NO. _____

In the Supreme Court of the United States

DAVID W. SUETHOLZ,

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a deliberate ignorance instruction in a physician prosecution under 21 U.S.C. § 841(a) that incorporates an objective yet "ambiguous" standard of "authorized" prescribing have the improper effect of allowing criminal liability based on the mental state of a hypothetical "reasonable" doctor rather than based on the "knowing" mental state of the defendant himself, as required by *Ruan v. United States*?

2. Is a deliberate ignorance instruction appropriate when there is no evidence the defendant took affirmative steps to avoid learning the truth of a relevant fact?

LIST OF PROCEEDINGS

U.S. District Court, Eastern District of Kentucky
No. 2:21-CR-00056
United States v. David W. Suetholz
Judgment: June 29, 2023

U.S. Court of Appeals for the Sixth Circuit
No. 23-5613
United States v. David W. Suetholz
Opinion: September 13, 2024

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PETITION FOR A WRIT OF CERTIORARI

David W. Suetholz, M.D. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The decision of the U.S. Court of Appeals for the Sixth Circuit affirming Petitioner's judgment for conviction (App.1a–24a) is available at 2024 WL 4182903. This decision was not recommended for publication.

JURISDICTION

The court of appeals entered judgment on September 13, 2024. (App.1a). The court of appeals denied rehearing en banc on November 5, 2024. (App.29a). The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 841(a)(1) of the Controlled Substances Act, 21 U.S.C. § 841(a)(1), provides in relevant part:

> Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—
>
> (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance . . . .

Section 1306.04(a) of Title 21 of the Code of Federal Regulations provides in relevant part:

> A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice . . . .

STATEMENT OF THE CASE

As the District Court said at sentencing, "Now, I have no doubt that you were treating your patients. In a pill mill situation, that's not the case. That does not occur. [Pill mill doctors] just kind of prescrib[e] to make money. [Here, t]his isn't a financial motive situation." App.68a. Indeed, Dr. Suetholz was a well-respected family physician from Kentucky who had spent over 40 years serving his community. App.57a. He was convicted of 12 counts of dispensing controlled substances without authorization in violation of 21 U.S.C. § 841(a)—that is, 12 prescriptions written for three different patients over a nearly three-year period, who accounted for less than 1% of his patient population. App.5a, 47a.

This result was only possible because the District Court issued a deliberate ignorance instruction incorporating what this Court has described as "ambiguous" regulatory language. By doing so, the District Court invited the jury to convict Dr. Suetholz of violating § 841 on the basis of negligence, rather than knowledge, in direct contravention of *Ruan v. United States*. 597 U.S. 450, 454, 459 (2022).

To convict under § 841, the Government must prove beyond a reasonable doubt that a physician knowingly or intentionally acted in an unauthorized manner. *Id.* at 457. "Authorized" means the doctor issued the controlled substance prescription "for a legitimate medical purpose . . . in the usual course of his professional practice." 21 C.F.R. § 1306.04(a). The Court acknowledges that this language is "'ambiguous,' written in

'generalit[ies], susceptible to more precise definition and open to varying constructions.'" *Id.* at 459 (quoting *Gonzales v. Oregon*, 546 U.S. 243, 258 (2006)).

Here, the jury was instructed that Dr. Suetholz acted "knowingly" if he "deliberately ignored a high probability that he was prescribing controlled substances outside the usual course of professional practice without a legitimate medical purpose[.]" App.39a–40a. The District Court defined the phrases "legitimate medical purpose" and "usual course of professional practice" as "acting in accordance with generally recognized and accepted standards of medical practice in the State of Kentucky." App.41a.

This instruction effectively lessened the mens rea required for conviction under § 841 from "knowingly" to "negligently," contrary to the Court's holding in *Ruan v. United States*. The instruction permitted the jury to infer knowledge if it found that Dr. Suetholz deliberately ignored a "high probability" that another "reasonable" doctor in Kentucky would have acted differently—*i.e.*, that Dr. Suetholz should have acted in some way differently relative to the 12 prescriptions at issue. That is negligence—not knowledge.

Here, the District Court adopted language similar to what was explicitly rejected by this Court in *Ruan*. The Government offered a substitute mens rea standard in *Ruan* that would have enabled the Government to convict "'by proving beyond a reasonable doubt that [the defendant] did not even make an objectively reasonable attempt to ascertain and act within the bounds of professional medicine.'" *Ruan*, 597 U.S. at 465 (quoting Br. for United States at 16) (emphasis added). A unanimous Court rejected this standard, with the majority explaining that it would impermissibly "turn a defend-

ant's criminal liability on the mental state of a hypothetical 'reasonable' doctor, not on the mental state of the defendant himself or herself." *Id.*

For the same reasons, the Court should grant certiorari to reaffirm its holding in *Ruan* and reject jury instructions that impermissibly lessen the mens rea required for conviction under § 841. Where, as here, a deliberate ignorance instruction permits the jury to find subjective knowledge by objective means—such as whether a physician acted in accordance with generally recognized medical standards—the instruction runs afoul of *Ruan*.

The problem is only made worse when considering where the Courts of Appeals stand on deliberate ignorance instructions.[1] There is almost an even split among the Circuits regarding the circumstances required to give a deliberate ignorance jury instruction: whether the evidence shows the defendant took proactive steps to avoid learning the truth of critical facts, or whether merely failing to investigate to uncover key facts is sufficient to give the instruction. In physician prosecutions under § 841, that means that a doctor's negligence will in some jurisdictions virtually always result in a deliberate ignorance instruction—but not others. In turn, if the jury instruction given here is allowed to stand, the doctors in those jurisdictions may be convicted of negligently violating § 841.

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[1] The Circuit Courts of Appeals use different terms for deliberate ignorance instructions, sometimes called "willful blindness," "conscious avoidance," or "ostrich" instructions. *See United States v. Alston-Graves*, 435 F.3d 331, 338 (D.C. Cir. 2006) (collecting cases).

This case stands apart from the numerous other physician prosecutions under § 841—usually pill mill cases—where a faulty jury instruction was harmless in light of the substantial evidence presented from which a jury could infer actual knowledge of unlawful prescribing. For that reason, Dr. Suetholz's case—with a comparatively thin evidentiary record—illustrates the dangers of allowing jury instructions that permit a jury to convict a doctor for simply acting negligently.

