

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6385

UNITED STATES OF AMERICA,

Petitioner-Appellee,

v.

DUANE LETROY BERRY,

Respondent-Appellant.

Appeal from the United States District Court for the
Eastern District of North Carolina, at Raleigh.
Richard E. Myers, II, Chief District Judge.
(5:20-hc-02085-M)

Argued: May 7, 2025

Decided: June 24, 2025

Before: WILKINSON and KING, Circuit Judges, and
MATTHEW J. MADDOX, United States District Judge
for the District of Maryland, sitting by designation.

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Judge King and Judge Maddox joined.

WILKINSON, Circuit Judge:

This case involves two interconnected civil commitment statutes—18 U.S.C. § 4241 and 18 U.S.C. § 4246. Section 4241 permits a federal court to commit a mentally incompetent criminal defendant to determine if his competency can be restored so that he may stand trial. *See* 18 U.S.C. § 4241(d). Section 4246 allows a federal court to commit a person (1) whose federal sentence is about to expire, (2) who is in custody under § 4241, or (3) whose federal charges have been dismissed, if his release would pose a substantial danger to the public. *See* 18 U.S.C. § 4246(a).

Appellant Duane Berry was committed to the government's custody under § 4241 for a competency evaluation. When it became clear that his competency could not be restored, a district court dismissed the charges against him. The government then moved to certify Berry as a dangerous person under § 4246, and another district court granted the motion. On appeal, Berry argues that the certification was invalid because he did not fall into any of the three categories of people eligible for commitment under § 4246. Because we conclude that Berry was in custody under § 4241 at the time of his certification under § 4246, we affirm. While the civil commitment scheme is a bit of a tangle, and the procedural history of this case is lengthy and involved, we are satisfied that the statutory provisions have been faithfully followed by the relevant authorities.

I.

A.

Section 4241 establishes a multi-step process for assessing a defendant's competency. The court must first determine whether there is "reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent." 11 U.S.C. § 4241(a). If so, it must schedule a hearing "to determine the mental competency of the defendant." *Id.* At any time before the hearing, the court may "order that a psychiatric or psychological examination of the defendant be conducted." 18 U.S.C. § 4241(b). It may also commit the defendant to a "suitable facility" for a "reasonable period, but not to exceed thirty days," to complete that evaluation. 18 U.S.C. § 4247(b). The facility's director "may apply for a reasonable extension, but not to exceed fifteen days . . . upon a showing of good cause." *Id.*

After the hearing, if the court finds by a preponderance of the evidence that the defendant is incompetent, it "shall commit the defendant to the custody of the Attorney General." 18 U.S.C. § 4241(d). The Attorney General must then "hospitalize the defendant for treatment in a suitable facility . . . for such a reasonable period of time, not to exceed four months," to assess whether there is a "substantial probability" of restoring competency. 18 U.S.C. § 4241(d)(1). If necessary, the court may hospitalize the defendant "for an additional reasonable period of time until" either "(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional

period of time he will attain the capacity to permit the proceedings to go forward,” or “(B) the pending charges against him are disposed of according to law; whichever is earlier.” 18 U.S.C. § 4241(d)(2). The statute finally provides that “[i]f, at the end of the time period specified, it is determined that the defendant’s mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of section[] 4246.” 18 U.S.C. § 4241(d).

Section 4246, in turn, establishes a process for hospitalizing dangerous individuals who would otherwise be released from the federal system. An individual can be committed under § 4246 if he is (1) “a person in the custody of the Bureau of Prisons whose sentence is about to expire,” (2) a person “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). If one of those conditions is met, “the director of a facility in which [the] person is hospitalized” may initiate commitment proceedings by certifying that the person is “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.” *Id.* The court must then “stay the release of the person” from federal custody and “order a hearing” to review the director’s determination. *Id.*

As with § 4241, a court may order a psychological evaluation of a person under § 4246. 18 U.S.C. § 4246(b). A person may be committed “for a reasonable

period, but not to exceed forty-five days,” to conduct this evaluation, and a facility director can apply for an extension “not to exceed thirty days” if he shows “good cause.” 18 U.S.C. 4247(b). After the hearing, the court must commit the individual if it “finds by clear and convincing evidence” that he suffers from a mental disease and would pose a risk of bodily injury or property damage if released. 18 U.S.C. § 4246(d). The Attorney General must then hospitalize the person in a federal treatment facility unless or until a state facility will assume responsibility for the individual or until the person is no longer dangerous. *See* 18 U.S.C. § 4246(d), (e).

B.

