

No. ____

October Term, 2024

IN THE
Supreme Court of the United States

HAITHAM YOUSEF ALHINDI,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

HECTOR DOPICO
FEDERAL PUBLIC DEFENDER
BERNARDO LOPEZ
Assistant Federal Public Defender
Attorney for Petitioner
1 E. Broward Blvd, Ste. 1100
Ft. Lauderdale, FL 33301
(954) 356-7436
Bernardo_Lopez@fd.org

QUESTION PRESENTED FOR REVIEW

In 1972, this Court made it clear that a criminal defendant who may not be competent to stand trial cannot be held more than the reasonable period of time necessary to determine whether the accused is competent or “whether there is a substantial probability that he will attain that capacity in the foreseeable future.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). “[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Id.* In 1984, those due process concerns were codified into federal law when Congress passed The Insanity Defense Reform Act of 1984 (“IDRA”), Pub. L. 98-473, 98 Stat. 2057 (1984), 18 U.S.C. §§ 4241-4247. The IDRA provides in pertinent part that once a court has found that a criminal defendant is not competent to stand trial:

[T]he court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility –

- (1) For such **a reasonable period, 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).

Question Presented:

Whether, given the structure of § 4241(d)(1) and in light of *Jackson v. Indiana*, 406 U.S. 715 (1972), the four-month period of 18 U.S.C. § 4241(d)(1) begins when the district court commits the accused to the custody of the Attorney General or when the accused arrives at the Bureau of Prisons hospital?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED CASES

United States v. Alhindi, no. 9:22-cr-80085-AMC-1 (S.D. Fla.)

United States v. Alhindi, no. 24-10595 (11th Cir.)

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW	i
INTERESTED PARTIES	ii
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
OPINION BELOW.....	2
STATEMENT OF JURISDICTION	2
STATUTORY AND OTHER PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS	4
REASONS FOR GRANTING THE WRIT	10
<p>The holding of the Eleventh Circuit that an individual accused of a federal crime who has been found not to be competent to stand trial may be detained for an indefinite period of time after being committed to the custody of the Attorney General for treatment pursuant to 18 U.S.C. § 4241(d) violates the Due Process clause of the Fifth Amendment and is contrary to this Court’s opinion in <i>Jackson v. Indiana</i>, 406 U.S. 715 (1972). In addition, the reality, as confessed by the Bureau of Prisons, is that hundreds of federal defendants nationally routinely wait seven months or more in the custody of the Attorney General before they are placed in a medical facility for treatment. Resolution of this issue would affect hundreds of federal defendants.....</p>	
CONCLUSION.....	17

APPENDIX

Decision of the Eleventh Circuit Court of Appeals, <i>United States v. Alhindi</i> , No. 24-10595 (11th Cir. Apr. 1, 2024)	A-1
Order Denying Rehearing En Banc, <i>United States v. Alhindi</i> , No. 24-10595 (11th Cir. Aug. 22, 2024).....	A-2
Supplemental Authority filed, DE 49, <i>United States v. Alhindi</i> , No. 24-10595 (11th Cir. Sep 16, 2023) Re: Order to Show Cause, <i>United States v. Shepherd</i> , No. 22-cr-20483 (S.D. Fla , 2019)	A-3
Supplemental Authority filed, DE 53, <i>United States v. Alhindi</i> , No. 24-10595 (11th Cir. Oct., 5, 2023) Re: Transcript of Status Conference, <i>United States v. Shepherd</i> , No. 22-cr- 20483 (S.D. Fla. Sep. 25, 2023)	A-4
Motion to Dismiss, <i>United States v. Alhindi</i> , No. 9:22-cr-80085-AMC-1 (S.D. Fla, 2019)	A-5
Order Denying Motion to Dismiss, <i>United States v. Alhindi</i> , No. 9:22-cr-80085-AMC-1 (S.D. Fla, 2019)	A-6

TABLE OF AUTHORITIES

Cases:

Jackson v. Indiana,

406 U.S. 715 (1972).....5, 10-12, 15

Summit Medical Associates, P.C. v. Pryor,

180 F.3d 1326 (11th Cir. 1999).....9

United States v. Alhindi,

97 F.4th 814 (11th Cir. April 1, 2024).....9, 11, 12

United States v. Carter,

583 F. Supp. 3d 94 (D.D.C. 2022).....15

United States v. Donnelly,

41 F.4th 1102 (9th Cir. 2022)15

United States v. Hansen,

599 U.S. 762 (2023).....14

Statutes And Other Authority:

