

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 6:22-cr-00201-WWB-LHP
	)	
EVAN EDWARDS,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT’S MEMORANDUM ON SEQUENCE OF
DETENTION AND COMPETENCE DETERMINATIONS**

COMES NOW, the Defendant, Evan Edwards [hereinafter “Defendant”], by and through the undersigned counsel, and in compliance with this Court’s *ore tenus* instructions at the hearing held on January 26, 2023, and submits the instant memorandum on the issue presented.

I. Procedural and Factual Footing

The Defendant was indicted on December 7, 2022 on various counts, including Conspiracy to Commit Bank Fraud, Bank Fraud, and Visa Fraud. Dkt. 1. He was arrested on December 14, 2022 on a previously issued warrant. Dkt. (un-numbered) of 12/14/22 & Dkt. 10. Mr. Edwards was brought to court for his initial appearance that same day. Dkt. 14. At the time of his initial appearance, however, Mr. Edwards’ medical condition did not allow him to materially participate in the

proceeding. Nevertheless and on December 16, 2022, the presiding United States Magistrate Judge issued an “Order of Temporary Detention” reflecting that “due to an apparent medical issue, the Defendant was not able to participate or consult with counsel.” Dkt. 21. This Order committed the Defendant “to the custody of the United State Marshal for provision of medical care.” *Id.* (emphasis added). Finally, this Order noted that “initial appearance and other preliminary matters will resume when the Defendant is medically able to participate.” *Id.* (emphasis added). Since that time and without interruption, the Defendant has been held at a local Central Florida hospital, handcuffed wrist and ankle to the bed. It is the understanding of the undersigned that the Defendant has not been allowed visitors other than counsel during this period.¹

With respect to the Defendant’s **medical** condition, the facility at which he is being held has noted that he is eligible for discharge from that facility (based solely on his medical status) since December 20, 2022. Dkt. 65, p.2. After appointment, consultation with the Defendant, and as part of a response to a court-ordered status report, the defense moved for the Defendant’s release pending trial. Dkt. 56. The Court then afforded the parties until February 17, 2023, to submit memoranda addressing the issue thus presented regarding the potential release of the Defendant

¹ Curiously, the Orange County Jail informed the undersigned that, in addition to the undersigned and Dr. Hall referenced *infra*, the only other visitor with the Defendant was named “Augustus Invictus[.]” The undersigned has been unable to determine the identity or role of Mr. or Ms. Invictus.

pending a determination of competence.

As the foregoing suggests and on a parallel track, there has been some issue raised about the Defendant's ability/willingness to participate in the ongoing proceeding, which behaviors appear to implicate his competence (or potential malingering). See, e.g., Dkt 33. The parties and the Court have sought to sort out the issue by way of focusing on the Defendant's competence *vel non* in a series of hearings, including a Status Conference on December 21, 2022 [Dkt. 27], re-set arraignment of the Defendant on December 27, 2022 (via Zoom from the Defendant's hospital/detention room) [Dkt. 33]², Status Conference on December 28, 2022 (also via Zoom from the Defendant's hospital/detention room) [Dkt. 42]³, Status Conference on January 4, 2023 (via Zoom from the Defendant's hospital/detention room) [Dkt. 48]⁴, and Status Conference on January 26, 2023.

After the parties' submissions of potential competency evaluators after the Status Conference on January 4, 2023, the Court ordered the evaluation of the Defendant by Dr. Ryan Hall "regarding [the Defendant's] competency to proceed to trial." Dkt. 50, p.2. On January 16 and 17, 2023, the United States and later the

² Although there was some communication between the Court and the Defendant, the arraignment was continued by the presiding Magistrate Judge without the arraignment being completed. Id. The Court noted that the Defendant's competence appeared to be an issue. Id.

³ This Status Conference involved a more substantive attempt to address the competence issues brought to the forefront at the attempted Arraignment the prior day. The parties sought and the Court entered an Order directed to the health care facility holding the defendant to disclose to the parties all medical records of the defendant. Dkt. 45.

⁴ As a result of this Status Conference, the parties were directed to submit the name(s) of person(s) to evaluate the Defendant's competency to proceed. Dkt. 48. The parties did so on January 6, 2023. Dkt. 49.

Court and defense counsel, respectively, were provided the report of Dr. Hall. Consistent with the Court's prior instructions, the parties submitted their responses to Dr. Hall's report and (perhaps unsurprisingly) reached different conclusions: the United States implicitly took the position that the Defendant is not competent to proceed⁵; whereas the defense position was (and remains) that the report was ambiguous at best and, consequently, that further proceedings are warranted, to and including a contested competency hearing under 18 U.S.C. § 4241 and its progeny. Dkts. 57 & 56. In the defense's response to Dr. Hall's report, the defense also sought the release of the Defendant pending further proceedings. Dkt. 57.

