No. 25-__

IN THE
Supreme Court of the United States

DUANE LETROY BERRY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Congress has enacted several statutes that collectively provide for the involuntary civil commitment of certain individuals in "the custody" of the federal government. *See* 18 U.S.C. § 4246(a); *see also* §§ 4241-4248.

In *United States* v. *Comstock*, 560 U.S. 126 (2010), this Court examined the statutory scheme and concluded that Congress did not trespass constitutional limits in enacting the scheme because "[a]s the Solicitor General repeatedly confirmed at oral argument," the statutes' "reach is limited to individuals already 'in the custody of the' Federal Government." *Id.* at 148. All parties thus agreed that, unless a person is "either charged with or convicted of" a federal offense, the federal government cannot commit him. *Id.* at 138. Anything more would "confer[] on Congress a general 'police power, which the Founders denied the National Government and reposed in the States.'" *Id.* at 148.

Petitioner Duane Letroy Berry stands neither charged with nor convicted of a federal offense. Yet the federal government sought and obtained his commitment. The Fourth Circuit affirmed the commitment order because Berry had previously been charged with a crime, and despite the charge's dismissal months prior to his commitment, Berry remained in the federal government's physical custody.

The question presented is:

Whether 18 U.S.C. § 4246(a) exceeds the constitutional limits of Congress's powers insofar as it permits the federal government to civilly commit a person who

has not been convicted of a federal offense and whose federal criminal charge has already been dismissed.

PARTIES TO THE PROCEEDING

Duane Letroy Berry, petitioner on review, was the appellant before the United States Court of Appeals for the Fourth Circuit, and the respondent before the United States District Court for the Eastern District of North Carolina.

The United States of America, respondent on review, was the appellee before the United States Court of Appeals for the Fourth Circuit, and the petitioner before the United States District Court for the Eastern District of North Carolina.

RELATED PROCEEDINGS

While represented by counsel at all relevant times, Petitioner filed a number of pro se cases and appeals challenging his continued confinement. For completeness, those cases are included below.

United States Court of Appeals for the Fourth Circuit:

- *United States* v. *Berry*, No. 24-06385 (4th Cir.), judgment entered June 24, 2025
- *Berry* v. *Holland*, No. 17-6938 (4th Cir.), judgment entered October 30, 2017
- *Berry* v. *Holland*, No. 17-7348 (4th Cir.), judgment entered December 12, 2017
- *Berry* v. *Lloyd*, No. 17-7353 (4th Cir.), judgment entered December 12, 2017
- *Berry* v. *Scarantino*, No. 20-6786 (4th Cir.), judgment entered July 31, 2020
- *United States* v. *Berry*, No. 20-6893 (4th Cir.), judgment entered September 29, 2020
- *Berry* v. *Lloyd*, No. 20-7196 (4th Cir.), judgment entered October 19, 2020
- *United States* v. *Berry*, No. 20-7409 (4th Cir.), judgment entered December 29, 2020
- *United States* v. *Berry*, No. 21-7029 (4th Cir.), judgment entered September 29, 2021
- *In re Berry*, No. 22-2292 (4th Cir.), judgment entered February 9, 2023
- *United States* v. *Berry*, No. 22-6131 (4th Cir.), judgment entered May 24, 2022
- *United States* v. *Berry*, No. 22-6379 (4th Cir.), judgment entered August 26, 2022

- *United States* v. *Berry*, No. 22-6480 (4th Cir.), judgment entered August 26, 2022
- *In re Berry*, No. 23-2191 (4th Cir.), judgment entered January 25, 2024
- *United States* v. *Berry*, No. 23-6205 (4th Cir.), judgment entered April 25, 2023
- *United States* v. *Berry*, No. 23-6643 (4th Cir.), judgment entered August 29, 2023
- *In re Berry*, No. 24-1433 (4th Cir.), judgment entered June 5, 2024
- *United States* v. *Berry*, No. 24-6457 (4th Cir.), judgment entered August 22, 2024

United States Court of Appeals for the Sixth Circuit:

- *United States* v. *Berry*, No. 17-2168 (6th Cir.), judgment entered Dec. 19, 2018
- *Berry* v. *United States*, No. 16-2702 (6th Cir.), judgment entered June 21, 2017
- *United States* v. *Berry*, No. 16-2744 (6th Cir.), judgment entered August 3, 2017
- *Berry* v. *Daly*, No. 17-1584 (6th Cir.), judgment entered July 11, 2017
- *United States* v. *Berry*, No. 17-1856 (6th Cir.), judgment entered February 28, 2018
- *Berry* v. *Michigan*, No. 17-2202 (6th Cir.), judgment entered March 16, 2018
- *Berry* v. *United States*, No. 17-2205 (6th Cir.), judgment entered January 10, 2018
- *Berry* v. *United States*, No. 18-1221 (6th Cir.), judgment entered August 22, 2018

- *United States* v. *Berry*, No. 18-1257 (6th Cir.), judgment entered June 5, 2018
- *United States* v. *Berry*, No. 18-1355 (6th Cir.), judgment entered October 4, 2018
- *United States* v. *Berry*, No. 18-1506 (6th Cir.), judgment entered August 22, 2018
- *United States* v. *Berry*, No. 18-1533 (6th Cir.), judgment entered June 15, 2018
- *Berry* v. *Stephenson*, No. 18-1607 (6th Cir.), judgment entered February 20, 2019
- *Berry* v. *Stephenson*, No. 18-1733 (6th Cir.), judgment entered August 20, 2018
- *United States* v. *Berry*, No. 19-1246 (6th Cir.), judgment entered March 28, 2019
- *Berry* v. *Mich. Dept. of Health*, No. 19-1323 (6th Cir.), judgment entered July 15, 2019
- *United States* v. *Berry*, No. 19-1343 (6th Cir.), judgment entered May 17, 2019
- *United States* v. *Berry*, No. 19-1369 (6th Cir.), judgment entered May 17, 2019
- *United States* v. *Berry*, No. 19-1559 (6th Cir.), judgment entered March 24, 2020
- *United States* v. *Berry*, No. 19-1570 (6th Cir.), judgment entered July 26, 2019
- *United States* v. *Berry*, No. 19-1597 (6th Cir.), judgment entered July 26, 2019
- *United States* v. *Berry*, No. 19-1618 (6th Cir.), judgment entered July 26, 2019
- *United States* v. *Berry*, No. 19-2220 (6th Cir.), judgment entered December 2, 2019

- *United States* v. *Berry*, No. 22-1077 (6th Cir.), judgment entered April 26, 2022
- *In re Berry*, No. 23-1112 (6th Cir.), judgment entered March 24, 2023
- *United States* v. *Berry*, No. 23-1326 (6th Cir.), judgment entered May 26, 2023
- *United States* v. *Berry*, No. 23-1604 (6th Cir.), judgment entered September 14, 2023
- *United States* v. *Berry*, No. 23-1720 (6th Cir.), judgment entered April 5, 2024
- *In re Berry*, No. 23-1863 (6th Cir.), judgment entered November 6, 2023
- *United States* v. *Berry*, No. 23-1865 (6th Cir.), judgment entered October 25, 2023
- *United States* v. *Berry*, No. 23-2013 (6th Cir.), judgment entered February 1, 2024
- *In re Berry*, No. 23-2028 (6th Cir.), judgment entered July 29, 2024.

