No. 25-833

In the Supreme Court of the United States

DUANE LETROY BERRY, 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

In 18 U.S.C. 4246, Congress provided for the civil commitment of persons in federal custody suffering from mental illness whose release would create a substantial risk of bodily injury or serious property damage. The question presented is:

Whether Congress acted within its Article I powers in enacting 18 U.S.C. 4246, to the extent that it authorizes court-ordered civil commitment of a person who is already in lawful federal custody but whose criminal charges were dismissed before trial because the person's competency to stand trial could not be restored.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 142 F.4th 184. The sealed order of the district court (Pet. App. 45a-56a) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on June 24, 2025. A petition for rehearing was denied on August 25, 2025 (Pet. App. 30a). The petition for a writ of certiorari was filed on November 21, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case concerns the longstanding federal statutory framework that provides "for the civil commitment of individuals who are, or who become, mentally incompetent at any time after their arrest and before the expiration of their federal sentence." *United States* v. *Comstock*, 560 U.S. 126, 140 (2010). The provisions at

issue here are 18 U.S.C. 4241 and 4246, which together authorize court-ordered commitment of persons found to be mentally incompetent to stand trial, but whose release would create a substantial risk of bodily injury or serious property damage due to their mental illness.

Section 4241 provides that, at any time between the commencement of a federal prosecution and the completion of any sentence, if the district court determines that a defendant is "presently suffering from a mental disease or defect rendering him mentally incompetent" to stand trial or to undergo post-release proceedings, the court must commit the defendant to the custody of the Attorney General, who "shall hospitalize the defendant for treatment." 18 U.S.C. 4241(d). That hospitalization can occur only "for such a reasonable period of time, not to exceed four months," as is needed to determine if there is a substantial chance that the defendant will regain competency. 18 U.S.C. 4241(d)(1). The hospitalization may also be extended "for an additional reasonable period of time" until the defendant regains competency, or until the pending charges "are disposed of according to law." 18 U.S.C. 4241(d)(2). At the end of that additional period, if the court determines that the defendant is still incompetent, he is "subject to the provisions of section[ ] 4246." 18 U.S.C. 4241(d).

Section 4246, in turn, authorizes civil-commitment proceedings against three categories of persons: (1) "a person in the custody of the Bureau of Prisons whose sentence is about to expire," (2) a person "who has been committed to the custody of the Attorney General pursuant to section 4241(d)," or (3) a person "against whom all criminal charges have been dismissed solely for reasons related to [his] mental condition." 18 U.S.C. 4246(a). A commitment proceeding under Section 4246 is initi-

ated when the director of the facility in which such a person is hospitalized certifies to the federal district court for the district of confinement 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," and that "suitable arrangements for State custody and care of the person are not available." 18 U.S.C. 4246(a).

The filing of a certificate of dangerousness "stay[s] the release" of the person from federal custody "pending completion of [the] procedures" set out in Section 4246. 18 U.S.C. 4246(a). Those procedures include an opportunity for the district court to order a psychiatric or psychological examination, as well as a district court hearing to determine whether the person's release would in fact create the requisite risk of bodily injury or serious property damage. 18 U.S.C. 4246(a)-(c); see 18 U.S.C. 4247(b). At the hearing, the respondent is entitled to representation, including by appointed counsel, and must be given an opportunity to testify and to present and cross-examine witnesses. 18 U.S.C. 4247(d); see 18 U.S.C. 4246(c).

If, after the hearing, the district court finds that the government has proved "by clear and convincing evidence" that in light of the person's current "mental disease or defect" his "release would create a substantial risk of bodily injury to another person or serious damage to property of another," then the person is committed to the custody of the Attorney General. 18 U.S.C. 4246(d). At that point, the Attorney General must "release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care,

and treatment." *Ibid.* The Attorney General must "make all reasonable efforts to cause such a State to assume such responsibility." *Ibid.* But if the State will not assume custody, the Attorney General must "hospitalize the person for treatment in a suitable facility" until either the State assumes responsibility for him or the person's release "would not create a substantial risk of bodily injury to another person or serious damage to property of another." *Ibid.*

