No. 24-505

In the Supreme Court of the United States

ROBERT L. IGNASIAK, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in denying a certificate of appealability on petitioner's unpreserved claim, which he asserted on collateral review, that his convictions and sentence for illegally prescribing controlled substances, in violation of 21 U.S.C. 841, should be vacated based on *Ruan* v. *United States*, 597 U.S. 450 (2022).

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-8a) is available at 2024 WL 4678061. The order of the district court (Pet. App. 9a-10a) is unreported. The report and recommendation of the magistrate judge (Pet. App. 11a-40a) is available at 2024 WL 947997.

JURISDICTION

The judgment of the court of appeals was entered on August 2, 2024. The petition for a writ of certiorari was filed on October 31, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Florida, petitioner was convicted on 12 counts of health care fraud, in violation of 18 U.S.C. 1347 (2002); and 31 counts of illegally

prescribing controlled substances, in violation of 21 U.S.C. 841(a)(1) and 21 U.S.C. 841(b)(1)(C) (Supp. II 2002). 08-cr-27 Am. Judgment 1-2. The district court sentenced petitioner to 292 months of imprisonment, to be followed by three years of supervised release. *Id.* at 4-5. The court of appeals reversed and remanded for a new trial. 667 F.3d 1217, 1229-1237, 1239.

On remand, following a guilty plea, petitioner was convicted on 12 counts of health care fraud, in violation of 18 U.S.C. 1347 (2000); 29 counts of illegally prescribing controlled substances, in violation of 21 U.S.C. 841(a)(1) and (b)(2), 21 U.S.C. 841(b)(1)(C) and (D) (Supp. II 2002); and failure to appear for a jury trial, in violation of 18 U.S.C. 3146(a)(1) and (b)(1)(A)(i). 13-cr-95 Third Am. Judgment 1-2. The district court sentenced petitioner to 360 months of imprisonment, to be followed by three years of supervised release. *Id.* at 4-5. Petitioner did not appeal.

In 2018, the district court granted petitioner's Section 2255 motion in part and reentered judgment so that petitioner could appeal the 2013 judgment. 08-cr-27 D. Ct. Doc. (D. Ct. Doc.) 458 (Feb. 14, 2018); see D. Ct. Doc. 452 (Nov. 13, 2017) (magistrate judge report and recommendation). The court of appeals affirmed petitioner's conviction and sentence. 808 Fed. Appx. 709, 712-718.

In 2021, petitioner filed a 28 U.S.C. 2255 motion, which he amended in 2022 after this Court's decision in *Ruan* v. *United States*, 597 U.S. 450 (2022). D. Ct. Doc. 513 (Feb. 23, 2021); D. Ct. Doc. 530 (Aug. 2, 2022); D. Ct. Doc. 533 (Aug. 4, 2022). The district court denied the motion and declined to issue a certificate of appealability (COA). Pet. App. 9a-10a. The court of appeals denied a COA. *Id.* at 1a-8a.

1. Petitioner was a licensed physician who operated a clinic in Freeport, Florida. 667 F.3d at 1220. In 2005, the federal Agency for Health Care Administration undertook a review of petitioner's files based on concerns that he was regularly billing for higher-than-normal levels of service for a family-practice doctor. *Id.* at 1221. The auditor reviewed 30 patients' charts and found that they did not justify the charges petitioner was submitting to Medicaid. *Ibid.* The auditor was more concerned, however, about petitioner's practice of prescribing significant quantities of certain combinations of pain killers. *Ibid.*

By December 2005, petitioner retired and sold his medical practice to Hospital Corporations of America, which sent a replacement doctor for the clinic. 667 F.3d at 1221. Upon reviewing the patient files, the new doctor was alarmed by the quantity of controlled substances that petitioner had been prescribing. *Ibid.* Patients were visibly angry when the new doctor notified them that he would not be prescribing pain killers, to the point where the doctor feared for his safety and began wearing a bullet-proof vest. *Id.* at 1221-1222. The doctor also observed that patients were traveling considerable distances to visit the clinic, and he found it unusual that people were driving past so many qualified doctors to be treated at this clinic in Freeport. *Id.* at 1222. In February 2006, the government seized petitioner's patient files. *Ibid.*

