No. __-____

IN THE

Supreme Court of the United States

EDGAR SEARCY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the 28 U.S.C. § 1658(a) four-year statute of limitations for "a civil action arising under an Act of Congress" applies to civil commitment proceedings under 18 U.S.C. § 4248.

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Petitioner Edgar Searcy respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's Opinion affirming the district court's final order civilly committing Petitioner is attached at Pet. App. 1a. The Fourth Circuit's Order denying a timely petition for rehearing and rehearing en banc is attached at Pet. App. 26a. The Mandate of the Fourth Circuit is attached at Pet. App. 27a.

JURISDICTION

The Fourth Circuit issued its opinion on January 18, 2018. Pet. App. 1a. The Fourth Circuit denied a timely petition for rehearing and rehearing en banc on March 19, 2018. Pet. App. 26a. On May 9, 2018, this Court granted a motion to extend the time to file a petition for a writ of certiorari until August 17, 2018. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Federal Rules of Civil Procedure say that

> There is one form of action—the civil action.

Fed. R. Civ. P. 2.

The statute providing for "Civil commitment of a sexually dangerous person" states

> In relation to a person who is in the custody of the Bureau of Prisons . . . the Attorney General or any individual authorized by the Attorney General or the Director of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. . . . The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

18 U.S.C. § 4248(a).

The statute of limitations states

> Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

28 U.S.C. § 1658(a).

INTRODUCTION

This petition addresses a civil procedure bedrock: "There is one form of action—the civil action." Fed. R. Civ. P. 2. Despite this plain language, the Fourth Circuit held that 18 U.S.C. § 4248 civil commitment proceedings are civil cases but somehow not "civil actions." The Fourth Circuit reached this holding to exempt

Section 4248 proceedings from the federal catch-all statute of limitations applicable to all "civil action[s]." *See* 28 U.S.C. § 1658(a). This Court's review is necessary because this precedent will have unintended consequences beyond Section 1658(a). Congress uses the term "civil action" throughout the United States Code to establish the legal framework for federal civil procedure. Congress builds these procedures on the foundation that "[t]here is one form of action—the civil action." The Fourth Circuit has cracked that foundation, with unknown consequences. Its holding invites needless litigation over what sorts of cases are and are not "civil actions," injecting pointless uncertainty into civil procedure. Litigants will use it to evade the application of generally applicable laws, hindering express Congressional intent. This Court should grant review to remove that uncertainty and clarify that there is one form of action—the civil action.

STATEMENT OF THE CASE

Legal Background of Section 1658(a)

Before 1990, Congress had not "enact[ed] a uniform statute of limitations applicable to federal causes of action." *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 377 (2004). Instead, federal courts applied the statute of limitations from the closest analogous cause of action from the state in which the federal court sat. *Id.*; *see also* Report of the Federal Courts Study Committee (April 2, 1990) at 93, available at https://www.fjc.gov/sites/default/files/2012/RepFCSC.pdf (last visited August 13, 2018) ("Study Committee Report"). This reliance "creat[ed] several practical problems." Study Committee Report at 93. It forced courts and litigants

to waste resources arguing over which state claim was the most analogous to the federal claim being litigated; it prevented federal courts from developing "federal doctrine on the suspension of limitations periods;" and it created unwarranted uncertainly and disparity for litigants because "a plaintiff alleging a federal claim in State A would find herself barred by the local statute of limitations while a plaintiff raising precisely the same claim in State B would be permitted to proceed." *Id.*; *Jones*, 541 U.S. at 379.

Congress listened to these complaints and agreed that the practice of borrowing state statutes of limitations caused unnecessary problems. *See* H.R. Rep. No. 101-734, at 24 (1990) (judiciary committee report), *as reprinted in* 1990 U.S.C.C.A.N. 6860, 6870. It responded with Section 1658(a) which created a four-year statute of limitations for all laws passed after Section 1658(a)'s enactment that did not otherwise contain a more specific statute of limitations. *See* Judicial Improvements Act of 1990, 101 P.L. 650, Title I § 313, 104 Stat. 5089, 5115.

