No. 25-5812

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IN THE SUPREME COURT OF THE UNITED STATES

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MICHAEL BARRETO, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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# BRIEF FOR THE UNITED STATES IN OPPOSITION

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D. JOHN SAUER
Solicitor General
Counsel of Record

A. TYSEN DUVA
Assistant Attorney General

JOHN P. TADDEI
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

## QUESTION PRESENTED

Whether the district court abused its discretion in not sua sponte ordering a competency hearing under 18 U.S.C. 4241(a), where a psychological report ordered by the court found petitioner competent to stand trial, the court repeatedly confirmed petitioner's competency at the plea hearing and sentencing, and petitioner waived any challenge to the lack of a separate competency hearing.

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is available at 2025 WL 1537529. The order of the district court (Pet. App. 21a-22a) is unreported.

## JURISDICTION

The judgment of the court of appeals was entered on May 30, 2025. The petition for a writ of certiorari was filed on August 28, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of New York, petitioner was convicted on three counts of enticement of a minor to engage in sexual activity, in violation of 18 U.S.C. 2422(b), and three counts of receipt of child pornography, in violation of 18 U.S.C. 2252A(a)(2)(B) and (b)(1). Pet. App. 12a-13a. The district court sentenced petitioner to 240 months of imprisonment, to be followed by ten years of supervised release. Id. at 14a-15a. The court of appeals affirmed. Id. at 1a-11a.

1. Between 2008 and 2019, petitioner engaged in sexual contact with multiple minor victims and received child pornography from multiple additional minor victims. Gov't C.A. Br. 2. Petitioner lied to victims about his age, claiming to be 17-19 years old when he was actually in his late 20s or early 30s. Id. at 3-5. He engaged in physical contact with several of his minor victims, including sexual intercourse and oral sex; recorded a video of a sexual encounter without the victim's consent; enticed several victims to share sexual imagery of themselves over social media; and attempted to entice more than a dozen other minors into meeting for sexual activity. Ibid.

2. A grand jury in the Southern District of New York returned a superseding indictment charging petitioner with four counts of production of child pornography, in violation of 18

U.S.C. 2251(a) and (e) and 2; four counts of enticement of a minor to engage in sexual activity, in violation of 18 U.S.C. 2422(b) and 2; and one count of possession of child pornography, in violation of 18 U.S.C. 2252A(a)(5)(B) and (b)(2) and 2. Superseding Indictment 1-8. Petitioner made his initial appearance in October 2019, and a magistrate judge ordered him detained pending trial. C.A. App. A4.

In April 2021, about six weeks before the then-scheduled trial date, counsel for both parties jointly requested a competency examination. Gov't C.A. Br. 5; see C.A. App. A8-A9. The district court granted the parties' request and appointed a psychologist to examine petitioner. Pet. App. 21a-22a. The psychologist conducted an examination and submitted a report finding petitioner competent to proceed. Id. at 4a-5a. Among other things, the report "found that although [petitioner] had 'significantly lower than average intellectual functioning,' he 'demonstrated a simplistic but adequate understanding of the roles of most court personnel and court processes,' 'the information his attorneys provided,' the nature of the charges, and 'the strength of'" the "'evidence' against him." Id. at 4a (citation omitted). Upon receiving the psychologist's report, neither party requested that the district court hold a competency hearing. Gov't C.A. Br. 7.

After more than a year of additional pretrial proceedings, petitioner pleaded guilty to a superseding information charging

him with three counts of enticement of a minor to engage in sexual activity, in violation of 18 U.S.C. 2422(b) and 2, and three counts of receipt of child pornography, in violation of 18 U.S.C. 2252A(a)(2)(B) and (b)(1) and 2. C.A. App. A36-A48.

