No.

IN THE
SUPREME COURT OF THE UNITED STATES

TIMOTHY O'LAUGHLIN,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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

Petitioner, Timothy O'Laughlin, respectfully requests this Court to issue a writ of certiorari to review the Judgment and Opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on August 19, 2019, affirming the district court's judgment.

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QUESTION PRESENTED

Whether 18 U.S.C. § 4247(h) unconstitutionally and illegally deprives individuals of the right to litigate their personal liberty interests *pro se*, under both the Sixth Amendment and 28 U.S.C. § 1654, by filing a *pro se* petition under 18 U.S.C. § 4247(h), seeking a termination of an indeterminate term of custody in the Bureau of Prisons imposed on them pursuant to the civil commitment process contained in 18 U.S.C. § 4246, in that § 4247(h) exclusively grants standing to file such a petition for liberty only to the citizen's "counsel for the person or his legal guardian" and not directly to the incarcerated individual?

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OPINIONS BELOW

A copy of the published opinion in *United States v. Timothy O'Laughlin*, 934 F.3d 840 (8th Cir. 2019), is found in the Appendix, pp. 1-2. A copy of the Eighth Circuit Court of Appeal's order of October 31, 2019, denying the petition for rehearing, and for a rehearing *en banc*, is found in the Appendix, p. 3. A copy of the full docket sheet from the United States Court of Appeals for the Eighth Circuit is found in the Appendix, pp. 4-11.

JURISDICTION

Jurisdiction was vested in the United States District Court for the Western District of Missouri pursuant to the federal mental health statutes (18 U.S.C. §§ 4241-4247 (2019)), and specifically 18 U.S.C. §§ 4246 and 4247. Mr. O'Laughlin is currently subject to a civil mental health commitment arising from 18 U.S.C. § 4246(d). In an effort to terminate this civil commitment, Mr. O'Laughlin filed a *pro se* motion seeking the termination of this civil commitment under 18 U.S.C. § 4247(h). Both 18 U.S.C. § 4246(d) and 18 U.S.C. § 4247(h) conferred federal question jurisdiction on the United States District Court for the Western District of Missouri pursuant to 28 U.S.C. § 1331, in that this mental health commitment, and Mr. O'Laughlin's *pro se* challenge to his ongoing commitment, are "civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. §

1331 (2019).

Mr. O'Laughlin appealed the district court's denial of his *pro se* motion to the United States Court of Appeals for the Eighth Circuit. Jurisdiction in that court was established by 28 U.S.C. § 1291. The Eighth Circuit denied the appeal on August 19, 2019. *See Appendix, p. 2, p. 9.*

The final Opinion and Judgment of the United States Court of Appeals for the Eighth Circuit was entered on August 19, 2019. *Appendix, pp. 1-2.* Mr. O'Laughlin filed *pro se* motions for rehearing, and rehearing *en banc*, which were denied on October 31, 2019. *Appendix, p. 3.* In accordance with Rule 13.3, U.S. Sup. Ct. R., this Petition for a Writ of Certiorari was filed in this Court within ninety days of the date on which his motions for rehearing, and rehearing *en banc*, were denied (October 31, 2019). Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1) and Sup.Ct.R. 13.3.

CONSTITUTIONAL PROVISION INVOKED

U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATUTORY PROVISION INVOKED

28 U.S.C. § 1654 (2019)

In all courts of the United States, the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

I. STATEMENT OF THE CASE

A. District Court Proceedings

On September 19, 2016, Mr. O'Laughlin was civilly committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4246(d)(2016). (District Court Document 18) (hereinafter cited as "DCD"). This 2016 civil commitment subjected Mr. O'Laughlin to custody in the Bureau of Prisons based on a finding that he "is presently suffering 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[.]" *Id.* (quoting 18 U.S.C. § 4246(d) (2016)). Mr. O'Laughlin appealed this order of commitment to the Eighth Circuit Court of Appeals. (DCD 23).