Another thread in the fabric of this case is that, at the Status Conference on January 26, 2023, the United States indicated that it would oppose release pending trial for the Defendant. Dkt. 61, p. 17. Finally and in light of the government's position on release as well as the issues which touch and concern the Defendant's ability to communicate, the court instructed the parties to submit memoranda on the issue presented by February 17, 2023. Dkt. 60. The instant Memorandum ensued.⁶

⁵ Particularly, the United States averred that it agreed with the "findings and recommendation" of Dr. Hall's report, that a competency hearing should be conducted under 18 U.S.C. § 4241, and that as a result, the Court should find the defendant not competent to proceed (and committing the defendant to the custody of the Attorney General "for treatment."). Dkt. 57 The statement in the text above is a synopsis of this multi-step averment.

⁶ On February 2, 2023, the parties issued a joint status report to the court, the government stating that it was unable to currently house Mr. Edwards due to his ongoing medical needs and could only offer custodial care through the "Just Care" program in a Columbia, South Carolina hospital [Dkt. 65] and the defense positing that Mr. Edwards' family was trained and capable in caring for him at home. Id.

During the preparation of this memorandum, on February 14, 2023, the United States and the undersigned were informed by the Office of the United States Marshal that, on what is expected to be seventy two (72) hours-

II. Legal Issues Presented

The question facing the Court and the parties with respect to Mr. Edwards involves the proper sequential process for handling a request for release pending trial of a defendant while he or she may not or may not be fully competent. Simply stated: are a defendant's constitutional and statutory rights to release pending trial trumped by a potential determination that the defendant is not competent to proceed to trial? Although the case law is not crystal clear and many of the decisions are fact- or procedurally-bound, the answer seems to be that courts have, at times, stayed all proceedings until competency is determined, but other courts respect the freedom principle expressed in the Eighth Amendment's mandate that bail not be unreasonable and have allowed Defendants to remain at liberty pending determinations of their competency. Nevertheless, Mr. Edwards' position is that his Fifth and Eighth Amendment rights dictate he be released to his family for care⁷

notice, the defendant will be relocated to that South Carolina Facility. It is of note that this facility is more than 430 miles from Orlando, Florida. Such a relocation would effectively divest the defendant of counsel, given the logistical challenges such a relocation poses. This issue is also the subject of a contemporaneously-filed Motion to Prohibit Transfer by the defense.

⁷ On January 4, 2023, the Defendant's medical facility informed the United States and the undersigned that the Defendant's medical condition had reached a sufficient level in which a discharge from his stay at the medical care facility was appropriate. Further and as a result of a prior hospitalization, the defendant's family is able to care for him in his current state. Despite this and for reasons seemingly driven by the cost of ongoing detention, the Office of the United States Marshall has indicated an intent to move the defendant to a facility in South Carolina, which would effectively place the defendant beyond the ability of his counsel to confer, to even a limited extent, with him. See note 6, *supra*.

Although the defense is not unaware of the significant cost of the ongoing detention of the Defendant (including his stay in a private medical facility as well as two, around the clock corrections officers in the room with him where he remains cuffed wrist and ankle to the bed), the defense objects to this plan as it would, effectively, divest the defendant of contact with his counsel. Anticipating the United States' position on the same, the undersigned would note that he has been able, to a limited extent, to communicate with and inform the defendant of events in the proceeding to date, despite the defendant's communication challenges, however sourced.

pending trial and during any competency evaluation process.⁸

III. Applicable Law

The constitutional issues raised involve the Defendant's rights with respect to release pending trial pursuant to the Eighth Amendment, the Defendant's right to be competent at all material stages of the proceeding so as to be able to assist counsel with his defense pursuant to the Sixth Amendment, and the overarching right to due process of law, pursuant to the Fifth Amendment. On a more granular level, there are at least three statutes implicated in the analysis: the Bail Reform Act of 1984 (18 U.S.C. § 3142(g)), the Insanity Defense Reform Act of 1984 (18 U.S.C. § 4241, *et seq.*), and the Speedy Trial Act (18 U.S.C. § 3161, *et seq.*)⁹. The assessment of the impact of the first two, in turn, follows.

