

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Petitioner,

V.

UNITED STATES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

PETITION FOR WRIT OF CERTIORARI

Attorney for Petitioner

QUESTION PRESENTED

1. Whether the government violated petitioner's constitutional due process rights by involuntarily transferring him to, and holding him in, a secure mental health unit for two years without filing a petition under 18 U.S.C. §4245?

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

The petitioner, [REDACTED], respectfully seeks a writ of certiorari to review the judgment [REDACTED] entered in this case.

OPINIONS BELOW

The sealed and unreported opinion of the Court of Appeals is found at Sealed Appendix A. The district court's sealed and unreported order is found at Sealed Appendix B.

JURISDICTION

The Court of Appeals entered judgment on April 7, 2022. This petition is being filed within ninety days of that opinion. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. §4245

Hospitalization of an imprisoned person suffering from mental disease or defect

(a) Motion to determine present mental condition of imprisoned person.—If a person serving a sentence of imprisonment objects either in writing or through his attorney to being transferred to a suitable facility for care or treatment, an attorney for the Government, at the request of the director of the facility in which the person is imprisoned, may file a motion with the court for the district in which the facility is located for a hearing on the present mental condition of the person. The court shall grant the motion if there is reasonable cause to believe that the person may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. A motion filed under this subsection shall stay the transfer of the person pending completion of procedures contained in this section.

(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 person may 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 person is presently suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility, the court shall commit the person to the custody of the Attorney General. The Attorney General shall hospitalize the person for treatment in a suitable facility until he is no longer in need of such custody for care or treatment or until the expiration of the sentence of imprisonment, whichever occurs earlier.

(e) Discharge.—When the director of the facility in which the person is hospitalized pursuant to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the term of imprisonment imposed upon the person has not expired, the court shall order that the person be reimprisoned until the expiration of his sentence of imprisonment.

STATEMENT OF THE CASE¹

[REDACTED] is a federal prisoner serving a 535-month sentence.² S.A. B 2-3. He was 27 when he was sentenced, and he has been in the custody of the Bureau of Prisons (BOP) since 1998. *Id.* [REDACTED]

[REDACTED]

On November 3, 2016, BOP transferred petitioner from a general population SHU to the most restrictive, locked mental health unit [REDACTED]

[REDACTED] *Id.* at 3-4. Despite his protests that he is not mentally ill and does not need treatment, he has been involuntarily held there ever since. S.A. B 3-4.

[REDACTED]

[REDACTED]

Nearly two years after this transfer, on October 31, 2018, the government filed a petition seeking to transfer petitioner to a mental health facility pursuant to 18 U.S.C. §4245. S.A. B 4. At that time, petitioner had already spent two years in such a facility, being treated involuntarily. *Id.* Petitioner opposed this petition and asked the court to dismiss it because he had been unlawfully transferred two years earlier. S.A. B 8-9. After a hearing, the district court denied his motion to dismiss and granted the government's petition. *Id.*

¹ Throughout this petition, S.A. A refers to Sealed Appendix A and S.A. B to Sealed Appendix B.

² Petitioner was convicted of drug and gun offenses in 1997 in the Eastern District of North Carolina. S.A. B at 2-3. His original sentence of 592 months was reduced due to "retroactive amendments to the drug sentencing guidelines." *Id.*

On appeal, petitioner argued that the government violated his due process rights by transferring him to, and holding him in, a secure mental health unit without filing a §4245 petition.³ The Court of Appeals summarily affirmed the district court. S.A. A 1-2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REASONS FOR GRANTING THE PETITION

- I. The involuntary transfer of an incarcerated person to a mental hospital implicates a due process liberty interest. The government violated petitioner's constitutional due process rights by unlawfully transferring him to, and holding him in, a secure mental health unit without filing a §4245 petition. This Court should grant certiorari to protect important due process rights and correct the [REDACTED] misinterpretation of *Vitek v. Jones* and 18 U.S.C. §4245.