A. Factual and Procedural Background

1. In 1975, Dr. Suetholz began practicing medicine in the underserved areas of Covington, Kentucky. Br. for the Appellant at 4, *United States v. Suetholz*, No. 23-5613 (6th Cir.), ECF No. 19 ("C.A.6 Appellant's Br."). In addition to his private practice, Dr. Suetholz started working for the Kenton County Coroner's Office a few years later, ultimately serving as the County Coroner for over thirty years. *Id.* at 5. Dr. Suetholz's career demonstrates a commitment to combatting the opioid crisis that has ravaged Kentucky, such as by helping numerous patients with addiction issues, becoming licensed to prescribe suboxone when it was still taboo to do so, and working with the Kenton County Detention Center to start a drug treatment program for inmates. *Id.*

On October 14, 2021, the Government charged Dr. Suetholz with ten counts of unlawful distribution of a controlled substance in violation of 21 U.S.C. § 841(a)(1). *Id.* at 4. The Government subsequently filed a superseding indictment, charging Dr. Suetholz with 25 counts of violating the same statute. App.33a. These 25 counts related to 25 prescriptions Dr. Suetholz wrote for five patients between September 2018 and August 2021. App.5a, 47a. These five patients made up

0.5% of his entire patient population. C.A.6 Appellant's Br. at 6.

At trial, the Government called only five witnesses —only one of which had first-hand knowledge of Dr. Suetholz's prescribing practices. *Id.* That witness was a former patient who conceded that she "pull[ed] the wool over [Dr. Suetholz's] eyes" by obtaining a prescription for Suboxone while also purchasing illicit drugs on the street. *Id.* at 7. She eventually came clean to Dr. Suetholz and testified that she felt supported by him and that no other medical provider showed her the same level of concern. *Id.*

The Government also called John Marshall, an investigator for the Kentucky Board of Medical Licensure (the "Board"), who explained that in 2012, the Board conducted an investigation into Dr. Suetholz's prescribing practices. *Id.* at 9. At the conclusion of the investigation, Dr. Suetholz entered an Agreed Order regarding the Board's findings that certain of Dr. Suetholz's patient files contained "inadequate documentation" to "support the medical necessity of prescribing controlled substances," and that Dr. Suetholz failed to adjust prescriptions for certain patients to account for potentially problematic behavior. App.2a. Dr. Suetholz denied wrongdoing, but nevertheless agreed to the Board's terms, which included recurring review of Dr. Suetholz's medical decision-making documentation. *Id.* Dr. Suetholz was ultimately released from the Agreed Order in 2014. App.3a.

The Government's remaining witnesses included a DEA agent who investigated Dr. Suetholz's case; the cousin of one of Dr. Suetholz's former patients who never spoke with Dr. Suetholz or attended an appointment with her cousin; and an expert from California who

opined on purported requirements for doctors prescribing controlled substances, such as screening patients for addiction history; addressing reported drug diversion; avoiding prescriptions of high doses of opioids; avoiding concurrent prescriptions of opioids and benzodiazepines; considering alternative pain-treatment options instead of prescribing opioids; and documenting consideration of these and other factors in patient files. C.A.6 Appellant's Br. at 9–12; App.8a. The Government's expert also opined on what he believed were "red flags" in Dr. Suetholz's patient files, such as "failed" drug tests; failure to perform drug screenings; and failure to investigate his patients' "vague" complaints of pain. C.A.6 Appellant's Br. at 10; App.12a.

2. Over Dr. Suetholz's objection, the district court judge issued a deliberate ignorance instruction to the jury. This instruction stated:

> No one can avoid responsibility for a crime by deliberately ignoring the obvious. If you are convinced that the Defendant deliberately ignored a high probability that he was prescribing controlled substances outside the usual course of professional practice without a legitimate medical purpose, then you may find that he knew he was doing so.
>
> But to find this, you must be convinced beyond a reasonable doubt that the Defendant was aware of a high probability that he was prescribing controlled substances outside the usual course of professional practice without a legitimate medical purpose, and that the Defendant deliberately closed his eyes to what was obvious. Carelessness, or

> negligence, or foolishness on his part is not the same as knowledge, and is not enough to convict. App.39a–40a.

The district court provided additional instructions to define key terms, most significantly:

> The phrases 'legitimate medical purpose' and 'usual course of professional practice' mean acting in accordance with generally recognized and accepted standards of medical practice in the State of Kentucky. You have heard testimony about what constitutes the usual course of professional practice and legitimate medical purpose for the prescription of controlled substances, and you are to weigh that evidence the same way that you would weigh any other evidence in this case. App.41a.

Dr. Suetholz was ultimately convicted on 12 counts of violating § 841(a) relative to prescriptions he issued for three patients. App.5a. The jury could not reach a verdict as to the remaining 13 counts relative to prescriptions he issued for two patients. C.A.6 Appellant's Br. at 17.

At sentencing, the Government asked for over five years imprisonment, but the District Court imposed a sentence of one year and one day. App.64a, 74a. Explaining the downward variance, the court acknowledged that Dr. Suetholz's practice was "clearly not a pill mill," because, unlike such pill mill cases, the court had "no doubt" that Dr. Suetholz was treating his patients and there was no financial motivation. App.61a, 68a. In fact, the District Court judge noted

that Dr. Suetholz's case was "one of the more difficult" cases the judge has ever had. App.66a.

3. On appeal, the Sixth Circuit affirmed the district court's decision to give the deliberate ignorance instruction, finding its decision in *United States v. Stanton*, which was a "pill mill" case, was "on point and controlling." App.12a (citing 103 F.4th 1204 (6th Cir. 2024)). In *Stanton*, the Sixth Circuit stated that a deliberate ignorance instruction comports with *Ruan* when: "(1) the trial record could support the inference that the defendant 'avoid[ed] the consequences of his actions by closing his eyes to the obvious,' and (2) the defendant 'claims a lack of knowledge' about relevant facts." App.13a (citation omitted). Applying *Stanton*, the panel below upheld the deliberate ignorance instruction because "the conditions supporting the instruction's use were satisfied." *Id.* The panel did not, however, analyze whether the jury instruction given here effectively lessened the mens rea required for conviction in light of *Ruan v. United States*.