In November 2015, a federal grand jury indicted Duane Berry in the Eastern District of Michigan for knowingly conveying false information or hoaxes in violation of 18 U.S.C. § 1038(a). Specifically, Berry was accused of planting a fake bomb outside the Guardian Building in Detroit, where many corporate employees for the Bank of America work. The criminal complaint alleged that the fake bomb had black and red wires protruding from it and was covered by a white sheet. When a bomb squad removed the sheet, they found a motion detector, a piece of paper stating “Attention!!! Fore Closed Bank of America,” and numerous documents related to an ongoing dispute between Berry and Bank of America. *See* Indictment and Criminal Complaint, *United States v. Berry*, No. 2:15-cr-20743 (E.D. Mich. 2015).

In December 2015, the Michigan district court found there was reasonable cause to believe Berry was mentally incompetent to stand trial. It accordingly

ordered a psychological examination and scheduled a competency hearing pursuant to § 4241. After the psychologist testified that Berry suffers from delusional disorder, the court found Berry incompetent and committed him to the custody of the Attorney General under § 4241(d)(1) in an August 2016 order. Berry was subsequently admitted to the Federal Medical Center in Butner, North Carolina, on October 3, 2016. *See* Order Granting Motion for Competency Evaluation, Order of Commitment, & D.E. 52, *United States v. Berry*, No. 2:15-cr-20743 (E.D. Mich. 2015, 2016).

After Berry was evaluated at FMC Butner, the facility submitted a report stating that although he remained incompetent, his competency might be restored if he took antipsychotic medication. Because Berry refused this medication, the district court ordered that the medication be administered to Berry involuntarily. This precipitated much litigation and an appeal to the Sixth Circuit. The Sixth Circuit eventually vacated the district court's involuntary medication order in December 2018. *See* Order Authorizing Administration of Medication, *United States v. Berry*, No. 2:15-cr-20743 (E.D. Mich. 2017); *United States v. Berry*, 911 F.3d 354, 366 (6th Cir. 2018).

Following the Sixth Circuit's decision, the Michigan district court ordered a new competency evaluation under § 4241 due to the significant passage of time since the initial evaluation. After a psychologist testified that Berry continued to suffer from delusional disorder, the court issued a new order on September 6, 2019, committing him to the Federal

Medical Center in Forth Worth, Texas, for a reasonable period not to exceed four months to determine anew if his competency could be restored. *See* 18 U.S.C. § 4241(d)(1) (authorizing such an order). On December 17, 2019, well before that four-month period expired, the district court concluded that Berry's competency could not be restored and granted the government's motion to dismiss the charges. But because the court was concerned that Berry's release "would create a substantial risk of bodily injury" or "serious damage to property of another," it also ordered that Berry be committed for a psychological evaluation under § 4246. *See* Order for Competency Evaluation & Second Order of Commitment, *United States v. Berry*, No. 2:15-cr-20743 (E.D. Mich. 2019).

Shortly after the Michigan district court's order, Berry was placed on a waiting list to be evaluated at FMC Butner. At the time, Butner was one of only two facilities nationwide that was equipped to conduct § 4246 evaluations, and it was inundated with a backlog of cases. It was also experiencing a staffing shortage and was subject to numerous time-consuming restrictions related to the COVID-19 pandemic. Berry was eventually admitted to Butner on March 18, 2020. Shortly after Berry arrived, the Michigan district

court granted the facility director's request for a 30-day extension to complete the dangerousness assessment. On April 30, 2020, Butner submitted a lengthy report detailing its conclusion that Berry's release would create "a significant risk of harm to others due to his mental illness." J.A. 162. Shortly thereafter, on May 21, 2020, the government filed a certificate from Butner's director in the Eastern

District of North Carolina. *See* 18 U.S.C § 4246(a) (requiring that the certificate be filed in “the district in which the person is confined”). In accordance with § 4246(a), the North Carolina district court stayed Berry’s release from federal custody and scheduled a hearing to determine if he met § 4246’s requirements. J.A. 13–17, 71–75; S.J.A. 145.

After extensive litigation, the North Carolina district court determined that Berry met the requirements to be committed under § 4246. It first held that Berry was a qualified person under § 4246(a) because he was “committed to the custody of the Attorney General pursuant to section 4241(d)” when the Michigan district court ordered an evaluation under § 4246. J.A. 122 (quoting 18 U.S.C. § 4246(a)). The court then conducted a hearing and found by clear and convincing evidence that his “release to the community would pose a substantial risk of serious damage to the property of another” given his untreated mental illness. S.J.A. 202. As a result, the court committed Berry to the custody of the Attorney General pursuant to § 4246(d). J.A. 142.

