No. 25-574

IN THE
Supreme Court of the United States

RON ELFENBEIN,

Petitioner,

v.

UNITED STATES

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF *AMICI CURIAE* EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND AND ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICI CURIAE*[1]

Amicus Eagle Forum Education & Legal Defense Fund ("Eagle Forum ELDF") was founded in 1981 by Phyllis Schlafly. Eagle Forum ELDF has long opposed overreach by the federal government, including misuse of federal prosecutorial power for allegations that could and should be handled in less costly and oppressive ways.

Amicus Association of American Physicians and Surgeons ("AAPS") is a national association of physicians, founded in 1943. AAPS is dedicated to protecting the patient-physician relationship, and has been a litigant in this Court and in other appellate courts. *See, e.g.*, *Ass'n of Am. Physicians & Surgs. v. Mathews*, 423 U.S. 975 (1975); *Ass'n of Am. Physicians & Surgs. v. Tex. Med. Bd.*, 627 F.3d 547 (5th Cir. 2010); *Ass'n of Am. Physicians & Surgs. v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993). AAPS has repeatedly objected to prosecutorial overreach in the past, as when its amicus brief successfully urged reversal in connection with the conviction of another

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[1] *Amici* file this brief after providing the requisite ten days' advance written notice to counsel for all the parties. Pursuant to Rule 37.6, counsel for *amici curiae* authored this brief in whole, no counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity – other than *amici*, their members, and their counsel – contributed monetarily to the preparation or submission of this brief.

physician. See *Ruan v. United States*, 597 U.S. 450, 467 (2022).

Amici thereby have strong interests in this Petition for a Writ of Certiorari to advocate against federal prosecutions when reasonable minds can differ as to the interpretation of a requirement and a civil remedy is readily available to the government for the dispute.

SUMMARY OF ARGUMENT

This misguided prosecution of Dr. Elfenbein exemplifies the misuse of federal power, and presents an ideal vehicle for reining in the federal overreach. This is a mere billing dispute concerning the use of ambiguous codes that permit leeway in their interpretation and use. This coding system is owned by a private entity, the American Medical Association (AMA), which filed an amicus brief in the Fourth Circuit explaining that the government's interpretation of its codes does not justify this criminal prosecution. The district judge correctly found no criminality here.

It is overreach in federal power to prosecute someone over a mere billing dispute where, as here, there is no dispute that underlying services were provided. If services were never rendered, then that would be criminal fraud actionable under federal law. But the services were rendered. Government has in other situations declined to pay physicians' bills or has "clawed back" amounts that have retroactively been considered overpaid. The U.S. faces a crisis

shortage of physicians,[2] and criminal prosecution is not legitimate in disputes about levels of coding and reimbursement. Where the government has entered medical care as a participant, as it does with the Medicare program, government should handle its disagreements about billing as private companies do, without abusing federal power by prosecuting those with whom it disagrees. Dr. Elfenbein saved money for the Medicare program in keeping his patients out of hospitals during Covid by treating them early, and should not be prosecuted for doing so.

The federal government is increasingly resorting to prosecutorial power to assert control as its own fiscal integrity spirals downward. A pattern of unjustified prosecutions followed by presidential pardons has become commonplace. Many good physicians fear becoming the next target of an overzealous federal prosecution, not for any wrongdoing but for a different interpretation of regulations that can be reasonably construed in different ways. This climate of overzealous prosecution, which creates the need for nearly weekly pardons, undermines public confidence in federal institutions and distracts physicians from focusing on their jobs.

The Petition here presents an ideal vehicle for this Court to rein in federal prosecutions that should be handled as civil matters. These prosecutions lack a

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[2] *See, e.g.*, "The 2025 Physician Workforce Crisis: An International Perspective," *Dynamic Health Staff* (June 2, 2025) https://dynamichealthstaff.com/blog/the-2025-physician-workforce-crisis-an-international-perspective/ (viewed Dec. 8, 2025).

constitutional basis or any other justification. It is this Court that has the supervisory duty to curb prosecutorial power. Certiorari should be granted to establish a much-needed precedent that civil disputes such as this should not be prosecuted as federal crimes, just as the district judge found a lack of criminality after the trial below.

ARGUMENT

I. The Unchecked Conversion of a Mere Civil Dispute into a Federal Prosecution Is Particularly Unjustified Where, as Here, the Defendant Reasonably Interpreted Ambiguous Rules.

Our constitutional system is one of carefully crafted checks and balances. But federal prosecutions currently have no real limit. As Chief Justice Roberts commented during oral argument in a federal prosecution of our future President, "Now you know how easy it is in many cases for a prosecutor to get a grand jury to bring an indictment, and reliance on the faith – good faith of the prosecutor may not be enough in … some cases." (*Trump v. United States*, Sup. Ct. No. 23-939, Tr. 74:22-75:1)[3]

After presiding over a full trial with the benefit of viewing the testimony first-hand, the district judge below concluded that the evidence did not support a federal criminal conviction. There should be more decisions like this in district court, and they should not be so frequently reversed on appeal. Yet the

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[3] https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/23-939_3fb4.pdf (viewed Dec. 6, 2025).

