No. 18-6374

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM CARL WELSH, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court abused its discretion in denying petitioner's motion under Federal Rule of Civil Procedure 60(b)(4) and (5) to reopen a previous order of civil commitment under 18 U.S.C. 4248.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 879 F.3d 530. The order of the district court (Pet. App. 23a-46a) is not published in the Federal Supplement but is available at 2017 WL 7805581.

JURISDICTION

The judgment of the court of appeals was entered on January 12, 2018. A petition for rehearing was denied on July 18, 2018 (Pet. App. 86a-88a). The petition for a writ of certiorari was filed on October 16, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In response to "the growing epidemic of sexual violence against children," Congress enacted the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act), Pub. L. No. 109-248, 120 Stat. 587, seeking to "address loopholes and deficiencies in existing laws" intended to protect children, H.R. Rep. No. 218, 109th Cong., 1st Sess. Pt. 1, at 20 (2005). As one means of addressing these concerns, the Adam Walsh Act amended and supplemented existing provisions in Chapter 313 of Title 18, United States Code, that provide for the civil commitment of certain categories of mentally ill persons who are in federal custody. Tit. III, § 302, 120 Stat. 619.

As relevant here, the Adam Walsh Act added 18 U.S.C. 4248, which authorizes the federal government to seek court-ordered civil commitment of a "sexually dangerous person" if either the person "is in the custody of the Bureau of Prisons"; the person "has been committed to the custody of the Attorney General pursuant to" 18 U.S.C. 4241(d), because the person has been charged with a criminal offense but has been determined to be mentally incompetent to stand trial (or to undergo postrelease proceedings); or "all criminal charges" against the person "have been dismissed solely for reasons relating to the mental condition of the person." 18 U.S.C. 4248(a). The Act defines a "sexually dangerous person" as "a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous

to others." 18 U.S.C. 4247(a)(5). A person is "sexually dangerous to others" if he "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." 18 U.S.C. 4247(a)(6).

To seek civil commitment of a person under Section 4248(a), the government must file a certificate with "the clerk of the court for the district in which the person is confined" certifying "that the person is a sexually dangerous person." 18 U.S.C. 4248(a). Filing of such a certificate stays release of the person pending completion of the civil-commitment proceedings. Ibid. The district court must then conduct a hearing "to determine whether the person is a sexually dangerous person." Ibid.; see 18 U.S.C. 4247(d), 4248(c). The court also may order "a psychiatric or psychological examination" of the person. 18 U.S.C. 4248(b). Following the hearing, "the court shall commit the person to the custody of the Attorney General" if "the court finds by clear and convincing evidence that the person is a sexually dangerous person." 18 U.S.C. 4248(d); see United States v. Comstock, 560 U.S. 126, 133-149 (2010) (upholding Section 4248 as a valid exercise of Congress's authority under the Necessary and Proper Clause, U.S. Const. Art. I, § 8, Cl. 18).

A civil-commitment order under Section 4248 is subject to ongoing review. If the director of the facility in which a civilly committed person has been placed subsequently determines that the

person "is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment," then the director must "promptly file a certificate to that effect" with the district court. 18 U.S.C. 4248(e). If the director so certifies, the court must then release the person if the court finds that the person will not be sexually dangerous to others if released, either unconditionally or with conditions. Ibid. In addition, the director of the facility must prepare and submit to the court annual reports "concerning the mental condition of the person and containing recommendations concerning the need for his continued commitment." 18 U.S.C. 4247(e).

2. a. Petitioner has committed numerous sex crimes against children. Pet. App. 39a & n.3 (describing petitioner's "decades of child molestation"). He was separately convicted in California in 1979, 1980, and 1982 for instances of child molestation; he was later convicted in Oregon for four 1986 sex offenses against four different children and received a 15-year prison sentence; and, following his release from that incarceration, petitioner again was convicted in Oregon for offenses in 1999 in which he engaged in sex acts with children and was sentenced to eight years of imprisonment, to be followed by three years of supervised release. Pet. App. 39a n.3, 64a-69a. Because of petitioner's history as a repeat sex offender, he was required to maintain a registration under the Sex Offender

Registration and Notification Act (SORNA), 34 U.S.C. 20901 et seq., enacted as part of the Adam Walsh Act, Tit. I, 120 Stat. 590.

