
IN THE
Supreme Court of the United States

MICHAEL BARRETO,

Petitioner,

v.

UNITED STATES,

Respondent.

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

REDACTED REPLY BRIEF

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INTRODUCTION

Petitioner Michael Barreto respectfully submits this Reply to the government’s Opposition (“Opp.”) and in further support of his Petition for a Writ of Certiorari (“Pet.”). This case presents the question of whether, under 18 U.S.C. § 4241, a district court may rely on a psychiatric evaluation to find a defendant competent in lieu of a competency hearing when there is reasonable cause to doubt a defendant’s competency. The government’s opposition rests on three flawed premises, each of which this Court should reject.

First, the government contends that Barreto waived his challenge to the district court’s failure to hold a competency hearing by not requesting one. Opp. 8-9. It is well established, however, that it is the district court’s responsibility—not Barreto’s—to ensure Barreto’s competency to plead guilty. *Musaid v. Kirkpatrick*, 114 F.4th 90, 108 (2d Cir. 2024) (“[T]rial courts themselves are obligated to ensure that the state does not prosecute incompetent defendants.”).

Second, the government argues that § 4241(a)’s hearing requirement can be “eliminated” by “subsequent developments,” such as a psychiatric report finding competency. Opp. 11. This reading ignores the statute’s plain text: the court “*shall* order . . . a hearing . . . *if there is reasonable cause.*” 18 U.S.C. § 4241(a) (emphasis added). Once reasonable cause exists, as it unequivocally did here, the district court has “but one option: order a hearing.” *United States v. Arenburg*, 605 F.3d 164, 169 (2d Cir. 2010) (cleaned up).

Third, the government disputes the existence of a circuit split, emphasizing that many of the circuit cases cited in Barreto’s Petition affirmed a finding of competency. Opp. 12-13. The distinction that defines the split, however, is not about whether a defendant was found competent, but about the procedures employed to make that determination. Most circuits follow the rule that

once reasonable cause is established, the district court must hold a hearing. Yet, three courts of appeals—the Fourth and Ninth Circuits, as well as the Second Circuit in its decision below—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. That doctrinal divide warrants this Court’s review.

REASONS FOR GRANTING THE PETITION

I. Waiver Cannot Bar the Right to a Competency Hearing.

The government argues that Barreto waived his competency hearing challenge by never explicitly requesting one. Opp. 8-9. But the government cites no authority for the proposition that silence equals waiver, and for good reason: the law is clear that it does not. “[W]hether defense counsel raises the issue of competency *is of no moment.*” *Musaid*, 114 F.4th at 108 (emphasis added) (citing *Nicks v. United States*, 955 F.2d 161, 168 (2d Cir.1992)). The duty to ensure Barreto’s competency to plead guilty falls squarely on the district court, not on Barreto himself. *Id.*; see also *Pate v. Robinson*, 383 U.S. 375, 385 (1966) (holding that when evidence raises a reasonable doubt regarding a defendant’s competence to stand trial, the trial court’s failure to conduct a competency hearing *sua sponte* violates due process); *Nicks*, 955 F.2d at 168 (noting that the Court’s holding in *Pate* “conforms to that which is required under 18 U.S.C. § 4241”).

Perhaps in recognition that Barreto’s silence alone cannot constitute waiver of his right to a competency hearing, the government argues that the failure to request a hearing was not mere silence, but a deliberate and strategic choice. Opp. 8-9. The government cites, among other things, the fact that the parties’ counsel had “detailed conversations about a resolution of this case” and failed to voice competency concerns during sentencing. *Id.* This theory is both factually unsupported and legally circular. Neither settlement negotiations nor sentencing advocacy establishes that Barreto made a knowing, intentional decision to forgo a competency hearing. Nor

does the fact that counsel invoked Barreto’s cognitive limitations as mitigation evidence constitute a tactical waiver—a theory for which the government cites no supporting authority.¹

