No. 24-505

IN THE

Supreme Court of the United States

ROBERT IGNASIAK, JR.,

Petitioner,

v.

UNITED STATES,

Respondent.

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

REPLY BRIEF FOR THE PETITIONER

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In the decision below, the Eleventh Circuit held that a United States Supreme Court case of statutory interpretation can never constitute "cause" to excuse procedural default of a habeas claim. Respondent United States of America's defenses of that holding lack merit. There is indeed a deep circuit split on application of this Court's procedural default jurisprudence. Accordingly, the Court should grant a writ of certiorari.

1. There is a historic and ongoing circuit split on this Court's procedural default jurisprudence.

The United States' Brief in Opposition ("BIO") claims that Dr. Ignasiak's petition does not indicate any circuit split that would warrant this Court's attention. (BIO 7). In the next sentence, the BIO cites to six cases "raising similar issues" where this Court denied *certiorari*. *Id.* Rather than casting doubt on whether Dr. Ignasiak's claim raises a circuit split, the cases cited in the BIO confirm that any time this Court issues a case of statutory interpretation or new rule of constitutional law, the circuits are divided on how the judge-made doctrine of procedural default applies to defendants on collateral review.

Each of the six cases cited by the BIO pertain to this Court's trio of decisions in *Johnson v. United States*, 576 U.S. 591 (2015), *Sessions v. Dimaya*, 584 U.S. 148 (2018), and *United States v. Davis*, 588 U.S. 445 (2019). Notably, four of those six decisions originated in the United States Court of Appeals for the Eleventh Circuit. *Wordley v. United States*, No. 22-10166, 2023 WL 1775723 (11th Cir. Feb. 6, 2023), *cert. denied*, 144 S. Ct. 575 (2024) (denial of

2255 motion based on *Davis*); *Maxine v. United States*, No. 22-11482-J, 2022 WL 18145205 (11th Cir. June 7, 2022), *cert. denied*, 143 S. Ct. 583 (2023) (denial of certificate of appealability based on *Davis*); *Granda v. United States*, 990 F.3d 1272 (11th Cir. 2021), *cert. denied*, 142 S. Ct. 1233 (2022) (affirming denial of § 2255 motion based on *Davis*); and *Blackwell v. United States*, No. 20-12706-F, 2020 WL 9594452 (11th Cir. Dec. 9, 2020), *cert. denied*, 142 S. Ct. 139 (2021) (denying COA based on *Davis*). The two remaining cases cited in the BIO are from the Fifth and Sixth Circuits. *Vargas-Soto*, 35 F.4th 979 (5th Cir. 2022), *cert. denied*, 143 S. Ct. 582 (2023) (affirming denial of 2255 motion based on *Dimaya*); *Gatewood v. United States*, 979 F.3d 391 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 2798 (2021) (affirming denial of 2255 motion based on *Johnson*).

Notably, the BIO's string cite involves the underlying issue of the constitutionality of the residual clause of particular statutes beginning with *Johnson* and its progeny. These cases are distinguishable from *Ruan v. United States*, 597 U.S. 450 (2022), a case of pure statutory interpretation, and thus should not be regarded as barring review on this important question of federal law that has deeply divided the circuits. Moreover, the fact that numerous petitions for *certiorari* arise every time this Court issues a decision that is retroactive to cases on collateral review only emphasizes the importance of the question at issue. The Court should grant *certiorari* to provide instruction and guidance to the lower courts on the appropriate application of the procedural default doctrine—specific to this case, whether a case of statutory interpretation may be considered "cause" to excuse procedural default.

The fact that two-thirds of the cases cited in the BIO arise from the Eleventh Circuit further supports Dr. Ignasiak's position that the Eleventh Circuit erred in its denial of his certificate of appealability. Accordingly, the Court should grant *certiorari* in this matter.

