

No. 23-

In the Supreme Court of the United States

MARCOS CAMPOS,

APPLICANT,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

**EMERGENCY APPLICATION TO STAY ORDER OF SURRENDER ISSUED
BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA PENDING APPEAL IN THE ELEVENTH CIRCUIT
COURT OF APPEALS**

Emergency Application for Stay Submitted to the Honorable Clarence Thomas
Associate Justice of the Supreme Court of the United
States and Circuit Justice for the Eleventh Circuit

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PARTIES TO THE PROCEEDINGS

The applicant in this Court is Mr. Marcos Campos.

The respondent in this Court is the United States of America (the “Government”)

RELATED CASES

United States v. Campos, no. 23-10508-HH (11th Cir. 2023) (pending appeal)

By: s/ *Bernardo Lopez*
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RELIEF SOUGHT

To: The Honorable Clarence Thomas, Circuit Justice for the Eleventh Circuit:

Pursuant to Rule 23 of the Rules of this Court, Mr. Campos respectfully seeks a stay of the District Court of the Southern District of Florida's order requiring that Mr. Campos self-surrender to the Federal Medical Center in Butner, North Carolina ("FMC Butner") today, April 25, 2023, a copy of which is appended to this application.

Mr. Campos seeks a stay of the District Court's order pending the outcome of his appeal in the Eleventh Circuit. Pursuant to Rule 23 of this Court, Mr. Campos first filed a motion to a stay the District Court's order in the Eleventh Circuit on March 8, 2023. As of the date of this filing, the Eleventh Circuit has not ruled on the motion. Mr. Campos is ordered to report today, April 25, 2023.

PROCEEDINGS BELOW

On April 15, 2021, a federal grand jury charged Mr. Marcos Campos with receipt and possession of child pornography. DE 19. A United States Magistrate Judge found Mr. Campos incompetent. Pursuant to 18 U.S.C. § 4241, the Magistrate Court ordered Mr. Campos into the custody of the

Attorney General for a four-month period in an attempt to determine whether Mr. Campos could be made competent to stand trial. DE 49. After the four-month period of treatment at a federal medical facility, the Magistrate Court, based on reports from medical personnel, made a factual determination that there was no substantial probability that Mr. Campos could be made competent to stand trial within the foreseeable future. The Magistrate Court released Mr. Campos to the custody of his sister. DE 64.

The prosecutor subsequently filed objections to the Magistrate Court's ruling. DE 66. The District Court, with no additional evidence and without holding a hearing, found the Magistrate Court had committed clear error in her finding that there was no substantial probability of Mr. Campos regaining competency to stand trial. The District Court ordered Mr. Campos to surrender to the Attorney General by April 25, 2023, for an additional reasonable period to restore his competence. DE 72. The District Court denied Mr. Campos's request to stay the order of surrender pending his appeal in the Eleventh Circuit. DE 76.

On March 8, 2023, Mr. Campos filed a motion to stay the District Court's order of surrender in the Eleventh Circuit Court of Appeals. As of the time of this filing, the Eleventh Circuit has not ruled on Mr. Campos's motion to stay the District Court's order of surrender. Mr. Campos is scheduled to self-surrender to FMC Butner today, April 25, 2023.

STATEMENT OF JURISDICTION

The district court had jurisdiction of this case pursuant to 18 U.S.C. § 3231 because the defendant was charged with an offense against the laws of the United States. The court of appeals has jurisdiction over this appeal pursuant to the collateral order doctrine *See United States v. Donofrio*, 896 F.2d 1301, 1303 (11th Cir. 1990). This Court has jurisdiction pursuant to Supreme Court Rule 23.

REASON TO GRANT THE APPLICATION

This Court should grant the application for a stay pending the outcome of Mr. Campos’s appeal in the Eleventh Circuit. This Court will stay a lower court’s order if there is “(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *San Diegans for the Mt. Soledad Nat’l War Mem’l v. Paulson*, 548 U.S. 1301, 1302 (2006) (Kennedy, J., in chambers); see also *Nken v. Holder*, 556 U.S. 418, 427–29 (2009); *West Virginia v. EPA*, 577 U.S. 1126 (2016); *Anderson v. Loertscher*, 137 S. Ct. 2328 (2017).

