No. _____

IN THE SUPREME COURT OF THE UNITED STATES

BITHOMAS CEASAR, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

(REDACTED)

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QUESTION PRESENTED

Whether a district court lacks authority to order additional competency-restoration commitment under 18 U.S.C. § 4241(d)(2) once the director of a Bureau of Prisons medical facility has certified that a defendant is competent to proceed.

PARTIES TO THE PROCEEDINGS

All parties to the petitioner's Fifth Circuit proceedings are named in the caption of the case before this Court.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF CONTENTS iii

TABLE OF CITATIONS iv

PRAYER 1

OPINION BELOW 1

JURISDICTION 1

DIRECTLY RELATED PROCEEDINGS 1

STATUTORY PROVISION INVOLVED 2

STATEMENT OF THE CASE 3

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT 11

REASONS FOR GRANTING THE PETITION 12

CONCLUSION 17

APPENDIX A: Opinion of the Court of Appeals, *United States v. Ceasar*, 30 F.4th 497 (5th Cir. April 6, 2022) 18

APPENDIX B: 18 U.S.C. 4241 22

TABLE OF CITATIONS

Page

CASES

Jackson v. Indiana, 406 U.S. 715 (1972) 12

United States v. Brennan, 928 F.3d 210 (2d Cir. 2019) 14

United States v. Ceasar, 30 F.4th 497 (5th Cir. 2022) ..... iii, 1, 3, 8, 10, 14

United States v. Farmer, 110 F. Supp. 3d 1355 (S.D. Ga. 2015) 14

United States v. Magassouba, 544 F.3d 387 (2d Cir. 2008) 14

United States v. McKown, 930 F.3d 721 (5th Cir. 2019) 13

United States v. Millard-Grasshorn, 603 F.3d 492 (8th Cir. 2010) 13

United States v. Santos, 553 U.S. 507 (2008) 14

Wooden v. United States, __ U.S. __, 142 S. Ct. 1063 (2022) 15

Woodfork v. Marine Cooks & Stewards Union, 642 F.2d 966 (5th Cir. 1981) 9

Zeigler Coal Co. v. Kleppe, 536 F.2d 398 (D.C. Cir. 1976) 9

STATUTES AND RULES

18 U.S.C. § 924(e)(1) 15

18 U.S.C. § 3231 11

18 U.S.C. § 4241 ..... 2, 11-14, 16

TABLE OF CITATIONS – (cont'd)

Page

STATUTES AND RULES – (cont'd)

18 U.S.C. § 4241(d) 4, 6, 8-9, 12-13

18 U.S.C. § 4241(d)(1) 7, 9

18 U.S.C. § 4241(d)(2) ..... i, 7-9, 12, 14

18 U.S.C. § 4241(d)(2)(A) 9

18 U.S.C. § 4241(e) 5-6, 8, 12-14

18 U.S.C. § 4246 14

28 U.S.C. § 1254(1) 1

Sup. Ct. R. 13.1 1

MISCELLANEOUS

C.A. Br. for Appellant, *United States v. Ceasar*, 30 F.4th 497 (5th Cir. 2022) (No. 21-10163), 2021 WL 2645088 ..... 3, 12, 14

Antonin Scalia, & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012) 9

Sealed Order, *United States v. Van Houten*, No. 04-cr-134 (S.D. Iowa Sept. 26, 2005) 13

PRAYER

Petitioner Ceasar Bithomas, Jr. ("Mr. Ceasar") prays that a writ of certiorari be granted to review the judgment and opinion entered by the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The Westlaw version of the opinion of the United States Court of Appeals for the Fifth Circuit, *United States v. Ceasar*, 30 F.4th 497 (5th Cir. 2022), is attached to this petition as Appendix A. The amended order of the United States District Court for the Southern District of Texas is attached as Appendix B.

JURISDICTION

The Fifth Circuit's judgment and opinion was entered on April 6, 2022. *See* Appendix A. This petition is filed within 90 days after entry of that judgment. *See* Sup. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

DIRECTLY RELATED PROCEEDINGS

- *United States v. Bithomas Ceasar, Jr.*, No. 21-20163, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on April 6, 2022.
- *United States v. Bithomas Ceasar, Jr.*, No. 2:18-cr-01339, U.S. District Court for the Southern District of Texas. Order entered on March 15, 2021.