At the plea hearing in October 2022, the district court "repeatedly confirmed [petitioner's] competency." Pet. App. 5a. "[I]n response to the court's inquiries, [petitioner] and his counsel consistently assured the district court that he understood the proceeding and was competent to move forward." Ibid.; see Gov't C.A. Br. 8-11; C.A. App. A53-A61. "During the Rule 11 colloquy and plea allocution, [petitioner] responded to each of the judge's questions and described his offense conduct in his own words in a rational and coherent manner." Pet. App. 5a-6a. Petitioner confirmed that, at the time he committed each offense, he knew that what he was doing was wrong and illegal, and he apologized for his actions. Gov't C.A. Br. 10. Defense counsel twice confirmed that she knew of no reason why petitioner should not be permitted to plead guilty. Ibid.

After the plea hearing, petitioner requested that the district court sentence him to the statutory mandatory minimum of ten years of imprisonment, citing factors including petitioner's cognitive impairments. Gov't C.A. Br. 11-12. The government sought a below-Guidelines sentence of no less than 25 years of imprisonment, citing factors including the seriousness of petitioner's

offense and the need to protect the public, while recognizing that petitioner's individual characteristics warranted a sentence substantially below the Guidelines recommendation of life imprisonment. Id. at 12. At sentencing, petitioner addressed the court and again apologized for his actions. Id. at 12-13.

The district court sentenced petitioner to a below-Guidelines term of 240 months of imprisonment (i.e., five years less than the government had requested), to be followed by ten years of supervised release. Pet. App. 14a-15a. As part of its explanation for the sentence, the court acknowledged petitioner's individual circumstances, including his "problems in school" and "in social settings," but concluded that petitioner "was aware of the age of consent, knew that the boys that he was contacting were below the age of consent and knew that he had to lie about his age in order to begin or further those discussions." C.A. App. A230. The court added that it "could not 'fully reconcile the arguments made [by the defense] about [petitioner's] abilities with the specifics of his conduct in this case and the specifics of some of his communications with the victims.'" Gov't C.A. Br. 13 (quoting C.A. App. A231) (first set of brackets in original). Petitioner's counsel did not object when given an opportunity by the court to raise any legal objections to the sentence. Id. at 14.

3. Petitioner appealed and contended, as relevant here, that the district court violated 18 U.S.C. 4241 by not ordering a

competency hearing sua sponte. Pet. C.A. Br. 31-34. The government argued in response that petitioner had waived that challenge, Gov't C.A. Br. 19-21, and alternatively that the district court did not err under the governing law as applied to the facts of this case, id. at 21-25.

4. The court of appeals affirmed in an unpublished summary order. Pet. App. 1a-11a. As relevant here, the court found that the district court did not abuse its discretion in not ordering a competency hearing sua sponte, for several reasons. Id. at 3a-7a. First, the district court was entitled to rely on the report of the court-appointed psychologist, who examined petitioner and found him competent because he understood court processes, information from his attorneys, the nature of the charges, and the strength of the evidence. Id. at 4a-5a. "Moreover, the record shows that the district court was acutely aware of [petitioner's] cognitive limitations," "explicitly inquired into these issues at [his] plea and sentencing," and "repeatedly confirmed [his] competency throughout these proceedings." Id. at 5a. Defense counsel also did not "voice concern with respect to [petitioner's] competency at sentencing," which itself "'provides substantial evidence of the defendant's competence'" under governing precedent. Ibid. (quoting United States v. Quintieri, 306 F.3d 1217, 1233 (2d Cir. 2002), cert. denied, 539 U.S. 902 (2003)). And petitioner's "conduct at the plea and sentencing" -- where he "continued to be

cogent," "expressed remorse for his conduct," and "asked the court for leniency" -- "further demonstrates that he understood the nature of the proceedings against him." Id. at 5a-6a.

The court of appeals rejected petitioner's contention that a competency hearing was required after the parties requested a psychological examination. Pet. App. 6a-7a. The court explained that the parties had "requested only an 'examination,' not a competency hearing." Id. at 6a (citation omitted). "[A]lthough the district court ordered the examination, it was not required to thereafter order a competency hearing unless there was reasonable cause to question [petitioner's] competency following the examination -- and no such cause was presented." Id. at 6a-7a.

