

No. 25-

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IN THE  
**Supreme Court of the United States**

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LONNIE JOSEPH PARKER,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether a doctor can be convicted of unlawfully prescribing controlled substances under 21 U.S.C. § 841(a) (1) and 21 C.F.R. § 1306.04(a) based on a deviation from the standard of care in a single state.

**PARTIES TO THE PROCEEDING**

Petitioner, the defendant-appellant below, is Dr. Lonnie J. Parker.

Respondent is the United States of America, appellee below.

**STATEMENT OF RELATED PROCEEDINGS**

U.S. District Court for the Western District of Arkansas: *United States v. Lonnie Parker*, Case No. 4:19-cr-40018-SOH-1. Judgment entered on August 27, 2024. See Pet.App.12a.

U.S. Court of Appeals for the Eighth Circuit: *United States v. Lonnie Parker*, Case No. 24-2813. Judgment entered August 1, 2025. See Pet.App.1a.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner respectfully petitions this Court for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit.

### **OPINIONS BELOW**

The Eighth Circuit's August 1, 2025, opinion (Pet. App.1a) is reported at 145 F.4th 915.

### **JURISDICTION**

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Eighth Circuit entered its judgment on August 1, 2025, and denied rehearing *en banc* on September 11, 2025. *See* Pet.App.30a.

### **STATUTORY AND REGULATORY PROVISIONS INVOLVED**

21 U.S.C. § 841(a)(1) states:

- (a) Unlawful acts. Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—
  - (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance[.]

21 C.F.R. § 1306.04(a) states:

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

## INTRODUCTION

The Controlled Substances Act (CSA), in particular 21 U.S.C. § 841(a)(1), was enacted to target drug trafficking. In *United States v. Moore*, 423 U.S. 122 (1975), this Court affirmed that Congress deemed the harsh penalties for unlawful distribution under § 841(a)(1) an appropriate sanction for drug trafficking by a registered physician. Thus, in prosecutions of physicians under § 841(a)(1), this Court has held that the jury is to consider whether the physician acted “in accordance with a standard of medical practice generally recognized and accepted in the United States.” *Moore*, 423 U.S. at 138-39.

Despite the wide variety among legitimate medical viewpoints on what type of treatment is appropriate for a particular patient treated with controlled substances, the Eighth Circuit below concluded that a physician—here, Petitioner Dr. Lonnie Parker—could be convicted of a federal felony because the quantity of his prescriptions exceeded the recommended maximum daily amount set by the Arkansas State Medical Board—that is, his prescriptions exceeded the recommended maximum daily amount set by a single state. The Eighth Circuit held that “there is nothing in the language of § 841(a)(1) that suggests that a physician’s conduct must be compared to a national standard.” 145 F.4th 915, 920 (8th Cir. 2025).

That holding is wrong, and this Court should intervene to clarify that, in prosecutions of physicians under § 841(a)(1), the jury is to consider whether the doctor’s conduct fell within the bounds of *any* “generally recognized and accepted” medical practice in the United States, *Moore*, 423 U.S. at 138-139, instead of, as the Eighth Circuit held, the nuances of a single state’s regulations.

Without intervention, the CSA will have been converted into a mechanism to weaponize non-criminal state regulatory guidance into the basis for federal criminal liability—something that the text of § 841(a)(1) does not authorize and that Congress never authorized or intended.

## STATEMENT

### A. Legal background.

Section 841(a)(1) of Title 21, U.S. Code, provides that “[e]xcept as authorized by this subchapter, it shall be

unlawful for any person knowingly or intentionally \* \* \* to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance[.]” And 21 C.F.R. § 1306.04(a) provides that “[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” As this Court has explained, in § 841(a) prosecutions, the jury is to consider whether the defendant acted “in accordance with a standard of medical practice generally recognized and accepted in the United States.” *United States v. Moore*, 423 U.S. 122, 138-39 (1975). In *Ruan v. United States*, this Court clarified that, in order for a doctor to be convicted under § 841(a)(1), the government must prove beyond a reasonable doubt that he “knowingly or intentionally acted in an unauthorized manner.” 597 U.S. 450, 457 (2022). This case concerns the correct benchmark for evaluating whether a physician’s dispensing of controlled substances is “authorized.”