STATUTORY PROVISION INVOLVED

The text of the statutory provision involved, 18 U.S.C. § 4241, is attached as Appendix C.

STATEMENT OF THE CASE[1]

In August of 2018, the government charged Mr. Ceasar with receiving, distributing, and possessing child pornography. After an initial appearance, Mr. Ceasar was released on bond with a variety of conditions. Later, through counsel, he filed a motion to suppress his custodial statements, arguing in part that his diminished intellectual capacity and "mental retardation" rendered his statements involuntary. As a result, the government requested a mental examination and a hearing on whether Mr. Ceasar was competent to stand trial.

The court ordered an expert to evaluate Mr. Ceasar's competence. That expert, clinical psychologist J. Scott Hickey, Ph.D., concluded that Mr. Ceasar was "presently incompetent to stand trial." Dr. Hickey based his findings on a 3.5-hour competency assessment, a collateral interview, and his review of several documents, including educational records that showed that Mr. Ceasar had been placed in special education courses after he was diagnosed with "mental retardation" in the first grade. Dr. Hickey concluded that Mr. Ceasar was suffering from intellectual disability, mood disorder, and psychotic disorder—all of which were contributing to his incompetence. He further opined that Mr. Ceasar's intellectual ability would not improve, but his other conditions might improve with medication and education. Finally, Dr. Hickey recommended psychiatric care, medication management, and a reevaluation once medication had reduced his psychotic symptoms.

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[1] The facts summarized in this section are described at length, supported by detailed citation to the record, in petitioner's opening brief in the court of appeals. *See* C.A. Br. for Appellant at 5-12, *United States v. Ceasar*, 30 F.4th 497 (5th Cir. 2022) (No. 21-20163), 2021 WL 2645088, at *5-*12.

Consequently, the district court signed an agreed order committing Mr. Ceasar to the custody of the Attorney General to determine whether there was a substantial probability that in the foreseeable future he would attain competence, citing 18 U.S.C. § 4241(d). The court authorized commitment for no more than four months and ordered a report to be filed within that time period.

Based on that order, Mr. Ceasar entered custody on December 10, 2019, and the Federal Bureau of Prisons ("BOP") acknowledged that "[h]is period of competency restoration treatment [was] therefore scheduled to conclude no later than April 7, 2020."

On April 2, 2020, the government filed an opposed motion to extend Mr. Ceasar's commitment for 120 days. It wrote that the doctor conducting the evaluation believed that "with more time, and the cessation of deliberately uncooperative behavior by the Defendant, he may well be restored to competency in the foreseeable future." Defense counsel opposed that motion and requested Mr. Ceasar's immediate release based on either a finding that the BOP had failed to comply with the court's four-month deadline or, alternatively, a stay of competency-restoration treatment given the COVID-19 pandemic and attendant disruptions to the BOP's competency-restoration procedures.

After a hearing on those issues, the district court entered an agreed order that the competency restoration process would be stayed due to the COVID-19 pandemic, and it ordered that Mr. Ceasar would be released on bond during that stay. The court further ordered that the BOP medical center should "issue a report on [Mr.] Ceasar's treatment and prognosis to the court."

Three weeks later, the warden of that medical center sent the court a certificate of competency under 18 U.S.C. § 4241(e). The warden certified that the medical facility's staff "determined Mr. Ceasar has recovered to such an extent he is able to understand the nature and consequences of the proceedings against him and to assist properly in the defense of the claims brought against him." The warden attached a forensic psychological report completed by Ashley K. Christiansen, Ph.D., the BOP clinical psychologist who had evaluated Mr. Ceasar. Dr. Christiansen had intended to request an additional period of time for further competency restoration and evaluation, because her opinion on competence was based on less data than would typically be available. She described several limitations in her ability to assess Mr. Ceasar's competence, but she concluded based on the available data that Mr. Ceasar was likely competent to proceed.