Legal Background of Section 4248

In 2006, Congress enacted a statutory scheme to commit indefinitely individuals who the executive branch considers sexually dangerous. *See* Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, Title III § 302(4), 120 Stat. 620. The government can certify anyone in the Bureau of Prisons as sexually dangerous and start civil commitment proceedings against them. 18 U.S.C. § 4248(a). Once the government files this certification, the district court in that district "shall order a hearing" to determine whether that person is sexually

dangerous. *Id.* The certification begins a process of discovery, depositions, factual research, psychological evaluations, and expert reports. *Id.* §§ 4247(b)-(c), 4248(b). If, after the hearing, the district court finds that the individual is dangerous, it "shall commit the person to the custody of the Attorney General." *Id.* § 4248(d). This commitment lasts until the district court determines that an individual is no longer sexually dangerous and may amount to lifetime confinement. *Id.* §§ 4247(h), 4248(e).

Facts and Procedural History Relating to Mr. Searcy

The United States filed a certificate in the District Court for the Eastern District of North Carolina alleging that Edgar Joe Searcy was a sexually dangerous person under Section 4248. Mr. Searcy moved to dismiss the certification under Section 1658(a) because the United States filed it more than four years after the cause of action against him accrued. The district court denied the motion.

The expert witnesses who testified at Mr. Searcy's commitment hearing relied almost exclusively on Mr. Searcy's sexual criminal history to conclude that he met the criteria for commitment. Mr. Searcy had

- a thirty-year-old Florida conviction to which he pleaded no contest and for which most of the records had been purged and destroyed;
- a twenty-four-year-old Kansas conviction resulting from charges brought by his ex-wife after a custody dispute; and
- a fifteen-year old federal conviction.

Throughout the commitment proceedings, Mr. Searcy denied most of the factual allegations surrounding these convictions. Because of the age of the

convictions, however, the witnesses to the facts surrounding these convictions were unavailable. The experts thus relied on old police reports and similar documents to form their opinions without access to the witnesses to those events.

Mr. Searcy, in other words, had no way effectively to challenge the factual bases on which the experts based their opinions. The district court ruled in favor of the government and committed Mr. Searcy. Mr. Searcy appealed, raising as his sole issue that the district court should have dismissed the certification because it fell outside the statute of limitations.

The Fourth Circuit affirmed Mr. Searcy's commitment. The panel majority held that (1) Section 4248 proceedings are not civil actions, so Section 1658(a) does not apply to them, and (2) in the alternative, Section 4248's requirement that an individual be in the Custody of the Bureau of Prisons "anchors civil commitment proceedings to a discrete duration of time," which effectively means that another statute of limitations is "otherwise provided by law." Pet. App. 11a. Judge Thacker concurred in the judgement on a different theory. Pet. App. 18a. She argued that applying a statute of limitations to a civil commitment statute "would lead to absurd results," so the courts should refuse to apply it.

This petition follows.

REASONS FOR GRANTING THE PETITION

The plain language of Section 1658(a) shows that it applies to Section 4248 civil commitment proceedings. To hold otherwise, the Fourth Circuit had to "decide[] . . . important federal question[s] in a way that conflicts with relevant

decisions of this Court" and incorrectly "decide[] . . . important question[s] of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c):

- Section 1658(a) applies to "a civil action." The Fourth Circuit held that a Section 4248 commitment is not "a civil action." Pet. App. 14a.
- Section 1658(a) applies unless another statute of limitations is "otherwise provided by law." The Fourth Circuit held that Congress "otherwise provided by law" a de facto statute of limitations by limiting Section 4248 certifications to individuals in the Bureau of Prisons. Pet. App. 13a.

Both holdings are wrong. And both holdings will create confusion and unnecessary litigation. The first holding interjects chaos into the otherwise well-settled understanding of what constitutes "civil actions," a result whose effects will extend beyond Section 1658(a) and into the many areas where Congress uses the term "civil action." The second holding allows plaintiffs to evade Section 1658(a) simply by arguing that the substantive statute at issue contains some inherent practical limitations on when a plaintiff can sue. Because most civil actions have that limitation, the Fourth Circuit's holding thwarts Congress' attempt to protect parties by requiring plaintiffs to timely sue.