2. The BIO fails to demonstrate that the legal basis for *Ruan* was reasonably available to Dr. Ignasiak

The BIO contends that "the legal basis for the statutory interpretation argument that succeeded in *Ruan* was reasonably available to petitioner's counsel at the time of [his] sentencing and direct appeal." (BIO 9). In support of this argument, the BIO states that the issue has been litigated "for decades, and three circuits had approved jury instructions that incorporated a mens rea requirement similar to the one that this Court adopted in *Ruan*." *Id*. 9–10. However, the three cases cited in the BIO did not include the *mens rea* requirement set by this Court in *Ruan* and in fact, included jury instructions this Court expressly found to be insufficient in its holding.

The BIO cites to *United States v. Sabean*, 885 F.3d 27 (1st Cir. 2018), *United States v. Kohli*, 847 F.3d 483 (7th Cir. 2017), and *United States v. Fiengold*, 454 F.3d 1001 (9th Cir. 2006). *Id*. 10. However, each in each of these cases the respective courts of appeals affirmed convictions based on jury charges that provided a "good-faith" instruction. *Sabean*, 885 F.3d at 45; *Kohli*, 847 F.3d at 489; *Fiengold*, 454 F.3d at 1009–10. This was the same type of instruction given by the trial court in *Ruan*. *Ruan*, 597 U.S. at 455. And this "good-faith" instruction is precisely what this Court rejected in *Ruan*. *Id*. at 465 (We are not convinced. For one thing, § 841, like many criminal statutes, uses

the familiar *mens rea* words 'knowingly or intentionally.' It nowhere uses words such as 'good faith,' 'objectively,' 'reasonable,' or 'honest effort.'").

The BIO claims that the *mens rea* argument of *Ruan* has been litigated for decades, but offers no citation to any legal authority where it has been. Moreover, this claim flies in the face of the Eleventh Circuit's own characterization of its pre-*Ruan* instructions as a "precedential juggernaut." *United States v. Duldulao*, 87 F.4th 1239, 1255 (11th Cir. 2023).

3. The BIO is misguided on the Court's holding in *Reed*.

The BIO contends that the three-category test announced by this Court in *Reed v. Ross*, 468 U.S. 1 (1984) is essentially rendered null because "*Reed* itself concerned only the third category' which is not at issue here." (BIO 12) (internal citation and quotation marks omitted). According to the BIO, although this Court has never overturned *Reed*, it should disregard the whole of this Court's holding in that case. The BIO is misguided in this respect.

This Court's recent *per curiam* opinion in *Andrew v. White*, 604 U.S. —, No. 23-6573, 2025 WL 247502 (U.S. Jan. 21, 2025) is highly instructive. In *Andrew*, this Court held that "[w]hen this Court relies on a legal rule or principle to decide a case, that principle is a 'holding' of the Court for purposes of AEDPA." *Id.* at *3. This Court further wrote that "[g]eneral legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court." *Id.* at 4. Although *Andrew* was concerned with the AEDPA under 28 U.S.C. § 2254, the

Court's holding in that case is equally applicable to this Court's procedural default jurisprudence and how it has been applied—or misapplied—by lower courts:

> This Court has no occasion to defer to other federal courts' erroneous interpretations of its own precedent. Nor is such double deference necessary to prevent expansion of federal habeas relief to those who rely on "debatable" interpretations or extensions of our holdings. [citation omitted].

Id.

Here, Dr. Ignasiak relies on this Court's holding in *Reed* that applies a three-category test to determine whether an issue is so "novel" as to excuse a procedural default. (Pet. 19). The Court's holding in *Ruan* falls under *Reed's* second category for novelty: a decision of this Court that overturns a longstanding and widespread practice "which a near-unanimous body of lower court authority has expressly approved." *Reed*, 458 at 17. The cases cited by the BIO, as well as the Eleventh Circuit's categorization of the pre-*Ruan* "precedential juggernaut," clearly demonstrates that *Ruan* overturned a near-unanimous body of lower court precedent. Accordingly, and consistent with *Reed*, there was "no reasonable basis upon which an attorney previously could have urged a [ ] court to adopt the position that this Court ultimately adopted." *Reed*, at 17.

Dr. Ignasiak has demonstrated excusable cause for procedural default of his *Ruan* claim. As such, the Eleventh Circuit erred in denying his certificate of appealability.

This Court should grant *certiorari* to address the deep circuit split on application of the procedural default doctrine.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this 14th date of February 2025.

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