

**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 18 U.S.C. § 4246 BRIEF

COMES NOW, the Defendant, Evan Edwards, by and through the undersigned counsel, and in compliance with this Court's Order of November 1, 2024, and hereby submits the instant brief with respect to the propriety of a dangerousness assessment for the Defendant by the Bureau of Prisons. Dkt. 239.

I. PROCEDURAL HISTORY

1. On or about September 18, 2020, a criminal complaint was filed as to the Defendant, alleging the Defendant knowingly possessed and used a nonimmigrant visa procured by false claim or otherwise unlawfully obtained in violation of 18 U.S.C. § 1546(a), and he was subsequently arrested. *United States v. Evan William Edwards*, 6:20-mj-01673 (M.D. Fla. 2020).

2. On or about September 18, 2020, the criminal complaint was dismissed as a result of errors made in the affidavit in support of the criminal complaint. *Id.*, at Dkt. 8.

3. On December 7, 2022, a federal grand jury returned an indictment against the defendant, Evan Edwards, charging him with Conspiracy to Commit Bank Fraud in violation of 18 U.S.C. § 1349, Bank Fraud in violation of 18 U.S.C. §§ 1344 and 2, False Statement to Lending Institution in violation of 18 U.S.C. §§ 1014 and 2, and Visa Fraud in violation of 18 U.S.C. § 1546(a).

4. Mr. Edwards was arrested on December 14, 2022. Dkt. 9.

5. Since his arrest more than two (2) years ago, the Defendant has not yet been arraigned. He has either been held in custody or, for a period, was released on bond.

6. His time in custody has included time where he was held, bound by shackle at wrist and ankle, to his hospital bed at ORMC, transported to Columbia Regional Care Center in Columbia, South Carolina, for warehousing, sent to FMC Devens for a competency determination (as well as a restorability determination), had his bond revoked, been determined by the United States Bureau of Prisons to be

un-restorable to competency by three (3) separate physicians, and remained in custody at FMC Devens until November 14, 2024¹.

7. On September 23, 2024, a report was completed by the Bureau of Prisons as to the Defendant's restorability, in which the Bureau's attending doctors opined that the Defendant is unlikely to benefit from further competency restoration efforts and is likely to be unrestorable in the foreseeable future.

8. Despite this clear, unambiguous, and well-reasoned finding, the Office of the United States Attorney objected to the report and sought a fourth "evaluation" of Mr. Edwards, this time solely via his review of Mr. Edwards' medical records, which was ordered to be completed.

9. On October 28, 2024, Dr. Ryan Darby, M.D. completed a fourth evaluation of the Defendant and opined that he is incompetent to proceed and not restorable to competency.

10. Following the same, this Court ordered the parties to address whether the provisions of 18 U.S.C. § 4246 are applicable to the Defendant's current circumstance or whether they may (or not) be waived. Dkt. 239.

¹Mr. Edwards was transported back to the Middle District of Florida and released to the custody of his family on November 14, 2024.

II. MEMORANDUM OF LAW AND ANALYSIS

Under 18 U.S.C. § 4241(d), if a defendant is found incompetent to proceed, “the defendant is subject to the provisions of sections 4246 and 4248.” Section 18 U.S.C. § 4246(a) states that:

(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 . . . who has been committed to the custody of the Attorney General pursuant to section 4241(d) . . . 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.

18 U.S.C. § 4246.

Following transmission of the certificate, the Court shall order a hearing to be held in which the Court must decide “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 the property of another.”

