No. 24-12018

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARK WHEELER,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AS APPELLEE

PETER D. LEARY
United States Attorney

MICHELLE SCHIEBER
DANIEL W.A. PEACH
SONJA J. PROFIT
Assistant United States Attorneys
United States Attorney's Office
Middle District of Georgia
300 Mulberry St.
Macon, GA 31201
(478) 752-3511

KRISTEN CLARKE
Assistant Attorney General

ERIN H. FLYNN
NOAH B. BOKAT-LINDELL
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 598-0243

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In accordance with Eleventh Circuit Rules 26.1-1-26.1-3, the United States certifies that, in addition to those identified by defendant-appellant in his opening brief, the following persons may have an interest in the outcome of this case:

1. Clarke, Kristen, U.S. Department of Justice, Civil Rights Division, counsel for the United States;
2. M.H., victim;
3. R.H., wife of M.H.

The United States is not aware of any publicly traded corporations or companies that have an interest in the outcome of this case or appeal.

s/ Noah B. Bokat-Lindell
NOAH B. BOKAT-LINDELL
Attorney

Date: October 25, 2024

STATEMENT REGARDING ORAL ARGUMENT

Because circuit precedent and the text of the applicable statute squarely control the disposition of this appeal, the United States does not believe oral argument is warranted.

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF CITATIONS

CASES: **PAGE**

CASES (continued): **PAGE**

STATUTES:

STATUTES (continued): **PAGE**

LEGISLATIVE HISTORY:

RULE:

MISCELLANEOUS:

STATEMENT OF JURISDICTION

Defendant Mark Wheeler appeals the district court's order of commitment in his criminal case. The district court had jurisdiction under 18 U.S.C. 3231 and entered its order on June 5, 2024. Doc. 57.[1] Wheeler filed a timely notice of appeal on June 18, 2024. Doc. 59; *see* Fed. R. App. P. 4(b)(1)(A)(i). The district court's order is not a final decision under 28 U.S.C. 1291. However, the United States agrees that the order is appealable under the collateral order doctrine. *See United States v. Donofrio*, 896 F.2d 1301, 1303 (11th Cir. 1990).

STATEMENT OF THE ISSUES

Federal law requires that any court finding a criminal defendant incompetent to stand trial "shall commit the defendant to the custody of the Attorney General," who in turn "shall hospitalize the defendant for treatment in a suitable facility" to determine whether he can regain capacity to stand trial. 18 U.S.C. 4241(d). The issues presented are:

1. Whether Section 4241(d) leaves the choice of a suitable facility for hospitalization to the Attorney General's discretion.

---

[1] "Doc. __, at __" refers to the docket entry and page number of documents filed in the district court, No. 3:23-cr-21 (M.D. Ga.). "Br. __" refers to the page number of Wheeler's opening brief on appeal.

2. Whether this Court's precedents foreclose a due process challenge to Section 4241(d)'s hospitalization requirement as applied to a defendant who claims he will never be capable of standing trial.

STATEMENT OF THE CASE

Defendant Mark Wheeler was indicted by a grand jury for one count of interference with housing, in violation of 42 U.S.C. 3631(a), and one count of use of a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A). Soon after Wheeler's indictment, defense counsel arranged for an initial mental competency examination of Wheeler. Based on those findings, defense counsel then sought and received a trial continuance to conduct a second examination.

After holding a competency hearing at the government's request, the district court found that Wheeler was not competent to stand trial. The court ordered Wheeler into the custody of the Attorney General, as required by statute, to determine whether he can be sufficiently rehabilitated to stand trial. Wheeler appealed from the district court's order, which the district court stayed pending appeal. Wheeler remains out on release.

A. Statutory Background

Through the Insanity Defense Reform Act of 1984 (IDRA), Pub. L. No. 98-473, Tit. II, ch. 4, 98 Stat. 2057-2068, Congress "completely amend[ed] chapter 313 of title 18 of the United States Code dealing with the procedure to be followed by Federal courts with respect to offenders suffering from a mental disease or defect," S. Rep. No. 225, 98th Cong., 1st Sess. 231 (1983), https://perma.cc/H6U7-FGEF (Senate Report). Section 403 of the IDRA consolidated and amended several preexisting statutory sections into a new one, 18 U.S.C. 4241. *See* IDRA, ch. 4, § 403, 98 Stat. 2057-2059; Senate Report 231, 233. "Section 4241 contains six subsections which deal exclusively with the determination of the mental competency of the defendant to stand trial." Senate Report 233. The first four of those subsections are relevant to this appeal.

First, at any time prior to sentencing in a criminal case, either party or the court can file a motion for a hearing to determine the defendant's mental competency. 18 U.S.C. 4241(a). The court must grant the party's motion, or order 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." *Ibid.*

Second, if the court finds that a competency hearing is warranted, it may order a psychiatric or psychological examination of the defendant before holding the hearing. 18 U.S.C. 4241(b). The court may, but need not, commit the defendant for up to 30 days for this pretrial competency examination. *See ibid.*; 18 U.S.C. 4247(b).

