

No. \_\_\_\_\_

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In the  
Supreme Court of the United States

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**Sealed Appellant,**

*Petitioner,*

v.

**Sealed Appellee,**

*Respondent.*

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

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PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

- I. Whether this Court should grant certiorari to determine whether continued custody under 18 U.S.C. § 4142 for almost four months beyond the expiration of an order to determine mental competency violates the Petitioner's rights under the Due Process Clause?

## **PARTIES TO THE PROCEEDING**

Sealed Appellant is the petitioner, who was the respondent-appellant below.

The Sealed Appellee is the respondent, and was the petitioner-appellee in the court below.

## TABLE OF CONTENTS

QUESTION PRESENTED .....	ii
PARTIES TO THE PROCEEDING .....	iii
INDEX OF APPENDICES .....	v
TABLE OF AUTHORITIES .....	vi
PETITION FOR A WRIT OF CERTIORARI .....	1
OPINIONS BELOW .....	1
JURISDICTION.....	1
STATUTORY AND RULES PROVISIONS.....	1
LIST OF PROCEEDINGS BELOW .....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THIS PETITION.....	7
CONCLUSION.....	12

**INDEX TO APPENDICES**

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Order of Commitment from the United States District Court for the  
Northern District of Texas

**TABLE OF AUTHORITIES**

**Cases**

**Page(s)**

## PETITION FOR A WRIT OF CERTIORARI

Petitioner seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

### OPINIONS BELOW

The opinion of the Court of Appeals is located within the Federal Appendix at *Sealed Appellee v. Sealed Appellant*, 802 F. Appx. 138 (5th Cir. 2020) (unpublished). It is reprinted in Appendix A to this Petition. The district court's commitment order is attached as Appendix B.

### JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on March 10, 2020. On March 19, 2020, this Court extended the 90-day deadline to file a petition for certiorari to 150 days. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

### STATUTORY PROVISIONS

18 U.S.C. § 4241 provides, in part, for the following procedure once a district court has made a determination that a defendant is incompetent to stand trial:

**(d) Determination and Disposition.**—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the

foreseeable future he will attain the capacity to permit the proceedings to go forward; and

(2) for an additional reasonable period of time until—

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

The portion of the mental health statute which allows for the continued commitment of a person found incompetent to stand trial reads as follows:

**§ 4246 Hospitalization of a person due for release but suffering from a mental disease or defect**

**(a) Institution of Proceeding.—**

If the director of a facility in which a person is hospitalized certifies that a person in the custody of the Bureau of Prisons whose sentence is about to expire, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person, 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, and that suitable arrangements for State custody and care of the person are not available, he shall transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person 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. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

## CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides in part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## LIST OF RELATED PROCEEDINGS

1. *Sealed Appellant v. Sealed Appellant*, 3:17-CR-00200. United States District Court, Middle District of Tennessee, original criminal charges.
2. *Sealed Appellant v. Sealed Appellant*, 4:19-CV-0081-A-1, United States District Court, Northern District of Texas, petition for mental health commitment, commitment ordered on March 26, 2019.
3. *Sealed Appellee v. Sealed Appellant*, CA No. 19-10405, United States Court of Appeals for the Fifth Circuit. Opinion and judgment affirming the sentence entered March 10, 2020. *Sealed Appellee v. Sealed Appellant*, 802 Fed. Appx. 138 (5th Cir. 2020) (unpublished) (See Appendix A).

## STATEMENT OF THE CASE

On October 18, 2017, the Petitioner/Respondent/Appellant (Petitioner) was indicted in the Middle District of Tennessee for one count of assaulting a Special Agent engaged in the performance of his duties, and one count of resisting or impeding a Special Agent engaged in the performance of his duties, both counts in violation of 18 U.S.C. § 111(a). (ROA.104-105).<sup>1</sup> On January 23, 2018, the Petitioner was apparently committed to the Attorney General pursuant to 18 U.S.C. § 4241 for a determination of competency. *See* (ROA.125). Pursuant to this order, the Petitioner has been housed at Federal Medical Center, Carswell in Fort Worth, Texas (Carswell) since February 22, 2018. *See id.* The original commitment expired on May 9, 2018, and nearly two months later, the Government requested an additional four months to attempt to restore competency. *See id.* The four-month extension was granted by the district court and expired on September 9, 2018. *See id.* On October 1, 2018, the district court in the Middle District of Tennessee entered an order denying forced medication and continuing the trial from its setting of October 2, 2018. (ROA.139).

