Cuba, and then to Haiti.

Counsel argued that the charges arose from activity which occurred in 2016, at which time doctors were still being told by the pharmaceutical companies that Oxycodone pills were safe, yet the pharmaceutical companies were paying out billions and billions of dollars in confidential settlements because they misrepresented the addictive nature of the pain medication to doctors and lied to the public about the safety of the medications and their addictiveness. (R 5-6).

Dr. Jeanne Germeil was a primary care physician for approximately 15 years, without incident. It was when she started running the pain clinic that the Government contended there was a problem. While she kept up with her Continuing Medical Education, she did not specialize in pain management. (R 5-7).

Dr. Jeanne Germeil allocuted at sentencing with regards to her prescription writing. She stated that in the beginning she was dealing with handwritten

prescriptions, but later the medical center switched to computer generated prescriptions. Dr. Jeanne Germeil explained that when dealing with prescription forms she followed “the five Ss.” The first S is for special in that Dr. Jeanne Germeil’s prescription pads were only purchased from a specific Government business, ordered online, and received at the office. The prescription forms were specific, sensitive, and had a sensor. Finally, the prescription forms were in a series, thus easily searchable. (S-21). This was also done to safeguard the prescription forms.

Dr. Jeanne Germeil explained that she entered the prescription information into the computer and the prescription was automatically generated. After the doctor signed the prescription, a stamp was affixed.

The Judge stated at sentencing:

I recognize that Dr. Germeil is a very caring person and related very well to the patients. But, unfortunately, she was willing to write these prescriptions, again, with a frequency and at quantities that were unsafe and posed a danger of addiction and also posed a danger that the patients were reselling the drugs, which is, of course, one of the biggest problems with pill mills. The quantities are such to suggest that the patients probably were reselling the drugs. So I'm not inclined to vary. I think that the sentence is appropriate. (S-18)

The Court denied the defense request for a variance.

The Court imposed the low-end Guideline sentence and found that the Defendant was not able to pay a fine. Dr. Jeanne Germeil was sentenced to concurrent terms of 188 months as to each Counts I-V, IX, X, and XIII-XVI. Upon release from imprisonment, she was placed on supervised release for a term of three years as to Counts I-V, IX, X and XIII-XVI, to be served concurrently. (S-26). As to the “bond jumping” case, the Court considered the Guidelines “to the extent that there is a grouping issue” as well as the statutory factors set forth in Title 18 U.S.C. Section 3550(a), U.S.S.G. Dr. Jeanne Germeil was committed to the Bureau of Prison on the 2019 case to a total of 22 months consisting of 10 months as to Count I, a consecutive term of 10 months as to Count II, and a consecutive term of 2 months pursuant to the sentencing enhancement under Title 18 U.S.C. Section 3147. The term of imprisonment in the “bond jumping” case was ordered to be served consecutively to the term of imprisonment in the 2018 case to achieve a total punishment of 210 months, followed by supervised release. (S-28). Judgment was entered on November 27, 2019. (D 36).

### **Direct Appeal**

On appeal to the Eleventh Circuit Court of Appeals, the Petitioner lodged three (3) arguments in her Initial Brief as follows:

I. THE EVIDENCE EDUCED WAS INSUFFICIENT

TO ESTABLISH THAT DR. JEANNE GERMEIL  
UNLAWFULLY DISPENSED PRESCRIPTIONS  
WITHOUT A LEGITIMATE MEDICAL PURPOSE

II. THE DISTRICT COURT REVERSIBLY ERRED BY  
ALLOWING DR. HOCH TO OPINE AS TO THE  
ULTIMATE ISSUE AND TO OFFER AN OPINION AS  
TO ALL PATIENTS AT GM MEDICAL BASED UPON  
A REVIEW OF 10 RANDOM PATIENT FILES

III. THE DISTRICT IMPOSED A SUBSTANTIALLY  
UNREASONABLE SENTENCE BASED IN PART  
UPON AN INCORRECT DRUG QUANTITY

In her Supplemental Initial Brief, the Petitioner lodged the following three

(3) arguments:

I. THE UNITED STATES SUPREME COURT'S DECISION  
IN *RUAN v. UNITED STATES* REQUIRES REVERSAL  
AND REMAND

A. The United States Supreme Court's Decision in  
*Ruan v. United States*

II. *RUAN* IMPACTED THE DISTRICT COURT'S  
RULING ON JEANNE GERMEIL'S MOTION  
FOR JUDGMENT OF ACQUITTAL

III. THE DISTRICT COURT REVERSIBLY ERRED  
BY REFUSING TO INSTRUCT THE JURY ON  
JEANNE GERMEIL'S GOOD FAITH DEFENSE

The Government filed an Answer Brief, seeking affirmance of the Judgment,  
Conviction and Sentence.