Third, when the hearing occurs, it "shall be conducted pursuant to the provisions of [18 U.S.C.] 4247(d)." 18 U.S.C. 4241(c). At the competency hearing, the defendant can testify, present evidence, subpoena witnesses, and confront and cross-examine government witnesses. 18 U.S.C. 4247(d).

Fourth, and as particularly relevant here, if the court finds after the hearing "by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent" as defined by the statute, the court "*shall* commit the defendant to the custody of the Attorney General." 18

U.S.C. 4241(d) (emphasis added). This provision is mandatory. *See United States v. Donofrio*, 896 F.2d 1301, 1303 (11th Cir. 1990).

The Attorney General then "shall hospitalize the defendant for treatment in a suitable facility," 18 U.S.C. 4241(d)—meaning "a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant," 18 U.S.C. 4247(a)(2). The defendant must be hospitalized "for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward." 18 U.S.C. 4241(d)(1).[2]

B. Factual Background

In late May 2023, Wheeler allegedly shot his revolver in the direction of his neighbor M.H. and M.H.'s dwelling. Doc. 21, at 1. Wheeler allegedly yelled racial slurs at M.H., who is Black, while doing

[2] If a defendant is improving but is not yet ready to stand trial, the hospitalization can continue "for an additional reasonable period of time until" the defendant's "mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward." 18 U.S.C. 4241(d)(2).

so. *Ibid.* Wheeler thereby allegedly "willfully injured, intimidated, and interfered with, and attempt[ed] to injure, intimidate, and interfere with" M.H.'s occupation of his housing based on race and color. *Ibid.*

Wheeler was arrested on October 2, 2023, based on a criminal complaint charging him with one count of interference with housing, in violation of 42 U.S.C. 3631(a), and one count of use of a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A). Docs. 1, 6. A grand jury soon indicted Wheeler on the same two counts. Doc. 21. The interference with housing charge "involved the use, attempted use, and threatened use of a dangerous weapon." *Id.* at 1. On November 1, Wheeler pleaded not guilty and was released on bond. Docs. 30, 31, 32.

Two weeks later, defense counsel retained the expert services of Dr. Deepti Bhasin to evaluate Wheeler's mental health. Doc. 44, at 1-2. Dr. Bhasin conducted a single interview in which she spoke with Wheeler for approximately one hour. *See* Doc. 52, at 2; Doc. 54, at 8-9. Dr. Bhasin diagnosed Wheeler with [redacted]

[redacted]

Doc. 52, at 2-4.[3]

Based on Dr. Bhasin's initial findings that Wheeler was not currently competent to stand trial (*see* Doc. 52, at 6), defense counsel moved for a trial continuance to facilitate further evaluation (Doc. 44, at 1-2). The district court granted this request. Doc. 45. Defense counsel requested, and received, a second trial continuance in January 2024 to obtain the results of Dr. Bhasin's second interview of Wheeler. Docs. 47, 48. Defense counsel provided the government with a copy of Dr. Bhasin's second report on April 1. Doc. 49-1, at 2. This report repeated the same diagnoses in more detail, and it again concluded that Wheeler lacks the capacity to communicate rationally and factually with defense counsel. *Ibid.*; Doc. 52-1, at 4-5, 7-8.

---

3 [redacted]

Doc. 52-1, at 4-5.

Dr. Bhasin's initial report [redacted] whether Wheeler could be restored to competency than whether he was currently competent. Doc. 52, at 6. She found it impossible to tell, based on a single interview, whether Wheeler's inability to assist his attorney was due to [redacted]

Id. at 6-7. Dr. Bhasin's second report, by contrast, did not make any conclusions about whether Wheeler's competency could be sufficiently restored to make him competent to stand trial. Doc. 49-1, at 2; Doc. 52-1, at 7-8.

After receiving these reports, the government moved under 18 U.S.C. 4241(a) for the court to hold a competency hearing and under 18 U.S.C. 4241(b) for a pretrial mental health examination. Doc. 49-1, at 1. The government cited evidence from Dr. Bhasin's report and from Wheeler's family's prior testimony that Wheeler [redacted], and could not "identify or explain the roles of all the parties in a courtroom and ha[d] no understanding of the charges against him." *Id.* at 5. The court never acted on the government's request to conduct its own

mental health examination under 18 U.S.C. 4241(b). *See* Doc. 57, at 5 n.2 (granting government's motion for hearing and examination "retroactively" after ordering defendant committed). However, the court held a competency hearing, at which both sides questioned Dr. Bhasin. *See* Doc. 54.

After additional briefing (Docs. 55, 56), the district court held that Wheeler was incompetent to stand trial (Doc. 57, at 4-5). The court found that Wheeler "has neither a 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' nor an 'understanding of the proceedings against him.'" Doc. 57, at 1 (citation omitted). The court recognized that, once it found Wheeler incompetent to stand trial, it "*must* commit the defendant to the United States Attorney General to determine whether his competency can be restored." *Id.* at 2. As "circuit courts across the country (including the Eleventh Circuit) have uniformly agreed," Section 4241(d) leaves to the Attorney General's exclusive discretion the terms of a defendant's confinement during this limited hospitalization period. *Id.* at 3-4 (citing cases).