United States District Court for the Eastern District of North Carolina:

- *United States* v. *Berry*, No. 5:20-hc-02085 (E.D.N.C.), judgment entered April 19, 2024
- *Berry* v. *Holland*, No. 5:16-hc-2302 (E.D.N.C.), judgment entered June 28, 2017
- *Berry* v. *Holland*, No. 5:17-hc-2042 (E.D.N.C.), judgment entered July 31, 2017
- *Berry* v. *Scarantino*, No. 5:20-hc-2058 (E.D.N.C.), judgment entered September 16, 2020

- *Berry* v. *Scarantino*, No. 5:21-hc-2108 (E.D.N.C.), judgment entered June 28, 2021
- *Berry* v. *Lloyd*, No. 5:16-ct-3341 (E.D.N.C.), judgment entered July 24, 2017
- *Berry* v. *Lloyd*, No. 5:20-ct-3188 (E.D.N.C.), judgment entered July 15, 2020

United States District Court for the Eastern District of Michigan:

- *United States* v. *Berry*, No. 2:15-cr-20743 (E.D. Mich.), judgment entered Dec. 19, 2018
- *Berry* v. *Midland Cnty. Jail*, No. 2:17-cv-11154 (E.D. Mich.), judgment entered October 26, 2017
- *Berry* v. *Daly*, No. 2:16-cv-14495 (E.D. Mich.), judgment entered January 27, 2017
- *Berry* v. *Lawson*, No. 2:17-cv-11360 (E.D. Mich.), judgment entered May 25, 2017
- *Berry* v. *United States*, No. 2:17-cv-11361 (E.D. Mich.), judgment entered May 18, 2017
- *Berry* v. *Stephenson*, No. 2:18-cv-10451 (E.D. Mich.), judgment entered April 6, 2018
- *Berry* v. *Mich. Dept. of Health*, No. 2:19-cv-10397 (E.D. Mich.), judgment entered February 24, 2019
- *Berry* v. *Stephenson*, No. 2:18-cv-10586 (E.D. Mich.), judgment entered May 31, 2018
- *Berry* v. *U.S. Atty. Gen.*, No. 2:19-cv-10155 (E.D. Mich.), judgment entered March 14, 2019
- *Berry* v. *United States*, No. 2:16-cv-12041 (E.D. Mich.), judgment entered October 18, 2016

- *Berry* v. *U.S. Atty. Gen.*, No. 2:23-cv-11425 (E.D. Mich.), judgment entered January 2, 2024
- *Berry* v. *Third Circuit Court*, No. 2:17-cv-12738 (E.D. Mich.), judgment entered September 1, 2017
- *Berry* v. *Sessions*, No. 2:18-cv-11678 (E.D. Mich.), judgment entered July 9, 2018
- *Berry* v. *Stephenson*, No. 2:18-cv-10876 (E.D. Mich.), judgment entered April 30, 2018

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INTRODUCTION

This case presents a question with profound implications for personal liberty: whether the federal government can civilly commit people who are neither charged with nor convicted of a federal crime. Under this Court's precedents and bedrock principles of federalism, the answer to that question is "no." But according to the federal government and the Fourth Circuit, the answer is "yes."

The Constitution reposes in the States the general police power—that is, the power to legislate for the "promotion of safety of persons and property." *Kelley* v. *Johnson*, 425 U.S. 238, 247 (1976). The power to

care for people suffering from mental illness and, where necessary, the power "to protect the community from the danger[s]" associated with that illness, has long been handled first and foremost by the States. *See Addington* v. *Texas*, 441 U.S. 418, 426 (1979).

The federal government, by contrast, is "acknowledged by all, to be one of enumerated powers." *McCulloch* v. *Maryland*, 17 U.S. 316, 405 (1819). Federal civil commitment of the people suffering from mental illness is therefore constitutional only where it is a necessary and proper means of enforcing federal criminal laws. *United States* v. *Comstock*, 560 U.S. 126, 136, 148 (2010); *Greenwood* v. *United States*, 350 U.S. 366, 375 (1956). The federal government may, for example, civilly commit someone who "came legally into the custody of the United States," so long as "[t]he power that put him into such custody—the power to prosecute for federal offenses—is not exhausted" because "the pending indictment persists." *Id*. at 375. But it cannot commit those who are no longer in lawful federal custody, such as "a person who has been released from prison and whose period of supervised release is also completed." *Comstock*, 560 U.S. at 148 (quotation marks omitted).

In line with those principles, and for nearly all of American history, federal civil commitment has been limited to narrow classes of people uniquely within federal control, including persons accused or convicted of federal crimes. Any expansion of federal power beyond that transgresses "the constitutional underpinnings" of the federal government's limited "authority in the general field of lunacy." *United States* v. *Cohen*, 733 F.2d 128, 137 n.15 (D.C. Cir. 1984) (en banc) (Scalia, J.). There is "no justification whatsoever for

reading the Necessary and Proper Clause to grant Congress the power to authorize the detention of persons without a basis for federal criminal jurisdiction." *Comstock*, 560 U.S. at 176 (Thomas, J., dissenting).

For all these reasons, Petitioner Duane Berry's continued commitment is unconstitutional. Berry has not been proven guilty of a federal crime. He is no longer even accused of one. Yet ten years after the federal government arrested him for a crime punishable by a maximum of five years' imprisonment, Berry remains civilly committed, confined in a federal facility.

The Fourth Circuit gravely erred in sanctioning this detention. As the court below saw it, because the federal civil commitment scheme permits the commitment of a person in "the custody of the Attorney General," 18 U.S.C. § 4246(a), for "[d]etermination of mental competency to stand trial," *id.* § 4241, the government may lawfully commit someone *after* his charges are dismissed, as long as it initiates the civil commitment process within some "reasonable period" of time after dismissal, Pet. App. 10a–14a; *see also* 18 U.S.C. § 4246(a) (permitting civil commitment of an individual "against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person"). The Fourth Circuit's rule effectively greenlights the federal commitment of *anyone* in the federal government's physical custody, regardless of whether that custody is lawful.