On February 14, 2023, the Eleventh Circuit Court of Appeals issued its 39 page unpublished Opinion affirming the convictions and sentence. The Court below provided a factual background of the case, its procedural history, and discussed several of the issues presented. First, the Court determined that allowing the Government expert, Dr. Hoch, to base opinions about all of Dr. Germeil's patients on his review of 10 random patient files and to opine as to the appropriateness of the prescriptions was not reversible error.

The Court analyzed Dr. Hoch's methodology and its reliability. The Court found that that Dr. Hoch's methodology was reliable and that the District Court did not abuse its discretion in allow its admission. Second, the Eleventh Circuit analyzed Dr. Germeil's request for a Good Faith Defense Jury Instruction and Motion for Judgment of Acquittal in light of the Supreme Court's recent decision in *Ruan v. United States*, 142 S.Ct. 2370 (2022). Specifically, Dr. Germeil maintained the District Court erred in its treatment of a good faith defense and failure to allow a good faith instruction. The Court found that the District Court did not abuse its discretion by rejecting Dr. Germeil's proposed Instruction because the proposed good faith language was "adequately covered" by other Instructions. (Opinion at pg. 22). However, the Court below admits that "[A]lthough the District

Court didn't relay "the precise wording" of this Instruction, it effectively conveyed the gist." *Id.*

The District Court instructed the Jury that Dr. Germeil was "not on trial for medical malpractice and is not charged with acting negligently with respect to the care of her patients. Again, she is charged with *knowingly and intentionally* prescribing controlled substances to her patients outside the usual course of professional medical practice." (Opinion at 12)

The Petitioner maintains that the language used in that Instruction was not the same as the Good Faith Instruction allowed by this Court based upon *Ruan*.

The Eleventh Circuit determined that since knowingly and intentional, were defined in the Instructions, there was no need to give a "good faith" instruction. The Petitioner asserts that a huge difference exists, as evidenced by this Court's decision in *Ruan*. Because good faith is a defense to the charges, the Jury should have been so instructed.

The Eleventh Circuit found that the evidence was sufficient to convict Jeanne Germeil of the charged offenses and to withstand a Motion for Judgement of Acquittal pursuant to Rule 29, Fed.R.Crim.P. under *Ruan*, and that the sentence imposed was reasonable in light of "the totality of the circumstances." (Opinion at pg. 38).



## REASONS FOR GRANTING THE WRIT

A Writ of Certiorari should issue in this case to review the federal constitutional questions raised herein. Pursuant to Rule 10, S.Ct.R., compelling reasons support certiorari review at bar based on the following issues:

- I. Whether the United States Supreme Court's Decision in *Ruan v. United States* Warrants Certiorari Review?
- II. Whether Certiorari Review is Warranted as a Result of Improper Government Expert Testimony by Allowing the Government Expert to Opine as to All of Dr. Jeanne Germeil's Patients Based Upon a Random Sample of Ten Patient Files?

**I. THIS COURT'S DECISION IN *RUAN v UNITED STATES* WARRANTS CERTIORARI REVIEW AND REVERSAL BASED UPON INSUFFICIENCY OF THE EVIDENCE AND FAILURE TO INSTRUCT THE JURY ON GOOD FAITH AS A DEFENSE**

The Petitioner urges this Honorable Court to accept certiorari review and reverse the Judgment, Conviction and Sentences under review in Case No: 19-20474-CR-UU based upon the District Court's failure to follow *Ruan v United States*, 142 S.Ct. 2370 (2022). Under *Ruan*, Jeanne Germeil's Rule 29 Motion should have been granted. Importantly, the Court's error in refusing to give the proposed Good Faith Instruction to the Jury permitted and thereby permitting a

conviction without the Jury being directly advised that a physician's good faith in prescribing appropriate medication for a legitimate medical purpose was not lawful.

The 11<sup>th</sup> Circuit Court of Appeals determined that the District Court did not abuse its discretion by rejecting a proposed defense instruction when "the gist" of the instruction was substantially covered by the charge given. (Opinion at pg. 22). However, the Instructions given below failed to instruct the Jurors on the good faith defense. The Petitioner urges this Court to examine the proposed good faith language and the language actually given to the Jury at trial to determine whether the Instructions "adequately covered" what this Court intended to impart in *Ruan*. They did not.