Wheeler appealed. Doc. 59. He requested, and the district court granted, a stay of his voluntary surrender pending the outcome of this appeal. Docs. 62, 65. Wheeler remains out on release.

SUMMARY OF ARGUMENT

Wheeler makes both a statutory and a constitutional challenge to his commitment order under 18 U.S.C. 4241(d). Neither succeeds.

First, the district court was not empowered to direct the Attorney General to place Wheeler in outpatient care. "The Attorney General," not the court, has the power to choose a suitable facility for the defendant's evaluation. 18 U.S.C. 4241(d). This Court's precedent, following the statutory text, has already so held. *See United States v. Donofrio*, 896 F.2d 1301, 1302-1303 (11th Cir. 1990); *United States v. Cobble*, 724 F. App'x 753, 754 (11th Cir. 2018). The statutory text envisions that defendants will be placed in a custodial, inpatient setting for medical evaluation and treatment, and it certainly does not authorize courts to restrict the Attorney General to outpatient care.

Wheeler also cannot successfully invoke the Due Process Clause as a basis to order the Attorney General to hospitalize him for a time certain that is less than four months, or for no time at all. This Court

rejected an identical as-applied challenge in *Donofrio*, 896 F.2d 1301, and every other circuit court confronted with such a challenge has done the same. Section 4241(d) follows the same reasonableness standard the Supreme Court set forth for due process compliance in *Jackson v. Indiana*, 406 U.S. 715 (1972), and it places a four-month outer limit on any initial commitment. Even for defendants who assert that their condition is irreversible, as Wheeler does here, Section 4241(d)'s hospitalization period allows for a more thorough exploration of the possibility for rehabilitation than the cursory examinations that precede competency hearings can provide. Indeed, Wheeler's own expert acknowledged that a more extensive examination would be needed to determine whether he could be restored to competency.

ARGUMENT

I. Section 4241(d) does not grant the district court discretion to choose where Wheeler shall be evaluated to determine his potential for rehabilitation.

The district court was correct to recognize that it lacked authority to order Wheeler's place of hospitalization. Doc. 57, at 3-4. Wheeler argues (Br. 21) that "inpatient hospitalization is in no way required by"

Section 4241(d), and that the district court "could order" Wheeler into a "less restrictive" setting (Br. 25). Wheeler is wrong.

Section 4241(d)'s text and history make clear that the court lacks discretion to order a particular location or form of treatment. This Court's precedent, as well as that of every other federal circuit court to address the issue, has held as much. What's more, Section 4241(d)'s hospitalization requirement is mandatory, and it does not envision the outpatient treatment Wheeler asks the district court to order.

A. Standard of review

"[T]o the extent that [Wheeler] challenges" his commitment order "as a violation of § 4241's text," this Court "review[s] the district court's statutory interpretation de novo." *United States v. Alhindi*, 97 F.4th 814, 820 (11th Cir. 2024). Statutory interpretation starts with the text, and—when the text is clear—ends with it. *Id.* at 821. This analysis requires "look[ing] to 'the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.'" *United States ex rel. Hunt v. Cochise Consultancy, Inc.*, 887 F.3d 1081, 1088-1089 (11th Cir. 2018) (citation omitted). "Legislative history" also "may prove helpful when the

statutory language remains ambiguous after considering" these textual factors. *Id.* at 1089.

B. The district court cannot order the Attorney General to choose a particular form of facility or type of treatment.

The district court correctly recognized that it lacks authority to order the Attorney General to place Wheeler in a particular sort of facility or to give him a particular form of treatment. Doc. 57, at 3-4.

1. Section 4241(d)'s text imposes an inflexible mandate. If a court finds the defendant presently incompetent, "the court *shall* commit the defendant to the custody of the Attorney General." 18 U.S.C. 4241(d) (emphasis added). The statute likewise provides that "[t]he Attorney General *shall* hospitalize the defendant for treatment in a suitable facility." *Ibid.* (emphasis added).

"Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement." *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 310 (2020) (citation omitted). Here, then, Congress's use of the word "'[s]hall' creates an obligation not subject to judicial discretion." *United States v. Peters*, 783 F.3d 1361, 1364 (11th Cir. 2015) (citation omitted). The legislative history echoes the

statutory text, providing that "[i]f the court makes a finding of incompetency, it *must* then commit the defendant to the custody of the Attorney General, who is *required* to hospitalize the defendant for treatment in a suitable facility." Senate Report 236 (emphases added).

The mandatory nature of Section 4241(d) becomes even clearer when compared to the permissive language of Section 4241(b). That provision states that "the court *may* order that a psychiatric or psychological examination of the defendant be conducted" before the initial competency hearing. 18 U.S.C. 4241(b) (emphasis added). Unlike Section 4241(d)'s use of "shall," Section 4241(b)'s "use of the word 'may' . . . reflects the district court's choice between an inpatient commitment and an outpatient evaluation." *United States v. Neal*, 679 F.3d 737, 741 (8th Cir. 2012); *see* Senate Report 235. Other parts of Section 4241 likewise distinguish between permissive and mandatory acts. *Compare* 18 U.S.C. 4241(a) (providing that defense or prosecution attorneys "may" file a motion for a competency hearing), *with ibid.* (stating that court "shall" grant such motion if there is reasonable cause to find incompetency), *and* 18 U.S.C. 4241(c) (stating that hearing "shall" be conducted under Section 4247(d)'s procedures). Courts

"generally presume[] that when Congress includes particular language in one section of a statute but omits it in another, Congress intended a difference in meaning." *Maine Cmty. Health Options*, 590 U.S. at 314 (citation and internal quotation marks omitted).