## **B. This litigation.**

1. Lonnie Joseph Parker, M.D. was a licensed medical practitioner in Arkansas who held a valid DEA registration to prescribe controlled substances. Parker Br. 9. Dr. Parker treated a spectrum of patients at his clinics, Primary Care Specialist and Modern Medicine, located in Texarkana, Arkansas. *Id.* Many of those patients were chronic pain patients requiring opioid medications to manage and treat their intractable pain. *Id.* Because Texarkana, and Arkansas more generally, suffered from a shortage of physicians, Dr. Parker stepped in to treat many patients afflicted with addiction but nonetheless suffering from pain. *See id.* He declined to turn these

patients away. Dr. Parker grew up near Texarkana on his stepfather's farm. *Id.* at 10. He has deep ties to the community, and he helped the patients that he could. *Id.*

Following his service in the Marine Corps, Dr. Parker received his medical degree from the Mayo Clinic Medical School in Rochester, Minnesota. *Id.* He practiced as a generalist following his medical training before a mentor of his, Dr. Donald Duncan, steered him toward taking a particular interest in pain. *Id.* Dr. Parker's growing interest in pain led him to seek certification for treating addiction, and with the help of a psychiatrist in Little Rock, he opened a suboxone treatment center on the Arkansas side of Texarkana. *Id.*

Dr. Parker went on to treat pain and addiction patients for decades until in October 2019 the government sought to put an end to that. The DEA obtained and executed a search warrant at Primary Care Specialists on October 8, 2019. *Id.* Several electronic patient records were seized and the clinic's computers imaged. *Id.* The DEA then retained a Florida physician, Dr. Mark Rubenstein, to review five of the seized patient records. That selection of five files was based on a review of Dr. Parker's Prescription Drug Monitoring Program (PDMP) data. Patients with "a high level of prescribing" were selected for Dr. Rubenstein to review. *Id.* at 11.

2. The government indicted Dr. Parker on nine counts of drug trafficking under 21 U.S.C. § 841(a)(1) and (b)(1)(C). That Indictment was then superseded, twice, and five counts remained. R. Doc. 114. Counts 1, 4 and 5 involved prescribing a Schedule II controlled substance, Oxycodone. Count 1 also alleged that the

Oxycodone prescription caused the death of Patient N.C. *Id.* Both Counts 2 and 3 involved prescribing a Schedule V controlled substance, Promethazine HCl. Dr. Parker pled not guilty on all counts, and he proceeded to trial in the Western District of Arkansas.

3. At the eight-day trial, the government called DEA agent Sheli Chupik who testified about the Arkansas Medical Practice Act, the Regulations of the Arkansas Medical Board, and the 2016 Center for Disease Control and Prevention Guidelines for Prescribing Opioids for Chronic Pain (2016 CDC Guidelines). Parker Br. at 11-12. Included in that testimony was an explanation of Morphine Milligram Equivalents (MMEs), in which Chupik explained that the CDC cautions against prescribing greater than 50 MMEs per day unless there is a specific justified need. *Id.* at 12.

The government then called, as an expert witness, a Florida physician named Dr. Mark Rubenstein. Dr. Rubenstein testified that the Arkansas Medical Practice Act defines “excessive” opioid prescribing as involving anything above 50 MME per patient per day. Parker Br. at 13.

4. The district court proposed instructing the jury that the phrase “legitimate medical purpose” and “usual course of professional practice” in 21 C.F.R. § 1306.04(a) meant acting in accordance with appropriate criteria for prescribing controlled substances in the State of Arkansas. Petitioner objected to this instruction. The district court, finding no error with the phrasing, instructed the jury accordingly, and the jury returned a verdict of guilty on Count One (but not guilty with respect to the death

enhancement), guilty on Counts Two, Three, and Four, but not guilty on Count Five.

The district court sentenced Petitioner to 87 months in prison on Counts One and Four, and 12 months in prison on Counts Two and Three—all of which were ordered to run concurrently.

5. On appeal to the Eighth Circuit, Petitioner argued that the district court erred in instructing the jury that it could convict Petitioner if it found that he deviated from Arkansas’s prescribing regulations. The Eighth Circuit rejected that argument, holding that “there is nothing in the language of § 841(a)(1) that suggests that a physician’s conduct must be compared to a national standard.” *United States v. Parker*, 145 F.4th 915, 920 (8th Cir. 2025). The Eighth Circuit affirmed Petitioner’s conviction. *Id.*

## **REASONS FOR GRANTING THE PETITION**

### **I. The Eighth Circuit’s holding is wrong.**

The Eighth Circuit held that “there is nothing in the language of § 841(a)(1) that suggests that a physician’s conduct must be compared to a national standard.” 145 F.4th 915, 920 (8th Cir. 2025). That holding is wrong, and backwards. Instead of asking whether anything in the text of § 841(a)(1) calls for a national standard, the Court of Appeals should have asked whether there is any indication in the text of § 841(a)(1) that would lead to the conclusion that Congress authorized federal criminal prosecutions based on a fifty-state patchwork of regulatory codes. Congress did not. Petitioner was convicted under a standard that is not found in the law, was not authorized

by Congress, and has no foothold in this Court's precedent. The Court should grant the petition and clarify that a doctor can only be convicted under § 841(a)(1) and 21 C.F.R. § 1306.04(a) if the Government proves beyond a reasonable doubt that his conduct was not authorized under *any* standard of care recognized in this United States and that he acted as a drug trafficker, *see United States v. Moore*, 423 U.S. 122, 137 (1975).

