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No. 25-5812

ORIGINAL

In the Supreme Court of the United States

MICHAEL BARRETO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

REDACTED PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under 18 U.S.C. § 4241(a), a district court "*shall*" hold a competency hearing "if there is reasonable cause to believe that the defendant may presently be 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." (emphasis added).

Under 18 U.S.C. § 4241(b), "[p]rior to the date of the hearing, the court *may* order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c)." (emphasis added).

The question presented is as follows:

If a district court orders a competency examination under § 4241(b) based upon reasonable cause to question a defendant's competency, is it mandatory that it thereafter hold a competency hearing under § 4241(a), even if the § 4241(b) examination concludes the defendant is competent?

RELATED PROCEEDINGS

United States v. Barreto, No. 23-6799-cr (2d Cir. May 30, 2025).

United States v. Barreto, 1:19-cr-00909-KPF (S.D.N.Y) — Judgment entered June 27, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Barreto respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The ruling by summary order of the United States Court of Appeals for the Second Circuit is available in the Westlaw database at 2025 WL 1537529, and reprinted in the Petition Appendix ("Pet. App.") at 1a. The judgment of the United States District Court for the Southern District of New York is reproduced at Pet. App. 12a.

STATEMENT OF JURISDICTION

The Court of Appeals for the Second Circuit entered final judgment on May 30, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor 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; nor shall private property be taken for public use, without just compensation.

Section 4241(a)–(c) of Title 18 of the United States Code provides:

> **(a) Motion To Determine Competency of Defendant.—**
> At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be 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.

(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 defendant 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).

Section 4247(d) of Title 18 of the United States Code provides:

(d) Hearing.—
At a hearing ordered pursuant to this chapter the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to section 3006A. The person shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

INTRODUCTION

Criminal defendants have a due process right not to be tried while incompetent. This case raises a critical question about the key procedural safeguard for that right, namely, when must a district court hold a competency hearing pursuant to 18 U.S.C. § 4241(a). The plain language of § 4241(a) categorically requires a hearing when a district court has reasonable cause to doubt a defendant's competency. Yet, despite this categorical requirement, the circuits are split on this issue. Three courts of appeals—the Fourth and Ninth Circuits, as well as the Second Circuit in its decision below—have created a carveout, permitting district courts to forgo a competency hearing when they instead order a psychiatric examination pursuant to 18 U.S.C. § 4241(b), so long as that examination concludes the defendant is competent. Most circuits follow the categorical rule: once reasonable cause is established, the district court must hold a hearing.

The plain language of the governing statute forecloses the exception to this categorical rule, and the Second Circuit's contrary decision is wrong. Section 4241(a) requires district courts to hold a competency hearing *sua sponte* whenever there is reasonable cause to doubt a defendant's competence, explicitly stating that a court "*shall*" order a hearing once reasonable cause has been established. The decision below mistakenly relied on older case law that interpreted a previous statute governing pretrial competency determinations, not the statute that exists today. In doing so, the decision below further entrenched a circuit split by creating a carveout that is contradicted by clear statutory language.

The question presented here is important and recurring, and there is a pressing need to resolve it. The mandatory hearing requirement is crucial to protecting a criminal defendant's fundamental right not to be tried while incompetent. The Second, Fourth, and Ninth Circuits' erroneous approach compromises that fundamental right in those circuits, and it has infected the proceedings of district courts in other circuits as well. This case is an ideal vehicle for resolving

the question presented, as the record is not voluminous, the issue is outcome determinative, and there are no jurisdictional or preservation issues. This Court should decide it.

