No. 22-6338

United States Court of Appeals
FOR THE FOURTH CIRCUIT

GERALD TIMMS,
Plaintiff-Appellant,

v.

ATTORNEY GENERAL,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina

REPLY BRIEF OF COURT-APPOINTED AMICUS CURIAE

Erica Hashimoto, Director
Court-Appointed Amicus Curiae

Georgetown University Law Center
Appellate Litigation Program
111 F Street NW, Suite 306
Washington, D.C. 20001
(202) 662-9555
eh502@georgetown.edu

Tara S. Mahesh
Edward McAuliffe
Audrey Hope Sheils
Student Counsel

Amicus in Support of Gerald Timms

May 3, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

ARGUMENT

The government never grapples with the reality that the district court's sua sponte dismissal denied any serious review of Mr. Timms' claims. That flaw dooms its arguments. Its failure to respond substantively to Mr. Timms' due process and separation of powers claim stemming from the Attorney General's[1] ultra vires confinement of Mr. Timms underscores the district court's error. The government simply has no answer to Mr. Timms' textual arguments that 18 U.S.C. § 4248 required a hearing before he was moved from criminal custody to civil confinement. And although the government agrees that Mr. Timms must exhaust only *available* remedies for this claim, it identifies no viable pathways for relief. Equally problematic, the government relies on passing dicta from Supreme Court cases about state prisoners to argue that federal prisoners' conditions of confinement claims are not cognizable in habeas. This Court should reverse and remand.

---

[1] The government asserts that the proper respondent in this case is the FCI Butner Warden, not the Attorney General. Gov. Br. 10 n.4. If this Court remands, this issue can be addressed in the district court where Mr. Timms can amend his complaint as of right. Fed. R. Civ. P. 15(a)(1)(B).

I. THE GOVERNMENT IGNORES THAT THE ATTORNEY GENERAL'S ULTRA VIRES ACTIONS VIOLATE THE FIFTH AMENDMENT AND THAT § 4248 DOES NOT PROVIDE A REMEDY.

The government purports to strictly interpret the statute's text, reading two statutory methods for securing discharge from civil commitment as exhaustive. Gov. Br. 5, 12, 17–18. But its argument both fails to acknowledge the historical practice of the Attorney General and reads out entire statutory protections for committed individuals. Moreover, the government's insistence that there are available remedies for Mr. Timms to exhaust is a mirage. There is no such remedy.

A. The government's interpretation of § 4248 comports with neither the statute's text nor historical practice.

The government's assertion that there are only two statutory means of discharge, § 4248(e) and 18 U.S.C. § 4247(h), is belied by the Attorney General's use of extra-textual discharge proceedings when convenient. And it has no answer to amicus' textual arguments about suitable facilities and the statute's requirements. Focusing on irrelevant facts like § 4248's legislative history and Mr. Timms' past behavior, the government seeks to distract from the absence of judicial oversight in Mr. Timms' case. The government's argument that ruling in favor of Mr. Timms will leave the Attorney General helpless to address crime

overlooks his many means for combatting criminal acts by civilly-committed people. The statute guaranteed Mr. Timms a § 4248(a) hearing after his release from criminal incarceration, and the government has no answer for its failure to provide one.

The Government's Atextual and Inconsistent Interpretation

Claiming to strictly interpret § 4248, the government first argues that an individual can leave civil commitment only if he is found not dangerous by his custodian or commitment court. Gov. Br. 20. False. For all the government's concern regarding "creat[ing] an alternate path to discharge beyond what Congress authorized," Gov. Br. 23, it is conspicuously silent on the Attorney General's *own* creation of such a path, Amicus Br. 32–33 (identifying Attorney General's historical use of extra-statutory discharge). Discharge from civil commitment is seemingly limited only when this reading aligns with the Attorney General's desires. This text-for-thee, not-for-me approach to statutory interpretation cannot stand.

The inadequacy of the government's supposedly-textualist interpretation is further highlighted by its erasure of subsections of the statute. For instance, nowhere does the government's brief address the

Attorney General's § 4248(d) duty to "place [a] person for treatment in a suitable facility," or the statute's mandate that it is applicable only when an individual is moving from criminal to civil custody. Amicus Br. 25, 28–31; *see* 18 U.S.C. § 4248(a). True, § 4248 permits the civil commitment of individuals. But it simultaneously creates mandatory safeguards against an Attorney General acting beyond his authority. By transferring Mr. Timms out of civil commitment to be incarcerated, where he was held without compliance with § 4248's protections, the Attorney General terminated the civil commitment.

