No. 07-785

In the Supreme Court of the United States

ERIC R. WALLACE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's unconditional guilty plea waived his right to appeal the trial court's pretrial ruling finding him competent to stand trial.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitution, statutes and rules: Page

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-50a) is reported at 936 A.2d 757.

JURISDICTION

The judgment of the court of appeals was entered on September 13, 2007. The petition for a writ of certiorari was filed on December 12, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

STATEMENT

Following an unconditional guilty plea in the Superior Court of the District of Columbia, petitioner was convicted of one count of second-degree murder while armed, in violation of D.C. Code §§ 22-2103 and 22-4502, and sentenced to thirty-five years of imprisonment, to be followed by five years of supervised release. Peti-

tioner subsequently moved to withdraw his guilty plea, and the trial court denied the motion. The court of appeals dismissed petitioner's appeal from the guilty-plea conviction and affirmed the trial court's denial of petitioner's motion to withdraw his plea. Pet. App. 4a, 50a.

1. Petitioner was found incompetent to stand trial on misdemeanor assault charges. The United States petitioned to have petitioner civilly committed and sought to detain him pending resolution of the commitment petition. Petitioner successfully opposed the latter request, and he was released from custody on October 10, 2002. Pet. App. 2a.

At approximately 9 p.m. that evening, petitioner encountered Claude McCants on 4th Street, N.E., in Washington, D.C., as McCants was talking on his cellular phone while standing near the passenger side of his vehicle. Petitioner stabbed McCants in the neck with a steak knife and drove off in McCants's vehicle, leaving McCants to bleed to death. Pet. App. 76a-77a; Gov't C.A. Br. 2.

Eight days later, McCants's car was recovered from a gas station parking lot in Maryland. The car had a Maryland tag attached over the original Mississippi tag. Inside the car were mail matter and medical prescriptions in petitioner's name, a CD with petitioner's fingerprint, petitioner's blood-stained clothing, and a bloody steak knife. Police questioned petitioner, who admitted in a videotaped interview that he had stabbed McCants and stolen his car. Pet. App. 76a-77a; Gov't C.A. Br. 2.

2. On November 9, 2002, petitioner was presented in the Superior Court of the District of Columbia on a charge of second-degree murder while armed. The trial court ordered petitioner to undergo a competency screening examination. Dr. Lawrence Oliver of the

court's Legal Services Division found that petitioner was competent to stand trial. Pet. App. 2a-3a, 78a-79a; Gov't C.A. Br. 2-3. A separate criminal-responsibility study concluded that petitioner was not insane at the time of the offense. Pet. App. 2a. The trial court found petitioner competent and set a trial date. Pet. App. 80a; Gov't C.A. Br. 3.

On August 12, 2003, petitioner filed a motion challenging his competency determination. In response, the trial court ordered a more comprehensive competency examination, which Dr. Oliver performed. Dr. Oliver found that petitioner was competent to stand trial and expressed the opinion that petitioner was malingering. Pet. App. 2a-3a. The government also had petitioner examined by two additional experts, Drs. Raymond Patterson and Stephen Lally, who submitted written reports generally in accord with that of Dr. Oliver. Gov't C.A. Br. 6-9. Neither of petitioner's competency experts, Drs. Thomas Hyde and David Pickar, submitted a written report. *Id.* at 4.

The trial court convened a five-day competency hearing and received testimony from all five experts, as well as voluminous exhibits, including medical records, reports from the government and court-appointed experts, and a videotape of petitioner's confession. Pet. App. 3a. Petitioner's experts testified that he was incompetent and not malingering. *Id.* at 82a-83a. The government did not dispute that petitioner suffered from dementia and mild impairment, but contended that he was malingering and did not suffer from psychosis or severe cognitive impairment. *Id.* at 83a.