STATEMENT OF THE CASE

1. [redacted]

In 2017, Dr. Barry Winkler, J.D., Psy.D, and Dr. Melissa Kaye, M.D., examined Barreto pursuant to New York Criminal Procedure Law § 730, regarding his competence to be prosecuted in a Bronx Criminal Court matter. *Id.* [redacted] Ultimately, both Dr. Winkler and Dr. Kaye concluded that Barreto was unfit to proceed because of a mental disease or defect; the court agreed and dismissed the state charges against Barreto. *Id.*

2. On October 2, 2019, Barreto was arrested on a complaint in the instant case, and a grand jury indicted him on December 17, 2019.[1] On April 14, 2021, the government filed a sealed letter

[1] The district court exercised jurisdiction under 18 U.S.C. § 3231.

with the district court on behalf of the parties, which jointly requested a competency examination of Barreto pursuant to § 4241(b). Pet. App. 76a. [redacted]

[redacted] on April 15, 2021, the district court ordered a psychiatric examination of Barreto, pursuant to § 4241(a) and (b). *Id.* at 21a–22a. In pertinent part, that order stated that the court was ordering the examination to determine whether Barreto was, in fact, incompetent:

> It is hereby ORDERED, *pursuant to Title 18, United States Code, Sections 4241(a), 4241(b), and 4247(b)*, that Cheryl Paradis, Psy.D., a forensic psychiatrist, is appointed to conduct a psychiatric examination of defendant Michael Barreto *in order to determine whether Mr. Barreto 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.*

Id. (emphasis added). Notably, it did not order the examination to determine whether there was "reasonable cause" to question Barreto's competence, [redacted]

On June 23, 2021, the district court received the report from the psychiatrist who examined Barreto (the "Paradis Report"), which concluded that he was competent to proceed. *Id.* at 23a. After receiving that report, the district court did not hold a competency hearing pursuant to § 4241(a) at any point during the remainder of the case, as required under that statute and the Due Process Clause of the Fifth Amendment. *See* § 4241(a) (stating court "*shall* order" a competency hearing "on its own motion" where "reasonable cause" to believe defendant is incompetent (emphasis added)). On October 28, 2022, Barreto pled guilty. On June 27, 2023, the district court sentenced him to concurrent terms of 20 years' imprisonment on each count to which he pleaded guilty.

3. On appeal, among other things, Barreto challenged the district court's failure to hold the required competency hearing under § 4241(a), despite [redacted] and the district court's order for an evaluation of whether Barreto was, in fact, competent based on that representation. ECF No. 49-1 at 31–34, *United States v. Barreto*, No. 23-6799-cr (2d Cir. Nov. 8, 2024). In response, the Second Circuit concluded that, "although the district court ordered the examination, it was not required thereafter to order a competency hearing unless there was reasonable cause to question Barreto's competency *following the examination* -- and no such cause was presented." Pet. App. 6a–7a (emphasis added). To support its holding, the Second Circuit relied on its decision in *United States v. Kerr*, 752 F.3d 206, 216 (2d Cir. 2014), which it cited for the proposition that, "[w]here a defendant has been found competent following a court-ordered evaluation, a district court generally is 'not required to

hold a competency hearing before accepting a plea,'" Pet. App. 4a–5a (quoting *Wojtowicz v. United States*, 550 F.2d 786, 791 (2d Cir. 1977)).

The Second Circuit thus has created an exception to § 4241(a)'s mandatory hearing requirement that is not contemplated by the statute, namely, no hearing is required where a competency evaluation concludes that a defendant is competent. As discussed below, however, the majority of circuits have not recognized such an exception, and that exception is not grounded in the statute. Rather, the statute is clear that, once reasonable cause is established, there must be a competency hearing, regardless of the outcome of any subsequent psychiatric examination. 18 U.S.C. § 4241(a).

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Split on Whether a District Court Must Hold a Competency Hearing Upon Finding Reasonable Cause to Doubt a Defendant's Competency.

Section 4241(a) categorically requires a hearing when the district court has reasonable cause to doubt a defendant's competency. Accordingly, most circuit courts apply that categorical rule. However, the Second, Fourth, and Ninth Circuits have created a carveout, allowing district courts to forgo the competency hearing by ordering a psychiatric evaluation instead, so long as that evaluation concludes the defendant is competent.