The government tries to avoid the textual requirement that committed individuals be placed in a facility suitable for their treatment by eliding distinctions between criminal and civil confinement. 18 U.S.C. §§ 4247(a)(2), 4248(d). It insists that recognizing the exclusivity of the two would "lead to absurd results." Gov. Br. 20. But it asks this Court to somersault to a truly "absurd" interpretation: that when Congress mandated that the Attorney General "shall place the person for treatment in a suitable facility," § 4248(d), it meant to say that he "may incarcerate the person for punishment in a prison." Read strictly, the statute imposes rights and burdens on both Mr. Timms and

the Attorney General. The government, however, recognizes only rights for the Attorney General and burdens on Mr. Timms.

Had the government engaged in a plain text reading of the statute—in its entirety—it would have seen that Mr. Timms was denied precisely the procedural protections that *United States v. Comstock*, 560 U.S. 126 (2010), found necessary when it sustained the constitutionality of § 4248. The Court relied on the statute's narrow tailoring to hold that it was a constitutional exercise of congressional power. *Id.* at 148. Now, the government seeks to widen the reach of § 4248 to permit the adjudication-free transfer of individuals from criminal to civil custody even when doing so erodes the foundation on which the Supreme Court upheld the statute's constitutionality. *Id.*

The Government's Reliance on Irrelevant Legislative History

The government spills much ink detailing the legislative history of § 4248 and Mr. Timms' carceral history. Gov. Br. 3–10, 16–20. Neither is pertinent here. The congressional purpose of enacting § 4248 bears on why, whether, and how to authorize an individual's civil commitment upon completing a criminal sentence. But the statute's legislative history does not suggest that Congress sanctioned, or even contemplated, a

commitment order surviving an intervening criminal sentence as the government proposes. Gov. Br. 20. The legislative purpose for enacting a law that the government has not followed in a scenario that Congress did not consider thus carries no persuasive weight.

Because Mr. Timms is neither collaterally attacking the 2013 commitment order against him nor seeking to relitigate past § 4247(h) proceedings, an inquiry into past behavior and potential dangerousness is irrelevant to resolving his argument that commitment must be a judicial, not unilaterally executive, process. The government's reliance on congressional intent and Mr. Timms' decades-old misconduct—facts relevant *only* at the § 4248(a) dangerousness hearings he should have received in 2016 and 2020—betrays that it has sidestepped Mr. Timms' substantive arguments and responded to those it feels better-postured to challenge.

To be sure, the government is correct that § 4248 was enacted to address a gap between federal and state law. Gov. Br. 4. Prior to its passage, a federally-incarcerated individual was not subject to any civil commitment statute addressing sexual dangerousness upon release. But there was no such gap here. The Attorney General could have pursued

commitment of Mr. Timms following his intervening criminal sentences in accordance with § 4248. The Attorney General chose not to do so.

Contrary to the government's argument, the Attorney General has § 4248 authority over individuals only while they are in civil commitment. Under the government's interpretation, a person is civilly committed in perpetuity unless discharged in formal § 4248(e) proceedings. Gov. Br. 18. Thus, the Attorney General would have the power to recommit—at any time and for any reason—individuals whom he had earlier informally discharged from civil commitment. *See* Amicus Br. 32–33 (discussing Attorney General's practice of releasing civilly-committed individuals to state criminal custody). That theory runs headlong into the separation of powers, which gives the commitment power to courts, not the Attorney General.

Civil and Criminal Commitment Cannot Coincide

The government is incorrect that recognizing the mutual exclusivity of criminal and civil confinement would carve away the Attorney General's power to prosecute. It offers only conclusory statements about the "absurd results" such a recognition would yield, focusing on an imaginary conundrum: that differentiating between civil

and criminal commitment would permit a person to offend his way out of civil commitment and bar the Attorney General from prosecuting crimes within a civil commitment facility. Gov. Br. 21–22. This claim is doubly wrong.