Mr. Campos meets each of the three factors here. This case involves a challenge to the District Court’s application of Federal Rule of Criminal Procedure 59(a) when it overturned the Magistrate Court’s decision that there was no substantial probability that Mr. Campos would be restored to competency with an additional period of treatment pursuant to 18 U.S.C. § 4241(d). Federal Rule of Criminal Procedure 59(a) only permits

a district court to overturn a magistrate judge's decision on a non-dispositive matter if it was clearly erroneous or contrary to law. Clear error is a high standard, and a reviewing court may only overturn on clear error if it is left with a firm and definite conviction that a mistake has been committed. But this does not mean that a reviewing court may overturn a lower court's decision simply because it would have decided the case differently. Rather, if the lower court's decision is plausible and supported by the record evidence, the reviewing court must affirm. The misapplication of a Federal Rule of Criminal Procedure—particularly when the consequences are a deprivation of liberty—raise an important issue sure to gather the attention of at least four Justices.

Further, a higher court is likely to reverse the District Court's decision. Here, the Magistrate Court's decision is both plausible and supported by ample evidence in the record. The Magistrate Court thoroughly reviewed and relied upon the entire history of Mr. Campos's legal proceedings, multiple competency evaluations, the most recent competency evaluation from FMC Butner, and the entire record as a whole. The District Court, without considering additional evidence or holding a hearing, reviewed the same evidence as the Magistrate Court

and simply disagreed with its ultimate conclusion. That is not clear error. Because the District Court failed in its application of the rigorous clear error standard, a higher court is likely to reverse.

Finally, Mr. Campos will face irreparable harm absent a stay. Mr. Campos has already been imprisoned in a federal medical prison facility for the maximum term of four months pursuant to § 4241(d)(1)—a statute which set a clear limit on the length of time an incompetent individual can be detained pursuant to the due process clause of the Fifth Amendment. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); 18 U.S.C. § 4241(d); *see also* S. Rep. No. 98-225 at 236, 1984 U.S.C.C.A.N. 3182, 1983 WL 25404(1984). A deprivation of Mr. Campos’s constitutional rights is unquestionably an irreparable injury.

More specifically, Mr. Campos’s individual treatment progress will be harmed by returning him to FMC Butner. FMC Butner is no ordinary treatment facility to Mr. Campos. In 2012, while Mr. Campos was undergoing restoration proceedings in a prior criminal case, Mr. Campos’s roommate sexually assaulted him at the facility. DE 39-1 at 9 (Sealed); 39-2 at 3 (Sealed); 39-3 at 9 (Sealed). Mr. Campos was diagnosed with Post Traumatic Stress Disorder (“PTSD”) as a direct result the

attacks at FMC Butner. *See* DE 39-1 at 9 (Sealed). Since returning from FMC Butner most recently, Mr. Campos has trouble sleeping and has developed a urinary tract infection from being too afraid to use the restroom while he was at FMC Butner. Returning Mr. Campos to the very facility that (1) instigated his PTSD and (2) has already failed to restore him to competency will cause him even more harm.

The Eleventh Circuit's inaction to consider Mr. Campos's motion for a stay should not prevent this Court from considering his request. *Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303, 1305 (1983) (J., O'Connor, chambers) (granting stay pending disposition of application for stay in lower court and noting that "the failure of the Michigan Supreme Court to act promptly should not prevent a member of this Court from entering an application to stay"). The Eleventh Circuit's failure to act by the date that the District Court ordered Mr. Campos to self-surrender amounts to a denial of his motion for a stay. Accordingly, this Court's action is needed to prevent substantial harm to Mr. Campos in the absence of a stay.

FACTUAL AND PROCEDURAL BACKGROUND

The Applicant, Mr. Campos, is currently released in the custody of his sister, Paula Campos. He is scheduled to self-report to FMC Butner on April 25, 2023.

I. Course of Proceedings in the District Court

A federal grand jury in the Southern District of Florida charged Mr. Campos in a two count Indictment with one count of receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2); and one count of possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4). DE 19. On April 15, 2021, defense counsel moved to have Mr. Campos evaluated and his competency determined. DE 18. The District Court referred the motion to the Magistrate Court pursuant to 28 U.S.C. § 636. DE 23. The Magistrate Court ordered Mr. Campos committed to the custody of the Attorney General for a period “not to exceed four months” to undergo treatment to see whether Mr. Campos could be restored to competency. DE 49 at 2–3 (emphasis removed).

