

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANDREW RYAN,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether under *United States v. Olano* an incompetent defendant waives appellate review of his statutory and due process right to a timely resolution of his competency determination when defense counsel fails to object to timing violations under 18 U.S.C. § 4241(d) with the committing court?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Andrew Ryan respectfully requests this Court to issue a writ of certiorari to review the opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on October 28, 2022.

OPINION BELOW

The Eighth Circuit's judgment affirming Mr. Ryan's civil commitment under 18 U.S.C. § 4246 is reported at *United States v. Ryan*, 52 F.4th 719 (8th Cir. 2022), and is included in the Appendix.

JURISDICTION

On October 28, 2022, the Court of Appeals affirmed Mr. Ryan's appeal from his civil commitment under 18 U.S.C. § 4246. Under Supreme Court Rule 13.3, this petition for writ of certiorari is filed within ninety days of the date on which the Court of Appeals entered its final order. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254, 28 U.S.C. § 2253 and Sup. Ct. R. 13.3 and 13.5.

CONSTITUTIONAL PROVISION INVOKED

U.S. CONST. amend. V.

STATEMENT OF THE CASE

District Court Proceedings

In January 2018 Mr. Ryan was charged in the Middle District of Tennessee with making threats against the President. *United States v. Ryan*, 52 F.4th 719, 720 (8th Cir. 2022). On August 3, 2018, the Middle District of Tennessee ordered Mr. Ryan to be committed for a competency examination under 18 U.S.C. § 4241(b). *Id.* The examination report concluded Mr. Ryan was incompetent to proceed but could likely attain competency with treatment. *Id.*

After receiving the report, the Middle District of Tennessee held a competency hearing on January 16, 2019 and committed Mr. Ryan to the custody of the Attorney General for hospitalization in a suitable facility for 120 days under 18 U.S.C. § 4241(d). *Id.* On March 7, 2019, Mr. Ryan was designated to the United States Medical Center for Federal Prisoners [“MCFP”] in Springfield, Missouri. *Id.* Due to miscommunication and limited bedspace, Mr. Ryan did not arrive at MCFP until June 27, 2019. *Id.* The evaluation ended October 25, 2019, and the report was completed four days later. *Id.*

Mr. Ryan returned to Tennessee on January 3, 2020. *Id.* On March 17, 2020, the Middle District of Tennessee found Mr. Ryan incompetent to proceed, unlikely to be restored to competency, and ordered an evaluation under 18 U.S.C. § 4246(a) to determine if he should be civilly committed. *Id.* Mr. Ryan arrived at MCFP for this examination on September 3, 2020. *Id.*

On October 15, 2020, the government filed a petition in the Western District

of Missouri to commit Mr. Ryan under § 4246. *Id.* at 720-21. With its petition, the government also filed a certificate from the MCFP warden stating Mr. Ryan was suffering from “a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another,” and “suitable arrangements for state custody and care over the defendant are not currently available.” *Id.* at 721.

Mr. Ryan moved to dismiss the petition alleging the statutory prerequisites under § 4246(a) had not been met. *Id.* Mr. Ryan argued the Middle District of Tennessee violated the time restrictions in § 4241(d), which meant he was no longer in the lawful custody of the Attorney General. *Id.* at 722. Mr. Ryan argued more than four months passed between his arrival at MCFP and the Middle District of Tennessee’s determination of incompetency, and that the court authorized no additional periods for treatment under § 4241(d)(2). *Id.*

The Western District of Missouri denied the motion to dismiss. *Id.* at 721. In October 2021, the district court granted the government’s petition to civilly commit Mr. Ryan under § 4246. *Id.* Mr. Ryan appealed. *Id.*

Appeal to the Eighth Circuit

On appeal before the Eighth Circuit, the court affirmed the denial of Mr. Ryan’s motion to dismiss the government § 4246 petition. The court rejected Mr. Ryan’s argument that the Western District of Missouri lacked jurisdiction to commit him based on the timing violations that occurred with the committing court in the Middle District of Tennessee. *Id.* at 722. After concluding the requirement in

§ 4246(a) that a defendant be committed to the custody of the Attorney General under § 4241(d) was not jurisdictional, the Court opined it can be waived. *Id.* at 722. The court noted Mr. Ryan never objected to the § 4241 (d) timing violations in the Middle District of Tennessee, never filed an appeal in the Sixth Circuit, and never requested a writ of mandamus from the Sixth Circuit. *Id.* at 722-23. Based on Mr. Ryan's failure to take those actions, the court held he waived his right to challenge the § 4241(d) timing violations. *Id.* at 723.