On August 10, 2017, the Eighth Circuit affirmed the district court's order of civil commitment. *See United States v. O'Laughlin*, 695 F. App'x 172 (8th Cir. 2017) (*per curiam* and unpublished). Thus, having concluded this direct appeal, Mr. O'Laughlin's mental health commitment under § 4246 became legally final and indefinite in duration. Since the 2016 order of commitment, Mr. O'Laughlin has been continuously incarcerated in Bureau of Prisons' mental health units.

On May 29, 2018, Mr. O'Laughlin filed a *pro se* motion with the district court seeking termination of his § 4246 civil commitment pursuant to the provisions of 18

U.S.C. § 4247(h)(DCD 41). In a subsequent *pro* se pleading on June 8, 2018, Mr. O'Laughlin articulated that: (1) he wished "to represent himself at court for any/all hearings;" and (2) he was requesting a hearing "to determine my release from imprisonment" and to be "released from 'custody.'" (DCD 42).

On June 11, 2018, a Report and Recommendation was filed concluding that these *pro se* motions should be denied. (DCD 43). The Report and Recommendation premised denial on the legal conclusion that § 4247(h) does not authorize Mr. O'Laughlin to seek release *pro se*. (DCD 43). Rather, the Report and Recommendation concluded that the statutory cause of action contained in § 4247(h) is reserved only for the defendant's attorney or guardian and not the defendant himself. Specifically, the Report and Recommendation concluded that:

> Defendant is not authorized to file a motion for a hearing to determine whether he should be discharged. *See* 18 U.S.C. § 4247(h) (only "counsel for the person or his legal guardian may, at any time during such person's commitment, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility.") Furthermore, on October 7, 2015, the Federal Public Defender was appointed to represent Defendant in this matter, and said appointment remains in place. Consequently, Defendant has counsel, who may, if appropriate, file motions on his behalf, including a motion requesting a hearing pursuant to Section 4247(h).

(DCD 43). The district court adopted this conclusion and denied Mr. O'Laughlin's motion on July 2, 2018. (DCD 46). Mr. O'Laughlin filed a *pro* se Notice of Appeal

on July 9, 2018, which was within the time restriction of Fed. R. App. P. 4(a). (DCD 49).

B. Eighth Circuit's Ruling

On appeal to the Eighth Circuit, Mr. O'Laughlin presented a single legal question—whether the district court erred in denying Mr. O'Laughlin's *pro se* motions for termination of his civil commitment, filed pursuant to 18 U.S.C. § 4247(h), on the basis that "Defendant is not authorized to file a motion for a hearing to determine whether he should be discharged" in that such an outcome deprives Mr. O'Laughlin of his Sixth Amendment right to represent himself in legal actions directly impacting his liberty interests. *Appendix, p. 1.* As the Eighth Circuit phrased the issue before it, "Timothy O'Laughlin argues the district court erred in denying his motion under 18 U.S.C. § 4247(h). Specifically, he claims to have a Sixth Amendment and statutory right to proceed *pro se* when seeking discharge from a civil commitment in a proceeding under § 4247(h)." *Appendix, p. 1.*

The Eighth Circuit affirmed the district court's ruling on two bases: (1) that any Sixth Amendment right to proceed *pro se* applies only to criminal proceedings and not proceedings arising from a civil mental health commitment; and (2) that the general statutory right, contained in 28 U.S.C. § 1654 (2019), to proceed *pro se* in civil proceedings "must give way to the specific requirement of 18 U.S.C. § 4247(h)

that motions for release for civil commitment be filed by an attorney or legal guardian for the committed person." *Appendix, p. 2.*

II. REASON FOR GRANTING REVIEW

Rule 10 of the Rules of the Supreme Court of the United States states that one of the most compelling reasons for granting review on a writ of certiorari is where "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court[.]" Sup.Ct.R. 10(c). Given this criteria, Supreme Court review of this issue is critically important.

As the Eighth Circuit acknowledged, the constitutionality and legality of 18 U.S.C. § 4247(h) is a question of "first impression[.]" *Appendix, p. 1.* Additionally, there appear to be no other Circuit Courts that have squarely addressed this legal issue. This question of first impression of critical constitutional significance in that § 4247(h), as interpreted and applied by the Eighth Circuit, acts as a complete prohibition of self-representation by persons incarcerated pursuant to 18 U.S.C. § 4246(d).