At the end of the four month period, Mr. Campos filed a motion for immediate release, arguing that no substantial probability existed that he would be restored to competency. DE 55; *see* 18 U.S.C. § 4241(d). The

Magistrate Court granted the motion and ordered Mr. Campos released. DE 64. The Government filed an objection to the Magistrate Court's order. DE 66. On February 13, 2023, the District Court sustained the Government's objection and ordered Mr. Campos committed to FMC Butner for an additional reasonable period of treatment pursuant to 18 U.S.C. § 4241(d). DE 72. On March 8, 2023, Mr. Campos filed a motion to stay the District Court's order of surrender pending the outcome of his appeal in the Eleventh Circuit. Mr. Campos also requested an expedited briefing schedule on his appeal. As of the date of this filing, the motion to stay remains pending.

II. Facts

A. Mr. Campos's Background

Mr. Campos is a 53 year-old man who has resided in Miami, Florida, since he was nine years old. Despite being well into his fifties, Mr. Campos has never lived independently. This is so because of severe cognitive defects that have plagued Mr. Campos for his entire life. *See* DE 39-2 at 3–4 (Sealed). Although Mr. Campos was not formally evaluated until he was an adult, he has struggled with speech, motor skills, developmental milestones, and social interactions since he was a

young boy. Mr. Campos was also born with abnormalities in his ear, nose, and throat, each of which required surgery and caused physical defects. *Id.*

Mr. Campos's cognitive and physical challenges plagued his development. Mr. Campos required frequent redirection and attention to complete basic tasks like brushing his teeth or bathing. In school, Mr. Campos failed several grades, eventually graduating high school only through an alternative program. DE 39-2 at 3–4(Sealed); DE 39-1 at 2–3 (Sealed). Mr. Campos's challenges made him the target of bullying and harassment from the other children, and Mr. Campos has never had significant social relationships outside of his family. Mr. Campos shared a particularly close relationship with his mother. DE 39-1 at 3–4(Sealed).

In 1994, while Mr. Campos was in his twenties, both of his parents were in a car accident that left them both with severe injuries. DE 39-1 at 5 (Sealed). Mr. Campos's mother was in a coma for a period after the car accident and suffered permanent brain damage. *Id.* Following the accident, Mr. Campos's mental state deteriorated all the more, causing him to face depression, anxiety, and paranoia. *Id.* He became obsessed with the idea of neighbors spying on the Campos family. He also began

to hear noises and voices that did not exist. *Id.* Because Mr. Campos's parents were no longer able to care for themselves or Mr. Campos, Mr. Campos's older sister, Paula Campos, moved in with the Campos family to serve as the fulltime caretaker for Mr. Campos and his two parents. *Id.* at 4–5.

B. Prior Case and Competency Proceedings

In 2010, a grand jury in the Southern District of Florida charged Mr. Campos with three counts of distributing child pornography in violation of 18 U.S.C. § 2252(a)(2), and one count of possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B) in case number 2011-CR-20518-Altanoga (“Prior Case”). Prior Case, DE 13. On request of the parties, the court ordered that Mr. Campos submit to a competency evaluation pursuant to 18 U.S.C. § 4241(d). DE 38.

On May 4, 2012, the court found a reasonable probability that Mr. Campos was incompetent and ordered him committed to the custody of the Attorney General for a period not to exceed 120 days pursuant to 18 U.S.C. § 4241(d). Prior Case, DE 57. The court then ordered Mr. Campos be admitted to FMC Butner for restoration treatment. *Id.* Despite the court's order that Mr. Campos should not be admitted for a period longer

than 120 days, FMC Butner failed to complete a competency report during the 120-day period. *See* Prior Case, DE 60. Mr. Campos's extended time at FMC Butner was not without consequence. Mr. Campos was the victim of an unprovoked assault by his cellmate where he was physically and sexually abused to the point where he feared for his life. DE 39-1 at 5 (Sealed); DE 39-2 at 3 (Sealed). To this day, Mr. Campos lives the trauma of his experience at FMC Butner.

On January 23, 2013, upon motion of defense counsel, the court ordered Mr. Campos released from FMC Butner and into the custody of his sister. Prior Case, DE 63. Following his return from FMC Butner in 2013, Mr. Campos submitted to additional evaluations in the community. DE 66–69. On March 4 and 8, 2013, the district court held a competency hearing as to Mr. Campos. DE 68 & 69. On April 30, 2013, the parties agreed that the prosecution against Mr. Campos could not proceed because of his incompetency. DE 77 at 2–9. Upon joint request of the parties, the district court ordered that (1) Mr. Campos continue to be released on house arrest with the special condition of mental health therapy in the community; and (2) the case be administratively closed while Mr. Campos received treatment. Prior Case, DE 75.