REASONS FOR GRANTING THE WRIT

The judgment of the Eighth Circuit Court of Appeals has decided an important question of federal law in a way that significantly departs from the criteria for waiver this Court enumerated in *United States v. Olano*, 507 U.S. 725 (1993). Waiver is the “intentional relinquishment or abandonment of a known right.” *Id.* at 733. In contrast, forfeiture is failing to make a timely assertion of a right. *Id.* at 733. Mere forfeiture, as opposed to waiver, does not extinguish a reviewing court’s ability to correct an error on appeal. *Id.*

Olano instructs that whether a particular right is waivable depends on the right at stake, whether the defendant must participate personally in the waiver, whether certain procedures are required for waiver, and whether the defendant’s choice must be particularly informed or voluntary. *Id.* (citing 2 W. LaFave & J. Israel, Criminal Procedure § 11.6 (1984)).

The holding in *Ryan* that any non-jurisdictional right is subject to waiver

violates the *Olano* criteria. The right at stake, Mr. Ryan's fundamental right to liberty, is paramount. Though he has not been convicted of any crime, Mr. Ryan faces the remainder of his life confined in a Bureau of Prisons medical facility. It is difficult to fathom a right more deserving of protection. The importance of the right at stake militates against a finding of waiver.

The second factor of *Olano* - whether the defendant must participate personally in the waiver - also militates against a finding of waiver. The rationale underlying this factor is that a court's application of the waiver doctrine to a right is more tenable if a defendant assents to its relinquishment. Here there is no evidence Mr. Ryan personally participated in any hearing or process by which he waived his statutory and due process right to a timely resolution of the determination of his competency to proceed. But even if there were such evidence, the record is undisputed Mr. Ryan never attained competency during any stage of the proceedings leading to his § 4246 commitment. Mr. Ryan's undisputed incompetency acts as a complete bar to the contention that he personally approved of or acquiesced to the § 4241(d) violations that occurred here. If a person is incompetent to proceed at trial, such person is likewise incompetent to waive statutory and constitutional rights associated with those proceedings.

The third factor of the *Olano* criteria - whether certain procedures are required for waiver – also militates against a finding of waiver. The court in *Ryan* outlined no procedures that were necessary before concluding Mr. Ryan waived his right to a timely resolution of his competency determination. The opinion in *Ryan*

only describes what he could have but failed to do: he did not object, he did not formally request release, he did not file an appeal, he did not request a writ of mandamus. *Id.* at 722-23. While these actions would support a finding of forfeiture - failing to make a timely assertion of a right, they cannot demonstrate an “intentional relinquishment or abandonment of a known right” as required by *Olano*. See *United States v Wisecarver*, 598 F.3d 982, 988-89 (8th Cir. 2010) (relying on *Olano* to conclude defendant did not waive right to challenge jury instruction on appeal despite failure to object during colloquy with the district court regarding its flaws).

The fourth *Olano* factor - whether the defendant’s choice must be particularly informed or voluntary – also militates against a finding of waiver. Similar to the second factor that looks to the defendant’s participation in the process, this factor addresses whether the right at issue was knowingly relinquished by the defendant. Here there is no basis to conclude Mr. Ryan knowingly relinquished his statutory and constitutional right to a timely determination of his competency. As noted above, Mr. Ryan’s undisputed incompetency throughout the proceedings demonstrates he lacked the capacity to make any informed or voluntary decisions that affected his rights during the proceedings.

Each *Olano* factor refutes a finding Mr. Ryan waived his statutory and constitutional right to a timely resolution of his competency determination. The holding in *Ryan* that a defendant’s failure to object to during competency restoration proceedings constitute a waiver of his statutory and constitutional

rights to a timely resolution of his competency determination should be reviewed and reversed by the Court as inconsistent with *Olano*.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Mr. Ryan respectfully requests this Court grant his petition for certiorari.

Respectfully submitted,

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