No. _____

In the Supreme Court of the United States

ANTWAN LAMAR HUTCHINSON

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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

REDACTED PUBLIC VERION OF SEALED PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Should the Court reverse the Sixth Circuit's modified version of the three-factor legal test in *Drope v. Missouri*, because it adds a fourth factor, "statements of Defense counsel regarding the competency of their client," which a judge must consider when deciding whether to *sua sponte* order a competency hearing, despite numerous strategic, ethical, and practical reasons that prevent Defense counsel from opining as to their own client's competency?

2) Is procedural due process violated through the appellate standard of review of abuse of discretion, as applied to a district court's failure to *sua sponte* order a competency hearing, when relevant evidence of incompetency exists and there is no record the court applied the appropriate legal test to that relevant evidence to determine whether to order a competency hearing or mental evaluation?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page. A list of all parties to the proceeding in the Court whose judgment is the subject of this petition are as follows:

Antwan Lamar Hutchinson, *Petitioner*

United States of America, *Respondent*

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Antwan Lamar Hutchinson respectfully prays this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered on October 20, 2020.

OPINIONS BELOW

United States of America v. Hutchinson et al., No. 2:17–cr–00077–MHW–1, U.S. District Court for the Southern District of Ohio, Columbus. Judgment entered Oct. 3, 2019.

United States of America v. Antwan Lamar Hutchinson, No. 19-4003, U.S. Court of Appeals for the Sixth Circuit. Judgment entered Oct. 20, 2020.

JURISDICTION

The judgment of the court of appeals was entered on October 20, 2020. This petition was filed within one hundred and fifty (150) days after the entry of the judgment. As a result, the Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V, states as follows:

> 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 public use, without just compensation.

(Emphasis added)

18 U.S.C. § 4241, "*Determination of mental competency to stand trial to undergo postrelease proceedings*," states at relevant part:

(a) Motion To Determine Competency of Defendant.—At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be 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.

(b) Psychiatric or Psychological Examination and Report.—Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing.—The hearing shall be conducted pursuant to the provisions of section 4247(d).

(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** assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General [....].

[....]

(Emphasis added).

STATEMENT OF THE CASE

Defendant-Appellant Antwan Hutchinson ("Mr. Hutchinson") was indicted on April 25, 2017 by a federal grand jury on twelve counts alleging federal criminal violations of Titles 18 and 21 of the United States Code. *Indictment*, R. 13, PageID# 37. A Superseding Indictment[1] issued on September 27, 2017, charged Mr. Hutchinson with counts of conspiracy to distribute

[1] The Superseding Indictment is substantially similar to the original indictment but adds co-defendants.

various drugs; two counts of conspiracy to tamper with a witness; carrying and brandishing a firearm during a crime of violence; two counts of carrying and brandishing a firearm during a drug trafficking crime;-, two counts of conspiracy to murder a witness; two counts of murdering a witness; and, two counts of murder through the use of a firearm during and in relation to a drug trafficking crime. *Superseding Indictment*, R. 66, PageID# 233-246.

At his arraignment on May 11, 2017, Mr. Hutchinson was questioned by the district court as follows:

Transcript of Arraignment and Indictment Proceedings, R. 56, PageID #157-158

On May 11, 2017, Mr. Hutchinson wrote a letter to the court, which was placed on the record of the case, demanding his right to a speedy trial, protesting he did "not knowingly and fully understand [his] right," his waiver was involuntary, and he was ".... pressured presuaded and coach to go against my will *[sic]*." *Letter from Antwan Hutchinson*, R. 53, PageID #149. As a result, a status conference was held on August 16, 2017, where Mr. Hutchinson's lawyers

discussed the scheduling of the case with the court. *Sealed Transcript of Status Conference Proceedings*, R. 64, PageID #202. During this discussion, Mr. Hutchinson's counsel confirmed a mitigation presentation to the United States Attorney was required so that counsel could argue against the potential pursuit of the death penalty by the U.S. Attorney. *Id.* at PageID #205.