For four years thereafter, Mr. Campos remained fully compliant with all conditions of release. Despite receiving community treatment during those four years, Mr. Campos's competency was never restored. On August 23, 2017, the court held a hearing during which the government stipulated to Mr. Campos' most recent evaluation finding him incompetent and not restorable. *See* Prior Case, DE 78 & 83. On August 31, 2017, upon leave of court, the government then dismissed without prejudice the Indictment against Mr. Campos. Prior Case, DE 85.

C. Instant Case and Competency Proceedings

On October 11, 2020, Mr. Campos was arrested and charged by criminal complaint in the instant case. The same day, the Magistrate Court held a detention hearing and released Mr. Campos on a \$ 150,000 personal surety bond, cosigned by Paula Campos. DE 9. At the detention hearing, the Government confirmed that Mr. Campos's competency had not changed since the Prior Case. On April 15, 2021, a grand jury in the Southern District of Florida returned an Indictment as to both charges named in the complaint. DE 19. Also on April 15, 2021, defense counsel

requested that Mr. Campos be formally evaluated and that the Court determine his competency. DE 18.

Three providers then completed formal competency evaluations as to Mr. Campos. First, Dr. Michael Brannon completed a Forensic Psychological Evaluation as to Mr. Campos. DE 39-1 (Sealed). In the evaluation, Dr. Brannon offered the diagnosis of Schizoaffective Disorder with prominent paranoid features; Autism Spectrum Disorder; Posttraumatic Stress Disorder; Generalized Anxiety Order; and Borderline Intellectual Functioning. *Id.* Dr. Brannon concluded that Mr. Campos suffers from “severe and permanent psychological problems” that predate his legal issues and “will not improve by any form of educational, medical, or psychological interventions.” *Id.* at 10. Dr. Brannon also noted that Mr. Campos’s “mental condition could deteriorate through placement into mental health settings away from family support such as hospitals or residential programs.” *Id.* Dr. Brannon therefore concluded that Mr. Campos is incompetent and not restorable. *Id.*

Defense counsel then retained the services of Dr. Lori Butts because she had previously evaluated Mr. Campos in both 2011 and 2017. *See*

Prior Case, DE 35 & 36 (Sealed). In her current evaluation, Dr. Butts concluded that Mr. Campos is in no different cognitive position than in 2011 or 2017 when she previously evaluated him. *See* DE 31-2 (Sealed). Dr. Butts opined that Mr. Campos' cognitive deficits are developmental and therefore unlikely to change. *Id.* Dr. Butts also noted signs of Posttraumatic Stress Disorder caused by attacks against Mr. Campos when he was previously receiving treatment at FMC Butner. *Id.* She concluded that Mr. Campos is incompetent to proceed to trial and is not restorable. *Id.*

At the Government's request, the Magistrate Court then appointed an independent examiner to evaluate Mr. Campos. On August 14, 2021, Dr. Alejandro J. Arias evaluated Mr. Campos and concluded that he is not competent to proceed to trial and is unlikely to be restored. DE 39-3 (Sealed). Thus, in total, three evaluators in the instant case have concluded that Mr. Campos is not competent to proceed to trial and is not likely or completely unable to be restored to competency. *See* DE 39 (Sealed).

On December 15, 2021, the parties submitted a joint recommendation that the Magistrate Court find by a preponderance of

the evidence that Mr. Campos is presently suffering from a mental disease or defect such that he is mentally incompetent to proceed to trial. DE 46. The parties then recommended that Mr. Campos be committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4241(d) for a reasonable period not to exceed four months to undergo restoration treatment. *Id.* The Magistrate Court granted the motion on February 1, 2022, and ordered Mr. Campos be committed to the custody of the Attorney General for a period “**not to exceed four months.**” DE 49 at 2–3 (emphasis in original). The Magistrate Court permitted Mr. Campos to remain released on bond until his designation. Accordingly, Mr. Campos self-surrendered to his assigned facility, FMC Butner, on September 14, 2022.