This question of first impression is not a mere academic puzzle. At this moment, there are hundreds of persons incarcerated in the Bureau of Prisons, serving potential lifelong terms of custody, pursuant to 18 U.S.C. § 4246.

III. ARGUMENT

QUESTION

Whether 18 U.S.C. § 4247(h) unconstitutionally and illegally deprives individuals of the right to litigate their personal liberty interests *pro se*, under both the Sixth Amendment and 28 U.S.C. § 1654, by filing a *pro se* petition under 18 U.S.C. § 4247(h), seeking a termination of an indeterminate term of custody in the Bureau of Prisons imposed on them pursuant to the civil commitment process contained in 18 U.S.C. § 4246, in that § 4247(h) exclusively grants standing to file such a petition for liberty only to the citizen's "counsel for the person or his legal guardian" and not directly to the incarcerated individual?

A. Supreme Court Review is Required Given the Concrete, Personal Liberty Interests at Stake and Lack of Controlling Supreme Court Precedent

Mr. O'Laughlin is a proxy for all those persons currently incarcerated in a penal environment pursuant to a mental health commitment under 18 U.S.C. § 4246. Specifically, Mr. O'Laughlin is today incarcerated in the Bureau of Prisons (BOP) at the United States Medical Center for Prisoners in Rochester, Minnesota. *See* https://www.bop.gov/inmateloc. Significantly, this BOP web-based "inmate locator" indicates that Mr. O'Laughlin's release date is "unknown." *Id.* His release date is unknown because a civil commitment under 18 U.S.C. § 4246 is inherently indefinite. Stated differently, this civil commitment to the BOP is a potential life sentence to incarceration in prison.

Given this dire potential term of incarceration, the federal mental health statutes do provide some legal mechanisms by which a civil commitment can be

terminated. One such mechanism is found in 18 U.S.C. § 4247(h), which states:

> (h) Discharge--Regardless of whether the director of the facility in which a person is committed has filed a certificate pursuant to the provisions of subsection (e) of section 4241, 4244, 4245, 4246, or 4248, or subsection (f) of section 4243, counsel for the person or his legal guardian may, at any time during such person's commitment, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be committed. A copy of the motion shall be sent to the director of the facility in which the person is committed and to the attorney for the Government.

18 U.S.C. § 4247(h) (2018). This provision is unique, and distinguished from other federal mental health statutes providing for release from a civil commitment, in that § 4247(h) allows for the defense side of the case to unilaterally initiate proceedings to terminate the mental health commitment—albeit through his or her "attorney" and/or "legal guardian." In this case, Mr. O'Laughlin himself filed motions seeking release from his § 4246 commitment. Stated differently, neither an attorney, nor a legal guardian initiated these proceedings seeking termination of Mr. O'Laughlin's custody.

Because Mr. O'Laughlin filed *pro* se motions (interpreted by the district court as seeking termination of his civil commitment via § 4247(h)), the district court denied his motions and adopted the conclusion of the Report and Recommendation that:

> Defendant is not authorized to file a motion for a hearing to determine whether he should be discharged. *See* 18 U.S.C. § 4247(h) (only "counsel for the person or his legal guardian may, at any time during such person's commitment, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility.") Furthermore, on October 7, 2015, the Federal Public Defender was appointed to represent Defendant in this matter, and said appointment remains in place. Consequently, Defendant has counsel, who may, if appropriate, file motions on his behalf, including a motion requesting a hearing pursuant to Section 4247(h).

(DCD 43). The district court adopted this conclusion and denied Mr. O'Laughlin's motion on July 2, 2018. (DCD 46).