First, it ignores that the Attorney General has ample means for addressing criminal acts by civilly-committed persons. The government's claim to the contrary is wholly unsupportable and hardly a basis for dismissing Mr. Timms' action summarily. Despite the government's insistence otherwise, Gov. Br. 21–22, an individual who commits or is convicted of a criminal offense could remain legally committed under a proper exercise of the Attorney General's authority. Examples abound. The Attorney General could, for instance, lodge the criminal conviction as a detainer to be served when that individual is discharged from commitment. *Cf. Ofarrit-Figueroa v. Ratledge*, No. 5:15-HC-2299-D, 2017 WL 1293461, at *1 (E.D.N.C. Apr. 6, 2017) (noting that deportation order had been lodged as a detainer). Or the Attorney General could continue to confine the individual in civil commitment by exercising prosecutorial discretion and declining to prosecute misconduct, including sexual offenses, that a suitable commitment facility is equipped to

address. *See, e.g.*, *United States v. King*, No. 5:09-HC-2076-FA, 2022 WL 17085596, at *4 (E.D.N.C. Nov. 18, 2022) (referencing unprosecuted instance of indecent exposure).

If an individual's immediate criminal punishment were necessary, the Attorney General could move for the district court to hold a commitment order in abeyance before transferring the individual to criminal custody. Further, the Attorney General could institute a new commitment proceeding against the individual before satisfaction of his imprisonment sentence. *Ofarrit-Figueroa v. Ratledge*, No. 5:15-HC-2299-D, 2016 WL 8677330, at *1 (E.D.N.C. June 28, 2016)

The government has considered no alternatives. Gov. Br. 21–22. It instead concludes that the Attorney General should wield unchecked authority, recasting Mr. Timms' demands for due process as "tying the hands of the Attorney General." *Id.* at 22. But a finding that the Attorney General must provide civilly-committed individuals with congressionally-prescribed process does not amount to handcuffing.

Second, the government argues only that a criminal *conviction* does not sever a § 4248 commitment order against an individual. Gov. Br. 16. Perhaps. But this is not an argument Mr. Timms or amicus has raised.

Amicus Br. 22–24. Instead, Mr. Timms challenges his post-conviction transfer to, and incarceration in, a facility unsuitable under § 4248, not the fact of his conviction and sentence. *Id.* The Attorney General exceeds his authority by attempting to sustain a commitment order against Mr. Timms sub silentio while failing to comply with § 4248's procedural mandates, not merely by "prosecuting [Mr. Timms] for . . . criminal conduct" as the government alleges. Gov. Br. 21.

Nor can the government explain how civil commitment can nest within criminal incarceration even when the two have inconsistent:

- Purposes—medical care and harm reduction for civilly-committed persons versus punishment and deterrence for criminal prisoners;
- Available treatments—specifically-tailored programs versus generalized rehabilitation; and
- Government custodians—the Attorney General versus the Bureau of Prisons (BOP) Director.

The government's conflation of criminal and civil confinement disregards their fundamental differences and mutual exclusivity. The two cannot coincide.

Due Process Is Not Fungible

The government insists that providing adequate process in other suits by or against Mr. Timms makes up for the complete absence of process in his post-incarceration transfers to civil commitment. Gov. Br. 24 ("Petitioner has received ample due process"). Wrong again. That Mr. Timms has had some process on unrelated claims means nothing when he has had none here. The Attorney General failed to provide Mr. Timms with any process following his intervening periods of incarceration, much less the process the Constitution and the statute require.

To defend this gross denial of procedural protections, the government points to unrelated proceedings involving Mr. Timms, Gov. Br. 23–24, going so far as to cite the number of appellate decisions that include Mr. Timms' name in the caption. Gov. Br. 24. But no matter how often Mr. Timms received process in prior claims, he was denied due process before his 2016 and 2020 commitments when the government had the burden of proving his dangerousness.

The government's references to denied requests for discharge, *e.g.*, Gov. Br. 23, ignore a material difference between a § 4248(d) commitment proceeding, where the Attorney General carries the burden

of proving an individual's dangerousness by clear and convincing evidence, and a § 4248(e) discharge proceeding, where the burden shifts to Mr. Timms to *disprove* that finding. § 4248. The Attorney General twice failed to conduct a commitment hearing before moving Mr. Timms to civil commitment, escaping the evidentiary burden at the core of the statute. Gov. Br. 8; Amicus Br. 13. As a substitute, the government points to a favorable outcome for the Attorney General in discharge proceedings, after the burden had been thrust on Mr. Timms. The statute requires more.