A. The Second, Fourth, and Ninth Circuits Allow District Courts to Forgo Their Statutory Mandate to Hold a Hearing When There Is Reasonable Cause to Doubt a Defendant's Competency.

1. Although the Second Circuit has recognized an exception to § 4241(a)'s hearing requirement in this case, up until recently, it had suggested that no such exception existed, demonstrating that there are likely conflicting views on this issue even within the Second Circuit. Specifically, in *United States v. Houston*, the Second Circuit addressed a case in which the district court ordered a psychiatric examination because it had "reasonable cause to believe that the

defendant . . . may presently be suffering from a mental disease or defect rendering him mentally incompetent." 603 F. App'x 7, 9 n.1 (2d Cir. 2015). The examination concluded that the defendant was competent, and the district court accepted that conclusion without holding a competency hearing. *Id.* While the Second Circuit remanded the case back to the district court for a competency hearing on other grounds, it also questioned whether the district court had violated § 4241's mandatory hearing requirement by failing to hold a hearing. More specifically, it stated that the district court's "finding [of reasonable cause to doubt the defendant's competency] triggered the need for a full competency hearing pursuant to 18 U.S.C. § 4241(a), complete with the suite of procedural protections guaranteed by 18 U.S.C. §4247(d)." *Id.* Thus, it noted that "[t]he district court's direct acceptance of the conclusion of the psychiatric examination may not have complied with [§ 4241's] statutory framework." *Id.* Nonetheless, considering the other bases to remand the case, the court did "not reach the question of whether the district court erred by not conducting a full competency hearing before making its initial competency determination." *Id.*

Despite *Houston*'s strong language indicating that a hearing is mandatory where reasonable cause to doubt a defendant's competency exists, this case reached the opposite conclusion. [redacted] the district court then ordered an examination to determine if Barreto was, in fact, competent, specifically citing to §§ 4241(a) and 4241(b) in its order. *Id.* at 21a–22a. Based on the plain language of the statute, a psychiatric evaluation under § 4241(b) is available only where the court has already found reasonable cause to doubt a defendant's competency under § 4241(a). *See, e.g., United*

States v. Gillette, 738 F.3d 63, 77 (3d Cir. 2013) ("§ 4241(b) does not apply unless a court has already ordered a hearing under § 4241(a)."). Yet, after the report of the psychiatric examination concluded that Barreto was competent, the district court did not proceed with the requisite hearing. The Second Circuit then upheld the district court's decision to rely on the untested conclusions of that psychiatric report, which "was never subject to critical scrutiny at a competency hearing." *Houston*, 603 F. App'x at 9. The Second Circuit thereby created a carveout in the statute, permitting district courts to rely on a psychiatric report, in lieu of a competency hearing, if the report concludes a defendant is competent.

2. Similar to the Second Circuit, the Fourth Circuit has repeatedly held that a district court that has reasonable cause to doubt a defendant's competency need not hold a hearing, but can instead satisfy its statutory and constitutional obligation by ordering a psychiatric evaluation. For example, in *United States v. Bernard*, the Fourth Circuit explained § 4241(a) "provides that the district court shall conduct a competency hearing *and/or* order the defendant to undergo a psychiatric evaluation 'if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent.'" 708 F.3d 583, 592 (4th Cir. 2013) (emphasis added) (quoting § 4241(a)). This "and/or" approach is routinely applied in the Fourth Circuit and plainly violates § 4241(a). *See, e.g., United States v. Ziegler*, 1 F.4th 219, 227 (4th Cir. 2021) ("Statutorily, a 'district court shall conduct a competency hearing and/or order the defendant to undergo a psychiatric evaluation 'if there is *reasonable cause* to believe that the defendant may presently be suffering from a mental disease or defect rendering him *mentally incompetent.*'") (emphasis in original) (quoting *Bernard*, 708 F.3d at 593) (quoting § 4241(a)).

