
No.

**IN THE
SUPREME COURT OF THE UNITED STATES**

FITA SPANN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTION PRESENTED

WHETHER DUE PROCESS AND THE FEDERAL MENTAL HEALTH STATUTES 18 U.S.C. § 4246 AND § 4247 REQUIRE A NEW MENTAL EXAMINATION, PRIOR TO THE REVOCATION OF A TERM OF CONDITIONAL RELEASE PREVIOUSLY GRANTED PURSUANT TO 18 U.S.C. § 4246(f), ADDRESSING THE ESSENTIAL STATUTORY QUESTION OF WHETHER “IN LIGHT OF HIS FAILURE TO COMPLY WITH THE PRESCRIBED REGIMEN OF MEDICAL, PSYCHIATRIC, OR PSYCHOLOGICAL CARE OR TREATMENT, HIS CONTINUED RELEASE WOULD CREATE A SUBSTANTIAL RISK OF BODILY INJURY TO ANOTHER PERSON OR SERIOUS DAMAGE TO PROPERTY OF ANOTHER?”

TABLE OF CONTENTS

PAGE

Question Presented:

Whether Due Process and the federal mental health statutes 18 U.S.C. § 4246 and § 4247 require a new mental examination, prior to the revocation of a term of conditional release previously granted pursuant to 18 U.S.C. § 4246(f), addressing the essential statutory question of whether “in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another?”i

Table of Contents	ii
Index to Appendices.....	iii
Table of Authorities	iv
Opinions Below.....	1
Jurisdiction	2
Constitutional Provisions Invoked	2
Statement of the Case	3
A. Original Jurisdiction	3
B. Facts and Proceedings Below	4
Reasons for Granting Review	11
Argument.....	14
Conclusion.....	19
Appendices	20

INDEX TO APPENDICES

Appendix A - Opinion of the Eighth Circuit Court of Appeals dated
January 11, 2021

Appendix B - Full Docket Sheet from the Eighth Circuit Court of Appeals
U. S. v. Spann, No. 19-3573

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965)	15
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	15
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972).....	15, 16
<i>United States v. Woods</i> , 944 F. Supp. 778 (D. Minn. 1996)	7
<i>United States v. Fita Spann</i> , 984 F.3d 711 (8 th Cir. January 11, 2021)	1, 4, 5, 10

<u>STATUTES</u>	<u>PAGE</u>
18 U.S.C. § 3231	3
18 U.S.C. § 4246	4, 5, 12, 17, 18
18 U.S.C. § 4246(d)	3, 12
18 U.S.C. § 4246(e)	3, 4, 12, 13, 14
18 U.S.C. § 4246(f).....	3, 6, 9, 13, 16, 17, 18
18 U.S.C. § 4247	4, 5, 6, 7, 14, 17, 18
18 U.S.C. § 4247(c)	17
18 U.S.C. § 4247(d)	17
28 U.S.C. § 1254(1)	2

SUPREME COURT RULES

PAGE

Sup. Ct. Rule 10(c).....	11
Sup. Ct. Rule 13	2
Sup. Ct. Rule 13.1	2
Sup. Ct. Rule 13.3	2

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Petitioner, Fita Spann, 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 January 11, 2021.

OPINIONS BELOW

A copy of the published opinion in *United States v. Fita Spann*, 984 F.3d 711 (8th Cir. January 11, 2021), appears in the Appendix hereto and is found at Appendix A. A copy of the full docket sheet from the United States Court of Appeals for the Eighth Circuit is included as part of the Appendix and is found at Appendix B.

JURISDICTION

The final Opinion and Judgment of the United States Court of Appeals for the Eighth Circuit was entered on January 11, 2021. In accordance with Rules 13.1 and 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 the Eighth Circuit Court of Appeals entered its final judgment in Mr. Spann's appeal. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1) and Sup.Ct.R. 13.

CONSTITUTIONAL PROVISION INVOKED

1) U.S. Const. Amend. V

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 offense 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 private use, without just compensation.