**A. The text of the CSA confirms that prosecutions under § 841 must be based on a national standard.**

Nothing in the text of the CSA suggests that Congress authorized federal criminal prosecutions based on a fifty-state patchwork of regulatory codes. As this Court has made clear, “[s]tatutory interpretation, as we always say, begins with the text.” *Ross v. Blake*, 578 U.S. 632, 638 (2016) (citation omitted).

Section 841(a)(1) makes no mention of state prescribing criteria. From a textualist approach, Congress has not delegated any authority to the States to set the limits of conduct required under § 841(a)(1). Likewise, the implementing regulation, 21 C.F.R. § 1306.04(a), states that for a prescription to be valid, it must be issued for a “legitimate medical purpose by a practitioner acting in the usual course of professional practice.” The regulation makes no mention of state prescribing guidelines and, indeed, when the regulation was first adopted, most states did not even have prescribing guidelines. The notion that a state can have such a broad impact on the application of federal law is foreign to the application of federal criminal statutes.

The lower courts' contention that a state board, committee, or sub-committee has the power to influence the interpretation of the law, and thereby alter the conduct required by Congress or the DEA, ignores the absence of any indication from Congress that a violation of § 841(a)(1) is contingent on state law. Indeed, as this Court has held, § 841(a)(1) targets "illicit drug dealing and trafficking as conventionally understood." *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006). Section 841(a)(1) does not criminalize mere deviations from state regulatory guidelines. *See id.*

**B. The Eighth Circuit's interpretation creates a 50-state patchwork and disrupts uniformity.**

The Eighth Circuit's interpretation of § 841(a)(1) also leads to the absurd result that doctors who prescribe controlled substances can be criminally prosecuted, fined, and even imprisoned—up to life—based on a deviation from a standard of care that may be entirely reasonable in other states.

1. At the time of Petitioner's conduct in this case, Arkansas law counseled against prescribing over 50 MMEs per day to a single patient. And because proof at trial established that he did, the Government's expert testified that Petitioner was not "authorized" to do so. The district court instructed the jury that the phrase "legitimate medical purpose" and "usual course of professional practice" meant acting in accordance with appropriate criteria for prescribing controlled substances in the State of Arkansas. Parker Br. 32-33. That instruction invited the jury to convict Petitioner for conduct that, at the time of the verdict in this case, was not illegal in many other states. For example, in California, the threshold was

90 MMEs per patient per day, which is nearly double that of Arkansas. Parker Br. 26-27. The upshot is that, had Petitioner been prosecuted in California, he likely would not—indeed, could not—have been convicted.

Even dating as far back as 2014, California acknowledged: “There are differing opinions among reputable experts and organizations as to what MED [Morphine Equivalent Dose] should trigger a consultation.” This led California to adopt an 80 mg per day MME back in 2014. *Medical Board of California, Guidelines for Prescribing Controlled Substances for Pain* (Sept. 25, 2014).<sup>1</sup>

The notion that liability under § 841(a)(1) turns on the location where a doctor happens to practice is at odds with fundamental notions of uniformity in the application of federal criminal law. *See Leland v. State of Oregon*, 343 U.S. 790, 797 (1952) (recognizing the federal government’s interest in uniformity in the application of federal law). Further, this Court has held that “[e]ven though regulation of health and safety is primarily, and historically, a matter of local concern, there is no question that the Federal Government can set uniform national standards in these areas.” *Gonzalez*, 546 U.S. at 271 (citation and internal quotation marks omitted). And the *Gonzalez* Court explicitly concluded that the dispensation of narcotics to treat pain is one of those areas where Congress sought to create uniformity. *Id.*

The Eighth Circuit’s ruling below disrupts that uniformity by allowing liability under § 841(a)(1) to turn on

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1. <https://www.mbc.ca.gov/About/Meetings/Material/29533/rx-Materials-20140929.pdf>.

the nuances of a single state’s prescribing guidelines. The Court should grant certiorari to clarify that Congress did not intend for liability under § 841(a)(1) to be circumscribed in this way.