In open court, the court explained how the decision-making process would work to Mr. Hutchinson, and how his attorneys would present evidence to convince the U.S. Attorney not to seek the death penalty against Mr. Hutchinson. *See id.* at PageID #205. Mr. Hutchinson's attorneys next outlined scheduling for their mitigation presentation. *Id.* at PageID #205-207. The court addressed Mr. Hutchinson's letter by reading it aloud, reiterating his allegations of coercion, but failed to make any inquiry whatsoever. The court explained to Mr. Hutchinson as follows:

> [T]he potential penalty is the most severe that we have in our law. In order to properly defend you, your counsel needs to develop mitigation evidence to present first to the United States Attorney's Office and then to the committee that he spoke about. These people will do nothing that is not in your ultimate best interest.
>
> *Id.* at PageID #207-208.
>
> Subsequently, Mr. Hutchinson's counsel states to the court:
>
> I explained to Mr. Hutchinson that under the Sixth Circuit case authority, even though he objects to it, that his objection doesn't control what the Court does. That the Court makes that decision based upon other interests and that is protecting his rights.
>
> *Id.* at PageID #215.
>
> Next, the following exchange transpires:
>
> COURT: You do or do not consent, Mr. Hutchinson, to a continuance?
>
> MS. WILLIAMS: Your Honor, before Mr. Hutchinson answers, we have advised him not to speak. I believe he's going to anyway. We'd ask that the government be excused and that he be allowed to speak ex parte.

COURT: Just answer my question first.

HUTCHINSON: I do not.

COURT: All right. And what's the purpose for the ex parte here?

MS. WILLIAMS: Because in all candor, Judge, I'm not --

COURT: You're not sure what's going to be said?

MS. WILLIAMS: I'm not entirely sure what's coming.

Id. at PageID #215-216.

The Court next proceeds to rule against Mr. Hutchinson's request for a speedy trial, finding a continuance is in his best interest because failing to allow it would create a miscarriage of justice and considerations in favor of a continuance outweigh Mr. Hutchinson's demand for a speedy trial. *Id.* at PageID #216-218.

On April 1, 2019, Mr. Hutchinson signed a plea agreement. The plea agreement confirms a guilty plea to Counts 1, 6, and 8 of the Superseding Indictment, namely conspiracy to distribute controlled substances in Count 1, and murder of a witness in Counts 6 and 8. *Plea Agreement*, R. 252, PageID# 686-687, ¶¶1 and 2. The plea agreement also states Mr. Hutchinson will receive a sentence of life without the possibility of release. *Plea Agreement*, R. 252, PageID# 688, ¶7(a).

On April 12, 2019, the court held a change of plea hearing. The transcript confirms the following exchange:

[redacted]

[redacted]

COURT: And that's as much a question for your counsel as it is for you.

MR. CHANEY: Your Honor, we've had an opportunity to meet with Mr. Hutchinson over the course of this representation and earlier this morning. We have no question as to his competence to plead here today.

COURT: Very good.

Transcript of Plea Proceedings, R. 308, PageID# 959

On May 8, 2019, a draft *Presentence Investigation Report ("PSR")* was prepared. On June 26, 2019, the revised final PSR was issued by U.S. Probation. *Presentence Report*, ECF No. 10, (6th Cir. docket), p. 2. The PSR references little about Mr. Hutchinson's history of mental health problems. As a result, his counsel objected by letter to U.S. Probation as follows:

[redacted]

Presentence Investigation Report, ECF No. 10, (6th Cir. docket), p. 37, ¶4.

Additionally, Mr. Hutchinson's counsel filed a *Sentencing Memorandum* with the attached *Mitigation Report* prepared by CVA Consulting Services. *Sentencing Memorandum and Mitigation Report*, R. 290 and 290-1, PageID# 834, 849. [redacted]

[redacted]

[redacted] Relevant examples follow:

> The investigation was conducted over the course of approximately 20 months ... The mitigation report, completed May 10, 2019, sets forth in detail, significant historical information, collected from more than 12 family members and verified over the course of almost 2 years. [The consultant] conducted extensive interviews with several family members familiar with Antwan's family history and structure during his childhood, adolescence and young adulthood. [She] conducted a thorough investigation of Mr. Hutchinson's family history using available public records from various sources, including [redacted]

Sentencing Memorandum, R. 290, PageID# 834-835.