U.S. Const., amend. V.....2, 10

18 U.S.C. § 4241.....8, 14-15

18 U.S.C. § 4241(d)9-10, 13, 15-17

18 U.S.C. § 4241(d)(1).....9-12, 14

18 U.S.C. § 4247.....4, 12

18 U.S.C. § 4247(b)5

28 U.S.C. § 1254(1)2

Sup. Ct. R. 13.1	2
Part III of the Rules of The Supreme Court of The United States.....	2

**IN THE
SUPREME COURT OF THE UNITED STATES**

No:

**HAITHAM YOUSEF ALHINDI,
*Petitioner,***

v.

**UNITED STATES OF AMERICA,
*Respondent.***

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

PETITION FOR WRIT OF CERTIORARI

Mr. Haitham Yousef Alhindi respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 23-11349 in that court on April 1, 2024, *United States v. Alhindi*, which affirmed the judgment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment of the United States District Court for the Southern District District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on April 1, 2024. An order denying a timely filed petition for rehearing en banc was entered on August 22, 2024. This petition is timely filed pursuant to Sup. Ct. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to the “collateral order” doctrine, which provides appellate jurisdiction over non-final orders that (1) conclusively determine a disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) present a question that would be effectively unreviewable on appeal from a final judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional and statutory provisions:

U.S. Const., amend. V:

No person 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.

18 U.S.C. § 4241(d):

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 to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility –

- (1) For such a reasonable period, 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; and
- (2) For an additional reasonable period of time until ---
 - (A) His mental condition is so improved that trial may proceed, 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; or
 - (B) The pending charges against him are disposed of according to law;

Whichever is earlier.

If 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 proceeding to go forward, the defendant is subject to the provisions of section 4246 and 4248.

STATEMENT OF THE CASE

The Appellant, Mr. Alhindi, is currently committed to the custody of the Attorney General for medical treatment. The district court committed Mr. Alhindi to the custody of the Attorney General for treatment on November 28, 2022. Mr. Alhindi has been unlawfully detained at FMC Butner since June 21, 2023.

COURSE OF PROCEEDINGS AND DISPOSITION IN THE DISTRICT AND CIRCUIT COURT

A federal grand jury charged Mr. Haitham Yousef Alhindi in a superseding indictment with five counts of cyberstalking. DE 35. The district court found Mr. Alhindi incompetent to stand trial and committed him to the custody of the attorney general for medical treatment pursuant to 18 U.S.C. § 4241(d). DE 34, 49. Mr. Alhindi filed an interlocutory appeal challenging the order of commitment. DE 50.

STATEMENT OF FACTS

Mr. Alhindi has been deprived of his liberty for more than two years on the underlying offense. On May 19, 2022, Mr. Alhindi made his first appearance following his arrest pursuant to a criminal complaint alleging that Mr. Alhindi committed interstate domestic violence and cyberstalking. DE 3, 11. On May 27, 2022, the Magistrate Judge held a hearing and ordered Mr. Alhindi detained. DE 13, 14. On June 7, 2022, a federal grand jury charged Mr. Alhindi with interstate domestic cyberstalking. DE 15. On July 15, 2022, the District Court ordered Mr. Alhindi to the custody of the attorney general for evaluation regarding his competency pursuant to 18 U.S.C. §§ 4241, 4247. DE 20. In the order, the District Court also ordered that “[t]he evaluation shall be conducted by the Federal Bureau of Prisons, and shall be completed, and a report prepared, no later than August 26, 2022.” *Id.*

Despite the clear dictates of the district court’s order, the Bureau of Prisons and the Attorney General failed to comply with the order. On September 15, 2022, the Bureau of Prison filed a letter with the district court noting that the Bureau of Prisons, instead of taking Mr. Alhindi to a medical facility as ordered by the district

court, they took Mr. Alhindi across country to the Metropolitan Detention Center (“MDC”) in Los Angeles. DE 24. There was no explanation given why Mr. Alhindi was taken across the country to merely sit at another detention center. The Warden of MDC noted that Mr. Alhindi arrived at MDC on August 18, 2022 and that he was not “medically cleared” until August 29, 2022. *Id.* Again, there was no explanation as to why Mr. Alhindi was taken all the way across the country to MDC Los Angeles and why it took additional days to “medically clear” him. Nevertheless, the MDC warden requested an extension of the district court’s order to have until November 2, 2022 to evaluate Mr. Alhindi, as ordered by the court, and until November 23, 2022 to provide a report on that evaluation. *Id.*