Berry timely appealed the district court’s decision that he is a qualified person within the meaning of § 4246(a).

II.

As we have explained, an individual is only qualified to be committed under § 4246(a) if he is (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 the mental condition of the person.” 18 U.S.C. § 4246(a). Berry argues on appeal that only the dismissed charges category applies to him and, further, that the dismissed charges category is unconstitutional under *United States v. Comstock*, 560 U.S. 126 (2010), because the federal government lacks the power to civilly commit individuals who are no longer in its legal custody.

We disagree with Berry’s premise. We hold that Berry is a qualified person under § 4246(a) because he was “committed to the custody of the Attorney General pursuant to section 4241(d)” when the § 4246 proceedings began. Because Berry only needs to fall within one § 4246(a) category to be validly committed, we need not consider whether it would be constitutional to commit him under the dismissed charges category.

Berry argues that he was not within the “custody of the Attorney General pursuant to section 4241(d)” for two reasons. First, he claims the delay between the district court’s decision that his competency could not be restored in December 2019 and the filing of a § 4246 certificate in May 2020 was so long that it effectively ended his custody under § 4241. Second, he argues that both of his § 4241 commitment orders had expired by the time the government filed the § 4246 certification. *See United States v. Wayda*, 966 F.3d 294, 305 (4th Cir. 2020) (holding that “committed to the custody of the Attorney General” means that the person must be “legally committed to the Attorney General’s custody” (emphasis added)).

Neither argument passes muster. We begin with Berry’s claim that the government waited too long to file the § 4246 certificate. In *Wayda*, we held that any delay between the district court’s unrestorability determination and the filing of a § 4246 certificate must “be limited to a reasonable period.”¹ 966 F.3d at 303. Whether a delay is reasonable depends on whether the government “provide[s] an adequate explanation of any physical, behavioral, or administrative obstacles to the BOP’s evaluation” of the person to be committed. *Id.* at 308.

The government’s explanation here is more than adequate. The district court found that Berry was unrestorable under § 4241 on December 17, 2019, and the government filed the § 4246 certificate on May 21, 2020—meaning five months passed between the unrestorability determination and the filing of the § 4246 certificate. As we have explained, this delay was due to a range of administrative challenges that the government was confronting at the time. FMC Butner was one of only two facilities in the country capable of conducting a § 4246 dangerousness evaluation, and both facilities had lengthy waiting lists. In addition, Berry’s dangerousness evaluation at FMC Butner in March 2020 coincided with the beginning of the COVID-19 pandemic, which caused additional delays due to staffing shortages, long quarantine periods for

¹ Although *Wayda* addressed the timeliness of a certificate filed under § 4248, which governs the commitment of sexually dangerous individuals, its reasoning applies equally to § 4246. The two provisions are nearly identical in structure and language, differing only in the category of dangerousness at issue.

new admittees, and the need to comply with various safety protocols. Despite all this, the government still managed to evaluate Berry and file a § 4246 certificate within a few months. As we held in *United States v. Curbow*, 16 F.4th 92, 112 (4th Cir. 2021), the statute envisions that the government should act with “reasonable speed.” It does not compel the government to act “in the quickest possible manner.” *Id.* The government did all that it reasonably could given the circumstances here, and § 4246 requires no more.

Berry’s argument that the § 4241 commitment orders had expired fares no better than his first argument. He gives three reasons in support. First, Berry claims that the initial custody order expired at the latest by February 2017, four months after his initial commitment to FMC Butner, because the court never explicitly extended his commitment “for an additional reasonable period of time” beyond the initial four months authorized by statute. 18 U.S.C. § 4241(d)(1), (2). This point is irrelevant. Regardless of whether the district court properly extended the initial order, it was superseded when the court issued its second commitment order. The pertinent question is whether Berry was “committed to the custody of the Attorney General” when the government filed the § 4246 certificate. The answer to that question turns on the validity of the order then in effect—not on whether there was some alleged lapse in custody in a long defunct order.

Berry next argues that the second custody order was invalid from the outset because the court failed to make the required finding that commitment was “necessary to determine whether there is a

substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward.” 18 U.S.C. § 4241(d)(1). But the statute requires a substantial probability finding only when the court *extends* the defendant’s commitment for “an additional reasonable period of time” beyond the initial four-month period. *See* 18 U.S.C. § 4241(d)(2). No such finding is required when the court commits the defendant for the standard “reasonable period of time, not to exceed four months,” authorized by statute. 18 U.S.C. § 4241(d)(1). The second custody order was plainly a new order, not an extension of the old one. Not only was it styled “Second Order of Commitment,” but it came after the court spent months meticulously marching through the entire § 4241 process anew and conforming with the relevant procedural requirements. The court ordered a fresh psychological evaluation, held another hearing, and issued a new opinion finding the defendant incompetent. Nothing in the statute’s text prohibited the district court from issuing a new commitment order. And with three years having passed since the first order, the court had every reason to initiate fresh commitment proceedings in light of the changed circumstances.