18 U.S.C. § 4246(a). If by clear and convincing evidence the court finds that the defendant poses a substantial risk of harm to others or property the court must be committed to the custody of the Attorney General. 18 U.S.C. § 4246(d). However, if the court finds that the defendant does not pose a substantial risk of harm to others, the defendant must be released. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

Here, Mr. Edwards has been determined incompetent to proceed by four (4) different specialists. *See BOP Forensic Psychology Report* [hereinafter, “BOP Report”]; *see also Dr. Ryan Darby Report* [hereinafter, “Darby Report”]. Each expert opined that Mr. Edwards suffered from moderate to severe dementia and suffered from significant and permanent cognitive deficits. BOP Report, pg. 38; Darby Report, pgs. 3-4. It is clear from even a cursory review of the BOP Report that Mr. Edwards requires significant help to complete the simple activities of daily living and is bedridden. Mr. Edwards has no physical ability to care for and keep himself alive on a daily basis and, consequently, does not pose “a substantial risk of bodily injury to another person or serious damage to the property of another.” 18 U.S.C. § 4246(a).

While failure of the FMC Devens Bureau of Prisons Director to file a certificate as to the lack of dangerousness propensities of the Defendant prior to the determination of the need for a dangerousness hearing does not automatically warrant waiver of the same,² it is of note that § 4246 does allow the Court to order the Defendant for a brief commitment to the Attorney General for the sole purpose of conducting a dangerousness evaluation. *See United States v. Ferguson*, No. 04-cr-14041-Middlebrooks/Matthewman, 2020 U.S. Dist. LEXIS 151861, at *16-17

²Bureau of Prisons’ declination to file such a certificate should result in the release of the Defendant. *See United States v. Pfeifer*, 2018 WL 1210962, at *3 (M.D. Ala. Mar. 8, 2018).

(S.D. Fla. Aug. 5, 2020) (holding that commitment to the attorney general's office to conduct a dangerousness evaluation was appropriate and the government did not have to wait for the facility that engaged in the competency evaluation to file a dangerousness certificate prior to engaging in an evaluation for the same).

However, given the patent severity of Mr. Edwards' physical and cognitive limitations, it is clear that Mr. Edwards poses no threat to others or property, and keeping Mr. Edwards in custody to conduct a dangerous evaluation at this juncture would be a useless act. The record is both clear and uncontroverted that he is no risk to anyone other than himself and his family is currently addressing his daily needs. The permanency of and significance of Mr. Edwards' mental and physical limitations yield no conceivable manner or possibility in which he could pose a *substantial* risk to others or property³.

Finding a result to the contrary would lead to an absurdity. Four (4) separate physicians have evaluated the Defendant and/or his prior medical history and reached the conclusion that Mr. Edwards is incompetent to proceed in the proceedings. In reaching this joint conclusion, the physicians have each noted

³ This risk "*must* derive from mental disease or defect" in order to be considered for any potential further confinement. *United States v. Acosta-Soberanis*, 2012 WL 1801978, at *18 (N.D. Ga. Apr. 3, 2012), report and recommendation adopted sub nom. *United States v. Soberanis*, 1:09-CR-0359-01-RWS, 2012 WL 1801680 (N.D. Ga. May 15, 2012)(emphasis added). Should the Court perceive that a dangerousness evaluation and further proceedings with respect to the same be necessary, the four (4) prior evaluating physicians have established no indication that Mr. Edwards' potential dangerousness could or would derive from any of his mental diseases or defects.

significant, highly restrictive physical and mental limitations affecting the Defendant that can only result in a determination that no further proceedings under 18 U.S.C. § 4246 warrant any meritorious discussion.

Any additional such evaluation period under 18 U.S.C. § 4246 to determine such a potential risk or lack thereof would only result in delaying what has been a near two (2) year litigative period to reach an inevitable and unavoidable result. During his substantial time in custody and limited time out on bond, Mr. Edwards has posed no threat to others or property and apart from Mr. Edwards' extensive medical needs and medical complications; Mr. Edwards has presented no risk to others. Mr. Edwards has been physically unable to move himself, to take care of nearly all basic daily life functionalities without assistance, much less pose any risk of harm to them. Simply put, Mr. Edwards' condition warrants no any further study, analysis, or assessment by the Bureau of Prisons.

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WHEREFORE, the Defendant, Mr. Edwards respectfully requests this Court to order the Attorney General to release the Defendant.

Respectfully submitted this 15th day of November, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of November, 2024, 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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