On January 11, 2023, the restoration period ended. The same day, the Government filed a motion to extend the period of time to restore competency, requesting an additional eight weeks to restore Mr. Campos. DE 54. Neither the Government nor BOP filed a report regarding Mr. Campos’s competency during the four-month restoration period.

Also on January 11, 2023, Mr. Campos filed a motion for immediate release, arguing that the statutory restoration period had ended and

nothing in the record supported finding that he would be restored to competency in the future. DE 55. Both parties filed responses in opposition to the other side's motion. DE 58, 59. The District Court referred both motions to the Magistrate Court pursuant to 28 U.S.C. § 636 and Fed. R. Crim. P. 59. DE 62.

On January 17, 2023, the Government filed a BOP report regarding Mr. Campos's competency, stating that with additional time, Mr. Campos's "competency related skills could improve." DE 61 (Sealed) (BOP Forensic Evaluation, January 17, 2023 ("January 17th Evaluation")). Mr. Campos then filed a supplemental response to the Government's motion, opposing any extension of the restoration period. DE 60.

D. Magistrate Court's Order

On January 20, 2023, following a telephonic status conference, the Magistrate Court entered a written order granting Mr. Campos's motion for immediate release ("Magistrate Court's Order"). DE 64. Following a consideration of the entire factual record, the Magistrate Court "found that the evidence does not support by a substantial probability the

finding that [Mr. Campos] can be restored to competency during the requested extension.” *Id.* at 12.

In its twelve page order, the Magistrate Court considered the entire history of Mr. Campos’s case, including: the Prior Case; Mr. Campos’s three evaluations conducted in the instant case; and the recent January 17th Evaluation. Specifically, the Magistrate Court’s Order relied on the January 17th Evaluation’s assessment that Mr. Campos’s mental condition is developmental in nature and thus “chronic and unchanging[,]” as confirmed by Mr. Campos’s three evaluations conducted before his commitment at FMC Butner. DE 64 at 8–9. The Magistrate Court further noted the January 17th Evaluation’s conclusion that Mr. Campos met the criteria for Borderline Intellectual Functioning and Adaptive Functioning Deficits. *Id.* She also considered Mr. Campos’s diagnoses for Unspecified Neurodevelopmental Disorder, Borderline Intellectual Functioning, and Major Depressive Disorder. DE 64 at 9. The Magistrate Court identified that the January 17th Evaluation failed to opine that Mr. Campos had a substantial probability of regaining competence and that the record as a whole would not support such a finding.

On January 21, 2023, FMC Butner released Mr. Campos into the custody of his sister, Paula Campos, pursuant to his previously set bond conditions. On February 3, 2023, the Government objected to the Magistrate Court's Order. DE 66. Mr. Campos responded on February 10, 2023. DE 70.

E. District Court's Reversal of the Magistrate Court's Order

On February 13, 2023, the District Court issued a written order sustaining the Government's objection to the Magistrate Court's Order ("District Court's Order"). DE 72. Having considered no additional evidence, the District Court found that the Magistrate Court committed clear error in finding no substantial probability that Mr. Campos would be restored to competency within an additional reasonable period of time. The District Judge reasoned that portions of the January 17th Evaluation indicated that Mr. Campos's competency could be restored. Specifically, the District Court pointed to the January 17th Evaluation's explanation that Mr. Campos's factual understanding of courtroom proceedings had "improved" and that Mr. Campos's mental state had developed since his prior evaluation at FMC Butner in 2012. DE 72 at 4.

Further, the District Court faulted the Magistrate Court for “overly rel[ying]” on the January 17th Evaluation’s statement that with an extension, Mr. Campos’s “competency related skills could improve[,]” rather than opining that Mr. Campos had a substantial probability of being restored. DE 72 at 4. The District Court determined this statement could be interpreted only as an indication that the evaluators believed Mr. Campos could be restored. The District Court further concluded that the Magistrate Court’s Order was not supported by substantial evidence in the record. DE 72 at 5. The District Court therefore sustained the Government’s objection.

Following the District Court’s Order, Mr. Campos promptly filed a notice of appeal, and the District Court held a telephonic status conference with the parties. DE 73, 74. During the status, Mr. Campos requested a stay of the District Court’s Order for the duration of his appeal of the Order. The District Court orally denied the motion and later issued a written order mandating that Mr. Campos self-surrender to FMC Butner by April 25, 2023. DE 76. Mr. Campos filed a motion to stay the District Court’s order mandating his self-surrender to FMC Butner with the Eleventh Circuit that remains pending.