2. The unworkability of having liability under § 841(a)(1) turn on a specific state’s regulations is illustrated by the following hypothetical. Suppose Michigan were to adopt opioid prescribing regulations that limited physicians to a mere 5 MMEs per patient per day. If a physician in Michigan prescribed above this amount, he could, under the logic of the Eighth Circuit’s holding below, be prosecuted and convicted under the CSA, notwithstanding the fact that *in no other state* would this conduct be banned.

This is almost exactly what happened here, with the only difference being the amount of MMEs at issue.

3. Moreover, this Court has already rejected the notion that a state can hijack Congress’s power under the Commerce Clause to regulate purely intrastate activities if those activities have national reach. In *Gonzalez v. Reich*, 545 U.S. 1 (2005), this Court struck down California’s attempt to legalize medical marijuana. In so doing, the Court held that “state action cannot circumscribe Congress’s plenary commerce power.” *Id.* at 29 (citation omitted).

Here, by allowing the jury to convict Petitioner based purely on the nuances of Arkansas state law, Arkansas now has, in effect, the ability to dictate the full scope of liability under a *federal* criminal statute—§ 841(a)(1). This result is inconsistent with the Court’s holding in *Reich*, and

the Court should grant certiorari to clarify that liability under the CSA does not—indeed, cannot—turn on the nuances of a single state’s prescribing regulations.

**C. This Court has already held that § 841(a)(1) prosecutions must be based on a national standard.**

The Eighth Circuit held that “there is nothing in the language of § 841(a)(1) that suggests that a physician’s conduct must be compared to a national standard.” 145 F.4th at 920. But this Court has already held that prosecutions under § 841(a)(1) are not governed by the medical standards at play in a single state. In *Moore*, this Court held that in § 841(a) prosecutions, the jury is to consider whether the defendant acted “in accordance with a standard of medical practice generally recognized and accepted in the United States.” 423 U.S. at 138-39.

That holding makes sense. “A standard,” *id.*, is exactly that: “a standard of medical practice generally accepted in the United States.” *Id.* True, Arkansas’s 50 MME per patient per day is one such standard which is accepted in the United States. But it is of course not the only standard. In § 841(a)(1) prosecutions, Congress deliberately chose to cast a wide net in defining when a prescription is authorized, and this Court recognized as much in *Moore*. Thus, to convict a physician for unauthorized prescribing, the government must prove that the physician’s conduct deviated from what is generally accepted in the United States—not merely that the conduct was disfavored by a single state’s medical board.

The Eleventh Circuit has understood this Court’s precedents as requiring the jury, in § 841(a)(1) prosecutions,

to evaluate the physician’s conduct against “a standard of medical practice generally recognized and accepted in the United States.” *United States v. Joseph*, 709 F.3d 1082, 1095 (11th Cir. 2013). In *Joseph*, the court held that “[t]his instruction did not suggest that the jury must evaluate the conduct of the defendants against a single national standard of practice. The instruction instead required the prosecution to prove that the actions of the defendants were inconsistent with *any* accepted standard of professional practice.” *Id.* (emphasis in original). The Eleventh Circuit had it right.

The Eighth Circuit below, however, erred in concluding, 145 F.4th at 920, that Petitioner’s deviation from the MME guidelines in a single state—here, Arkansas—could trigger federal felony liability under the CSA *even though* Petitioner’s conduct was demonstrably not prohibited in many other states, and for hundreds of thousands of other physicians, throughout the country.

## **II. The question presented is of national importance.**

The answer to the question presented is of the utmost importance nationwide because it affects countless doctors on a daily basis, and the consequences of a conviction under § 841 are “severe,” as § 841 calls for “severe penalties upon those who violate it, including life imprisonment and fines up to \$1 million.” *Ruan v.* 597 U.S. at 460 (citing § 841(b)(1)(C)).

There are approximately one million doctors in the United States. Those doctors treat an untold number of patients, many of whom suffer from intractable, chronic, debilitating pain. The Eighth Circuit’s holding endorsed

a view of the CSA that anchors criminal liability to prescribing guidelines in a single state, notwithstanding the fact that deviation from those guidelines in many other states would not be considered criminal, and would not even be considered problematic by a state's medical board.

Unless this Court intervenes, it follows that doctors who prescribe opioids now will fear an indictment if they deviate from a state medical board's guidelines on prescribing opioids, even if the doctors legitimately believe that certain treatment is necessary for the patient's well-being.