2. A federal grand jury in the Northern District of Florida returned an indictment charging petitioner with 14 counts of health care fraud, in violation of 18 U.S.C. 1347 (2000); and 40 counts of illegally dispensing controlled substances, in violation of 21 U.S.C. 841(a)(1) and 21 U.S.C. 841(b)(1)(C) (Supp. II 2002). 08-cr-27

Indictment 1-24. A jury found him guilty of 12 counts of health care fraud and 31 counts of illegally prescribing controlled substances. 08-cr-27 Am. Judgment 1-2. It acquitted him on the remaining counts. Pet. App. 12a. The district court sentenced petitioner to 292 months of imprisonment, to be followed by three years of supervised release. 08-cr-27 Am. Judgment 4-5.

3. The court of appeals reversed and remanded for a new trial, based on its view that the introduction of certain evidence had prejudicially violated petitioner's rights under the Confrontation Clause. 667 F.3d at 1239; see *id.* at 1229-1237. In 2012, shortly before his scheduled retrial, petitioner faked his own death, absconded from pretrial supervision, and fled the jurisdiction. Pet. App. 13a-14a.

The grand jury returned an indictment charging petitioner with failure to appear for a jury trial, in violation of 18 U.S.C. 3146(a)(1) and (b)(1)(A)(i). 13-cr-95 Indictment 1-2. After he was apprehended, petitioner pleaded guilty to 12 counts of health care fraud, in violation of 18 U.S.C. 1347 (2000); 29 counts of illegally prescribing controlled substances, in violation of 21 U.S.C. 841(a)(1) and (b)(2), 21 U.S.C. 841(b)(1)(C) and (D) (Supp. II 2002); and failure to appear, in violation of 18 U.S.C. 3146(a)(1) and (b)(1)(A)(i). 13-cr-95 Third Am. Judgment 1-2. The district court sentenced him to 360 months of imprisonment, to be followed by three years of supervised release. *Id.* at 4-5. Petitioner did not appeal.

In 2015, petitioner moved under 28 U.S.C. 2255 to vacate his convictions and sentence on the ground that, *inter alia*, his attorney had failed to file a notice of appeal as requested by petitioner. D. Ct. Doc. 424, at 8 (Feb. 13, 2015). The district court granted the motion

in part and reentered judgment so that petitioner could timely appeal. D. Ct. Doc. 458 (Feb. 14, 2018); see D. Ct. Doc. 452, at 7-24 (Nov. 13, 2017) (magistrate judge report and recommendation). On the second direct appeal, the court of appeals rejected each of petitioner's challenges to his guilty plea and sentence. 808 Fed. Appx. at 713-718.

4. In 2021, petitioner filed another Section 2255 motion, which he later amended in 2022 after this Court's decision in *Ruan*, *supra*. D. Ct. Doc. 513 (Feb. 23, 2021); D. Ct. Doc. 530 (Aug. 2, 2022); D. Ct. Doc. 533 (Aug. 4, 2022); D. Ct. Doc. 537 (Aug. 17, 2022). Section 841(a) makes it a crime, "[e]xcept as authorized[,] * * * for any person knowingly or intentionally * * * to manufacture, distribute, or dispense * * * a controlled substance." 21 U.S.C. 841(a). Under applicable regulations, a prescription is "authorized" when a licensed practitioner issues it "for a legitimate medical purpose * * * acting in the usual course of his professional practice." 21 C.F.R. 1306.04(a). In *Ruan*, this Court held that the "'knowingly or intentionally' mens rea" in Section 841(a) "applies to the [statute's] 'except as authorized' clause," such that, "once a defendant meets the burden of producing evidence that his or her conduct was 'authorized,' the Government must prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner." 597 U.S. at 457.

A magistrate judge recommended that petitioner's Section 2255 motion be denied. Pet. App. 11a-40a. As relevant here, the magistrate judge rejected petitioner's argument that his convictions and sentence for illegally dispensing controlled substances should be vacated in light of *Ruan*. *Id.* at 24a-40a. The magistrate

judge agreed with the parties that *Ruan* applies retroactively to cases on collateral review. *Id.* at 26a-27a. The magistrate judge determined, however, that petitioner had failed to raise a *Ruan* claim on direct appeal or in his previous Section 2255 motion, *id.* at 29a-32a, and that petitioner could not demonstrate cause and prejudice —or actual innocence of the charged controlled-substance offenses—to excuse his procedural default, *id.* at 33a-38a.