Counsel for Mr. Alhindi filed an objection to the request by the BOP. DE 23. Specifically, counsel for Mr. Alhindi noted that the request by the BOP was untimely, that the request and the granting of that request violated the strict mandates of 18 U.S.C. § 4247(b), and violated Mr. Alhindi’s due process rights pursuant to *Jackson v. Indiana*, 406 U.S. 715 (1972). *Id.* On October 6, 2022, the district court issued an order allowing the BOP to conduct an expedited psychological examination of Mr. Alhindi by October 14, 2022. DE 25. Again, the district court ordered a competency evaluation on July 15 2022. Instead of simply taking Mr. Alhindi to FDC Miami and conducting that evaluation, BOP inexplicably took Mr. Alhindi across the country to a facility that had a backlog of cases and then sat around and did nothing until ordered by the district court and then, it did a poor, rushed evaluation.

On November 28, 2022, following a hearing, the district court found Mr.

Alhindi to be incompetent to stand trial. DE 34. Pursuant to 18 U.S.C. § 4241, the district court ordered Mr. Alhindi committed to the custody of the Attorney General for a four-month period in an attempt to determine whether Mr. Alhindi could be made competent to stand trial. DE 34. Given BOP's inexplicable delays, the order expressly noted that the commitment to the Attorney General could not exceed four months from November 28, 2022. *Id.* The order also expressly gave the director until February 28, 2022 to make a determination as to whether Mr. Alhindi's competence had been restored or whether his competence could be restored within a reasonable amount of time. *Id.* The district court also set a status conference for March 2, 2023. *Id.* On December 13, 2022, the grand jury filed a superseding indictment against Mr. Alhindi charging him with five counts of cyberstalking. DE 35.

Despite the strong language in the district court's order and the specific deadlines, the BOP and the Attorney General again failed to comply with the explicit order of the district court. Specifically, the BOP notified the Court that despite the Court's explicit order, BOP had not yet transferred Mr. Alhindi to the medical facility for treatment. On February 27, 2023, the eve of when BOP had been ordered to comply, the district court sua sponte ordered "that the Federal Bureau of Prisons shall forthwith hospitalize Defendant Yousef Alhindi for treatment at a suitable facility to restore his competency to proceed in the instant proceedings, as it was ordered to do in the November 28, 2022 Competency Order." DE 36.

However, even in light of the district court's order of November 28, 2022, finding Mr. Alhindi incompetent to stand trial, the district court, based on a

recommendation of the government and over the objection of counsel for Mr. Alhindi, ordered that Mr. Alhindi be re-evaluated to determine whether he was competent. DE 39. That order was based on a letter written by a BOP psychiatrist who had not personally seen Mr. Alhindi and who based his recommendation of anecdotal evidence from lay staff at FDC Miami. Counsel for Mr. Alhindi maintains, despite the panel's decision, that the letter was a thinly-veiled attempt to restart the clock. The district court overruled the arguments from counsel for Mr. Alhindi that ordering a new evaluation on the initial question of competency was beyond the court's statutory authority and violated Mr. Alhindi's due process rights. *Id.* The Court set a status conference for April 7, 2023 on the ordered expedited evaluation. DE 41. On April 10, 2023, the district court held a second competency hearing and, just as it had on November 28, 2022, the district court found Mr. Alhindi incompetent to stand trial. DE 46. Counsel for Mr. Alhindi filed a motion to dismiss the indictment arguing that the delay in treatment from the BOP and the district court's actions violated federal statute and violated Mr. Alhindi's due process rights. DE 47. The district court denied the motion to dismiss, committed Mr. Alhindi to the custody of the Attorney General and ordered that the BOP commence the hospitalized treatment of Mr. Alhindi no later than July 1, 2023. DE 49. Mr. Alhindi filed an appeal to this Court from the district court's order. DE 50.