The Petitioner contends that *Ruan* impacted her case in two key respects, requiring reversal and remand. First, the most obvious error was in the District Court's refusal to allow a "good faith" jury instruction as required by *Ruan* when facts in support of Jeanne Germeil prescribing legitimate prescriptions for a valid purpose were elicited. Second, the Petitioner contends the District Court reversibly erred in rejecting the good faith defense in denying Jeanne Germeil's Motion for Judgment of Acquittal pursuant to Rule 29, Fed.R.Crim.P. at the conclusion of the

Government's case and all of the evidence. In either event, reversal and remand is warranted.

**A. The United States Supreme Court's Decision in *Ruan v. United States***

In *Ruan v. United States*, 142 S.Ct. 2370 (June 27, 2022), Justice Alito authored the primary Opinion in the consolidated cases of *Xiulu Ruan* and *Shakeel Kahn*. The Court granted certiorari to resolve a conflict in decisions between the Eleventh Circuit and the Tenth Circuit.

In *Ruan*, the U.S. Supreme Court determined that in a Section 841 prosecution in which a defendant met his burden of production under Title 21 U.S.C. Section 885, the Government was required to prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner. The United States Supreme Court reversed the 11<sup>th</sup> Circuit's ruling in *United States v. Ruan*, 966 F.3d 1101 (11<sup>th</sup> Cir. 2020) [overruled], which controlled in this Circuit at the time of Jeanne Germeil's trial.

In *Ruan*, the Supreme Court stated:

“We hold that the statute's “knowingly or intentionally” *mens rea* applies to authorization. After a defendant produces evidence that he or she was authorized to dispense controlled substances, the Government must prove beyond a reasonable doubt that the defendant knew that he or she was acting in an unauthorized manner, or intended to do so. *Ruan* at 2375

In *Ruan*, the Court noted that the Controlled Substances Act of 1970 (CSA) contains an exception for prescriptions issued in the course of a professional practice. The Court ruled that a good faith defense in Section 841(a) federal prosecutions of physicians was proper, and that the jury should be instructed as such. Here, the Court refused to instruct the Jury as requested by the defense and refused to instruct on “good faith,” only reluctantly agreeing to give an entrapment Jury Instruction.

Finally, Justice Alito held that on remand a new trial should be conducted allowing the defense to raise a “good faith” defense, but left open the question of whether the error for failing to so instruct might be harmless.

During the Charge Conference below, the defense requested an instruction on good faith. (T 762). At first, the Court stated:

“I’m also going to give you the good faith and the entrapment [instructions]. I’m likely to give the entrapment, but, of course, I’ll give you an opportunity to argue it.” (T 763)

After a break, the Court decided to grant the defense request for a jury instruction on entrapment. The Court noted that the pattern instruction concerning “good faith” said “good faith is a complete defense to a charge that requires intent to defraud and this is not a fraud case.” (T 766-767). This Court’s holding in *Ruan* does not limit a Defendant from a “good faith” defense only in fraud cases. In this

case, a correct interpretation of this Court's decision in *Ruan* warrants certiorari review.

The Court, looking at Special Instruction 9, relating to willfulness, determined that the Government was only required to show Jeanne Germeil acted "knowingly," and that no willfulness issue existed. The Court stated:

"So I'm not going to give the good faith instruction. I think the issue is adequately covered by the jury instructions as to knowingly, and there are other instructions in here that make it clear that in evaluating whether she did it knowingly, they have to take into consideration the standards of medical practice, which is really what this is all about, whether or not she was knowingly deviating in a criminal way from the standards of practice or whether she was within the parameters of standard practice. So I'm not going to give it. But I am going to give the entrapment." (T 774). [Emphasis added]

The defense argued in closing that Dr. Germeil discharged many patients who were suspicious. (T 826-827). She sent discharge letters when patients were non-compliant. (T 827). She routinely accessed a Government computer program called Eforce to make sure that her patients weren't getting simultaneous prescriptions from other doctors. If there was anything wrong, they were discharged as Jeanne Germeil's patients. Defense counsel argued:

"That shows her intent. That shows her **good faith**. And you can see letter after discharge after discharge after discharge, the same thing, discharge, getting prescriptions, failure to disclose pertinent medical information, discharge, failing to disclose patient evidence, evidence

of doctor shopping in the database, discharge, failure to go to a urine test. That's what she's suppose to do." (T 827). [Emphasis added]

As substantial evidence was educed at trial as to Jeanne Germeil's "good faith," without an instruction from the Court, the jury was never informed that if the Defendant met her burden of production, the Government was required to prove, beyond a reasonable doubt, that the Defendant knowingly or intentionally acted in an unauthorized manner. Jeannie Germeil's good faith defense should have prompted a jury instruction, as it would have been factually based. The request for the Good Faith Instruction was timely, properly requested, and based upon the Supreme Court's ruling in *Ruan*, reversible error occurred.