In 2009, while on parole from his 1999 Oregon convictions, petitioner absconded to Belize. Pet. App. 23a, 69a-71a. He was apprehended, and his Oregon parole was revoked. Id. at 71a.

b. In 2010, a federal grand jury in the District of Oregon returned an indictment charging petitioner with violating SORNA, alleging that petitioner was a person required to register as a sex offender, that he had thereafter traveled in interstate or foreign commerce from Oregon to Belize, and that he had knowingly failed to register or update his registration. C.A. App. 20. Petitioner pleaded guilty to that charge. Pet. App. 23a; C.A. App. 21. In 2011, the district court sentenced petitioner to 673 days of imprisonment, to be followed by a lifetime term of supervised release, and the court accordingly remanded petitioner "to the custody of the United States Bureau of Prisons" to carry out the imprisonment. C.A. App. 22-23.

c. In October 2011, before the expiration of petitioner's term of imprisonment for his SORNA conviction, the government filed a certificate in the United States District Court for the Eastern District of North Carolina -- the district in which petitioner was then serving his federal term of imprisonment for that conviction, -- certifying that petitioner was a sexually dangerous person. Pet. App. 23a-24a; C.A. App. 28-32. In 2013, following a bench trial, Pet. App. 24a; see 9/6/12 Tr. 1-241, the North Carolina

district court issued an order finding that "the United States ha[d] proven by clear and convincing evidence" that petitioner "is a sexually dangerous person as defined in the Adam Walsh Act" and ordering him civilly committed pursuant to Section 4248. Pet. App. 56a. The court also made an oral statement of its findings, which it incorporated into its written order by reference. Ibid.; see id. at 59a-84a. The court found that petitioner had committed past sexually violent conduct or child molestation; that he suffered from a serious mental disorder (pedophilia); and that he would as a result have serious difficulty refraining from future sexually violent conduct or child molestation if released. Id. at 79a-84a. In 2014, the court of appeals affirmed. Id. at 49a-54a.

3. a. In April 2016, this Court issued its decision in Nichols v. United States, 136 S. Ct. 1113 (2016), which held that SORNA did not require a sex offender who resided in a State, and who then moved to a foreign country, to update his registration in the State in which he had resided. Id. at 1117-1119. In August 2016, petitioner filed a motion in the Oregon district court to vacate his 2011 SORNA conviction on the ground that, under Nichols, petitioner was not required to update his sex-offender registration after relocating from Oregon to Belize. C.A. App. 64-72. The government did not oppose that motion, and the court vacated the conviction. Pet. App. 47a-48a.[1]

[1] Congress amended SORNA in 2016 to encompass international travel, see Nichols, 136 S. Ct. at 1119, but that amendment does not apply to petitioner's 2009 conduct.

b. Petitioner subsequently filed a motion in the North Carolina district court under Federal Rule of Civil Procedure 60(b) seeking relief from its 2013 civil-commitment order. Pet. App. 26a. The court denied the motion. Id. at 27a-46a. It first denied petitioner's request for relief under Rule 60(b)(4), which authorizes a court to grant relief from a prior judgment if "the judgment is void." Fed. R. Civ. P. 60(b)(4). The court explained that "Rule 60(b)(4) 'applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard.'" Pet. App. 28a (quoting United States Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 271 (2010)). Petitioner contended that the 2013 civil-commitment order was void because, in light of Nichols, "the [Bureau of Prisons] lacked legal custody over [petitioner]" when the government submitted its certificate, and therefore the North Carolina district court had lacked jurisdiction to order petitioner civilly committed. Id. at 29a; see id. at 29a-33a. The court rejected that argument, concluding that "section 4248(a)'s custody provision is not jurisdictional" and is merely "an element of the government's claim for relief." Id. at 30a-31a.

In the alternative, the district court concluded that, "even if section 4248(a)'s custody provision is jurisdictional, [petitioner] was 'in the custody of the Bureau of Prisons'" at the time the government certified that he was a sexually dangerous

person. Pet. App. 31a. The court reasoned that the Bureau of Prisons had "legal authority over [petitioner's] detention on the date of the certification" because the Oregon district court's sentencing order had remanded petitioner "to the custody of the Bureau of Prisons." Id. at 32a. The court determined that the vacatur of petitioner's SORNA conviction in 2016 had not affected the court's jurisdiction in 2013 to order petitioner civilly committed, because "jurisdiction is traditionally assessed at the moment it attaches, and future events do not divest a court of jurisdiction." Ibid. (citing, inter alia, Freeport-McMoRan Inc. v. K N Energy, Inc., 498 U.S. 426 (1991) (per curiam), and Saint Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938)).