Once a person is committed to a federal facility under Section 4246, the director of that facility must "prepare annual reports" about the person's mental condition, as well as "recommendations concerning the need for his continued commitment." 18 U.S.C. 4247(e)(1)(B). If the director determines that the committed person "has recovered from his mental disease or defect to such an extent that his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another," the director must promptly notify the court that ordered the confinement. 18 U.S.C. 4246(e). The court must then either order the person's discharge or hold a hearing to determine whether he should be released and, if so, under what conditions. *Ibid.* Additionally, even without the director's recommendation, a confined person's counsel or legal guardian may move the court for a "hearing to determine whether the person should be discharged" at any point beginning 180 days after a confinement order. 18 U.S.C. 4247(h).

2. In 2015, a federal grand jury in the Eastern District of Michigan indicted petitioner on one count of conveying false information and hoaxes in violation of 18 U.S.C. 1038(a). Pet. App. 5a, 24a. The indictment alleged that petitioner had planted a briefcase made to

look like a bomb outside of a Bank of America office in downtown Detroit. *Id.* at 24a. A bomb squad opened the briefcase and found documents evincing an ongoing dispute between petitioner and Bank of America. *Ibid.* In addition to the bomb-threat incident, petitioner is believed to have vandalized several Bank of America branches in the Detroit area, including by spraying ATMs with glue and marking entrances with a large X. See *id.* at 24a. According to petitioner's filings and statements, he believes that he is the "primary trustee" of a trust that owns "every Bank of America branch and asset around the world" and that he has been tasked with "repossession" of those assets. *Ibid.* Petitioner has also expressed a belief that "he is a government agent and thus is immune from federal prosecution for any acts the government claims he has committed." *United States* v. *Berry*, 911 F.3d 354, 358 (6th Cir. 2018).

Shortly after petitioner's arrest in 2015, the Michigan district court ordered a competency examination. Pet. App. 25a. A Bureau of Prisons (BOP) psychologist examined petitioner and determined that he suffers from a delusional disorder. *Ibid.* Following a hearing, the court found petitioner not competent to stand trial and ordered him committed to the Attorney General's custody under Section 4241(d)(1) to assess the likelihood that he would regain competency in the foreseeable future. *Id.* at 6a, 25a.

During that period of hospitalization, petitioner refused to take prescribed antipsychotic medication, and the Michigan district court ordered the involuntary administration of medication. Pet. App. 25a-26a. In 2018, the Sixth Circuit vacated the involuntary-medication order on the ground that the government had not established a "sufficient interest in prosecuting" petitioner to

warrant "involuntary medication." *Berry*, 911 F.3d at 366. Among other factors, the Sixth Circuit emphasized the "strong likelihood" that petitioner would meet the requirements for civil commitment under Section 4246 because his release would create a "'substantial risk'" of significant property damage. *Id.* at 365 (citation omitted).

Following the Sixth Circuit's decision, the Michigan district court ordered a new competency evaluation, as significant time had passed since the initial evaluation in 2015. Pet. App. 26a. Another BOP psychologist determined that petitioner continued to suffer from a delusional disorder. *Id.* at 27a. Following a second hearing, in September 2019, the court found that petitioner remained not competent to stand trial and ordered him committed to the Attorney General's custody under Section 4241(d), "for a reasonable period * * * not to exceed four months," to assess the probability that petitioner would regain competency. *Id.* at 27a-29a; see 18 U.S.C. 4241(d)(1).

In December 2019—less than four months later—the Michigan district court found that petitioner "cannot be restored to competency" because he would "not agree to treatment" for his delusional disorder. Pet. App. 20a. The court therefore granted the government's motion to dismiss the indictment against petitioner on the ground that petitioner is not competent to stand trial and cannot be restored to competency. *Id.* at 20a-21a. But because petitioner's "delusion appears to have propelled him to engage in acts of vandalism and threatening conduct against the object of his delusion," the court found that petitioner's release from federal custody could pose a risk of serious property damage or bodily injury. *Id.* at 21a. The court thus referred petitioner for

a civil-commitment determination under Section 4246. *Id.* at 21a-22a; see 18 U.S.C. 4241(d).