2. For these reasons, this Court has long held that a defendant who is found incompetent "*must* be committed to the Attorney General for hospitalization" under Section 4241(d), and that "this statute is mandatory." *United States v. Donofrio*, 896 F.2d 1301, 1302 (11th Cir. 1990) (emphasis added). Citing *Donofrio*, this Court recently reaffirmed that "[a] district court has no authority to circumvent the statutory mandate that a person found mentally incompetent must be committed to the Attorney General for hospitalization." *United States v. Cobble*, 724 F. App'x 753, 754 (11th Cir. 2018).

Other federal appeals courts uniformly concur with *Donofrio*'s interpretation of Section 4241(d). As the Ninth Circuit put it, Section 4241(d) "mandates that district courts commit mentally incompetent defendants to the custody of the Attorney General for treatment, without discretion for the court to order a particular treatment setting."

United States v. Quintero, 995 F.3d 1044, 1050 (9th Cir. 2021). The Second, Fifth, Seventh, Eighth, and Tenth Circuits all agree.[4]

3. Wheeler attempts to argue (Br. 23-24) otherwise by pointing to two portions of Section 4247(i). That subsection provides that the Attorney General "may contract with a State, a political subdivision, a locality, or a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to his custody pursuant to this chapter," 18 U.S.C. 4247(i)(A), and that he "shall, before placing a person in a facility pursuant to the provisions of

---

[4] *See United States v. McKown*, 930 F.3d 721, 727 (5th Cir. 2019) (holding that "commitment is mandatory upon a finding of incapacity . . . irrespective of the defendant's initial prognosis" (citation omitted)); *United States v. Dalasta*, 856 F.3d 549, 554 (8th Cir. 2017) (holding that choice of facility for evaluation under Section 4241(d) "is a discretionary decision Congress has delegated to the Attorney General, not to the district court"); *United States v. Anderson*, 679 F. App'x 711, 712-713 (10th Cir. 2017) (holding that "[t]he language in § 4241(d) is unambiguous and mandatory" and that "only the Attorney General can exercise the discretion sought by" the defendant over her commitment); *United States v. Magassouba*, 544 F.3d 387, 404 (2d Cir. 2008) (holding that "once a defendant is found incompetent, commitment pursuant to § 4241(d) is mandatory"); *United States v. Shawar*, 865 F.2d 856, 861 (7th Cir. 1989) ("Our reading of 18 U.S.C. § 4241(d) is not only that commitment is mandatory, but also that likelihood of recovery is not something to be considered by the district court in deciding whether to commit the defendant for the evaluation period.").

section 4241, . . . consider the suitability of the facility's rehabilitation programs in meeting the needs of the person," 18 U.S.C. 4247(i)(C). Neither of these provisions grants the district court the power to direct a defendant's placement.

First, Section 4247(i)(A) simply gives the Attorney General the option ("may") of contracting with other entities to use their facilities. 18 U.S.C. 4247(i)(A). It does not grant the court power to order the Attorney General to contract with States or to consider specific treatment options. *See Quintero*, 995 F.3d at 1050 (pointing to Section 4247(i)(A) and (i)(C) to hold that, "[i]f there is discretion here, it rests with the Attorney General").

Second, Section 4247(i)(C) merely requires the Attorney General to "consider" the suitability of a facility's rehabilitation programs before deciding whether to send the defendant to a facility under Section 4241(d). 18 U.S.C. 4247(i)(C). This requirement is procedural, and the determination of a facility's suitability and the ultimate choice of where to send the defendant are left to the Attorney General's wide discretion. *See, e.g.*, *United States v. Donnelly*, 41 F.4th 1102, 1106 (9th Cir. 2022) (stating that "§ 4247 endows the Attorney General with considerable

discretion in making th[e] determination" of a suitable facility). Nowhere does Section 4247(i)(C) mention the district court or state that the court may restrict or override this explicit discretion.[5]

Wheeler's reading of Section 4241(d), which would allow district courts to direct forms of treatment or even to forbid hospitalization based on their initial information about the defendant's likelihood of rehabilitation, leads to further distortions of the statutory scheme. Section 4241(d) subjects defendants who are not rendered competent within the subsection's time limits to "the provisions of Section 4246." 18 U.S.C. 4241(d). Section 4246, in turn, requires a determination of whether the defendant's mental condition would pose a danger of bodily

[5] Any judicial oversight of the suitability of a facility must occur after the defendant's placement has been made, under the deferential standard of review suitable to the level of discretion Sections 4241 and 4247 grant the Attorney General. *See, e.g.*, *Timms v. United States Att'y Gen.*, 93 F.4th 187, 191 (4th Cir. 2024) (considering, and rejecting, a challenge to the suitability of a facility chosen by the Attorney General), *cert. denied*, No. 24-5090 (U.S. Oct. 7, 2024); *Phelps v. United States Bureau of Prisons*, 62 F.3d 1020, 1023 (8th Cir. 1995) (same). Any court determination before then necessarily would be "based on conjecture insofar as the [Attorney General] has yet to make such an assessment." *United States v. Chatman*, No. 8:20-CR-191-T-35TGW, 2020 WL 6801866, at *3 (M.D. Fla. Nov. 19, 2020).

injury or serious property damage, followed by a court hearing and disposition on the issue. 18 U.S.C. 4246(a) and (d).