More fundamentally, the argument is self-defeating. It “is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently ‘waive’ his right to have the court determine his capacity to stand trial.” *Silverstein v. Henderson*, 706 F.2d 361, 366 (2d Cir. 1983) (quoting *Pate*, 383 U.S. at 384). The very purpose of a competency hearing is to determine whether a defendant 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). The government’s argument assumes Barreto was competent enough to make a strategic waiver of the very hearing designed to determine his competence. *See United States v. Bodnar*, 37 F.4th 833, 843 (“Because waiver negate[s] even plain error review, we must ensure that the record supports the *critical determination* that the defendant acted intentionally in pursuing, or not pursuing, a particular course of action.”). The Court should decline to find waiver here.

¹ The government’s sole citation is to a section of its own Circuit brief relying on several inapposite cases, all involving clear defense tactics before the jury at trial. *See United States v. Bodnar*, 37 F.4th 833 (2d Cir. 2022) (defendant waived his challenge to cooperating witnesses’ testimony where defense counsel not only failed to object to admission of testimony during trial, but also emphasized potential bias on cross-examination and in presenting its theory of case to jury); *United States v. Yu-Leung*, 51 F.3d 1116 (2d Cir. 1995) (same); *United States v. Coonan*, 938 F.2d 1553 (2d Cir. 1991) (same); *United States v. Quinones*, 511 F.3d 289 (2d Cir. 2007) (defendant waived his right to challenge imposition of life sentence where defense urged jury and court not to impose the death penalty, arguing that defendant could instead serve a life sentence). No similar circumstances are present here.

II. Section 4241(a) Imposes a Categorical, Mandatory Duty When Reasonable Cause Exists.

A. The Statute’s Plain Text and Structure Require a Hearing.

As noted in the Petition, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the district court ordered a psychiatric examination of Barreto pursuant to § 4241(a) and (b). *Id.* at 76a-77a.

Despite this conclusion, the district court never held the competency hearing that § 4241(a) mandates. Section 4241(a) provides that the court “shall order . . . a hearing . . . if there is reasonable cause.” This Court has ruled that “shall” creates an “obligation impervious to judicial discretion.” *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see also Bufkin v. Collins*, 604 U.S. 369, 379 (2025) (“It is undisputed that the word ‘shall’ imposes a mandatory command. ‘Shall’ means ‘must.’”) (cleaned up); *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 297 (2020) (same); *Murphy v. Smith*, 583 U.S. 220, 223 (2018) (same). By contrast, § 4241(b) distinguishes that the court “may” order a psychiatric examination prior to the hearing—a word that signals discretion rather than obligation. *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016) (“When a statute distinguishes between ‘may’ and ‘shall,’ it is generally clear that ‘shall’ imposes a mandatory duty.”). As these decisions make clear, Congress’s deliberate use of “shall” and “may” underscores that while a psychiatric exam may be optional upon reasonable cause, an evidentiary competency hearing is not. *United States v. Arenburg*, 605 F.3d at 169 (“[W]here reasonable cause exists at any time after the commencement of a prosecution, a district court has but one option: order a hearing.”) (cleaned up).

Despite the clear distinction in statutory language, the government contends that, even when reasonable cause has been definitively established, as it was here, § 4241(a)'s hearing requirement is flexible or can be “eliminated” by “subsequent developments,” such as a “report by a court-appointed psychologist finding petitioner competent to stand trial.” Opp. 11. This reading cannot be correct: under the government’s logic, core questions of due process would ultimately depend on a single mental health expert’s untested conclusion, rather than judicial determination via an adversarial process in open court. As this Court articulated in *Ford v. Wainwright* regarding capital punishment competency evaluations:

[c]ross-examination of the psychiatrists . . . would contribute markedly to the process of seeking truth in sanity disputes by bringing to light the bases for each expert’s beliefs, the precise factors underlying those beliefs, any history of error or caprice of the examiner, any personal bias . . . , the expert’s degree of certainty about his or her own conclusions, and the precise meaning of ambiguous words used in the report. Without some questioning of the experts concerning their technical conclusions, a factfinder simply cannot be expected to evaluate the various opinions, particularly when they are themselves inconsistent.