On November 10, 2003, the court found petitioner competent to stand trial. Pet. App. 71a-93a. The court concluded that "the evidence of malingering [was] far

more powerful than the evidence of significant progressive deterioration." Pet. App. 93a. Petitioner's conduct was simply inconsistent with the impairments he claimed, including an IQ of 55 and a tendency to hallucinate; the court credited the conclusions by the government's experts and the court-appointed expert that petitioner was functioning at a cognitive level well above his purported IQ and that his reports of hallucinations were both variable and inconsistent with legitimate symptoms. *Id.* at 84a, 86a. Accordingly, the court concluded, petitioner had failed to carry his burden of proving that he is incompetent. *Id.* at 93a.

On January 5, 2004, petitioner entered an unconditional guilty plea to one count of second-degree murder while armed. After the required colloquy, the trial court found petitioner competent to plead guilty, and accepted his plea. Pet. App. 3a-4a; Pet. C.A. App. 77-93. The court held a follow-up hearing ten days later, in accordance with *Frendak* v. *United States*, 408 A.2d 364 (D.C. 1979), and confirmed as required by that case that petitioner understood the consequences of failing to assert the defense of insanity, that he was fully informed of the alternatives available to him, and that he was freely choosing to waive that defense. Pet. App. 4a & n.3. At the conclusion of the *Frendak* hearing, the trial court found that petitioner "underst[ood] the consequences of the choice to waive the [insanity] defense," and that his "waiver [was] voluntary and intelligent." Pet. C.A. App. 96-97. The court sentenced petitioner to thirty-five years of imprisonment, to be followed by five years of supervised release. Pet. App. 1a. Petitioner appealed.

3. While his direct appeal was pending, petitioner filed a motion to withdraw his guilty plea "to correct

manifest injustice."[1] The District of Columbia Court of Appeals stayed petitioner's direct appeal until that motion was resolved.

On October 27, 2005, the trial court denied petitioner's motion to withdraw his plea. Pet. App. 51a-70a. The court explained that the Rule 32(e) standard requires the defendant to make a two-part showing: "that (1) to allow the plea to stand would be manifestly unjust, and that (2) the plea proceeding was fundamentally flawed such that there was a complete miscarriage of justice." *Id.* at 59a.[2] The court found that petitioner had not satisfied either part of this test. It explained that the evidence on which petitioner relied as new either had been raised at petitioner's plea hearing; had been considered before petitioner's sentencing; or was legally irrelevant to petitioner's competency to plead guilty because it came from the period after he had been sentenced and incarcerated. *Id.* at 64a-65a. The court reiterated that it had thoroughly considered the relevant evidence and, indeed, "knew [petitioner] so well that it was able to understand his facial expressions and determine whether or not [he] understood the proceedings." *Id.* at 68a.

4. In a consolidated opinion, the court of appeals dismissed the direct appeal from the guilty-plea convic-

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[1] "A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw the plea." D.C. Super. Ct. R. Crim. P. 32(e).

[2] The court of appeals later declined to determine whether the test was conjunctive or disjunctive, because petitioner had failed to meet "either prong of the test." Pet. App. 8a & n.9.

tion and affirmed the denial of petitioner's motion to withdraw his guilty plea. Pet. App. 1a-50a.

a. The court first explained that an unconditional plea of guilty waives "virtually every possible avenue of appeal." Pet. App. 4a (quoting *Bettis* v. *United States*, 325 A.2d 190, 194 (D.C. 1974)). "[T]he only issues that are appropriately raised in an appeal from a conviction entered after a guilty plea are the exercise of jurisdiction by the trial court and the legality of the sentence imposed." *Id.* at 5a (quoting *Carmichael* v. *United States*, 479 A.2d 325, 326 n.1 (D.C. 1984)). The court noted that "some jurisdictions" have exempted competency issues from this general waiver rule, but it concluded that it was not "free to depart" from its precedents adopting a waiver rule. Pet. App. 6a-7a. Defendants could still move to withdraw their guilty pleas, as petitioner had. *Id.* at 5a.