To preserve the constitutional balance between state and federal power, the Court should grant certiorari. This case presents an ideal vehicle. This important constitutional question has been preserved at every stage of litigation. And the Fourth Circuit is home to the largest federal mental health facility in the

country: the Federal Medical Center Butner, located in the Eastern District of North Carolina. The great majority of all § 4246 certificates are thus adjudicated in the Fourth Circuit. Without this Court's review, the errant decision below all but nullifies similar future challenges to post-dismissal detention under § 4246.

Certiorari should be granted.

OPINIONS BELOW

The Fourth Circuit's decision (Pet. App. 1a–14a) is reported at 142 F.4th 184. The district court's decision civilly committing Berry under 18 U.S.C. § 4246 is at JA142.[1]

JURISDICTION

The Fourth Circuit entered judgment on June 24, 2025. Pet. App. 1a. The en banc court denied Berry's timely rehearing petition on August 25, 2025. Pet. App. 30a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

The relevant provisions of the statutory and constitutional provisions are reproduced at Pet. App. 31a–44a.

STATEMENT

A. Legal Background

1. The procedural rules associated with federal civil commitment are codified at 18 U.S.C. §§ 4241-4248. As relevant here, these statutes provide that, at any time during a criminal prosecution, either the

[1] "JA" refers to the joint appendix filed in the Fourth Circuit. *See* Dkt. Nos. 25-26 (Sep. 16, 2024).

defendant or the Government may request a hearing to determine the defendant's mental competency to stand trial. 18 U.S.C. § 4241(a). If there is reason to believe the defendant "may presently be suffering from a mental disease or defect rendering him mentally incompetent," the district court must schedule a hearing where it can determine the defendant's competence. *Id.*

If, after holding the competency hearing, the district court finds by a preponderance of the evidence that the defendant is mentally incompetent, the court "shall commit the defendant to the custody of the Attorney General." *Id.* at § 4241(d). The Attorney General must then "hospitalize the defendant" to assess whether there is a "substantial probability" of restoring competency. *Id.* at § 4241(d)(1). That hospitalization should "not . . . exceed four months," *id.*, but may be extended "for an additional reasonable period of time until" the defendant's "mental condition is so improved that trial may proceed," or "the pending charges against him are disposed of according to law"—"whichever is earlier," *id.* § 4241(d)(2)(A)-(B).

If the Attorney General wishes to continue hospitalization at the conclusion of that four-month period, the Attorney General generally must initiate civil commitment proceedings. 18 U.S.C. § 4246. Not every person may be subjected to civil commitment proceedings. Under § 4246(a), the government may seek commitment of only a person: (1) who is "in the custody of the Bureau of Prisons whose sentence is about to expire," (2) who "has been committed to the custody of the Attorney General pursuant to section 4241(d)," or (3) "against whom all criminal charges have been

dismissed solely for reasons related to the mental condition of the person." *Id.* § 4246(a).

The government must also establish that a person's mental illness substantially risks bodily injury to another person or serious damage to another person's property. 18 U.S.C. § 4246. The prison warden must attest that the person is "presently 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." *Id.* § 4246(d).[2] A person is then civilly committed only if—after holding a hearing—the district court finds by clear and convincing evidence that the government has met the statutory risk standard.

2. This Court has viewed the federal civil commitment scheme with some skepticism. "The Federal Government 'is acknowledged by all to be one of enumerated powers.'" *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 534 (2012) (quoting *McCulloch*, 17 U.S. at 405). Unlike the states, the federal government has no general police or *parens patriae* power. *United States* v. *Lopez*, 514 U.S. 549, 566 (1995). The Court has therefore repeatedly examined the federal civil commitment scheme, affirming its validity only to the extent that there is a close nexus between the federal civil commitment and a federal criminal prosecution.

In *Greenwood* v. *United States*, 350 U.S. 366 (1955), for example, this Court held that the federal

[2] Similarly, 18 U.S.C. § 4248 authorizes civil commitment if the court finds by clear and convincing evidence that the person is "sexually dangerous." The language of Section 4248 is, in pertinent part, identical to the language of Section 4246.

government may constitutionally commit an incompetent defendant with a "pending indictment" to restore his competency for trial.[3] Justice Frankfurter emphasized that "[t]he petitioner came legally into the custody of the United States" and "[t]he power that put him into such custody—the power to prosecute for federal offenses—is not exhausted," because "the pending indictment persists." *Id*. at 375. Such a "commitment, and therefore the legislation authorizing commitment in the context of this case," must be "within congressional power under the Necessary and Proper Clause." *Id*.

Similarly, in *United States* v. *Comstock*, a divided Court narrowly held that the government may civilly commit a sexually dangerous individual who has been convicted of a federal offense. 560 U.S. 126, 148 (2010).[4] The *Comstock* Court held that the federal government's civil commitment of these individuals was

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[3] At the time *Greenwood* was decided, § 4246 permitted the temporary, pre-trial commitment of an individual found incompetent to stand trial, and § 4248 permitted the further commitment of the same individual until the competency is "restored" or "so improved" that he is no longer dangerous, or until he could be released to "the State of his residence," "whichever event shall first occur." 350 U.S. at 369 n.4, 374.

[4] *Comstock* focused on § 4248, which "allows a district court to order the civil commitment of an individual who is currently 'in the custody of the Federal Bureau of Prisons,' if that individual (1) has previously 'engaged or attempted to engage in sexually violent conduct or child molestation,' (2) currently 'suffers from a serious mental illness, abnormality, or disorder,' and (3) 'as a result of' that mental illness, abnormality, or disorder is 'sexually dangerous to others,' in that 'he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.'" *Comstock*, 560 U.S. at 129 (quoting §§ 4248, 4247(a)(5)-(6)).

constitutional under the Necessary and Proper Clause because of "(1) the breadth of the Necessary and Proper Clause, (2) the long history of federal involvement in this arena, (3) the sound reasons for the statute's enactment in light of the Government's custodial interest in safeguarding the public from dangers posed by those in federal custody, (4) the statute's accommodation of state interests, and (5) the statute's narrow scope." *Id.* at 149.