The district court next rejected petitioner's request for relief under Rule 60(b)(5) on the grounds that "applying [the civil-commitment order] prospectively is no longer equitable" and that the order "[wa]s based on an earlier judgment that ha[d] been reversed or vacated." Fed. R. Civ. P. 60(b)(5); see Pet. App. 33a-40a, 42a-45a. The court first found that petitioner "ha[d] failed to demonstrate that he [wa]s entitled to relief * * * under the no-longer-equitable clause of Rule 60(b)(5)." Pet. App. 36a. It explained that, although the vacatur of petitioner's SORNA conviction was a "change in [his] circumstances," the public still "has a great countervailing interest in [petitioner's] continued commitment * * * on the basis of [petitioner's] sexual dangerousness, which the government established by clear and

convincing evidence at [the] trial." Id. at 34a. The court noted that petitioner's SORNA conviction "did not form the basis of the court's findings and conclusions under any prong of the Adam Walsh Act," and petitioner's "mental condition and failures" in the prison's Commitment and Treatment Program during his civil commitment "bolster[ed] the public interest in [his] continued commitment." Id. at 35a; see id. at 35a-36a (detailing petitioner's later conduct showing sexual dangerousness).

The district court also declined to grant relief under "Rule 60(b)(5)'s reversed-or-vacated clause." Pet. App. 36a; see id. at 36a-40a, 42a-45a. The court "assume[d] without deciding" that Rule 60(b)(5) permitted the court to grant relief in these circumstances, id. at 37a, concluding that relief would not be warranted in any event, id. at 38a-40a, 42a-45a. The court again emphasized that, in ordering petitioner civilly committed, the court "did not rely on [petitioner's] now-vacated 2011 criminal judgment to support [its] findings on any prong under the Adam Walsh Act," but instead had relied on petitioner's stipulations and the evidence the government submitted, which the court recounted. Id. at 38a; see id. at 38a-40a. Conducting an equitable balancing under Rule 60(b) called for by circuit precedent, the court held that the balance weighed decisively against relief, in light of the public interest and the independent evidentiary basis that underlay the court's prior findings of petitioner's sexual dangerousness and the minimal role played by

petitioner's SORNA conviction in that weighing. See id. at 42a-45a.[2]

4. The court of appeals affirmed. Pet. App. 1a-22a.

a. The court of appeals agreed with the district court that relief under Rule 60(b)(4) was unavailable. Pet. App. 5a-10a. The court of appeals explained that Rule 60(b)(4) is reserved "for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." Id. at 5a (quoting Espinosa, 559 U.S. at 271). Like the district court, the court of appeals determined that, under this Court's precedent, "§ 4248(a)'s custody requirement is not jurisdictional" -- i.e., it does not impose a limit on "'a court's adjudicatory authority'" -- "but rather is an element of a civil commitment claim." Id. at 6a (quoting Kontrick v. Ryan, 540 U.S. 443, 455 (2004)); see id. at 6a-7a (discussing, inter alia, Reed Elsevier, Inc. v. Muchnick, 559 U.S. 154 (2010), and Arbaugh v. Y & H Corp, 546 U.S. 500 (2006)). The court of appeals explained that "nothing in the text

[2] Petitioner also sought relief below under Rule 60(b)(6)'s catchall provision, which "applies if 'any other reason . . . justifies relief.'" Pet. App. 28a (quoting Fed. R. Civ. P. 60(b)(6)). The district court assumed without deciding that relief under that provision would be available if the court had lacked discretion to grant relief under Rule 60(b)(5), but the court concluded that such relief would be unwarranted in any event for the same reasons as under Rule 60(b)(5). Id. at 40a-45a. The court of appeals affirmed, concluding that Rule 60(b)(6) relief is unavailable in this case because petitioner's "claim falls under the more specific Rule 60(b)(5)." Id. at 11a n.2. Petitioner has not sought review of that determination in this Court. See Pet. 15-25.

of § 4248(a)'s custody requirement suggests that it's a limit on the court's jurisdiction." Id. at 7a. The court rejected petitioner's contention that the custody requirement is jurisdictional because "the government's authority to civilly commit is constitutional only because of the custody requirement," explaining that "the fact that an element of a claim is constitutionally required does not mean that it is jurisdictional." Ibid. (citing United States v. Williams, 341 U.S. 58 (1951)). The court alternatively held that, even if the custody requirement were jurisdictional, "[petitioner] was in the custody of the Bureau of Prisons when he was certified as a sexually dangerous person * * * because at the time of his certification [petitioner] was still serving a prison sentence pursuant to a court order committing him 'to the custody of the United States Bureau of Prisons.'" Id. at 8a (citation omitted). The court explained that neither Comstock, supra, which addressed Congress's constitutional authority to enact Section 4248, nor Fourth Circuit precedent supported a contrary conclusion. Id. at 8a-10a.

The court of appeals also held that the district court did not abuse its discretion in denying relief under Rule 60(b)(5). Pet. App. 10a-14a. With respect to Rule 60(b)(5)'s "'no longer equitable'" clause, the court of appeals held that "the district court properly characterized [petitioner's] argument, applied the appropriate legal standard, and considered the fact that

[petitioner] no longer stands convicted of violating SORNA." Id. at 11a-12a (citation omitted).