[redacted]

Id. at PageID# 836.

[redacted]

Id. at PageID# 837.

[redacted]

Id. at PageID# 837.

[redacted]

Id.

[redacted]

Id. at PageID# 838.

[redacted]

Id. at PageID# 841.

[redacted]

Id. at PageID# 842.

[redacted]

Id.

[redacted]

[redacted]

Id. at PageID# 843.

[redacted]

Id. at PageID# 844.

[redacted]

Id.

[redacted]

Id.

[redacted]

Id. at PageID# 845.

[redacted]

Id. at PageID# 846.

[redacted]

Id.

[redacted]

Mitigation Report, R. 290-1, PageID# 851.

Although the Mitigation Report lists a [redacted] this document was not on the record of the case or quoted by any filing, other than a bare citation in the Mitigation Report. The ECF/PACER docket of the case and filed transcripts show no court-ordered 18 U.S.C. § 4241 competency hearing or evaluation was conducted on Mr. Hutchinson or even inquired about by the court. *See Mitigation Report*, R. 290-1, PageID# 850.

A guilty plea must be knowing and voluntary to be valid. *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1993). A mentally-ill individual cannot make a knowing and voluntary waiver of his rights, and to do so violates due process. *Godinez v. Moran*, 509 U.S. 389, 389 (1993); Fed. R. Crim. P. 11; see 18 U.S.C. § 4241. The Sentencing Memorandum and Mitigation Report, along with Mr. Hutchinson's behavior before the court reasonably call his mental health into serious question. Crucially, the court failed to inquire into the non-court ordered mental evaluation referenced in the Mitigation Report. As a result, the court erred by not inquiring into basic relevant facts and not moving *sua sponte* for a mental evaluation or competency hearing to

determine Mr. Hutchinson's competence to participate in his defense and decision whether to face trial or plead guilty.

A defendant is incompetent to stand trial if he suffers from a mental disease or defect that: (1) impairs his "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" or (2) leaves him lacking a "rational as well as factual understanding" of both the charges against him and the nature of the judicial proceedings. *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam). A defendant need only satisfy one of the two prongs to be regarded mentally incompetent to stand trial.

The *Dusky* standard was codified at 18 U.S.C. § 4241(a), which states as follows:

> (a) Motion To Determine Competency of Defendant.—At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be 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.

In *Godinez v. Moran*, the Supreme Court held that the *Dusky* standard is the baseline constitutional standard of mental competency for all decisions the defendant must make during the criminal trial process, including whether to plead guilty or to waive the right to counsel. *Godinez v. Moran*, 509 U.S. 389, 398 (1993) "In addition to determining that a defendant who seeks to plead guilty or waive counsel is competent ... the waiver of his constitutional rights [must be] knowing and voluntary." *Godinez*, 509 U.S. at 400.

The Sentencing Memorandum and Mitigation Report, along with Mr. Hutchinson's behavior in court, reasonably called his mental health into serious question. The first opportunity

to question Mr. Hutchinson about his mental health came at the arraignment. Here, the court did not ask basic though essential follow-up questions when Mr. Hutchinson [redacted] The court similarly neglected to clarify the status of Mr. Hutchinson's mental health at his change of plea hearing.

After the arraignment, Mr. Hutchinson even circumvented the objection of his own counsel and wrote directly to the court to make serious allegations of coercion against his counsel and to retract his *claimed* forced waiver of his speedy trial rights. In the subsequent hearing, it also was clear Mr. Hutchinson did not understand or wish to take the advice of his counsel in a matter as simple as a continuance of the trial date, even when the need for the continuance related to avoiding the pursuit of the death penalty against him.

Indeed, Mr. Hutchinson even refused to consult or reveal to his counsel his planned statement to the court while still in the presence of the U.S. Attorney. Again, the court failed to inquire about Mr. Hutchinson's refusal to inform or confer with his counsel or his serious allegations of coercion, despite finding his demand for a speedy trial was against his own best interest. Defense counsel later filed a Sentencing Memorandum and Mitigation Report confirming Mr. Hutchinson suffered from life-long serious mental health conditions.