With respect to the fifth factor, Justice Breyer's opinion for the Court highlighted the federal government's express agreement that it lacked the power to civilly commit individuals who were not in federal criminal custody. Justice Breyer explained that the Court need not "fear that our holding … confers on Congress a general 'police power, which the Founders denied the National Government and reposed in the States,'" because "the Solicitor General argues that 'the Federal Government would not have the power to commit a person who has been released from prison and whose period of supervised release is also completed." *Id.* at 148 (quoting *United States* v. *Morrison*, 529 U.S. 598, 618 (2000); Tr. of Oral Arg. 9). Instead, "[a]s the Solicitor General repeatedly confirmed at oral argument, § 4248 is narrow in scope," in that "its reach is limited to individuals already 'in the custody of the' Federal Government." *Id.* (quoting § 4248(a); Tr. of Oral Arg. 7, 24–25).

Justice Kennedy concurred in the judgment, emphasizing that "[t]he federal program in question applies only to those in federal custody," and is only "a discrete and narrow exercise of authority over a small class of persons already subject to the federal power." *Id.* at 154–155 (Kennedy, J., concurring). Justice Alito

likewise concurred in the judgment, reiterating that "Section 4248 was enacted to protect the public from federal prisoners" with a serious mental illness who are sexually dangerous. *Id.* at 155 (Alito, J., concurring).

Justice Thomas, largely joined by Justice Scalia, dissented, criticizing the majority's analysis and stating that it "perfunctorily genuflects to *McCulloch*'s framework for assessing Congress' Necessary and Proper Clause authority, and to the principle of dual sovereignty it helps to maintain, then promptly abandons both in favor of a novel five-factor test," that "cannot be reconciled with the [Necessary and Proper] Clause's plain text or with two centuries of our precedents interpreting it. *Id.* at 165–166 (Thomas, J., dissenting).

The dissenters also criticized the results of the "newly minted test," *id.* at 166, explaining that "§ 4248 does not bear that essential characteristic" of "help[ing] to carry into Execution the enumerated power that justifies the imposition of criminal sanctions on the inmate," *id*. at 170 (internal quotation marks and alterations omitted). Instead, the statute "permits the term of federal civil commitment to continue beyond the date on which a convicted prisoner's sentence expires or the date on which the statute of limitations on an untried defendant's crime has run," and "therefore authorizes federal custody over a person at a time when the Government would lack jurisdiction to detain him for violating a criminal law that executes an enumerated power." *Id.* In the dissenter's view, the Necessary and Proper Clause does not "authorize[] federal detention of a person even *after* the

Government loses the authority to prosecute him for a federal crime." *Id.* at 171.

B. Factual Background and Procedural History

1. In November 2015, a federal grand jury indicted Duane Berry for knowingly conveying false information or hoaxes in violation of 18 U.S.C. § 1038(a).

The criminal complaint accused Berry of planting a suitcase made to look like a bomb outside the Guardian Building in Detroit, where some employees for Bank of America work. The suitcase had wires protruding from it and contained a piece of paper stating "Attention!!! Fore Closed Bank of America," and several documents related to an ongoing dispute between Berry and Bank of America. Pet. App. 5a. Berry believed that he was the trustee of a trust that owns all of Bank of America's assets, and that it is his duty to execute the trust and repossess those assets.

Shortly after Berry's arrest and arraignment, the government moved for a competency evaluation pursuant to 18 U.S.C. § 4241(a). In December 2015, the district court granted that request. Order Granting Motion for Competency Examination, *United States* v. *Berry*, No. 2:15-cr-20743 (E.D. Mich. Dec. 23, 2015), Dkt. No. 19. A Bureau of Prisons forensic psychologist diagnosed Berry with a delusional disorder and opined that without treatment, including medication, he is unlikely to become competent to stand trial. After conducting a hearing, the district court agreed. Order of Commitment, *United States* v. *Berry*, No. 2:15-cr-20743 (E.D. Mich. Aug. 30, 2016), Dkt. No. 45.

In August 2016, the district court ordered that Berry be committed to the custody of the Attorney General

for competency restoration pursuant to 18 U.S.C. § 4241(d)(1). Berry was then transported from Michigan to North Carolina to be hospitalized at Federal Medical Center ("FMC") Butner for confinement and treatment. Order for Transportation, *United States* v. *Berry*, No. 2:15-cr-20743 (E.D. Mich. Sep. 26, 2016), Dkt. No. 49. Treatment at FMC Butner was unsuccessful. However, the doctors there reported that Berry's competency might be restored if he took an antipsychotic medication. Berry declined the medication.

In August 2017, the district court ordered that the medication be forcibly administered. Berry challenged that decision, and the Sixth Circuit vacated the forcible medication order. Order Authorizing Administration of Medication, *United States* v. *Berry*, No. 2:15-cr-20743 (E.D. Mich. Aug. 31, 2017), Dkt. No. 78; *United States* v. *Berry*, 911 F.3d 354 (6th Cir. 2018). While the parties litigated the medication order, Berry remained confined at FMC Butner. When the Sixth Circuit issued its decision, the panel observed that "Berry has already been confined for the length of time he likely would face as imprisonment if convicted." *Berry*, 911 F.3d at 357.

2. In February 2019, the government moved for leave to dismiss the indictment against Berry. Motion to Dismiss, *United States* v. *Berry*, No. 2:15-cr-20743 (E.D. Mich. Feb. 15, 2019), Dkt. No. 142. As the government explained, it sought "leave to dismiss the indictment" because "Berry is not competent to stand trial and cannot be restored to competency." *Id.*

Rather than rule on the government's motion, the district court ordered that Berry undergo another competency evaluation pursuant to 18 U.S.C.

§ 4241(a). Pet. App. 23a. In May 2019, the district court again ordered that Berry be committed to the custody of the Attorney General for a second attempt at competency restoration pursuant to 18 U.S.C. § 4241(d)(1). Berry was transferred to the Federal Medical Center in Fort Worth, Texas for this second round of confinement and treatment. But treatment at FMC Fort Worth was unsuccessful. Berry again refused medication, and the treatment team again concluded that the remaining available treatments were unlikely to restore his competency.

In December 2019, the district court granted the Government's motion to dismiss the indictment. Pet. App. 21a–22a. The court had again concluded that Berry was not competent to stand trial, and that his competency could not be restored. Pet. App. 15a–22a. And, as the court explained, "a criminal defendant may not be tried unless he is competent," and "there is little possibility" Berry can "be restored to competency." *Id.* at 20a. "Dismissal of the indictment on the government's motion, therefore, is appropriate." *Id.*[5]

3. Berry was not released following the dismissal of the criminal charge against him.

The district court instead granted the government's motion to initiate civil commitment proceedings under 18 U.S.C. § 4246, explaining that "Berry presently is in BOP custody and now 'all charges [against him] have been dismissed solely for reasons relating to [his] mental condition.'" *Id.* at 21a (quoting 18 U.S.C.