STANDARD OF REVIEW

This Court should stay a lower court’s order if there is “(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth*, 558 U.S. at 190; *San Diegans for the Mt. Soledad Nat’l War Mem’l*, 548 U.S. at 1302; *see also Nken*, 556 U.S. at 427–29; *West Virginia v. EPA*, 577 U.S. 1126 (2016); *Anderson*, 137 S. Ct. at 2328.

ARGUMENT AND CITATIONS OF AUTHORITY

All three requirements for this Court to issue a stay weigh in Mr. Campos’s favor.

First, this Court is likely to grant review, and then reverse, on the important issue regarding a Federal Rule of Criminal Procedure and constitutional due process that Mr. Campos raises here.

The Magistrate Court made a non-dispositive ruling that there was no substantial probability of Mr. Campos being restored to competency in the foreseeable future after carefully reviewing the entire record of the case. In so deciding, the Magistrate Court carefully followed the strict

requirements of 18 U.S.C. § 4241(d), and adhered to the due process principles identified in *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

In 1972, *Jackson* made clear that “due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” 406 U.S. at 738. Accordingly, the this Court mandated that a criminal defendant who may not be competent to stand trial cannot be incarcerated for more than the reasonable period of time necessary to determine whether he is competent or “whether there is a substantial probability that he will attain that capacity in the foreseeable future.” *Id.*

In 1984, Congress codified those due process rights in the Insanity Defense Reform Act of 1984 (“IDRA”), Pub. L. 98-473, 98 Stat. 2057 (1984), 18 U.S.C. §§ 4241–4247. Congress passed the Act in direct response to the Supreme Court’s decision in *Jackson*. See *United States v. Donofrio*, 896 F.2d 1301, 1302 (11th Cir. 1990); see also S. Rep. No. 98-225 at 236, 1984 U.S.C.C.A.N. 3182, 1983 WL 25404(1984). As relevant here, the IDRA provides a strict procedure for raising the competency of a criminal defendant to stand trial in accordance with due process of law.

First, the statute provides that either defense counsel or the government can file a motion to determine the mental competency of a criminal defendant. 18 U.S.C. § 4241(a). The court can then order an initial psychiatric examination and hold a hearing on the defendant's competency. 18 U.S.C. § 4241(b),(c).

If, following a hearing, the court finds by the preponderance of the evidence that the defendant is incompetent, § 4241 then mandates the process to determine the defendant's "restorability"—that is, his likelihood of regaining mental capacity to stand trial. Upon a finding of incompetence, the court must commit the defendant to the custody of the Attorney General who "shall hospitalize" him for treatment for "a reasonable period of time, **not to exceed four months**, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward." 18 U.S.C. § 4241(d)(1) (emphasis added).

Following the initial reasonable period, the Court may only extend the evaluation period "if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward." § 4241(d)(2)(A)

(emphasis added). In other words, the “reasonable period” may only be extended upon the court’s factual finding that the defendant has a substantial probability of regaining competence in the foreseeable future.

As the Eleventh Circuit and many other courts have long recognized, the IDRA’s requirements are mandatory and unambiguous. *See Donofrio*, 896 F.2d at 1303 (“The statute limits confinement to four months, whether more time would be reasonable or not.”); *see also United States v. Baker*, 807 F.2d 1315, 1320 (6th Cir. 1986) (noting § 4241(d) “requires that a determination as to the individual’s mental condition be made within four months, and that the individual cannot be held pursuant to section 4241 in excess of four months unless the court finds that the individual is likely to attain competency within a reasonable time”). Simply put, unless the reviewing judge determines within the initial “reasonable period” that the defendant has a substantial probability of restoration with additional treatment, no extension may be granted under the IDRA.

Here, the Magistrate Court conducted Mr. Campos’s initial competency hearing pursuant to § 4241(a)–(c) and determined him to be

incompetent to stand trial. Pursuant to the statute, Mr. Campos was then detained for four months at a medical facility for treatment.

Following that four-month period of detention and treatment, the Magistrate Court made a factual determination that no substantial probability existed that Mr. Campos would be restored in the foreseeable future. The Magistrate Court only made this determination after reviewing Mr. Campos's numerous medical reports, the complete history of competency proceedings in the instant case and the Prior Case, and the entire record as a whole. The Magistrate Court then ordered Mr. Campos released.