This Court's review is necessary to correct these errors because no other circuit court or state supreme court will be able to address them. The United States brings all Section 4248 certifications in the Eastern District of North Carolina. Thus, the Fourth Circuit is the only court that will be able to address this question. This Court should not wait for a circuit split to develop before granting review because one will never develop.

A. This Court should grant review to address the Fourth Circuit's holding that Section 4248 proceedings are not civil actions.

Section 1658(a) applies to "a civil action arising under an Act of Congress enacted after the date of the enactment of this section." 28 U.S.C. § 1658(a). No one disputes that Congress enacted Section 4248 after it enacted Section 1658(a). The Fourth Circuit, though, held that Section 1658(a) did not apply because Section 4248 is not a "civil action." This holding is wrong and will have far-reaching unintended consequences.

1. There is one form of action—the civil action.

The Fourth Circuit misreads the plain meaning of the words "civil action," and it contradicts the other courts that have held that all civil cases in the federal system are "civil actions." Nothing in Section 1658(a)'s text, context, or legislative history shows that Congress intended the term "civil action" to have anything but its plain meaning. "In modern federal practice, all forms of action that are not criminal are inherently civil actions." The Bouvier Law Dictionary Desk Edition, *Civil Action* (Wolters Kluwer 2012). Black's Law Dictionary defines a "civil action" as a type of "action." Black's Law Dictionary (10th ed. 2014). Black's defines an "action" broadly and includes "any judicial proceeding, which, if conducted to a determination, will result in a judgment or decree." *Id.* That definition expressly includes any "special proceedings." *Id.*

The Fourth Circuit's holding also contradicts the historical understanding of the term "civil action" that existed when this Court and Congress promulgated Federal Rule of Civil Procedure 2 in 1938. Courts quickly understood that they

should interpret the term broadly because "[t]he term 'civil action' embraces, from its natural import, every species of 'suit' not of a criminal kind, and comprehends every conceivable cause of action, whether legal or equitable, except such as are 'criminal', in the sense that the judgment may be a fine or imprisonment, etc." *Gillson v. Vendome Petroleum Corp.*, 35 F. Supp. 815, 819 (E.D.La. 1940)(citing 1 Am.Jur. § 41, p. 432 (1940)); *see also Blondet v. Hadley*, 144 F.2d 370, 372 (1st Cir. 1944)("[T]here is no longer any procedural distinction between suits in equity and actions at law.").

Indeed, because the Fourth Circuit's holding strays so far from the common and historical understanding of "civil action," few courts have had a recent opportunity to address this issue. People simply don't question it. In 1990, however, the Fifth Circuit addressed a party's argument that the word "action" as used in 28 U.S.C. § 1441(d) meant something distinct from the word "case" for purposes of removing a third-party claim to federal court. *Nolan v. Boeing Co.*, 919 F.2d 1058, 1066 (5th Cir. 1990). Consistent with the plain meaning and historical understanding of the term, the Fifth Circuit had no problem holding that the "proposed distinction between an 'action' and a 'case' finds no support in [the statute or] the Federal Rules of Civil Procedure." *Id.* Instead, "[i]n federal practice, the terms 'case' and 'action' refer to the same thing, *i.e.*, the entirety of a civil proceeding." *Id.*

The Fourth Circuit stands alone in holding otherwise.

2. By calling the term "civil action" into question, the Fourth Circuit sows confusion throughout federal civil procedure.

The Fourth Circuit's error will not be limited to Section 1658(a). That "[t]here is one form of action—the civil action" underlies all of federal civil procedure. Fed. R. Civ. P. 2. Congress uses the term to control removal of cases from state to federal court, when federal courts have diversity jurisdiction over state law claims, the proper venue for suits, when the federal courts can exercise supplemental jurisdiction over state law claims. *See* 28 U.S.C. §§ 1332(a), 1346, 1367, 1391, 1441. Congress does not limit this term to major procedural statutes. A simple Westlaw search for the term "civil action" in the unannotated United States Code shows that Congress uses the term over 1,400 times.[1] Section 1658(a) is the tip of a vast iceberg.