I. STATEMENT OF THE CASE

A. Original Jurisdiction

Jurisdiction was vested in the United States District Court for the Western District of Missouri pursuant to 18 U.S.C. § 3231. Specifically, the District Court for the Western District of Missouri had jurisdiction to revoke Mr. Spann's conditional release from his civil mental health commitment pursuant to 18 U.S.C. § 4246(f) having previously committed him, and conditionally released him, via 18 U.S.C. § 4246(d) and (e). Mr. Spann was committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4246(d), on June 6, 2001. Thereafter, on March 17, 2015, the United States District Court for the Western District of Missouri granted Mr. Spann a conditional release, via 18 U.S.C. § 4246(e). On April 22, 2019, the Government sought to revoke this term of conditional release, via 18 U.S.C. § 4246(f) alleging that Mr. Spann had violated the conditions of his conditional release and because of "his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another." A final order revoking Mr. Spann's conditional release was filed on September 27, 2019. Mr. Spann filed his Notice of Appeal on November 26, 2019, which was within the time restriction of Fed. R. App. P. 4(a).

In *United States v. Fita Spann*, 984 F.3d 711 (8th Cir. 2021), this Court affirmed, January 11, 2021, the District Court's revocation of conditional release.

B. Facts and Proceedings Below

Introduction

Mr. Spann was civilly committed pursuant to 18 U.S.C. § 4246 on June 6, 2001. On March 17, 2015, this Court ordered that Mr. Spann be conditionally released, via 18 U.S.C. § 4246(e). The Government filed a Notice of Violation and Request for a Warrant on March 29, 2019, alleging that Mr. Spann had violated the conditions of his conditional release. Based on these alleged violations, the Government filed a Motion for Revocation of Conditional Release on April 22, 2019.

In response to the Government's motion to revoke Mr. Spann's conditional release, an evidentiary hearing was held on July 16, 2019. Prior to this evidentiary hearing, the defendant filed a written motion pursuant to 18 U.S.C. § 4247 requesting that the Court order an independent mental examination. This motion was denied. The objection to proceeding without a new contemporaneous mental health evaluation as to dangerousness was lodged at the evidentiary hearing and in objections to the Report and Recommendation filed by the United States Magistrate Judge assigned to the case.

A final order revoking Mr. Spann's conditional release was filed by the District Court [having adopted the aforementioned Report and Recommendation] on

September 27, 2019. Mr. Spann filed his Notice of Appeal on November 26, 2019, which was within the time restriction of Fed. R. App. P. 4(a). The District Court's revocation of Mr. Spann's conditional release without ordering a new and contemporaneous mental evaluation as to dangerousness, was affirmed by the Eighth Circuit on January 11, 2021. *See United States v. Fita Spann*, 984 F.3d 711 (8th Cir. 2021).

District Court Proceedings

By order of this Court, Mr. Spann was civilly committed pursuant to 18 U.S.C. § 4246 on June 6, 2001. On March 17, 2015, this Court ordered that Mr. Spann be conditionally released. The Government filed a Notice of Violation and Request for a Warrant on March 29, 2019, that alleged violations of the conditions of Mr. Spann's release. Based on these alleged violations, the Government filed a Motion for Revocation of Conditional Release on April 22, 2019. In this motion, the Government stated that Mr. Spann had lost his placement at a mental health facility due to repeated non-compliance with the rules of that facility.

In response to the Government's motion to revoke Mr. Spann's conditional release, an evidentiary hearing was held on July 16, 2019. Prior to this evidentiary hearing, the defendant filed a written motion pursuant to 18 U.S.C. § 4247 requesting an independent mental examination:

[F]or the purpose of determining whether the Defendant should be remanded to a suitable facility on the grounds that, in light of his alleged failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to the property of another[.]