[5] Throughout his decade-long civil commitment, Berry has frequently filed pro se appeals, writs of mandamus, and habeas petitions. *See, e.g.*, *In re Berry*, No. 23-1112 (6th Cir.); *United States* v. *Berry*, No. 23-6643 (4th Cir.).

§ 4246(a)). Berry was transferred to FMC Butner for evaluation. The evaluators opined that Berry met the criteria for civil commitment under the statute. The Warden signed the certificate of mental disease or defect. And in May 2020, the government filed that certificate with the district court. JA13–17; *see* 18 U.S.C. § 4246(a).

Berry objected. JA18–32. As his motion to dismiss the certificate explained, he could not be committed under § 4246 because he did not meet any of the three statutory prerequisites for certification: (1) Berry had never been convicted of a crime, so he was not "a person in the custody of the Bureau of Prisons whose sentence is about to expire;" (2) Berry's charges had been dismissed months *before* the certificate issued, so he was no longer "committed to the custody of the Attorney General pursuant to section 4241(d);" and (3) the provision purporting to permit the government to detain a person "against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person" was unconstitutional and void. JA21; JA104–108.

The district court denied the motion to dismiss. In the district court's view, Berry was certifiable under § 4246 because he met the second statutory prerequisite: he was committed to the Attorney General's custody when the certificate was filed. JA109–123. The court declined to consider the constitutionality or applicability of the third category permitting certification of persons "against whom all charges have been dismissed solely for reasons related to the mental condition of the person." JA122.

The district court subsequently held a civil-commitment hearing, and formally ordered that—because his

mental illness made him a threat to property—Berry would be indefinitely civilly committed. JA142; JA194–202.

4. Berry appealed that decision to the Fourth Circuit. On appeal, Berry argued that the constitution does not permit the federal government to civilly commit people whose criminal charges have been dismissed.

The Fourth Circuit chose not to address the constitutional question. Instead it held that—even though Berry was indisputably a person against whom all criminal charges "have been dismissed solely for reasons related to [his] mental condition," *see* Order Granting Motions to Dismiss, *United States* v. *Berry*, No. 2:15-cr-20743 (E.D. Mich. Dec. 17, 2019), Dkt. No. 207 at 5—his civil commitment could be justified under the statute's second category, which allows for the confinement of people "committed to the custody of the Attorney General" for pre-trial competency evaluations. Pet. App. 4a.

In reaching that conclusion, the panel rejected the argument that the dismissal of charges should be treated as the end of Section 4241 custody. Pet. App. 12a–14a. In the court's view, treating the dismissal of criminal charges as the end of Section 4241 custody would frustrate the goal of "protect[ing] the public from dangerous individuals suffering from a mental illness." *Id*. at 13a. As the court of appeals saw it, the Attorney General must "maintain custody" over a former defendant "for some reasonable period" after "charges are dismissed," and civil commitment during that period is permissible under the statute. *Id*. at 11a-12a.

Berry sought rehearing en banc, which the Fourth Circuit denied. Pet. App. 30a.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. CERTIORARI IS WARRANTED TO CLARIFY THAT THE FEDERAL GOVERNMENT LACKS AUTHORITY TO CIVILLY COMMIT A PERSON WHOSE CRIMINAL CHARGES HAVE BEEN DISMISSED.

A. The Decision Below Is Wrong.

In *Comstock*, the Court cited five factors justifying its decision that § 4248 was a valid exercise of Congress's power under the Necessary and Proper Clause, including the "breadth" of the constitutional provision, the "history of federal involvement" in civil commitment, the statute's respect for "state interests," and the federal government's confirmation of the statute's "narrow scope." 560 U.S. at 149. Section 4246 purports to allow the federal government to civilly commit individuals whose "criminal charges have been dismissed" or who remain in "the custody of the Attorney General" following dismissal. 18 U.S.C. 4246(a). But those portions of the statute fail the *Comstock* test. The court of appeals gravely erred in holding that Congress possesses the power to civilly commit Berry despite the dismissal of criminal charges against him.

1. The Necessary And Proper Clause Is Not Broad Enough, And § 4246 Is Not Narrow Enough, To Permit Civil Commitment Of A Person Whose Federal Criminal Charges Have Been Dismissed.

The first and fifth *Comstock* factors suggest that § 4246's application to an individual whose charges have been dismissed is unconstitutional. The Necessary and Proper Clause is not so broad that it grants the federal government the authority to civilly commit an individual lacking a current connection to the federal criminal system. To the contrary, this Court's precedents in the civil commitment context hold that the Necessary and Proper Clause confers legislative power only in conjunction with one or more of the federal government's enumerated powers. *See Greenwood*, 350 U.S. at 375; *Comstock*, 560 U.S. at 148–149. So long as the federal government is enforcing laws that are validly enacted pursuant to an enumerated power, Congress is free to make laws necessary to that enforcement. *See Greenwood*, 350 U.S. at 375. Once the power to enforce that valid federal law has been exhausted, however, there is no longer an enumerated power to effectuate, and the Necessary and Proper Clause cannot justify further exercises of federal power. *See Comstock*, 560 U.S. at 148–149.

This Court has consistently rebuffed the federal government's attempts to push past that limit. Take, for example, *Greenwood* v. *United States*, 350 U.S. 366. In *Greenwood*, the government urged this Court to recognize a federal civil commitment power based on "[t]he duty of the federal government to provide care and custody for incompetents lawfully under its control." Brief for the United States at 37–40, *Greenwood*

v. *United States*, 350 U.S. 366 (1956). This Court declined to do so. As the Court explained, the civil commitment there was lawful—not because the government had custody of the individual—but because "[t]he power that put him into such custody," there, "the power to prosecute for federal offenses," was "not exhausted." 350 U.S. at 375. And for that reason, his commitment was "auxiliary to incontestable national power," the power to enforce federal criminal law. *Id.*; *see also id.* ("We cannot say that federal authority to prosecute has now been irretrievably frustrated.").

Greenwood's holding does not apply to an individual whose charges have been dismissed; after dismissal, the government's power to enforce the underlying criminal law has been "exhausted." *Id.* Continued detention therefore would not be "auxiliary" to the enforcement of the federal criminal law, or to any other enumerated power. *Id.*; *see also Comstock*, 560 U.S. at 175 (Thomas, J., dissenting) ("*Greenwood* * * * never endorsed the proposition that the Federal Government could rely on that statute to detain a person in the absence of a pending criminal charge or ongoing criminal sentence").

