25-6897

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

MARK DYER,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for Writ of Certiorari to the Sixth Circuit Court of Appeals

---

PETITION FOR WRIT OF CERTIORARI

Melissa M. Salinas (MI – P69388)
University of Michigan Law School
Federal Appellate Litigation Clinic
Room 2058, Jeffries Hall
701 South State Street
Ann Arbor, MI 48109 – 1215
(734) 764-2724

Appointed Counsel for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether a conspiracy conviction under 21 U.S.C. § 846 predicated on the § 841 unlawful distribution offense requires proof beyond a reasonable doubt that the defendant knew the agreed-upon conduct was unauthorized, as this Court required for § 841 convictions in *Ruan v. United States*, 597 U.S. 450 (2022).

TABLE OF CONTENTS

APPENDIX

SUPPLEMENTAL APPENDIX

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Regulations

Rules

Treatises

Other Authorities

PARTIES TO THE PROCEEDING

Petitioner Mark Dyer was a defendant in the district court and an appellant in the court of appeals. Respondent United States of America was the plaintiff in the district court and the appellee in the court of appeals. Jeffrey Campbell was a co-defendant in the district court and a co-appellant in the court of appeals but is not a party to this petition.

REFERENCES TO OPINIONS BELOW

The order of the United States District Court for the Western District of Kentucky is reproduced in the appendix at App. A22. The opinion of the United States Court of Appeals for the Sixth Circuit is published as *United States v. Campbell*, 135 F.4th 376 (6th Cir. 2025), and reproduced in the appendix at App. A1. The denial of rehearing en banc is unpublished but available at 2025 WL 2214152, and reproduced in the appendix at App. A27.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on April 3, 2025. The Sixth Circuit denied a timely petition for rehearing en banc on July 31, 2025. Petitioner timely invoked this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1). On October 30, 2025, the Clerk issued notice directing the Petitioner to file a corrected petition. This corrected petition is timely filed.

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are reproduced in the petition appendix at App. A29 and App. A44.

STATEMENT OF THE CASE

This case presents a pure question of law: whether a conspiracy conviction under 21 U.S.C. § 846 predicated on the 21 U.S.C. § 841 unlawful distribution offense requires proof that the defendant knew the agreed-upon conduct was unauthorized, as this Court required for § 841 convictions in *Ruan v. United States*, 597 U.S. 450 (2022).

Petitioner Mark Dyer is a 57-year-old nurse practitioner and father of seven who devoted nearly two decades to practicing medicine in Kentucky and Indiana. For more than eight years, Mr. Dyer was employed by Physicians Primary Care, a family medicine and pain management clinic in Louisville, where he provided a wide range of medical care to patients, from house calls to in-clinic primary care.

In 2020, Mr. Dyer was indicted on charges including conspiracy to unlawfully distribute controlled substances in violation of 21 U.S.C. §§ 841 and 846, and unlawful distribution of controlled substances in violation of 21 U.S.C. § 841. App. A79. Section 841 provides "[e]xcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense . . . a controlled substance." 21 U.S.C. § 841. Section 846, in turn, punishes "[a]ny person who attempts or conspires to commit" the § 841 unlawful distribution offense. 21 U.S.C. § 846. A medical practitioner's dispensation of a controlled substance is authorized when "issued for a legitimate medical purpose by an individual practitioner acting in

the usual course of his professional practice." 21 C.F.R. § 1306.04(a). At trial, the jury acquitted Mr. Dyer on all substantive counts charged under § 841 and convicted him of only one of the conspiracy counts under § 846. App. A22. He timely appealed.

While Mr. Dyer's appeal was pending, this Court clarified the *mens rea* requirement of § 841 in *Ruan v. United States*, 597 U.S. 450 (2022). *Ruan* held that § 841's "knowingly or intentionally" *mens rea* requirement applied to the "except as authorized" clause. *Id.* at 457.[1] Thus, to secure a conviction under § 841, the government "must prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized way." *Id.* at 468. Jury instructions in a trial for a § 841 charge must convey this *mens rea* requirement. *Id.* at 467.