Fourth Circuit's reversal of the trial court's dismissal is all-too-common, perhaps because of a tendency for federal appellate courts to give federal prosecutors the benefit of every doubt. The Eleventh Circuit typically reverses dismissals by trial courts of federal prosecutions. *See, e.g.*, *United States v. Jordan*, 316 F.3d 1215 (11th Cir. 2003). The Petition here should be granted to clarify important checks and limits on federal prosecutorial power.

Restraints on federal prosecution are necessary to rein in unfettered federal prosecutions of disputes that should be handled in more reasonable ways. *See* Neil Gorsuch and Janie Nitze, *Over Ruled: The Human Toll of Too Much Law* (2024). The toll on defendants of these prosecutions is severe, as lamented in that book, and there is also a toll on the federal government. The overzealous prosecutions have created a childlike game of political ping-pong, necessitating numerous pardons for the victims of federal criminal charges that never should have been asserted in the first place, as in this case.

The developer and owner of the coding procedures at issue here, the American Medical Association (AMA), urged the Fourth Circuit to recognize that there was no crime in how Dr. Elfenbein used the AMA's codes. That should negate any assertion of criminality by the federal government in Dr. Elfenbein's billing. The government would remain free to pursue recovery as a civil matter, but this is plainly not a provable criminal case given that the AMA itself, as the expert on its codes used here, declared in its amicus brief in the Fourth Circuit that

the conduct at issue should not be considered criminal.

Congress does not want federal courts clogged with cases that should not be there. It has, for example, required courts to shift its caseload to alternative dispute resolution methods that are more efficient and productive than full-blown trials, not to mention a second trial sought by the government in this case. "Congress enacted the ADR Act to promote the use of alternative dispute resolution methods in the federal courts. The ADR Act specifically promotes the use of mediation, early neutral evaluation, mini-trials and arbitration." *In re African-American Slave Descendants' Litig.*, 272 F. Supp. 2d 755, 758-59 (N.D. Ill. 2003) (citing 28 U.S.C. § 652(a)).

The government lacks any inherent expertise over the meaning of the privately developed and managed coding system, the Current Procedural Terminology (CPT), which is at issue here. As the Fourth Circuit recounted but failed to recognize as dispositive:

> The government relied on an expert witness, Stephen Quindoza, who explained the CPT code system to the jury. Quindoza also opined that level-four codes were generally too high for the quick and easy task of testing someone for COVID-19. But Quindoza did not specifically testify that Elfenbein's coding was improper, and he admitted on cross-examination that he was unfamiliar with the latest, pandemic-era coding rules.

United States v. Elfenbein, 144 F.4th 551, 558 (4th Cir. 2025).

There is no real criminal case here, in light of the above testimony by the government's own expert. Instead, this is a garden-variety civil dispute over billing and payment, unsuitable for criminal prosecution. The government has available to it an efficient way of resolving this dispute, by litigating this matter as private parties do. The government can also audit the physician under the Medicare program and withhold future payments from him. The government can exclude the physician entirely from the Medicare program, and administrative procedures are available to both sides for appealing any such decision.

II. This Court's Precedents in *Ruan v. United States* and *Wooden v. United States* Support Granting *Cert.*

In the reversal by this Court in the case of Dr. Xiulu Ruan, it highlighted the problem of ambiguous regulatory language in criminal prosecutions. Yet alleged crimes continue to be prosecuted based on mere interpretations of federal regulations which are at odds with how others, including Dr. Elfenbein and the AMA, reasonably construe unclear requirements. These cases should be handled by the government in administrative proceedings or civil, not criminal, litigation.

In *Wooden v. United States*, this Court reversed 9-0 an interpretation by the Sixth Circuit of a federal gun control law that had resulted in locking up a non-violent defendant for a minimum of 15 years in prison. 595 U.S. 360 (2022). That case illustrated how overzealous federal prosecutions have become, as upheld by courts of appeals; the threshold test of

three separate felonies for sentencing under Armed Career Criminal Act was found to be satisfied by someone who merely burglarized ten storage units on the same night. Years later, Wooden granted an officer's request to enter his home because it was cold outside, and Wooden was then arrested when the officer observed firearms in his home as a felon. *Id.* at 364.