REASONS FOR GRANTING THE PETITION

This petition presents two important issues meriting review. *First*, the panel decision directly contradicts *Ruan* by permitting a deliberate ignorance instruction that allows a jury to substitute the mental state of a hypothetical "reasonable" doctor for the mental state of the defendant himself. Specifically, the deliberate ignorance instruction in this case is entirely at odds with this Court's specific rejection of the government's proffered instruction in *Ruan*.

Second, the Circuit Courts of Appeals are split on when a deliberate ignorance instruction is warranted: whether the defendant must have affirmatively acted to avoid critical facts, or whether mere failure to investigate is sufficient for the instruction. Thus, a failure to investigate on the part of a physician defendant facing prosecution under § 841 will—in some jurisdictions—result in a deliberate ignorance jury instruction, while in other jurisdictions it will not.

I. The Court Should Grant Review to Decide Whether This Deliberate Ignorance Instruction Impermissibly Reduces the Required Mens Rea in a § 841(a) Physician Prosecution.

A. A Deliberate Ignorance Instruction Inviting the Jury to Infer Knowledge Based on Objective Yet "Ambiguous" Criteria Like the "Usual Course of Professional Practice" and "Generally Recognized and Accepted Standards" Is a Repackaged Version of the Standard Rejected in *Ruan*

1. The deliberate ignorance jury instruction given in this case plainly circumvents *Ruan* and permitted the jury to convict Dr. Suetholz of violating § 841 based on evidence that he acted negligently—not knowingly. Dr. Suetholz's conviction accordingly cannot stand.

To convict a physician of violating § 841, the Government must prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner. *Ruan*, 597 U.S. at 457. Thus, "authorization plays a 'crucial' role in separating

innocent conduct—and, in the case of doctors, socially beneficial conduct—from wrongful conduct." *Id.* at 459 (citing *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 73 (1994)).

A prescription for controlled substances is "authorized" if a doctor issues it "for a legitimate medical purpose . . . in the usual course of his professional practice." 21 C.F.R. § 1306.04(a). The Court acknowledges that this language is "'ambiguous,' written in 'generalit[ies], susceptible to more precise definition and open to varying constructions.'" *Ruan*, 597 U.S. at 459 (quoting *Gonzales*, 546 U.S. at 258). As such, "[t]he conduct prohibited by such language (issuing invalid prescriptions) is thus 'often difficult to distinguish from the gray zone of socially acceptable . . . conduct' (issuing valid prescriptions)." *Id.* (quoting *United States v. United States Gypsum, Co.*, 438 U.S. 422, 441 (1978)). However difficult to distinguish, there is no dispute that this regulatory language defines the scope of a provider's prescribing authority by references to objective criteria—that is, "for a legitimate medical purpose" and "usual course" of "professional practice." *Id.* at 467.

2. Once a defendant produces evidence that his conduct was "authorized," the Government must prove that the defendant knowingly or intentionally acted in an unauthorized manner under § 841. *Id.* at 457. In other words, the doctor must know that he has not prescribed a controlled substance "for a legitimate medical purpose" and in the "usual course" of "professional practice." This strong scienter requirement "helps to diminish the risk of 'overdeterrence,' *i.e.*, punishing acceptable and beneficial conduct that lies close to, but on the permissible side of, the criminal

line." *Id.* at 460 (citing *United States Gypsum*, 438 U.S. at 441).

Moreover, requiring the Government to prove that the defendant know that he has not prescribed a controlled substance "for a legitimate medical purpose" and in the "usual course" of "professional practice" avoids criminal liability turning on the mental state of a hypothetical "reasonable" doctor. *Id.* at 465. Indeed, *Ruan* expressly rejected the Government's proffered mens rea standard for § 841 prosecutions, which would have allowed for conviction "'by proving beyond a reasonable doubt that [the defendant] did not even make an objectively reasonable attempt to ascertain and act within the bounds of professional medicine.'" *Id.* (quoting Br. for United States at 16) (emphasis added). As the Court held, this standard would impermissibly reduce the required mens rea under § 841 to negligence. *Id.* (rejecting the Government's argument that a physician violates § 841 "'when he makes no objectively reasonable attempt to conform his conduct to something that his fellow doctors would view as medical care.'") (alteration in original) (quoting Br. for United States at 24).

Of course, the Government can use circumstantial evidence, including objective criteria, to prove a doctor's actual knowledge of lack of authorization. *Ruan*, 597 U.S. at 467. Indeed, "the more unreasonable a defendant's asserted beliefs or misunderstandings are, especially as measured against objective criteria, the more likely the jury . . . will find that the Government has carried its burden of proving knowledge." *Id.* (internal quotations omitted). All the same, the Government still must prove the defendant himself

knowingly or intentionally acted in an unauthorized manner. *Id.*

Against this backdrop, Dr. Suetholz now asks the Court to consider whether the deliberate ignorance instruction issued in his case allowed the jury to substitute consideration of Dr. Suetholz's mental state for consideration of what a hypothetical doctor should have done, thereby violating *Ruan*. *See Ruan*, 597 U.S. at 459, 467.

The district court below issued the following deliberate ignorance instruction: "If you are convinced that the Defendant deliberately ignored a high probability that he was prescribing controlled substances outside the usual course of professional practice without a legitimate medical purpose, then you may find he knew he was doing so." App.39a–40a (emphasis added). The instruction closely tracked the language of Sixth Circuit's Pattern Jury Instruction 2.09 regarding deliberate ignorance (App.11a); however, it incorporated what this Court has called the "ambiguous" regulatory language defining the scope of a physician's prescribing authority. *See* 21 C.F.R. § 1306.04(a) (defining "effective" prescription as one "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice."); *Ruan*, 597 U.S. at 459 (quoting *Gonzales*, 546 U.S. at 258).

After providing the deliberate ignorance instruction, the district court provided definitions for the relevant regulatory language: "The phrases 'legitimate medical purpose' and 'usual course of professional practice' mean acting in accordance with generally recognized and accepted standards of medical practice in the State of Kentucky." App.41a. Put another way, the jury here was instructed that it could find Dr.