3. In March 2020, petitioner was admitted to a BOP facility in North Carolina for evaluation. Pet. App. 7a. Following that evaluation, the facility's director certified that petitioner's release would create a "'significant risk of harm to others due to his mental illness'" and that "suitable arrangements for State custody and care" were not available. *Ibid.* (citation omitted); see *id.* at 46a. In May 2020, the government filed that certificate in the United States District Court for the Eastern District of North Carolina, initiating a civil-commitment proceeding against petitioner under Section 4246. C.A. App. 13.

Petitioner moved to dismiss the Section 4246 proceeding, arguing that "he does not fall within any of the designated categories of persons to which § 4246 applies." C.A. App. 112; see *id.* at 18-29, 104-107. The North Carolina district court denied petitioner's motion. *Id.* at 123. The court held that petitioner fell within Section 4246(a)'s second category, which authorizes the civil commitment of persons who are "committed to the custody of the Attorney General pursuant to section 4241(d)" at the time of certification. *Id.* at 122 (quoting 18 U.S.C. 4246(a)). The court therefore declined to reach petitioner's argument that Section 4246's third category—which authorizes the commitment of a person "'against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person'"—is "unconstitutional." *Ibid.* (quoting 18 U.S.C. 4246(a)).

Following a hearing, the North Carolina district court found by clear and convincing evidence that petitioner's release from federal custody would create a

substantial risk of serious property damage due to his untreated mental illness. Pet. App. 45a-56a. The court ordered petitioner committed to the Attorney General's custody under Section 4246(d). *Id.* at 56a.

4. a. The Fourth Circuit affirmed. Pet. App. 1a-14a. The court held that petitioner fell within the second category of persons authorized to be committed under Section 4246: those "'committed to the custody of the Attorney General pursuant to section 4241(d)' when the § 4246 proceedings began." *Id.* at 9a. It then rejected each of petitioner's contrary arguments, including petitioner's contention that he did not fall within the second category because the Michigan district court's latest Section 4241(d) order had "expired" when the criminal charges against him were dismissed. See *id.* at 11a-14a.

The court of appeals explained that petitioner's argument rested on a misreading of Section 4241(d)(2). Pet. App. 12a. That provision authorizes the Attorney General to hospitalize a defendant "for an additional reasonable period of time" after the initial four-month competency hospitalization period, but it further provides that the hospitalization must end if "pending charges against him are disposed of according to law." 18 U.S.C. 4241(d)(2). The court explained that Section 4241(d)(2) required only "that this 'additional reasonable period of time' for restoring competency" must end upon the dismissal of criminal charges, not that "any kind of custody under § 4241 for any purpose ends altogether" upon their dismissal. Pet. App. 13a. The court further reasoned that petitioner's interpretation would make no sense of the final sentence of Section 4241(d), which provides that at the end of a person's hospitalization, he will be "subject to the provisions of section 4246"—provisions that in practice require a person to

be in federal custody. *Ibid.* (quoting 18 U.S.C. 4241(d)). And the court explained that petitioner's reading would undermine Congress's aim of "protect[ing] the public from dangerous individuals suffering from a mental illness." *Ibid.*

The court of appeals noted that petitioner had also challenged the constitutionality of the third category of individuals eligible for civil commitment under Section 4246(a): those "against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person." Pet. App. 8a-9a (quoting 18 U.S.C. 4246(a)). Petitioner had argued that he could not constitutionally be committed under that category because "the federal government lacks the power to civilly commit individuals who are no longer in its legal custody." *Ibid.* But because the court determined that petitioner was "in lawful custody under § 4241 at the time the § 4246 certificate was filed," *id.* at 14a, it "disagree[d] with [petitioner's] premise" and thus had no occasion to "consider whether it would be constitutional to commit him under the dismissed charges category." *Id.* at 9a.

b. The court of appeals denied petitioner's request for rehearing en banc, with no judge calling for a poll. Pet. App. 30a.