Because statutes of limitations can be so exasperating for potential litigants, they have argued that the courts should give common terms in Section 1658(a) special and narrow meaning. They have not succeeded. The respondents in *Jones v. R. R. Donnelley & Sons Co.* asked this Court to adapt a narrow reading of the term "arising under" to limit Section 1658(a)'s reach. 541 U.S. at 383. This Court reviewed the language, history, and purpose of Section 1658(a) and declined the invitation, holding, "[w]e should avoid reading § 1658 in such a way as to give the familiar statutory language a meaning foreign to every other context in which it is used." *Id.* This Court should grant review to correct the Fourth Circuit's holding to the contrary.

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[1] Search conducted on August 7, 2018 using Westlaw Next.

Since 1938 courts, litigants, and legislators have maintained an efficient system of civil litigation based on the simple understanding that there is one form of action and that the words "civil action" refer to it. The Fourth Circuit has opened Pandora's Box by challenging the meaning of those words and creating a world where litigants can argue over whether their cases are "civil actions" for purposes of venue, removal, and jurisdiction generally. This Court should grant review to close that Box.

B. This Court should grant review to address the Fourth Circuit's holding that Section 1658(a) does not apply if the substantive statute contains elements that tether it to a period in time.

Section 1658(a) applies "except as otherwise provided by law." 28 U.S.C. § 1658(a). Congress enacted no separate statute of limitations for Section 4248 proceedings. Yet the Fourth Circuit held that "the statutory requirement that a civil commitment proceeding be initiated against a person while he is in federal custody amounts to a de facto statute of limitations." Pet. App. 13a. It continues, "[b]ecause this rule anchors civil commitment proceedings to a discrete duration of time, no additional statute of limitations is required." Pet. App. 11a.

This is wrong. Section 1658(a) does not ask a court to determine whether it believes that a "statute of limitations is required" before applying it. Congress already made that choice. The statute applies unless Congress has enacted another statute. The district and circuit courts cannot substitute their judgment for that plain language.

The Fourth Circuit holding that Section 4248's structure amounts to a de facto statute of limitations "otherwise provided by law" frustrates Congress' intent that Section 1658(a) should apply broadly to "fill[] more rather than less of the void that has created so much unnecessary work for federal judges." *Jones*, 541 U.S. at 380. It opens the door to challenges to Section 1658(a) outside the civil commitment context because nothing in the Fourth Circuit's holding limits it to Section 4248. It effectively holds that Section 1658(a) should not apply to any statute whose elements provide a temporal limitation.

This proves too much. The "statutory requirement that a civil commitment proceeding be initiated against a person while he is in federal custody" is not, as this opinion implies, some special jurisdictional hook unique to Section 4248. Instead, as the Fourth Circuit itself recently held, it is "a mere element of a civil commitment claim." *United States v. Welsh*, 879 F.3d 530, 534 (4th Cir. 2018).

Most statutes are spatially and temporally limited by the factual bases underlying their elements. In this way, Section 4248 actions are no different from other civil actions: the party suing must tether that suit to factual events that relate to the elements of the statute giving rise to the claim. This natural anchoring will generally limit both the time and the place that a plaintiff can bring a suit because facts occur in specific places at specific times. Courts, however, do not hold that statutes of limitation or statutes controlling venue do not apply because of this natural anchoring. Instead, they apply these statutes, effectuating Congress's intent to "promote justice by preventing surprises through plaintiffs' revival of

claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014) (internal quotations omitted). This Court should grant review to reverse the Fourth Circuit opinion holding otherwise.

C. Applying Section 1658(a) to Section 4248 actions will not lead to absurd results.

As shown above, the Fourth Circuit's opinion will have far-reaching negative consequences beyond the result here. Recognizing that, Judge Thacker declined to join the majority's reasoning. She still concurred in the judgment because, she argued, applying Section 1658(a) to Section 4248 proceedings would lead to "an absurd result." Pet. App. 18a. Judge Thacker is incorrect. First, it is not absurd to apply Section 1658(a) to Section 4248 certification proceedings. Applying the standard accrual analysis that courts apply to cases involving statutes of limitations shows that it would be straightforward. Additionally, comparing Section 4248 to 18 U.S.C. § 4246 reveals that Congress intended for Section 4248 claims to accrue once an individual enters the Bureau of Prisons.