Thus, Section "4241 and [Section] 4246, read together, entitle the government to a dangerousness hearing before a defendant is released due to incompetency to stand trial." *United States v. Ferro*, 321 F.3d 756, 762 (8th Cir. 2003). Making case-by-case exemptions from Section 4241(d)'s hospitalization requirement "short-circuits the statutory scheme by allowing the district court to make an initial determination that the defendant's condition will not improve without triggering the need for a dangerousness hearing." *Ibid.*

4. Wheeler also resists the natural reading of Section 4241(d) by "attempt[ing] to draw inferences from definitions of 'custody' and 'hospitalize' in other statutes," websites, and articles. *Quintero*, 995 F.3d at 1050; *see* Br. 21-23. But this Court "need not consider these, because any such inferences are irrelevant where, as here, the language of the statute is unambiguous" that the choice of facility is the Attorney General's, not the court's, to make. *Quintero*, 995 F.3d at 1050.

Moreover, Wheeler's reading draws either on statute-specific definitions that the IDRA does not share (*see* Br. 22 (discussing

definitions specific to Medicare Act)) or medical standards that long postdate the IDRA's enactment and that simply recognize outpatient services as a medically acceptable method of competency restoration (*see* Br. 21-23 (discussing definitions from articles written in 2010s or later)). None of these sources answers the key statutory question Wheeler's challenge raises: *Who* makes the initial decision about which facilities are suitable and into which of these facilities the defendant should be placed? As already discussed, the statute commits that decision to the Attorney General, not the district court.

Indeed—though this Court need not reach the issue to affirm—textual indicators suggest that Section 4241 generally envisions inpatient hospitalization. Once a district court finds a defendant incompetent, it "shall commit the defendant to the custody of the Attorney General," who in turn "shall hospitalize the defendant for treatment in a suitable facility." 18 U.S.C. 4241(d). The IDRA defines "suitable facility" as "a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant." 18 U.S.C. 4247(a)(2). But because the statute does not define "facility," or other key terms like "hospitalize" or "treatment," the

statute must be interpreted "based on the ordinary meaning of its text when it was enacted," as determined by "dictionaries, context," and interpretive canons, among other sources. *United States v. Bryant*, 996 F.3d 1243, 1252 (11th Cir. 2021).

When the IDRA was enacted, to "hospitalize" meant "to place in a hospital as a patient." *Webster's Third New International Dictionary* 1094 (1986) (*Webster's Third*); *see Random House Dictionary of the English Language* 686 (1979) (*Random House*) (defining "hospitalize" as "to place in a hospital for medical care or treatment"). Thus, the word "hospitalize" suggests that the patient should be placed *in* a hospital. This ordinary reading of "hospitalize" is buttressed by the statute's requirement that the defendant be hospitalized "*in* a suitable facility," 18 U.S.C. 4241(d) (emphasis added), which likewise indicates that Congress thought of the defendant as being physically placed within that facility.

The statute also states that the defendant shall be hospitalized "for treatment" in that suitable facility. 18 U.S.C. 4241(d). At the time of the IDRA's enactment, "treatment" meant "the action or manner of treating a patient medically or surgically." *Webster's Third* 2435; *see*

Random House 1509 (defining "treatment" as "management in the application of medicines, surgery, etc."). A "facility," meanwhile, was "something designed, built, installed, etc., to serve a specific function affording a convenience or service." *Random House* 509; *accord Webster's Third* 812-813.

Putting its various terms together, the statute generally envisions that the defendant be placed in a hospital, for the purpose of evaluation and engaging in appropriate medical interventions, in a location designed to provide that service for someone with the defendant's characteristics and considering the nature of the defendant's offense. *See, e.g.*, *United States v. Magassouba*, 544 F.3d 387, 405 (2d Cir. 2008) (stating that Section 4241(d) "mandates custodial hospitalization and treatment"); *United States v. Filippi*, 211 F.3d 649, 651 (1st Cir. 2000) (rejecting due process challenge to Section 4241(d) since "Congress could reasonably think that, in almost all cases, temporary *incarceration* would permit a more careful and accurate diagnosis" (emphasis added)); *but see Quintero*, 995 F.3d at 1054 (stating court "see[s] no impediment in the statute to the Attorney General—in his discretion, not ours—choosing outpatient treatment as the 'suitable

facility,'" while recognizing that the district court lacks discretion to order outpatient care (citation omitted)).