Berry finally contends that even if the second order was valid it nonetheless expired under the statute when the “charges against him [were] disposed of according to law”—an event which occurred months before the § 4246 certificate was filed. 18 U.S.C. § 4241(d)(2). This argument relies on a misreading of the statute. Section 4241(d)(2) says that a court may extend the hospitalization of a defendant for “an

additional reasonable period of time” if there is a “substantial probability” of restoring his competency. 18 U.S.C. § 4241(d)(2). It then provides that this “additional reasonable period of time” for restoring competency must end if “the pending charges against him are disposed of according to law.” *Id.* What it does not say is that any kind of custody under § 4241 for any purpose ends altogether. That reading would be indefensible for multiple reasons. For one, the purpose of § 4246 is to protect the public from dangerous individuals suffering from a mental illness. *See Comstock*, 560 U.S. at 139–40. It would make little sense to interpret the statute to require the release of dangerous, mentally incompetent individuals the moment their charges are dismissed without affording the government a reasonable opportunity to seek certification under § 4246.

For another, § 4241(d) specifically provides that “[i]f, at the end of the time period specified, it is determined that the defendant’s mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of section[] 4246.” 18 U.S.C. § 4241(d). Berry’s reading would effectively delete this provision from the statute. If the government can no longer maintain custody under § 4241 for any purpose once charges are dismissed, the defendant could not be “subject to the provisions of section 4246” at the end of his hospitalization because the government would have no opportunity to conduct a dangerousness evaluation or prepare the required certification. Section 4241(d)’s cross-reference to § 4246 must therefore allow the government to maintain custody for some reasonable period of time

to determine whether § 4246 commitment is appropriate.

III.

Congress designed § 4241 and § 4246 to work in tandem—one to assess whether a defendant can be restored to competency and the other to protect the public when he cannot. Berry's attempt to drive a wedge between the two would leave courts powerless to act at the very moment when continued commitment is most necessary. As we have explained, the statutory text and purpose foreclose that result. Because Berry remained in lawful custody under § 4241 at the time the § 4246 certificate was filed, the district court acted well within its authority in committing him.

For the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case Number 15-20743
Honorable David M. Lawson

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUANE LETROY BERRY,

Defendant.

**ORDER GRANTING MOTIONS TO DISMISS
AND TO REFER DEFENDANT FOR A CIVIL
COMMITMENT EVALUATION**

This matter is before the Court on the government's motions to dismiss the case and to refer the defendant for a civil commitment determination under 18 U.S.C. § 4146(a).

Defendant Duane Berry stands charged in an indictment with perpetrating false information and hoaxes in violation of 18 U.S.C. § 1038(a). The charge is based on evidence that on November 6, 2015, Berry left a briefcase made to look like a bomb outside of the

Guardian Building in Detroit, Michigan, where a Bank of America office was located. The device was not a bomb, but the government believes that Berry planted the device to pursue a dispute he has with the Bank of America. According to Berry's other filings and statements he made to a BOP psychologist during earlier examinations, Berry believes that he is the "primary trustee" of a trust that owns "every Bank of America branch and asset around the world," and he is responsible for "repossession" of those assets. In the days leading up to this event, Bank of America branches around the Metropolitan Detroit area had been vandalized. The vandalism ranged from spraying ATMs with glue or paint to marking financial center entrances with a big X. All of the vandalism appeared to be committed by the same perpetrator. One of Berry's relatives allegedly told a Bank of America employee that Berry had been responsible for the vandalism. That behavior was consistent with Berry's stated objective, which, as he explained to Dr. Christine Scronce, a Bureau of Prisons psychologist, was to "repossess the Bank of America in a stealth manner."

The Court granted an earlier motion for a competency examination. After an evaluation by Dr. Scronce, the Court held a hearing on August 25, 2016 under 18 U.S.C. §§ 4241(c), 4247(d) and determined that Berry was incompetent to stand trial. Based on that finding, the Court ordered that Berry be committed to the custody of the Attorney General for a period no longer than four months to determine whether there was a substantial probability that he would attain the capacity to permit the proceedings to

go forward in the foreseeable future. *See* ECF No. 45. The Court also ordered the director of the facility where Berry was hospitalized to report on Berry's condition by November 30, 2016. Berry subsequently was admitted to the Mental Health Unit at the Federal Medical Center in Butner, North Carolina ("FMC Butner") on October 3, 2016. Upon the director's request, Berry's evaluation period was extended through January 30, 2017. *See* ECF No. 52.