With respect to Rule 60(b)(5)'s "'reversed or vacated'" clause, the court of appeals held that the district court had "weighed the factors and (in [the court of appeals'] view) made a reasonable decision not to grant relief." Pet. App. 12a. Petitioner contended that the district court had "failed to appreciate that [petitioner] would never have been committed but for the now-vacated conviction." Id. at 13a. The court of appeals rejected that argument, explaining that that contention "does no more than state the predicate for granting relief under the 'reversed or vacated' provision." Ibid. The court also rejected petitioner's contention that continued civil commitment was unfair on the ground that "he didn't commit a crime." Ibid. It explained that such an "allegation of unfairness * * * can be levied against any form of civil commitment," and "the Adam Walsh Act expressly authorizes the civil commitment of individuals who were never convicted of a crime." Ibid. Finally, the court rejected petitioner's contentions that he should have been granted relief because he had "avoided any infractions over the past year," because he had "refused to participate in a treatment program for sex offenders only on advice of counsel," and because if released "he would be subject to significant reporting requirements." Ibid.

b. Judge Thacker dissented in part. Pet. App. 15a-22a. She agreed with the majority that petitioner was not entitled to

relief under Rule 60(b)(4) (or under Rule 60(b)(6), see p. 10 n.2, supra). Pet. App. 16a. In Judge Thacker's view, however, relief was warranted under Rule 60(b)(5), both because the civil-commitment order was based on a judgment (petitioner's SORNA conviction) that had been "reversed or vacated," and because "applying [the civil-commitment order] prospectively is no longer equitable." Ibid. (quoting Fed. R. Civ. P. 60(b)(5)). Judge Thacker stated that the district court had placed too much "emphasis on the sanctity of final judgments," id. at 17a, and had improperly relied on the public interest in denying relief, id. at 19a.

5. Petitioner sought panel rehearing and rehearing en banc, which were denied, with no judge requesting a poll. Pet. App. 86a. Judge Thacker issued a statement respecting the petition for rehearing en banc, reiterating her disagreement with the result in this case. Id. at 87a-88a.

ARGUMENT

Petitioner contends (Pet. 15-23) that the district court erred in denying his request for relief from the civil-commitment order under Rule 60(b)(4) and (5). The court of appeals correctly rejected those contentions, and its decision does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. Federal Rule of Civil Procedure 60(b)(4) states that a court may grant relief from a final judgment if "the judgment is

void." Fed. R. Civ. P. 60(b)(4). "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." United States Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 271 (2010). "[C]ourts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." Ibid. (citation omitted). The court of appeals correctly determined that petitioner has not satisfied that high standard in the circumstances of this case. Pet. App. 5a-10a.

a. Petitioner contended below that the civil-commitment order was void for want of jurisdiction because, when the government certified in 2011 that petitioner was a sexually dangerous person and sought his civil commitment, he was not in "the legal custody of the Bureau of Prisons because (as [this] Court announced in [Nichols v. United States, 136 S. Ct. 1113 (2016)]), [petitioner] never actually committed a crime by failing to register." Pet. App. 6a. The court of appeals correctly rejected that contention because Section 4248(a)'s requirement that a person must be in "the custody of the Bureau of Prisons," 18 U.S.C. 4248(a), is not jurisdictional.

This Court's decisions draw a "bright line" between limitations on "federal-court 'subject-matter' jurisdiction over a controversy"

and "ingredients of a federal claim for relief." Arbaugh v. Y & H Corp., 546 U.S. 500, 503, 516 (2006). Jurisdictional rules speak to "whether [a] federal court ha[s] authority to adjudicate the claim in suit," as distinct from whether the party asserting the claim is entitled to relief on the merits. Id. at 511. The Court has made clear that, unless Congress "clearly states that" a statutory requirement is jurisdictional, courts must treat statutory provisions "as nonjurisdictional in character." Id. at 515-516. Although Congress need not "'incant magic words,'" "traditional tools of statutory construction must plainly show that Congress imbued" the requirement "with jurisdictional consequences." United States v. Kwai Fun Wong, 135 S. Ct. 1625, 1632 (2015) (citation omitted) (addressing procedural bars).

Like other requirements this Court has deemed nonjurisdictional, Section 4248(a)'s custody requirement "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts." Arbaugh, 546 U.S. at 515 (citation omitted); see also, e.g., Reed Elsevier, Inc. v. Muchnick, 559 U.S. 154, 165 (2010). As the court of appeals explained, "nothing in the text of § 4248(a)'s custody requirement suggests that it's a limit on the court's jurisdiction." Pet. App. 7a. That requirement does not speak to the district court's adjudicative authority. Instead, it defines one of the classes of persons as to whom the government may seek civil commitment. 18 U.S.C. 4248(a). The government's failure in a particular case

to establish that the person as to whom it files a certificate under Section 4248(a) is in the custody of the Bureau of Prisons does not deprive the district court of jurisdiction; it means only that the court, on the merits, will not order the person committed.