### **III. This case is an ideal vehicle.**

This case is an ideal vehicle for addressing the question presented. Petitioner challenged the district court's jury instruction. Parker Reply Br. at 9. The parties briefed the question before the Eighth Circuit, and the Eighth Circuit addressed and decided the question in a published opinion. 145 F.4th 915, 920-21. If the Court were to find error in the jury instruction here, a new trial would be required—and there would be no alternative grounds for affirmance—because the error is not harmless beyond a reasonable doubt. *See* Fed. R. Crim. P. 52. The district court's instruction invited the jury to convict Petitioner on a standard that is not found in the text of § 841(a)(1) and which conflicts with this Court's previous holding that, in prosecutions of physicians under § 841(a)(1), the jury is to consider whether the physician acted “in accordance with a standard of medical practice generally recognized and accepted in the United States.” *Moore*, 423 U.S. at 138-39.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 2025

## **APPENDIX**

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**APPENDIX A — OPINION OF THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT,  
FILED AUGUST 1, 2025**

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 24-2813

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

LONNIE JOSEPH PARKER,

*Defendant-Appellant.*

Appeal from United States District Court  
for the Western District of Arkansas - Texarkana

Submitted June 13, 2025

Filed August 1, 2025

Before COLLOTON, Chief Judge, ARNOLD and  
GRUENDER, Circuit Judges.

GRUENDER, Circuit Judge.

A jury found Lonnie Parker, a licensed medical practitioner, guilty of distributing oxycodone and promethazine HCl with codeine solution in a manner unauthorized by the Controlled Substances Act. *See* 21

*Appendix A*

U.S.C. § 841(a)(1). The district court<sup>1</sup> sentenced Parker to 87 months' imprisonment. On appeal, Parker contends that the evidence was insufficient to support his convictions, the jury instructions were improper, and the district court committed procedural error in sentencing. Finding no reversible error, we affirm.

**I.**

On August 3, 2018, an officer in Plano, Texas pulled an individual—whom we will refer to as N.C.—over for reckless driving. N.C. was visibly impaired and had a yellow stain on his mouth. The officer asked N.C. if he had taken any medication, and N.C. responded that he had taken Lyrica for hand or back pain. After arresting N.C., the officer searched N.C.'s car and discovered numerous prescription bottles which listed Parker as the prescribing physician. N.C. was transported to the Plano City Jail and died later that same day.

The Drug Enforcement Administration (“DEA”) began suspecting that Parker was operating his medical clinic in Texarkana, Arkansas as a “pill mill” from which he illegally distributed various opioid prescriptions. On October 8, 2019, the DEA executed a search warrant at Parker's clinic and seized numerous patient records. The DEA retained an independent pain treatment expert—Dr. Mark Rubenstein—to review a subset of those records. Rubenstein reviewed N.C.'s patient record, as well as the

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1. The Honorable Susan O. Hickey, Chief Judge, United States District Court for the Western District of Arkansas.

*Appendix A*

patient records of four individuals whom we will refer to here as J.F., L.H., G.T., and K.J. The Government subsequently determined that Parker had distributed oxycodone—a schedule II controlled substance—and promethazine HCl with codeine solution—a schedule V controlled substance—in violation of the Controlled Substances Act.

On June 15, 2022, a grand jury returned an indictment charging Parker with unauthorized distribution of oxycodone to N.C., J.F., and L.H., and unauthorized distribution of promethazine HCl with codeine solution to G.T. and K.J. *See id.* The indictment also charged Parker with causing the death of N.C. *See id.* § 841(b)(1)(C).

During an eight-day jury trial, the Government presented testimony from sixteen witnesses. As relevant here, the Government called Rubenstein as an expert witness in the area of pain management. Rubenstein explained Arkansas’s regulations regarding legitimate medical practice in pain management. He testified that Parker had not conformed his conduct to those regulations. According to Rubenstein, Parker had failed to conduct necessary physical examinations for his patients, prescribed oxycodone and promethazine HCl with codeine solution inappropriately, and maintained deficient and internally inconsistent patient records.

At the close of trial, the district court gave various instructions to the jury. Instruction No. 6 instructed the jury that “[t]he terms ‘legitimate medical purpose’ and ‘usual course of professional practice’ mean acting

*Appendix A*

in accordance with appropriate criteria for prescribing controlled substances in the State of Arkansas.” Instruction No. 14 instructed the jury that it could find that Parker “acted knowingly if [it found] . . . that the defendant believed there was a high probability that [N.C., L.H., and J.F.] were addicted to oxycodone, and that [G.T. and K.J.] were diverting promethazine with codeine cough syrup, and that he took deliberate actions to avoid learning of that fact.”