This motion explicitly argued that revocation of a term of conditional release, governed by 18 U.S.C. § 4246(f), necessitates a new contemporaneous mental health finding as to the risk of dangerousness. Specifically, Mr. Spann's motion argued that:

[T]he central inquiry of a revocation hearing under § 4246(f) is, by the plain statutory language, an inquiry about the defendant's present mental health and whether the defendant's current mental health causes him or her to be dangerous given the failure(s) to abide by the conditions of release. Indeed, it is critical to the proper interpretation and application of § 4246(f) to understand that the ultimate inquiry of this statute is a mental health determination—whether, in light of the failures to abide by the regimen of medical or mental health care and treatment conditions of release, continued conditional release “create a substantial risk of bodily injury to another person or serious damage to property of another.” 18 U.S.C. § 4246(f) (2019). This phrase is the exact finding required, literally word for word, to initially civilly commit a person under § 4246. 18 U.S.C. § 4246(a) and (d) (2019). Thus, the ultimate inquiry under a § 4246(f) hearing necessitates that this Court make findings about the defendant's mental health, in light of the failure to abide by the conditions of conditional release, and whether the defendant's present mental health makes the defendant “dangerous” as that concept is stated and applied § 4246(a) and (d). Further, Chapter 313 of the United States Code is entitled, “Offenders with Mental Disease or Defect,” and is comprised of 18 U.S.C. §§ 4241 – 4248 (2019), all statutes that relate to, determine, and relate to the mental health of the defendant.

In this motion, Mr. Spann explicitly invoked due process and the provisions of 18 U.S.C. § 4247 in arguing that an independent mental evaluation prior to the revocation

hearing was demanded “to fully effectuate these due process and statutory protections . . . Without this evaluation, Mr. Spann will be unable to present relevant and beneficial expert mental health testimony as to his present mental health status.” By a written order, the Magistrate denied this motion for an independent mental health examination on July 1, 2019, principally relying on *United States v. Woods*, 944 F. Supp. 778 (D. Minn. 1996).

The evidentiary hearing on the Government’s motion to revoke Mr. Spann’s conditional release was held on July 16, 2019. At the evidentiary hearing on July 16, 2019, Mr. Spann again objected to proceeding forward on the revocation hearing given the lack of an independent mental evaluation. Specifically, counsel for Mr. Spann stated:

[B]y way of making an objection, this case was generated in 2014, as the Court has referenced, based on a May 2014 risk assessment. So, it’s been five years since there was a determination in a risk assessment. Well, let’s put it this way. The original risk assessment was May of 2014. I had previously filed a motion requesting an independent mental exam and the Court denied that request. But I would simply like to restate that objection for the purposes of the record today and ask that the Court order an independent mental exam pursuant §4247.

This request was denied by the Magistrate.

After the evidentiary hearing, the Magistrate filed a Report and Recommendation concluding that Mr. Spann’s conditional release should be revoked. This Report and Recommendation was silent as to the issue that is the focus of this

appeal. Written objections to this Report and Recommendation were filed on August 23, 2019. This Report and Recommendation was adopted by the District Court on September 27, 2019.

In this written order adopting the Report and Recommendation, the District Court addressed the issue relevant to this appeal. The District Court concluded as follows:

To begin, Defendant's argument regarding whether he remains committable under § 4246 is not the issue before the Court. Defendant's conditional release was not a determination that he was no longer committable under § 4246, rather, it was an order stating that he was "conditionally released pursuant to Title 18 U.S.C. § 4246(e)(2) under the following conditions..." (Doc. 76, emphasis added). The current motion pending before the Court is whether Defendant's conditional release should be revoked for failure to abide by the Court's ordered conditions, and as a result, whether he should be remanded to the custody of the Attorney General for hospitalization and treatment pursuant to the provisions of 18 U.S.C. § 4246.