At Mr. Dyer's trial, the jury was instructed differently. The government needed only to prove that he "conspired . . . to commit the crime of unlawful distribution of controlled substances" and that he "knowingly and voluntarily joined the conspiracy." App. A53. The instruction further explained that unlawful distribution occurred "when [a defendant] knowingly, intentionally, and unlawfully distributes or dispenses controlled substances, and he knows the substances are controlled substances." *Id.*

---

[1] *Ruan* recognized that the authorization clause differs from an element in some respects: the government need not allege lack of authorization in the indictment, and the defendant bears the burden of production. 597 U.S. at 462–64. But the clause is "sufficiently like an element" for *mens rea* purposes "to warrant similar legal treatment." *Id.* at 464. Courts applying *Ruan* have accordingly described authorization as an "element." *E.g.*, App. A5.

As to the authorization clause, the instruction stated that distribution is not authorized when it is "without a legitimate medical purpose *or* outside the usual course of medical practice." App. A53 (emphasis added). Framed in the disjunctive, the instruction permitted the jury to find Mr. Dyer's actions unauthorized because they were objectively outside the usual course of medical practice. And indeed, the government angled its case to capitalize on this, presenting expert witnesses who testified to what "should have happened" and what "we do" in particular medical situations. App. B7, B17, B23.

Further, the instructions expressly disavowed the government's burden to show Mr. Dyer knew the agreed-upon conduct was unauthorized. Clarifying the burden to prove "the defendants knowingly and voluntarily joined" an unlawful agreement, the trial court explained "[t]he government must only prove that the defendants knew that the drug was a controlled substance." App. A55.

The trial court also gave a deliberate-ignorance instruction permitting conviction if the jury found Mr. Dyer "deliberately ignored a high probability that the controlled substances were being dispensed or distributed outside the course of professional practice and not for a legitimate medical purpose, or that patients were diverting these controlled substances for illegal purposes[.]" App. A51. Nowhere did the instructions require the jury to find Mr. Dyer knew his conduct was unauthorized.

On appeal, Mr. Dyer argued his jury instructions violated *Ruan* because they omitted the required *mens rea* with respect to the authorization clause. The panel agreed the instructions failed to require Mr. Dyer knew or intended that his conduct was unauthorized. App. A5. Still, the panel deemed itself bound by circuit precedent holding that a deliberate-ignorance instruction cures any *Ruan* error. *Id.* at A5–7 (citing *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. Stanton*, 103 F.4th 1204 (6th Cir. 2024)).

The United States Court of Appeals for the Sixth Circuit denied rehearing en banc. App. A27. This petition follows.

REASONS FOR GRANTING THE WRIT

Certiorari is warranted for at least four reasons. First, the decision below conflicts with *Ruan v. United States*, 597 U.S. 450 (2022). Second, the circuit courts are deeply fractured on whether and how *Ruan*'s *mens rea* requirement applies to § 846 conspiracy convictions predicated on the § 841 unlawful distribution offense. Third, the question presented is exceptionally important and recurrent. And fourth, this case is an excellent vehicle. This Court should intervene.

I. The decision below runs headlong into *Ruan*.

When this Court speaks, lower courts must listen. "[V]ertical *stare decisis* is absolute, as it must be in a hierarchical system with 'one supreme Court.' " *Ramos v. Louisiana*, 590 U.S. 83, 124 n.5 (2020) (Kavanaugh, J.,

concurring) (quoting U.S. Const. art. III, § 1). Thus, lower courts may not cast aside this Court's decisions, "no matter how misguided the judges of those courts may think [them] to be." *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (*per curiam*). The Sixth Circuit's precedents present a clear and intolerable conflict with this Court's decision in *Ruan*.

In *Ruan*, this Court held that "§ 841's 'knowingly or intentionally' *mens rea* applies to the 'except as authorized' clause." 597 U.S. at 457. The government must therefore "prove beyond a reasonable doubt that the defendant knew that he or she was acting in an unauthorized manner, or intended to do so." *Id.* at 454. Liability turns on whether the "defendant himself" subjectively knew his acts were unauthorized rather than an objective assessment of professional practice. *Id.* at 465–67.