District Court's Order

The district court denied Mr. Alhindi's motion to dismiss the indictment and ordered that Mr. Alhindi be hospitalized for treatment by July 1, 2023, thus

extending the time of the commitment from the initial order of November 28, 2022. DE 49. In so holding, the district court ruled that, pursuant to 18 U.S.C. § 4241(d), the four-month period for commitment, hospitalization and treatment starts to run when a defendant is actually hospitalized for treatment and not when he is committed to the custody of the Attorney General for hospitalization and treatment. Thus, the district court concluded that since Mr. Alhindi had not yet been hospitalized, even though he had been imprisoned for a year and the district court committed him to the custody of the Attorney General on November 28 2022, the four-month period of § 4241 had not yet even started. *Id.* Mr. Alhindi filed an interlocutory appeal from that order.

On appeal, counsel for Mr. Alhindi requested a stay of the district court's order noting the previous delay by BOP and noting that Mr. Alhindi would suffer irreparable harm by being forced to be hospitalized under an unlawful order. This Court denied the request. Counsel for Mr. Alhindi requested an expedited resolution of his appeal. Briefing on the appeal was completed August 21, 2023. Oral argument on the appeal was not heard until January 31, 2024.

By the time of oral argument, Mr. Alhindi had been detained for eighteen months. He had been remanded to the custody of the Attorney General for fourteen months. More importantly, he had already been held at the BOP medical facility Butner for seven months since June 21, 2023. Counsel for Mr. Alhindi argued that although Mr. Alhindi maintained that the second order for a competency evaluation and the second order of commitment were unlawful, he had now been at the medical

facility beyond the four month limit of 18 U.S.C. § 4241(d) and that current and continued detention was unlawful under any reading of the statute. Counsel for Mr. Alhindi acknowledged that this was a limited interlocutory appeal, but counsel, nevertheless, argued that this Court could invoke pendant jurisdiction to determine an issue inextricably intertwined with the legality of the detention order – whether the detention had exceeded the authorized length of detention and violated due process. *See Summit Medical Associates, P.C. v. Pryor*, 180 F.3d 1326, 1335 (11th Cir. 1999) (the Court may exercise pendant jurisdiction, even in an appeal based on the collateral order doctrine, to decide issues that are “inextricably intertwined” with the order appealed from or where review of the issue is “necessary to ensure meaningful review” of the matter appealed).

On April 1, 2024, the Court of Appeals for the Eleventh Circuit issued a published opinion holding that, despite the express language of § 4241(d), the four-month period of 18 U.S.C. § 4241(d)(1) commences with the arrival of the accused at the prison medical facility and not when the district court order the accused committed to the custody of the Attorney General. *United States v. Alhindi*, No. 23-11349, 97 F.4th 814 (11th Cir. April 1, 2024).

REASONS FOR GRANTING THE WRIT

The holding of the Eleventh Circuit that an individual accused of a federal crime who has been found not to be competent to stand trial may be detained for an indefinite period of time after being committed to the custody of the Attorney General for treatment pursuant to 18 U.S.C. § 4241(d) violates the Due Process clause of the Fifth Amendment and is contrary to this Court's opinion in *Jackson v. Indiana*, 406 U.S. 715 (1972). In addition, the reality, as confessed by the Bureau of Prisons, is that hundreds of federal defendants nationally routinely wait seven months or more in the custody of the Attorney General before they are placed in a medical facility for treatment. Resolution of this issue would affect hundreds of federal defendants.

Petitioner, Mr. Haitham Alhindi, has been detained on the underlying charges since May 22, 2022. Following a hearing where the district court found that Mr. Alhindi lacked the competency to stand trial, and the district court committed Mr. Alhindi to the custody of the Attorney General for treatment on November 28, 2022 pursuant to 18 U.S.C. § 4241(d)(1). Mr. Alhindi was not hospitalized, and instead on April 10, 2023, the district court held another hearing after which the court again found that Mr. Alhindi lacked the competency to stand trial, and again the district court committed Mr. Alhindi to the custody of the Attorney General for treatment on April 21, 2023. Mr. Alhindi finally arrived at the Bureau of Prisons medical facility, Butner MC, on June 21, 2023. He is currently still being detained at Butner MC.