* * *

[Rather], the Court must determine whether in light of that violation he creates a substantial risk of harm to other people or their property. This Court has previously found, by clear and convincing evidence, that Defendant "suffers 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 commitment under § 4246 is appropriate. *See e.g. United States v. Woods*, 944 F. Supp. 778, 780 (D. Minn. 1996) (finding that at the revocation hearing the court may determine whether a mental examination is required or whether the statutory standard may be met without the need for a mental examination). There has been no evidence presented to the Court that contradicts its prior ruling. The Court previously ruled that Defendant could be safely released to the community if, and only if, certain

conditions were present. Those conditions are no longer present due to Defendant's actions. There has never been a determination Defendant could be safely released in the absence of the Court ordered conditions.

Defendant argues that ruling on the motion to revoke without an independent evaluation is improper. Here, Defendant's last mental evaluation was five years ago. The government has not provided the Court with an updated risk assessment of Defendant since his arrest. However, the current issue presented to the Court is not whether Defendant has recovered from his mental illness or whether he should be unconditionally released. Rather, the issue is whether his conditional release should be revoked and as a result he should be remanded to the custody of the Attorney General pursuant to the statute because his continued release would be a danger. The Court previously ruled that Defendant could be safely released only if certain conditions were followed to ensure both the safety of the Defendant and the public. Defendant failed to follow those conditions. As a result, the conditions established to ensure safety are no longer in place and as a result, the Court finds a danger now exists. Further, the Court considers the fact Defendant failed to comply with his conditions of release as further evidence of dangerousness. The Court does not believe the government must establish that Defendant remains committable under 18 U.S.C. §4246 at this procedural stage.

The final above order revoking Mr. Spann's conditional release was entered on September 27, 2019. The District Court's Clerk's Judgment was filed on September 30, 2019. Mr. Spann filed his Notice of Appeal on November 26, 2019.

Eighth Circuit Proceedings

Mr. Spann carried this issue forward through all appellate proceedings before the Eighth Circuit. In affirming the District Court's decision to revoke Mr. Spann's conditional release granted under 18 U.S.C. § 4246(f), the Eighth Circuit stated:

Spann appeals and argues that the district court was required to order a mental health examination before deciding whether to revoke the conditional release. We conclude that no such examination was required, and that revocation was appropriate based on a finding that Spann violated the conditions of his release. We therefore affirm the district court's order and judgment.

United States v. Fita Spann, 984 F.3d 711, 712 (8th Cir. 2021). In support of this finding, the Eighth Circuit reasoned as follows:

After Spann failed to abide by the conditions that were necessary to ensure the safety of the community, and no other set of conditions was available to accomplish the same objectives, it naturally followed that the situation returned to the state of affairs that existed previously: Spann presented a danger to the community. The court was required under § 4246(f) to decide whether Spann, “in light of his failure to comply” with conditions of release, presented “a substantial risk of bodily injury to another person or serious damage to property of another.” But the court was authorized to make that determination against the backdrop of previous findings that Spann presented such a risk if he were released without conditions.

Section 4246(f) does not direct, or even expressly authorize, the district court to order a mental health examination in a proceeding to consider revocation of conditional discharge. At least one court has posited that there is “implicit” authority to order an examination in that situation. *See Woods*, 944 F. Supp. at 780; *cf. United States v. Phelps*, 955 F.2d 1258, 1265 (9th Cir. 1992) (discussing “inherent power” to order an examination). The more straightforward way for a person to obtain a mental health examination is to move for unconditional discharge under § 4247(h), which provides that the person may “at any time” seek such relief once he has been committed for one hundred and eighty days. Spann did not file such a motion, argue that he had recovered from his mental defect or illness, or present any evidence of an improved condition. The district court thus had no cause to combine the revocation proceeding under § 4246(f) with an inquiry into possible discharge under § 4247(h), or to exercise potential implicit authority to develop the record

of the revocation proceeding. *See United States v. Woods*, 970 F. Supp. 711, 717 & n.1 (D. Minn. 1997). There was no error in declining to order a mental examination.