Based on the certificate of competency, defense counsel filed a notice of intent to proceed under 18 U.S.C. § 4241(e), and counsel attached a report from a defense expert, clinical psychologist Gerald E. Harris, Ph.D., who concluded that Mr. Ceasar remained incompetent despite the BOP's certificate to the contrary. At a status conference on those issues, counsel explained that the warden's certificate changed the nature of the proceedings, because it meant that the BOP was no longer requesting additional time and was instead declaring Mr. Ceasar competent. The court summarized that argument: "[I]t's your position that the BOP has basically said that he has been restored to competence, so there is no reason to put him back in there for additional time." After hearing from both sides, the court scheduled a competency hearing. That hearing was rescheduled a few

times, with continuance requests from both parties.

Before the competency hearing, defense counsel filed a memorandum outlining Mr. Ceasar's view of the issues. Counsel explained that the court should now address two issues: (1) whether the government could prove Mr. Ceasar's competence by a preponderance of the evidence; and (2) what to do next if the government could not meet that burden. The defense argued that the answer to the second question was that the "reasonable period of time" for evaluation and treatment, *see* 18 U.S.C. § 4241(d), had expired so Mr. Ceasar was now subject to civil commitment laws.

The government responded that it would not seek to prove that Mr. Ceasar was presently competent, but it disagreed about the next step. The government wrote that every expert who had evaluated Mr. Ceasar believed that he could be restored to competency with proper treatment, and the court should order him back into BOP custody for competency restoration.

In March of 2021, the court held a competency hearing under 18 U.S.C. § 4241(e). Both parties agreed that Mr. Ceasar was presently incompetent and that all experts believed he could be restored to competence. Defense counsel argued that the BOP certificate of competency moved the proceedings to a new stage and that once the BOP certifies that it has restored the defendant to competence, it "doesn't keep getting multiple tries, doesn't get multiple bites at the apple." The government agreed that the BOP had filed a certificate of competency, but in the prosecutor's words, "So what?" Defense counsel replied that the statute itself turns on whether or not that certificate was filed, so it had statutory

significance.

[redacted]

[redacted]

On appeal, Mr. Ceasar argued, *inter alia*, that a district court lacks authority to order additional competency-restoration commitment under 18 U.S.C. § 4241(d)(2) once the director of a Bureau of Prisons medical facility has certified that a defendant is competent to proceed. The Fifth Circuit affirmed, finding "no statutory basis to conclude that the warden's certification foreclosed the district court's authority to order an additional commitment period under § 4241(d)(2)." *Ceasar*, 30 F.4th at 500. In pertinent part, the Fifth Circuit opined:

> [W]hen a medical facility in which a defendant is being treated for competency restoration certifies that the defendant has regained competency, § 4241(e) requires the court to hold a competency hearing. 18 U.S.C. § 4241(e). Under that subsection, if the court concludes that the defendant has indeed regained competency, the proceedings move forward. *Id.* It *does not* address when the court concludes that the defendant is *not* in fact competent. *See id.* Thus, there is no reason from the text of that provision to conclude that it controls here.
>
> The only other statutory basis which could potentially affect the district court's authority to order an additional period of commitment for competency restoration is § 4241(d) itself. That provision explains that "[i]f, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the proceedings to go

forward, the defendant is subject to [the civil commitment provisions]." 18 U.S.C. § 4241(d).

But that statement does not constrain the district court's ability to order a second period of competency restoration treatment. Section 4241(d) provides for up to two commitment periods—the first to determine whether the defendant will likely gain competency in the near future, and the second if it is likely that the defendant will regain competency during that additional commitment period. 18 U.S.C. § 4241(d)(1), (2). Subsection (d) goes on to explain that the civil commitment proceedings apply when, "at the end of the time period specified," the defendant's mental condition has not sufficiently improved for the proceedings to move forward. *Id.* § 4241(d). That provision must apply to situations in which the court has not concluded under subsection (d)(2)(A) that the defendant would likely regain competency with a second period of commitment.