That reasoning applies with full force to conspiracy prosecutions under § 846. It is hornbook criminal law that "conspiracy to commit a particular substantive offense cannot exist without *at least* the degree of criminal intent necessary for the substantive offense itself." 1 W. LaFave, Substantive Criminal Law § 12.2(c)(2) 835 (6th ed. 2017) (citations omitted). This Court has long applied that principle to federal conspiracy prosecutions. See *Ocasio v. United States*, 578 U.S. 282, 288 (2016) (explaining that a defendant must "reach an agreement with the 'specific intent that the underlying crime *be committed*' by some member of the conspiracy") (citations omitted); *United States v. Feola*, 420 U.S. 671, 686 (1975) (same); *Ingram v. United States*, 360

U.S. 672, 678 (1959) (same); *Pettibone v. United States*, 148 U.S. 197, 204–07 (1893) (same). The decision below demonstrates how far the Sixth Circuit has strayed from this foundational principle.

The panel below candidly acknowledged "[n]owhere do the jury instructions . . . clearly state that the government must prove that Defendants knew they were 'acting in an unauthorized manner, or intended to do so.'" App. A4 (quoting *Ruan*, 597 U.S. at 454). It observed the "instructions do not explain that the conspirators in an unlawful distribution agreement must know their actions were unauthorized." *Id.* at A5. Indeed, the panel found it "doubtful that the[] instructions conveyed the mens rea *Ruan* requires for distribution." *Id.* Yet the panel was "compel[led]" to affirm under *United States v. Anderson* and its progeny. *Id.* at A4, A6.

The *Anderson* panel affirmed a § 841 conviction even though the jury was never instructed that the defendant had to know his conduct was unauthorized, concluding instead that a deliberate-ignorance instruction "substantially cover[ed] the concept of knowledge." 67 F.4th 755, 766 (6th Cir. 2023) (citing *United States v. Damra*, 621 F.3d 474, 502 (6th Cir. 2010)). A subsequent panel extended *Anderson*'s reasoning to § 846 conspiracy convictions in *United States v. Stanton*, 103 F.4th 1204 (6th Cir. 2024).

Anderson's flawed reasoning has drawn withering criticism from within the Sixth Circuit. One judge dissented in relevant part from *Anderson*, explaining that the deliberate-ignorance instruction plainly "does not inform

the jury that to return a guilty verdict it had to find that Anderson knew or intended that he was prescribing the controlled substances without a legitimate medical purpose." 67 F.4th at 772 (White, J., dissenting in part). Writing separately in another case, one judge observed, "*Anderson* does not cite any caselaw, within or outside of our circuit, providing that a deliberate [ignorance] instruction makes up for or imposes a missing knowledge requirement." *United States v. Hofstetter*, 80 F.4th 725, 734 (6th Cir. 2023) (Cole, J., concurring). So too another: "the instructions in *Anderson*—and thus here as well—do not fully comport with *Ruan*." *United States v. Bauer*, 82 F.4th 522, 533 (6th Cir. 2023) (Stranch, J.). Yet panel after panel has been bound by *Anderson*—a *per curiam* opinion issued without briefing on *Ruan*.

The Sixth Circuit's denial of rehearing en banc confirms it will not correct this error. Only this Court can.

II. The federal circuits have deeply fractured over the question presented.

The Sixth Circuit's misbegotten precedent reflects a broader fracture among the courts of appeals over whether and how *Ruan* applies to § 846 conspiracy convictions. The Tenth and Fourth Circuits require the trial court to instruct the jury that it must find beyond a reasonable doubt that defendants knew their agreed-upon conduct was unauthorized in order to sustain a § 846 conspiracy conviction predicated on the § 841 unlawful distribution offense. The Eleventh, Fifth, and Sixth Circuits do not.

A. The Tenth and Fourth Circuits apply Ruan faithfully in the § 846 conspiracy context.

The Tenth and Fourth Circuits have held that § 846 conspiracy convictions require proof beyond a reasonable doubt that defendants knew their agreed-upon conduct was unauthorized. That is, juries must find that the defendant knowingly agreed to dispense drugs in an unauthorized manner.

The Tenth Circuit has held § 846 conspiracy convictions require proof beyond a reasonable doubt that defendants knew their agreed-upon conduct was unauthorized. In *United States v. Kahn*, the Tenth Circuit reversed a § 846 conspiracy conviction where instructions erroneously "impose[d] an objective standard" of conduct. 58 F.4th 1308, 1317 (10th Cir. 2023).

Kahn involved a doctor accused of illicitly prescribing a variety of drugs through his medical practice. 58 F.4th at 1311–12. A jury convicted Kahn of dispensing of oxycodone in violation of § 841 and conspiracy under § 846, among other offenses. *Id.* Kahn appealed, and the Tenth Circuit affirmed. *Id.* This Court granted his petition for writ of certiorari, consolidated the case with *Ruan*, and vacated the judgment. *Id.* at 1313.