On January 28, 2019, the government filed a certificate of dangerousness from the Warden of Carswell, seeking a mental health commitment, pursuant to 18 U.S.C. § 4246. (ROA.147-149). The government filed a petition for a civil commitment on

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<sup>1</sup> For the convenience of the Court and the parties, the Petitioner is citing to the page number of the record on appeal below.

January 28, 2019. (ROA.96-102). On January 28, 2019, the district court appointed the Federal Public Defender to represent Petitioner. (ROA.159).

Based upon the evidence presented at a civil commitment hearing, the district court found by clear and convincing evidence that the Appellant suffered from a mental disease or defect, as a result of which her release from custody would create a substantial risk of bodily injury to another person or serious damage to property of another. (ROA.16,182-183).

On appeal, the Petitioner raised the issue that it was plain error for the district court in the Northern District of Texas to move forward with a commitment proceeding that was not initiated until almost four months after the commitment order from the Middle District of Tennessee in the pending criminal case had expired. The Court of Appeals found that, “[u]nder these circumstances, we find the Appellant has failed to show that the length of her hospitalization during these proceedings clearly or obviously violated § 4241(d).” *Sealed Appellee v. Sealed Appellant*, 802 Fed. Appx. 138, 143 (5th Cir. 2020) (unpublished).

## REASONS FOR GRANTING THIS PETITION

I. This Court should grant review to determine whether, under the plain language of the statute, the Bureau of Prisons was required to release the Petitioner upon expiration of her commitment to determine competency to stand trial. Neither the Bureau of Prisons nor the United States had authority to initiate commitment proceedings almost four months after the expiration of that term.

### A. Authority and discussion

Title 18 U.S.C. 4241(d) provides for the following procedure once a district court has made the determination that a defendant is incompetent to stand trial:

(d)Determination and Disposition.—If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and

(2) for an additional reasonable period of time until—

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

18 U.S.C. § 4241(d)

On January 23, 2018, the Petitioner was apparently committed to the Attorney General pursuant to 18 U.S.C. § 4241 for a determination of competency. *See* (ROA.125). Pursuant to this order, the Petitioner was housed at Federal Medical Center, Carswell in Fort Worth, Texas (Carswell) since February 22, 2018. *See id.* The commitment expired on May 9, 2018, and nearly two months later, the Government requested an additional four months to attempt to restore competency. *See id.* The four-month extension was granted and expired on September 9, 2018. *See id.* It does not appear from the record that the commitment order was extended beyond September 9, 2018.

However, the government did not seek to implement mental health commitment proceedings pursuant to 18 U.S.C. § 4146 until January 28, 2019. On January 28, 2019, the government filed a certificate of dangerousness from the Warden of Carswell, seeking a mental health commitment, pursuant to 18 U.S.C. § 4246. (ROA.147-149). The government filed a petition for a civil commitment on January 28, 2019. (ROA.96-102). On January 28, 2019, the district court appointed the federal public defender to represent the Petitioner. (ROA.159). From the record before us, the government took no action to initiate a civil proceeding between the expiration of the commitment order on September 9, 2018, and initiating civil commitment proceedings on January 28, 2019, a period of almost four months.

There should be no question that the Petitioner in this case was held at FMC Carswell without authority for almost 4 months past the expiration on September 9, 2018, of the July 11, 2018 order committing her to hospitalization. *See United States*

*v. Magassouba*, 544 F.3d 387, 410 (2nd Cir. 2008) (“Because §4241(d)(1) is unequivocal in limiting custodial hospitalization under that subsection to a reasonable period of time, ‘not to exceed four months,’ we necessarily conclude that the Attorney General exceeded its authority in holding Magassouba in custodial hospitalization through May 12, 2005, approximately three weeks longer than the four months specified in the court’s unopposed order of January 4, 2005.”); *See also United States v. Wood*, 469 F.2d 676, (5th Cir. 1972). In *Magassouba*, the defendant was seeking dismissal of the indictment. The Court of Appeals for the Second Circuit found the unauthorized custody was harmless in the context of a motion to dismiss the indictment as a remedy for such error. *See id.* at 392. In so holding, however, the court in *Magassouba*, also stated the following:

We further conclude that the district court did not exceed its authority in ordering Magassouba’s § 4241(d)(2)(A) commitment for additional custodial hospitalization and involuntary psychiatric treatment. We agree with the defendant that § 4241(d) does not permit an incompetent defendant to be held in *uninterrupted* custodial hospitalization unless a district court finds before expiration of a defendant’s initial term of § 4241(d)(1) confinement (which cannot exceed four months), that circumstances warrant additional hospitalization pursuant to §4241(d)(2)(A). Thus, when a defendant’s term of § 4241(d)(1) confinement expires and no § 4241(d)(2) order has been entered, the Attorney General lacks statutory authority to hold a defendant in further custodial hospitalization.