The Eighth Circuit affirmed this ruling first finding that a civil commitment is distinct from criminal prosecutions and does not trigger the implicit right to proceed *pro se* under the Sixth Amendment. Specifically, the Eighth Circuit concluded:

> The Supreme Court has held, in the context of a Due Process Clause challenge, that civil commitments are distinct from criminal prosecutions. *See Addington v. Texas*, 441 U.S. 418, 428, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979)("In a civil commitment state power is not exercised in a punitive sense. ... [A] civil commitment proceeding can in no sense be equated to a criminal prosecution."); *see also United States v. Veltman*, 9 F.3d 718, 721 (8th Cir. 1993) (holding the standard for waiving the statutory right to counsel in a civil commitment is "less exacting" than for waiving the Sixth Amendment right to counsel in a criminal prosecution). Civil commitment involves a loss of liberty, to be sure. But rather than imposing a punitive sentence upon criminal conviction, the civil commitment process provides for release once the individual is no longer a danger to others. *See* 18 U.S.C. § 4246(e). Following the logic of the Supreme Court in *Addington*, 441 U.S. at

> 428, 99 S.Ct. 1804, we hold a civil commitment proceeding under § 4246 is not a criminal prosecution for purposes of the Sixth Amendment. We thus conclude the district court did not err in denying O'Laughlin's § 4247(h) motion.

Appendix, p. 1. This conclusion, and the application of the language of § 4247(h), is unconstitutional in that it directly divests persons like Mr. O'Laughlin from seeking their own freedom *pro se*. Such an outcome is offensive to the Sixth Amendment and should not be tolerated.

As previously mentioned, this is an issue of first impression with national implications. Given the extreme liberty interests at stake for persons subject to § 4246 commitments, Supreme Court review should be granted to clarify whether persons incarcerated under § 4246 are legally able to seek their freedom *pro se*.

B. Supreme Court Review is Required to Validate *Faretta*'s Vision of the Sixth Amendment Right to Self-Representation

The Eighth Circuit's exclusive reliance on *Addington v. Texas*, 441 U.S. 418 (1979), to resolve this critical constitutional issue of first impression is misplaced and distorts the vision of the Sixth Amendment's right to self-representation announced in *Faretta v. California*, 422 U.S. 806 (1975). Supreme Court review should be granted to validate and uphold *Faretta*'s vision of the Sixth Amendment.

Addington addressed a fundamentally different constitutional issue. In *Addington*, the Supreme Court phrased the question before it as follows. "The

question in this case is what standard of proof is required by the Fourteenth Amendment to the Constitution in a civil proceeding brought under state law to commit an individual involuntarily for an indefinite period to a state mental hospital." 441 U.S. at 419-20. That issue is profoundly, and fatally, different from the constitutional issue raised by Mr. O'Laughlin's case—whether the Sixth Amendment demands that a person be granted the core right to seek their own freedom from incarceration. *Addington* in no way touches, or even mentions, the Sixth Amendment right to proceed *pro se* addressed by the Supreme Court's analysis in *Faretta v. California*, 422 U.S. 806 (1975).

In *Faretta v. California*, 422 U.S. 806 (1975), the United States Supreme Court wrestled with the constitutional right of the accused to represent himself or herself in a criminal case. Ultimately, the Supreme Court held that:

> The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.
>
> * * *

> The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master; and the right to make a defense is stripped of the personal character upon which the Amendment insists.

422 U.S. at 819-20. The Supreme Court concluded that, "The Sixth Amendment, when naturally read, thus implies a right of self-representation." *Id.* at 821.

This case of first impression requires Supreme Court review given the unresolved collision between the concrete deprivation of personal liberty currently being suffered by those committed under 4246 and their right to personally seek their liberty under the Sixth Amendment. That is, *Faretta*'s implied right of self-representation under the Sixth Amendment for those facing the loss of personal liberty under 18 U.S.C. § 4246 cannot be reconciled with the Eighth Circuit's interpretation and application of 18 U.S.C. § 4247(h) that bans such persons from seeking their liberty *pro se*.