ARGUMENT

Petitioner contends (Pet. 15-24) that Congress lacks power under Article I of the Constitution to authorize the court-ordered civil commitment of a person who is lawfully in federal custody pursuant to 18 U.S.C. 4241(d) but whose federal criminal charges have previously been dismissed. That contention was neither pressed nor passed upon below, making this case unsuitable for the Court's review. In all events, peti-

tioner's unpreserved contention is foreclosed by the reasoning of this Court's decision in *United States* v. *Comstock*, 560 U.S. 126 (2010), which sustained the constitutionality of a closely related statutory provision, and by Congress's long history of providing for civil commitment of persons in federal custody. Moreover, the question presented implicates no conflict among the courts of appeals warranting this Court's review. The Court should deny the petition.

1. As an initial matter, this Court should not consider petitioners' claim because this Court is "a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005), and its "traditional rule * * * precludes a grant of certiorari" on a question that "'was not pressed or passed upon below,'" *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (citation omitted). See *Zivotofsky* v. *Clinton*, 566 U.S. 189, 201 (2012) (declining to review a claim "without the benefit of thorough lower court opinions to guide our analysis of the merits").

Before this Court, petitioner contends (Pet. 16) that Section 4246 is unconstitutional as applied to any "individual whose charges have been dismissed." That is different from the argument he advanced below. In the court of appeals, petitioner argued only that Section 4246(a)'s *third* category—its "post-dismissal certification clause"—is unconstitutional. Pet. C.A. Br. 19; see, *e.g.*, *id.* at 23; Pet. C.A. Reply Br. 2; see also C.A. App. 122. In Part II of his brief, petitioner contended that the second category—for persons in the Attorney General's custody pursuant to Section 4241(d)—did not apply to him as a matter of statutory interpretation. Pet. C.A. Br. 23-28. But he did not argue that if he did fall within the second category as a person in the Attorney General's custody, the application of Section 4246 would

be unconstitutional—even though he was on notice of the potential need for such an argument, since the district court had already held that he was in the second category. See C.A. App. 122. On the contrary, petitioner's theory in the court of appeals was that the constitutionality of applying the civil-commitment statutes turns on whether the person in question is in "lawful federal custody." Pet. C.A. Br. 14; see *id.* at 15 ("[F]ederal civil commitment statutes may only be invoked against individuals who are in federal custody."); Pet. C.A. Reply Br. 4 (discussing the "centrality of legal federal custody" under *Comstock*); *id.* at 1, 5. To the extent that petitioner contended that the government had "unreasonably delayed filing the post-dismissal certification," Pet. C.A. Br. 25; see *id.* at 25-28, that was a statutory argument about the lawfulness of his custody at the time of certification, not a constitutional argument about Congress's powers under Article I.

The court of appeals rejected petitioner's reading of the statute, holding that petitioner *did* "remain[] in lawful custody under § 4241 at the time the § 4246 certificate was filed," and that he therefore fell within Section 4246(a)'s second category. Pet. App. 14a. The court therefore had no occasion to reach petitioner's constitutional challenge to Section 4246(a)'s third category. *Id.* at 9a; see also *id.* at 1a ("[W]e are satisfied that the statutory provisions have been faithfully followed by the relevant authorities."). Although petitioner suggests (Pet. 28-29) that the facts of his case should have precluded any attempt to avoid deciding the constitutional question, the court reasonably declined to address petitioner's sole constitutional argument on the ground that it was no longer relevant once the court had rejected its "premise"—that petitioner could be eligible for commit-

ment only under Section 4246(a)'s third category. Pet. App. 9a.

Petitioner does not ask this Court to review the court of appeals' statutory interpretation or its determination that, when the government initiated civil-commitment proceedings against him, he was still in lawful federal custody pursuant to Section 4241(d). Instead, he pivots (Pet. 15-24) to a new argument: that Section 4246 is unconstitutional as applied even to persons who are lawfully in federal custody pursuant to 18 U.S.C. 4241(d), if their federal criminal charges have been dismissed. Because petitioner did not make that argument below—and in fact indicated that lawful federal custody should itself be dispositive of the constitutional question—no court below considered it. This Court should not be the first to do so. See *Zivotofsky*, 566 U.S. at 201.