On remand, the Tenth Circuit panel vacated Kahn's convictions after finding both the § 841 unlawful distribution and § 846 conspiracy instructions to have been in error. See *Kahn*, 58 F.4th at 1316. With regard to the former, the panel held that, because the instructions allowed a conviction for conduct "without a legitimate medical purpose" and included a good faith exception, the district court had not met *Ruan*'s *mens rea* requirement. *Id.* at 1316–17.

As to the latter, because instructions were "predicated, at least in part, on one or more of the erroneous § 841(a)(1) instructions" and also included the good faith exception, the panel remanded with directions to vacate the convictions. *Id.* at 1321–22.

The Fourth Circuit has likewise found § 846 conspiracy convictions require proof beyond a reasonable doubt that defendants knew their agreed-upon conduct was unauthorized. In *United States v. Naum*, the Fourth Circuit found error in failing to inform the jury that convicting the defendant of a § 846 conspiracy required finding that he subjectively knew his conduct was unauthorized. 134 F.4th 234 (4th Cir. 2025).

In *Naum*, the government alleged that Naum was aware that a nurse at his clinic was improperly prescribing opioids and did not stop it. 134 F.4th at 237. The government indicted Naum for § 846 conspiracy to distribute and § 841 aiding and abetting distribution. *Id.* The jury instructions for the § 846 conspiracy count required: "(1) 'an agreement between two or more persons to distribute suboxone outside the bounds of professional medical practice;' (2) that Naum knew of the conspiracy; and (3) that Naum 'knowingly and voluntarily participated in the conspiracy.' " *Id.* at 240. A jury convicted him of both charges. *Id.* at 236. The district court denied Naum's motion for a new trial, and the Fourth Circuit affirmed. *Id.* at 238. A Fourth Circuit panel affirmed the district court in an unpublished *per curiam* opinion. *Id.* This Court

vacated that judgment and remanded to evaluate the jury instructions under *Ruan*. *Id.*

The panel held that the trial court's jury instructions misstated the law. Reasoning that the instructions did not "clarify that" Naum "must have known" that letting the nurse "submit prescriptions the way she did was outside the bounds of professional medical practice," the panel held that they were "incorrect after *Ruan*." *Naum*, 134 F.4th at 240. The panel similarly found error in the § 841 aiding and abetting instructions that "fail[ed] to incorporate the subjective mens rea *Ruan* require[d]." *Id.* at 239. Although the panel affirmed for lack of preservation or prejudice, it squarely held that instructions omitting the *mens rea* for the authorization clause violated *Ruan*. *Id.* at 243.

B. The Eleventh, Fifth, and Sixth Circuits do not apply *Ruan* faithfully in the conspiracy context.

In contrast, the Eleventh, Fifth, and Sixth Circuits have affirmed § 846 conspiracy convictions under § 841 where the jury instructions did not require proof beyond a reasonable doubt that defendants knew their agreed-upon conduct was unauthorized. Neither the Eleventh nor Fifth Circuit have recognized the error. And while the Sixth Circuit has, it has nonetheless repeatedly affirmed convictions where a deliberate-ignorance instruction "cured" the error.

The Eleventh Circuit has consistently and clearly held that § 846 conspiracy convictions do not require proof beyond a reasonable doubt that defendants knew their agreed-upon conduct was unauthorized. On remand

from *Ruan*, an Eleventh Circuit panel found jury instructions proper even where they contained no requirement of proof the defendant knew their conduct was unauthorized. *United States v. Ruan*, 56 F.4th 1291 (11th Cir. 2023) (*Ruan III*).