In sum, the IDRA "does not enjoin the Attorney General to choose the least restrictive treatment, a judgment that would constrain the Attorney General's options and potentially open this process to endless litigation over the range of appropriate restorative medical treatments." *Quintero*, 995 F.3d at 1051. Likewise, it does not authorize district courts to circumvent Section 4241(d)'s "mandatory" bifurcation of authority. *Donofrio*, 896 F.2d at 1302. The district court's duty is simply to commit the defendant to the Attorney General's custody; it is then left to the Attorney General, not the court, to determine a suitable facility for that defendant. *See* 18 U.S.C. 4241(d).

II. This Court's precedent forecloses Wheeler's due process challenge to the district court's order of commitment.

The district court also correctly recognized that it could not order the Attorney General to hospitalize Wheeler for a particular length of time within the statutory four-month time limit. *See* Doc. 57, at 3-4. Precedent forecloses a due process objection to the existence or length of Wheeler's initial commitment under Section 4241(d).

A. Standard of review

Because Wheeler raised only a statutory basis for not hospitalizing Wheeler below (Doc. 54, at 30-31; Doc. 55, at 1-4), and did not raise this due process objection before the district court, it is reviewed for plain error. *See United States v. Utsick*, 45 F.4th 1325, 1338 (11th Cir. 2022). His claim would fail even under de novo review, however.

B. The court's order of commitment does not violate Wheeler's due process rights.

1. Wheeler asserts (Br. 28-30, 32-34), contrary to his own expert's testimony (Doc. 54, at 24), that it is certain that there is no possibility of restoring his competence to stand trial. Thus, he argues, the district court should have ordered a shorter—or no—commitment period. But this Court rejected just such a challenge in *United States v. Donofrio*, 896 F.2d 1301 (11th Cir. 1990).

In *Donofrio*, the defendant argued that commitment under Section 4241 violated his due process rights because the evidence at his competency hearing showed that he would never attain competency. 896 F.2d at 1302. The court held that commitment upon a finding of incompetency was appropriate and complied with due process, and that

the "permanency of Donofrio's condition was not an issue before the district court" during the competency hearing under Section 4241's statutory scheme. *Id.* at 1302-1303. The court noted that the purpose of commitment was hospitalization "for a careful determination of the likelihood of regaining mental capacity to stand trial," and that such commitment complied with due process because the statute itself "requires that the period of commitment be 'reasonable' for that purpose." *Id.* at 1303. Wheeler's challenge is no different than Donofrio's and likewise fails.

Wheeler acknowledges the *Donofrio* decision but insists that it "did not address or consider whether the outside four-month limit was required in all cases." Br. 31. Not so. This Court rejected Donofrio's argument that it would violate due process to hold a defendant under Section 4241(d) whose "condition is permanent" and would not improve. *Donofrio*, 896 F.2d at 1302. The Court stated categorically that "it is appropriate that [the defendant] be hospitalized for a careful determination of the likelihood of regaining mental capacity to stand trial" after a court finds him incompetent, and that the statute meets due process requirements "because the statute itself requires that the

period of commitment be 'reasonable' for that purpose." *Id.* at 1303. The Court also expressly "agree[d] with the holding," *ibid.*, in *United States v. Shawar*, 865 F.2d 856 (7th Cir. 1989), which rejected a challenge from the defendant in that case that his commitment would violate due process "under the circumstances of [his] case," *id.* at 858, 863-864.

Indeed, this Court rejected a nearly identical as-applied due process argument last year, relying on *Donofrio*. *See United States v. McCarthy*, No. 22-12931, 2023 WL 5624616, at *1 (11th Cir. Aug. 31, 2023). The defendant in that case was 91 years old when arrested and "likely was incompetent to stand trial due to dementia and other end-of-life conditions." *Ibid.* His attorney argued before both the district court and this Court "that commitment was pointless and would violate his due-process rights because the health professionals she consulted assessed him as unrestorable." *Ibid.* But this Court held that *Donofrio* "foreclose[d]" the argument, affirming that "the 'permanency of [a defendant's] condition'" is not a proper subject for initial determination, but rather is open "for later consideration by the court" only *after*

Section 4241(d)'s evaluation period. *Ibid.* (quoting *Donofrio*, 896 F.2d at 1303).

2. This Court is not alone in reaching this conclusion. "[E]very court of appeals to have addressed the constitutionality of § 4241(d)" has held "that the statute complies with due process." *United States v. McKown*, 930 F.3d 721, 728 (5th Cir. 2019); *see id.* at 728 n.7 (citing *Donofrio* and cases from the First, Second, Seventh, Eighth, Ninth, and Tenth Circuits).

Several circuits have considered as-applied challenges that, like Wheeler's, claim that the defendant's condition is irreversible and that it would violate due process to hospitalize them for any length of time. In each case, the court has rejected the challenge and upheld the defendant's commitment. *See McKown*, 930 F.3d at 729 (rejecting challenge from defendant who "claim[ed] that the court violated due process by committing him despite the doctors' agreement that it was unnecessary to obtain an accurate diagnosis"); *United States v. Dalasta*, 856 F.3d 549, 554 (8th Cir. 2017) (rejecting challenge from defendant who claimed that "physicians say [commitment] would be detrimental to his health (and completely futile)"); *United States v. Anderson*, 679 F.