Petitioner identifies nothing in the statutory text or context of Section 4248 clearly establishes that it is jurisdictional in nature. He acknowledges (Pet. 20) that Section 4248's text does not refer to "jurisdiction." Petitioner asserts (ibid.) instead that "the structure of the statute strongly suggests that Congress was thinking in [jurisdictional] terms," noting that Section 4248(a) first enumerates the classes of persons who may be civilly committed before stating the fact that the Attorney General must certify to seek civil commitment, i.e., "that the person is a sexually dangerous person," 18 U.S.C. 4248(a). But nothing about that sequencing of elements in the statute clearly signifies that the listed classes of persons confine federal-court jurisdiction.

Petitioner also notes that in Arbaugh this Court described as jurisdictional various statutes that limit the persons who may bring certain claims or defendants against whom they may be brought. Pet. 21 (citing Arbaugh, 546 U.S. at 515 n.11). But those examples merely illustrated the "wide variety of factors" that Congress may use "to restrict the subject-matter jurisdiction of federal district courts," provided that Congress clearly indicates its intention to do so. Arbaugh, 546 U.S. at 515 n.11.

The Court did not suggest that all statutes that limit the range of permissible plaintiffs or defendants for a particular claim are inherently jurisdictional. Rather, the statutory provisions the Court cited expressly "confer[red] subject-matter jurisdiction" over the matters enumerated. Ibid. (citing 7 U.S.C. 2707(e)(3), 28 U.S.C. 1345, 28 U.S.C. 1348, and 49 U.S.C. 14301(l)(2)).

Petitioner argues (Pet. 21-22) that the custody requirement must be jurisdictional because this Court's decision in United States v. Comstock, 560 U.S. 126 (2010), upholding Congress's constitutional authority to enact Section 4248 was predicated on Congress's authority to prescribe and punish crimes. The court of appeals correctly rejected that argument. Pet. App. 7a. Even assuming arguendo that the Constitution empowers Congress to provide for civil commitment only as to persons who are in federal custody based on a valid conviction under a federal statute, that would not affect federal courts' authority to adjudicate a question of civil commitment. As the Court explained in United States v. Williams, 341 U.S. 58 (1951), "the unconstitutionality of the statute under which the proceeding is brought does not oust a court of jurisdiction." Id. at 66.

b. Even if Section 4248(a)'s custody requirement were jurisdictional, the court of appeals correctly determined that petitioner would not have been entitled to relief under Rule 60(b)(4) in any event because he was in "the custody of the Bureau of Prisons," 18 U.S.C. 4248(a), at the time the government

certified that he is a sexually dangerous person in 2011. Pet. App. 8a. At that time, petitioner undisputedly was in fact being held at a Bureau of Prisons facility. C.A. App. 30. Petitioner describes (Pet. 5) Section 4248(a) as requiring that a person "must not simply be in the physical custody of the Bureau of Prisons," but also "must be in its legal custody." Even assuming that is correct, the court of appeals correctly determined that "[petitioner] was in the 'legal custody' of the Bureau of Prisons." Pet. App. 9a. As a result of petitioner's guilty plea to the SORNA violation, the Oregon district court had remanded petitioner "to the custody of the United States Bureau of Prisons" to carry out the imprisonment. C.A. App. 22. The applicable federal statute required the court to do so. See 18 U.S.C. 3621(a) (providing that a person "who has been sentenced to a term of imprisonment pursuant to [various sentencing statutes, including 18 U.S.C. 3581] shall be committed to the custody of the Bureau of Prisons" (emphasis added)). Because petitioner thus "was 'placed in the [Bureau of Prisons'] custody by statutory authority'" and pursuant to an order of the Oregon district court, and because "the Bureau of Prisons was solely responsible for [petitioner's] 'custody, care, subsistence, education, treatment and training,'" the Bureau of Prisons "had 'legal custody'" over him. Pet. App. 9a (citations omitted).

In this Court, petitioner does not seek review of the court of appeals' determination that he was in the Bureau of Prisons'

legal custody in 2011. Review of the Rule 60(b)(4) question petitioner raises is therefore unwarranted because, even if petitioner were correct that the custody requirement is jurisdictional, the decision below found that that condition was satisfied. At a minimum, the court of appeals' determination that the custody requirement was satisfied would make this case an unsuitable vehicle to resolve the question petitioner raises.