On remand the Eleventh Circuit panel upheld the defendants' § 846 conspiracy convictions and vacated the § 841 distribution convictions. *Ruan III*, 56 F.4th at 1302. The panel explained an "inadequate substantive jury instruction would have no effect on the jury's analysis for the conspiracy counts." *Id.* at 1299. And the panel reasoned that "[h]ad the jury in this case concluded that" defendants "believed their actions to be for a legitimate medical purpose," then "they could not have found the defendants made an 'unlawful plan' and 'knew' its 'unlawful purpose,' nor could they have concluded they 'willfully' joined that plan." *Id.* The panel found "[t]he jury was properly instructed." *Id.*

In *United States v. Mencia*, another Eleventh Circuit panel found no error in jury instructions that did not require proof beyond a reasonable doubt that defendants knew their agreed-upon conduct was unauthorized. No. 18-13967, 2022 WL 17336503, at *1 (11th Cir. Nov. 30, 2022). In *Mencia*, the government indicted Mencia for § 841 unlawful distribution and § 846 conspiracy unlawfully distribute. *Id.* at *3. The § 846 jury instructions required:

> (1) [Mencia] "and another person 'in some way agreed to try to accomplish a shared and unlawful plan to distribute or dispense

> a con-trolled substance, outside the scope of professional practice and not for a legitimate medical purpose";
>
> (2) Mencia "knew the unlawful purpose of the plan and willfully joined in it"; and
>
> (3) the purpose of the plan, "was to distribute or dispense a controlled substance, outside the scope of professional practice and not for a legitimate medical purpose."

Id. at *14. The jury rendered a guilty verdict only as to the § 846 conspiracy charge. *Id.* at *6. An Eleventh Circuit panel affirmed before this Court granted certiorari, vacated, and remanded for consideration in light of *Ruan*. *Id.*

On remand, the Eleventh Circuit panel affirmed Mencia's § 846 conspiracy conviction. The panel found no error in instructions requiring proof that the defendant know the "unlawful purpose of the plan," even absent proof that he knew his conduct itself was unauthorized. *Id.* at *14. "Had he not known that the prescriptions were unauthorized," the panel reasoned, "he could not have known the 'unlawful purpose of the plan.' " *Id.* Finding no error, the panel affirmed. *Id.*

The Fifth Circuit has largely adopted the Eleventh Circuit's approach, holding that § 846 conspiracy convictions do not require proof beyond a reasonable doubt that defendants knew their agreed-upon conduct was unauthorized. In *United States v. Qureshi,* the Fifth Circuit affirmed a § 846 conspiracy conviction with instructions similar to those upheld in the Eleventh Circuit. 121 F.4th 1095, 1103 (5th Cir. 2024). Conviction required:

> *First*: That two or more persons, directly or indirectly, reached an agreement to unlawfully distribute or dispense a controlled

> substance not for a legitimate medical purpose or not in the usual course of professional practice;
>
> *Second*: That the defendant knew of the unlawful purpose of the agreement; and
>
> *Third*: That the defendant joined in the agreement willfully; that is with the intent to further its unlawful purpose.

Id. at 1100. The jury convicted the defendant of one count of § 846 conspiracy as well as four counts of § 841 unlawful distribution. *Id.* at 1097.

On appeal, a Fifth Circuit panel reversed the § 841 conviction and affirmed the § 846 conspiracy conviction. *Id.* Largely following the Eleventh Circuit's logic, the Fifth Circuit panel held that a defendant could not knowingly join a § 846 conspiracy without knowing "the agreement was to distribute controlled substances without authorization." *Id.* at 1102. Finding no harmful error in the § 846 conspiracy conviction, the panel affirmed. *Id.* at 1105.

The Sixth Circuit has likewise affirmed § 846 conspiracy convictions obtained on defective jury instructions, albeit on a different rationale. Rather than deeming *Ruan* categorically inapplicable to conspiracies, circuit precedent holds that deliberate-ignorance instructions satisfy *Ruan*'s *mens rea* requirement. *United States v. Anderson* first sanctioned a § 841 instruction omitting the *mens rea Ruan* held indispensable, 67 F.4th 755, 766 (6th Cir. 2023), and successive panels entrenched the error. *United States v. Hofstetter*, 80 F.4th 725, 728 (6th Cir. 2023); *United States v. Bauer*, 82 F.4th 522, 533 (6th Cir. 2023). *United States v. Stanton* then extended *Anderson* to § 846

conspiracy instructions. 103 F.4th 1204, 1213 (6th Cir. 2024). Bound by erroneous circuit precedent, the decision below followed.

Anderson hollowed out *Ruan*'s *mens rea* requirement. There, the § 841 jury instructions never told jurors that the government must prove the defendant knew his conduct was unauthorized. 67 F.4th at 766. The panel acknowledged this omission but concluded a deliberate-ignorance instruction "substantially cover[ed] the concept of knowledge" through its "description of deliberate ignorance and the juxtaposition of 'knowledge' with '[c]arelessness, negligence, or foolishness.' " *Id.* On what authority? The panel cited *United States v. Damra*, 621 F.3d 474, 502 (6th Cir. 2010), a rote application of this Court's decision in *United States v. Pomponio*, 429 U.S. 10 (1976). *Anderson*'s reasoning falters in two respects.

