

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:22-cr-201-WWB-LHP

EVAN EDWARDS

BRIEF IN RESPONSE TO COURT ORDER:
APPLICATION OF 18 U.S.C. § 4246

The United States of America by Roger B. Handberg, United States Attorney for the Middle District of Florida, by the undersigned AUSA, in accordance with this Court's Order dated November 1, 2024 (ECF NO. 239) hereby files this briefing.¹ As more fully detailed below, the provisions of 18 U.S.C. § 4246 as it relates to a dangerousness assessment by the Bureau of Prisons is not mandatory following a 4241(d) incompetency determination by the Court. The government does not waive such an assessment, but also does not ask the Court to consider the assessment beyond that which was raised and considered at the November 1, 2024 hearing. Put another way, the government is not requesting either the issuance of a

¹ As an initial matter, the government objects to the filings being made under seal. There is a common law presumption of public access to judicial records. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978), *Callahan v. United Network for Organ Sharing*, 17 F. 4th 1356 (11th Cir. 2021), *United States v. Rogers*, No. 6:23-cr-7-RBD-RMN, 2023 U.S. Dist. LEXIS 178692, 2023 WL 6464110 (M.D. FL, Oct. 4, 2023), *United States v. Kaczynski*, 154 F.3d 930, 931 (9th Cir. 1998) (holding, over the defendant's objections, that certain media companies could access redacted versions of a psychiatric competency report that was sealed based on the defendant's privacy interests). The government notes that its filing contains no personal identifying information (PII) or confidential mental health information.

dangerousness certificate or a referral to FMC Devens for a dangerousness evaluation under 18 U.S.C. § 4246(b).

I. Background

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). The sophisticated scheme involved multiple frauds to procure more than \$8 million in funds from the Federal Government.

ASLAN International Ministry, Inc. (ASLAN) was originally established in Ohio on June 16, 2005. On June 5, 2018, Dr. Evan Edwards, on behalf of ASLAN, filed an application to conduct business in Florida as a Foreign Not For Profit Corporation. In the application, Dr. Evan Edwards was listed as the registered agent, Chairman, and President of the business, Joshua Edwards (Evan Edwards' son) was listed as the Vice President and a Director; Dr. Joy Edwards (Evan Edwards' daughter) was listed as the Secretary and a Director; W.G. was listed as the Vice Chairman, and M.B. was listed as a Director. The application indicated that the purpose of the business was "religious." *See Verified Complaint, United States v. Approximately \$5,698,846.38 Seized from Bank of America Account number 898116276448 Held in the Name of Church of Florida, Inc.*, 6:20cv2269 (M.D. FLA).

On January 4, 2023, United States Magistrate Judge Embry Kidd determined that 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.” (Doc. 50 at 1 (quoting 18 U.S.C. § 4241(a))). Accordingly, Magistrate Judge Kidd appointed a doctor to examine Defendant and render an opinion regarding his competency to proceed to trial in this matter under 18 U.S.C. § 4241(b). (*Id.* at 2). *See* ECF No. 136, pg. 2.

On July 7, 2023, Dr. Miriam Kissin authored a competency report pursuant to 18 U.S.C. § 4241(b). Dr. Kissin opined that the defendant was incompetent to stand trial, and diagnosed defendant Evan Edwards with Major Neurocognitive Disorder (Demntia). *See* Kissin Competency Report dated July 7, 2023, pg. 7. According to Dr. Kissan’s report, and the other records reviewed, the defendant had no significant medical or mental problems prior to July 8, 2022, when he was brought by family members to the Emergency Department at Advent Health New Smyrna Beach Hospital. Kissan Report, pg. 3. He was reported to have not eaten or drank for two days, mumbled incoherently, and had become progressively weak. According to his family's reports, they had been spending every day at the beach under direct sun. His daughter had reportedly been feeding Mr. Edwards salt and lemons, with the intention of increasing his fluid intake and enhance alertness. It was this “salt and lemon” poisoning that was the basis of the defendant’s cognitive decline. Later obtained medical records indicated that the defendant’s daughter claimed to have

provided the defendant with six teaspoons of salt in a maple sugar mixture. Based upon a subsequent medical review by Neurologist Dr. Ryan Darby, that amount of salt, and mixture, would be completely inadequate to elevate the defendant's sodium level to the point tested at the Advent Health New Smyrna Beach Hospital on July 8, 2022.

On August 3, 2023, Magistrate Judge Hoffman Price held a hearing to address the findings in the competency report issued by the Bureau of Prisons ("BOP") and the parties were ordered to submit additional briefing on the applicability of the restoration procedures set forth in 18 U.S.C. § 4241(d). (Doc. 104 at 1; Doc. 105 at 1). The parties fully briefed the issue, and Magistrate Judge Hoffman Price issued the R&R committing the defendant to the custody of the Attorney General for the mandatory restoration process under 18 U.S.C. § 4241(d). That commitment was upheld by the District Court. *See* ECF No. 136.

On September 12, 2024, Dr. Chad Brinkley authored a competency report pursuant to 18 U.S.C. § 4241(d). Dr. Brinkley opined that the defendant remains incompetent to proceed. Brinkley Report, pg. 36. Further, Dr. Brinkley opined:

There is no indication he has been or ever will be able to achieve the same level of cognitive functioning he had prior to his 2022 hospitalization in any domain. It is likely he will continue to experience some level of cognitive impairment for the remainder of his life. Based on the available information, this evaluator believes Mr. Edwards' symptoms are unlikely to improve to the point where he could become competent in the foreseeable future.