Spann also contends that the district court's denial of his request for a mental health examination deprived him of liberty without due process of law under the Fifth Amendment. The statutory procedures, however, were sufficient to afford whatever process may have been due. Spann was represented by court-appointed counsel, and he was allowed “an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear[ed] at the hearing.” 18 U.S.C. § 4247(d). If Spann's position was that his mental health had improved to a point where unconditional discharge would be safe, then he was free to move for discharge under § 4247(h) and to seek a mental health examination in connection with that request for relief. In sum, Spann was afforded a meaningful opportunity to be heard on the revocation of his conditional release, and he did not avail himself of statutory opportunities to show that he was eligible for discharge despite violating conditions of release. There was no constitutional violation.

The judgment of district court is affirmed.

984 F.3d at 714-15.

II. REASON FOR GRANTING REVIEW

Rule 10 of the Rules of the Supreme Court of the United States indicates 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). Supreme Court review of this issue is critically important. Mr. Spann’s case presents this Court with a pressing opportunity of first impression to protect the due process and statutory rights

of persons (and especially unconvicted persons like Mr. Spann) who are incarcerated, via 18 U.S.C. § 4246.

Like many others civilly committed under the federal mental health statutes, Mr. Spann has never been convicted for the underlying federal offense that led to his mental health commitment to the Bureau of Prisons under 18 U.S.C. § 4246(d). Instead, he was found to be mentally incompetent to proceed and unrestorable by the United States District Court for the Southern District of Mississippi and, thus, subject to the provisions of 18 U.S.C. § 4246. Thereafter, in the United States District Court for the Western District of Missouri, Mr. Spann was civilly committed to the Bureau of Prisons pursuant to 18 U.S.C. § 4246(d). In short, Mr. Spann was ordered committed (incarcerated) based on expert mental health evidence and a finding under § 4246(d) that he was “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.” 18 U.S.C. § 4246(d) (2021). Ultimately, he was conditionally released from the Bureau of Prisons via 18 U.S.C. § 4246(e).

This conditional release was subsequently revoked, however, without any current contemporaneous expert mental health evidence addressing the statutory inquiry of whether “in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would

to another person or serious damage to property of another.” 18 U.S.C. § 4246(e) (2021).

If left unreviewed, District Courts throughout the United States will be empowered to incarcerate mentally ill persons in the Bureau of Prisons (many of whom have never been convicted of a crime) based on potentially outdated, inaccurate, and/or misleading mental health evaluations as to dangerousness. Supreme Court review is needed to prevent this constitutional and statutory violation.

III. ARGUMENT

Issue

Whether Due Process and the federal mental health statutes 18 U.S.C. § 4246 and § 4247 require a new mental examination, prior to the revocation of a term of conditional release previously granted pursuant to 18 U.S.C. § 4246(f), addressing the question essential statutory question of whether “in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another?”

Due Process Violations

It cannot be forgotten that Mr. Spann, unconvicted of the underlying federal charge, is today in a Bureau of Prisons penal institution. His life is indistinguishable from those inmates around him serving criminal sentences. At the same time, Mr. Spann has no end-date to his custody, no sentence computation, and no definite end to his time in custody. This stark reality should guide this Court’s decision whether to

grant Supreme Court review or not. Much higher levels of due process and constitutional protection should attach to those incarcerated persons whose daily incarceration in a penal institution flows from civil commitment rather than a criminal punishment. This petition for certiorari is an opportunity for this Court to grant more robust constitutional protections for persons like Mr. Spann who are serving potential life sentences in the Bureau of Prisons. It is both ironic and striking that the persons serving limited, known, and finite criminal sentences in the same Bureau of Prisons institution as Mr. Spann, were afforded greater and more defined rights to due process than Mr. Spann who is serving an unlimited, unknown, and potential life sentence. By granting review, this Court will bring much needed clarity to the due process protections available to those committed to the Attorney General via mental health commitments.