First, *Damra* cannot carry the cargo *Anderson* sought to ship. *Damra* and *Pomponio* stand for the unsurprising proposition that complete instructions are, in fact, complete. In *Pomponio*, this Court rejected a defendant's demand for a good-faith instruction in a prosecution for willfully filing false tax returns. 429 U.S. at 10–13. See also 26 U.S.C. § 7206(1) (criminalizing "willfully mak[ing] and subscrib[ing] any return . . . which he does not believe to be true"). The district court instructed the jury that "willful" meant "voluntarily and intentionally and with the specific intent to do something which the law forbids." 429 U.S. at 11. Because this definition encompassed the complete *mens rea*, any "additional instruction on good faith

was unnecessary." *Id.* at 13. *Damra* merely applied this straightforward principle, finding the district court "effectively and correctly instructed the jury" by "matching the language approved of in *Pomponio*." 621 F.3d at 502.

Second, the logic fails on its own terms. While a finding of deliberate-ignorance can satisfy a knowledge *mens rea*, see *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766 (2011), such an instruction does not apprise the jury that conviction requires knowledge. Rather, a deliberate-ignorance instruction presupposes the jury was properly instructed on knowledge. See *id.* at 766–68 (collecting cases). Nor can merely distinguishing deliberate-ignorance from negligence suffice when the trial court never explained what mental state the law requires. That is like telling someone where not to go without ever saying where they must end up.

Nonetheless, a Sixth Circuit panel extended *Anderson*'s flawed reasoning to § 846 conspiracies in *Stanton*, holding that "[a] deliberate ignorance instruction satisfies *Ruan* when, as here, it reminds the jury that this standard sits well above carelessness, negligence, and mistake." 103 F.4th 1204, 1213 (6th Cir. 2024) (citing *Anderson*, 67 F.4th at 766). The panel below was thus bound to affirm despite the likely error. App. A5–7.

The decision below has only deepened the fracture among the courts of appeals. Medical practitioners now face fundamentally different standards for conviction based solely on geography. Only this Court's review can bring clarity and uniformity to the law.

III. The question presented is extremely important.

This case is legally and practically important. Federal conspiracy law has long proved an "elastic, sprawling and pervasive offense." *Krulewitch v. United States*, 336 U.S. 440, 445 (1949) (Jackson, J., concurring). And "history exemplifies" conspiracy's " 'tendency . . . to expand itself to the limit of its logic.' " *Id.* (citation omitted). This case comes before the Court as conspiracy metastasized.

The question presented goes to the heart of *Ruan*'s holding. The government "must prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner" to secure a conviction under § 841. *Ruan*, 597 U.S. at 468. But the Fifth, Sixth, and Eleventh Circuits read *Ruan*'s *mens rea* requirement out of § 846 conspiracy convictions predicated on the § 841 unlawful distribution offense. That makes little sense.

Conspiracy is "an agreement to commit an unlawful act." *United States v. Jimenez Recio*, 537 U.S. 270, 274 (2003) (quoting *Iannelli v. United States*, 420 U.S. 770, 777 (1975)). See also *id.* (collecting cases). But one cannot agree to "knowingly or intentionally" distribute controlled substances in an unauthorized manner without knowing the conduct is unauthorized any more than one can conspire "to commit a crime which is defined in terms of . . . negligently causing a result." See 1 W. LaFave, Substantive Criminal Law § 12.2(c)(2) 835 & n.210–11 (6th ed. 2017).