In the court of appeals, petitioner argued "that a person can never be in the Bureau's 'legal custody' if his underlying conviction is subsequently vacated." Pet. App. 8a. He has not renewed that argument in this Court, and in any event it lacks merit. Petitioner cites nothing in Section 4248(a)'s text or this Court's precedent establishing that a person was not in the Bureau's legal custody at a particular point in time merely because his underlying conviction was later held to be invalid. Case law addressing the federal criminal escape statute, 18 U.S.C. 751, supports the opposite conclusion. That statute imposes punishment on individuals who escape "from the custody of the Attorney General." 18 U.S.C. 751(a). As the courts of appeals have long recognized, federal prisoners who escape from prison have escaped the "custody" of the Attorney General, even if courts later determine those individuals' incarceration was erroneous. See United States v. Haley, 417 F.2d 625, 626 (4th Cir. 1969) (per curiam); Godwin v. United States, 185 F.2d 411, 413 (8th Cir. 1950); Bayless v. United States, 141 F.2d 578, 579 (9th Cir.),

cert. denied, 322 U.S. 748 (1944); Aderhold v. Soileau, 67 F.2d 259, 260 (5th Cir. 1933).

At a minimum, petitioner has not shown that there was no "arguable basis" for jurisdiction. Espinosa, 559 U.S. at 271 (citation omitted). The court of appeals correctly held that the district court did not err in rejecting his request for relief under Rule 60(b)(4). That ruling does not warrant further review.

2. Federal Rule of Civil Procedure 60(b)(5) states that a district court "may" relieve a party from a judgment if (inter alia) it is "based on an earlier judgment that has been reversed or vacated" or if "applying it prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). A district court's decision to grant or deny Rule 60(b)(5) relief is reviewed for abuse of discretion. See Browder v. Director, Dep't of Corrections, 434 U.S. 257, 263 n.7 (1978). The court of appeals correctly held that the district court did not abuse its discretion in denying Rule 60(b)(5) relief in these circumstances. Pet. App. 11a-13a.

a. Before a person may be civilly committed under Section 4248, the government must demonstrate, and the district court must find, by clear and convincing evidence that the person is a "sexually dangerous person." 18 U.S.C. 4248(d). That in turn requires the government to show and the court to find that (1) the person "has engaged or attempted to engage in sexually violent conduct or child molestation"; (2) that "the person suffers from a serious mental illness, abnormality, or disorder"; and (3) that,

"as a result" of that condition, the person "would have serious difficulty in refraining from sexually violent conduct or child molestation if released." 18 U.S.C. 4247(a)(5) and (6). In the North Carolina district court's 2013 civil-commitment ruling, it found that all three of those elements had been shown by clear and convincing evidence. Pet. App. 79a-84a; see id. at 38a-40a.

Petitioner requested relief from the 2013 civil-commitment order under Rule 60(b)(5) on the grounds that it was based on a judgment (his SORNA conviction) that had since been "reversed or vacated" and that, in light of the vacatur of his conviction, enforcing the civil-commitment order prospectively was "no longer equitable." Fed. R. Civ. P. 60(b)(5). The district court rejected both theories, reasoning that the vacatur of petitioner's 2011 conviction did not call into question the court's findings about petitioner's sexual dangerousness and the need for civil commitment. Pet. App. 33a-40a, 42a-45a.

As the district court observed, its analysis of the three statutory requirements for finding a person in Bureau of Prisons custody to be a "sexually dangerous person" had not rested on petitioner's SORNA conviction for failing to update his sex-offender registration. Pet. App. 35a ("[Petitioner's 2011] conviction for failing to update his sex-offender registration in the District of Oregon did not form the basis of the court's findings and conclusions under any prong of the Adam Walsh Act."); id. at 38a ("[T]he court's consideration of the now-vacated 2011

criminal judgment in the District of Oregon was minimal in the context of [petitioner's] section 4248(c) trial and this court's [civil-commitment order]"; that conviction "was not mentioned during the presentation of evidence" at the trial, and "th[e] court did not rely on that now-vacated 2011 criminal judgment to support th[e] court's findings on any prong under the Adam Walsh Act."); id. at 43a ("The court's findings and conclusions on February 5, 2013, focused heavily on [petitioner's] mental condition and conduct, making only one brief mention of [petitioner's] now-vacated 2011 judgment in the District of Oregon, and * * * did not rely on that judgment to satisfy any prong of the Adam Walsh Act analysis."). Indeed, petitioner's "counsel [had] correctly argued in closing at the end of [petitioner's] trial" that his SORNA conviction "was not evidence of any prong of the court's Adam Walsh Act analysis." Id. at 39a. Instead, as the district court explained, its analysis had rested primarily on the facts that petitioner had committed numerous sex offenses against children; that experts had diagnosed him with pedophilia; and that petitioner had repeatedly demonstrated that his mental condition caused him to have serious difficulty refraining from reoffending. Id. at 34a-40a; see id. at 59a-84a. The vacatur of petitioner's SORNA conviction did not undermine the basis of the district

court's reasoning in finding petitioner to be a sexually dangerous person.[3]