Comstock is much the same. In that case, the government again asked the Court to ground federal civil commitment power in the federal government's "plenary control over" the people it detained, arguing that "the exercise of federal custody alters the relationship of the government to an individual, conferring upon the government a greater degree of authority over the inmate himself and the management of his relationship to society." Brief for the United States at 30–31, *United States* v. *Comstock*, 560 U.S. 126 (2010); *see also United States* v. *Comstock*, 551 F.3d 274, 281 &

n.7 (4th Cir. 2009) (court of appeals noting the "expansive view" of the Government "that § 4248 requires only that a person is 'in custody' of the Bureau of Prisons, not that this custody is lawful").

But this Court declined to endorse the government's plenary-power theory, instead grounding the constitutionality of civil commitment of sexually dangerous individuals in "the federal authority that permits Congress to create federal criminal laws, to punish their violation, to imprison violators, to provide appropriately for those imprisoned, and to maintain the security of those who are not imprisoned but who may be affected by the federal imprisonment of others." *Comstock*, 560 U.S. at 149.

As illustrated by the number of times that the word "imprison" appears in that sentence, *Comstock* confirms that civil commitment can be a necessary and proper means to effectuate an unexhausted power to vindicate the violation of a federal criminal statute. The Necessary and Proper Clause cannot, however, permit the federal government to reach someone who is not "already 'in the custody of the' Federal Government," such as "a person who has been released from prison and whose period of supervised release is also completed." *Id*. at 148.

Greenwood and *Comstock* compel the conclusion that the dismissal of criminal charges severs the tie between the enumerated power giving rise to the original criminal prosecution and Congress's asserted federal authority to civilly commit an individual. Unless a person is "either charged with or convicted of" a federal offense, the federal government lacks authority to seek his commitment. *Comstock*, 560 U.S. at 138. And the dismissal of charges means that there is neither a

criminal conviction nor a pending criminal charge; the federal criminal power is "exhausted." *Greenwood*, 350 U.S. at 375. Thus, even the "broad authority" Congress exercises under the Necessary and Proper Clause cannot justify a statute with § 4246's scope. *Id.* at 133.

2. The History Of Federal Civil Commitment Demonstrates That The Federal Government Lacks The Power To Civilly Commit Individuals After Criminal Charges Have Been Dismissed.

History confirms what this Court's precedents teach. The *Comstock* Court emphasized that "Congress has long been involved in the delivery of mental health care to federal prisoners, and has long provided for their civil commitment," citing federal statutes as far back as 1855. *Id.* at 137–138. That history is limited to *prisoners*—people whom the federal government has incarcerated to punish and deter violations of federal law. There is no similar historical practice of federal civil commitment of people who lack a criminal connection to the federal government. For that reason, the second *Comstock* factor—historical practice—similarly counsels in favor of invalidating § 4246 insofar as it purports to permit the commitment of an individual whose charges have been dismissed.

a. For most of American history, civil commitment authority "reside[d] exclusively in the states." Note, *Federal Hospitalization of Insane Defendants Under Section 4246 of the Criminal Code*, 64 Yale L.J. 1070, 1070 (1955). This power "stems from Chancery's exercise of the doctrine of *parens patriae*." Caleb Foote, *A Comment on Pre-Trial Commitment of Criminal Defendants*, 108 U. Pa. L. Rev. 832, 836 (1960).

Federal civil commitment, by contrast, was limited to narrow classes of people uniquely within federal control, like federal military personnel and persons "*accused* or *convicted* of committing federal offenses." *Cohen*, 733 F.2d at 151 (MacKinnon, J., concurring); *see also Comstock*, 560 U.S. at 137–138 (summarizing federal statutes dating back to 1855).

Early Attorneys General carefully policed that line, issuing opinions that admonished other executive branch officials that federal prisoners could not be detained following the completion of a term of imprisonment. For example, in 1916, the Attorney General considered a statute authorizing the hospitalization of incompetents charged with federal crimes, Act of Feb. 7, 1857, ch. 36, § 5, 11 Stat. 157, 158, and explained that a prisoner can "be lawfully held in confinement because of the criminal charge or sentence;" outside of those circumstances, he must be "subject to the insanity laws and processes of the State, Territory, or district wherein he might be found and accused of insanity." *Commitment to Gov't Hosp. for the Insane,* 30 Op. Att'ys Gen. 569, 571 (1916).

b. Section 4246's predecessor was enacted in 1949. But in its original form, it permitted commitment only of convicted prisoners whose sentences are "about to expire" and defendants with "pending charges." *Greenwood*, 350 U.S. at 368 n.2 & n.3 (quoting the predecessor statute's text). Even with those limitations, courts immediately "questioned the Federal Government's power to detain a person in such circumstances." *Comstock*, 560 U.S. at 175 & n.14 (Thomas, J., dissenting) (collecting cases); *see also, e.g.*, *Dixon* v. *Steele,* 104 F. Supp. 904, 908 (W.D. Mo. 1952) (holding that the federal government lacked authority to

detain an individual declared incompetent to stand trial once it was determined that he was unlikely to recover).

Contemporaneous commentators similarly warned that Congress lacked the power to civilly commit someone whose charges had been dismissed. As one such scholar explained, "[c]ertainly the rationale for jurisdiction in the *Greenwood* case—that commitment is necessary and proper to the power to prosecute offenses—cannot be extended to a pre-trial * * * commitment whose 'pre-trial' nature becomes pure fiction where the criminal charge has been dropped or demonstrably cannot be maintained." Foote, *supra*, 108 U. Pa. L. Rev. at 840; *see also, e.g.*, Note, *Incompetency to Stand Trial*, 81 Harv. L. Rev. 454, 468 (1967) ("Since the power to commit an incompetent defendant derives from the authority to prosecute, commitment requires at a minimum the existence of a bona fide criminal accusation.") (internal quotation marks omitted). And as then-Judge Scalia opined, "once the criminal custody is terminated," "the constitutional underpinnings of federal treatment may also dissolve." *Cohen*, 733 F.2d at 137 n.15.

c. In 1984, Congress expanded the civil commitment statutes to apply to individuals "against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person." 18 U.S.C. 4246(a).