The practical impact here is astounding. Section 846 already stands as the single most frequently charged federal criminal offense. From 1994 to 2023, federal prosecutors brought § 846 charges against more than 400,000 people. See Dep't of Justice, Bureau of Justice Statistics, Federal Criminal Case Processing Statistics Data Tool, https://tinyurl.com/5hex4cez. That is almost twice the number of defendants charged with a substantive § 841 offense. See *id.* Prosecutors already have sound reasons to prefer conspiracy charges: favorable statute of limitations, wider venue, hearsay exceptions, and joint trials. *United States v. Kissel*, 218 U.S. 601, 608 (1910) (holding that "the conspiracy continues up to the time of abandonment or success"); *Brown v. Elliott*, 225 U.S. 392, 400–02 (1912) (holding that each overt act gave the government another choice of venue under the Sixth Amendment); *United States v. Inadi*, 475 U.S. 387, 395 (1986) (discussing prosecutorial advantage of co-conspirator hearsay rule); Fed. R. Crim. P. 8(b) (permitting joinder of defendants "alleged to have participated in the same . . . offense or offenses). See also *Pinkerton v. United States*, 328 U.S. 640, 647 (1946) (holding co-conspirators liable for substantive offenses committed by another conspirator in furtherance of the conspiracy). Conspiracy law needs no further indulgence to remain the "darling of the modern prosecutor's nursery." *Harrison v. United States*, 7 F.2d 259, 263 (2d Cir. 1925) (Hand, J.).

The stakes for medical practitioners are enormous. This Court granted certiorari in *Ruan* to stymie the risk of "overdeterrence." 597 U.S. at 459

(citation and quotation marks omitted). But the circuits below, by eliding *Ruan* on § 846 conspiracy convictions, have resurrected that problem twice over. Not only have prosecutors long enjoyed the peculiar advantages of conspiracy doctrine, but they now deploy those advantages unbounded by *Ruan*'s *mens rea* requirement. Nurse practitioners like Mr. Dyer face even greater risk because they prescribe under physician supervision but can be convicted as co-conspirators without proof they knew their conduct was unauthorized. Mr. Dyer was sentenced to five years in prison for prescriptions he wrote believing that he acted within the scope of his practice. Until this Court acts, *Ruan*'s promise remains unfulfilled.

IV. This case is an excellent vehicle.

This case is an ideal vehicle for resolving the conflict in authority. The question presented was preserved at every stage of the proceedings, arises in a factual context that starkly illuminates the practical stakes of the circuit split, and goes to the heart of Mr. Dyer's conviction.

This question is squarely presented and was preserved at every stage below. Mr. Dyer objected to the jury instructions at trial, App. A73–74, raised the issue on appeal, App. A3, and sought rehearing en banc, App. A27. The Sixth Circuit denied rehearing en banc. *Id.* This case comes to the Court on direct review.

This case presents the question without the complications that prevented review elsewhere. Unlike recent petitions raising similar

challenges, the jury here acquitted Mr. Dyer of every substantive distribution count but convicted on conspiracy alone. See *United States v. Murphy*, No. 23-10781, 2024 WL 4847755, at *1 (11th Cir. Nov. 21, 2024), *cert. denied*, No. 25-61, 2025 WL 2824165 (U.S. Oct. 6, 2025) (one § 841(a)(1) conviction); *United States v. Qureshi*, 121 F.4th 1095 (5th Cir. 2024) (four § 841(a)(1) convictions), *cert. denied*, 145 S. Ct. 1437 (2025) (No. 24-900). The verdict isolates the precise question presented: whether § 846 requires the government to prove defendants knew their agreed-upon conduct was unauthorized.

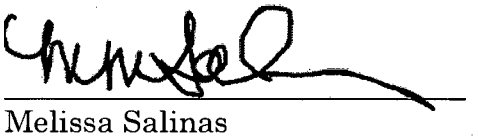
The question presented is outcome determinative because the district court's instructional error was not harmless. The district court's instructions provided no assurance the jury found Mr. Dyer knew the agreed-upon conduct was unauthorized. The jury's split verdict acquitting Mr. Dyer on all substantive unlawful distribution counts but convicting him on conspiracy highlights the prejudicial impact of the erroneous instructions. As such, the jury could have convicted Mr. Dyer for agreeing to engage in what he believed was authorized conduct— "conduct that is not unlawful." *McDonnell v. United States*, 579 U.S. 550, 579–80 (2016). That precludes any finding that the instructional error was harmless beyond a reasonable doubt. *Id.*

This case comes to the Court on a clean record, presents the issue directly, and offers the clearest possible setting for resolving the question.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,



Melissa Salinas
University of Michigan Law School
Federal Appellate Litigation Clinic
Room 2058, Jeffries Hall
701 South State Street
Ann Arbor, MI 48109 – 1215
(734) 764-2724

Appointed Counsel for Petitioner

Submitted: November 12, 2025