Second, though this Court has held that, in some narrow instances, a court might decline to apply a statute of limitations, it has limited those instances to cases in which that application would prevent the aggrieved party from ever vindicating its interest. That is not the case here; the government can easily vindicate its interests by filing Section 4248 certifications within four years after the cause of action accrues. We know this because the government brings certifications within four years whenever an individual has a prison sentence

shorter than four years. It only waits to certify individuals with longer sentences. It is not absurd to require the government to do something that it routinely does when it has proper incentives.

1. Section 4248 action accrue when someone enters the Bureau of Prisons.

To decide whether it would be "absurd" to apply the statute of limitations, we must first determine when a Section 4248 civil action accrues and whether the United States can file a certificate within four years of that time. The Fourth Circuit expressly declined make this determination, calling it "a nonsensical riddle that judges need not solve." Pet. App. 17a at n.5. It is no such thing.

Section 4248 actions accrue when an individual enters the Bureau of Prisons. For purposes of Section 1658(a), a civil cause of action accrues "when the plaintiff can file suit and obtain relief." *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 134 S. Ct. 604, 610 (2013)(internal quotation omitted). The United States has that authority as soon as an individual enters the legal custody of the Bureau of Prisons because "[t]he only statutory precondition for certification is that the person be in the custody of the Bureau of Prisons, be civilly committed as mentally incompetent to stand trial under 18 U.S.C. § 4241(d), or have had all criminal charges against him 'dismissed solely for reasons relating to his mental condition.'" *United States v. Springer*, 715 F.3d 535, 543 n.1 (4th Cir. 2013)(citing and quoting 18 U.S.C. §§ 4248(a), (d)).

Thus, under the plain language of Section 4248 and Section 1658(a), the United States has four years from the point someone enters the legal custody of the

Bureau of Prisons to file a Section 4248 certificate. That plain language compels the result here because "when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished." *Estate of Cowart v. Nicklos Drilling Co*, 505 U.S. 469, 475 (1992). Additionally, however, both the statutory context of Section 4248 and the public policy behind the law buttress this plain language reading.

Comparing Section 4248 to 18 U.S.C. § 4246 shows that Congress intended for Section 4248 cases to accrue once an individual enters Bureau of Prisons' custody. Section 4246 pre-dates Section 4248. It empowers federal officials to commit civilly a mentally ill individual within the Bureau of Prisons if they can prove that that individual "suffer[s] from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another." 18 U.S.C. § 4246(a). Section 4246 applies only to individuals "whose sentence is about to expire." *Id.* Section 4248, in contrast, applies to any individual within the Bureau of Prisons. Congress expressly omitted the "whose sentence is about to expire" language from Section 4248.

Congress made this choice deliberately. Congress modeled Section 4248 after Section 4246, even using the same definitional section and procedural framework to apply to both types of proceedings. *See* 18 U.S.C. § 4247(b) (establishing procedures for both Section 4246 and Section 4248 hearings). And when Congress enacted Section 4248, it expressly chose to omit Section 4246's additional requirement that

an individual be nearing the end of his sentence to allow the filing of the certificate. "It is always appropriate to assume that our elected representatives, like other citizens, know the law." *Cannon v. University of Chicago*, 441 U.S. 677, 696-97 (1979). In other words, a Section 4248 action legally accrues once the government places an individual in the Bureau of Prisons, not when his sentence is about to expire.

Congress's decision makes sense. General mental illness of the type contemplated by Section 4246 can develop or worsen while an individual is incarcerated. *See generally Brown v. Plata*, 563 U.S. 493, 520 (2011)(noting that "crowded, unsafe, and unsanitary conditions can cause prisoners with latent mental illnesses to worsen and develop overt symptoms"). So a rational civil commitment scheme for that type of mental illness will wait for individuals to near a release date before starting commitment proceedings. Sexual pathologies, in contrast, have no connection to the prison sentence itself. If someone suffers from a paraphilia, experts will be able to diagnose him upon his entrance into the Bureau of Prisons. Waiting to certify him serves no purpose other than to delay possibly beneficial treatment and to make the evidence supporting that commitment fade into the past.