The court rejected petitioner's contention that the waiver rule conflicts with this Court's precedents. The court distinguished *Pate* v. *Robinson*, 383 U.S. 375 (1966), which held only that "a defendant is entitled to procedural due process to determine whether he is competent," because in this case petitioner had been amply afforded the required procedural protections. Pet. App. 5a n.5. "Nothing in *Pate*," the court explained, "compels a holding that a defendant who has received the benefit of [valid competency determinations] must be allowed to challenge his competency again on direct appeal following a guilty plea." *Ibid.*

The court also concluded that its waiver rule was not inconsistent with *Menna* v. *New York*, 423 U.S. 61 (1975), or *Blackledge* v. *Perry*, 417 U.S. 21 (1974). In both of those cases, this Court concluded that a guilty plea does not waive a claim that the State entirely lacks

power to indict the defendant. Pet. App. 7a n.7 (citing *Blackledge*, 417 U.S. at 30-31). A defendant's challenge to his competency to stand trial is not such a claim. *Ibid.*

b. The court then concluded that the trial court had not abused its discretion in denying petitioner's Rule 32(e) motion. The court of appeals first noted that its review of that motion required it to address the trial court's competency determination. Pet. App. 8a-10a. The court of appeals then conducted an exhaustive review of the evidence presented at the competency hearing, *id.* at 12a-18a, of the trial court's competency ruling, *id.* at 18a-26a, and of the trial court's Rule 32(e) order, *id.* at 26a-34a. In light of that review, the court of appeals concluded that the trial court's competency finding had been based on a "permissible view[] of the evidence" and had reasonably resolved the dispute between the testifying experts. *Id.* at 26a (citation omitted). The post-hearing evidence that petitioner had submitted "contained nothing that required the trial judge to conclude that [petitioner's] competence to stand trial or plead guilty had diminished." *Id.* at 32a-33a. The court also reviewed the guilty-plea colloquy in great detail and concluded that petitioner had not shown that the proceeding was fundamentally flawed. *Id.* at 34a-46a.

ARGUMENT

Petitioner renews his contention that the Due Process Clause entitles him to direct appellate review of the trial court's competency finding, notwithstanding his guilty plea. The court of appeals correctly rejected that claim, and its decision does not merit further review. Petitioner's unconditional guilty plea operated to waive review on appeal of claimed independent constitutional deprivations in pre-plea trial-court rulings. Petitioner,

moreover, received appellate review of his claim that he was not competent to plead guilty, an issue that is not meaningfully different from the pre-plea competency determination that petitioner seeks to challenge. Not only is there no conflict of authority warranting this Court's review, and not only does the availability of *conditional* guilty pleas render the issue of far less importance than petitioner suggests, but the court of appeals' holding that the denial of petitioner's motion to withdraw his plea was not an abuse of discretion renders this case an inappropriate vehicle in any event for further review of petitioner's due process claim.

1. The court of appeals' holding is consistent with this Court's precedents. The general rule that a guilty plea waives pending claims of legal error, including constitutional error, is well established. As this Court has explained, "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett* v. *Henderson*, 411 U.S. 258, 267 (1973); see also, *e.g.*, *United States* v. *Broce*, 488 U.S. 563, 570 (1989); *McMann* v. *Richardson*, 397 U.S. 759, 766-768 (1970). The courts of the District of Columbia have adopted the same general rule. Pet. App. 4a-5a. The rule of waiver plainly satisfies due process in the ordinary case.

As petitioner notes (Pet. 19-22), this Court has recognized a narrow exception to this general rule of waiver for constitutional claims "that—*judged on its face*—the charge is one which the State may not constitutionally prosecute." *Broce*, 488 U.S. at 575 (quoting *Menna* v. *New York*, 423 U.S. 61, 63 n.2 (1975)). The prime exam-

ple is a claim of double jeopardy that is apparent on the face of the indictment, see *id.* at 574-575, because a valid claim of double jeopardy entitles a defendant to immediate dismissal of the indictment so that he is not "forced to 'run the gauntlet' a second time." *Abney* v. *United States*, 431 U.S. 651, 662 (1977) (establishing that denial of a motion to dismiss an indictment on double-jeopardy grounds is immediately appealable). Thus, in *Menna*, this Court held that the defendant could appeal on double-jeopardy grounds even after his guilty plea; "the State [was] precluded * * * from haling [the] defendant into court" at all, and so could not rely on a waiver rule. 423 U.S. at 62. Similarly, in *Blackledge* v. *Perry*, 417 U.S. 21 (1974), the double-jeopardy-like protection against prosecutorial vindictiveness absolutely precluded the State from "[t]he very initiation of" more serious charges against the defendant in retaliation for his exercise of the right to appeal. *Id.* at 30-31. His challenge to those charges, therefore, was not waived by his guilty plea. See *ibid.* In each of those cases, the constitutional claim was not foreclosed because "the constitutional infirmity in the proceedings lay in the State's power to bring any indictment at all." *Broce*, 488 U.S. at 575.

