

No. 23-6122

IN THE
Supreme Court of the United States

COURTNEY NEWMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

NOTICE OF SUPPLEMENTAL AUTHORITY

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*Christopher J. Oldham is Court-appointed Counsel for Petitioner pursuant to the Criminal
Justice Act of 1964*

NOTICE OF SUPPLEMENTAL AUTHORITY

Petitioner Courtney Newman, along with petitioners Cynthia Clemons, Hollie Womack, and Sylvia Hofstetter, has previously file a Petition for Writ of Certiorari seeking review of the decision of the Sixth Circuit Court of Appeals in this matter. Shortly after Ms. Newman filed her petition with this Court, the Eleventh Circuit Court of Appeals issued an opinion in *United States v. Duldulao*, Dkt. No 20-13973 (11th Cir., Nov. 29, 2023). This notice is

Duldulao held that a jury instruction is in error if it fails to convey the proper *mens rea* standard under 21 U.S.C. §841:

In sum, *Ruan II* holds that a defendant acts outside the "usual course of professional practice" under 21 U.S.C. § 841 only when a knowing or intentional scienter requirement is satisfied.

Ruan II, 142 S.Ct. at 2375. Applying that holding in *Ruan III* and *Heaton*, we concluded that a district court errs by instructing a jury to "apply an objective standard to the outside the usual course of professional practice requirement," *Heaton*, 59 F.4th at 1240 (internal quotation marks omitted), or failing to "convey that a subjective analysis [is] required," *Ruan III*, 56 F.4th at 1297.

Duldulao at 28.

Further, the Eleventh Circuit held that while the error may not have been plain error at the time of the original opinion, it is the current law that controls review:

Under our decisions in *Ruan III* and *Heaton*, this instruction was error, and the error is plain.

Greer, 141 S.Ct. at 2096. "An error is plain if it is obvious and clear under current law." *United States v. Johnson*, 981 F.3d 1171, 1179 (11th Cir. 2020) (internal quotation marks omitted).

Current law for this purpose includes intervening decisions: "an intervening decision by this Court or the Supreme Court squarely on point may make an error plain." *United States v. Jones*, 743 F.3d 826, 829-30 (11th Cir. 2014) (internal quotation marks omitted); *see also Dell v. United States*, 710 F.3d 1267, 1273 (11th Cir. 2013).

Id. at 27.

The decision in *Duldulao*, and those cases cited therein, place the Eleventh Circuit and the Sixth Circuit squarely in conflict as to their respective treatment of the questions raised by the petitioner(s) in this case and specifically as to the Sixth Circuit's decision in *United States V. Anderson*, 67 F.4TH 755 (6th Cir. 2023).

Respectfully submitted,

/s/ Christopher Oldham

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CERTIFICATE OF SERVICE

I, hereby certify that on the 26th day of December, 2023, a copy of the foregoing was filed electronically and that service has been made upon all parties by regular U. S. Mail pursuant to United States Supreme Court Rule 29.

By: /s/Christopher Oldham

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