3. The Ninth Circuit has also created a similar carveout. In *United States v. Garza*, the district court ordered the defendant to be committed and subject to a psychiatric examination pursuant to §§ 4241 and 4247 (which details procedures for psychiatric and psychological examinations, commitment, and hearings related to mental competency). 751 F.3d 1130, 1138 (9th Cir. 2014). Accordingly, at the time the court entered this order, it had reasonable cause to doubt the defendant's competence. *Id.* The Ninth Circuit, however, did not find that the court erred in failing to hold a competency hearing. Instead, it explained that later evidence of competency, specifically including the results of a psychiatric examination, can "dispel reasonable cause." *Id.* at 1138. Thus, in the Ninth Circuit, as in the Second and Fourth Circuits, district courts may avoid the competency hearing requirement by ordering a psychiatric evaluation, so long as that evaluation concludes the defendant is competent.

B. The Majority of Circuits Follow the Plain Language of the Statute, Categorically Requiring a Hearing Upon a Finding of Reasonable Cause.

Because § 4241(a) clearly requires a hearing when there is reasonable cause to doubt a defendant's competency, the majority of circuits apply that categorical requirement. *See, e.g., United States v. Brown*, 669 F.3d 10, 17 (1st Cir. 2012) ("A district court must sua sponte order a competency hearing if there is reasonable cause to believe that a defendant is mentally incompetent.") (citation omitted); *United States v. Gillette*, 738 F.3d 63, 77 (3d Cir. 2013) ("[A] district court errs in failing to hold a competency hearing . . . if there is reasonable cause to believe that the defendant is incompetent."); *United States v. Sterling*, 99 F.4th 783, 803 (5th Cir. 2024) ("Under 18 U.S.C. § 4241(a), district courts are required to conduct a competency hearing if there is reasonable cause . . . .") (quotations omitted); *United States v. Coleman*, 871 F.3d 470, 474–75 (6th Cir. 2017) ("A district court is required to order a competency hearing *sua sponte* if there is reasonable cause . . . .") (quotations omitted); *United States v. Ewing*, 494 F.3d 607, 622 (7th Cir.

2007) ("A court must hold a competency hearing if there is reasonable cause to believe the defendant may presently be incompetent.") (citation omitted); *Griffin v. Lockhart*, 935 F.2d 926, 931 (8th Cir. 1991) (defendant appearing competent before and during trial was "irrelevant, for once a doubt about the competency of an accused exists, later behavior cannot be relied upon to dispense with a hearing") (citations and quotations omitted); *United States v. Landa-Arevalo*, 104 F.4th 1246, 1253 (10th Cir. 2024) ("[A] district court must determine whether reasonable cause exists to believe the defendant may be mentally incompetent; if so, the district court must conduct a competency hearing.") (citing § 4241(a)); *United States v. Wingo*, 789 F.3d 1226, 1236 (11th Cir. 2015) ("The plain language of Section 4241(a)—the court 'shall order . . . a hearing on its own motion'—is unambiguous about the court's obligation to *sua sponte* hold a hearing if it has 'reasonable cause' to believe that the defendant 'may' be incompetent; the court must conduct a hearing under those circumstances.") (citations omitted); *United States v. Perez*, 603 F.3d 44, 47 (D.C. Cir. 2010) ("Section 4241(a) requires the district court, on its own motion, to order a hearing to evaluate a defendant's competency if there is reasonable cause . . . ." (quotations omitted)). We have located no case in these other circuits recognizing a judicially created exception to §4241(a), which permits a judge to rely on a psychiatric examination in lieu of a hearing, once reasonable cause to doubt a defendant's competency has been established.

II. The Decision Below Is Wrong and Conflicts with This Court's Decisions Interpreting the Due Process Clause, As Well As Clear Statutory Language.