The United States Constitution provides that no one shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V; *see also* U.S. Const. Amend XIV. This Court has held that the involuntary transfer of an incarcerated person to a mental hospital implicates a due process liberty interest:

None of our decisions holds that conviction for a crime entitles a State not only to confine the convicted person but also to determine that he has a mental illness and to subject him involuntarily to institutional care in a mental hospital. Such consequences visited on the prisoner are qualitatively different from the punishment characteristically suffered by a person

³ Petitioner also argued that the district court did not give him a sufficient opportunity to attend the §4245 hearing [REDACTED]. This claim is not raised in this petition.

convicted of crime. Our cases recognize as much and reflect an understanding that involuntary commitment to a mental hospital is not within the range of conditions of confinement to which a prison sentence subjects an individual. A criminal conviction and sentence of imprisonment extinguish an individual's right to freedom from confinement for the term of his sentence, but they do not authorize the State to classify him as mentally ill and to subject him to involuntary psychiatric treatment without affording him additional due process protections.

Vitek v. Jones, 445 U.S. 480, 493-94 (1980) (internal citations omitted). It held that “the stigmatizing consequences of a transfer to a mental hospital for involuntary psychiatric treatment, coupled with the subjection of the prisoner to mandatory behavior modification as a treatment for mental illness, constitute the kind of deprivations of liberty that requires procedural protections.” *Id.* at 494; *see also Olim v. Wakinekona*, 461 U.S. 238 (1983) (noting difference between transfer from prison to prison, even if out of state, and from prison to mental hospital).

Following *Vitek*, Congress enacted “statutory procedural requirements” that must be followed before “a person serving a sentence of imprisonment” can be transferred for mental health care or treatment. *United States v. Frierson*, 208 F.3d 282 (1st Cir. 2000) (discussing *Vitek* and §4245). This statute states:

If a person serving a sentence of imprisonment objects either in writing or through his attorney to being transferred to a suitable facility for care or treatment, an attorney for the Government, at the request of the director of the facility in which the person is imprisoned, may file a motion with the court for the district in which the facility is located for a hearing on the present mental condition of the person. The court shall grant the motion if there is reasonable cause to believe that the person may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. A motion filed under this subsection shall stay the transfer of the person pending completion of procedures contained in this section.

§4245(a). If “the court finds by a preponderance of the evidence that the person is presently suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility, the court shall commit the person to the custody of the Attorney General,” who “shall hospitalize the person for treatment in a suitable facility....” §4245(d). “[H]ospitalization in a suitable facility’ includes the Bureau’s designation of inmates to medical referral centers or correctional institutions that provide the required care or treatment.” 28 C.F.R. §549.41.

Petitioner was unlawfully transferred to, and held in, a secure mental health unit for two years without the benefit of these procedures. The application of §4245 and *Vitek* to this case is clear: the government was required to file a petition and provide the required due process *before* it transferred petitioner to a locked mental health unit. The statute and case require that the person being transferred has an opportunity to contest that transfer before being moved to a mental health unit. This rule is consistent with the longstanding principle that constitutional due process demands a meaningful opportunity to be heard before the challenged deprivation occurs. *See Fuentes v. Shevin*, 407 U.S. 67, 80-82 (1972) (“If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented.”); *see also Zinermon v. Burch*, 494 U.S. 113, 136-39 (1990); *Wolff v. McDonnell*, 418 U.S. 539, 564-65 (1974); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

Neither *Vitek* nor §4245 allows BOP to transfer someone to, or hold someone in, a mental health unit based on its judgment that it is the best option.

[REDACTED], petitioner maintained that he did not want to be held on the mental health unit and that he did not want or need treatment.

S.A. B 4. At that moment, if not earlier, the government was required to file a §4245 petition if it wanted to continue to hold petitioner in the mental health unit. It waited two years to do so.

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The Appeals Court's ruling improperly excused BOP's clear violation of petitioner's constitutional due process rights. More broadly, its ruling allows the

BOP to hold people in secure mental units and to subject them to unwanted treatment indefinitely. It allows the BOP to effect de facto commitments as long as it does not draw attention to the commitment by filing a §4245 petition. This result is contrary to *Vitek* and §4245. The BOP has been holding petitioner unlawfully in a mental health facility and subjecting him to involuntary mental health treatment since November 2016. It did not file a §4245 petition until October 2018. This delay is an egregious violation of his due process rights

CONCLUSION

For the foregoing reasons, petitioner asks this Court to grant this petition, to determine that [REDACTED] erred in affirming the district court's decision to grant the government's §4245 petition, and to remand this case for further proceedings.

Respectfully submitted,

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Date: June 28, 2022