Without receiving any additional information or holding a hearing, the District Court set aside the Magistrate Court's Order under Federal Rule of Criminal Procedure 59(a). Under Rule 59(a), the District Court has the authority to "modify or set aside any part of the [magistrate judge's] order that is **contrary to law or clearly erroneous.**" Fed. R. Crim. P. 59(a) (emphasis added). Clear error is a "highly deferential" standard of review. *Eggers v. Alabama*, 876 F.3d 1086, 1094 (11th Cir. 2017) (citing *Holladay v. Allen*, 555 F.3d 1346, 1354 (11th Cir. 2009)) (quotation omitted). As long as the lower court's findings are

“plausible[,]” the reviewing court may not reverse unless it is left with “the definite and firm conviction that a mistake has been committed.” *United States v. Engelhard Corp.*, 126 F.3d 1302, 1305 (11th Cir. 1997) (citing *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, 105 (1985)). A “firm conviction that a mistake has been committed” does not mean that the district court can reverse simply because it disagrees with the conclusion of the lower court. *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1301 (11th Cir. 2020) (citing *Solomon v. Liberty Cnty. Comm'rs*, 221 F.3d 1218, 1226 (11th Cir. 2000)). In other words, the reviewing court may not make its task “to decide factual issues de novo.” *Id.* Instead, the reviewing court must give “due regard” to the lower court’s factual findings and overturn only if “the findings are not supported by substantial evidence.” *Id.* Unless this “high standard” is met, the reviewing court must affirm. *See United States v. White*, 335 F.3d 1314, 1319 (11th Cir. 2003).

This deferential standard makes sense, as the lower court is in the best position to determine witness credibility and evaluate the record evidence. But even in a case with no live testimony, this deferential standard applies with equal force. *Madison v. Comm'r, Alabama Dep't of*

Corr., 761 F.3d 1240, 1247 (11th Cir. 2014) (citing *Thompson v. Nagle*, 118 F.3d 1442, 1447 (11th Cir. 1997)) (clear error standard applies even when the lower court’s finding is made “solely from documents, records, or inferences from other facts.”).

Here, the record plainly demonstrates that the Magistrate Court’s Order was neither contrary to law nor clearly erroneous. The Magistrate Court considered the robust record of Mr. Campos’s competency and all related proceedings. First, the Magistrate Court considered the history of Mr. Campos’s Prior Case. In the Prior Case, the court found Mr. Campos incompetent and committed him to the custody of the Attorney General pursuant to § 4241(d) for a reasonable period “not to exceed one hundred twenty (120) days.” Prior Case, DE 57. The court committed Mr. Campos to the custody of FMC Butner where he remained for over eight months. Despite being held at FMC Butner for months beyond the statutory period, Mr. Campos never regained competency. Ultimately, the court ordered Mr. Campos released into the custody of his sister where he remained on bond and received treatment in the community. Prior Case, DE 64. After four years of community treatment, Mr. Campos *still* was not competent to proceed to trial. Having failed to restore Mr.

Campos, the government had no choice but to dismiss the case. Prior Case, DE 82.

The Magistrate Court also had the benefit of Mr. Campos's three evaluations conducted in the instant case. First, Dr. Michael Brannon evaluated Mr. Campos, concluding that Mr. Campos suffered from "severe and permanent psychological problems" predating his legal issues. DE 39-1 at 10. Dr. Brannon diagnosed Mr. Campos with Autism Spectrum Disorder; Posttraumatic Stress Disorder; Generalized Anxiety Order; and Borderline Intellectual Functioning. *Id.* at 9–10. Dr. Brannon concluded that Mr. Campos's mental health problems "will not improve by any form of educational, medical, or psychological interventions." DE 39-1 at 10. Second, Dr. Lori Butts—who had previously evaluated Mr. Campos in both 2011 and 2017—evaluated him. Dr. Butts concluded that Mr. Campos is in no different position than when she previously evaluated him. She concluded that Mr. Campos is incompetent to proceed and will not be restorable. DE 39-2 at 6. At the Government's request, the Court then appointed an independent examiner, Dr. Alejandro Arias, to evaluate Mr. Campos. Dr. Arias too concluded that Mr. Campos is unlikely to ever be restored. DE 39-3 at 2.