The district court additionally determined that "[petitioner's] mental condition and failures" in the prison treatment program "since 2013 bolster[ed] the public interest in [petitioner's] continued commitment." Pet. App. 35a. The court observed that petitioner's serious condition had not materially improved in the years since his 2013 commitment, citing petitioner's record while in custody and a 2017 annual report by a forensic psychologist opining that petitioner "remains a sexually dangerous person." Ibid. The court concluded that these factors, coupled with the broader interest in the finality of judgments, outweighed the fact that it had conducted the hearing and entered the commitment order in 2013 because petitioner was in Bureau of Prisons custody based on his SORNA conviction. Id. at 42a-45a.

[3] In one respect, the vacatur of petitioner's SORNA conviction may in fact have further strengthened the district court's original determination. Petitioner's sentence for his SORNA conviction included a lifetime term of supervised relief. C.A. App. 23. In opposing civil commitment, petitioner cited that lifetime supervised-release term as a reason that civil commitment was unnecessary, but the district court was unpersuaded, and the court of appeals held that the district court had "adequately weighed the potential effect of Welsh's lifetime term of supervised release." Pet. App. 53a; see id. at 53a-54a. In light of the vacatur of petitioner's SORNA conviction, however, that lifetime supervised-release term has now also been vacated, eliminating that safeguard if he were now released.

The court of appeals correctly concluded that the district court did not abuse its discretion in determining that the vacatur of petitioner's SORNA conviction did not warrant setting aside the civil-commitment order. Petitioner does not demonstrate any error in the lower courts' assessment of the particular circumstances of this case. In any event, those highly case-specific, fact-dependent determinations would not warrant this Court's review.

b. Petitioner principally contends (Pet. 15-20) that the court of appeals applied "too strict" a standard in evaluating his request for Rule 60(b)(5) relief. Pet. 18. Citing decisions of this Court addressing "the context of institutional reform litigation" involving school and prison policies, Pet. 17, petitioner argues that Rule 60(b)(5) requires a court to grant relief upon a showing of "a significant change either in factual conditions or in law." Pet. 15 (quoting Rufo v. Inmates of Suffolk Cty. Jail, 502 U.S. 367, 384 (1992); see Pet. 16-19 (discussing Horne v. Flores, 557 U.S. 433 (2009), and Agostini v. Felton, 521 U.S. 203 (1997)). Petitioner contends (Pet. 19) that the court of appeals here improperly denied relief because his circumstances were not "radically changed," and that the vacatur of his SORNA conviction should have sufficed. See Pet. 17-19. Those contentions lack merit. The court of appeals did not articulate or apply a standard requiring drastic change in a litigant's circumstances as a prerequisite for Rule 60(b)(5) relief. It simply concluded that the district court did not abuse its

discretion in declining to grant relief in this case, given that the only fact that has changed -- the validity of petitioner's SORNA conviction -- had "played a very minor role" in the district court's civil-commitment analysis of petitioner's sexual dangerousness. Pet. App. 12a.

Moreover, none of the decisions petitioner cites held that Rule 60(b)(5) reflexively requires relief whenever there has been any change in the underlying factual or legal circumstances that would have altered the outcome of the original proceeding. Instead, this Court's decisions recognize the role reserved for a district court's discretion and equitable considerations. In Flores, for example, the Court confirmed that Rule 60(b)(5) includes an equitable analysis, and it articulated the standard there as requiring a significant change in fact or law that renders "continued enforcement" of the judgment "'detrimental to the public interest.'" 557 U.S. at 447 (citation omitted); see Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 233-234 (1995) (Rule 60(b) "authorizes discretionary judicial revision of judgments in the listed situations" and "merely reflects and confirms" courts' equitable powers). Petitioner cites Agostini v. Felton, supra, but in that case subsequent decisions of this Court had

fundamentally altered the substantive law on which a previously entered injunction had been premised. See 521 U.S. at 215-240.[4]

In any event, petitioner has not identified any "significant change either in factual conditions or in law" that the courts below overlooked. Pet. 15 (citation omitted). Both acknowledged that petitioner's SORNA conviction had been vacated and explained why that fact did not significantly alter the analysis of whether he should remain committed. See Pet. App. 12a-13a, 33a-40a. Although that conviction occasioned petitioner's commitment to the Bureau of Prisons' custody, it was not the basis of the district court's civil-commitment order. At bottom, petitioner disagrees with the lower courts' conclusion that his SORNA conviction played a minor part in the district court's civil-commitment analysis, see Pet. 18, but that factbound disagreement does not warrant review.

c. For a related reason, even if the question petitioner raises about the Rule 60(b)(5) standards otherwise warranted review, this case would be an unsuitable vehicle to address it. Several courts of appeals, including the Fourth Circuit, have

