

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	No. CR-20-163-PRW
)	
DONALD HYUNGJOON KIM, M.D.,)	
)	
Defendant.)	

UNITED STATES’ MOTION TO DISMISS INDICTMENT

The United States of America, pursuant to Federal Rule of Criminal Procedure Rule 48(a), respectfully moves this Court to dismiss the Indictment, returned June 17, 2020, in the above-styled case without prejudice. Such action would best meet the ends of justice for the following reasons:

1. On June 17, 2020, a federal grand jury issued an Indictment charging Defendant Donald Hyungjoon Kim, M.D. with 154 counts of distributing controlled substances outside the usual course of medical practice and without medical necessity to include 3 counts of distribution with death resulting. (Doc. 1.)

2. On June 27, 2022, the Supreme Court issued its opinion in *Ruan v. United States*, --- U.S. ----, 142 S.Ct. 2370 (2022). In *Ruan*, the Supreme Court held that the government must “prov[e] that a defendant knew or intended that his or her conduct was unauthorized,” which inserted a *mens rea* requirement that had not previously been recognized. *Id.* at 2382; *see United States v. Khan*, 989 F.3d 806, 825 (10th Cir. 2021),

vacated and remanded by Ruan, 142 S.Ct. 2370 (holding that “§ 841(a)(1) and § 1306.04(a) require the government to provide that a practitioner-defendant either: (1) subjectively knew a prescription was issued not for a legitimate medical purpose; or (2) issued a prescription that was objectively not in the usual course of professional practice”).

3. Based on this intervening Supreme Court ruling, the United States has concluded that the Indictment is defective. As such, the government believes that the ends of justice would best be served by dismissing, without prejudice, the Indictment in this case.

WHEREFORE, the United States requests that this Court enter an Order dismissing, without prejudice, the Indictment filed herein on June 17, 2020.

Respectfully submitted,

ROBERT J. TROESTER
United States Attorney

s/ Matthew P. Anderson
MATTHEW P. ANDERSON
OK Bar No. 30472
Assistant U.S. Attorney
210 Park Avenue, Suite 400
Oklahoma City, Oklahoma 73102
(405) 553-8700 (Office)
(405) 553-8888 (Fax)
matthew.anderson2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2022, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrant:

Nick Oberheiden, counsel for Donald Hyungjoon Kim, M.D.

s/ Matthew P. Anderson
MATTHEW P. ANDERSON
Assistant U.S. Attorney