1. This Court has held that the Due Process Clause bars the "criminal prosecution of a defendant who is not competent to stand trial." *Medina v. California*, 505 U.S. 437, 439 (1992). It therefore demands that courts employ "adequate" procedures to protect the right not to be tried or convicted while incompetent. *Pate v. Robinson*, 383 U.S. 375, 378 (1966). In *Pate*, the Court held that those procedures include a trial court's *sua sponte* duty to inquire into a defendant's

competency when faced with evidence raising a "bona fide doubt" that the defendant is competent. *Id.* at 378, 385; *see Drope v. Missouri*, 420 U.S. 162, 181 (1975) ("[A] trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial."). To protect this right under the Due Process Clause, the plain language of § 4241(a) requires district courts to hold a competency hearing whenever there is reasonable cause to doubt a defendant's competence, explicitly stating that a court "*shall*" order a hearing once reasonable cause has been established. As discussed above, it does not contemplate that a psychiatric examination may "dispel" reasonable cause, such that no hearing is required.

2. The Second Circuit's erroneous contrary conclusion, based on its decision in *Kerr*, is due to *Kerr*'s reliance on older case law that interpreted a previous version of the statute governing pretrial competency determinations, not the statute that exists today. A review of that caselaw and the legislative history of the current version of § 4241, demonstrates that the Second Circuit was wrong to rely on *Kerr* in this case.

As noted above, here, the Second Circuit quoted *Kerr* for the proposition that, "[w]here a defendant has been found competent following a court-ordered evaluation, a district court generally is not required to hold a competency hearing before accepting a plea," because it is "entitled to rely on [the] forensic report." Pet. App. 4a–5a (quoting *Kerr*, 752 F.3d at 216 (quoting *Wojtowicz*, 550 F.2d at 791)). The court relied on that proposition from *Kerr* to support its finding that, "although the district court ordered the examination, it was not required to thereafter order a competency hearing unless there was reasonable cause to question Barreto's competency *following the examination* -- and no such cause was presented." Pet. App. 6a–7a (emphasis added) (citing *Kerr*, 752 F.3d at 216). This statement of law is wrong under the statute; where reasonable cause

exists prior to a psychiatric evaluation, the court must hold a competency hearing regardless of the outcome of the examination. 18 U.S.C. § 4241(a).

Indeed, the portions of *Kerr* used to justify this carveout rely on *Wojtowicz*, a much earlier case, which in turn was based on a statutory framework that has long since been replaced. From 1949 to 1984, pretrial competency determinations were governed by 18 U.S.C. § 4244, the statute applied in *Wojtowicz*. S. Rep. No. 98-225, at 232 (1983), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3414. Under the prior statutory framework, "upon motion by the government or the defendant, or on its own motion," the court was "required to order that the defendant be examined by at least one psychiatrist." *Id.* If the report "indicate[d] mental incompetency," the court was then required to "hold a hearing and make a finding with respect to the defendant's competency." *Id.*[2] It is in interpreting this statute that the court in *Wojtowicz* held that, "where, as here, a defendant has been found competent in an examination conducted pursuant to 18 U.S.C. § 4244, the district court is not required to hold a competency hearing before accepting a plea." 550 F.2d at 791 (citing *United*

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[2] The relevant portion of the prior version of § 4244 stated as follows:

> Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court . . . . If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto."

Ch. 535, § 1, 63 Stat. 686, enacted Sept. 7, 1949.

States ex rel. Curtis Zelker, 466 F.2d 1092, 1100 (2d Cir. 1972)). That holding—which the Second Circuit relied on in reaching its decision here—was based on the plain language of the outdated version of § 4244. That statute explicitly made a competency hearing contingent upon the outcome of the court-appointed psychiatrist's report. *See id.*; *Zelker*, 466 F.2d at 1100 (citing *United States v. Kaufman*, 393 F.2d 172, 176 (7th Cir. 1968)).