First, the Bail Reform Act of 1984 requires that the court impose the least restrictive set of conditions reasonably necessary to secure the Defendant's appearance at trial and to secure the safety of the community. 18 U.S.C. § 3142(g). Here, Mr. Edwards has been arrested and held in rather stark conditions, since

⁸ As previously noted, when the Court sets the matter for a competency hearing, the defense will seek approval for the retention of an expert to assess the defendant, prepare a report, and testify if necessary at a Competency Hearing.

⁹ Finally, the court asked the parties to address the speedy trial issue. Dkt. 61, p. 23, ll. 22-24. The Speedy Trial Act period is tolled during the period of time between a defendant's initial appearance and any subsequent judicial proceeding to determine the mental competency of a defendant. "The following periods of delay shall be excluded in computing the time within which . . . the trial of any such offense must commence: (1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant." 18 U.S.C. § 3161(h)(1)(A). United States v Pendleton, 2012 WL 12961087 (M.D. Fla. April 10, 2012); United States v. Kelly, 2020 WL 5607728 (S.D. Fla. Sept. 21, 2020).

December 16, 2022 or approximately sixty-three (63) days (through the date of this document) without having been afforded a bond hearing. Of course, his medical conditions have impacted the viability of such a proceeding, separate and apart from the question of his competency for trial.

Second, the Insanity Defense Reform Act of 1984 sets forth a process for assessing a Defendant's competency to stand trial and ability to assist in his own defense. 18 U.S.C. § 4241, *et seq.* Specifically, Section § 4241(a) states:

[a]t any time after the commencement of a prosecution for an offense and prior to the sentencing of the Defendant, The court . . . 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.

§ 4241(a). If the court finds that such “reasonable cause” exists, then “[p]rior 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).” 18 U.S.C. § 4241(b). It is of note that release pending further proceeding (including a competency determination) is not referenced in the Insanity Defense Reform Act. Seemingly, detention is to be addressed by the Court as a separate issue under the Bail Reform Act. Here, the Court appears to have found reasonable cause (hence Dr. Hall’s report), but the parties have reached differing conclusions

on the opinion provided by Dr. Hall. Clearly, a plenary evidentiary competency hearing is contemplated by the Court and the parties. See Transcript of Hearing on January 27, 2023, Dkt. 61, p. 12, l. 16-22.

The Fifth Amendment to the U.S. Constitution provides that due process requires that a person whose mental condition is such that he lacks capacity to understand nature and object of proceedings against him, to consult with counsel and to assist in preparing his defense may not be subjected to trial, U.S. Const. Amend V, Drope v. Missouri, 420 U.S. 162 (1975); United States v. Rahim, 431 F. 3d 753 (11th Cir 2005). The Sixth Amendment to the U.S. Constitution provides essentially that in all criminal prosecutions, the accused shall enjoy the right to a *speedy and public trial*, be informed of the nature and cause of the accusation against him and to have the assistance of counsel for his defense, among other things. U.S. Const. Amend. VI. The process codified in the Insanity Reform Act, at 18 U.S.C. 4241, *et seq.*, is designed to comport with Sixth Amendment rights of an accused with mental health issues. Jackson v. Indiana, 406 U.S. 715 (1972).

Finally, the Eighth Amendment to the U.S. Constitution states “[e]xcessive bail shall not be required, not excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. Amend. VIII, Harris v. United States, 404 U.S. 1232, 1232 (1971) (Eighth Amendment at the very least obligates judges passing on right to bail to deny such relief only for the strongest of reasons).

III. Argument

The Sixth Amendment to the U.S. Constitution requires that a Defendant have counsel present at all “critical stages” of a criminal proceeding. Missouri v. Frye, 566 U.S. 134, 140 (2012). Critical stages include arraignment, post-indictment interrogations, post-indictment lineups, and entry of a guilty plea. Id.; see also United States v. Hakim, 30 F. 4th 1310, 1326 (11th Cir. 2022) (cert. petition docketed) (critical stages include an arraignment, a preliminary hearing, and a plea hearing); Hunter v. Moore, 304 F. 3d 1066, 1070 (11th Cir. 2002) (closing argument is a critical stage of trial).