2. It is not "absurd" to give the United States four years to decide whether to certify someone.

Because Section 4248 actions accrue when an individual enter the legal custody of the Bureau of Prisons, the United States has four years from that point to determine whether to certify someone as sexually dangerous. It is not "absurd"

to hold the government to that standard because it can comply with Congress' directive, which is all that the law requires.

In *Heimeshoff v. Hartford Life & Accident Ins. Co.*, the petitioner argued that the courts should not apply a three-year contractual-limitations period in an ERISA case when "administrative exhaustion requirements" would, as a practical matter, shorten that period below what the drafters intended. 134 S. Ct. at 608. This Court disagreed. It noted that the limitations period, as drafted and applied, would still provide litigants with a year to sue, which was a reasonable time. *Id.* at 612-13. It expressly distinguished that situation from other times when it refused to apply a limitations period when long administrative exhaustion requirements left "claimants with little chance of bringing a claim not barred by the State's statute of limitations." *Id.* at 613. The rule, then, is to apply the statute that Congress wrote unless it would be impossible to do so.

Here, it would not be impossible for the United States to certify individuals within four years of their entering the Bureau of Prisons. In fact, the United States is better suited than most potential civil plaintiffs to vindicate its interest and conduct a thorough investigation of its claim over the course of four years. Once an individual enters the Bureau of Prisons, the government has access to his Presentence Report, which contains his entire criminal history (including narrative descriptions of the prior criminal conduct) as well as his personal history, including his medical and mental health history. *See* United States Department of Justice Legal Resource Guide to the Federal Bureau of Prisons 2014 at p.10,

https://www.bop.gov/resources/pdfs/legal_guide.pdf (last visited August 13, 2018). And the Bureau has power over a prisoner's body and can move, observe, and evaluate him at will over the course of four years. At the end of that period, the government needs only enough information to determine that it should file a certificate.

The time provided to the United States is more than adequate. The United States' own history with certifications proves that, when motivated, it has no problem conducting an investigation and filing a certificate within four years. The Appendix to this petition contains a chart listing individuals certified under Section 4248 in the Eastern District of North Carolina who were serving sentences less than four years. *See* Pet. App. 28a-31a.

The United States can certify individuals within the four years required by the plain language of Section 1658. It has done so many times in the past; it can do so in the future. It is neither impossible nor absurd to apply the plain language of the statute on its face. Indeed, it is the judiciary's job to do just that. This Court should grant this petition to resolve properly this question.

D. This case is the proper vehicle to address this question. Because the United States chooses to certify everyone in the Eastern District of North Carolina, no circuit split can develop.

This case is the proper vehicle to address the question presented. Mr. Searcy raised this argument in this district court, which denied his motion to dismiss. The parties fully briefed and argued the issue in the Fourth Circuit, which issued a published opinion addressing this question.

And this Court cannot wait for a circuit split to develop because one never will. The United States brings all Section 4248 certifications at the federal prison complex in Butner, North Carolina in the Eastern District of North Carolina. 28 U.S.C. § 113(a). The other circuits thus will not have an opportunity to address the question raised by this petition and also develop the law. Certiorari is the only mechanism through which this Court can adequately address the question raised by this petition.

And this Court should address this question because it has exceptional importance. Depriving citizens of liberty is one of the most powerful acts a government can take. Individuals have an interest in civil commitment claims being brought within a reasonable time before evidence and witness memories fade and old police reports take on an un-rebuttable weight. The public has an interest in prompt hearings and entry into a treatment program. And, most importantly, the courts have an interest in ensuring that certifications do not happen so close to a prisoner's release date that civil confinement runs the risk of routinely extending criminal sentences and "becom[ing] a mechanism for retribution or general deterrence." *Kansas v. Hendircks,* 521 U.S. 346, 373 (1997)(Kennedy, J., concurring). The nature of civil commitment is such that courts should be more stringent—not less—when holding the government to its procedural requirements.

CONCLUSION

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

Respectfully submitted,

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