Berry's evaluators at FMC Butner reported that Berry remained incompetent to stand trial, and he would benefit from anti-psychotic medication. But Berry refused to accept treatment voluntarily. On January 9, 2017, the Court directed the parties to submit briefs addressing the issue of whether involuntary treatment was appropriate under *Sell v. United States*, 539 U.S. 166 (2003). The Court held a hearing on the first *Sell* factor on February 15, 2017, and upon finding that the government established that it has an important interest in continuing Berry's prosecution, the Court held an evidentiary hearing on the other three factors on June 1, 2017. On August 31, 2017, the Court authorized the involuntary administration of medication. *United States v. Berry*, 276 F. Supp. 3d 740, 749-50 (E.D. Mich. 2017), *rev'd* 911 F.3d 354 (6th Cir. 2018). The Sixth Circuit reversed the decision on December 19, 2018. *United States v. Berry*, 911 F.3d 354 (6th Cir. 2018). The defendant never received medication.

FMC Butner did not continue to treat Berry; on March 24, 2017, Berry was transferred to U.S. Marshal custody and lodged as a pretrial detainee at Midland County Jail in Midland, Michigan, where he

remained until June 15, 2017. After that date, Berry was moved in and out of federal custody to face state charges in two criminal cases. Berry had been charged on November 3, 2015 with malicious destruction of a building, and he previously was charged with criminal sexual conduct and kidnapping on July 4, 2008. The defendant's competency had been questioned in those matters; Berry underwent competency evaluations as to both sets of charges between July 2017 and August 2018. However, the competency determinations were inconsistent. According to the competency evaluation report dated November 29, 2018, Berry "appear[ed] to have a delusional belief system related to Bank of America and the Federal Reserve." ECF No. 166-3, PageID.4661. However, the examiner concluded that Berry was competent to stand trial because he "did not express any delusional beliefs during the instant examination and was able to remain focused on the questions asked of him and respond in a relevant and coherent manner." *Ibid.* The state court found Berry competent in that case; but the state court found him incompetent to stand trial in the criminal sexual misconduct/kidnapping case.

Although the defendant's competency had been raised in those matters, the defendant had

not been evaluated for competence in this case since he was released from FMC Butner, and there

was no indication from any other detention facilities that Berry had been treated for his psychosis.

The Court had not received any reports on Berry's mental condition that were prepared at FMC Butner in advance of his discharge, which the statute would seem to contemplate. *See* 18 U.S.C. § 4247(e)(1)(A).

The government filed its motions to dismiss the indictment and to refer Berry for a civil commitment examination on February 15, 2019. Berry was not in a BOP facility at the time, and the Court expressed concern over the odd competency reports, which could have been stale. The Court therefore ordered a new examination by the BOP under 18 U.S.C. § 4243(b).

After the examination was completed, the Court held a second competency hearing under 18 U.S.C. §§ 4241(c), 4247(d) on August 21, 2019. Dr. Danielle Powers testified at the second hearing. The defendant was offered the opportunity to testify but declined. He did, however, pose questions to Dr. Powers through his attorney. Dr. Powers testified that Berry continued to suffer from a delusional disorder. She explained that the defendant's thinking is affected by his paranoid ideation, evidenced by the belief that the Department of Treasury and Bank of America are colluding to prosecute him because of the effect he could have on the world economy. She testified that his mental illness affects his competency to assist in his defense because there is no rational basis for a defense rooted in delusions — for instance, believing that the charges will be dropped because “he has a financial relationship with the judge.” The Court found that it was more likely than not that the defendant still suffered from a delusional disorder and that he could not assist properly in his defense. Thereafter, the Court ordered that the defendant be committed to the custody of the Attorney General to determine whether there is a substantial probability that in the foreseeable future he would attain the capacity to permit the proceedings to go forward.

Berry was then transferred to the Federal Medical Center in Fort Worth, Texas for treatment under 18 U.S.C. § 4241(d).

