

No. 24-525

IN THE
Supreme Court of the United States

JOHN L. STANTON,

Petitioner,

v.

UNITED STATES,

Respondent.

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

REPLY BRIEF

MATTHEW J. PELCOWITZ
CHAPMAN LAW GROUP
701 Waterford Way, Ste. 340
Miami, FL 33126
(305) 712-7177

RONALD W. CHAPMAN II
Counsel of Record
CHAPMAN LAW GROUP
1441 W. Long Lake Rd., Ste. 310
Troy, MI 48098
(248) 644-6326
rwchapman@
chapmanlawgroup.com

Counsel for Petitioner



TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	ii
REPLY BRIEF FOR PETITIONER	1
CONCLUSION	7

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Gonzales v. Oregon</i> , 546 U.S. 243 (2006)	2, 6
<i>Gonzales v. Raich</i> , 545 U.S. 1 (2005)	6
<i>Ladner v. United States</i> , 358 U.S. 169 (1958)	6
<i>Lubetsky v. United States</i> , No. 24-137 (Nov. 12, 2024)	5
<i>Ruan v. United States</i> , 144 S. Ct. 377 (2023)	5
<i>United States v. Bauer</i> , 82 F.4th 522 (6th Cir. 2023)	1
<i>United States v. Ignasiak</i> , 667 F.3d 1217 (11th Cir. 2012)	1
<i>United States v. Lubetsky</i> , No. 23-10142, 2024 U.S. App. LEXIS 3367, 2024 WL 577543 (11th Cir. Feb. 13, 2024)	6
<i>United States v. Moore</i> , 423 U.S. 122 (1975)	4, 6

Cited Authorities

	<i>Page</i>
<i>United States v. Ruan</i> , 966 F.3d 1101 (11th Cir. 2020)	5
<i>United States v. Smithers</i> , 92 F.4th 237 (4th Cir. 2024)	1
<i>Yee v. City of Escondido, Cal.</i> , 503 U.S. 519 (1992)	5
 Statutes & Other Authorities	
21 U.S.C. § 841(a)	1, 3, 4, 6
21 U.S.C. § 846	1, 3, 4, 6
John J. Mulrooney II and Katherine E. Legel, <i>Current Navigation Points in Drug Diversion Law: Hidden Rocks in Shallow, Murky, Drug- Infested Waters</i> , 101 Marq. L. Rev. 333 (2017)	2

REPLY BRIEF FOR PETITIONER

This case brings to the Court yet another example where a physician was prosecuted and convicted for deviating from the “usual course of professional practice.” No determination was made on whether Petitioner seized practicing medicine altogether such that he was engaged in drug trafficking. Nor was there expert testimony that allowed the jury to make that determination. Stanton Br. 21-22. No matter. The court of appeals upheld Petitioner’s conspiracy conviction, anyway, finding that a simple departure from prevailing medical standards will suffice in sentencing a physician to 120 months of imprisonment. Pet. App. 6a-10a; *Id.* 16a. That, in the government’s view, is the way in which 21 U.S.C. §§ 841(a) and 846 should be enforced. And it is how the government has enforced both statutes time and again.¹

Yet, what’s more, is that the government has erected its own standard for prescribing controlled substances, invading on the individual authority of each state to

1. See *United States v. Smithers*, 92 F.4th 237, 251 (4th Cir. 2024) (For each patient that the government presented evidence, Smithers spoke about their medical records and complaints, and almost all of the patients had significant accidents); *United States v. Bauer*, 82 F.4th 522, 533 (6th Cir. 2023) (Bauer’s practice did not resemble a typical “pill mill,” he had a long history as a prominent physician on the vanguard of pain management, and he had no financial incentive to overprescribe opioids); *United States v. Ignasiak*, 667 F.3d 1217, 1228 (11th Cir. 2012) (Ample record evidence suggests that Ignasiak’s practice exposed him to sick patients afflicted by legitimately painful conditions and the medical records of all twenty patients in the indictment documented illnesses that caused pain).

regulate the practice of medicine.² See *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (“The structure and operation of the CSA presume and rely upon a functioning medical profession regulated under the States’ police powers.”). The result is a regressive, restrictive, and rigid standard for prescribing controlled substances, not least in part because the government rosters a limited number of experts with an identical prescribing philosophy.^{3 4 5}

2. John J. Mulrooney II and Katherine E. Legel, *Current Navigation Points in Drug Diversion Law: Hidden Rocks in Shallow, Murky, Drug-Infested Waters*, 101 Marq. L. Rev. 333, 385-86 (2017), <https://scholarship.law.marquette.edu/mulr/vol101/iss2/3>.