The jury found Parker guilty of the unauthorized distribution of oxycodone to N.C. and L.H., and the unauthorized distribution of promethazine HCl with codeine solution to G.T. and K.J. It found Parker not guilty of the unauthorized distribution of oxycodone to J.F. and also not guilty of causing the death of N.C. At sentencing, the parties disputed the quantity of controlled substances that should be used to calculate Parker’s base offense level under the sentencing guidelines. Parker argued that the district court should consider only those controlled substances that were prescribed to N.C., L.H., G.T., and K.J. on the date set forth in the indictment. The Government argued that the district court should also include uncharged prescriptions written by Parker to N.C., L.H., G.T., and K.J. outside of that date as relevant conduct. *See* U.S.S.G. § 1B1.3. The district court agreed with the Government and calculated Parker’s base offense level as 28. After accounting for a two-level enhancement for using a special skill to facilitate the offense, the district court calculated Parker’s total offense level as 30. Parker’s total offense level of 30 combined with a criminal history category of II resulted in an advisory sentencing

*Appendix A*

guidelines range of 108 to 135 months' imprisonment. The district court varied downwards and sentenced Parker to 87 months' imprisonment. The district court noted that, even if it had ruled in Parker's favor on quantity, it nonetheless would have imposed the same sentence.

**II.**

On appeal, Parker asserts that the evidence was insufficient to support his convictions and that the jury instructions were erroneous. He also contends that the district court miscalculated the quantity of controlled substances used in determining his base offense level. We address each claim in turn.

**A.**

We first address whether the evidence was sufficient to convict Parker of the unauthorized distribution of oxycodone and promethazine HCl with codeine solution. We review sufficiency of the evidence challenges *de novo*, "viewing the evidence and the jury's credibility determinations in the light most favorable to its verdict and reversing only if no reasonable jury could have found [the defendant] guilty." *United States v. Obi*, 25 F.4th 574, 577 (8th Cir. 2022).

To prove Parker guilty of the unauthorized distribution of oxycodone and promethazine HCl with codeine solution, the Government had to show that Parker "knowingly or intentionally" distributed the controlled substances in a manner not "authorized" by the Controlled Substances

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Act. 21 U.S.C. § 841(a)(1). A licensed medical practitioner is “authorized” to prescribe controlled substances when he issues a prescription “for a legitimate medical purpose . . . acting in the usual course of his professional practice.”<sup>2</sup> 21 C.F.R. § 1306.04(a) (2025). Parker contends that the evidence was insufficient because the Government did not prove that he acted without a “legitimate medical purpose.” But Rubenstein reviewed Parker’s patient files and testified that, with respect to each patient named in the indictment, Parker either prescribed controlled substances that were not appropriate for the claimed ailment or prescribed excessive amounts of controlled substances. *See United States v. Heaton*, 59 F.4th 1226, 1246 (11th Cir. 2023) (noting that a physician violates § 841(a)(1) when he prescribes “an excessive quantity of controlled substances” or prescribes controlled substances that have “no logical relationship to the treatment of the patient’s alleged condition”). Rubenstein also testified that Parker prescribed controlled substances without performing physical examinations that would have informed him if such prescriptions were necessary. *See id.* (noting that a physician violates § 841(a)(1) when he distributes controlled substances without physically examining patients). The jury was entitled to accept

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2. Parker asks this court to decide whether the terms “legitimate medical purpose” and “in the usual course of his professional practice” should be considered in the conjunctive or disjunctive. 21 C.F.R. § 1306.04(a) (2025). Because the jury was instructed on the conjunctive and the Government does not challenge this determination, we take no position on whether the terms “legitimate medical purpose” and “usual course of his professional practice” should be considered in the conjunctive or disjunctive.

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Rubenstein’s testimony, which provided sufficient evidence to conclude that Parker had prescribed oxycodone and promethazine HCl with codeine solution without “a legitimate medical purpose.” 21 C.F.R. § 1306.04(a); *see United States v. Cole*, 721 F.3d 1016, 1022 (8th Cir. 2013) (“[I]n reviewing a sufficiency-of-the-evidence challenge, we are obliged to defer to the jury’s determination of the credibility of the witnesses.” (internal quotation marks omitted)). Accordingly, we reject Parker’s challenge to the sufficiency of the evidence.