2. In all events, petitioner's unpreserved constitutional objection lacks merit. Under a straightforward application of this Court's decision in *Comstock*, Congress acted well within its powers under the Necessary and Proper Clause in authorizing the civil commitment of a person lawfully committed to the Attorney General's custody under Section 4241(d), even when the criminal charges against that person have already been dismissed. Petitioner identifies no sound basis for holding Section 4246 unconstitutional—let alone for summarily reversing the decision below, as he ultimately, and remarkably, urges (Pet. 29-30).

a. The Necessary and Proper Clause vests in Congress the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. Art. I,

§ 8, Cl. 18. The Clause gives Congress "discretion" to choose the "means by which" its constitutional powers "are to be carried into execution," so long as those means are "appropriate" and the end they serve is "legitimate" and "within the scope of the [C]onstitution." *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819).

In *Comstock*, this Court held that the Necessary and Proper Clause authorized Congress to enact 18 U.S.C. 4248, which permits court-ordered civil commitment of a "mentally ill, sexually dangerous" person "currently 'in the custody of the Federal Bureau of Prisons'" beyond "the date the prisoner would otherwise be released." 560 U.S. at 129-130 (quoting 18 U.S.C. 4248(a)) (brackets omitted). The Court concluded that "the statute is a 'necessary and proper' means of exercising 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." *Id.* at 149.

The Court explained that "five considerations, taken together," supported the law's constitutionality. *Comstock*, 560 U.S. at 133. First, the Court emphasized the "breadth of the Necessary and Proper Clause," *id.* at 149, which authorized Congress to enact not only "criminal laws" but also laws "ensur[ing] the safety of the prisoners, prison workers and visitors, and those in surrounding communities." *Id.* at 136-137. Second, the Court noted the "long history of federal involvement in this arena," *id.* at 149, starting with early federal civil-commitment provisions in the 19th century. *Id.* at 139-142. Third, the Court emphasized "the Government's custodial interest in safeguarding the public from dan-

gers posed by those in federal custody." *Id.* at 149. Fourth, the Court determined that Section 4248 "properly accounts for state interests," because it requires the Attorney General to notify and encourage States to assume custody of the individual. *Id.* at 143-144. And fifth, the Court concluded that "the links between [Section] 4248 and an enumerated Article I power are not too attenuated." *Id.* at 146. It explained that "the same enumerated power that justifies the creation of a federal criminal statute" and the power to imprison people who violate that criminal law also authorizes statutes like Section 4248 that "regulate the prisoners' behavior even after their release." *Id.* at 147-148.

b. The constitutionality of petitioner's commitment under Section 4246 follows directly from *Comstock*. Section 4246's civil-commitment framework is in all relevant respects "similar to" the statute at issue there. 560 U.S. at 142. As petitioner acknowledges (Pet. 6 n.2), the three categories of persons in federal custody who are eligible for commitment under Section 4246(a) are "identical to" those in Section 4248(a). And critically, in both this case and *Comstock*, the government's attempts to obtain civil-commitment orders continued after the end of any federal criminal proceeding or imprisonment. When this Court decided *Comstock*, four of the five respondents had long since served their entire terms of federal imprisonment. See 560 U.S. at 129, 131-132. And in this case, the government was still detaining petitioner after the federal criminal charges against him were dismissed because of his incompetence to stand trial. See Pet. App. 21a. In both circumstances, even after any federal criminal authority to detain or imprison has lapsed, civil commitment remains a "'necessary and proper' means of exercising"

Congress's power to "provide appropriately" for those in federal custody and to "maintain the security" of those who may be affected by a federal detainee's release. *Comstock*, 560 U.S. at 149.

Each of the factors the Court considered in *Comstock* further supports the constitutionality of petitioner's civil commitment. Most notably, Congress's "power to act as a responsible federal custodian," *Comstock*, 560 U.S. at 143, applies with full force here. When Section 4246 proceedings were initiated against petitioner, he was lawfully in federal custody pursuant to Section 4241(d), which authorizes a criminal defendant to be hospitalized for treatment pending a competency determination. 18 U.S.C. 4241(d)(1); see Pet. App. 14a. Although the government had voluntarily dismissed the criminal charges against him because of the determination that his competency could not be restored, petitioner lawfully remained in custody in a federal facility. Accordingly, "[a]s federal custodian," the government "ha[d] the constitutional power to act in order to protect" the public "from the danger federal prisoners may pose," including by initiating a civil proceeding that would result in petitioner's continued commitment. *Comstock*, 560 U.S. at 142. The government continues to have an interest in "confin[ing] an individual" who is currently in its custody and "whose mental illness threatens others" even after the circumstance that first caused him to enter the federal criminal system—his criminal indictment—is no longer pending. *Id.* at 142-143.