On the specific question of whether a detention hearing is a “critical stage” of a criminal proceeding, counsel has been unable to locate any controlling Eleventh Circuit authority nor any other clearly persuasive decisions by other Circuits of the United States Courts of Appeals directly on point. However, there are district court cases dealing with situations involving the determination of a defendant's competency, which issue was raised prior to the court's holding a detention hearing.¹⁰ Although the cases in note 10 are procedurally and factually unique (and hence distinguishable), there is at least one case where the defendant was released on conditions during the process of the determination of his

¹⁰ See, e.g., United States v. Meyer, 2011 WL 1519724 (M.D. Fla. April 20, 2011)(staying proceedings), United States v. Moser, 541 F. Supp. 1235 (W.D. Okla. 2008)(same); United States v. Weathers, 374 F. Supp. 957 (D. New Mex. 2004)(same); United States v. Segers, 2022 WL 3578272 (S.D. Tex. Aug. 19, 2022)(same).

competence (and at least a portion of the process of determining his restorability to competence), although the defendant was released on bond before the competency issue arose. See United States v. Evans, Case No. 6:19-CR-116-PGB-DCI (M.D. Fla.). The unique facts presented here makes discovery of cases addressing this unique fact pattern a challenge.

Consequently, a more circumspect approach may be required. Foundationally, "[a] pretrial detainee's confinement is subject to due process requirements." United States v. Rodriguez, 2021 WL 4776355 *2 (S. D. Cal.) Oct. 13, 2021, (quoting Or. Advocacy Ctr., v. Mink, 322 F. 3d 1101, 1120 (9th Cir. 2003)). The other book end teaches that "[t]he Supreme Court articulated a general 'rule of reasonableness' limiting the duration of pretrial detention for incompetent defendants and requiring, at minimum, 'that the nature and duration of confinement bear some reasonable relation to the purpose for which the individual is committed.'" Id., quoting Trueblood v. Wash. State Dept. of Soc. & Health Servs., 822 F. 3d 1037, 1043 (9th Cir. 2016) (quoting Jackson v. Indiana, 406 U.S. 715, 733 (1972)). Importantly, "this framework applies to individuals awaiting competency evaluations." Rodriguez, *supra*, at 2. In Rodriguez, the defendant's bond had been set and he had remained in custody due to failure to meet conditions of release prior to defense counsel's request for a competency examination. Due to Covid quarantine, Rodriguez' competency examination was delayed beyond the 30-day

time period allowed under 18 U.S.C. § 4247 (b). Although the case is not on all fours procedurally with the instant matter, the reasoning is applicable: the standards and concerns implicated where a defendant is confined or released pre-trial and pending a competency determination are still governed by the Eighth Amendment.

Here, the United States has indicated that it will seek detention of the defendant under 18 U.S.C. 3142(f)(2)(A) as it perceives him to be a serious risk of flight. Whether or not that proves to be true on the merits is a different question from whether or not the Defendant is entitled to a hearing on release. The defense posits that his detention to date has been and remains unduly harsh and punitive. Mr. Edwards has spent considerable amounts of time since his arrest in the hospital shackled to his bed and receiving only necessary medical treatment, even after he has been determined to be discharge-able from hospital care. As set forth more fully above, the government (now) claims an inability to (afford?) provide the necessary medical support for the Defendant at any location which allows him reasonable access to the undersigned counsel. Further delay in affording Mr. Edwards the opportunity for release bears no reasonable relation to the evaluative and restorative purposes for commitment. Trueblood, *supra*, at 1043.

As such the defense position is that the Defendant be released on bond until the issue of competency is determined. There is no authority necessitating a stay of all proceedings until after the competency hearing. Cases dealing with the factually

similar situation only note a stay of proceedings to accommodate a competency hearing as *dicta*, in that the issue is not directly addressed or necessary to the holdings of these cases. Clearly, this Court has power to craft an appropriate set of conditions of release for the defendant (and his family) which insure both the safety of the community and the Defendant's later appearance in the proceeding, including any assessment of his competence. This result would protect Mr. Edwards' Eighth Amendment right to be free of excessive bail and allow the assessment of his competence as currently contemplated.

The defense is not unmindful of the Court's observations regarding the Defendant's ability to understand and comply with any conditions of release imposed, given that his competence appears to be at issue. Nevertheless, counsel is absolutely certain that the Court can fashion appropriate conditions (on both the defendant and his caregiver/family) which assure both the safety of the community and the later appearance of the Defendant for proceedings. Although these conditions may be burdensome to both the Defendant and his family, they would be less burdensome than his continued detention, cuffed wrist and ankle to a hospital bed, several hundred miles from family or counsel. Accordingly, the Defendant respectfully requests this Court set the matter for a detention hearing.

WHEREFORE, the undersigned complies with this Court's Order of January 26, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of February, 2023, I filed a copy of the foregoing with the Clerk of the Court via the CM/ECF system. I further certify that all parties to this case are equipped to receive service of documents via that system.

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