477 U.S. 399, 415 (1986).

The government’s approach would violate basic constitutional principles safeguarded by § 4241. See *Drope v. Missouri*, 420 U.S. 162, 172 (1975) (“[T]he failure to observe procedures adequate to protect a defendant’s right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial.”); *Musaid*, 114 F.4th at 108 (“The criminal trial of an incompetent defendant violates the Due Process clause of the Fourteenth Amendment.”); *Nicks* 955 F.2d at 168 (finding standards under § 4241 and due process essentially equivalent). 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 the accuracy of competency decisions. *United States v. Houston*, 603 F.App’x 7, 9 (2d Cir. 2015) (“Because this 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.”).

The government's approach also suggests that trial courts may sidestep § 4241's directive by waiting for a psychiatric evaluation to find the defendant competent or delaying proceedings until “reasonable cause” fades. But the statute's text forecloses this. Once reasonable cause exists, the court must hold a hearing. *Arenburg*, 605 F.3d at 169. To permit otherwise would render § 4241's use of “shall” meaningless and allow untested expert conclusions to supplant the adversarial process Congress deemed essential to protecting defendants' constitutional rights.

B. A Plea Colloquy Is No Substitute for an Evidentiary Hearing.

The government's argument that the district court's “repeated confirmation of petitioner's competency at the plea hearing and sentencing” excused it from complying with §4241(a)'s mandate is equally meritless. Opp. 11. The statute does not just require *any* type of hearing once the reasonable cause standard is met. Rather, the district court is explicitly required to hold an *evidentiary* hearing to determine competency. See 18 U.S.C. § 4241(c) (requiring hearing to be held under § 4247(d)); 4247(d) (“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.”). [REDACTED]

[REDACTED] the district court was obligated to hold an evidentiary hearing. A guilty plea proceeding is not such an evidentiary hearing, no matter how detailed the colloquy, and therefore does not satisfy the statutory requirement.

C. The Second Circuit Applied a Pre-1984 Statutory Framework That Congress Expressly Supplanted.

The government argues that the Second Circuit did not err in citing *United States v. Kerr*, 752 F.3d 206 (2d Cir. 2014), for the proposition that, “[w]here a defendant has been found

competent following a court-ordered evaluation, a district court is generally ‘not required to hold a competency hearing before accepting a plea.’” Opp. 11-12 (quoting *Kerr*, 752 F.3d at 216 (quoting *Wojtowicz v. United States*, 505 F. 2d 786, 791 (2d Cir. 1977))). The government defends this reliance by noting that “the Second Circuit specifically noted that *Kerr* involved an examination under Section 4244(b).” Opp. 12. While the Second Circuit cited *Kerr* multiple times in the Opinion below, it acknowledged *Kerr*’s § 4244(b) foundation only once—in a parenthetical to a single citation—without analyzing whether that outdated statutory framework remains applicable under § 4241. *See* Pet. App. 7a. In any event, a passing acknowledgement that *Kerr* relied on outdated authority does not cure the error—it confirms it.

What’s more, the government fails to address the threshold question that the Second Circuit’s confirmation raises: why does § 4244(b)’s reasoning carry any weight when Congress enacted a statute to replace it? As the Petition discusses at length, Congress fundamentally altered the statutory framework when it enacted § 4241 as part of the 1984 Insanity Defense Reform Act (the “Act”). *See* Pet. 14-15; *see also United States v. Jensen*, 639 F.3d 802, 805 (8th Cir. 2011) (discussing how these changes were enacted as part of the Act). Under § 4244, a competency hearing was contingent upon what the psychiatric report concluded; under § 4241, by contrast, Congress made the hearing mandatory upon reasonable cause. *See* Pet. 14-15.