Considering the available material information, the court erred by not moving *sua sponte* for a mental evaluation or competency hearing to determine Mr. Hutchinson's competence to participate in his defense, or the decision to go to trial, or plead guilty. Based on plenary review, there is serious doubt regarding Mr. Hutchinson's competence during his case before the district court, and therefore whether his guilty plea was knowing and voluntary. As a result, he asks this

Court to reverse the decision of the Sixth Circuit, vacate his guilty plea and sentence, and remand the case so that he may have a psychological evaluation and a competency hearing.

There is an independent obligation on defense counsel, the prosecution, and the trial court to inquire into a defendant's mental competence if a good-faith basis to question competency arises during criminal proceedings. *See* 18 U.S.C. § 4241(a) (obligation to raise issue "if there is reasonable cause to believe" the defendant might not be competent; *see also Pate v. Robinson*, 383 U.S. 375, 385 (1966). If a *bona fide* doubt regarding a defendant's mental competence is raised, the trial court must hold a competency hearing, which typically begins with an evaluation of the defendant's competence performed by a court-appointed mental health professional. *Id.*

Despite abundant evidence of Mr. Hutchinson's lack of competency, the Sixth Circuit, upon reviewing the trial court's decision not to *sua sponte* order a competency hearing found no abuse of discretion. However, this Court should review this case because it illustrates how the Sixth Circuit's modified *Drope* test, and its reliance on an abuse of discretion standard, a standard varying between the circuits, led to a violation of Mr. Hutchinson's right to due process. Here, his right to procedural due process was violated because the court failed to *sua sponte* order a competency hearing before allowing Mr. Hutchinson to waive his rights and plead guilty, despite serious evidence that indicated a lack of competence.

REASONS FOR GRANTING THE PETITION

I. The four-part test applied by the Sixth Circuit, in reviewing factors the district court must consider when evaluating competency claims, if strictly applied, will lead to violations of procedural due process

Due process requires a court to hold a hearing whenever evidence raises a sufficient doubt about the mental competency of an accused to stand trial. *Drope v. Missouri,* 420 U.S.

162, 180 (1975). In *Pate v. Robinson*, 383 U.S. 375, 385-386 (1966), this Court held that the failure to observe procedures adequate to protect a defendant's right to not to be tried or convicted while incompetent deprives him of his due process right to a fair trial. An incompetent defendant has a substantive due process right to a competency hearing based on the above standard and a procedural due process right that guarantees procedures adequate to guard an accused's right not to stand trial or suffer conviction while incompetent. *U.S. v. Flores-Martinez*, 677 F.3d 699, 705-06 (5th Cir., 2012).

In addition to due process rights, 18 U.S.C. § 4241(a) confirms that a court must grant a motion for a competency hearing or order a hearing *sua sponte* "if there is reasonable cause[2] to believe that the defendant may presently be 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." 18 U.S.C. § 4241(b) also provides the court may order a mental competency examination be conducted on the defendant prior to the competency hearing." 18 U.S.C. § 4241(b).

In *Drope v. Missouri*, this Court lists three factors which a court must consider when deciding whether to order a hearing:

(1) Evidence of irrational behavior by the accused;

(2) The demeanor of the accused at trial; and,

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[2] In *Drope*, this Court held that the trial court must order a hearing if there is "sufficient doubt" about competency. *Drope v. Missouri*, 420 U.S. 162, 180 (1975). *Pate*, 383 U.S. at 385 used the language "bona fide doubt" as to competency, but despite the varying descriptions, it appears these standards are all the same.

(3) Any previous medical opinion on the mental competency of the accused to stand trial.

The Court further notes ".... even one of these factors standing alone may, in some circumstances, be sufficient."

Drope v. Missouri, 420 U.S. 162, 180 (1975).

Respectfully, in this case, the Sixth Circuit erroneously expands the *Drope* test to include reliance on a fourth factor: "statements by defense counsel regarding the defendant's competency," citing *United States v. Dubrule*, 822 F.3d 866, 879 (6th Cir., 2016) (citing *United States v. Tucker*, 204 Fed.Appx. 518, 520 (6th Cir., 2006)). The court also omits an important part of the *Drope* test, and although it lists the first three factors [and its own fourth factor] it does not fully explain or seem to consider that in some cases ".... even one of these factors standing alone may, in some circumstances, be sufficient." *Drope*, 420 U.S. at 180.