B. The government ignores that Mr. Timms can seek habeas relief because there is no remedy to exhaust.

Mr. Timms cannot bring his due process claim in § 4248(e) or § 4247(h)[2] dangerousness hearings. Amicus Br. 19. Thus, he has no available § 4248 remedies to exhaust and must raise his claim in habeas—a fact the § 4248 civil commitment court recognized. *Id.*; JA114–115. The government fails to respond to this fact. Instead, it simply states that Mr. Timms "has not tried" to exhaust alternative § 4248

[2] The government asserts that Mr. Timms should have raised his due process claim in his January 2023 § 4247(h) proceedings. Gov. Br. 27. Those proceedings commenced long after he filed this habeas petition.

remedies without identifying *where* the statute provides an available remedy. Gov. Br. 28.

The government misreads *Timms v. Johns*, 627 F.3d 525 (4th Cir. 2010), as holding that Mr. Timms has a § 4248 remedy for his due process claim. Gov. Br. 25–26. But unlike in that case, Mr. Timms is not challenging the constitutionality of § 4248 here. Instead, he is challenging the Attorney General's ultra vires actions of moving him between criminal and civil confinement without due process. This challenge cannot be heard in § 4248 proceedings because those hearings focus on determining and reassessing sexual dangerousness, not whether due process required the Attorney General to file new § 4248 proceedings. Thus, Mr. Timms' only recourse is to bring a habeas corpus petition challenging the illegality of his confinement. *See* 18 U.S.C. § 4247(g) ("Habeas Corpus Unimpaired").

Citing unpublished cases, the government insists that Mr. Timms must exhaust BOP's administrative remedies. Gov. Br. 26–27. That argument is wrong as a matter of BOP's authority and unsupported by this Court's case law. First, the administrative process does not grant the BOP authority to declare Mr. Timms' current confinement

unconstitutional. Only a court has that power. And second, this Court has expressly reserved ruling on whether a civilly-committed person must "exhaust administrative remedies with the BOP prior to seeking relief from detention through habeas corpus." *Timms v. Johns*, 627 F.3d at 533 n.7. The government has failed to show there are any available remedies for Mr. Timms to exhaust before pursuing habeas relief.

Alternatively, because the district court erred in summarily dismissing this claim, this Court need not reach the exhaustion question. It should find that the district court could not sua sponte dismiss Mr. Timms' habeas petition for failure to exhaust—an affirmative defense—without giving him "fair notice and an opportunity to present [his] positions." *See Day v. McDonough*, 547 U.S. 198, 208–10 (2006). The government errs in relying on unpublished and pre-*Day* case law to state otherwise. Gov. Br. 29.

The government's efforts to distinguish *United States v. Muhammad*, 16 F.4th 126, 130 (4th Cir. 2021), which bars sua sponte dismissal for failure to exhaust available remedies, also fall short. Gov. Br. 29–30. To be sure, the petitioner in *Muhammad* sought compassionate release rather than habeas, but this Court focused on the

non-jurisdictional nature of the exhaustion requirement rather than that the petitioner's motion sought compassionate release. 16 F.4th at 130. Like compassionate release exhaustion, 28 U.S.C. § 2241 exhaustion is a non-jurisdictional claims-processing rule. *See*, *e.g.*, *Santiago-Lugo v. Warren*, 785 F.3d 467, 471–75 (11th Cir. 2015). To argue that this rule is limited to compassionate release cases ignores the non-jurisdictional nature of the exhaustion requirement.

II. MR. TIMMS HAS STATED A PLAUSIBLE CONDITIONS OF CONFINEMENT HABEAS CLAIM.

Mr. Timms' claim challenging his federal custodial conditions is cognizable in § 2241 habeas. The government relies on case law limiting the scope of 42 U.S.C. § 1983 claims brought by state prisoners to conclude that Mr. Timms has no habeas remedy. But those cases have no bearing on people in federal custody like Mr. Timms given this Court's recognition of a habeas remedy for federal prisoners' conditions of confinement claims. Mr. Timms has no other remedy to challenge his conditions of confinement, and he appropriately brought it in habeas.