The government argues in its motion to dismiss that Berry has been found incompetent to stand trial and (without treatment) cannot be restored to competency. The Court agrees. If Berry will not agree to treatment, and the court of appeals will not permit involuntary treatment, there is little possibility that the status quo will change. No one disputes the well-established premise that “a criminal defendant may not be tried unless he is competent.” *Pate v. Robinson*, 383 U.S. 375, 378, (1966). Likewise, he cannot waive his right to counsel or plead guilty unless he does so “competently and intelligently.” *Johnson v. Zerbst*, 304 U.S. 458, 468, (1938); accord *Brady v. United States*, 397 U.S. 742, 758, (1970); see also *Godinez v. Moran*, 509 U.S. 389 (1993) (holding that the standard of competency for pleading guilty or waiving right to counsel is the same as the competency standard for standing trial). Dismissal of the indictment on the government’s motion, therefore, is appropriate.

When a defendant’s case is dismissed but the defendant has not been restored to competency, consideration of civil commitment is called for. 18 U.S.C. § 4241(d) (“If, at the end of the time period specified, it is determined that the defendant’s mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246 and 4248.”); 18 U.S.C. 4246(a) (outlining the procedure for civil commitment of such a defendant). The Sixth Circuit seemed to be of that mind when it noted in its earlier opinion that

“[a]lthough Berry is not a danger to other individuals under current conditions, we believe that there is a strong likelihood, given Berry’s predilections regarding Bank of America, that a court will find that Berry’s release, in an untreated state, would ‘create a substantial risk . . . of serious damage to property of another . . .’” *Berry*, 911 F.3d at 365-66.

The Court concurs with that observation. Berry still suffers from a delusional disorder. He has been found incompetent to stand trial by this Court and at least one other state court. His delusion appears to have propelled him to engage in acts of vandalism and threatening conduct against the object of his delusion. He also is accused of acts of sexual violence in the past. And he still refuses treatment for his psychotic disorder.

Berry presently is in BOP custody and now “all charges [against him] have been dismissed solely for reasons relating to [his] mental condition.” 18 U.S.C. § 4246(a). The Court is satisfied with the government’s showing that “his release would create a substantial risk of . . . serious damage to the property of another,” *ibid.*, and possibly to another person. Therefore, it is appropriate that Berry be evaluated for civil commitment, and that a hearing on that question be held in the district where Berry is presently lodged in the BOP facility. *See* 18 U.S.C. § 4246(c).

Accordingly, it is **ORDERED** the government’s motion to dismiss the indictment (ECF No. 142) is **GRANTED**.

It is further **ORDERED** that the government’s motion to refer the defendant for a civil commitment

determination 18 U.S.C. § 4246(a) (ECF No. 143) is **GRANTED**.

It is further **ORDERED** that all other pending motions (ECF No. 17, 23, 36, 53, 61, 120, 141, 176, 189) are **DISMISSED as moot**.

It is further **ORDERED** that the government must serve a copy of this order upon the warden of the BOP facility currently having custody of defendant Berry **forthwith**.

/s/ David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: December 17, 2019

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case Number 15-20743
Honorable David M. Lawson

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUANE LETROY BERRY,

Defendant.

**SECOND ORDER OF COMMITMENT TO
ATTORNEY GENERAL UPON FINDING
DEFENDANT NOT COMPETENT TO STAND
TRIAL**

This case came back before the Court on the government's motion to refer the defendant for a civil commitment evaluation. However, before addressing that motion, the Court determined that a fresh competency evaluation should be held. The Court ordered the government to transfer the defendant to a Bureau of Prisons (BOP) facility for an evaluation. The defendant was examined by BOP forensic psychologist Danielle Powers, Ph.D. at the Federal

Medical Center in Fort Worth, Texas. Dr. Powers submitted a report conforming to 18 U.S.C. § 4647(c).

Defendant Duane Berry stands charged in an indictment with perpetrating false information and hoaxes in violation of 18 U.S.C. § 1038(a). The charge is based on evidence that on November 6, 2015, Berry left a briefcase made to look like a bomb outside of the Guardian Building in downtown Detroit, where a Bank of America office was located. The device was not a bomb, but the government believes that Berry planted the device in an effort to pursue a dispute he has with the Bank of America. According to Berry's other filings and statements he made to a BOP psychologist during an earlier examination, Berry believes that he is the "primary trustee" of a trust that owns "every Bank of America branch and asset around the world," and he is responsible for "repossession" of those assets. In the days leading up to this event, Bank of America branches around the metro Detroit area had been vandalized. The vandalism ranged from spraying ATMs with glue or paint to marking financial center entrances with a big X. All of the vandalism appeared to be committed by the same perpetrator. One of Berry's relatives allegedly told a Bank of America employee that Berry had been responsible for the vandalism. That behavior was consistent with Berry's stated objectives, which, as he explained to Dr. Christine Scronce, a forensic psychologist located at the Metropolitan Correctional Center in Chicago, Illinois, was to "repossess the Bank of America in a stealth manner."