The long history of civil commitment of federal detainees further supports the constitutionality of petitioner's commitment. See *Comstock*, 560 U.S. at 137-142. As the Court in *Comstock* explained, Congress has provided for the civil commitment of mentally ill federal

prisoners since the 1850s. See *id.* at 138. In 1882, Congress expanded federal civil commitment to those who are "charged" with federal offenses but became "insane" while in federal "custody." Act of Aug. 7, 1882, ch. 433, 22 Stat. 330. Then, in the 1940s, the Judicial Conference proposed additional legislative reforms, following a comprehensive study by a "conspicuously able committee." *Comstock*, 560 U.S. at 139 (citation omitted). Among other issues, that committee considered the problem of individuals who were in federal custody because they had been charged with federal offenses but found mentally unfit for trial, and for whom no State would "assume responsibility," even though it was "not safe" for them to be "let at large." J.A. at 68-69, *Comstock*, *supra* (No. 08-1224) (reprinting the Judicial Conference committee report). Against that backdrop, Congress enacted the precursor to Section 4246. See *Comstock*, 560 U.S. at 141. While petitioner observes (Pet. 21-22) that Congress did not expressly provide for the commitment of a person whose charges have been dismissed until 1984, see Pub. L. No. 98-473, Tit. II, § 403(a), 98 Stat. 2063, the provision making that change—like the 2006 extension to sexually dangerous persons at issue in *Comstock*—was only a "modest addition to a longstanding federal statutory framework." 560 U.S. at 142.

The remaining three factors the Court considered in *Comstock* likewise compel the same result here. It remains true that "the Necessary and Proper Clause grants Congress broad authority," including the power to "enact laws governing prisons and prisoners" in order to "ensure the safety of * * * those in surrounding communities." *Comstock*, 560 U.S. at 133, 137. Further, Section 4246 appropriately "requires accommodation of state interests," *id.* at 144-145 (emphasis omitted), since

it provides that a State may assume responsibility for a covered person at any time. 18 U.S.C. 4246(d). And insofar as Section 4246 authorizes the continued commitment of persons hospitalized for competency restoration under Section 4241(d) even after their charges have been dismissed, it is "narrow in scope" and "limited to individuals already in the custody of the Federal Government." *Comstock*, 560 U.S. at 148 (internal quotation marks omitted). Such an application of Section 4246 therefore fits comfortably within Congress's authority under the Necessary and Proper Clause.

c. Petitioner's contrary arguments (Pet. 15-24) lack merit. Petitioner contends (Pet. 16) that the Necessary and Proper Clause does not permit civil commitment of "an individual lacking a current connection to the federal criminal system." But that assertion cannot be squared with *Comstock*'s central holding—that the clause authorizes commitment "beyond the date the prisoner would otherwise be released" after serving his term of imprisonment. 560 U.S. at 129. Congress has the "power to act as a responsible federal custodian" and to "ensure the safety of * * * those in surrounding communities" who may be affected by the release of a person in federal custody, regardless of the pendency of criminal charges or a criminal sentence. *Id.* at 143. Here, the court of appeals held that petitioner "remained in lawful custody under § 4241 at the time the § 4246 certificate was filed," Pet. App. 14a, and petitioner does not ask this Court to review that determination.

Petitioner's reliance (Pet. 16-19) on this Court's pre-*Comstock* decision in *Greenwood* v. *United States*, 350 U.S. 366 (1956), is similarly unavailing. In *Greenwood*, this Court upheld—as "plainly within congressional power under the Necessary and Proper Clause"—the

continued commitment under Section 4246's predecessor of a person charged with, but incompetent to be tried for, a federal offense. *Id.* at 375. Petitioner emphasizes (Pet. 17) the Court's observation that the "power to prosecute" Greenwood for a federal offense was "not exhausted" at the time of his commitment because the indictment was still pending. *Ibid.* (citation omitted). But the Court did not suggest that Congress would have lacked the power to commit someone whose charges had been dismissed. On the contrary, the Court emphasized that it did "not imply an opinion on situations" besides the one at hand. *Id.* at 376. Nor can petitioner's reading of *Greenwood* be squared with the subsequent decision in *Comstock*, which upheld civil commitment after the federal custodial sentence itself had been exhausted.