App'x 711, 712-713 (10th Cir. 2017) (rejecting challenge from defendant who was diagnosed with "Mental Retardation-Mild" since childhood (citation omitted)); *United States v. Strong*, 489 F.3d 1055, 1060, 1062 (9th Cir. 2007) (rejecting challenge from defendant who complained that Section 4241(d) forecloses "any consideration of the efficacy of such a commitment or the availability of less restrictive alternatives" (citation omitted)); *Shawar*, 865 F.2d at 864 (holding that "mandatory commitment under § 4241(d) upon a finding of incompetency" complied with due process, including as applied to defendant with permanent condition).

These cases provide two principal reasons why Section 4241(d)'s hospitalization requirement comports with due process, even as applied. First, the provision is modelled after the standard the Supreme Court set forth in *Jackson v. Indiana*, 406 U.S. 715 (1972). There, the Court struck down a state law that mandated indefinite commitment of defendants who were found incompetent. *Id.* at 731. The Court held that a defendant "committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time

necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." *Id.* at 738.

Section 4241(d) adopts *Jackson*'s standard wholesale, while adding even greater protections. It "limits confinement to four months, whether more time would be reasonable or not," and it bases "[a]ny additional period of confinement" on a "finding there is a probability that within the additional time [the defendant] will attain capacity to permit trial" or else that the defendant would "create a substantial risk to himself and to others." *Donofrio*, 896 F.2d at 1303; *accord McKown*, 930 F.3d at 728; *Strong*, 489 F.3d at 1061; *United States v. Filippi*, 211 F.3d 649, 652 (1st Cir. 2000); *Shawar*, 865 F.2d at 864.

Second, even where restoration of competency is unlikely, some period of commitment is reasonably necessary to confirm as much. Following *Jackson*, "the overarching purpose of commitment under § 4241(d) is to enable medical professionals to accurately determine whether a criminal defendant is restorable to mental competency." *Strong*, 489 F.3d at 1062; *see also United States v. Ferro*, 321 F.3d 756, 762 (8th Cir. 2003) (observing that the nature of scientific innovation means that "few conditions are truly without the possibility of

improvement," and thus favoring a more comprehensive opportunity for evaluation and treatment). Obtaining such an accurate determination "requires a more 'careful and accurate diagnosis' than the 'brief interviews' and 'review of medical records' that tend to characterize the initial competency proceeding." *Strong*, 489 F.3d at 1062 (citation omitted); *accord United States v. Brennan*, 928 F.3d 210, 217 (2d Cir. 2019); *Ferro*, 321 F.3d at 762; *Filippi*, 211 F.3d at 651. A few hours observing a defendant does not suffice to make the restorability determination, as Dr. Bhasin readily acknowledged here. *See* Doc. 54, at 8-9, 24; *see also id.* at 24 (Dr. Bhasin agreeing that her statements about whether Wheeler could be restored to competence were "just speculation" and would require "further examination" by "licensed doctors and clinicians").

Wheeler's reliance (Br. 31-32) on the First Circuit's decision in *Filippi* is unavailing. *Filippi* merely pointed out that the statute's reasonableness standard would lead to a "more flexible and case-oriented . . . length of incarceration." 211 F.3d at 652. It noted that the district court in that case had asked for monthly reports, and that "the record reflect[ed] the expectation" that the Section 4241(d)

determination would take less than four months. *Ibid.* Nowhere, however, did *Filippi* suggest that courts could *order* a shorter period of hospitalization (or forbid one entirely) in its order of commitment. Rather, the statute is case-specific in that it "allows the defendant to gain early release through a medical determination, before the conclusion of the four-month period, that he has regained competency or that he is unlikely to do so." *McKown*, 930 F.3d at 728.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's order of commitment.

Respectfully submitted,

PETER D. LEARY
United States Attorney

MICHELLE SCHIEBER
DANIEL W.A. PEACH
SONJA J. PROFIT
Assistant United States Attorneys
United States Attorney's Office
Middle District of Georgia
300 Mulberry St.
Macon, GA 31201
(478) 752-3511

KRISTEN CLARKE
Assistant Attorney General

s/ Noah B. Bokat-Lindell
ERIN H. FLYNN
NOAH B. BOKAT-LINDELL
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 598-0243

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) and Eleventh Circuit Rule 32-4 because it contains 6028 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Eleventh Circuit Rule 32-4. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (a)(6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

s/ Noah B. Bokat-Lindell
NOAH B. BOKAT-LINDELL
Attorney

Date: October 25, 2024

ADDENDUM

ADDENDUM: TABLE OF CONTENTS

PAGE

18 U.S.C. 4241. Determination of mental competency to stand trial to undergo postrelease proceedings.

(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).

(d) Determination and disposition.--If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility--

> **(1)** for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and
>
> **(2)** for an additional reasonable period of time until--

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246 and 4248.

(e) Discharge.--When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial or other proceedings. Upon discharge, the defendant is subject to the provisions of chapters 207 and 227.