*United States v. Magassouba*, 544 F.3d at 392.

In the Petitioner’s case, from the record as it now exists, it does not appear that the district court for the Middle District of Tennessee extended the Petitioner’s commitment beyond September 9, 2018. The Attorney General was without authority to hold the Petitioner beyond September 9, 2018, and was without authority to hold

her in custody while a certification of dangerousness was finally filed almost four months later. The Petitioner has been severely harmed by this error in that she has now been indefinitely committed to the custody of the Attorney General, rather than returned to the court with original Jurisdiction for the court to determine how to move forward on the pending criminal charges.

While it appears that some Courts have allowed a reasonable period of time after the expiration of the four-month period to file the dangerousness certificate, it is difficult to imagine how a nearly four-month delay could be justified or harmless. See *United States v. Godinez-Ortiz*, 563 F.3d 1022, 1030 (9th Cir. 2009).

This error of the Bureau of Prisons holding the Petitioner and filing a certificate of dangerousness nearly four months after the expiration of the commitment period resulted directly in an indefinite civil commitment and violates the Petitioner's Fifth Amendment Due Process rights. See *United States v. Baker*, 807 F.3d 1315, 1324 (6th Cir. 1986)(Holding a defendant in custody pursuant to § 4246 without a proper certificate from the Bureau of Prisons violated the defendant's Fifth Amendment Due Process rights).

#### **B. Plain Error**

Whether a commitment proceeding is authorized is ordinarily a question of statutory construction reviewed *de novo*. See *Sealed Appellee 1 v. Sealed Appellant 1*, 767 F.3d 418, 421 (5th Cir. 2013)(citing *United States v. Bonin*, 541 F.3d 399, 400 (5th Cir. 2008)). However, the Petitioner did not raise this objection in the trial court. Therefore, the error must be reviewed under the plain error standard found in

Federal Rule of Criminal Procedure 52(b). Reversible plain error consists of 1) error, 2) that is plain or obvious, 3) that affects substantial rights, and 4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings. *United States v. Jones*, 527 U.S. 373, 389 (1999). Moreover, in determining whether error is plain, “it is enough that the error be plain at the time of appellate consideration.” *Henderson v. United States*, 568 U.S. 266, 274 (2013) quoting *Johnson v. United States*, 520 U.S. 461, 468 (1997) (“We agree with petitioner on this point, and hold that in a case such as this – where the law at the time of trial was settled and clearly contrary to the law at the time of the appeal – it is enough that an error be ‘plain’ at the time of appellate consideration.”).

### **1. Error**

There should be no question that the continued commitment or confinement of the Petitioner to FMC Carswell after the expiration of the commitment order on September 9, 2018, was without authorization. See *United States v. Magassouba*, 544 F.3d at 410.

### **2. The error was clear or obvious**

The district court in the Middle District of Tennessee noted in its July 11, 2018, order that the 4-month extension of the commitment order expired on September 9, 2018. The district court also urged the Bureau of Prisons “to complete its evaluation promptly.” (ROA.125).

### **3. Effecting the substantial rights of the Appellant**

As a result of this error, the Appellant, rather than being returned to the original court to face the criminal charges and a disposition of that case, has been indefinitely committed to the custody of the Attorney General. Moreover, her liberty was deprived for four months past the expiration of her commitment order. This was a violation of her Fifth Amendment Due Process rights. See *United States v. Baker*, 807 F.3d at 1324.

### **4. That seriously affects the fairness, integrity, or public reputation of judicial proceedings.**

As a result of the error in the case, the Petitioner has been indefinitely committed to the custody of the Bureau of Prisons. Realistically, the Petitioner could spend the rest of her life in FMC Carswell. At best, perhaps someday she might enjoy a conditional release, which would be equivalent to a term of supervised release for life.

**CONCLUSION**

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 7th day of August, 2020.

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