

No. _____

In the Supreme Court of the United States

MARK MURPHY AND JENNIFER MURPHY,

Applicants,

v.

UNITED STATES OF AMERICA

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicants Mark Murphy and Jennifer Murphy respectfully request a 60-day extension of time, to and including August 14, 2025, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Eleventh Circuit issued an unpublished opinion on November 21, 2024. A copy of the opinion is attached as Exhibit A. The Eleventh Circuit denied a timely petition for rehearing and for rehearing en banc on March 17, 2025. A copy of that Order is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for a writ of certiorari would be due on June 15, 2025. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case seeks review of a decision by the Eleventh Circuit that upholds a conspiracy conviction tainted by a jury instruction that plainly misstated the *mens rea* required to commit the underlying substantive offense. The error in the substantive instruction unavoidably and prejudicially infected the district court's instructions to the jury regarding what the government must prove to convict defendants of conspiring to commit that underlying offense. The Eleventh Circuit's affirmance contradicts settled law in the Tenth Circuit, deepens a circuit split, and warrants reversal.

4. Mark Murphy, a licensed physician specializing in pain management, was convicted of knowingly prescribing controlled substances without a legitimate medical purpose or outside the usual course of professional practice in violation of 21 U.S.C. § 841. Dr. Murphy and his wife, Jennifer Murphy, were also found guilty of conspiring to distribute controlled substances without a legitimate medical purpose or outside the usual course of professional practice in violation of 21 U.S.C. § 846. After the verdict, but before the appeal, this Court held that 21 U.S.C. § 841—the statute providing the basis for the Murphys' convictions—contains a heightened *mens rea* requirement. *Ruan v. United States*, 597 U.S. 450 (2022). Specifically, this Court held that, to convict a physician for unlawful prescribing under 21 U.S.C. § 841, the government must prove not only that the doctor knew he was prescribing the drugs, but also that he knew or intended that the prescription was unauthorized.

5. The jury instructions in this case did not comply with *Ruan*. The district court therefore vacated Dr. Murphy's 21 U.S.C. § 841 conviction. *United States v. Murphy*, No. 5:20-CR-291, 2023 WL 2090279, at *2 (N.D. Ala. Feb. 17, 2023). Despite acknowledging

the fundamental error in its substantive drug distribution instruction, the district court concluded that its conspiracy instruction remained untainted. It reached this result notwithstanding the fact that the jury had never been instructed on the *mens rea* required for a physician to be convicted of unlawful drug distribution.

6. An Eleventh Circuit panel affirmed. The panel agreed with the district court that the erroneous 21 U.S.C. § 841 instruction had no effect on the validity of the Murphys’ 21 U.S.C. § 846 convictions. In doing so, it largely relied on prior circuit precedent upholding conspiracy convictions under 21 U.S.C. § 846 despite plainly flawed 21 U.S.C. § 841 instructions.

7. In a separate opinion, Judge Jordan agreed that “the Murphys’ challenge to the drug conspiracy instruction [was] foreclosed by” circuit precedent. Slip op. at 38. He expressed, however, that “if we were writing on a clean slate, [he] would find the Tenth Circuit’s contrary decision in *United States v. Kahn*, 58 F.4th 1308, 1311 (10th Cir. 2023), more persuasive.” The Eleventh Circuit panel denied a petition for rehearing or rehearing en banc.

8. When faced with materially identical jury instructions, the Tenth Circuit had no trouble concluding that an instruction that misstates the *mens rea* required to violate 21 U.S.C. § 841 automatically and prejudicially “infect[s]” a corresponding conspiracy instruction under 21 U.S.C. § 846. *Kahn*, 58 F.4th at 1311. But at least three other circuits—the Fifth, Sixth, and Eleventh—disagree. The Eleventh Circuit’s decision in this case, and the Fifth and Sixth Circuits’ decisions in similar cases, see *United States v. Qureshi*, 121 F.4th 1095, 1102-05 (5th Cir. 2024), *cert. denied*, No. 24-900, 2025 WL 889184

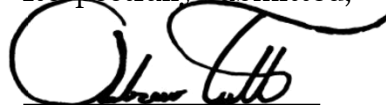
(U.S. Mar. 24, 2025); *United States v. Campbell*, __F.4th __, No. 23-5298, 2025 WL 1000136, at *2-5 (6th Cir. Apr. 3, 2025), are inconsistent with this Court’s decision in *Ruan*. This Court should not indulge this departure from its precedent, especially in light of the enormous stakes for all future defendants facing charges of conspiring to unlawfully dispense drugs under 21 U.S.C. § 846. The issue is also one that is certain to recur, as illustrated by the fact that a similarly situated defendant recently sought this Court’s review of materially identical jury instructions. Petition for a Writ of Certiorari, *Qureshi v. United States*, No. 24-900 (Feb. 17, 2025).

9. Applicants respectfully request an extension of time to file a petition for a writ of certiorari. A 60-day extension would allow counsel of record sufficient time to fully examine the Eleventh Circuit’s decision’s consequences, research and analyze the issues presented, and prepare the petition for filing. Additionally, the undersigned counsel has a number of other pending matters that will interfere with counsel’s ability to file the petition on or before June 15, 2025.

Wherefore, Applicants respectfully request that an order be entered extending the time to file a petition for a writ of certiorari to and including August 14, 2025.

Dated: April 8, 2025

Respectfully submitted,



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