

IN THE
Supreme Court of the United States

FRANK PARASMO,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

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APPLICATION

To the Honorable Sonia Sotomayor, Associate Justice of the United States Supreme Court and Circuit Justice for the Second Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant Frank Parasmó respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The extension would make the petition due on September 16, 2026.

1. The Second Circuit issued its decision on May 19, 2026. *See United States v. Parasmó*, 176 F.4th 220 (2d Cir. 2026) (App. A). Unless extended, the time to file a petition for certiorari will expire on August 17, 2026. This application is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. Dr. Frank Parasmó is an 80-year-old medical doctor who has practiced medicine in New York for decades. Between 2014 and 2015, Dr. Parasmó prescribed oxycodone and hydrocodone to patients suffering from chronic pain. His patients had genuine, serious medical conditions—traumatic brain injuries, degenerative disk disease, severe migraines, and spinal injuries, among others. App. A at 32a (Robinson, J., dissenting). Confronted with patients suffering from these conditions alongside indications of possible misuse, Dr. Parasmó took numerous steps to protect his patients, including ordering tests, referring patients to specialists, attempting to wean them off controlled substances, and pursuing non-narcotic treatments. *Id.* at 31a. His practice had none of the hallmarks of a “pill mill”—no prescriptions doled

out without examinations, no fictitious patients, no cash payments, and no cash kickbacks from pharmacies. *Id.* at 30a.

3. In January 2019, a grand jury in the Eastern District of New York indicted Dr. Parasmo on 35 counts of distributing oxycodone and hydrocodone without authorization under 21 U.S.C. § 841. App. A at 4a (majority op.). At trial, Dr. Parasmo vigorously contested criminal intent, arguing that a conviction under the Controlled Substances Act required the government to prove that he subjectively knew he was acting in an unauthorized manner. *Id.* at 35a, 39a (Robinson, J., dissenting). The district court, however, instructed the jury to apply an objective standard—whether Dr. Parasmo was “acting reasonably”—rather than the subjective standard requiring proof that he knew or intended his conduct was unauthorized. *Id.* at 7a-8a (majority op.) (citation omitted). Under this standard, the jury convicted Dr. Parasmo on 32 counts but acquitted him on three counts—including rendering “not guilty” and “guilty” verdicts as to the same patient (Summer Ferro), underscoring the conflicting evidence in the record. D. Ct. Dkt. No. 139 at 2.

4. In June 2022, this Court decided *Ruan v. United States*, 597 U.S. 450 (2022), holding that Section 841 of the Controlled Substances Act imposes a subjective rather than objective standard: The Government must prove beyond a reasonable doubt that the defendant knew or intended that his conduct was unauthorized. *Id.* at 454. Dr. Parasmo filed a supplemental motion for acquittal or new trial based on *Ruan*, D. Ct. Dkt. Nos. 144, 151, which the district court denied, App. B. Dr. Parasmo timely appealed to the Second Circuit. D. Ct. Dkt. No. 166.

5. On May 19, 2026, a divided panel of the Second Circuit affirmed Dr. Parasmó’s conviction. The panel agreed that the district court’s jury instructions were “legally deficient” under *Ruan* because they applied an objective, rather than subjective, standard of intent. App. A at 10a. Yet the majority went on to hold the instructional error harmless, focusing on the strength of the government’s evidence—deeming it “overwhelming”—without due regard to whether Dr. Parasmó contested the intent element with evidence sufficient to support a contrary finding. *Id.* at 11a-15a. The majority brushed aside the dissent’s analysis of Dr. Parasmó’s evidence, calling it “a highly selective view of the record.” *Id.* at 16a.