Other circuits have recognized these distinctions and refused to import pre-Act reasoning into § 4241. For example, three years after the passage of the Act, the district court in *United States v. Nichols*, 661 F. Supp. 507 (W.D. Mich. 1987), addressed confusion stemming from the differences between § 4244 and § 4241, explaining that because of the “significant changes” between the two statutes, “pre-Act case law is not always on point in interpreting the new and/or the amended sections.” *Id.* at 510. Critically, the court explained that, “[u]nder the former scheme,

the trial court was not required to hold a hearing if the psychiatric examination indicated that the defendant was competent,” whereas the post-Act framework mandates a hearing with a “full panoply of due process protections” upon the showing of “reasonable cause.” *Id.* at 512; *see also United States v. Roberts*, 915 F.2d 889, 891–92 (4th Cir. 1990) (§ 4241 and § 4244 serve different purposes under different standards); *United States v. White*, 887 F.2d 705, 707 (6th Cir. 1989) (same); *United States v. Morris*, 550 F. Supp. 2d 1290, 1293–94 (M.D. Ala. 2008) (same). Precedent interpreting a superseded statute cannot be used to evade the requirements of the statute that replaced it. Yet, that is exactly what the Second Circuit did—and what the government now defends.

III. A Genuine Division Among the Circuits Merits This Court’s Intervention.

The government disputes the existence of a circuit split, contending that the cases Barreto cites found defendants competent, just as the Second Circuit did here, and thus reflects no meaningful disagreement among the circuits. *See, e.g.*, Opp. 12-13 (“Also consistent with the decision below, seven of the eight decisions on which petitioner relies 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).”). This argument never engages with the legal reasoning of the cases cited in the Petition. By focusing overwhelmingly on outcomes, the government sidesteps the question that divides the circuits: whether, under § 4241, a psychiatric evaluation can substitute for a competency hearing once there is reasonable cause to doubt a defendant’s competency.

Indeed, the government mischaracterizes the Petition’s arguments entirely, claiming Barreto argues that “§ 4241 ‘always contemplates that a competency hearing will be held where a court has ordered a psychological evaluation.’” Opp. 12-13 (quoting *United States v. Gillette*, 738

F.3d 63 (3d Cir. 2013)). This is not, and never was, Barreto’s argument. The question is not whether ordering a psychiatric examination triggers a competency hearing—the real question, which the government ignores, is whether, once reasonable cause has been established, a district court may forgo a hearing by relying on a psychiatric examination that concludes the defendant is competent.

The government likewise elides the distinction between the majority and minority approaches. The majority of circuits—the First, Third, Fifth, Sixth, Seventh, Eighth, Tenth, Eleventh, and D.C. Circuits—require hearings once reasonable cause is established. *See* Pet. 10-11. These circuits declined to hold hearings because they found no reasonable cause existed in the first instance—not because they allowed a psychiatric examination to “dispel” an already-established statutory trigger. Instead of grappling with how other circuits reasoned or what legal standard they applied, the government offers a catalog of outcomes in lieu of argument. *See* Opp. 12-13.

By contrast, the Second Circuit’s opinion below, along with precedent from the Fourth and Ninth circuits, permits district courts to forgo hearings by relying on psychiatric examinations finding the defendant competent, even after reasonable cause has been established. *See* Pet. 7-10. The government does not dispute this characterization of the minority approach, nor does it explain how that approach is consistent with the reasoning of the majority of courts of appeals. Regardless, the minority’s approach cannot be reconciled with either Congress’s deliberate choice in enacting § 4241, *see* Pet. 14-15, or core procedural due process protections against trial or pleading guilty while incompetent guaranteed under the U.S. Constitution. *See Musaid*, 114 F. 4th at 108 (“The criminal trial of an incompetent defendant violates the Due Process clause of the Fourteenth Amendment.”); *Drope*, 420 U.S. at 172 (“[T]he failure to observe procedures adequate to protect

a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial."); *Pate*, 383 U.S. at 378 (same). Given the paramount importance of the rights at stake, this Court's review is warranted.

CONCLUSION

For the foregoing reasons, Barreto respectfully requests that this Court grant the petition for the writ of certiorari.

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Respectfully submitted,

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