Suetholz knowingly violated § 841 if it found he deliberately ignored a high probability that his actions were not in accordance with "generally recognized and accepted standards of medical practice in the state of Kentucky." *Id.*

3. Taken together, the jury instructions issued below were a repackaged version of the standard this Court expressly rejected in *Ruan*. Indeed, the Court rejected the Government's suggested standard for liability under § 841, which would have allowed for conviction "by proving beyond a reasonable doubt that [the defendant] did not even make an objectively reasonable attempt to ascertain and act within the bounds of professional medicine." *Ruan*, 597 U.S. at 465 (quoting Br. for United States at 16). Likewise, the jury instructions given below allowed the jury to infer knowledge if it found that Dr. Suetholz "deliberately ignored a high probability" that his actions were not in accordance with the standards of medical practice. App.39a. "Deliberately ignoring a high probability" of acting outside the norm is functionally the same thing as failing to "make an objectively reasonable attempt" to act within the norm.

The *Ruan* Court rejected the Government's proposed standard, in part, because it would mean that a defendant's criminal liability turns on the mental state of a hypothetical "reasonable" doctor, not on the mental state of the defendant himself. *Ruan*, 597 U.S. at 465; *see also id.* (rejecting Government's argument that "a physician can violate Section 841(a) when he makes no objectively reasonable attempt to conform his conduct to something that his fellow doctors would view as medical care.") (alteration in original) (quoting Br. for United States at 24). Such a standard reduces

the mens rea required for a knowledge or intent crime to negligence. *Id.* at 466 (citing *Elonis v. United States*, 575 U.S. 723, 738 (2015)). And that standard was applied by the jury instructions here, which improperly allowed the jury to substitute the mens rea of a hypothetical doctor in Kentucky who practices "in accordance with generally recognized and accepted standards of medical practice" for that of Dr. Suetholz.

4. The Sixth Circuit panel below affirmed the district court's decision to give the deliberate ignorance instruction. App.13a. The panel reasoned that its decision in *United States v. Stanton* was "on point and controlling." App.12a (citing 103 F.4th 1204 (6th Cir. 2024)). In *Stanton*, the Sixth Circuit explained: "In pill-mill conspiracies, the [deliberate ignorance] instruction prevents clinic owners and providers from claiming a lack of knowledge of illegal operations despite awareness of serial red flags." *Stanton*, 103 F.4th at 1213 (emphasis added). In affirming use of the deliberate ignorance instruction in *Stanton*, the *Stanton* panel explained that (i) *Ruan* does not prevent the government from proving knowledge through circumstantial evidence, and (ii) such an instruction satisfies *Ruan* when it reminds the jury that the standard sits well above carelessness, negligence, or mistake. *Id.* Applying *Stanton*, the panel below affirmed the instruction given in Dr. Suetholz's case because, according to the panel, "conditions supporting the instruction's use were satisfied," and the instruction appropriately "warn[ed] against convicting on a lower negligence or carelessness standard." App.13a.

As a factual matter, *Stanton* is far afield from Petitioner's case. As the Sixth Circuit acknowledged, *Stanton* was a pill mill case. *Stanton*, 103 F.4th at 1213

(explaining the jury heard "copious evidence" suggesting the defendant knew of "telltale signs of a pill mill."). By contrast, as the District Court judge below correctly noted, this is "clearly not a pill mill [case]." App.61a. As a legal matter, *Stanton* misreads *Ruan* and was wrongly decided. The *Stanton* court explained that *Ruan* does not prevent the Government from using circumstantial evidence to prove knowledge, and further: "A deliberate ignorance instruction satisfies *Ruan* when . . . it reminds the jury that this standard sits well above carelessness, negligence, and mistake." *Stanton*, 103 F.4th at 1213. No one disputes the government is free to prove its case with circumstantial evidence. *Ruan*, 597 U.S. at 467. No one disputes that the regulation defining the scope of a doctor's prescribing authority does so by referencing objective yet "ambiguous" criteria, like the "usual course of professional practice." *Id.* at 459, 467. No one disputes that the more unreasonable the defendant's asserted beliefs are, as measured against objective criteria, the more likely the jury will find that the Government has carried its burden of proving actual knowledge. *Id.* at 467. But there is a critical difference between the Government being free to use circumstantial evidence to prove a defendant's knowledge and a jury instruction itself reducing the mental state required for conviction. And that fatal flaw in the instructions cannot be remedied by a simple reminder that the standard sits above negligence and mistake.

5. *Elonis v. United States* is instructive. 575 U.S. 723 (2015). In *Elonis*, the Court considered the mental state required for making threating communications in violation of 18 U.S.C. § 875(c). *Id.* at 726. The jury in *Elonis* was instructed that the Government need only

prove that a reasonable person would have regarded the defendant's communications as threats in order to convict. *Id.* at 740. This Court reversed, holding that the statute requires the defendant himself to have acted knowingly or intentionally. *Id.* Thus, the defendant's conviction "was premised solely on how his threating [posts] would be understood by a reasonable person," and, therefore, the defendant's conviction "[could not] stand." *Id.* at 737, 740.

The same is true here: the jury was permitted to convict Dr. Suetholz based on how another doctor in Kentucky would have acted, and his conviction therefore cannot stand. Certainly, in *Elonis*, as here, the Government could use circumstantial evidence to prove its case, but the issue was that the jury instructions impermissibly created criminal liability based on a standard less than what was required by the statute.

If a doctor's criminal liability under § 841 requires that the defendant subjectively knew he acted "without authorization," then a jury cannot be permitted to infer knowledge based on their finding that the doctor was "ignor[ing] a high probability" that he was acting in a way some or most doctors in his state would not. App.39a. Knowledge of unauthorized prescribing "does not depend on perceiving or ignoring probabilities. [The physician] either understood or intended to prescribe controlled substances without a legitimate medical purpose in the usual course of professional practice, or he did not." *United States v. Anderson*, 67 F.4th 755, 772 (6th Cir. 2023) (White, J., concurring in part and dissenting in part). The jury instructions issued in this case permitted the jury to convict Dr. Suetholz for

acting negligently, not knowingly, and his conviction therefore "cannot stand." *See Elonis*, 575 U.S. at 740.