Otherwise, it is hard to imagine when the second period of commitment could ever be allowed: If a court concludes that an additional commitment period would likely allow for the defendant to regain competency (under subsection (d)(2)(A)), it necessarily concludes, albeit implicitly, that the defendant's mental condition has not yet improved to permit the proceedings to go forward. We will not read one part of subsection (d) in a way that renders another part of that same subsection essentially ineffective. *See Woodfork v. Marine Cooks & Stewards Union*, 642 F.2d 966, 970–71 (5th Cir. 1981) ("A basic principle of statutory construction is that 'a statute should not be construed in such a way as to render certain provisions superfluous or insignificant.' " (quoting *Zeigler Coal Co. v. Kleppe*, 536 F.2d 398, 406 (D.C. Cir. 1976))); Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012) ("If possible, every word and every provision is to be given effect .... None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").

Instead, the natural reading of the provision referencing the civil commitment procedures is that it applies when, "at the end of the time period specified" by any orders under subsections (d)(1) or (d)(2), a defendant remains incompetent. After all, that phrase sits at the end of subsection (d) generally and not within subpart (d)(1). In other words, the civil commitment

provisions take effect only after the court has ordered all commitment periods that it might order under those provisions.

Thus, the hospital warden's certification of competency did not undermine the district court's ability to order an additional period of commitment when the court—and all the parties, for that matter—concluded that Ceasar had again become incompetent.

Ceasar, 30 F.4th at 501-02 (cleaned up).

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

The district court had jurisdiction pursuant to 18 U.S.C. § 3231 and 18 U.S.C. § 4241.

REASONS FOR GRANTING THE PETITION

The Court should grant this petition for certiorari to resolve an important question of federal law that had not been, but should be, settled by this Court: Whether a district court lacks authority to order additional competency-restoration commitment under 18 U.S.C. § 4241 (d)(2) once the director of a Bureau of Prisons medical facility has certified that a defendant is competent to proceed.

Mr. Ceasar contends that the filing of a certificate of competency under § 4241(e) ends the § 4241(d) "reasonable period of time" for competency evaluation and restoration. *See* C.A. Br. for Appellant at 17-22. The Constitution permits involuntary confinement of an incompetent defendant only if it is justified by progress toward competency evaluation or restoration. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Congress codified that limit in 18 U.S.C. § 4241. *See* C.A. Br. for Appellant at 16. Under § 4241(d), an incompetent defendant shall be hospitalized for only the "reasonable period of time" necessary to evaluate and restore him to competency. *See* C.A. Br. for Appellant at 17 (citing *Jackson*). If a defendant remains incompetent at the end of that reasonable period of time, he becomes subject to civil commitment laws. § 4241(d). But if the medical facility treating the defendant finds him competent before the expiration of that § 4241(d) period, the director of the facility shall certify that opinion to the court under § 4241(e). Once a medical facility issues that certificate, the statute no longer authorizes competency-restoration commitment.

Several courts have described § 4241 in a way that fits that interpretation, although only one district court has squarely addressed this argument. In a sealed order, that court

took the position that Mr. Ceasar urges, reasoning that it would be "unauthorized and patently unfair" to repeatedly commit the defendant under § 4241(d) "until the Government is satisfied with the ultimate result." Sealed Order, *United States v. Van Houten*, No. 04-cr-134 (S.D. Iowa Sept. 26, 2005), as quoted in *United States v. Millard-Grasshorn*, 603 F.3d 492, 495 n.2 (8th Cir. 2010). The Eighth Circuit analyzed that sealed order and explained that in *Van Houten* (as in Mr. Ceasar's case), "[T]he second judicial finding of incompetency was made at the end of the mandatory § 4241(e) competency hearing held to consider the Attorney General's certification that competency had been restored." *Millard-Grasshorn*, 603 F.3d at 496. After finding the defendant still incompetent, the *Van Houten* district court rejected the government's request for a second period of commitment as "unauthorized and patently unfair." *See id.* at 495 n.2.