6. Judge Robinson dissented, challenging the majority’s harmless-error analysis on multiple grounds. She emphasized that there was “ample evidence from which the jury could have concluded that the government failed to prove beyond a reasonable doubt that Dr. Parasmó subjectively believed he was acting as a dealer not a doctor.” *Id.* at 29a (Robinson, J., dissenting). She further stressed that the evidence did not “all flow in one direction,” that the government had relied heavily on the erroneous objective standard in its closing argument, and that the jury’s split verdict—acquitting on some counts while convicting on others—demonstrated the evidence was genuinely contested. *Id.* at 30a-36a, 39a-40a. Judge Robinson observed that “where an element of an offense is contested,” an appellate court “should be extremely wary of treating the failure to require the jury to make a finding as to that element as a harmless error.” *Id.* at 28a.

7. The decision below deepens a recognized circuit split on a recurring question: whether an appellate court may deem an erroneous jury instruction on an element of a crime harmless based on the strength of the government’s evidence, without regard to whether the defendant contested the element with evidence sufficient to support a contrary finding. The split arises from this Court’s decision in *Neder v. United States*, 527 U.S. 1 (1999), which concluded that an erroneous instruction is harmless if “the omitted element was uncontested and supported by overwhelming evidence.” *Id.* at 17. The Second Circuit (in the decision below), the Third Circuit (*United States v. Boyd*, 999 F.3d 171, 180-182 (3d Cir. 2021)), and the Eleventh Circuit (*United States v. Neder*, 197 F.3d 1122, 1129-34 (11th Cir. 1999)) focus solely on the strength of the government’s evidence. By contrast, the Fourth Circuit (*United States v. Lee*, 100 F.4th 484, 489 (4th Cir. 2024); *United States v. Legins*, 34 F.4th 304, 319, 322 (4th Cir. 2022)) and the Tenth Circuit (*United States v. Kahn*, 58 F.4th 1308, 1319 (10th Cir. 2023)) hold that an instructional error is not harmless when a defendant contests the element with evidence sufficient to support a contrary finding.

8. The split is real and acknowledged. Judge Lipez highlighted the “significant inconsistency” among the circuits in their harmless-error review of “the failure to instruct on an element of a crime.” *United States v. Pizarro*, 772 F.3d 284, 303 (1st Cir. 2014) (Lipez, J., concurring). Because “the Sixth Amendment right to a jury trial is at stake,” he “urge[d] the Supreme Court to clarify the line between an unconstitutional, directed guilty verdict and a harmless failure to instruct on an

element.” *Id.* This Court’s intervention is needed to resolve this division on a question of fundamental constitutional importance.

9. The Second Circuit’s decision is wrong. It divined Dr. Parasmo’s subjective intent from a cold record—even though that issue was “fiercely contested” at trial and was the basis of his “sole defense.” App. A at 39a (Robinson, J., dissenting). In so doing, the panel majority focused on the wrong evidence. The majority focused on the strength of the *government’s* evidence, rather than whether *Dr. Parasmo* put forth evidence sufficient for the jury to rule in his favor. *See id.* at 11a-15a (majority op.). It further characterized the dissent’s analysis of the evidence in Dr. Parasmo’s favor as “highly selective,” *id.* at 16a, but that misunderstands the relevant inquiry. An appellate court must determine, upon reviewing the record, whether the defendant has put forth evidence sufficient for a jury to find in his favor. That inquiry necessarily entails mining the record for evidence favorable to the defendant, even where the government’s evidence is strong.

10. The instructional error infected the jury’s verdict. The government repeatedly (and wrongly) emphasized in its closing statement that it was evaluating the evidence under an “objective standard.” *Id.* at 35a (Robinson, J., dissenting) (citation omitted). From this premise, the government could wave away Dr. Parasmo’s defense without addressing it on the merits. “The government argued that it didn’t matter whether Dr. Parasmo ‘thought the prescription was okay.’” *Id.* (citation omitted). But it *did* matter—the entire case hinged upon it.