3. Dr. King, besides testifying in this case, has also testified in the following cases: *United States v. Anderson*, No. 2:19-cr-0067-ALM-1 (S.D. Oh. 2021); *United States v. Petty et al.*, No. 4:20-cr-00290-O-4 (N.D. Tx. 2021); *United States v. Campbell et al.*, No. 3:17-cr00087-RGJ-1 (W.D. Ky. 2023); *United States v. Bauer*, No. 3:19-cr00490-JZ-1 (N.D. Oh. 2022); *United States v. Hofschulz et al.*, No. 2:18-cr-00145-PP-1 (E.D. Wi. 2021); *United States v. Spayd*, No. 3:19-cr-00111-SLG-MMS-1 (D. Ak. 2023); *United States v. Kistler*, No. 2:22-cr-00067-ALM-1 (S.D. Oh. 2023); *United States v. Wagoner et al.*, No. 2:17-cv-00478-HAB (N.D. In. 2021).

4. Dr. Altman has testified in the following cases: *United States v. James Litton*, No. 2:19-cr-20083 (W.D. Tenn. 2021); *United States v. Clinton Battle*, No. 4:20-cr-00157-1 (N.D. Tex. 2023); *United States v. Mark Murphy*, No. 5:20-cr-00291-LSC-SGC (N.D. Ala. 2023); *United States v. Talbot*, No. 2:21-cr-00111 (E.D. La. 2021); *Moore v. St. Vincents Hospital*, No. CV-19-900950, Jefferson County Circuit Court, Birmingham Division, 2019.

5. Dr. Rubenstein has testified in the following cases: *United States v. Ronald Lubetsky*, No. 1:21-cr-20485 (S.D. Fla. 2023); *United States v. Osmin Morales*, No. 1:22-cr-20255 (S.D. Fla. 2024); *Osmin A. Morales, M.D.*, No. 22-36 (DEA, Order to Show

In fact, that prescribing philosophy is so ironclad that the government's experts comfortably opine on prescribing in the absence of reviewing medical records, diagnostic imaging, and prescribing histories. *See* Lubetsky Petition for Certiorari (No. 24-137). Rather than engaging with a patient's symptoms and complaints and the complex medical decision-making underpinning a prescription, the government's experts reduce prescribing into a simple and formulaic equation that ignores nuance. *Step 1*: Were there red flags present? *Step 2*: Did the physician continue prescribing following those red flags? If so, then the physician's prescribing departs from the "usual course of professional practice." The steps a physician may have taken to follow up on those red flags before continuing to prescribe is irrelevant. In the government's view, red flags require the cessation of prescribing controlled substances altogether. Anything short of that and prosecution under Title 21 follows.

Here, for example, the government argued at trial that red flags were present at Gateway Medical Associates ("GMA"). Stanton Br. 53-54. Because Petitioner continued to prescribe controlled substances following those red flags, the government argued that he violated 21 U.S.C. §§ 841(a) and 846. *Id.*; Pet. App. 6a-10a. That was also what Dr. King based his opinion on at trial. Stanton Br. 21-22. It did not matter that Dr. King failed to review any medical records, diagnostic imaging, or prescribing histories. Nor did it matter to Dr. King what steps Petitioner took to address the red flags at GMA. *See Id.* Equally irrelevant to Dr. King was that Petitioner had stepped in to ensure

Cause, 2022); *United States vs. Lonnie Joseph Parker*, No. 4:19-cr-40018 (W.D. Ark. 2024).

continuity of care following emergency medical leave from the GMA treating physician. The government's regressive and rigid philosophy leaves no room for such considerations. Instead, physicians like Petitioner are subjected to the harsh penalties under Section 841(a) absent inquiry into whether a prescription was issued for other than a legitimate medical purpose. The government has thus stretched the boundaries that Congress intended to surround and limit 21 U.S.C. §§ 841(a) and 846, prosecuting and convicting physicians regardless of whether they are drug trafficking controlled substances. *See United States v. Moore*, 423 U.S. 122, 137 (1975).