**B.**

We next address Parker’s challenge to the jury instructions—specifically, Instructions No. 6 and 14. Because Parker raised these arguments for the first time on appeal, Parker has forfeited them and we review only for plain error. *See United States v. Ford*, 888 F.3d 922, 925-26 (8th Cir. 2018). To establish plain error, Parker “must show that there is (1) error, (2) that is plain, and (3) that affects substantial rights.” *Id.* at 926 (internal quotation marks omitted). If all three conditions are met, “an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.*

Parker argues that Instruction No. 6, which instructed the jury that “[t]he terms ‘legitimate medical purpose’ and ‘usual course of professional practice’ mean acting in accordance with appropriate criteria for prescribing controlled substances in the State of Arkansas,” wrongly

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limited the jury to consider only the criteria set forth by a single state. According to Parker, the district court should have instead instructed the jury on a national standard, namely the regulations set forth by the Centers for Disease Control and Prevention (“CDC”). However, there is nothing in the language of § 841(a)(1) that suggests that a physician’s conduct must be compared to a national standard. And, contrary to Parker’s assertion that the Supreme Court in *Ruan v. United States*, 597 U.S. 450, 142 S. Ct. 2370, 213 L. Ed. 2d 706 (2022) disavowed reference to a state standard, *Ruan* addressed only the *mens rea* required under § 841(a)(1). *See id.* at 457. Parker therefore has not identified an error in Instruction No. 6 that is plain. Moreover, he fails to show how the instruction affected his “substantial rights.” *Ford*, 888 F.3d at 926. He does not identify a meaningful distinction between the standards set forth by the CDC and the State of Arkansas that would justify reversal in this case. Accordingly, we reject Parker’s challenge to Instruction No. 6.

As for Instruction No. 14, it instructed the jury that it could find that Parker “acted knowingly if [it found] . . . that the defendant believed there was a high probability that [N.C., L.H., and J.F.] were addicted to oxycodone, and that [G.T. and K.J.] were diverting promethazine with codeine cough syrup, and that he took deliberate actions to avoid learning of that fact.” Parker asserts that the instruction was erroneous because it wrongfully equated treating addicted patients with criminal conduct. While we agree with Parker that treating addicted patients is not in and of itself criminal conduct, we cannot say that he has established that he is entitled to relief. “In

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determining the effect of [a challenged] instruction on the validity of [a] conviction, [courts] accept at the outset the well-established proposition that a single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge.” *Boyd v. California*, 494 U.S. 370, 378, 110 S. Ct. 1190, 108 L. Ed. 2d 316 (1990). Before closing arguments, the district court instructed the jury on the basic elements of the charged offenses, informing the jury that the Government had to show that Parker acted without “a legitimate medical purpose” and outside “the usual course of his professional practice” in order to be convicted. Instruction No. 6, which reiterated those basic requirements to the jury, never equated treating addicted patients with criminal conduct. And Instruction No. 13 clarified that, if Parker “dispense[d] a drug in good faith, in medically treating a patient,” then “he has dispensed the drug lawfully.” Instruction No. 13 did not draw artificial lines between treating patients who were addicted and those who were not. Moreover, while it is true that Instruction No. 14 referred to addiction, the same instruction also stated that a “willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of *wrongdoing* and who can almost be said to have actually known the critical facts.” Because we cannot view the “addicted” language in Instruction No. 14 in artificial isolation—and the jury instructions as a whole clarified what constituted criminal conduct—we cannot say that Parker has established entitlement to relief for plain error. *See Greer v. United States*, 593 U.S. 503, 508, 141 S. Ct. 2090, 210 L. Ed. 2d 121 (2021) (noting that establishing plain error is “difficult”).

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In addition, Parker argues that the jury instructions were erroneous because the district court gave Instruction No. 14 without explicitly reciting to the jury a particular fact that Parker took deliberate action to avoid learning. Parker contends that such a reference is mandated by the Supreme Court's decision in *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 131 S. Ct. 2060, 179 L. Ed. 2d 1167 (2011). However, the portion of the opinion cited by Parker only states the basic requirements for the doctrine of willful blindness, namely that "[t]he defendant must subjectively believe that there is a high probability that a fact exists" and that "the defendant must take deliberate actions to avoid learning of that fact." *Id.* at 769. The opinion nowhere states that the district court must specifically identify that fact for the jury. Accordingly, we reject Parker's challenge to Instruction No. 14.

**C.**

Finally, we address Parker's claim of procedural error in his sentencing. "Procedural error includes failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence . . . ." *United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (internal quotation marks omitted). In determining whether a district court committed procedural error, "we review the district court's factual findings for clear error, and its interpretation and application of the Guidelines, de novo."

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*United States v. Frisch*, 704 F.3d 541, 543 (8th Cir. 2013) (alteration omitted).

Parker contends that the district court erred in calculating the quantity of controlled substances used to determine his base offense level. He asserts that the district court's calculation should not have included conduct outside of the indictment. He also claims that some of his prescriptions to the individuals named in the indictment were legitimate and therefore should not be included in quantity. We need not address the merits of Parker's contention as any error is harmless. We have held that, even when a district court miscalculates a sentence, any error is harmless "when the district court indicates it would have alternatively imposed the same sentence even if a lower guideline range applied." *United States v. Hamilton*, 929 F.3d 943, 948 (8th Cir. 2019). Here, the district court stated that it would have "impose[d] [the] same sentence regardless" of its ruling on quantity. Thus, any error was harmless and we reject Parker's challenge to his sentence.