A defendant's claim that he is incompetent to stand trial does not fall into the narrow class of claims that the Constitution excludes from the waiver rule. A competency claim does not affect the validity of the charge "judged on its face." Indeed, an incompetent defendant is not entitled to walk free; rather, the government is entitled to seek to restore him to competency, during which time the charge remains pending and the trial may remain in "suspension." *Medina* v. *California*, 505 U.S. 437, 448 (1992); see *Sell* v. *United States*, 539 U.S.

166, 180 (2003); *Cooper* v. *Oklahoma*, 517 U.S. 348, 365 & n.21 (1996). In a case like this one, neither the "very initiation of proceedings" nor the government's power to "hal[e] [the] defendant into court" is in question. *Broce*, 488 U.S. at 575 (citations omitted).

"*Menna* and *Blackledge*," the court of appeals correctly explained, "do not dictate that in this circumstance the defendant must be able to bring a freestanding appeal of the competency determination as though he had never pled guilty." Pet. App. 7a n.7. The court of appeals' reading of *Menna* and *Blackledge* is correct and does not warrant further review.[3]

2. Petitioner also asserts (Pet. 12-18) that the court of appeals' decision contributes to an existing divide among state courts concerning whether an unconditional guilty plea waives the right to appeal an adverse competency finding. Petitioner does not identify any disagreement warranting the Court's review of his due process argument.

Of the decisions petitioner cites to support his argument, only three are from state courts of last resort, and one of these three is altogether inapposite. In *Thompson* v. *Commonwealth*, 56 S.W.3d 406 (Ky. 2001), the

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[3] Petitioner also relies tangentially on *Pate* v. *Robinson*, 383 U.S. 375 (1966), in which this Court held that the right to a competency hearing could not be waived. *Id.* at 384-386 (holding that "Robinson's constitutional rights were abridged by his failure to receive an adequate hearing on his competence to stand trial"). The issue here is altogether different: petitioner received a full and thorough adjudication of his competency, and the trial court determined that he was competent both to stand trial and to plead guilty. Nothing in *Pate* entitled petitioner to plead guilty while preserving a direct appeal on competency from his guilty-plea conviction. Once a defendant has been found competent to waive constitutional rights, it is not "contradictory" (*id.* at 384) to conclude that he may waive further review of competency.

court did not consider whether the defendant had waived the question of competency by pleading guilty. Rather, the defendant's *counsel* had separately waived the competency issue even though the trial court had not held a competency hearing. *Id.* at 408. The Kentucky Supreme Court held that a state statute gave the defendant a non-waivable right to a competency hearing following a mental evaluation. See *id.* at 408-409 (citing Ky. Rev. Stat. Ann. § 504.100(3)). The decision applying that statute did not involve any due process issue of the sort petitioner raises here; the Kentucky Supreme Court referred only to defendants' due process right not to be convicted while incompetent, not to any due process right to appellate review.

Petitioner's two other principal cases do adopt a rule permitting competency challenges to be raised on direct appeal from a guilty-plea conviction. These decisions do not make clear, however, whether they rest on the federal Constitution or simply on state law or the courts' own supervisory power. Significantly, neither of them discusses *Blackledge* or *Menna*, the federal cases on which petitioner chiefly relies (Pet. 19-22) and which the court of appeals distinguished in this case. The mere fact that other States have adopted, on policy grounds, a rule different from the District of Columbia's is not a basis for review, on constitutional grounds, of the court of appeals' decision in this case.