Certiorari review is warranted.

**II. THE DISTRICT COURT REVERSIBLY ERRED BY ALLOWING GOVERNMENT EXPERT, DR. HOCH, TO OPINE AS TO THE ULTIMATE ISSUE AND TO OFFER AN OPINION AS TO ALL PATIENTS AT GM MEDICAL BASED UPON A REVIEW OF 10 RANDOM PATIENT FILES**

DEA retained a pain management expert, Rueben M. Hoch, MD PA, who is Board Certified in Anesthesiology with additional qualifications in Pain Medicine from the American Board of Anesthesiologists. Dr. Hoch testified that his private practice has been dedicated to both the practice of Anesthesiology and Pain Medicine for over 20 years.

Dr. Hoch testified that he reviewed patient records, audio/video undercover recordings from CS and UC's visits to Dr. Germeil, and records of 10 patients who received prescriptions from Dr. Germeil with a date range of March 2016 to November 2017. Without prescreening or evaluating the patient files, DEA selected the 10 patient files based on a date range of when patients received treatment from Dr. Germeil, and turned over the files to Dr. Hoch for evaluation and examination. As reflected in the expert report disclosed to the defense, Dr. Hoch's expert opinion was that Dr. Germeil did not have a legitimate medical purpose for prescribing controlled substances to the CSs, UCs and patients listed in the Superseding Indictment.

*Sub judice*, the District Court reversibly erred by allowing Dr. Hoch to opine as to all patients at GM Medical based upon a review of 10 random patient files. The Petitioner maintains that this was not an appropriate number of patient files to sample, and resulted in misleading or confusing testimony being offered by the Government's expert.

Dr. Hoch, the Government's expert witness, like Dr. Jeanne Germeil, was not Board Certified in pain medicine. He is an anesthesiologist. The doctor failed to determine reasonableness based upon quantity and dosage. He was unable to quantify appropriate dosages or quantities. He was unable to point to any federal

or state laws setting forth “appropriate quantities or dosages.” Further, he had not met with and did not have a doctor/patient relationship with these individuals. For example, on one of the informant’s first appointments, the informant created the false impression that she was a legitimate pain patient with her false history of pain medications, her MRI that indicated some injury, and her presence in the E-FORCE that indicated that she been lawfully prescribed opioids by another physician recently. The defense argued that according to the Florida rules, a medical examination is not required every visit. Also, Dr. Jeanne Germeil was not required to seek to push the CI to alternative forms of treatment if, in her medical opinion, the prescriptions were effective for the patient and the patient was otherwise compliant.

Further, patients at Germeil Medical were directed to have a drug test, and patients such as the informant were discharged from Dr. Jeanne Germeil’s for not obtaining a drug test.

At trial, evidence was introduced verifying that Confidential Source 2 was sent for a drug test and discharged after making statements about selling his medication.

In *Ruan v United States*, 966 F.3d 1101 (11<sup>th</sup> Cir. 2020) [vacated on other grounds], the appellants argued that government expert Dr. Aultman was not qualified to give her opinions, and that the district court improperly limited the



defense cross-examination of her. The district court overruled the objections at trial. Dr. Jeanne Germeil raises the same objection with regards to the doctor's opinion, although met with the same ruling.

On appeal, the *Ruan* court held that a district court's decisions regarding the admissibility of expert testimony will not be set aside unless we determine that the court abused its discretion. *United States v. Frazier*, 387 F.3d 1244 (11<sup>th</sup> Cir. 2004). "By definition . . . under the abuse of discretion standard of review there will be occasions in which we affirm the district court even though we would have gone the other way had it been our call." *Id.* (quoting *In re Rasbury*, 24 F.3d 159, 168 (11th Cir. 1994)). The Court stated:

"In order to reverse, we must find that the district court "has made a clear error of judgment, or has applied the wrong legal standard." *Id.* (citing *Maiz v. Virani*, 253 F.3d 641, 662 (11th Cir. 2001))."