And in the years since, judges have questioned its validity. *See e.g.*, *United States* v. *Welsh*, 879 F.3d 530, 541 & n.3 (4th Cir. 2018) (Thacker, J., dissenting) (discussing "a never challenged provision permitting civil commitment of individuals 'against whom all criminal charges have been dismissed,'" and opining that

"extending *Comstock* to permit the commitment of the factually and legally innocent is a bridge too far"); Order, *United States* v. *Wayda*, No. 5:20-HC-2180-BO (E.D.N.C. Jan. 15, 2021), Dkt. No. 27 at 10 (finding unconstitutional the federal government's attempt to civilly commit people whose criminal charges had been dismissed). And for good reason. The civil commitment of individuals whose criminal charges have been *dismissed* lacks any historical pedigree.

3. There Are No Sound Reasons To Interfere With State Interests By Expanding Federal Authority.

Civil commitment of a person whose charges have been dismissed under § 4246 is also distinguishable from *Comstock* in that the third and fourth *Comstock* factors do not support its constitutionality. Section 4246 interferes with "state interests," and there are no "sound reasons" that would support the federal exercise of authority in this space. *Comstock*, 560 U.S. at 149.

The "general power of governing," commonly known as the "police power," belongs to the States. *Seblius*, 567 U.S. at 536. The police power includes the authority to legislate for the "promotion of safety of persons and property." *Kelley*, 425 U.S. at 247. As a result, "States possess primary authority for defining and enforcing the criminal law," *Lopez*, 514 U.S. at 561 n.3, and for "protect[ing] the community" from dangers associated with mental illness, *Addington*, 441 U.S. at 426; *see also, e.g.*, *Foucha* v. *Louisiana*, 504 U.S. 71, 96 (1992) (Kennedy, J., dissenting) ("In the civil context, the State acts in large part on the basis of its *parens patriae* power to protect and provide for an ill individual.").

By reading § 4246 to capture all people with a mental health condition who have been—but are no longer—the subject of a federal indictment, § 4246 broadens the scope of federal power beyond what the Constitution permits. That is not the balance of state and federal power that the *Comstock* Court endorsed. *See Comstock*, 560 U.S. at 143–144. Unlike with § 4248, where the Court found that "Congress could * * * have reasonably concluded" that "the Federal Government itself severed [a convicted prisoner's] claim to legal residence in any State by incarcerating them in remote federal prisons," *id.*, the pre-trial nature of commitment following dismissal of criminal charges under § 4246 offers no reason to think that an individual lacks a continuing connection to their state.

In the decision below, the Fourth Circuit attempted to justify § 4246 as necessary to the practical administration of the civil commitment scheme. As the court of appeals saw it, the Attorney General was permitted to maintain control over a former defendant for "a reasonable period" after charges are dismissed. Pet. App. 9a–13a. But administrability concerns cannot make an unconstitutional confinement constitutional. And there are easy fixes to the Fourth Circuit's conundrum: The state can make its own dangerousness assessment. And if the federal government must act, then it can do so prior to the dismissal of charges. The government often certifies a defendant's dangerousness while charges remain pending. *See, e.g.*, *United States* v. *Carrington*, 91 F.4th 252, 263 (4th Cir. 2024).[6]

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[6] Nor would a finding of unconstitutionality significantly interfere with the federal government's administration of the federal

The Fourth Circuit's view that the federal government's custody of a former defendant must extend beyond the dismissal of criminal charges is so extreme as to transform the Necessary and Proper Clause into a font of police power. It cannot be correct. *C.f. Reid* v. *Covert*, 354 U.S. 1, 20 (1957) (labeling as "extreme" the theory that, based on the Necessary and Proper Clause, Congress could "subject[] persons who made contracts with the military to court-martial jurisdiction with respect to frauds related to such contracts").

B. Certiorari Is Warranted Now.

1. The Question Presented Is Important.

"[C]ivil commitment for any purpose constitutes a significant deprivation of liberty" that can have a "very significant impact on the individual." *Addington*, 441 U.S. at 425–426. "The loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement," as commitment to a mental hospital generally includes "[c]ompelled treatment in the form of mandatory behavior modification

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civil commitment scheme. "It has long been settled that one section of a statute may be repugnant to the Constitution without rendering the whole act void." *Seila Law LLC* v. *Consumer Fin. Prot. Bureau*, 591 U.S. 197, 233 (2020) (internal quotation marks omitted). Thus, a ruling invalidating the portion of § 4246 that purports to authorize the civil commitment of persons whose criminal charges have been dismissed will not invalidate the entirety of the civil commitment statute. Even if the Court agreed with Berry's view of the statute, the federal government would retain the ability to commit individuals in "the custody of the Bureau of Prisons whose sentence is about to expire" (the portion of § 4246 that mirrors the language approved in *Comstock*), and individuals "committed to the custody of the Attorney General" for pretrial competency restoration whose criminal charges remain pending.

programs" and "can engender adverse social consequences to the individual." *Vitek* v. *Jones*, 445 U.S. 480, 492 (1980) (internal quotation marks omitted).

Worse, this loss of liberty is potentially infinite. There is no temporal limit on federal civil commitment—as illustrated by the fact that Berry already has been confined by the federal government for twice the amount of time that would have been permissible had he been tried and convicted of the crime for which he was charged. *Compare* Pet. App. 5a (noting Berry has been detained since 2015) *with* 18 U.S.C. § 1038(a)(1)(A) (noting that Berry's former charge of conveying false information and hoaxes, where no bodily injury results, is punishable by a maximum of "5 years"). *See also* 18 U.S.C. § 4244(a)-(d) (Where a defendant is civilly committed after being convicted but "prior to the time [he] *** is sentenced," "[s]uch a commitment constitutes a provisional sentence of imprisonment to the maximum term authorized by law for the offense for which the defendant was found guilty.")

Still worse, Berry has not been convicted of a federal crime, and he is *no longer even accused of one*. A district court adjudged him a risk of "damage to *** property"—not people—based on nothing more than the government's say-so. JA194. There was no innocent until proven guilty. *Victor* v. *Nebraska*, 511 U.S. 1, 29 (1994) (Blackmun., J., concurring in part). There was no jury of his peers. *Ramos* v. *Louisiana*, 590 U.S. 83, 93 (2020). There was no proof beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970). And yet, the federal government has confined Berry with no prospect of future release.

For all these reasons, the federal government's civil commitment power must be jealously guarded against abuse.