The magistrate judge rejected petitioner's argument that he could not have raised that statutory claim before this Court's decision in *Ruan*, explaining that futility does not constitute cause for failure to raise a claim. Pet. App. 33a. The magistrate judge also went on to make clear that petitioner could not show prejudice resulting from his failure to raise a *Ruan* claim because there was a sufficient factual basis for his plea even in light of *Ruan*. *Id.* at 34a. And the magistrate judge further determined that petitioner could not overcome procedural default through actual innocence because the record did not support such a finding. *Id.* at 35a. It emphasized that petitioner had specifically admitted, in both the plea and the statement of facts accompanying it, that he had "prescrib[ed] large quantities of controlled substances without a legitimate medical purpose and outside the usual course of professional medical practice." *Id.* at 35a-37a.

The district court adopted the report and recommendation, denied the Section 2255 motion, and declined to issue a COA. Pet. App. 9a-10a.

5. The court of appeals denied petitioner's motion for a COA. Pet. App. 1a-8a. The court acknowledged that novelty can constitute cause for excusing a procedural default when the claim is truly novel, meaning that its

legal basis was not reasonably available to counsel at the time of the direct appeal. *Id.* at 6a. But it observed that petitioner's *Ruan* claim based "on an intervening Supreme Court decision clarifying the interpretation of a statute" could not meet this standard because counsel would have been aware of a plain-language statutory interpretation argument and the argument would not have been rejected by courts out of hand. *Ibid.* The court determined that reasonable jurists would not debate whether petitioner had established cause to excuse his procedural default and therefore declined to issue a COA. *Ibid.*

ARGUMENT

Petitioner contends (Pet. 8-21) that the court of appeals erred in denying a COA on his claim, which he brought in a motion under 28 U.S.C. 2255, that his conviction for illegally distributing controlled substances, in violation of 21 U.S.C. 841(a), should be vacated in light of this Court's decision in *Ruan* v. *United States*, 597 U.S. 450 (2022). The court of appeals' decision is correct and does not implicate any circuit conflict warranting this Court's review. This Court has recently and repeatedly declined review of petitions for writs of certiorari raising similar issues. See, *e.g.*, *Wordly* v. *United States*, 144 S. Ct. 575 (2024) (No. 23-5331); *Maxime* v. *United States*, 143 S. Ct. 583 (2023) (No. 22-5549); *Vargas-Soto* v. *United States*, 143 S. Ct. 583 (2023) (22-5503); *Granda* v. *United States*, 142 S. Ct. 1233 (2022) (No. 21-6171); *Blackwell* v. *United States*, 142 S. Ct. 139 (2021) (No. 20-8016); *Gatewood* v. *United States*, 141 S. Ct. 2798 (2021) (No. 20-1233). The same result is appropriate here.

1. Once a federal prisoner's conviction becomes final on appeal, he may file a motion under Section 2255 to

"move the court which imposed the sentence to vacate, set aside or correct the sentence." 28 U.S.C. 2255(a). If the district court denies relief, the prisoner must obtain a COA from "a circuit justice or judge" before he may appeal that decision. 28 U.S.C. 2253(c)(1); see Fed. R. App. P. 22(b)(1) ("[T]he applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability."). A COA may issue only if the prisoner has made "a substantial showing of the denial of a constitutional right," 28 U.S.C. 2253(c)(2), and must "indicate which specific issue or issues satisfy the showing required by paragraph (2)," 28 U.S.C. 2253(c)(3). The "substantial showing" requirement is satisfied only when the prisoner demonstrates "that reasonable jurists could debate" entitlement to relief on the merits and the resolution of any relevant procedural issues. *Slack* v. *McDaniel*, 529 U.S. 473, 484 (2000).

Contrary to petitioner's contention (Pet. 18-19), the court of appeals did not err in denying a COA on his argument that he had showed cause for the procedural default of his *Ruan* claim. Although "[t]he COA inquiry * * * is not coextensive with a merits analysis," *Buck* v. *Davis*, 580 U.S. 100, 115 (2017), this Court has made clear that a prisoner seeking a COA must still show that jurists of reason "could conclude [that] the issues presented are adequate to deserve encouragement to proceed further," *ibid.* (citation omitted). Petitioner's argument that he had showed cause did not "deserve encouragement to proceed further," *ibid.* (citation omitted).