The Court granted an earlier motion for a competency examination. After an evaluation by a BOP psychologist, the Court held a hearing on August 25, 2016 under 18 U.S.C. §§ 4241(c), 4247(d) and determined that Berry was incompetent to stand trial. Based on that finding, the Court ordered that Berry be committed to the custody of the Attorney General for a period no longer than four months to determine whether there was a substantial probability that he would attain the capacity to permit the proceedings to go forward in the foreseeable future. *See* ECF No. 45. The Court also ordered the director of the facility where Berry was hospitalized to report on Berry's condition by November 30, 2016. Berry was subsequently admitted to the Mental Health Unit at the FMC Butner on October 3, 2016, and upon the director's request, Berry's evaluation period was extended through January 30, 2017. *See* ECF No. 52.

Berry's evaluators at FMC Butner reported that Berry remained incompetent to stand trial, and that he would benefit from anti-psychotic medication. But Berry refused to voluntarily accept treatment. On January 9, 2017, the Court directed the parties to submit supplemental briefs addressing the issue of whether involuntary treatment was appropriate under *Sell v. United States*, 539 U.S. 166 (2003). *See* ECF No. 56. The Court held a hearing on the first *Sell* factor on February 15, 2017, and upon finding that the government established that it has an important interest in continuing Berry's prosecution, the Court held an evidentiary hearing on the other three factors on June 1, 2017. On August 31, 2017, the Court authorized the administration of medication. *See*

United States v. Berry, 276 F. Supp. 3d 740 (E.D. Mich. 2017). The Sixth Circuit reversed the decision on December 19, 2018. *See United States v. Berry*, 911 F.3d 354 (6th Cir. 2018). The defendant never received medication.

FMC Butner did not continue to treat Berry, and on March 24, 2017 Berry was transferred to U.S. Marshal custody and lodged as a pretrial detainee at Midland County Jail in Michigan, where he remained until June 15, 2017. Since then, Berry was moved in and out of federal custody to face state charges in two criminal cases. Although the defendant's competency had been raised in those matters, the defendant had not been evaluated for competence in this case since he was released from FMC Butner and there was no indication from any other detention facilities that Berry had been treated for his psychosis. The Court has not received any reports on Berry's mental condition that were prepared at FMC Butner in advance of his discharge. *See* 18 U.S.C. § 4247(e)(1)(A).

Earlier this year, the government filed a motion to dismiss the indictment and a motion to refer Berry for a civil commitment evaluation under 18 U.S.C. § 4246. The Court heard oral argument on those motions on May 2, 2019. Because of the significant passage of time since the defendant's last competency evaluation, the Court took the government's motions under advisement and referred the defendant for another competency evaluation.

On August 21, 2019, the Court held a second competency hearing under 18 U.S.C. §§ 4241(c), 4247(d). Dr. Danielle Powers testified at the second

hearing. The defendant was offered the opportunity to testify but declined. He did, however, pose questions to Dr. Powers through his attorney. Dr. Powers testified that Berry continued to suffer from a delusional disorder. She explained that the defendant's thinking is affected by his paranoid ideation, evidenced by the belief that the Department of Treasury and Bank of America are colluding to prosecute him because of the effect he could have on the world economy. She said that his mental illness affects his competency to assist in his defense because there is no rational basis for a defense rooted in delusions — for instance, believing that the charges will be dropped because “he has a financial relationship with the judge.”

A criminal defendant is not competent to stand trial if “the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him . . . unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.” 18 U.S.C. § 4241(d). The Court finds that it is more likely than not that defendant Berry still suffers from a delusional disorder, mixed type, which is a mental disease recognized by the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.). Although it is possible and perhaps likely that Berry understands the nature of the proceedings against him, it is abundantly clear that he cannot assist properly in his defense. To be competent, a defendant must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding — and . . . a rational as well as factual

understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam). As Dr. Powers explained, someone with a delusional disorder may be highly functional and appear “normal” in casual conversation. But the anchor to reality becomes unmoored when the discussion turns to the object of his delusion, a phenomenon that the defendant has exhibited in this case. And there can be no rational basis for a defense (e.g., that the defendant was entitled to “repossess” Bank of America assets “by stealth” and therefore was justified in his actions) that is rooted in delusional ideas. The defendant, therefore, is presently mentally incompetent to stand trial.

A criminal defendant cannot be tried unless he is mentally competent. *Godinez v Moran*, 509 U.S. 389, 396 (1993). A defendant found incompetent to stand trial must be “commit[ted] . . . to the custody of the Attorney General . . . [to be] hospitalize[d] . . . for treatment in a suitable facility . . . for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward.” 18 U.S.C. § 4241(d).