Last, the Magistrate Court thoroughly considered the January 17th Evaluation, which she credited as “incredibly thorough, candid, and . . . direct.” DE 68 at 7:18–20. The Magistrate Judge praised the January 17th Evaluation’s “honesty and transparency” about Mr. Campos’s progress and its thorough account of the history of Mr. Campos’s mental state. *Id.* at 8:12–15. Having fully considered each part of the January 17th Evaluation, the Magistrate Court found that the January 17th Evaluation did not opine that Mr. Campos had a “substantial probability” of being restored. Rather, the evaluators only found that he “could benefit” from further treatment to perhaps improve his “competency related skills.” DE 64 at 8–9. The Magistrate Court recognized the January 17th Evaluation’s assessment of Mr. Campos’s mental defects as guarded, chronic, and unchanging. *See id.*

The District Court’s conclusion that the Magistrate Court committed clear error ignores the ample evidence contained in the record—evidence that the Magistrate Court plainly considered and which supports her ultimate conclusion. That the District Court simply disagreed with the Magistrate Court’s assessment of the facts does not amount to clear error. *See, e.g., Anderson v. Bessener Cty*, 470 U.S. 564,

574 (1985) (stating that “[w]here there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.”).

In sum, because Mr. Campos’s appeal raises a challenge to the important and far-reaching issue of the application of a Federal Rule, and because Mr. Campos is likely to succeed in his challenge, the first two factors weigh in favor of this Court granting a stay.

Finally, Mr. Campos will be irreparably harmed absent a stay. A deprivation of Mr. Campos’s constitutional rights is unquestionably an irreparable injury. Should this Court fail to stay the District Court’s order, Mr. Campos’s due process rights under the Fifth Amendment will be violated. Mr. Campos has already been imprisoned in a federal medical prison facility for the maximum term of four months pursuant to § 4241(d)(1)—a statute designed to prevent this very due process violation. As the Magistrate Court carefully determined, there is no substantial probability that in the foreseeable future Mr. Campos will be restored. If Mr. Campos is required to return to FMC Butner, he will be subjected to an unnecessary period of detention, in violation of the IDRA and his due process rights. *See Jackson*, 406 U.S. at 738. Loss of freedom

through deprivation of a constitutional right is an injury which cannot be undone.

More specifically, Mr. Campos's individual treatment progress will be harmed by returning him to FMC Butner. FMC Butner is no ordinary treatment facility to Mr. Campos. In 2012, while Mr. Campos was undergoing restoration proceedings in the Prior Case, Mr. Campos's roommate sexually assaulted him at the facility. DE 39-1 at 9; 39-2 at 3; 39-3 at 9. Mr. Campos was diagnosed with Post Traumatic Stress Disorder ("PTSD") as a direct result of the attacks at FMC Butner. *See* DE 39-1 at 9. Upon his most recent return from FMC Butner, Mr. Campos has had difficulty sleeping, has night terrors, and sustained a urinary tract infection because he was too afraid to use the restrooms at FMC Butner for fear of being attacked. Returning Mr. Campos to the very facility that (1) instigated his PTSD and (2) has failed to restore him in two separate cases will only cause his mental condition to deteriorate.

In sum, if this Court denies the request for a stay, Mr. Campos's constitutional rights will be violated and his individual treatment progress disrupted. Such injuries are non-quantifiable and cannot be reversed.

Further, the Government will suffer NO injury much less a substantial injury if this Court grants Mr. Campos a stay. Mr. Campos is residing in the community in the custody of his sister. He has expedited the preparation of his initial brief in his appeal in the Eleventh Circuit and will not seek an extension.

Additionally, no public interest is served by keeping Mr. Campos detained. The Government has conceded in the district court that Mr. Campos poses no danger to the community. Indeed, prior to his commitment at FMC Butner, Mr. Campos was released on bond for nearly two years with no violations. His compliance over the past several years demonstrates that he is not a flight risk nor a danger. Simply put, no public interest will be served by keeping Mr. Campos detained pending the Eleventh Circuit's consideration of his appeal. In contrast, there is a strong public interest in ensuring that Mr. Campos's due process rights—the very rights Congress chose to protect through the IDRA—are protected. This final factor likewise weighs in favor of this Court granting Mr. Campos's request for a stay.

CONCLUSION

This Court should stay the District Court's order requiring Mr. Campos to self-surrender to FMC Butner on April 25, 2023, pending the outcome of his appeal in the Eleventh Circuit.

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