In 1984, however, Congress changed that statutory language pertaining to pretrial competency determinations. It created a new framework, enacting the current version of § 4241(a) to govern such determinations. In doing so, it explicitly stated that a hearing is required where there is reasonable cause to doubt a defendant's competency; and, while a psychiatric report is discretionary, Congress expected that district courts would routinely order such examinations prior to holding the requisite hearing:

> [I]t is *mandatory* that the court order a hearing *if there is reasonable cause* to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent [. . .]. Thus, unlike present federal law, section 4241(a) permits the court to order that a hearing be held prior to a psychiatric or psychological examination if the requisite finding can be made. However, *the committee contemplates that a psychiatric examination will be routine in virtually all cases in which the court is required to hold a hearing*, and although discretion to hold the hearing without a psychiatric examination is provided, the court may not abuse this discretion and refuse to order an examination where the facts warrant an examination.

S. Rep. No. 98-225, at 234–35 (1983), *as reprinted in* 1984 U.S.C.C.A.N. 3182, 3416–17 (emphasis added).

In other words, Congress changed the law to make hearings mandatory under § 4241, rather than psychiatric reports, whereas the prior framework under § 4244 had been the reverse. Under § 4241(a)'s new framework, a district court must order a hearing where there is a reasonable cause to doubt a defendant's competency, while it "may" order a psychiatric evaluation "prior to the date of the hearing" under § 4241(b). Thus, where a court elects to order a § 4241(b) evaluation, the plain language of the statute requires that a hearing follow that evaluation. By relying on

Wojtowicz in this case, however, the Second Circuit has created a carveout in the current statute that is based on the outdated statutory framework analyzed in that case. According to the Second Circuit, a district court may skip the required hearing by ordering a psychiatric evaluation, if the report of that evaluation concludes that the defendant is competent. While such a rule was proper under the § 4244 statutory framework in effect when *Wojtowicz* was decided, it is improper under § 4241(a). The Second Circuit reverted to the prior law with its decision in this case.

Congress changed the law for good reason. The new framework under § 4241 affords greater protection to defendants than the old framework under § 4244. Section 4241 no longer permits a district court to simply rely on a psychiatric report's conclusion a defendant is competent to "dispel reasonable cause," as § 4244 had allowed. Rather, it requires a district court to make its own competency determination after a hearing, while considering a psychiatric report's competency determination, when it deems it appropriate to do so. A psychiatric report's conclusion a defendant is competent is no longer dispositive. Indeed, the ability to challenge a court-appointed psychiatrist's conclusion that a defendant is competent was the critical procedural change in the law. As the Second Circuit has recognized, adversarial hearings with the "suite of procedural protections guaranteed by 18 U.S.C. § 4247(d)," are necessary to test the conclusions of such reports and ensure that an accurate competency decision has been made. *Houston*, 603 F. App'x at 9 n.1 ("Because the report was never subjected to critical scrutiny at a competency hearing, it deserves less weight than it might otherwise be entitled to in deciding whether there was new reason to doubt Houston's competency.").

3. Barreto's case demonstrates this point. The district court should have held the required competency hearing to resolve critical factual questions about the Paradis Report. Not only did that report conflict with the earlier Kaye and Winkler Reports, but it also raised several important

questions the district court left unanswered. [redacted] These fact issues should have been resolved at a competency hearing before the district court proceeded with Barreto's guilty plea and sentencing. Rather than hold a competency hearing to further probe and resolve these issues, however, the district court conducted no hearing and made no factual findings regarding that report.

The district court's subsequent plea and sentencing hearings were not sufficient to satisfy § 4241(a)'s hearing mandate, and the Second Circuit's reliance on those hearings was misplaced. Pet. App. 5a–6a. Section 4241(c) requires that a § 4241(a) hearing be an evidentiary hearing pursuant to § 4247(d), with the attendant procedural protections outlined therein. That statute specifically states that, at the hearing, the defendant "*shall* be afforded an opportunity to testify, to

present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing." § 4247(d) (emphasis added). Neither the guilty plea nor the sentencing proceeding in this case afforded Barreto those procedural protections. They did not meet the statutory requirement for a hearing under §4241. Accordingly, the Second Circuit was wrong, when it held the district court was not required to *sua sponte* hold a competency hearing.