In *State* v. *Cleary*, 824 A.2d 509 (Vt. 2003), the court stated that it "will treat appeals of competency determinations as an exception to the waiver rule" generally followed in Vermont." *Id.* at 512. The court cited, without extensive discussion, the holdings of other state courts adopting a similar rule. *Ibid.* The court also cited this Court's decision in *Pate* v. *Robinson*, 383 U.S.

375 (1966), but noted that it arose "[i]n a different context." *Cleary*, 824 A.2d at 512. Although the court agreed as a logical matter with *Pate*'s statement that "it is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently 'waive' his right to have [a] court determine his capacity to stand trial," *ibid.* (quoting *Pate*, 383 U.S. at 384), the court did not purport to be applying a rule of federal constitutional law laid down in *Pate*.

Cleary cited the other decision on which petitioner principally relies, *People* v. *Armlin*, 332 N.E.2d 870 (N.Y. 1975). The court in *Armlin* devoted only three sentences of analysis to the waiver question and did not make the basis of its decision clear. The court cited *Pate* in the same way that the Vermont court did in *Cleary*, *i.e.*, for the proposition "that there is an inherent contradiction in arguing that a defendant may be incompetent, and yet knowingly or intelligently waive his right to have a court determine his capacity to stand trial in accordance with the Criminal Procedure Law." *Id.* at 874. The court also observed that it had previously "taken cognizance of the principles enunciated in *Pate*" to hold that the question of competency could not be forfeited by failure to raise it. *Ibid.* The New York Court of Appeals thus left vague whether it relied on federal law, on state law, or on its own powers, and this issue has not been clarified by the two subsequent New York decisions that petitioner cites. See *People* v. *Seaberg*, 541 N.E.2d 1022, 1025-1026 (N.Y. 1989) (enforcing an appeal waiver and holding that such waivers generally are valid, except when a "societal interest" in "fairness in the process" justifies making an exception, as in *Armlin*); *People* v. *Frazier*, 495 N.Y.S.2d 478, 479 (App. Div. 1995) (applying *Armlin*'s holding without analysis).

Thus, the decision below does not present a clear conflict with any decision of a state high court on the question presented, *i.e.*, whether due process entitles defendants in petitioner's situation to an appeal. States are free to adopt remedies for constitutional violations that exceed the required remedies under federal law. See *Danforth* v. *Minnesota*, 128 S. Ct. 1029 (2008). None of the decisions of a state court of last resort cited by petitioner announces a rule that the court claims is *compelled* by federal law.[4] Petitioner therefore has not presented an issue that warrants this Court's review.

3. Even if the court of appeals' reasoning created a conflict with other courts' decisions, resolution of any such conflict would have no substantive impact on this case. Petitioner contends that the court of appeals should not have dismissed his direct appeal. But for several reasons, any direct appeal, contrary to petitioner's contention (Pet. 24-25), would not have been substantively different from the appellate review peti-

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[4] Petitioner also cites (Pet. 14-16) a few decisions from trial and intermediate appellate courts, which generally are not a basis for review in this Court, because any conflict they create may be resolved by the State's high court. In any event, several of these decisions either do not expressly rely on the federal Constitution, see *State* v. *Wead*, 609 N.W. 2d 64, 68 (Neb. Ct. App. 2000), or arise in the habeas corpus context and thus are highly unlikely to involve any due process right to appellate review, see *King* v. *Cunningham*, 442 F. Supp. 2d 171, 185 (S.D.N.Y. 2006). Petitioner also cites (Pet. 15) *People* v. *White*, 308 N.W.2d 128 (Mich. 1981), but the language he quotes is from an opinion concurring in part and dissenting in part, *id.* at 139 (Moody, J.), and the cited analysis does not mention claims of incompetence; instead, it focuses on claims of entrapment. *Id.* at 140. Petitioner cites no decision of Michigan's highest court adopting his proposed rule. See Pet. 14-15, 18 n.4 (citing only *People* v. *Parney*, 253 N.W.2d 698 (Mich. Ct. App. 1977)).

tioner received, *i.e.*, review of his attempt to withdraw his guilty plea.