2. The lower courts correctly determined that petitioner cannot show "cause" to excuse his procedural

default of his challenge to the interpretation of Section 841(a). Pet. App. 6a-8a, 33a-34a.

a. This Court has explained that "cause" may exist where a claim "is so novel that its legal basis is not reasonably available to counsel." *Reed* v. *Ross*, 468 U.S. 1, 16 (1984). "[T]he question is not whether subsequent legal developments have made counsel's task [in raising a particular claim] easier, but whether at the time of the default the claim was 'available' at all." *Smith* v. *Murray*, 477 U.S. 527, 537 (1986). And the Court has reiterated that the "futility" of raising a claim "cannot alone constitute cause." *Engle* v. *Isaac*, 456 U.S. 107, 130 (1982); see *Bousley* v. *United States*, 523 U.S. 614, 623 (1998) (reaffirming that "futility cannot constitute cause if it means simply that a claim was 'unacceptable to that particular court at that particular time'") (citation omitted); *Smith* v. *Murray*, 477 U.S. at 535 (reaffirming that "perceived futility alone cannot constitute cause") (citation omitted). The existence of cause instead turns on "the novelty of [the] * * * issue" itself. *Reed*, 468 U.S. at 13; see *id.* at 15. "If counsel ha[d] no reasonable basis upon which to formulate" a legal theory, *id.* at 14-15, then the "issue" was "sufficiently novel" to "excuse" counsel's "failure to raise it," *id.* at 16; see *id.* at 17 (framing the relevant inquiry as "whether an attorney has a 'reasonable basis' upon which to develop a legal theory").

Here, the legal basis for the statutory interpretation argument that succeeded in *Ruan* was reasonably available to petitioner's counsel at the time of petitioner's sentencing and direct appeal. The issue had been litigated in the courts of appeals for decades, and three circuits had approved jury instructions that incorporated a mens rea requirement substantially similar to the one

that this Court adopted in *Ruan*. See *United States* v. *Sabean*, 885 F.3d 27, 44-45 (1st Cir. 2018); *United States* v. *Kohli*, 847 F.3d 483, 488-489, 494 (7th Cir.), cert. denied, 583 U.S. 869 (2017); *United States* v. *Feingold*, 454 F.3d 1001, 1007-1009 (9th Cir.), cert. denied, 549 U.S. 1067 (2006). While the Eleventh Circuit had done otherwise, see, *e.g.*, *United States* v. *Duldulao*, 87 F.4th 1239, 1251 (2023) (citing *United States* v. *Tobin*, 676 F.3d 1264, 1282 (11th Cir.), cert. denied, 568 U.S. 1026 (2012), and 568 U.S. 1105 (2013)), nothing prevented petitioner from challenging that precedent.

Indeed, the petitioner in *Ruan*—whose own case originated in the Eleventh Circuit—succeeded in doing exactly that. See *Ruan*, 597 U.S. at 456. Given that "various forms of the claim [petitioner] now advances had been percolating in the lower courts for years at the time of his original appeal," "it simply is not open to argument that the legal basis of the claim * * * was unavailable to counsel at the time." *Smith* v. *Murray*, 477 U.S. at 537; see *Bousley*, 523 U.S. at 622 (rejecting a novelty-based "cause" argument where the "Federal Reporters were replete with cases" considering the purportedly novel claim "at the time" petitioner should have raised it); *Engle*, 456 U.S. at 131 (rejecting a novelty-based "cause" argument where "dozens of defendants" had previously raised the purportedly novel claim).