**III.**

For the foregoing reasons, we affirm the judgment of the district court.

**APPENDIX B — JUDGMENT IN A CRIMINAL  
CASE, UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF ARKANSAS,  
FILED AUGUST 27, 2024**

UNITED STATES DISTRICT COURT  
Western District of Arkansas

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 4:19CR40018-001

USM Number: 21657-009

Ronald W. Chapman, II  
Defendant's Attorney

UNITED STATES OF AMERICA

v.

LONNIE JOSEPH PARKER

**THE DEFENDANT:**

pleaded guilty to count(s) \_\_\_\_\_

pleaded nolo contendere to count(s) \_\_\_\_\_ which  
was accepted by the court.

was found guilty on count(s) One (1), Two (2), Three (3), and Four (4) of the Second Superseding Indictment on October 28, 2022.  
after a plea of not guilty.

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The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and C.F.R. § 1306.04	Distribution of a Schedule II Controlled Substance Without an Effective Prescription	08/01/2018 & 01/04/2019	1 & 4
21 U.S.C. §§ 841(a)(1), 841(b)(3), and 21 C.F.R. § 1306.04	Distribution of a Schedule V Controlled Substance Without an Effective Prescription	08/29/2018 & 11/17/2018	2 & 3

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) Five (5) of the Second Superseding Indictment on October 28, 2022.

Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any

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change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 26, 2024

\_\_\_\_\_  
Date of Imposition of Judgment

/s/ Susan O. Hickey

\_\_\_\_\_  
Signature of Judge

Honorable Susan O. Hickey, Chief United States

District Judge

\_\_\_\_\_  
Name and Title of Judge

August 27, 2024

\_\_\_\_\_  
Date

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DEFENDANT: LONNIE JOSEPH PARKER  
CASE NUMBER: 4:19CR40018-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **eighty-seven (87) months on Count One and Count Four; twelve (12) months on Count Two and Count Three, with all counts to run concurrently with each other; for a total term of eighty-seven (87) months., with credit for time served in federal custody.**

The court makes the following recommendations to the Bureau of Prisons:

That the defendant be housed in FCI Texarkana.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on October 9, 2024.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

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**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_,  
with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

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**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of: **three (3) years on Count One and Count Four, and one (1) year on Count Two and Count Three, with all terms to run concurrently for a total term of three (3) years.**

**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)

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5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
  
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
  
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

*Appendix B***STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.

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5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

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8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

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**U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see Overview of Probation and Supervised Release Conditions, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_ Date \_\_\_\_\_

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**SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall submit his person, residence, and/or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner based upon reasonable suspicion of evidence of a violation of any condition of supervised release. Failure to submit to a search may be grounds for revocation.
  
2. The defendant shall not purchase, possess, use, distribute, or administer marijuana or obtain or possess a medical marijuana card or prescription. If the defendant is currently in possession of a medical marijuana card, he will turn it over immediately to the probation office.

*Appendix B***CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

**TOTALS \$**

<u>Assessment</u>	<u>Restitu- tion</u>	<u>Fine</u>	<u>AVAA Assess- ment*</u>	<u>JVTA Assess- ment**</u>
Count 1 100.00				
Count 2 25.00	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Count 3 25.00				
Count 4: 100.00				

- The determination of restitution is deferred until . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	\$ _____	
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\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
  
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
  
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for  
 fine             restitution.
  
  - the interest requirement for  
 fine             restitution is modified  
as follows:

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**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ 250.00 due immediately.
- not later than , or  
 in accordance with  C  D,  E, or  F below;  
or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal (*e.g., weekly, monthly, quarterly*) installments of \$ over a period of (*e.g., months or years*), to commence (*e.g., 30 or 60 days*) after the date of this judgment; or
- D  Payment in equal (*e.g., weekly, monthly, quarterly*) installments of \$ over a period of (*e.g., months or years*), to commence (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

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F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number Defendant and Co- Defendant Names <i>(including defendant number)</i>	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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**APPENDIX C — ORDER OF THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT,  
FILED SEPTEMBER 11, 2025**

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No: 24-2813

UNITED STATES OF AMERICA,

*Appellee,*

v.

LONNIE JOSEPH PARKER,

*Appellant.*

Appeal from U.S. District Court for the  
Western District of Arkansas – Texarkana  
(4:19-cr-40018-SOH-1)

**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Shepherd did not participate in the consideration or decision of this matter.

September 11, 2025

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Susan E. Bindler