A. Mr. Timms' conditions of confinement claim is cognizable in habeas.

The government cites Supreme Court concurrences to argue that permitting habeas claims outside of the *Preiser*-defined "core" would "utterly sever the writ from its common-law roots." Gov. Br. 31–32 (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 86 (2005) (Scalia, J., concurring)). Not so. As the government acknowledges, the traditional function or "essence" of habeas is an "attack by a person in custody upon the legality of that custody." Gov. Br. 31, 35 (internal quotation marks and citations omitted). This Court has reasoned that a petitioner challenging his conditions of confinement "inevitably" argues that "'some aspect of his confinement has deprived him of a right to which he is entitled in custody.'" *Farabee v. Clarke*, 967 F.3d 380, 395 n.10 (4th Cir. 2020) (quoting *Aamer v. Obama*, 742 F.3d 1023, 1036 (D.C. Cir. 2014)). Because Mr. Timms is challenging the legality of his custody by challenging the unconstitutional conditions of that custody, he is entitled to pursue a habeas remedy.

The government concedes that neither the Supreme Court nor this Court has ever held in a published opinion that conditions of confinement claims cannot be brought in habeas. Gov. Br. 32–34. Congress also has

never limited § 2241 as a remedy for conditions of confinement claims—even where it has limited habeas relief significantly to impose limitations it found appropriate. *See, e.g.*, Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104–132, 110 Stat. 1214 (1996). Further, Congress explicitly reserved a habeas remedy under 18 U.S.C. § 4247(g).

The government nonetheless asserts that *Preiser* and its progeny bar habeas claims outside habeas' "core." Gov. Br. 31–33. That is wrong. First, this argument fails to acknowledge that the *Preiser* line of cases considers *only* whether a state prisoner's core-habeas claim can be asserted under § 1983. *See Preiser v. Rodriguez*, 411 U.S. 475, 499–500 (1973). The Court reasoned that a state prisoner could not avoid habeas exhaustion and other limitations simply by applying the "different label" of § 1983, and it said nothing about the converse—whether habeas is limited to "core" claims. *Id.* at 489; *see also Wilkinson*, 544 U.S. at 78–82.

Second, the Supreme Court's cases on the scope of § 1983 say nothing about the availability of habeas for *federal* prisoners. Many circuit courts have concluded that habeas provides a remedy for conditions of confinement claims brought by federal prisoners. *See, e.g.*,

Aamer, 742 F.3d at 1038 (recognizing a habeas remedy for Guantanamo detainees challenging their conditions of confinement); *Levine v. Apker*, 455 F.3d 71, 78 (2d Cir. 2006) (recognizing that a challenge to the execution of a federal prisoner's sentence—including a challenge to their prison conditions—"is properly filed pursuant to § 2241"); *United States v. DeLeon*, 444 F.3d 41, 59 (1st Cir. 2006). This Court has also granted § 2241 relief on a federal prisoner's conditions of confinement claim. *McNair v. McCune*, 527 F.2d 874, 875 (4th Cir. 1975).

Because of this distinction between federal and state prisoners, the government's reference to cases brought by state prisoners to argue that Mr. Timms has no § 2241 remedy for his federal custody, Gov. Br. 33, is not germane. Indeed, one of the state prisoner cases the government cites explicitly recognizes that federal prisoners are differently situated and might have a § 2241 remedy for conditions of confinement claims. *See Nettles v. Grounds*, 830 F.3d 922, 931 (9th Cir. 2016) (en banc).

Further, the few cases the government cites addressing federal prisoner conditions of confinement claims are not persuasive. Gov. Br.

33 (collecting cases).[3] Importantly, most of these cases concluded that they were bound by prior circuit precedent holding that there was no § 2241 remedy. *E.g.*, *Spencer*, 774 F.3d at 470; *Glaus*, 408 F.3d at 387–88. Unlike in those circuits, this Court's precedent recognizes that federal prisoners can bring conditions of confinement claims in § 2241. *McNair,* 527 F.2d at 875.

The government misreads *McNair* to preclude habeas relief for all conditions of confinement claims except segregated confinement claims. Gov. Br. 35. True, *McNair* was decided via a segregated confinement claim, but it confirmed that habeas relief is available for federal prisoners' conditions of confinement claims generally. Segregated confinement, after all, *is* a condition of confinement outside *Preiser*'s "core" of habeas. Because this Court has recognized a habeas remedy for a federal prisoner's conditions of confinement claim, it should do so here.