11. This Court has instructed that “[i]n a free society respectful of the individual, a criminal defendant enjoys the right to hold the government to the burden of proving its case beyond a reasonable doubt to a unanimous jury of his peers *regardless of how overwhelming the evidence may seem to a judge.*” *Erlinger v. United States*, 602 U.S. 821, 842 (2024) (emphasis added) (quotation marks, citation, and brackets omitted); *see also Hunter v. United States*, 146 S. Ct. 1702, 1715 (2026) (Gorsuch, J., joined by Sotomayor and Jackson, JJ., concurring) (noting that this Court has begun to “correct course” after earlier decisions undermining the Sixth Amendment). In *Neder* itself, Justice Scalia dissented in part on the ground that holding jury-instruction errors harmless “depriv[es] a criminal defendant of the right to have the jury determine his guilt of the crime charged.” 527 U.S. at 30 (Scalia, J., joined by Souter and Ginsburg, JJ., dissenting in part). The only exception is when the defendant “waive[s] the jury right.” *Id.* at 32. That waiver plausibly happens when a defendant does not provide sufficient evidence from which a jury could find him not guilty. But if a jury receives erroneous instructions regarding an element of the crime, the defendant is entitled to a new trial if he put forth evidence sufficient to support a verdict in his favor.

12. The stakes here are extreme. Section 841 imposes penalties of up to 20 years’ imprisonment for a single count of unlawful distribution of Schedule II drugs, including oxycodone and hydrocodone, along with fines of up to \$1 million. 21 U.S.C. § 841(b)(1)(C). Dr. Parasmó was convicted on 32 counts. And since *Ruan*, courts have vacated numerous Section 841 convictions on the ground that a *Ruan* error in the

jury instructions was not harmless. *See, e.g., Kahn*, 58 F.4th at 1317-22; *United States v. Ruan*, 56 F.4th 1291, 1298 (11th Cir. 2023) (per curiam); *see also, e.g., United States v. Duldulao*, 87 F.4th 1239, 1254-62 (11th Cir. 2023) (vacating under plain-error review of *Ruan* error). And that is to say nothing of the countless harmless-error cases raising non-*Ruan* errors percolating in the lower courts every day. These cases confirm that the question is recurring and that this Court’s guidance is urgently needed.

13. This case presents an excellent vehicle for resolving the circuit split. The Second Circuit found the jury instruction erroneous under *Ruan*, eliminating any threshold question about whether error occurred. *See* App. A at 5a-10a. The sole basis for affirmance was the majority’s assessment that the government’s evidence was “overwhelming,” *id.* at 11a-15a—an assessment vigorously contested by the dissent, which documented “ample evidence” supporting a contrary finding, *id.* at 29a (Robinson, J., dissenting). The jury’s own split verdict demonstrates that the evidence did not “all flow in one direction.” *Id.* at 40a (citation omitted). And the government’s repeated reliance on the erroneous objective standard during trial—arguing that it “didn’t matter whether Dr. Parasmo ‘thought the prescription was okay’”—further confirms that the error infected the verdict. *Id.* at 35a (citation omitted).

14. Counsel of record is new to the case in this Court, and an extension will allow counsel to further research the relevant issues and prepare a petition that fully addresses the important questions raised by the proceedings below. Additionally,

counsel has upcoming briefing deadlines and oral argument in several matters that warrant an extension: a motion to dismiss due on August 10, 2026 in *Balva v. Binance Holdings Ltd.*, No. 3:25-cv-266 (D.N.D.); a remand opposition brief due on August 10, 2026 in *Kentucky v. KalshiEX LLC*, No. 3:26-cv-48 (E.D. Ky.); a reply brief due on August 12, 2026 in *In re: Gol Linhas Aereas Inteligentes S.A.*, No. 26-49 (2d Cir.); oral argument on September 1, 2026 in *Federated Indians of Graton Rancheria v. Koi Nation of Northern California*, Nos. 25-6300, 25-4604 (9th Cir.); an opening brief due on September 4, 2026 in *Empire Technology Development LLC v. Samsung Electronics Co.*, No. 26-1822 (Fed. Cir.); and a motion to dismiss due on September 4, 2026 in *Troell v. Binance Holdings Ltd.*, No. 1:24-cv-7136 (S.D.N.Y.).

15. For these reasons, Dr. Parasmoo respectfully requests that an order be entered extending the time to file a petition for certiorari to and including September 16, 2026.

Respectfully submitted,

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