2. The Question Presented Is Recurring.

Although the government does not often seek to commit an individual whose criminal charges have been dismissed or whose federal custody is otherwise questionable, it does happen. *See United States* v. *Payne*, 623 F. App'x 829 (8th Cir. 2015); *United States* v. *Combs*, 327 F. App'x 429 (4th Cir. 2009); *United States* v. *Copley*, 63 F. App'x 692 (4th Cir. 2003); *United States* v. *Sahhar*, 56 F.3d 1026 (9th Cir. 1995); *Ecker* v. *United States*, 527 F. Supp. 2d 199, 201 (D. Mass. 2007); *United States* v. *Wayda*, No. 5:20-HC-2180-BO (E.D.N.C. Jan. 15, 2021), ECF No. 27.[7]

Berry's case is thus not an outlier. The government reads § 4246 to permit the civil commitment of anyone in the physical custody of the federal government—regardless of whether that "custody is lawful." *Comstock*, 551 F.3d at 281 & n.7; *see also id.* (collecting cases exemplifying the federal government's "expansive view of 'custody'" and noting that it would extend

[7] In only one such case did the district court address the constitutional question, and there, the court found unconstitutional the federal government's attempt to civilly commit an individual whose criminal charges had been dismissed. *United States* v. *Wayda*, No. 5:20-HC-2180-BO (E.D.N.C. Jan. 15, 2021), ECF No. 27 at *10. The court reasoned that persons whose charges have been dismissed are, "at the time of the dismissal of their criminal charges, untethered to the federal custody status on which the *Comstock* court so heavily relied." *Id.* at 7. And a dangerousness certification could come "days, weeks, months, or, most concerningly, years after the dismissal of criminal charges due to mental condition," creating a "general federal police power." *Id.* at 10. The government did not appeal that decision.

to "material witnesses, civil contempt detainees, and individuals in immigration detention"). And the federal government has exercised that purported authority. Unless this Court intervenes, this will happen again.

Review of the Fourth Circuit's decision in this case is also appropriate in light of recent changes to the geographic distribution of the proceedings that the government has initiated under § 4246. There are only four facilities within the federal Bureau of Prisons that are suitable for evaluating and treating mentally incompetent detainees. Decl. of Tanya Cunic, *United States* v. *Berry*, No. 5:20-HC-2085 (E.D.N.C. Mar. 5, 2021), Dkt. No. 41-1 at 4 ¶ 11. The government has indicated that, since the pandemic, two of those facilities serve only convicted and sentenced inmates. *Id.* at 5 ¶ 12. And of the remaining two, the Federal Correctional Complex in Butner, North Carolina, houses the vast majority of individuals who have been detained for purposes of evaluation or restoration. *Id.* at 5–6 ¶ 14–15. Indeed, "FMC Butner completed approximately two-and-a-half times the number of studies completed by other facilities during 2020." *Id.* at 6 ¶ 16.

As a result, most of the individuals who have been certified for indefinite commitment under § 4246 and its sister statute, § 4248, are housed at Butner, and the great majority of all § 4246 and § 4248 certificates have been filed in the Eastern District of North Carolina. *See id.* at 4–7 ¶ 11–16; *see also e.g. Carrington*, 91 F.4th 252; *United States* v. *Wayda*, 966 F.3d 294 (4th Cir. 2020); *United States* v. *Timms*, 664 F.3d 436, 440 (4th Cir. 2012). Thus, in the absence of further

review by this Court, the Fourth Circuit's decision will largely nullify constitutional challenges to § 4246.

3. This Is An Excellent Vehicle.

The constitutional question is well preserved. Both in the district court and at the Fourth Circuit, Berry has consistently pressed the argument that Section 4246—which, again, purports to cover people whose federal charges have been dismissed—falls outside of the "few and defined" powers granted to the federal legislature. *See* JA105 ("Berry reiterates . . . his argument that the third category of persons described in section 4246(a) is unconstitutional."); Opening Br., *United States* v. *Berry*, (4th Cir. Sep. 16, 2024), Dkt. No. 24 at 1 ("18 U.S.C. § 4246 purports to authorize certification of people against whom all charges have been dismissed because they are incompetent; but the Federal Government may not certify people who are not in its legal custody for civil commitment."); *Id.* ("The Federal Government thus exceeds the bounds of its authority when it seeks to civilly commit individuals who are presumed innocent, are no longer in lawful competency and restoration proceedings with an eye toward trial, and against whom all federal charges have been dismissed.").

The court of appeals sought to avoid the constitutional question by positing that Berry could be understood to be an individual "who has been committed to the custody of the Attorney General" for pretrial competency restoration. Pet. App. 8a–9a (citing 18 U.S.C. § 4246). The Fourth Circuit focused on the length of time that had passed between December 2019 (when Berry's indictment was dismissed) and May 2020 (when the government later sought Berry's civil commitment), opining that the delay between the

dismissal and the issuance of a § 4246 certificate was not so long that it ended the federal government's custody of Berry under the pretrial competency restoration statute. Pet. App. 10a–12a. There was, however, no avoiding the constitutional question, because of the undisputed factual predicate the Fourth Circuit largely failed to acknowledge: *Berry's indictment had been dismissed for nearly half a year*. The statute prescribes no "reasonable period" *following dismissal of an indictment* during which commitment proceedings may be pursued. Nor could that possibly hold water under the Necessary and Proper Clause.

This case is an ideal vehicle. The constitutional question is squarely presented and cannot be avoided on the facts—making Supreme Court review both timely and necessary.

II. ALTERNATIVELY, THIS COURT SHOULD SUMMARILY REVERSE.

The Fourth Circuit's decision so plainly conflicts with this Court's precedents that the Court should, in the alternative, summarily reverse. The Fourth Circuit's decision "reflects a clear misapprehension" of this Court's precedents. *Tolan* v. *Cotton*, 572 U.S. 650, 659 (2014) (per curiam). The decision extends federal civil detention authority far beyond those "either charged with or convicted of any federal offense," *Comstock*, 560 U.S. at 138, and long after "the power to prosecute for federal offenses" is "exhausted," *Greenwood*, 350 U.S. at 375. Yet the panel did not even *consider* those precedents before sanctioning Berry's continued commitment. That alone warrants summary reversal.

This case sets a disturbing precedent. Berry remains in federal detention, indefinitely civilly committed,

despite having committed no crime and not qualifying for civil commitment under the scheme that this Court just barely approved in *Comstock*. This Court has already made clear that federal civil commitment must bear a close relationship to federal criminal enforcement. The Fourth Circuit severed that tie when it upheld civil commitment in the absence of a valid charge or conviction. That is a dangerous step. And it is not one our Founders would have accepted.

CONCLUSION

The petition for a writ of certiorari should be granted and the decision below reversed.

Respectfully submitted,

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