Although the court of appeals noted and relied in part on petitioner's failure to request a competency hearing below, Pet. App. 5a, 6a, it did not expressly address the government's argument that petitioner had waived his challenge to the lack of a hearing.

ARGUMENT

Petitioner renews his contention (Pet. 7-17) that the district court violated the statute governing mental competency to stand trial, 18 U.S.C. 4241, when it did not order a competency hearing sua sponte after a psychological examination found petitioner competent, the court confirmed petitioner's competency at the plea hearing and at sentencing, and no party requested a separate competency hearing. But petitioner waived that contention

in the district court. And even if this Court were to overlook the waiver, the court of appeals correctly rejected petitioner's contention based on the fact-specific record in this case, and its nonprecedential summary order does not conflict with any decision of another court of appeals. Further review is unwarranted.

1. Petitioner waived any challenge to the lack of a competency hearing in the district court. That waiver -- the "intentional relinquishment or abandonment of a known right," Wood v. Milyard, 566 U.S. 463, 474 (2012) (quoting Kontrick v. Ryan, 540 U.S. 443, 458 n.13 (2004)) -- makes this case an inappropriate vehicle to consider the question presented, contrary to petitioner's assertion (Pet. 4) that "there are no * * * preservation issues."

The record establishes that petitioner and his counsel knew of their ability to request a hearing but deliberately declined to do so at multiple points. In April 2021, petitioner's counsel "requested only an 'examination,' not a competency hearing." Pet. App. 6a (citation omitted). After the examination found petitioner competent, he did not object, "present[]" any "cause to question [his] competency," or request a hearing at any time through more than a year of additional pretrial proceedings, id. at 6a-7a, during which the parties' counsel had "detailed conversations about a resolution of this case" "[i]n light of the competency evaluation," C.A. App. A30. "At the plea hearing, in response to

the court's inquiries, [petitioner] and his counsel consistently assured the district court that he understood the proceedings and was competent to move forward." Pet. App. 5a. "Nor did defense counsel voice concern with respect to [petitioner's] competency at sentencing." Ibid. Instead, petitioner and his counsel deliberately made the tactical choice to cast petitioner's cognitive limitations as a basis for a lenient sentence after a guilty plea rather than a basis for incompetency to stand trial. Gov't C.A. Br. 19-21. This Court may deny review based solely on petitioner's waiver below.

2. On the merits, the court of appeals correctly rejected petitioner's argument that 18 U.S.C. 4241(a) required the district court to order a competency hearing sua sponte in this case. That statute provides conditionally that a district court shall order a competency hearing, on its own motion or a party's, "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." 18 U.S.C. 4241(a) (emphases added). Accordingly, as the court of appeals explained, "although the district court ordered [a psychological] examination, it was not required to thereafter order a competency hearing unless there was reasonable cause to question [petitioner's] competency following

the examination." Pet. App. 6a. In this case, "no such cause was presented" because the court-appointed psychologist's report found petitioner competent to stand trial, without objection from petitioner, among other facts establishing petitioner's competency. Id. at 6a-7a. The district court thus did not abuse its discretion in determining that the facts here did not rise to a level that would trigger Section 4241(a)'s conditional requirement to hold a competency hearing.

Petitioner acknowledges that the psychologist's report "concluded that he was competent to proceed," Pet. 6, and he does not dispute that "the district court repeatedly confirmed [petitioner's] competency throughout these proceedings," Pet. App. 5a. Nor does he challenge controlling circuit precedent, applied below, establishing that the court of appeals "review[s] a district court's decision on whether to hold a competency hearing for abuse of discretion" and that "[i]n deciding whether there is reasonable cause warranting a competency hearing, the court may rely on many factors, including but not limited to 'psychiatrists' reports indicating competency,' 'its own observations of the defendant,' and defense counsel's judgment." Id. at 3a (citations omitted) (quoting United States v. Nichols, 56 F.3d 403, 414 (2d Cir. 1995), and citing United States v. Quintieri, 306 F.3d 1217, 1222-1233 (2d Cir. 2002), cert. denied, 539 U.S. 902 (2003)). Together, those undisputed facts and legal principles confirm that the district

court did not abuse its discretion in not ordering a competency hearing sua sponte.