The Sixth Circuit's test applied here erroneously expands the *Drope* test. Ironically, however, its expansion works to contract its application and effectiveness. As a result, courts in the Sixth Circuit are permitted to ignore compelling factors that provide serious doubt regarding a defendant's lack of competency while giving unwarranted weight to unreliable and unqualified opining of counsel as to their own client's mental health.

Even if serious doubt as to Mr. Hutchinson's competence did not already arise before the court at other phases of the case, it is unreasonable and arbitrary to conclude the Sentencing Memorandum and Mitigation Report did not produce reasonable or *bona fide* doubts as a matter of law, if, respectfully, the court actually considered those submissions to the record and applied the factual statements referenced therein regarding Mr. Hutchinson's mental health under the correct version of the *Drope* test.

Further, for a court to rely on "statements by defense counsel regarding the defendant's competency" invites a minefield of foreseeable injustices. This modified test, affirmed by the Sixth Circuit, could require attorneys to disclose confidential medical information, violate attorney/client privilege, and divulge information that ends up not being in a client's best interest. Additionally, even if counsel is able to dodge these ethical conundrums, volunteering this information could lead to foreseeable conflicts at sentencing or trial. For example, the Tenth Circuit observed, "[w]e recognize defense counsel may face a dilemma in deciding whether to move for a competency evaluation since the results of competency tests can be used to rebut a mental defense at trial." *U.S. v. Vazquez-Pulido*, 155 F.3d 1213, 1218 (10th Cir., 1998).

Overall, the new fourth factor applied by the Sixth Circuit is ill-advised at best, and at worst, invites violations of ethical rules and obligations regarding confidentiality, thus underscoring the violation of due process. In sum, the instant case led the court to give undue, if not sole, weight to the unqualified opining of defense counsel that he did not doubt his client's competency to enter a plea, an inquiry which this Court wisely elected not to include as part of the *Drope* test.

II. Circuit Courts are split as to an appropriate uniform appellate standard of review to apply regarding the trial court's obligation to sua sponte order a competency hearing

In analyzing Mr. Hutchinson's appeal, the Sixth Circuit relied on an *abuse of discretion* standard to review the district court's failure to make a decision on competency, despite substantial evidence of incompetence. Due process considerations require courts to ensure incompetent defendants do not enter a plea or proceed to trial without the mental capacity to work with their attorney or make decisions in their cases. As a result, abuse of discretion

deference should not be given to the trial court. Instead, the standard of review applied should be de novo/plenary.

The law enshrines a fundamental presumption against trying an incompetent person. *Cooper v. Oklahoma*, 517 U.S. 348, 348 (1996). Hence, in *Cooper*, this Court decided "a State may not proceed with a criminal trial after the defendant has demonstrated that he is more likely than not, incompetent." Further, *Pate v. Robinson*, 383 U.S. 375, 384 (1966) established that a defendant may not waive his right to a competency hearing. Although the *Cooper* Court decided a different issue than the present case[3], the decision by the Sixth Circuit allows an incompetent person to be tried, therefore violating the reasoning used in *Cooper* as long as the trial court meets an abuse of discretion standard. This outcome renders it quite improbable that error will ever be found. The reasoning circuits use to justify reliance on the abuse of discretion standard is that [the] district court, [] is in [the] best position to determine need for [a] competency hearing." *United States v. Ruston*, 565 F.3d 892, 901 (5th Cir., 2009).