At bottom, the deliberate ignorance instruction issued below meant that Dr. Suetholz's criminal liability turned on the mental state of the same hypothetical "reasonable" doctor that this Court rejected in *Ruan*—not his own mental state. Where, as here, a jury is instructed that it may infer a defendant acted knowingly if it finds the defendant "ignored a high probability" that he was not acting "in accordance with generally recognized and accepted standards of medical practice", then the jury is no longer evaluating the defendant's own mental state but instead measuring culpability against what a "reasonable" doctor would have done. That is negligence—not knowledge. The Court should accordingly vacate Dr. Suetholz's conviction.

B. The Decision Below Chills Legitimate Prescribing

1. The panel decision below is contrary to *Ruan* and criminalizes a doctor's negligent conduct under § 841. In *Ruan*, the Court noted that the "severe penalties" under § 841 counsel in favor of a strong scienter requirement. *Ruan*, 597 U.S. at 460 (citing *Staples v. United States*, 511 U.S. 600, 618–19 (1994)). The jury instructions given in this case, however, conveyed a weaker scienter requirement focused on the mental state of a hypothetical "reasonable" doctor. If allowed to stand, doctors are back to where they were pre-*Ruan*: uncertain about the mental state required for conviction under § 841. On this basis alone, the Court should grant certiorari to reaffirm its logic and holding in *Ruan*. *See Percoco v. United States*, 598

U.S. 319, 336 (2023) (Gorsuch, J., concurring) (quoting *Johnson v. United States*, 576 U.S. 591, 595 (2015)) ("In this country, a criminal law is supposed to provide 'ordinary people fair notice of the conduct it punishes.'").

The panel's decision below isn't an outlier: the Sixth Circuit has repeatedly—and erroneously—affirmed deliberate ignorance instructions such as the one issued here in physician prosecutions under § 841. *See, e.g.*, *United States v. Stanton*, 103 F.4th 1204 (6th Cir. 2024); *United States v. Anderson*, 67 F.4th 755 (6th Cir. 2023); *United States v. Bauer*, 82 F.4th 522 (6th Cir. 2023); *United States v. Hofstetter*, 80 F.4th 725 (6th Cir. 2023).

2. It is a bedrock principle that our criminal law generally "seeks to punish the 'vicious will.'" *Ruan*, 597 U.S. at 457 (quoting *Morissette v. United States*, 342 U.S. 246, 251 (1952)). This Court has a long history of skepticism of interpreting statutes and crafting rules in a way that would criminalize innocent conduct or deter socially beneficial conduct. Indeed, "[t]he cases in which [the Court has] emphasized scienter's importance in separating wrongful from innocent acts are legion." *Rehaif v. United States*, 588 U.S. 225, 231 (2019) (collecting cases). The *Ruan* Court explained at length that the analogous precedents reinforced its conclusion that a § 841 defendant must have acted knowingly in violating the law. *See generally Ruan*, 597 U.S. at 460–61, 465–66 (discussing *Rehaif v. United States*, 588 U.S. 225 (2019), *Liparota v. United States*, 471 U.S. 419 (1985), *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994), and *Elonis v. United States*, 575 U.S. 723 (2015)).

In *Ruan*, this Court recognized two distinct dangers in considering the mens rea required for conviction

§ 841: (1) the strong scienter requirement helps to diminish the risk of "overdeterrence"; and (2) criminal liability turning on objective standards would mean that a doctor could be convicted under § 841 based on the mental state of a hypothetical "reasonable" doctor—far less culpable than a defendant who acts knowingly. *Ruan*, 563 U.S. at 459, 465.

As to the first point, permitting the jury instruction issued below creates the precise risk this Court tried to guard against in *Ruan*—overdeterrence of socially beneficial conduct by doctors. "[W]e expect, and indeed usually want, doctors to prescribe medications that their patients need." *Ruan*, 597 U.S. at 459. Thus, the Court held, requiring the Government to show that the defendant acted knowingly in a § 841 case "'helps advance the purpose of scienter, for it helps to separate wrongful from innocent acts.'" *Id.* at 459 (quoting *Rehaif*, 588 U.S. at 232). Allowing jury instructions similar to those given in this case effectively creates liability under § 841 for negligence, which will almost certainly chill legitimate prescribing activity.

As to the second point, if a jury is permitted to substitute the mental state of a reasonable doctor who reacts to "red flags" with how the individual defendant should have reacted to those "red flags," then the jury instruction effectively "'reduces culpability on the all-important element of the crime to negligence.'" *Ruan*, 597 U.S. at 466 (quoting *Elonis*, 575 U.S. at 738)). Such an instruction subverts both the spirit and logic of *Ruan*. Again, this is not to say the Government is prohibited from using circumstantial evidence to prove its case. *Id.* at 467. Rather, the instruction issued in this case is a recycled version of the standard the Government sought in *Ruan*, as there is no meaningful

difference between a doctor's failure to make "an objectively reasonable attempt" to act in accordance with medical standards, which the Court explicitly rejected (*id.* at 465), and a doctor's deliberate ignorance regarding a high probability that he was not acting in accordance with medical standards.

C. The Trial Record Demonstrates Dr. Suetholz Was Convicted of Acting Negligently, Not Knowingly

1. The facts of this case perfectly illustrate the problem. At best, the evidence presented at trial shows that Dr. Suetholz acted negligently. The panel below spent the bulk of its analysis considering whether the evidence supported the district court's decision to give the deliberate ignorance instruction. App.11a–13a. The panel explained that the deliberate ignorance instruction is appropriate "'only when' two conditions are met: (1) the trial record could support the inference that the defendant 'avoid[ed] the consequences of his actions by closing his eyes to the obvious,' and (2) the defendant 'claims a lack of knowledge' about relevant facts." App.13a (quoting *Stanton*, 103 F.4th at 1212–13). Further, a deliberate ignorance instruction must remind the jury that deliberate ignorance sits well above carelessness, negligence, or mistake. *Id.*

But the Sixth Circuit's application of this rule was thin, and the evidence adduced at trial only underscores that Dr. Suetholz was convicted for acting negligently, not knowingly. The panel explained that the deliberate ignorance instruction was appropriate because the evidence suggested Dr. Suetholz "'clos[ed] his eyes to the obvious,' by, for instance, ignoring his

patients' failed drug tests." App.13a (quoting *Stanton*, 103 F.4th at 1212). The panel further explained "Suetholz's patient files showed his lack of action to learn facts crucial to whether his prescriptions were appropriate or safe[,]" such as Dr. Suetholz's "lack of screening for additional history and mental-health issues" and his purported failure to "assess his patients' vague complaints of pain, anxiety, or other conditions—for example, by ordering or reviewing recent imaging of areas of claimed pain—to justify the doses or combinations of their prescriptions." App.12a.