First, even on direct appeal petitioner's competency determination would be reviewed only for abuse of discretion. Pet. App. 26a (citing *Higgenbottom* v. *United States*, 923 A.2d 891, 897 (D.C. 2007)). That is the same standard by which the court of appeals reviewed the denial of petitioner's motion to withdraw his guilty plea. *Id.* at 8a (citing *Carmichael* v. *United States*, 479 A.2d 325, 327 (D.C. 1984)). Petitioner urges (Pet. 24-25) that the latter type of review is more difficult for defendants, but as the court of appeals explained, in this case *either* form of abuse-of-discretion review would necessarily turn on whether the trial court's competency determination rested on a view of the evidence that was clearly erroneous. See Pet. App. 8a-9a & n.10 (citing *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 405 (1990)). Petitioner acknowledged as much in his appellate brief. See Pet. C.A. Br. 20, 22 (urging a clear-error standard of review in the direct appeal). And this Court has made clear that it "do[es] not question the State's power, in post-conviction proceedings, * * * to delimit the scope of state appellate review." *Drope* v. *Missouri*, 420 U.S. 162, 174 (1975).

Second, the court of appeals found no such clear error in the trial court's competency finding, which involved a credibility determination among competing expert opinions. That conclusion is fatal to petitioner's appeal—whether it is styled an appeal from his conviction or from the denial of his motion to withdraw his plea. Petitioner disputes the accuracy of the trial court's finding, but that fact-bound issue is not appropriate for this Court's review on certiorari. See, *e.g.*, Sup. Ct. R. 10; *United States* v. *Doe*, 465 U.S. 605, 614 (1984) (this

Court is "reluctant to disturb findings of fact in which two courts below have concurred"). And even if it were, petitioner could hardly show clear error. See *Anderson* v. *Bessemer City*, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous.").

Thus, even if petitioner persuaded this Court that his direct appeal should not have been dismissed, the decision below makes clear that the ultimate result would be the same: the competency finding would stand and the conviction would be affirmed.

4. Not only is petitioner mistaken in his contention that the supposed due-process right to a direct appeal would affect the outcome of his case, he overstates the significance of the issue more generally. In the District of Columbia courts, as in federal criminal proceedings and in many state courts, a defendant can enter a conditional guilty plea that reserves the right to appeal a legal issue, with the consent of the court and the government. See D.C. Super. Ct. R. Crim. P. 11(a)(2); accord, *e.g.*, Fed. R. Crim. P. 11(a)(2); *State* v. *Hodge*, 882 P.2d 1, 6-7 (N.M. 1994) (collecting state-level analogues). Thus, a defendant can plead guilty but preserve the ability to appeal an adverse pre-plea competency finding, by seeking the government's accession to a conditional guilty plea. See, *e.g.*, *United States* v. *Wayt*, 24 Fed. Appx. 880, 882-883 (10th Cir. 2001), cert. denied, 534 U.S. 1152 (2002); *In re J.M.*, 769 A.2d 656, 657-658 (Vt. 2001); *Gabbard* v. *Commonwealth*, 887 S.W.2d 547, 550 (Ky. 1994); cf. *Doggett* v. *United States*, 505 U.S. 647, 658 n.3 (1992) (rejecting the government's argument that Doggett's guilty plea waived his right to appeal an adverse pretrial speedy-trial ruling because Doggett

entered a conditional plea reserving his right to appeal that issue, not "a guilty plea simpliciter"). Indeed, in considering whether to retain the rule that an unconditional guilty plea waives the right to appeal a competency determination, state courts have noted the availability of conditional guilty pleas as a ready alternative avenue of obtaining review. See *State* v. *Al-Kotrani*, 106 P.3d 392, 395 (Idaho 2005).

This widely available alternative undermines petitioner's assertion (Pet. 25) that the question presented has broad significance. Defense counsel simply do not face a "dilemma" in every case involving competency (*ibid.*) where a conditional guilty plea offers them a third alternative, one that may "relieve the problem of congested criminal trial calendars in a manner that does not diminish the opportunity for the assertion of rights guaranteed by the Constitution." *Lefkowitz* v. *Newsome*, 420 U.S. 283, 293 (1975).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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