b. Petitioner errs in contending (Pet. 19) that he can nevertheless show "cause" for his procedural default under this Court's decision in *Reed*. In *Reed*, this Court stated that it had previously identified, for purposes of retroactivity analysis, "three situations in which a 'new' constitutional rule, representing 'a clear break with the past,' might emerge from this Court": "First,

a decision of this Court may explicitly overrule one of [the Court's] precedents"; "[s]econd, a decision may overtur[n] a longstanding and widespread practice to which this Court has not spoken, but which a near-unanimous body of lower court authority has expressly approved"; and third, "a decision may disapprov[e] a practice this Court arguably has sanctioned in prior cases." 468 U.S. at 17 (quoting *United States* v. *Johnson*, 457 U.S. 537, 549, 551 (1982)) (internal quotation marks omitted; third and fourth sets of brackets in original). *Reed* suggested that when a new decision of this Court "falling into one of the first two categories is given retroactive application, there will almost certainly have been no reasonable basis upon which an attorney previously could have urged a [lower] court to adopt the position that this Court has ultimately adopted," and that the "failure of a defendant's attorney to have pressed such a claim * * * is sufficiently excusable to satisfy the cause requirement." *Ibid.*

Reed's three categories were derived from this Court's decision in *United States* v. *Johnson*, which determined that a new constitutional rule does not apply retroactively, even to cases on direct review, if the new rule represented a "clear break with the past." 457 U.S. at 549 (citation omitted); see *id.* at 551. But after *Reed*, this Court overruled that aspect of *United States* v. *Johnson* in *Griffith* v. *Kentucky*, 479 U.S. 314 (1987), "hold[ing] that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past." *Id.* at 328.

The Court does not appear to have relied on *Johnson*'s "clear break" categories since then, suggesting that

any special distinction for those categories may lack continuing salience. And even if those categories retained significance after *Griffith*, *Reed* itself concerned only "the third category," 468 U.S. at 18, which is not at issue here. Furthermore, the most relevant aspect of *Reed*—its explanation that a defendant may show "cause" when "a * * * claim is so novel that its legal basis is not reasonably available to counsel," *id.* at 16—cuts against petitioner here, as other defendants raised similar claims before petitioner's default, see pp. 9-10, *supra*.

In any event, petitioner errs in asserting (Pet. 19) that he can show cause under *Reed*'s second category. He contends (*ibid.*) that *Ruan* overturns a longstanding and widespread practice of imposing an objective scienter requirement for Section 841 that the lower courts had widely approved. As previously explained, that is incorrect. The practice among district courts varied before *Ruan*, and several courts of appeals had approved jury instructions that incorporated a mens rea requirement of substantially the type that the Court adopted in *Ruan*. See pp. 9-10, *supra*. And even if the court of appeals would have concluded that petitioner's challenge was foreclosed by circuit precedent at the time of petitioner's direct appeal, this Court has held that "futility cannot constitute cause if it means simply that a claim was 'unacceptable to that particular court at that particular time.'" *Bousley*, 523 U.S. at 623 (citation omitted); see *Smith* v. *Murray*, 477 U.S. at 535 (emphasizing that "perceived futility alone cannot constitute cause") (citation omitted).

3. Petitioner contends (Pet. 12-18) that the circuits are divided over whether a claim of the sort raised in his Section 2255 motion is sufficiently novel to demonstrate

cause to excuse a procedural default. But petitioner cites no other decision that addressed whether this Court's decision in *Ruan* was sufficiently novel to excuse the procedural default of a claim that Section 841 requires the government to prove that the defendant knowingly and intentionally acted outside the usual course of professional medical practice.

One decision cited by petitioner (Pet. 15) involved a challenge to the residual clause of the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e). See *Lassend* v. *United States*, 898 F.3d 115, 118 (1st Cir. 2018), cert. denied, 139 S. Ct. 1300 (2019). That case involved different considerations—principally, the effect of this Court's ACCA residual-clause decisions in *James* v. *United States*, 550 U.S. 192 (2007), and *Sykes* v. *United States*, 564 U.S. 1 (2011), and how the timing of a particular prisoner's sentencing relates to them. See *Lassend*, 898 F.3d at 118. Such decisions do not resolve cause-and-prejudice issues for other statutes. See *Gatewood* v. *United States*, 979 F.3d 391 (6th Cir. 2020), cert. denied, 141 S. Ct. 2798 (2021); *Granda* v. *United States*, 990 F.3d 1272, 1287 (11th Cir. 2021), cert. denied, 142 S. Ct. 1233 (2022).