Finally, § 2241 is Mr. Timms' only possible remedy. Even though the government string-cites to case law relating to § 1983 and *Bivens*,

---

[3] Of the cases cited by the government, only the following address federal prisoners' claims: *Spencer v. Haynes*, 774 F.3d 467, 468–69 (8th Cir. 2014); *Glaus v. Anderson*, 408 F.3d 382, 388 (7th Cir. 2005); *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035–36 (10th Cir. 2012); and *Luedtke v. Berkebile*, 704 F.3d 465, 466 (6th Cir. 2013).

Gov. Br. 35–36, it does not—because it cannot—argue that Mr. Timms has a remedy under either. It instead half-heartedly suggests that Mr. Timms' claim could perhaps be remedied through a suit in equity or in an Administrative Procedure Act (APA) challenge. Gov. Br. 36. If "suit in equity" refers to mandamus, *id.*, the government misunderstands that remedy. Such relief is available "only to compel a government officer to perform a duty that is 'ministerial, clearly defined, and peremptory' as opposed to duties within the officer's discretion." *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1235 (10th Cir. 2005) (quoting *Schulke v. United States*, 544 F.2d 453, 455 (10th Cir. 1976)). Conditions of confinement are, as the government inevitably argues, uniquely within the discretion of BOP officers and are thus beyond the scope of mandamus relief. The government's throwaway argument about an APA remedy evaporates because it fails to cite a single case in which a court has considered a conditions of confinement claim under the APA. Mr. Timms' claim is cognizable in § 2241.

B. The government's reliance on *Matherly* is flawed, and this case should be remanded for discovery.

The government asserts that *Matherly v. Andrews*, 859 F.3d 264 (4th Cir. 2017), directly governs this case, so dismissal is warranted at

this preliminary stage. Gov. Br. 38. This argument is unpersuasive. In *Matherly*, a civilly-committed person alleged that his conditions of confinement were unlawful because they resembled those of *criminal* prisoners. 859 F.3d at 269. Unlike in *Matherly*, Mr. Timms' conditions of confinement are unconstitutional because they are worse than those of other *civilly-committed* people at the same facility. Amicus Br. 41. And Mr. Timms has alleged that he is being subjected to those harsher conditions because he refuses to participate in voluntary treatment. *Id.* He is detained in a separate unit, denied privileges given to treatment participants, and required to wear a uniform. JA017. Taking these uncontested, well-pled facts as true and construing them in the light most favorable to him, Mr. Timms has "state[d] a claim [for] relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 422 (4th Cir. 2015).

At this early stage in the litigation, the government has not provided evidence showing that the difference between Mr. Timms' conditions and those of other civilly-committed people is rationally related to a non-punitive objective. *See Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979). The Fifth Amendment forbids subjecting a civilly-

committed person to conditions of confinement that are punitive in nature. *See Matherly*, 859 F.3d at 274–75. The government attempts to frame its punitive actions as "disciplinary measures." Gov. Br. 39. But this is an issue of fact that belongs before the district court.

CONCLUSION

For the foregoing reasons, the district court's summary dismissal was unjustified. This Court should reverse and remand for further proceedings.

Respectfully Submitted,

/s/ Erica Hashimoto
Erica Hashimoto
Director

Tara S. Mahesh
Edward McAuliffe
Audrey Hope Sheils
Student Counsel

Georgetown University Law Center
Appellate Litigation Program
111 F Street NW, Suite 306
Washington, D.C. 20001
(202) 662-9555

Court-Appointed Amicus in Support
of Appellant Gerald Timms

May 3, 2023

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,154 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Respectfully Submitted,

/s/ Erica Hashimoto
Erica Hashimoto
Georgetown University Law Center
Appellate Litigation Program
111 F Street NW, Suite 306
Washington, D.C. 20001
(202) 662-9555

Court-Appointed Amicus in Support
of Appellant Gerald Timms

May 3, 2023

CERTIFICATE OF SERVICE

I, Erica Hashimoto, certify that on May 3, 2023, a copy of Amicus' Reply Brief was served on counsel for Appellee via the Court's ECF system and on Appellant Gerald Timms at the following address:

Mr. Gerald Timms
BOP #54292-004
FCI Butner-Medium I
Federal Correctional Institution
P.O. BOX 1000
Butner, NC 27509

Respectfully Submitted,

/s/ Erica Hashimoto
Erica Hashimoto
Georgetown University Law Center
Appellate Litigation Program
111 F Street NW, Suite 306
Washington, D.C. 20001
(202) 662-9555

Court-Appointed Amicus in Support of Appellant Gerald Timms