Petitioner's remaining contentions largely recycle arguments that this Court rejected in *Comstock*. He contends that civil commitment in the circumstances here "interferes with 'state interests.'" Pet. 22 (citation omitted). But Section 4246 contains protections for state interests even greater than the ones deemed sufficient in *Comstock*. See 18 U.S.C. 4246(d) (requiring the Attorney General to "continue periodically to exert all reasonable efforts to cause such a State to resume responsibility for the person's custody"); *Comstock*, 560 U.S. at 149. Petitioner also asserts (Pet. 24) that upholding civil commitment here would "transform the Necessary and Proper Clause into a font of police power." But like the provision in *Comstock*, Section 4246 is "narrow in scope," and is here being applied to a person who "'entered the criminal justice system'" upon his indictment and who remained "'in the custody of the' Federal Government" when commitment pro-

ceedings were initiated. 560 U.S. at 148 (citations omitted); see Pet. App. 14a. If anything, it is petitioner's argument that has broad implications (contra Pet. 23-24 n.6), as it would call into question not only post-dismissal and post-sentencing commitment, but also the statutory provision authorizing continued commitment of a person who is acquitted of federal charges by reason of insanity. See 18 U.S.C. 4243.

Finally, petitioner is wrong to assert (Pet. 25) that his commitment is "based on nothing more than the government's say-so." After a hearing with extensive procedural safeguards, see 18 U.S.C. 4247(d), a federal district court found by clear and convincing evidence that petitioner's release from federal custody would create a substantial risk of serious property damage due to his untreated mental illness. See Pet. App. 8a; 18 U.S.C. 4246(d). Moreover, the statute requires the facility of commitment to periodically reassess the need for continued custody, 18 U.S.C. 4246(e), 4247(e), and it permits petitioner, through his counsel or legal guardian, to seek a district court hearing to determine whether he should be discharged. 18 U.S.C. 4246(e), 4247(h).

3. The decision below creates no conflict of authority warranting this Court's review. Petitioner does not identify any court of appeals that has adopted his novel and unpreserved constitutional argument. Nor does he point to any circuit court that has reached a different conclusion on the statutory issue that the court of appeals actually addressed. See pp. 10-12, *supra*. On the contrary, other courts of appeals have rejected statutory challenges to Section 4246 commitment after the dismissal of criminal charges. See *United States* v. *Williamson*, 161 F.4th 803, 808 (D.C. Cir. 2025) (upholding order described by the court as "similar to" the one that

the Fourth Circuit addressed here); *United States* v. *Godinez-Ortiz*, 563 F.3d 1022, 1026, 1029-1032 (9th Cir. 2009) (upholding order referring defendant for dangerousness evaluation under Section 4246 while "dismissing the charges without prejudice"), cert. denied, 559 U.S. 1009 (2010).

Petitioner nonetheless contends (Pet. 27-28) that the decision below will "largely" foreclose "constitutional challenges to § 4246" because "the great majority of all § 4246 and § 4248 certificates have been filed in" North Carolina. But the Fourth Circuit here expressly declined to resolve the constitutional argument that petitioner raised below, Pet. App. 9a, and it was never presented with the new constitutional argument he now advances, see pp. 10-12, *supra*. Regardless, petitioner does not dispute that civil-commitment proceedings are initiated in other circuits. See Pet. 27.

Nor does petitioner identify a "recurring" issue warranting review. Contra Pet. 26. Petitioner concedes (Pet. 26) that "the government does not often seek to commit an individual whose criminal charges have been dismissed." And petitioner does not dispute that, even under his view, civil commitment would be permissible if—as petitioner asserts "often" occurs—the government seeks civil commitment without dismissing pending criminal charges despite the small likelihood that the defendant will regain competency to stand trial on those charges. See Pet. 23 & n.6. The unusual circumstances of this case provide an additional reason for this Court to deny review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2026