The *Ruan* Court addressed the expert's qualifications. The Court held that the proponent of the expert's testimony must show that the expert is qualified based on her "knowledge, skill, experience, training, or education." *Frazier*, 387 F.3d at 1261 (emphasis omitted) (quoting Fed. R. Evid. 702). Based on the expert's training and experience, the Court in *Ruan* found that the expert was qualified as an expert to testify as to whether the doctors' treatment of some patients was

outside the usual course of professional practice. The Court noted that the expert, Dr. Aultman, had a medical degree and completed a residency in internal medicine. She has practiced for over twenty years in Mississippi: at the time of trial, she was a hospitalist, but she had also practiced general medicine in a private clinic and palliative care in a hospice setting. She regularly prescribed opioids, benzodiazepines, and muscle relaxers to patients with acute and chronic pain, and she has prescribed fentanyl to hospice patients. She previously testified as an expert witness in federal court cases involving illegitimate pain-medication prescriptions and reviewed patient files for the DEA since 2002. Dr. Aultman testified generally about the doctor-patient relationship, examination and prescribing practices, pain assessments, and documenting patient information. She also testified specifically regarding her review of the medical files of four medical case patients and an undercover officer/patient, opining that the doctors' treatment of these patients was outside the usual course of professional practice, as shown by a lack of accurate patient histories and the infrequent use of non-opioid treatment options.

The *Ruan* Court held:

We are not concerned, although the appellants say we should be, that Dr. Aultman is not a board-certified pain management physician and does not have her own specialty clinic like PPSA. This Court has held

that a "proffered physician need not be a specialist in the particular medical discipline to render expert testimony relating to that discipline." *McDowell v. Brown*, 392 F.3d 1283, 1297 (11th Cir. 2004) (quoting *Gaydar v. Sociedad Instituto Gineco-Quirurgico y Planificacion*, 345 F.3d 15, 24 (1st Cir. 2003)); see also *Gayton v. McCoy*, 593 F.3d 610, 617 (7th Cir. 2010) ("[C]ourts often find that a physician in general practice is competent to testify about problems that a medical specialist typically treats."); *Dickenson v. Cardiac & Thoracic Surgery of E. Tenn.*, 388 F.3d 976, 979-80, 982 (6th Cir. 2004) (reversing a district court's exclusion of a cardiac thoracic surgeon's testimony on the standard of care applicable to pulmonologists); *Doe v. Biological, Inc.*, 971 F.2d 375, 385 (9th Cir. 1992) ("The fact that the experts were not licensed hematologists does not mean that they were testifying beyond their area of expertise. Ordinarily, courts impose no requirement that an expert be a specialist in a given field, although there may be a requirement that he or she be of a certain profession, such as a doctor."); *United States v. Viglia*, 549 F.2d 335, 336-37 (5th Cir. 1977) (pediatrician may testify about drug's effect on obese persons despite no experience treating obese patients). Despite not being a pain management specialist, Dr. Aultman's familiarity with prescribing opioids and treating chronic pain qualified her to opine on the appellants' conduct. *Id.* at 1162.

The Court further stated:

Additionally, the appellants questioned Dr. Aultman on cross-examination about her experience treating pain. They even established that as a hospitalist, she did not have her own clinical practice and that when a patient "presented with a significant amount of pain that was beyond [her] specialization, [she] referred that patient" to someone else. "A district court's gatekeeper role . . . 'is not intended to supplant the adversary system or the role of the jury.'" *Maiz*, 253 F.3d at 666 (quoting *Allison v. McGhan*, 184 F.3d 1300, 1311 (11th Cir. 1999)). "Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking [debatable] but admissible evidence." *Id.* (quoting *Allison*, 184 F.3d at 1311). We find

no abuse of discretion in the admission of Dr. Aultman as an expert, and the weight of her testimony was for the jury to evaluate.

*Id.* at 1162-1163

However, the Court has held that expert testimony, while helpful, is not required to prove violations of the Controlled Substances Act, and "a jury can find that a doctor prescribed controlled substances not in the usual course of his medical practice and was acting other than for a legitimate medical purpose from evidence received from lay witnesses surrounding the facts and circumstances of the prescriptions." *United States v. Joseph*, 709 F.3d 1082 (11<sup>th</sup> Cir. 2013), 709 F.3d at 1103 (quoting *United States v. Rogers*, 609 F.2d 834, 839 (5th Cir. 1980)).

Here, quite simply, three specific errors occurred concerning the Government's expert testimony. First, Petitioner challenges the admissibility of the "expert testimony" under the Federal Rules of Evidence. Second, the Government's expert failed to take into consideration the culture and community in which Dr. Jeanne Germeil practiced, and thus his testimony became misleading and caused confusion. In short, the Government's expert testimony as to prescriptions "in the grey area" should not have been allowed. Finally, the expert's selection of 10 random files for review and testimony should not have been allowed as they were not representative of the doctor's entire practice where the doctor saw many patients daily.

Certiorari review is warranted.

### CONCLUSION

Based upon the arguments and authorities set forth herein, proper grounds warrant granting certiorari review in this matter and reversing the 11<sup>th</sup> Circuit Order under review.

Respectfully submitted,

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