Here, there was substantial evidence Mr. Hutchinson was incompetent based in part on excerpts from his attorneys' Sentencing Memorandum and attached Consulting Report. More pertinently, there was a non-court-ordered competency evaluation conducted on Mr. Hutchinson that was not made part of the record. However, the trial judge did not even make an inquiry as to

[3] The *Cooper* Court decided upon which party the burden of proof falls when deciding the actual substantive decision of competency of the defendant at a competency hearing. *Cooper v. Oklahoma*, 517 U.S. 348, 355-56 (1996).

its findings. In fact, there is zero evidence the court questioned Mr. Hutchinson's competency beyond mere *pro forma* questions.[4]

Regrettably, the decision here by the Sixth Circuit will allow circuit courts to rubber-stamp a trial court's "decision" to not *sua sponte* order a competency hearing even when the court fails to consider the question of competency. Further, this standard permits a circuit court to consider the question of whether the district court applied the correct law to the facts, even when no direct consideration of competency was made on the record, as happened here. In other words, the court may bypass using its discretion completely, thus making the abuse of discretion standard illogical and contrary to manifest justice. Inevitably, this outcome will lead to conviction of incompetent defendants without adequate due process safeguards.

The appropriate standard of review is crucial in determining fairness and the standard applied in evaluating the voluntariness of a guilty plea is instructive here, which is a *de novo* standard. *U.S. v. Frye*, 402 F.3d 1123, 1126 (11th Cir. 2005). Also, in reviewing decisions made at sentencing, the Sixth Circuit reviews factual findings made in the application of the sentencing guidelines using the abuse of discretion standard, but the Court's legal interpretations of the guidelines are reviewed *de novo. U.S. v. Webb*, 335 F.3d 534, 536 (6th Cir., 2003); *U.S. v. Settle*, 414 F.3d 629, 630 (6th Cir., 2005). Further, ineffective assistance of counsel motions are reviewed as mixed questions of law and fact, with the legal determinations made *de novo*. *Hughes v. U.S.,* 258 F.3d 453, 457 (6th Cir., 2001).

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[4] The Federal Judicial Center's *Benchbook for U.S. District Court Judges* §§ 1.01, 1.07, 2.01, and 4.01 (6th ed. 2013), contains checklists of questions district court judges may use at various hearings, including initial appearances, arraignments, plea hearings, and sentencing.

The standard of proof applied to decisions regarding whether to conduct a competency hearing varies among the circuits, and even within the Sixth Circuit various decisions are inconsistent. For example, in *U.S. v. Coleman*, the court observed some of its decisions apply the plain error doctrine, while others utilize abuse of discretion. U.S. *v. Coleman*, 871 F.3d 470, 474 (6th Cir. 2017). While other circuits typically apply a plain error or abuse of discretion standard, the Third Circuit considers decisions on whether to *sua sponte* order a competency hearing to be mixed questions of law and fact, with the trial court's interpretation of the law reviewed *de novo*. *U.S. v. Jones*, 336 F.3d 245, 256 (3rd Cir., 2003).

In its fundamental reasoning of the separate, but analogically related [substantive] due process issue of whether a clear and convincing evidence standard should apply to making the actual competency decision after a hearing, the Court in *Cooper* relied heavily on the importance of the constitutional interest at stake in deciding upon the preponderance of the evidence standard. *Cooper v. Oklahoma*, 517 U.S. 348, 364 (1996). In *Cooper*, Court opined:

> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'
>
> The "more stringent the burden of proof a party must bear, the more that party bears the risk of an erroneous decision." For that reason, we have held that due process places a heightened burden of proof on the State in civil proceedings in which the "individual interests at stake ... are both 'particularly important' and 'more substantial than mere loss of money.' "
>
> (Emphasis added; internal citations omitted).

Based on the crucial importance of protecting constitutional due process rights, and because many court records will not contain explicit mentions or inquiries regarding competency, the Court should apply a *de novo* standard of review to decisions by a trial court on

whether to *sua sponte* order a competency hearing. When no explicit reference to a competency evaluation takes place, but relevant evidence exists to merit inquiry, a *de novo* standard ensures all relevant information is considered and incompetent defendants are not subject to conviction.

CONCLUSION

For the reasons stated above, Petitioner Antwan Hutchinson respectfully requests this Honorable Court grant his Petition for Certiorari, and upon the merits of the case, find the Due Process Clause of the U.S. Constitution, 18 U.S.C. § 4241, and the case law cited above, show the circuit court erred in deciding there was no reasonable basis for the trial court to order a competency hearing, and the determination of whether to *sua sponte* order a competency hearing be reviewed *de novo*/plenary if there is no indication the trial court considered all the relevant evidence regarding competency.

Dated: March 17, 2021

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