

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:22-cr-00201-WWB-LHP

EVAN EDWARDS

**RESPONSE TO MOTION TO PROHIBIT TRANSFER OF DEFENDANT
EVAN EDWARDS BY THE UNITED STATES MARSHALS SERVICE**

The United States of America by Roger B. Handberg, United States Attorney for the Middle District of Florida, and in accordance with this Court's Order (Doc. 80), hereby files this Response to Motion to Prohibit Transfer of Defendant Evan Edwards by the United States Marshals Service (the "Motion"), and states:

1. The United States Marshal Service ("USMS") has indicated to the parties that the Defendant has been accepted into the "Just Care" program, a program for inmates with complex medical issues. Specifically, the Defendant has been designated to Columbia Regional Care Center (the "Medical Facility") and could be moved with 72 hours' notice.

2. In the Motion, defense counsel takes issue with Defendant's potential move to the Medical Facility, claiming that such a move would impinge on Defendant's access to counsel and family members. However, as explained below, a move to the Medical Facility would be an appropriate, temporary stop-gap until the Defendant could be transferred for restoration of competency.

3. The record is clear in this case that the Defendant is medically complex, requiring 24-hour daily care. Accordingly, despite its diligent efforts, USMS has been unable to find a local facility that will agree to house the Defendant. The record is also clear that the Defendant's ability to communicate with his counsel and to assist properly in his defense is severely limited. In fact, the competency evaluation report authored by Dr. Hall has already found that the appropriate course of action is to commit the Defendant to the custody of the Attorney General for treatment.

4. Thus, the proposed move to the Medical Facility would be a temporary stop-gap until the Defendant's competency is restored, until further action under Section 4246 is deemed necessary, and/or until the extent of any malingering is determined. Following restoration of competency, a better determination could be made regarding an appropriate detention facility for the defendant pending trial. Additionally, Defendant's consultation with his counsel would also become more pertinent following restoration of competency, as the Defendant appears to be unable or unwilling to appropriately assist in his defense at this time. Accordingly, because the Defendant appears unable to communicate with his counsel in the first instance, purported concerns posed by a move to the Medical Facility are premature.

5. Moreover, while the Motion claims that a move to the Medical Facility would "divest [Defendant] of any meaningful Sixth Amendment right of access to counsel," the Motion wholly ignores the fact that Defendant's access to and ability to consult with counsel through video conferences, writing, and telephone would remain. *See, e.g., U.S. v. Rodriguez*, No. 12-CR-83S, 2014 WL 4094561, at *1 (W.D.N.Y. Aug.

18, 2014) (explaining that the statutory standard is whether a detainee has a “reasonable opportunity to consult with counsel,” and leaving open the possibility that such standard could be met through video conferences and telephone, despite a more than 450 mile distance between detainee and counsel).¹

6. Further, defense counsel could travel to meet with the Defendant in person if he deemed it necessary. While these modes of communication may be less convenient, they are viable avenues of access to counsel. *See United States v. Rodriguez*, No. 12-CR-83S, 2015 WL 1120157, at *3 (W.D.N.Y. Mar. 12, 2015) (“The Court regrets that this arrangement will require more work for defense counsel, but the standard imposed by the statute is one of necessity, not convenience.”) (citing *U.S. v.*

¹ The interplay between the Section 3142 statutory standard and Sixth Amendment standard is explained below:

The Sixth Amendment sets minimum standards for attorney conduct and strategy that potentially affects the outcome of a case. Section 3142(i)(3) reaches above minimum conduct affecting case outcomes and suggests how an attorney-client relationship ought to proceed leading up to trial—it assumes that the attorney and client will consult each other regularly and then mandates the removal of any impediment to ‘private’ consultations that are qualitatively and quantitatively ‘reasonable.’ Consequently, compliance with Section 3142(i)(3) virtually guarantees compliance with the Sixth Amendment, so long as an adequately skilled attorney works in good faith to stay in touch with a client and to solicit the client's input regarding trial strategy.

United States v. Rodriguez, No. 12-CR-83S, 2015 WL 1120157, at *2 (W.D.N.Y. Mar. 12, 2015); *see also Falcon v. U.S. Bureau of Prisons*, 52 F.3d 137, 139 (7th Cir.1995) (“Section 3142(i)(3) is designed to protect a defendant's Sixth Amendment right to counsel, and if that right is being infringed, [the Court] has the statutory authority to protect [defendant's] access to counsel.”).

Bolze, No. 3:09–CR–93, 2010 WL 199978, at *2 (E.D.Tenn. Jan.13, 2010)); *see also* *U.S. v. Acevedo–Ramos*, 600 F.Supp. 501, 507 (D.P.R.1984) (rejecting an assertion that pretrial detention interferes with pretrial preparation where “defendant, by counsel’s own admission, has been able to consult with his attorneys”).

7. Regarding the suggestion that the Defendant could be cared for by his family, the history of this case involving the family, including (1) malingering by the Defendant’s co-conspirator and son that appears to have been pre-coordinated, (2) the entire family’s prior flight from prosecution, and (3) safety concerns due to conduct by the Defendant’s family resulting in the Defendant’s current health condition, all illustrate that such placement would be inappropriate.

WHEREFORE, the United States requests that the Court enter an order denying Defendant’s Motion; that the Court permit the Defendant’s movement to Columbia Regional Care Center, if needed, as a temporary stop-gap prior to restoration of competency; and that the Court ultimately commit Defendant to the custody of the Attorney General under 18 U.S.C. § 4241(d) for treatment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2022, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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