Other decisions cited by petitioner (Pet. 15-16) likewise addressed cause and prejudice in different statutory contexts and did not involve specific consideration of procedural default for a *Ruan* claim. See *United States* v. *Werle*, 35 F.4th 1195, 1199-1201 (9th Cir. 2022) (statutory claim pursuant to *Rehaif* v. *United States*, 588 U.S. 225 (2019)); *Guardado* v. *United States*, 76 F.4th 17, 21 (1st Cir. 2023) (same). The Ninth Circuit in *Werle* concluded that a defaulted claim relying on this Court's decision in *Rehaif* v. *United States*—which interpreted the federal crime of unlawfully possessing a

firearm to require proof of a defendant's knowledge of both possession and his relevant status, see 588 U.S. at 227—fell under the second *Reed* category where "[a]t the time Werle pled guilty, all ten circuits that had addressed the issue, including [the Ninth Circuit], had held that the Government was not required to prove that a defendant knew of his status as a felon at the time the defendant possessed the firearm," and "at least six circuits had been unified on th[e] issue for nearly seventeen years." *Werle*, 35 F.4th at 1200. As discussed above, the state of the circuits was markedly different before *Ruan*. Accordingly, acceptance by a court of cause for procedural default of a *Rehaif* claim does not create a conflict of authority with a court finding no cause for procedural default of a *Ruan* claim.

Petitioner asserts (Pet. 16) that two Second Circuit cases found cause for procedural default of statutory claims in order to avoid an unfair result. See *Ingber* v. *Enzor*, 841 F.2d 450, 453-455 (1988); *United States* v. *Loschiavo*, 531 F.2d 659, 662-667 (1976). Those cases—neither of which implicated Section 841 or a *Ruan* claim—did not explicitly address the cause requirement at all. See *Ingber*, 841 F.2d at 453-455; *Loschiavo*, 531 F.2d at 662-667. Moreover, both predate *Bousley* and thus lacked this Court's most recent guidance on that subject.

Finally, to the extent that petitioner asserts (Pet. 12-15) that the court of appeals in this case has been inconsistent in its treatment of the cause requirement, any such inconsistency cuts further against his claim. Differing results in the court of appeals for statutory claims would underscore that the cause analysis depends on the particular claim at issue. And any intra-circuit conflict would not warrant this Court's review. See

Wisniewski v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).*

4. Petitioner alternatively contends (Pet. 20-21) that he did not, in fact, procedurally default his *Ruan* claim at all, on the theory that he raised a similar-enough claim in a prior Section 2255 motion and in his second direct appeal. This Court "do[es] not grant * * * certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925); see Sup. Ct. R. 10. Review by this Court of petitioner's fact-bound assertion that he in fact raised a *Ruan* claim on direct appeal is both unwarranted and, in any event, falls outside petitioner's own question presented, see Pet. i. And petitioner's dispute with the very premise of the default-focused question presented—namely, that he did in fact default his claim—would complicate this Court's review of that legal issue.

Moreover, the argument is meritless. To the extent that petitioner raised a *Ruan*-like argument (see Pet. 20) in a prior Section 2255 motion, that would have been too late to preserve the claim. See *Wainwright* v. *Sykes*, 433 U.S. 72, 85-86 (1977) (claim defaulted when no contemporaneous objection was lodged at trial); *Murray* v. *Carrier*, 477 U.S. 478, 490-492 (1986) (claim not raised on direct appeal is procedurally defaulted). Nor did petitioner adequately raise a *Ruan* claim in his second direct appeal. Petitioner contends (Pet. 20) that,

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* Petitioner's citation (Pet. 13-14) to the court of appeals' decision in *Duldulao*, *supra*, is inapposite because that case involved analysis of an unpreserved *Ruan* claim on direct appeal (on remand from this Court after *Ruan*) under the plain-error standard. 87 F.4th at 1254-1258. The court of appeals in that case had no occasion to determine cause and prejudice for procedural default of a claim raised in proceedings under 28 U.S.C. 2255.

in that appeal, petitioner "raised a *Ruan*-like claim challenging the sufficiency of the factual basis supporting his guilty plea." *Ibid.*; see Pet. 20-21 (quoting Pet. C.A. Br. 22). The paragraph petitioner invokes generally asserts that the court must independently assess the factual basis for the guilty plea, but does not specify *what* factual basis petitioner believed was missing or otherwise put the Court on notice that he was raising a statutory argument similar to the one adopted in *Ruan*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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