In a portion of his concurrence joined by Justice Sotomayor, Justice Gorsuch explained that "penal laws should be construed strictly.'" *Id.* at 388 (Gorsuch, J., concurring) (quoting *The Adventure*, 1 F. Cas. 202, 204, F. Cas. No. 93 (No. 93) (CC Va. 1812) (Marshall, C.J.)) "Because reasonable minds could differ (as they have differed) on the question whether Mr. Wooden's crimes took place on one occasion or many, the rule of lenity demands a judgment in his favor." 595 U.S. at 388 (Gorsuch, J., concurring).

Likewise here. Dr. Elfenbein's interpretation of the CPT codes and application of them to his services may be subject to disagreement by the government, but is not properly subject to prosecution. As a matter of law, Dr. Elfenbein lacked fair notice that he would be prosecuted for this. "[T]he regulatory language defining an authorized prescription is, we have said, 'ambiguous,' written in 'generalit[ies], susceptible to more precise definition and open to varying constructions.'" *Ruan*, 597 U.S. at 459 (quoting *Gonzales v. Oregon*, 546 U.S. 243, 258 (2006)).

In *Ruan v. United States*, this Court reversed and remanded due to concerns over a lack of proof of an element of the charges against a physician, and that burden of proof cannot be shifted to a physician such

as Dr. Elfenbein to require him to prove his innocence. "[G]overnments are 'foreclosed from shifting the burden of proof to the defendant … when an affirmative defense ... negates an element of the crime.'" *Id.* at 477 (Alito and Thomas, JJ., concurring, quoting *Smith v. United States*, 568 U.S. 106, 110 (2013), and *Martin v. Ohio*, 480 U. S. 228, 237 (1987), Powell, J., dissenting, cleaned up).

There was a full trial below, and Dr. Elfenbein testified candidly in his defense. The presiding trial judge properly concluded that the government failed to prove its case, as was its burden, and ordered the dismissal of this prosecution (and, in the alternative if reversed, a new trial). The interference with this ruling by the Fourth Circuit should be reversed here.

III. This Case Presents an Ideal Vehicle for Reining in the Overuse of Federal Prosecutorial Power.

This case is an ideal vehicle for trimming back the overuse of federal prosecutorial power, because there is a clean trial record and thoughtful decisions by the district and appellate courts that frame the issue perfectly. Moreover, the agreement between the Fourth Circuit and district court that the jury verdict should be overturned begs the question of whether a retrial is appropriate. It plainly is not, due to generally applicable principles that this Court could clarify by granting the Petition here.

The reversals by this Court in *Wooden* and *Ruan*, as discussed above, lacked a generally beneficial impact because of the relatively uncommon facts presented in those cases. The manifest injustice in the sentence initially imposed in the *Wooden* case is

common in many ongoing prosecutions in federal courts today, but the unusual facts in *Wooden* lacked the generality needed for its holding to help curb this problem.

One attorney properly decries "the tendency of federal sentences to be longer and carry higher mandatory minimums than their state counterparts" such that "over-federalization can lengthen sentences and increase incarceration." Liz Komar, "Over-Federalization: Federal Intrusion Into State Criminal Law," *The Sentencing Project* 4 (Oct. 1, 2025) (citing S.S. Beale, "Too many and yet too few: New principles to define the proper limits of federal criminal jurisdiction." 46 *Hastings Law Journal*, 979, 998-99 (1995)).[4] Ms. Kumar, as Sentencing Reform Counsel, added, "Over-federalization increases the lengths of sentences as well as the population of federal prisons." *Id.*

The Petition presents an issue of general applicability better than in the *Wooden* and *Ruan* cases, which makes this an ideal vehicle for the Court to clarify the guiding principles that sparked separate opinions in those prior decisions.

Here the government misuses prosecutorial power to enforce its view of a billing dispute for which it was one of the parties. Private entities cannot engage in collection by criminal prosecution from those with whom they disagree on a mere billing matter, and this Court can delineate in this case when a matter

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[4] https://www.sentencingproject.org/policy-brief/over-federalization-federal-intrusion-into-state-criminal-law/#footnote-43 (viewed Dec. 6, 2025).

should be brought by the government as a civil lawsuit rather than a criminal one.

Where the government enters a market as a participant, as it has in funding medical care for senior citizens under Medicare, there are inevitable disagreements that will arise as to the complexity and reimbursement levels for services. Rarely is there sufficient evidence to establish all the elements of criminality, and the invocation of the immense machinery of federal prosecutorial power is inappropriate when the government's own expert is unsure. Due process and the rule of lenity should safeguard the innocent, including Dr. Elfenbein.

Other situations are harder cases if the government lacks an alternative remedy for its grievances. Here, as explained above, multiple satisfactory means of recovery are available to the government to pursue rather than resorting to the blunt, costly instrument of federal prosecutorial power.

CONCLUSION

For the foregoing reasons and those stated in the Petition, the Court should grant the requested Writ of Certiorari.

Respectfully submitted,

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