Federal law provides for a maximum commitment time of four months to evaluate and treat an individual who has been found incompetent to stand trial. *See* 18 U.S.C. § 4241(d)(1). In a published opinion, the Eleventh Circuit Court of Appeals held that the four-month period of time pursuant to § 4241(d)(1) does not begin until the individual arrives at the hospital facility for evaluation and treatment and not

when the district court commits the individual to the custody of the Attorney General for evaluation and treatment. *United States v. Alhindi*, No. 23-11349, 97 F.4th 814 (11th Cir. April 1, 2024). However, that reading of § 4241(d)(1) improperly allows for an indefinite period of detention after an individual’s commitment to the custody of the Attorney General. Here, Mr. Alhindi was found incompetent to stand trial and committed to the custody of the Attorney General on November 28, 2022. Mr. Alhindi did not arrive at the medical facility until June 21, 2023. Under the Eleventh Circuit’s flawed reading of § 4241(d)(1), those seven months in the custody of the Attorney General are irrelevant and nothing in § 4241(d)(1) prevents such a lengthy, or even longer, detention. However, such a reading is counter to the structure of the statute, violates Due Process, and is contrary to this Court’s precedent, which requires that commitment related to competency evaluation and treatment be limited to a reasonable period of time.

In 1972, this Court made it clear that a criminal defendant who may not be competent to stand trial cannot be held more than the reasonable period of time necessary to determine whether the accused is competent or “whether there is a substantial probability that he will attain that capacity in the foreseeable future.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). “[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Id.*

In 1984, those due process concerns were codified into federal law when Congress passed The Insanity Defense Reform Act of 1984 (“IDRA”), Pub. L. 98-473,

98 Stat. 2057 (1984), 18 U.S.C. §§ 4241-4247. The IDRA directs a court to hold a hearing as follows:

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 to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility –

- (1) For such a reasonable period, 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).

On appeal, Mr. Alhindi argued that the seven-month period of time spent in the custody of the Attorney General awaiting transport to a medical facility violated both the express authority of § 4241(d)(1) and his due process rights as noted in this Court's *Jackson* decision. However, the Eleventh Circuit disagreed and held that the maximum four-month period of commitment in § 4241(d)(1) does not begin with the accused being committed to the custody of the Attorney General but rather when the accused arrives at the medical facility for treatment. *See Alhindi*, 97 F.4th at 824-826. The Eleventh Circuit relied heavily on the "grammatical structure of the statute" holding that, grammatically, the terms "reasonable period" and "four months" could only modify "shall hospitalize" and not "shall commit." *Id.* at 825. In addition, the Eleventh Circuit reasoned that the Attorney General's mandatory duty to hospitalize Mr. Alhindi pursuant to the order of commitment was not immediate,

and “[a]s a practical matter, the Attorney General needs a reasonable amount of time” to find a suitable facility to place an accused. *Id.* at 826.

However, the Eleventh Circuit’s holding is erroneous for several reasons. First, the Eleventh Circuit failed to give any weight to the structure of the statute. Structurally, the statute separates the period of limitation, “for a reasonable period, not to exceed four months,” from both the mandatory “commitment” and “hospitalization.” That structure suggests that the maximum period of time, four months, applies to both the commitment and hospitalization such that the total period of time spent committed to the custody of the Attorney General, including transport to and from the medical facility and treatment at the medical facility, cannot exceed four months.

Thus, the plain text of 4241(d) has two exact mandates once the court determines that a defendant is not competent to stand trial – 1) that the defendant be committed to the custody of the Attorney General; and 2) that the defendant be hospitalized for treatment. Both of those mandates are structurally located in the main initial paragraph of 4241(d). That main initial paragraph is then followed by several subparagraphs. The first subparagraph states that the reasonable period shall not exceed four months. That structure indicates that the outer limitation of four months contained in the first subparagraph applies to both mandates of the main initial paragraph. That is also consistent with a natural reading of the statute that mandates that the commitment to the Attorney General and the hospitalization for treatment not exceed four months.