Accordingly, it is **ORDERED** that defendant Duane Letroy Berry is committed to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility for a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the

foreseeable future he will attain the capacity to permit the proceedings to go forward.

It is further **ORDERED** that during the defendant's hospitalization, he will be provided the opportunity for treatment in an appropriate manner as prescribed by a mental health professional.

It is further **ORDERED** that when the director of the facility in which the defendant is hospitalized determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, that director shall promptly file a certificate to that effect with the clerk of this Court. The Court will then conduct a hearing under 18 U.S.C. § 4247(d) to determine the competency of the defendant.

It is further **ORDERED** that the United States Marshal's Service shall transport the defendant to and from the Federal Medical Facility designated by the Bureau of Prisons for confinement and treatment.

/s/ David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: September 6, 2019

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: August 25, 2025
No. 24-6385
(5:20-hc-02085-M)

UNITED STATES OF AMERICA,

Petitioner-Appellee,

v.

DUANE LETROY BERRY,

Respondent-Appellant.

CATO INSTITUTE

Amicus Supporting Rehearing Petition.

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX E

U.S. CONST. ART. I, §8, CL. 18

To 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.

APPENDIX F

18 U.S.C. § 4241

§ 4241. Determination of mental competency to stand trial to undergo postrelease proceedings

(a) Motion to determine competency of defendant.- At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) Psychiatric or psychological examination and report.-Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing.-The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and disposition.-If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility-

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and

(2) for an additional reasonable period of time until-

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the proceedings to go

forward, the defendant is subject to the provisions of sections 4246 and 4248.

(e) Discharge.-When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial or other proceedings. Upon discharge, the defendant is subject to the provisions of chapters 207 and 227.

(f) Admissibility of finding of competency.-A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

APPENDIX G

18 U.S.C. § 4246

§ 4246. Hospitalization of a person due for release
but suffering from mental disease or defect

(a) Institution of proceeding.- If the director of a facility in which a person is hospitalized certifies that a person in the custody of the Bureau of Prisons whose sentence is about to expire, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons related to the mental condition of 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, he shall transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether 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. A certificate filed under this subsection shall stay the release of the

person pending completion of procedures contained in this section.

(b) Psychiatric or psychological examination and report.- Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing.- The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and disposition.- If, after the hearing, the court finds by clear and convincing evidence 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, the court shall commit the person to the custody of the Attorney General. The Attorney General shall 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. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility, until-

(1) such a State will assume such responsibility;

or

(2) the person's mental condition is such that his release, or his conditional release under a

prescribed regimen of medical, psychiatric, or psychological care or treatment would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(e) Discharge.- When the director of the facility in which a person is hospitalized pursuant to subsection (d) determines that the 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, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person has recovered from his mental disease or defect to such an extent that-

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall-

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) Revocation of conditional discharge.- The director of a medical facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or

psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(g) Release to state of certain other persons.- If the director of a facility in which a person is hospitalized pursuant to this chapter certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of 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, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than ten days after certification by the director of the facility.

(h) Definition.- As used in this chapter the term "State" includes the District of Columbia.

APPENDIX H

18 U.S.C. § 4248

§ 4248. Civil commitment of a sexually dangerous person

(a) Institution of proceedings.- In relation to a person who is in the custody of the Bureau of Prisons, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person, the Attorney General or any individual authorized by the Attorney General or the Director of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

(b) Psychiatric or psychological examination and report.- Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric

or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing.- The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and disposition.- If, after the hearing, the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General. The Attorney General shall 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. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall place the person for treatment in a suitable facility, until-

(1) such a State will assume such responsibility;
or

(2) the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment;

whichever is earlier.

(e) Discharge.- When the Director of the facility in which a person is placed pursuant to subsection (d) determines that the person's condition is such that he is no longer sexually dangerous to others, or will not be sexually dangerous to others if released under a

prescribed regimen of medical, psychiatric, or psychological care or treatment, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person's condition is such that-

(1) he will not be sexually dangerous to others if released unconditionally, the court shall order that he be immediately discharged; or

(2) he will not be sexually dangerous to others if released under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the court shall-

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the Director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) Revocation of conditional discharge.- The director of a facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that he is sexually dangerous to others in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

(g) Release to state of certain other persons.- If the director of the facility in which a person is hospitalized or placed pursuant to this chapter certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is a sexually dangerous person, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such

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State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than 10 days after certification by the director of the facility.