As an initial matter, the evidence of purportedly "failed" drug tests is itself questionable. As Dr. Suetholz explained in his Petition for Rehearing En Banc, no patient in this case tested positive for any illicit drugs beyond marijuana, which, according to the Government's own witness, may be used to help reduce opioid intake in chronic pain patients and is legalized by the majority of states for medical purposes. *See* Appellant's Pet. for Reh'g En Banc at 12 n.1, *United States v. Suetholz*, No. 23-5613 (6th Cir.), ECF No. 48. And to the extent other "failed" drug tests showed negative results for certain prescribed medications, those medications were prescribed on a *pro re nata* ("PRN") or "as needed" basis. *Id.* The Sixth Circuit panel misinterpreted these test results as "problematic because, if the patient is taking the medication appropriately, urines should contain traces of the prescribed medications." App.3a. But, as explained by Petitioner's expert witness, Dr. James Murphy, many of the prescriptions at issue in this case—such as Valium, Xanax, and Tramadol—should be taken on an as-needed basis when the patient is experiencing symptoms. *See* Trial Tr. 4-65:3–8,

United States v. Suetholz, No. 2:21-cr-00056 (E.D. Ky. Sept. 12, 2022). It is therefore difficult to understand the Sixth's Circuit's conclusion that this evidence supports the inference Dr. Suetholz knowingly violated § 841.

The answer becomes clear when considering the jury instructions. The jury was instructed that it could infer Dr. Suetholz knowingly prescribed the controlled substances at issue without authorization if the jury found he "deliberately ignored a high probability" that he was prescribing controlled substances outside the "usual course of professional practice without a legitimate medical purpose," with the latter terms defined as "acting in accordance with generally recognized and accepted standards of medical practice in the State of Kentucky." App.39a–41a. Thus, the jury was permitted to infer Dr. Suetholz knowingly violated § 841 by measuring these alleged "red flags" against what another doctor would do—one whose practice accords with "generally recognized and accepted standards of medical practice in the state of Kentucky."[2]

The risks of a deliberate ignorance instruction are particularly heightened in this case. Usually (or always), the critical question is whether a defendant "blind[ed] themselves to direct proof of critical facts." *See Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766 (2011) (emphasis added) (citing *United States v. Jewell*, 532 F.2d 697, 700 (9th Cir. 1976) (en banc)). In this case, the question for the jury was not whether the Defendant blinded himself to a particular,

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[2] Notably, the government's expert witness, Dr. Munzing, is only licensed in California and has never practiced medicine in Kentucky. C.A.6 Appellant's Br. at 11.

indisputable fact (*e.g.*, whether a package contained cocaine or not), but to a legal and medical conclusion that this Court itself has stated is "ambiguous" and "open to varying constructions": whether the prescription was "for a legitimate medical purpose in the use course of professional practice" under 21 C.F.R. § 1306.04(a). *Ruan*, 597 U.S. at 459 (citing *Gonzales*, 546 U.S. at 258).

II. The Court Should Grant Review to Resolve a Circuit Split and Decide Under What Circumstances a Deliberate Ignorance Instruction Is Appropriate.

A. The Courts Of Appeals Are Divided On Whether A Defendant Must Affirmatively Act To Avoid Learning The Truth In Order To Give A Deliberate Ignorance Instruction

1. The Circuit Courts of Appeals are divided on when a deliberate ignorance jury instruction may be given: whether there must be some evidence that the defendant affirmatively acted to avoid learning the truth of a relevant fact, or whether the mere failure to investigate to uncover the truth of a relevant fact is sufficient. Thus, in a physician prosecution under § 841, this circuit split means that the state in which a doctor practices will likely determine whether the government will be able to obtain a deliberate ignorance instruction, and, in turn, whether the doctor may be convicted for negligence.

Every circuit court of appeals—except for possibly the D.C. circuit—has embraced the doctrine of deliberate ignorance. *See Glob.-Tech Appliances*, 563 U.S. at 767–68; *United States v. Alston-Graves*, 435 F.3d

331, 339–41 (D.C. Cir. 2006). This Court observed that "the Courts of Appeals articulate the doctrine of willful blindness in slightly different ways, [but] all appear to agree on two basic requirements: (1) The defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact." *Glob.-Tech Appliances*, 563 U.S. at 769 (emphasis added). The issue lies with the second prong; that is, whether the defendant must take some sort of affirmative steps to avoid learning the truth of a critical fact, or whether it is sufficient for the defendant to merely fail to take action to learn the truth of the fact.

2. The Court seemingly endorsed the former standard in *Global-Tech Appliances*, explaining that "a willfully blind defendant is one who takes deliberate actions to avoid confirming a probability of wrongdoing and who can almost be said to have actually known the critical facts." *Id.* (emphasis added). Likewise, the Third, Fourth, Fifth, Seventh, Ninth, and Tenth circuits require evidence that the defendant took some proactive step to avoid learning the truth of a particular fact.[3]

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[3] THIRD CIRCUIT: *United States v. Stadtmauer*, 620 F.3d 238, 257 (3d Cir. 2010) (approving deliberate ignorance instruction that explained the defendant must have "consciously and deliberately tried to avoid learning about [the critical] fact").

FOURTH CIRCUIT: *United States v. Miller*, 41 F.4th 302, 314 (4th Cir. 2022) ("Evidence supports an inference of deliberate ignorance if it tends to show that . . . the defendant took deliberate actions to avoid learning of that fact.") (internal quotations omitted).

