

No. 25-453

IN THE
Supreme Court of the United States

STEPHEN K. BANNON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the D.C. Circuit

REPLY BRIEF FOR PETITIONER

M. EVAN CORCORAN
CORCORAN LAW GROUP
PLLC
1050 30th Street NW
Washington, DC 20007
(202) 853-6965
evan@corcoranlg.com

MICHAEL BUSCHBACHER
Counsel of Record
JENNIFER K. HARDY
WALKER FORTENBERRY
BOYDEN GRAY PLLC
800 Connecticut Ave. NW
Suite 900
Washington, DC 20006
(202) 955-0620
mbuschbacher@boydengray.com

REPLY BRIEF

The government acknowledges that Petitioner’s criminal prosecution was unjust. *See* Br. in Opp. 3. Fundamental separation of powers principles—which are essential to our constitutional framework—lead to one path forward. As both parties request, this Court should grant certiorari, vacate the lower court opinions, and direct the district court to dismiss the indictment with prejudice. *Trump v. United States*, 603 U.S. 593, 620 (2024) (recognizing the Executive Branch’s “exclusive authority and absolute discretion to decide which crimes to investigate and prosecute” (quotation marks omitted)).

The government does not dispute that the D.C. Circuit’s opinion below entrenched a *mens rea* standard that flouts the basic canons of statutory interpretation and deviates from more than a century of this Court’s precedent, a point that even judges ruling against Petitioner acknowledged. Nor does the government dispute that the decision below erroneously held that the government need not prove that the subpoena to Petitioner was issued in accordance with the congressional committee’s authorizing resolution.

Instead, after reviewing the petition, the government has “determined in its prosecutorial discretion that dismissal of this criminal case is in the interests of justice.” Br. in Opp. 3. Petitioner agrees. To effectuate that dismissal, the government has filed

a motion in the district court pursuant to Federal Rule of Criminal Procedure 48(a) seeking dismissal of the operative indictment with prejudice. *See United States v. Bannon*, No. 1:21-cr-00670 (D.D.C. Feb. 9, 2026), Dkt. 207. To enable the district court to grant that pending motion as swiftly as possible, this Court should grant the petition, vacate the judgment below, and remand to the district court forthwith. *See, e.g., Rinaldi v. United States*, 434 U.S. 22, 32 (1977) (“The judgment is vacated, and the case is remanded to the District Court for the purpose of dismissing the indictment.”); *see also* Br. in Opp. 4 (collecting cases). Petitioner is also waiving the remainder of the 14-day waiting period for distributing the petition. *See* Sup. Ct. R. 15.5.

Under these circumstances, the only other appropriate course would be to grant the petition and reverse on the merits. The government’s decision to dismiss an ill-conceived prosecution even at this late stage is commendable. But it also underscores that the D.C. Circuit’s errant interpretation of “willfully” in 2 U.S.C. § 192 continues to threaten “individual liberty and implicate the separation of powers between Congress and the Executive.” Pet.App.65a (Rao, J., dissenting from the denial of rehearing *en banc*).

CONCLUSION

This Court should grant the petition, vacate the D.C. Circuit's judgment, and remand to the district court for the purpose of granting the government's motion to dismiss.

Respectfully submitted,

M. EVAN CORCORAN
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PLLC
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Washington, DC 20007
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evan@corcoranlg.com

MICHAEL BUSCHBACHER
Counsel of Record
JENNIFER K. HARDY
WALKER FORTENBERRY
BOYDEN GRAY PLLC
800 Connecticut Ave. NW
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Washington, DC 20006
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