Rather than disputing the court of appeals' review, for abuse of discretion, of that fact-specific determination, petitioner's sole contention now (Pet. 3) is that 18 U.S.C. 4241(a) "categorically" requires a hearing "once reasonable cause is established" to question a defendant's competency, no matter what subsequently transpires. But that is not what the statute says. By its terms, Section 4241(a) requires a hearing only "if" there "is" reasonable cause to believe that a defendant may "presently" be incompetent -- not if there was, or may have been, such cause before it was eliminated by subsequent developments, such as (here) an uncontested report by a court-appointed psychologist finding petitioner competent to stand trial, as well as the district court's repeated confirmation of petitioner's competency at the plea hearing and sentencing. Far from "creat[ing]" an "exception to § 4241(a)'s hearing requirement," Pet. 7, the courts below correctly applied the plain language of the statutory condition for holding a hearing and determined that it was not present in these circumstances.

Contrary to petitioner's contention (Pet. 12-15), the court of appeals did not err in citing United States v. Kerr, 752 F.3d 206, 216 (2d Cir.), cert. denied, 574 U.S. 945 (2014), 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; see id. at 6a-7a. Petitioner himself cited the same passage of Kerr below for the closely related proposition that "[a] court is not necessarily required to hold an evidentiary hearing where it orders a psychological evaluation before reasonable cause is established, and the report subsequently concludes the defendant is competent." Pet. C.A. Br. 33 (emphasis omitted) (citing Kerr, 752 F.3d at 216). Like petitioner's brief below, the court of appeals correctly recognized that Kerr remains relevant on this point even though it relied in part on case law addressing an older version of the competency statute previously codified at 18 U.S.C. 4244(b). The court of appeals did not "revert[] to the prior law," contra Pet. 15; indeed, after describing this case as involving Section 4241(a), the court specifically noted that Kerr involved an examination under Section 4244(b), Pet. App. 3a, 7a.

3. The unpublished, nonprecedential decision below does not conflict with any of the decisions from other circuits that petitioner inaccurately claims (Pet. 10-11) support his position. Like the decision below, United States v. Gillette, 738 F.3d 63 (3d Cir. 2013), cert. denied, 572 U.S. 1157 (2014), rejected the argument (advanced by petitioner here) that "§ 4241 'always contemplates that a competency hearing will be held where a court has ordered a psychological evaluation,'" and upheld a district

court's "decision not to hold a competency hearing" after a court-ordered psychologist "concluded [the defendant] was competent to stand trial." Id. at 76-77 (citation omitted). So did United States v. Ewing, 494 F.3d 607, 610, 622 (7th Cir. 2007), cert. denied, 552 U.S. 1120 (2008). Also consistent with the decision below, seven of the eight other decisions on which petitioner relies (Pet. 10-11) merely restated the language of Section 4241(a) and applied abuse-of-discretion review to district courts' fact-specific decisions finding particular defendants competent (with or without a hearing or psychological evaluation). Finally, Griffin v. Lockhart, 935 F.2d 926 (8th Cir. 1991), is inapposite because it addressed a constitutional (not statutory) collateral challenge to a state-court conviction, id. at 927, 930, whereas "§ 4241, like the rest of Title 18 generally, applies exclusively to federal defendants" in trial proceedings, Ryan v. Gonzales, 568 U.S. 57, 72 (2013).

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

A. TYSEN DUVA
Assistant Attorney General

JOHN P. TADDEI
Attorney

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