SEVENTH CIRCUIT: *United States v. Macias*, 786 F.3d 1060, 1062 (7th Cir. 2015) ("An ostrich instruction should not be given unless there is evidence that the defendant engaged in behavior that could reasonably be interpreted as having been intended to

See, e.g., *United States v. Lee*, 966 F.3d 310, 326 (5th Cir. 2020) ("The key is whether there is evidence showing the defendant took proactive steps to ensure his ignorance.") (emphasis added) (citation omitted).

By contrast, the First, Second, Sixth, Eighth, and Eleventh circuits require evidence that the defendant merely failed to take action or ask questions in the face of "red flags."[4] *See, e.g.*, *United States v. Florez*,

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shield him from confirmation of his suspicion that he was involved in criminal activity.").

NINTH CIRCUIT: *United States v. Heredia*, 483 F.3d 913, 920 (9th Cir. 2007) (en banc) ("A deliberate action is one that is intentional; premeditated; fully considered. [ ] A decision influenced by coercion, exigent circumstances or lack of meaningful choice is, perforce, not deliberate. A defendant who fails to investigate for these reasons has not deliberately chosen to avoid learning the truth.") (internal citations omitted).

TENTH CIRCUIT: *United States v. Sorenson*, 801 F.3d 1217, 1233 (10th Cir. 2015) ("[T]he defendant must take deliberate actions to avoid learning of [the relevant] fact.").

[4] FIRST CIRCUIT: *United States v. Kanodia*, 943 F.3d 499, 508 (1st Cir. 2019) (A defendant acts with a "conscious course of deliberate ignorance" where the government demonstrates warning signs that call out for investigation or evidence of deliberate avoidance of knowledge, that is, sufficient red flags.) (internal quotations omitted).

SECOND CIRCUIT: *United States v. Svoboda*, 347 F.3d 471, 480 (2d Cir. 2003) (Appropriate factual predicate for deliberate ignorance instruction where "[a] defendant's involvement in the criminal offense may have been so overwhelmingly suspicious that the defendant's failure to question the suspicious circumstances establishes the defendant's purposeful contrivance to avoid guilty knowledge.") (internal quotations omitted) (alteration in original).

SIXTH CIRCUIT: *United States v. Geisen*, 612 F.3d 471, 487–88 (6th Cir. 2010) (concluding that a deliberate ignorance instruc-

368 F.3d 1042, 1044 (8th Cir. 2004) ("Ignorance is deliberate if the defendant was presented with facts that put her on notice that criminal activity was particularly likely and yet she intentionally failed to investigate those facts.") (emphasis added) (citation omitted). That is, "[t]he evidence is sufficient to support the instruction . . . if a reasonable jury could find beyond a reasonable doubt that the defendant had either actual knowledge of the illegal activity or deliberately failed to inquire about it before taking action to support it." *Id.*

3. Even within circuits, the standard is often applied inconsistently, leading to even more uncertainty for a defendant. *See, e.g.*, *United States v. Heredia*, 483 F.3d 913, 919 (9th Cir. 2007) (en banc) (recognizing that the willful blindness jurisprudence in the Ninth Circuit has "created a vexing thicket of precedent that has been difficult for litigants to follow and for district courts—and ourselves—to apply with consistency.").

For example, the Seventh Circuit explained that a deliberate ignorance instruction "should not be given unless there is evidence that the defendant engaged in behavior that could reasonably be interpreted as having been intended to shield him from confirmation of his suspicion that he was involved in criminal activity." *United States v. Macias*, 786 F.3d 1060, 1062 (7th Cir. 2015). The Seventh Circuit acknowledged

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tion was appropriate where evidence established that the defendant "deliberately chose not to inform himself" of critical facts).

ELEVENTH CIRCUIT: *United States v. Hristov*, 466 F.3d 949, 952 (11th Cir. 2006) (Deliberate ignorance instruction appropriate where "a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance[.]") (internal quotations omitted).

that this Court seemed to adopt the same rationale in *Global-Tech Appliances*. *Id.* ("As the Supreme Court put it in [*Global–Tech Appliances*], the defendant must not only 'believe that there is a high probability that a fact exists' but also 'must take deliberate actions to avoid learning of that fact'"). *Id.* (alteration in original) (quoting 563 U.S. at 769). Applying this rationale, the Seventh Circuit held the district court should not have given a deliberate ignorance instruction, explaining the defendant—who smuggled cash for a cartel but claimed to not know where the cash came from—had "failed to display curiosity, but he did nothing to prevent the truth from being communicated to him. He did not act to avoid learning the truth." *Id.* at 1061–63 (emphasis in original); *but see United States v. Mikaitis*, 33 F.4th 393, 401 (7th Cir. 2022) (upholding deliberate ignorance instruction given in a physician prosecution under § 841 because, in part, the "[f]ailure to ask natural and obvious questions can support an ostrich instruction").

4. This circuit split must be resolved to put physician defendants in § 841 prosecutions on equal playing fields. In at least five circuits, the Government need only put forth evidence that a physician failed to take steps to learn the truth of a particular fact to obtain a deliberate ignorance instruction. In six circuits, the Government cannot obtain a deliberate ignorance instruction unless it shows the defendant affirmatively acted to avoid learning the truth of critical facts. Those cases are more in line with *Ruan* and Congress' intent in drafting the statute—the Government must prove that the defendant knowingly violated § 841; not that he simply acted negligently or recklessly. *See Ruan*, 597 U.S. at 457–58 (discussing the

"longstanding presumption" that Congress intends to require a defendant to possess a culpable mental state) (quoting *Rehaif*, 588 U.S. at 229).

In many cases, the evidence (circumstantial and otherwise) presented in § 841 prosecutions is sufficient for a jury to infer actual knowledge, so even improperly given deliberate ignorance instructions amount to harmless error. *See, e.g.*, *United States v. Lamartiniere*, 100 F.4th 625, 651 (5th Cir. 2024); *United States v. Lee*, 966 F.3d 310, 325–26 (5th Cir. 2020). Thus, the circuit split often matters little for the many cases where evidence supports inferences of both actual knowledge and deliberate ignorance.