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). As the Supreme Court said in *Morrisey v. Brewer*, even persons with diminished due process rights are entitled to “the minimum requirement of due process” which include written notice of the claimed violations; disclosure of evidence against the defendant; an opportunity to be heard in person and to present witnesses and documentary evidence; and the right to

confront and cross-examine adverse witnesses. *Morrissey v. Brewer*, 408 U.S. 471, 488-89 (1972).

The decision by the Eighth Circuit Court of Appeals violates the “minimum requirement of due process” as to persons who face revocation of their conditional release under 18 U.S.C. § 4246(f)—said revocation hearings being the exclusive gateway from the liberty of life in the community to incarceration in the Bureau of Prisons.

The Eighth Circuit concluded that “the [district] court was authorized to make that determination against the backdrop of previous findings that Spann presented such a risk if he were released without conditions.” *Spann*, 984 F.3d at 714. In other words, a district court seeking to revoke a defendant’s term of conditional release need not concern itself with the defendant’s current mental state, but can rely instead on a “backdrop” that is five (or more) years old. Due Process demands that a person whose liberty is to be deprived be based solely upon their present mental health, not their history of mental health. The statutory inquiry posed by 18 U.S.C. § 4246(f) is a present-tense and future-tense inquiry—whether the defendant’s “continued release would create a substantial risk of bodily injury to another person or serious damage to property of another?” *Id.* At the cost of Due Process, the Eighth Circuit has made this a past-tense inquiry. Supreme Court review is required to protect Mr. Spann, others

currently committed under 18 U.S.C. § 4246, and the thousands who will be committed under 18 U.S.C. § 4246 in the future.

Statutory Violations

The Eighth Circuit also held that “Section 4246(f) does not direct, or even expressly authorize, the district court to order a mental health examination in a proceeding to consider revocation of conditional discharge.” *Spann*, 984 F.3d at 714. This erroneous conclusion is unsupported by authority and will be detrimental to Mr. Spann, others currently committed under 18 U.S.C. § 4246, and the thousands who will be committed under 18 U.S.C. § 4246 in the future.

The entirety of the statutory scheme of 18 U.S.C. § 4246 and § 4247 contemplates that those facing deprivations of liberty pursuant to mental health civil commitments are entitled to a mental health expert at all critical stages of that process. *See* 18 U.S.C. § 4247(c). The Eighth Circuit’s decision erroneously and harmfully exempts revocations of conditional release from this statutory process.

Additionally, 18 U.S.C. § 4247(d) outlines the due process expectations for hearings arising under § 4246 as including “an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.” 18 U.S.C. § 4247(d) (2021). These due process and statutory expectations become hollow if the defendant’s present mental status, as

determined by a mental health expert, is not determined and presented to the court as part of the revocation process under § 4246(f).

The due process and statutory implications in this case are acute in that the defendant's present mental state has not been evaluated in seven years—it appears that the last substantive mental health evaluation of Mr. Spann by anyone occurred in June of 2014. Without either a current risk assessment conducted by government experts at the Bureau of Prisons, or an independent mental exam, the district court will be erroneously guided to make what is predominantly a mental health ruling without relevant evidence. Mr. Spann argues that without this critical evidence, his right to due process, as encapsulated in § 4246 and § 4247, will be violated.

In short, the most vulnerable persons subject to incarceration in the Bureau of Prisons, the mentally ill, are currently the least constitutionally protected during the process of commitment/incarceration. This disparity is especially acute in the proceedings under 18 U.S.C. § 4246(f) by which the freedom of conditional release is extinguished by judicial proceedings divorced from the defendant's present mental illness. Supreme Court review is necessary to ensure that the full measure of due process is afforded to those persons subject to mental health commitments under § 4246.

CONCLUSION

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

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "David R. Mercer", written over a horizontal line.

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APPENDICES

Appendix A - Opinion of the Eighth Circuit Court of Appeals

Appendix B -Full Docket Sheet from the Eighth Circuit Court of Appeals

U. S. v. Boaz, No. 09-2591