The Eighth Circuit's wooden distinction between criminal and civil incarceration, in this scenario, is specious. For those like Mr. O'Laughlin, who are suffering indefinite commitments in the BOP's penal institutions, there is no discernible difference between the daily loss of liberty they experience verses those

persons who are incarcerated having been found guilty of a crime. Regardless of its name, the Medical Center is a prison and those within its razor-wired walls live lives without essential liberty—indeed, it is likely that persons suffering a mental health commitment (like Mr. O'Laughlin) experience even less liberty than the average BOP inmate. Thus, the Sixth Amendment principles announced in *Faretta* are equally, or more, at play in this case of a citizen facing the profound loss of freedom due to a mental health commitment under § 4246. Remarkably, these mental health commitments under § 4246 are indefinite and potentially life sentences—unlike the vast majority of criminal sentences that have a definite conclusion.

In short, Mr. O'Laughlin has a constitutional right, under the Sixth Amendment, to file *pro se* pleadings that seek to secure his liberty. Any federal statute, like § 4247(h), that create an arbitrary and capricious barrier to seeking judicially ordered freedom is unconstitutional.

C. Supreme Court Review Should be Granted to Avoid Statutory Inconsistencies that Will Diminish Protected Liberty Interests

18 U.S.C. § 4247(h) is in direct conflict with the provisions of 28 U.S.C. § 1654, which states, "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654 (2018). There is no reason to find that the broad and permissive language of § 1654

is somehow inapplicable in motions filed under § 4247(h). Rather, the compelling liberty interests at stake in cases such as Mr. O'Laughlin's cut severely against such a judicially-created limitation on the meaning of § 1654. In addressing this anomaly, the Eighth Circuit held as follows:

> O'Laughlin also argues he is entitled to proceed pro se by 28 U.S.C. § 1654, which generally allows for self-representation in all proceedings in federal court. But under the well- established rule of statutory interpretation that specific statutory language controls over more general provisions, *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645, 132 S.Ct. 2065, 182 L.Ed.2d 967 (2012), the general rule of 28 U.S.C. § 1654 must give way to the specific requirement of 18 U.S.C. § 4247(h) that motions for release from civil commitment be filed by an attorney or legal guardian for the committed person.

Appendix, p. 2. The Eighth Circuit's ruling is based on a serious misreading of *RadLAX.* Moreover, the Eighth Circuit's misreading of *RadLAX* directly and unconstitutionally, impacts the liberty interests of those committed under § 4246. Therefore, Supreme Court review is necessary.

RadLAX stands for the proposition that a specific statute acts as an exception to more general statutes within the same statutory scheme. *RadLAX*, 566 U.S. at 645-47. The Supreme Court makes this reasoning specifically clear in *RadLAX* by its reliance on *HCSC–Laundry v. United States*, 450 U.S. 1 (1981), which states, "the specific governs the general "particularly when the two are interrelated and closely positioned, both in fact being parts of [the same statutory scheme]'"). 566 U.S. at

645. The Supreme Court further solidifies this "same statutory scheme" analysis by quoting *United States v. Chase*, 135 U.S. 255 (1890), which states:

> "It is an old and familiar rule that, where there is, in the same statute, a particular enactment, and also a general one, which, in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. This rule applies wherever an act contains general provisions and also special ones upon a subject, which, standing alone, the general provisions would include." *United States v. Chase*, 135 U.S. at 260.

RadLAX, 566 U.S. at 646.

Here the Eighth Circuit has abandoned the "same statutory scheme" limitation on the "specific-trumps-general" canon of statutory interpretation as stated in *RadLAX*. In its place, the Eighth Circuit has created a new and novel canon of statutory interpretation that any specific statute trumps any general statute. Such a ruling demands Supreme Court review. In short, the Eighth Circuit's ruling illegally and unconstitutionally divests persons incarcerated under § 4246 of their right under the Sixth Amendment and 28 U.S.C. § 1654 to self-representation by applying a previously unknown canon of statutory interpretation. Additionally, this novel canon of interpretation has far-reaching implications in the realm of statutory construction that should either be refused or validated by the Supreme Court.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant this petition.

Respectfully submitted,

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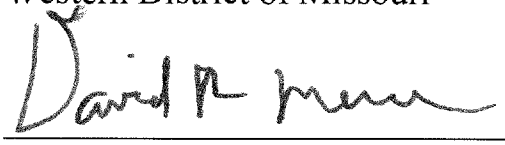

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