The appellant in *Millard-Grasshorn* raised an argument based on *Van Houten*, but the Eighth Circuit resolved the case on other grounds. *Millard-Grasshorn*, 603 F.3d at 496. Despite that, the court's discussion of 18 U.S.C. § 4241 sheds light on our question. *See* C.A. Br. for Appellant at 19. The court summarized the process after the filing of a § 4241(e) certificate of competency, writing that the district court must then hold a competency hearing and "[i]f the court determines that the defendant's competency has not been restored during the period prescribed, he may be further committed if he is dangerous."[2] *Millard-Grasshorn*, 603 F.3d at 493–94 (citing 18 U.S.C. §§ 4241(d) and

[2] The Fifth Circuit, too, has explained that the § 4241 commitment procedures survive due process scrutiny because they are limited by the "rule of reasonableness," which requires the scheduling of a civil-commitment hearing once the limited time for competency restoration ends. *See United States v. McKown*, 930 F.3d 721, 727-28 (5th Cir. 2019).

4246). That summary is consistent with Mr. Ceasar's position that after the § 4241(e) certificate is filed, a district court has two options: It may find the defendant competent and continue normal trial proceedings, or it may find the defendant incompetent and declare him subject to civil commitment laws.

Mr. Ceasar has cited three other cases with similar interpretations of 18 U.S.C. § 4241. *See* C.A. Br. for Appellant at 20-21 (citing *United States v. Brennan*, 928 F.3d 210, 215 (2d Cir. 2019), *United States v. Magassouba*, 544 F.3d 387, 406 (2d Cir. 2008), and *United States v. Farmer*, 110 F. Supp. 3d 1355, 1358 (S.D. Ga. 2015)). All three courts summarized § 4241 as subjecting the defendant to civil commitment laws if a court finds him incompetent after the filing of a § 4241(e) certificate of competency. *See* C.A. Br. for Appellant at 20-21. None of those courts suggested that a district court would have authority, after the filing of a § 4241(e) certificate, to order additional commitment for competency restoration.

At a minimum, the statute is *ambiguous* as to whether a district court lacks authority to order additional competency-restoration commitment under § 4241(d)(2) once the director of a Bureau of Prisons medical facility has certified that a defendant is competent to proceed. The Fifth Circuit, for example, concluded that § 4241(e) "*does not* address when the court concludes that the defendant is not in fact competent." *Ceasar*, 30 F.4th at 501 (emphasis in original). The rule of lenity demands that this ambiguity be resolved in favor of liberty. *See generally United States v. Santos*, 553 U.S. 507, 514 (2008) (plurality op.) ("The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the

defendants subjected to them.").

Justice Gorsuch's recent concurrence in *Wooden v. United States*, __ U.S. __, 142 S. Ct. 1063 (2022), supports applying the rule of lenity in this case. In *Wooden*, this Court held that the petitioner's ten burglary offenses arising from a single criminal episode did not occur on different "occasions" and thus count as only one prior conviction for purposes of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1). Justice Gorsuch filed an opinion concurring in the judgment, in which Justice Sotomayor joined in part. As is relevant here, Justice Gorsuch opined that the rule of lenity provided an independent basis for ruling in favor of the petitioner. Justice Gorsuch wrote: "[T]he key to this case does not lie as much in a multiplicity of factors as it does in the rule of lenity. Under that rule, any reasonable doubt about the application of a penal law must be resolved in favor of liberty. Because reasonable minds could differ (as they have differed) on the question whether Mr. Wooden's crimes took place on one occasion or many, the rule of lenity demands a judgment in his favor." *Id.* at 1081.

Justice Gorsuch also discussed the history of the rule of lenity ("a widely recognized rule of statutory construction in the Republic's early years"), and "its fair notice function" and "role in vindicating the separation of powers," and opined: "Where the traditional tools of statutory interpretation yield no clear answer, the judge's next step isn't to legislative history or the law's unexpressed purposes. The next step is to lenity." *Id.* at 1081-86.

The question presented is one not only of fundamental legal significance, but also of general importance given the importance of the liberty interest at stake for persons, like

Mr. Ceasar, who are subject to competency-restoration commitment under § 4241. And this case is an ideal vehicle for resolving the question presented, as the question is squarely presented and ripe for review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Date: May 23, 2022

Respectfully submitted,

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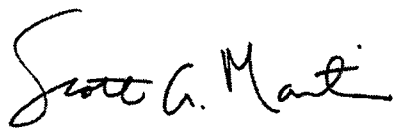

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