In addition, this reading that the total commitment to the Attorney General, including the transportation to the medical center and the hospitalization for treatment, not exceed four months is consistent with the context in light of the backdrop at the time the IDRA was enacted. *See United States v. Hansen*, 599 U.S. 762, 775 (2023); *see also* ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* at 70 (2012). Here, the context and the history of section 4241 also supports a reading that the four-month period is an outer limit on the invasive act of committing an individual, who is presumed innocent but not competent, for hospitalized treatment. Section 4241, as whole, seeks to minimize the time that a defendant is required to be committed and hospitalized for treatment. That is clear from the statement following the listing of the various time contemplated by the statute for treatment, return to competence, or dismissal of the charges – “whichever is earliest.” 18 U.S.C. § 4241(d). Section 4241’s concern with minimizing the time it takes to determine whether a defendant remains incompetent to stand trial is completely inconsistent with a reading that allows a defendant to be committed for an indefinite period of time without limitation so long as his hospitalized treatment has not yet commenced. Yet the Eleventh Circuit’s reading of § 4241(d)(1) allows just that. Mr. Alhindi remained committed to the custody of the Attorney General for treatment for seven months, from November 2022 until June 2023, without being provided any treatment. That simply violates the plain language of the statute.

Finally, as noted above, section 4241 was enacted against the backdrop of the

Supreme Court’s decision in *Jackson* which held that commitment and hospitalization for treatment of a defendant found to be incompetent to stand trial must be just for a limited, reasonable amount of time lest it violate the defendant’s due process rights. In *Jackson*, this Court clearly noted that “due process requires that the nature and duration of **commitment** bear some reasonable relation to the purpose for which the individual is **committed**.” *Jackson*, 406 U.S. at 738 (emphasis added). It is telling then that in section 4241, Congress chose the term “commit” to mandate that once a court has found a defendant to be not competent to stand trial, the “court **shall commit** the defendant to the custody of the Attorney General.” The backdrop of the *Jackson* decision and the language used by the Supreme Court and adopted by Congress further suggests that the four-month period of section 4241 is concerned with the entire time that an individual is **committed** under section 4241(d). As such, the four-month period of section 4241(d) began with the November 28, 2022 order of the district court which ordered Mr. Alhindi committed to the custody of the Attorney General for the purpose of hospitalization and treatment pursuant to section 4241(d). Other courts who have addressed the issue are split. Compare *United States v. Donnelly*, 41 F.4th 1102, 1104-1105 (9th Cir. 2022) (holding that the four-month period of § 4241 only begins with hospitalization), with *United States v. Carter*, 583 F. Supp. 3d 94, 100-101 (D.D.C. 2022) (relying on the plain language of § 4241 to hold that the four-month period of § 4241 begins when the defendant is ordered committed to the Attorney General).

This Court must grant the petition for a writ of certiorari to settle those differences. In addition, resolution of the issue will likely affect a large number of individuals who are accused of federal crimes but who may not be competent to stand trial. In the Eleventh Circuit, Mr. Alhindi filed a transcript from a hearing held in another case out of the Southern District of Florida. *See United States v. Alhindi*, No. 23-11349, DE 49, 53 (11th Cir. Sept. 6, 2023); *see also United States v. Angelo Marquis Shepherd*, No. 1:22-cr-20483-RNS (S.D. Fla. 2023). In *Shepherd*, the district court held a status conference where the government informed the Court that the defendant had not yet been transported for evaluation even though the Court committed the defendant to the custody of the Attorney General pursuant to § 4241(d). The order to show cause noted that there was a seven-month delay in getting defendants to a treatment facility. DE 49. A transcript from a subsequent status conference on September 5, 2023 has a Bureau of Prisons attorney explaining that the lengthy delay was based on the fact that there were 378 competency referrals made in federal court in a single year and the various medical centers could only take in 45 patients a month, with Butner only being able to take in 12 new referrals a month. DE 53 at 7-9.

That sworn testimony from a Bureau of Prisons representative demonstrates that the long detention suffered by Mr. Alhindi pursuant to § 4241(d), and in violation of his due process rights, is not limited to his case but rather it is a systemic issue that must be addressed by this Court. In this interlocutory appeal, Mr. Alhindi argues that the four-month limit imposed by § 4241(d) starts with the order

committing the defendant to the custody of the Attorney General for hospitalization and treatment pursuant to § 4241(d). If that is correct, then by the BOP's own admission, that four-month limit is routinely violated and most federal defendants are held in custody pursuant to § 4241(d) for at least seven months before they are even placed in a medical facility.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

HECTOR DOPICO
FEDERAL PUBLIC DEFENDER

Fort Lauderdale, Florida
November 20, 2024

By: s/ Bernardo Lopez
Bernardo Lopez
Assistant Federal Public Defender
Counsel For Petitioner Alhindi