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[4] To the extent petitioner also suggests (Pet. 24) that the court of appeals erred by considering finality of federal-court decisions as a factor in its Rule 60(b) analysis, that criticism is misplaced. Consistent with this Court's Rule 60(b) precedents, the court of appeals appropriately considered finality concerns alongside other factors. See, e.g., Inmates of Suffolk Cty. Jail, 502 U.S. at 389 (explaining that a standard under which "a clarification in the law automatically opens the door for relitigation of the merits of every affected consent decree would undermine the finality of such agreements").

explained that a movant seeking Rule 60(b) relief must (among other things) demonstrate that he has a "meritorious defense" (or claim), thereby ensuring that reopening the judgment will not be a "futile gesture." Boyd v. Bulala, 905 F.2d 764, 769 (4th Cir. 1990) (per curiam); see, e.g., Marino v. DEA, 685 F.3d 1076, 1079-1080 (D.C. Cir. 2012); United States v. Kayser-Roth Corp., 272 F.3d 89, 95-96 (1st Cir. 2001).

Here, that requirement would likely preclude relief because the subsequent vacatur of petitioner's SORNA conviction did not affect either the district court's jurisdiction to enter the civil-commitment order or the basis for its reasoning in doing so. See pp. 14-23, supra. Section 4248(a) was enacted to prevent dangers to the public that would result from the release of persons who were in Bureau of Prisons custody and often would not be taken into custody by a State if released. See Comstock, 560 U.S. at 142-143. Section 4248(a) therefore applies only if a person is in the custody of the Bureau of Prisons at the time the government certifies that the person is sexually dangerous. Vacatur of petitioner's SORNA conviction in 2016 did not alter the fact that he was in custody when the government certified him as a sexually dangerous person in 2011. And the district court made clear that its Section 4248 analysis did not rest on that conviction. The question petitioner raises regarding Rule 60(b)(5) therefore would likely lack practical significance in this case.

3. No other consideration warrants this Court's review of the issues petitioner raises. Petitioner acknowledges (Pet. 23) the absence of any lower-court conflict. He observes (ibid.) that, because all persons civilly committed under Section 4248 currently are housed at a federal facility in North Carolina, the issues he raises regarding Rule 60(b) are unlikely to arise in the specific context of Section 4248 civil-commitment proceedings outside the Fourth Circuit. The limited practical scope of the issues petitioner presents counsels against review. Moreover, petitioner's own arguments, especially concerning the standard for Rule 60(b)(5) relief, extend beyond the particular context of relief from civil-commitment orders under Section 4248. Yet petitioner has not identified any lower-court conflict even on the broader arguments he advances that could warrant this Court's review.

In any event, even in the context of Section 4248 proceedings in the Fourth Circuit, the issues petitioner raises have limited application and are not likely to recur frequently. We are aware of only one other case in a similar posture, United States v. Carr, appeal pending, No. 17-6853 (4th Cir.) (docketed July 6, 2017), in which another district court rejected similar arguments under Rule 60(b)(4) and (5), see United States v. Carr, No. 12-HC-2121, 2017 WL 2787706, at *2-*4 (E.D.N.C. June 27, 2017), appeal docketed, Carr, supra; see United States v. Carr, No. 17-6853 (4th Cir. Dec. 7, 2018) (placing appeal in abeyance pending disposition

of the petition for a writ of certiorari in this case). In addition, that case differs from this case in that the individual seeking relief was conditionally discharged from his commitment under 18 U.S.C. 4248(e)(2).[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[5] The parties' submissions below also discussed United States v. Schmidt, No. 16-HC-2076 (E.D.N.C. May 13, 2016), appeal dismissed, No. 16-6731 (4th Cir. July 5, 2018); see, e.g., Pet. App. 45a n.4; Gov't C.A. Br. 20-21 & n.3, but that case is not analogous. The district court in Schmidt initially dismissed for lack of jurisdiction the government's action seeking civil commitment of an individual on the ground that his criminal conviction for a federal sex offense had been vacated. Slip op. 1-4. The government appealed that ruling, but the appeal was overtaken when the vacatur of the individual's underlying conviction was itself reversed on appeal, see United States v. Schmidt, 845 F.3d 153 (4th Cir.), cert. denied, 138 S. Ct. 234 (2017); the government then voluntarily dismissed its appeal in the civil-commitment case as moot. The government filed a subsequent certificate seeking civil commitment, which the district court addressed (and rejected) on the merits. See United States v. Schmidt, 295 F. Supp. 3d 586, 589-595 (E.D.N.C. 2018). Neither of the district court's civil-commitment rulings in Schmidt addressed the application of Rule 60(b) in this setting.