There is a Pressing Need to Resolve the Conflict, and the Question Presented is Important and Recurring.

1. The question presented is undoubtedly important and recurring. This Court has deemed the right not to be tried while incompetent as "fundamental to an adversary system of justice." *Drope*, 420 U.S. at 172. The reasonable cause and *sua sponte* hearing requirements are crucial to protecting this fundamental right—so crucial that Congress codified them when it enacted § 4241(a). *See United States v. Arenburg*, 605 F.3d 164, 168–69 (2d Cir. 2010); *Musaid v. Kirkpatrick*, 114 F.4th 90, 108–09 (2d Cir. 2024).

2. There is no reason to believe the circuit split will resolve itself, and there is a pressing need to resolve the conflict. Section 4241's safeguards protect the rights of innumerable federal criminal defendants every year. Although comprehensive data is lacking, there are likely thousands, if not tens of thousands, of psychiatric and psychological evaluations each year in the federal system.[3] It is crucial that the lower courts apply the correct standard for holding a hearing under § 4241, so that defendants are afforded an opportunity to test the conclusions of these reports, where there is reasonable cause to doubt a defendant's competency. That hearing requirement provides critical protection against an incompetent defendant standing trial.

[3] Nathaniel P. Morris, et al., *Estimating Annual Numbers of Competency to Stand Trial Evaluations in the United States*, J. AM. ACAD. PSYCH. LAW ONLINE (August 2021), https://jaapl.org/content/jaapl/early/2021/08/10/JAAPL.200129-20.full.pdf.

3. The Second, Fourth, and Ninth Circuits' erroneous approach not only compromises this fundamental right in those circuits, but it also infects the proceedings of district courts in other circuits. Even beyond these three outlier circuits, some district courts are not holding hearings where required. For example, as the Second Circuit did here, some district courts have cited the Second Circuit's decision in *Kerr*, to conclude that they may rely on a psychiatric examination in lieu of a hearing under § 4241(a). In *United States v. Beckham*, the district court ordered a competency evaluation pursuant to § 4241(b), finding it had reasonable cause to doubt the defendant's competency. 2019 U.S. Dist. LEXIS 123584, at *9–10 (S.D. Ga. July 2, 2019). When the evaluation concluded the defendant was competent, the district court cited to *Kerr* in support of its decision that a hearing was not required in light of the expert's conclusion. *Id.* Likewise, in *United States v. Short*, the district court noted that, "[s]ome defendants have argued that, if a Court orders a competency evaluation pursuant to 18 U.S.C. § 4241(b), a competency hearing is mandatory." 2017 U.S. Dist. LEXIS 28085, at *8–9 (S.D. Ga. Feb. 28, 2017). Citing *Kerr*, however, the court concluded that it need not "hold a competency hearing if no reasonable question of competency exists after a psychological evaluation." *Id.* at *8.

The circuit courts' disagreement will undoubtedly continue to create confusion among the district courts, underscoring the pressing need to resolve this conflict. This Court should step in now and clarify the law. Resolving this important and recurring question will ensure that criminal defendants receive adequate procedural protections of their fundamental due process rights.

IV. This Case Squarely Presents the Question.

This case arises on direct appeal, and it presents a pure question of law. There are no jurisdictional problems or preservation issues, and the record is not voluminous. The question presented is outcome determinative; the Second Circuit's holding on this point turned entirely on its determination the district court was not required to hold a competency hearing. Pet. App. 6a–

7a. Accordingly, this case squarely presents the question of whether a district court may rely on a psychiatric evaluation to find a defendant competent, in lieu of a competency hearing, where there was reasonable cause to doubt a defendant's competency. The Court should resolve this question.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

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Respectfully submitted,

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