(f) Admissibility of finding of competency.--A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

18 U.S.C. 4247. General provisions for chapter.

(a) Definitions.--As used in this chapter--

(1) "rehabilitation program" includes--

(A) basic educational training that will assist the individual in understanding the society to which he will return and that will assist him in understanding the magnitude of his offense and its impact on society;

(B) vocational training that will assist the individual in contributing to, and in participating in, the society to which he will return;

(C) drug, alcohol, and sex offender treatment programs, and other treatment programs that will assist the individual in overcoming a psychological or physical dependence or any condition that makes the individual dangerous to others; and

(D) organized physical sports and recreation programs;

(2) "suitable facility" means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant;

(3) "State" includes the District of Columbia;

(4) "bodily injury" includes sexual abuse;

(5) "sexually dangerous person" means a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others; and

(6) "sexually dangerous to others" with respect a person, means that the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

(b) Psychiatric or psychological examination.--A psychiatric or psychological examination ordered pursuant to this chapter shall be conducted by a licensed or certified psychiatrist or psychologist, or, if the court finds it appropriate, by more than one such examiner. Each examiner shall be designated by the court, except that if the

examination is ordered under section 4245, 4246, or 4248, upon the request of the defendant an additional examiner may be selected by the defendant. For the purposes of an examination pursuant to an order under section 4241, 4244, or 4245, the court may commit the person to be examined for a reasonable period, but not to exceed thirty days, and under section 4242, 4243, 4246, or 4248, for a reasonable period, but not to exceed forty-five days, to the custody of the Attorney General for placement in a suitable facility. Unless impracticable, the psychiatric or psychological examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension, but not to exceed fifteen days under section 4241, 4244, or 4245, and not to exceed thirty days under section 4242, 4243, 4246, or 4248, upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant.

(c) Psychiatric or psychological reports.--A psychiatric or psychological report ordered pursuant to this chapter shall be prepared by the examiner designated to conduct the psychiatric or psychological examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include--

(1) the person's history and present symptoms;

(2) a description of the psychiatric, psychological, and medical tests that were employed and their results;

(3) the examiner's findings; and

(4) the examiner's opinions as to diagnosis, prognosis, and--

(A) if the examination is ordered under section 4241, whether the person is 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) if the examination is ordered under section 4242, whether the person was insane at the time of the offense charged;

(C) if the examination is ordered under section 4243 or 4246, whether the person is suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another;

(D) if the examination is ordered under section 4248, whether the person is a sexually dangerous person;

(E) if the examination is ordered under section 4244 or 4245, whether the person is suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility; or

(F) if the examination is ordered as a part of a presentence investigation, any recommendation the examiner may have as to how the mental condition of the defendant should affect the sentence.

(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.

(e) Periodic report and information requirements.--

(1) The director of the facility in which a person is committed pursuant to--

(A) section 4241 shall prepare semiannual reports; or

(B) section 4243, 4244, 4245, 4246, or 4248 shall prepare annual reports concerning the mental condition of the person and containing recommendations concerning the need for his continued commitment. The reports shall be submitted to the court that ordered the person's commitment to the facility and copies of the reports shall be submitted to such other persons as the court may direct. A copy of each such report concerning a person committed after the beginning of a prosecution of that person for violation of section 871, 879,

or 1751 of this title shall be submitted to the Director of the United States Secret Service. Except with the prior approval of the court, the Secret Service shall not use or disclose the information in these copies for any purpose other than carrying out protective duties under section 3056(a) of this title.

(2) The director of the facility in which a person is committed pursuant to section 4241, 4243, 4244, 4245, 4246, or 4248 shall inform such person of any rehabilitation programs that are available for persons committed in that facility.

(f) Videotape record.--Upon written request of defense counsel, the court may order a videotape record made of the defendant's testimony or interview upon which the periodic report is based pursuant to subsection (e). Such videotape record shall be submitted to the court along with the periodic report.

(g) Habeas corpus unimpaired.--Nothing contained in section 4243, 4246, or 4248 precludes a person who is committed under either of such sections from establishing by writ of habeas corpus the illegality of his detention.

(h) Discharge.--Regardless of whether the director of the facility in which a person is committed has filed a certificate pursuant to the provisions of subsection (e) of section 4241, 4244, 4245, 4246, or 4248, or subsection (f) of section 4243, counsel for the person or his legal guardian may, at any time during such person's commitment, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be committed. A copy of the motion shall be sent to the director of the facility in which the person is committed and to the attorney for the Government.

(i) Authority and responsibility of the Attorney General.--The Attorney General--

(A) may contract with a State, a political subdivision, a locality, or a private agency for the confinement, hospitalization, care, or

treatment of, or the provision of services to, a person committed to his custody pursuant to this chapter;

(B) may apply for the civil commitment, pursuant to State law, of a person committed to his custody pursuant to section 4243, 4246, or 4248;

(C) shall, before placing a person in a facility pursuant to the provisions of section 4241, 4243, 4244, 4245, 4246, or 4248, consider the suitability of the facility's rehabilitation programs in meeting the needs of the person; and

(D) shall consult with the Secretary of the Department of Health and Human Services in the general implementation of the provisions of this chapter and in the establishment of standards for facilities used in the implementation of this chapter.

(j) Sections 4241, 4242, 4243, and 4244 do not apply to a prosecution under an Act of Congress applicable exclusively to the District of Columbia or the Uniform Code of Military Justice.