The government nonetheless contends (at 1) that the Court should deny the petition for a writ of certiorari because it is unclear that the court of appeals considered any of Petitioner's current claims in the form presented before this Court. The record below defeats the government's claim. Petitioner clearly argued to the court of appeals that the government did not carry its burden at trial because it failed to prove beyond a reasonable doubt that Petitioner conspired to distribute controlled substances for other than a legitimate medical purpose. *See Stanton Br. 26*. There, Petitioner directed the court of appeals that it was impossible for the jury to determine whether prescriptions were issued for other than a legitimate medical purpose given the absence of expert testimony. *See Id.* (emphasizing that Dr. King's rebuttal testimony omitted any review of medical records, diagnostic imaging, and prescribing histories); *see also* Pet. App. 5a-10a.

Even if the government were correct, the worst that can be said is that Petitioner now advances other aspects

of an overall argument that plainly was presented to the court of appeals: Whether the government was required to prove that he conspired to prescribe for other than a legitimate medical purpose. *See* Stanton Br. 24-35. In such circumstances, this Court has not hesitated to treat the contention as fully preserved. *See Yee v. City of Escondido, Cal.*, 503 U.S. 519, 534 (1992) (“Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.”).

The government (at 2) also relies on *Lubetsky v. United States*, No. 24-137 (Nov. 12, 2024) and *Ruan v. United States*, 144 S. Ct. 377 (2023) (No. 22-1175) in directing the Court to deny the petition for a writ of certiorari. But, unlike in those cases, there was no medical expert testimony in this case. Moreover, the one physician that did testify on rebuttal, Dr. King, conceded that his testimony was solely based on the general standard of care and did not include an assessment of whether Petitioner was drug trafficking—*i.e.*, prescribing for other than a legitimate medical purpose. Stanton Br. 21-22. Conversely, in both *Lubetsky* and *Ruan*, the respective experts, Dr. Rubenstein and Dr. Altman, both opined on whether prescribing was for other than a legitimate medical purpose. *See* Lubetsky Petition for Certiorari (No. 24-137) at 11; *see also United States v. Ruan*, 966 F.3d 1101, 1130 (11th Cir. 2020) (finding that Dr. Altman opined on whether prescribing was for other than a legitimate medical purpose following her review of patients’ files). Unlike *Lubetsky* and *Ruan*, this case neatly separates the “usual course of professional practice” from prescribing for “other than a legitimate medical purpose” and presents before the Court the disjunctive versus conjunctive question on a clean record.

Moreover, this opinion, unlike *United States v. Lubetsky*, No. 23-10142, 2024 U.S. App. LEXIS 3367, 2024 WL 577543 (11th Cir. Feb. 13, 2024), is a published and precedential decision following this Court's decision in *Ruan*, in which the court of appeals has held that a physician violates 21 U.S.C. §§ 841(a) and 846 if he or she deviates from prevailing medical standards. Pet. App. 6a-10a; *Id.* 16a. Under the court of appeals' decision, it is immaterial whether a physician prescribed for other than a legitimate medical purpose, or, in other words, was engaged in drug trafficking. *See Id.* Unless and until the Court intervenes, the government will persist in prosecuting and convicting physicians for their simple departure from prevailing medical standards; following which courts will drive up physician sentences based on those same departures. *See Id.*

Stepping outside the usual course of professional practice, as described by the federal government's limited roster of expert physicians, is not how Congress intended for 21 U.S.C. §§ 841(a) and 846 to be enforced. *See Gonzales*, 546 U.S. at 270. Nor is it how both statutes' harsh penalties should be imposed under the rule of lenity. *See Ladner v. United States*, 358 U.S. 169, 178 (1958). Sections 841(a) and 846 both were enacted to punish and deter drug trafficking. *See Moore*, 423 U.S. at 137; *see also Gonzales v. Raich*, 545 U.S. 1, 24-26 (2005) (finding that the CSA was designed to balance the beneficial use of medications while preventing their misuse for which there is an established interstate market of illegitimate channels). That is the North Star that Petitioner asks the Court to clarify and make sure the government follows.

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

MATTHEW J. PELCOWITZ
CHAPMAN LAW GROUP

701 Waterford Way, Ste. 340
Miami, FL 33126
(305) 712-7177

RONALD W. CHAPMAN II
Counsel of Record

CHAPMAN LAW GROUP
1441 W. Long Lake Road, Ste. 310
Troy, MI 48098
(248) 644-6326
rwchapman@
chapmanlawgroup.com