

No. 24-5578

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IN THE SUPREME COURT OF THE UNITED STATES

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RANDY LAMARTINIERE, PETITIONER

v.

UNITED STATES OF AMERICA

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

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 22-39) that the district court abused its discretion when instructing the jury, in accord with 21 C.F.R. 1306.04(a), that a medical practitioner may be found guilty of the unauthorized distribution of a controlled substance, in violation of 21 U.S.C. 841(a)(1), if he "knowingly issu[ed] a prescription [for a controlled substance] outside the course of professional practice" or "knowingly issu[ed] a prescription [for a controlled substance] without a legitimate medical purpose." Pet. App. A31-A32. This Court has recently denied petitions for

writs of certiorari raising similar claims, and it should follow the same course here.

To the extent that petitioner is claiming that the district court erred in its incorporation of Section 1306.04(a)'s definition of when a prescription is authorized into the jury instructions, the Court recently denied a similar claim in the (second) petition for a writ of certiorari in Ruan v. United States, 144 S. Ct. 377 (2023) (No. 22-1175), and the claim does not warrant further review for the reasons stated on pages 14-19 of the brief in opposition in that case. To the extent that petitioner is claiming that the regulatory standard is itself flawed because it is phrased disjunctively rather than conjunctively, the Court recently denied a similar claim in Lubetsky v. United States, cert. denied, No. 24-137 (Nov. 12, 2024), and the claim does not warrant further review for the reasons explained on pages 10-15 of the brief in opposition in that case.<sup>1</sup>

The only circuit decision that petitioner asserts (e.g., Pet. 11-12, 25-28) is in conflict with the decision below is the Tenth Circuit's decision in United States v. Kahn, 58 F.4th 1308 (2023). But as explained in the (second) brief in opposition in Ruan, the Tenth Circuit in Kahn found error in a disjunctive jury instruction

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<sup>1</sup> The government has served petitioner with a copy of its responses in Ruan and Lubetsky, which are also available on the Court's electronic docket.

that omitted Section 841(a)(1)'s means rea requirement when describing one of the two criteria in Section 1306.04(a), and did not clearly adopt an approach under which a defendant may avoid conviction even if he knows or intends to prescribe drugs outside the circumstances described in that provision. See Br. in Opp. at 20-21, Ruan, supra (No. 22-1175). And any fact-specific issues that petitioner may have with the instructions in his case do not warrant this Court's review. See Sup. Ct. R. 10.

The petition for a writ of certiorari should be denied.<sup>2</sup>

Respectfully submitted.

ELIZABETH B. PRELOGAR  
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NOVEMBER 2024

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<sup>2</sup> The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.