But here, the trial record illustrates that the standard applied in Dr. Suetholz's case was consequential, and the Government would not have been able to secure a deliberate ignorance instruction if the Sixth Circuit required evidence of the defendant affirmatively acting to avoid the truth. The panel below affirmed the district court's decision to issue a deliberate ignorance instruction because "[Dr.] Suetholz's patient files showed his lack of action to learn facts crucial to whether his prescriptions were appropriate or safe[,]" such as Dr. Suetholz's "lack of screening for addition history and mental-health issues"; a failure to "assess his patients' vague complaints of pain"; and ignoring purportedly "failed" drug tests. App.12a (emphasis added). Had Dr. Suetholz practiced medicine in Texas, for example, this evidence would not have been sufficient to warrant a deliberate ignorance instruction. *See, e.g.*, *Lee*, 966 F.3d at 325 (evidence insufficient to demonstrate "purposeful contrivance" required for deliberate ignorance instruction in physician prosecution under § 841). In turn, the jury would

not have been permitted to infer subjective knowledge or intent by considering whether he was deliberately ignorant of "generally recognized and accepted standards of medical practice in the State of Kentucky." App.41a.

In *Global-Tech Appliances*, this Court seemingly endorsed the majority position that "the defendant must take deliberate actions to avoid learning of [the critical] fact" in order for a deliberate ignorance instruction to be appropriate. 563 U.S. at 769. By contrast, the Sixth Circuit, as demonstrated by the panel decision below, requires only that the defendant fail to take actions to learn the truth of a critical fact—no affirmative actions required. Under the Sixth Circuit standard, the district court will nearly always be in a position to give a deliberate ignorance instruction. The Court should grant certiorari to resolve the split and clarify the law.

B. The Deliberate Ignorance Instruction Is Overused In § 841(a) Physician Prosecutions

1. The doctrine of deliberate ignorance is well-established throughout criminal law, but, in cases such as Dr. Suetholz's where the evidence supporting knowledge is thin, the criticisms against the doctrine are on full display. "'[I]t is hard to see how ignorance, from whatever cause, can be knowledge. A particular explanation of why a defendant remains ignorant might justify treating him as though he had knowledge, but it cannot, through some mysterious alchemy, convert ignorance into knowledge.'" *Alston-Graves*, 435 F.3d at 337 n.1 (quoting Douglas N. Husak & Craig A. Callender, *Wilful Ignorance, Knowledge, and*

the "Equal Culpability" Thesis: A Study of the Deeper Significance of the Principle of Legality, 1994 WIS. L. REV. 29, 52). "Willful blindness occupies a nebulous position between the mens rea standards of knowledge and recklessness." Recent Cases, *Criminal Law – Willful Blindness – Ninth Circuit Holds That Motive Is Not an Element of Willful Blindness*, United States v. Heredia, 121 HARV. L. REV. 1245, 1249 (2008). Recognizing the distinction between knowledge and willful blindness, and further recognizing the difficulties in drawing the line between the two, Justice Kennedy repeatedly criticized the doctrine. *See, e.g.*, *Glob.-Tech Appliances, Inc.*, 563 U.S. at 772–75 (Kennedy, J., dissenting) ("Willful blindness is not knowledge; and judges should not broaden a legislative proscription by analogy."); *United States v. Jewell*, 532 F.2d 697, 706 (9th Cir. 1976) (Kennedy, J., dissenting).

Given these concerns, the Courts of Appeals generally agree that deliberate ignorance instructions should be used sparingly given the risk that a jury will convict defendants for mere negligence. *See, e.g.*, *Geisen*, 612 F.3d at 486 (deliberate ignorance instruction "should be used sparingly because of the heightened risk of a conviction based on mere negligence, carelessness, or ignorance"); *United States v. Ali*, 735 F.3d 176, 187 (4th Cir. 2013) (willful blindness instructions "appropriate only in rare circumstances"); *United States v. Tantchev*, 916 F.3d 645, 653 (7th Cir. 2019) ("[W]e must remember the instruction is aimed at defendants acting like fabled ostriches who bury their heads in the sand. We do not . . . require every defendant to act like Curious George. Accordingly, courts must be careful, lest we obliterate the already thin line between avoidance, which is criminal, and indif-

ference, which cannot be punished.") (internal quotations omitted).

The Fifth Circuit recently criticized the over-use of deliberate ignorance jury instructions, finding that the instruction was erroneously, albeit harmlessly, given in a physician prosecution under § 841. *See Lee*, 966 F.3d at 323–26. In *Lee*, the court explained: "It is troubling that an instruction that should be given rarely has become commonplace. With someone's liberty on the line, there must be a compelling justification for an instruction that runs the risk of 'confus[ing] the jury' and convicting a defendant who merely 'should have been aware' of criminal conduct." *Id.* at 326 (quoting *United States v. Cartwright*, 6 F.3d 294, 301 (5th Cir. 1993)). Likewise, the D.C. Circuit in *Alston-Graves* noted that at least six circuits caution against giving deliberate ignorance instructions and observed the instruction was likely unnecessary in that case. 435 F.3d at 337, 340–41 (citing cases from the First, Fourth, Fifth, Ninth, Tenth, and Eleventh Circuits cautioning against deliberate ignorance instructions and observing "[w]hy in the face of this mounting of evidence the prosecution sought, and the district court gave over a defense objection, a willful blindness instruction is difficult to fathom").

In light of these considerations, this case is the right vehicle for the Court to put an end to the troubling overuse of deliberate ignorance instructions in physician prosecutions under § 841 where there is no evidence of affirmative, deliberate action to avoid learning the truth. The only evidence adduced at trial of Dr. Suetholz's purported deliberate ignorance is evidence that Dr. Suetholz failed to take action—not that he took any affirmative steps to avoid learning the truth.

App.12a (affirming issuance of deliberate ignorance instruction because "[Dr.] Suetholz's patient files showed his lack of action to learn facts crucial to whether his prescriptions were appropriate or safe."). Thus, the Government would not have been able to obtain a deliberate ignorance instruction had a different standard applied.

CONCLUSION

The panel decision below blesses a jury instruction that directly contradicts the holding and logic of *Ruan v. United States*. Permitting a deliberate ignorance instruction such as the one issued in Dr. Suetholz's case creates the exact risks this Court cautioned against in *Ruan*. That risk is only exacerbated by a split in the Circuit Courts of Appeals as to when a deliberate ignorance instruction is appropriate, where geography may dictate whether the jury may be instructed on willful blindness.

The Court should grant Dr. Suetholz's petition.

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