Brinkley Report, pg. 37. Notwithstanding those conclusions, Dr. Brinkley noted:

The question of whether he may be malingering symptoms for secondary gain had been previously raised. Although there medical/organic findings

consistent with dementia have been identified, it is possible Inmate Edwards is also engaging in behaviors to make himself appear sicker than he is. It is possible that drinking hand cleanser with the objective of inducing repeated vomiting may be motivated by this objective.

Brinkley Report, pg. 10. Evidence of significant cognitive improvement and variability of tasks of daily living also demonstrated, the government maintains is suggestive of the possibility that Mr. Evan Edwards may have malingered symptoms of exaggerated cognitive decline. Dr. Brinkley further noted:

Since the time of Mr. Edwards arrest, however, there has been variation in his level of impairment and what he seems to be capable of doing. At times he presents as mute. At other time he has demonstrated he can speak in brief sentences. In some circumstances, Mr. Edwards has been described as unresponsive. In other situations, he has been able to participate in brief interviews with significant effort. Dietary staff at FMC Devens observed Mr. Edwards willingness to eat seems to be better when his mood is good than when he is angry. Mr. Edwards has been described as unable to take care of himself in the past. Nursing staff at FMC Devens, however, have observed he can dress himself and ambulate slowly when he chooses to do so.

Brinkley Report, pg. 32. During his restoration proceedings at FMC Devens, the defendant was also observed engaging in malingering behavior. In administrative notes taken at Devens, the staff noted that the defendant:

is under telemetry monitoring due to suspected selective mutism for secondary gain versus dementia versus catatonia. Suspected malingering versus dementia and inability to recognize thirst or hunger or participate in conversation or self-care. With certain times with some staff members, he is speaking and answering questions and at other times he is non-verbal.

Brinkley Report, pg. 11. Nevertheless, Dr. Brinkley diagnosed the defendant with Major Neurocognitive Disorder (Due to Another Medical Condition, With Behavioral Disturbance, Moderate-Severe Impairment). Brinkley Report, pg. 31.

The government notes that evidence adduced during the competency hearing of Evan Edwards' co-defendant (and son Joshua Edwards) casts further suspicion that the symptoms presented by the defendant may not accurately reflect his true cognitive capacity. On July 10, 2024, Agent Javier Mondejar testified in the competency hearing of Joshua Edwards, and testified about the contact between the defendant and his son, Joshua Edwards. Agent Mondejar testified:

A. He was escorted inside a cell with his dad. They started talking. I couldn't hear very well what they were saying, but they started talking one or two sentences, and then they switched to whispering in each other's ears.

Q. Okay. At some point that day, did Mr. Joshua Edwards' behavior change?

A. When we were in initial appearance.

Q. And can you describe that for the Court?

A. After coming back upstairs from U.S. Marshals, I was sitting at a table with you and the other agent. I observed Josh. He stood up. And they were standing, talking to the judge, and he was looking up at the ceiling, not paying attention, not talking to the magistrate, not acknowledging the lawyer or the judge.

Transcript of hearing, July 10, 2024, *United States v. J. Edwards*, No. 6:22-cr-00201-WWB-LHP (M.D. Fla.) pg. 82. The testimony by Agent Mondejar at the competency hearing of Joshua Edwards was offered to show the transformation of Joshua Edwards from a person engaging in normal interactions and conversations to complete mutism and an unwillingness to interact at all after contact with the defendant. The government suggests that the inverse is applicable as well: it could have been the defendant Evan Edwards' conduct and conversations with his son that resulted in feigned incompetency by the son. That level of interaction is potentially inconsistent

with the level of cognitive decline and deficiency demonstrated by the defendant at different points throughout this litigation.

It is for these aforementioned inconsistencies in conduct and behavior, interwoven with a sophisticated Covid fraud scheme, that led the government to retain Dr. Ryan Darby. On October 8, 2024, the Court held a status conference in which the government made a request for the appointment of Dr. Ryan Darby, a neurologist, to review the medical and mental health records of the defendant and to render an opinion as to his competency and/or restoration. ECF No. 226. The Court agreed and appointed Dr. Darby to review the available medical records, but established a strict deadline of October 29, 2024.

Although Dr. Darby did not interview or evaluate the defendant himself, he did have access to the defendant's medical records, including copies of the original medical records from Advent Health New Smyrna Beach, dated 7/8/2022 through 8/25/2022. Dr. Darby was able to confirm at least two aspects of the defendant's cognitive limitations germane to this Court's inquiry, and the government's overriding concern: (1) the defendant's sodium levels as recorded by the hospital upon admission on July 8, 2022 are extreme and consistent with hypernatremia which can cause brain injury, and (2) the defendant is not likely to recover a cognitive capacity consistent with competency to stand trial. Dr. Darby also suggested that the family's self-report that they had tried to rehydrate the defendant with orange slices, increased salt, and water mixed with 6 teaspoons of salt in maple

sugar would not be sufficient to raise the defendant's sodium level to 183, the reported blood-sodium level.

In an effort to expedite this process, and to not unduly delay the defendant's custody at FMC Devens, the government contacted staff at FMC Devens to facilitate any 18 U.S.C. § 4246 proceeding. The staff at FMC Devens confirmed that, since the defendant is currently in custody at FMC Devens and they are familiar with his background and condition, they can complete any 18 U.S.C. § 4246 dangerousness evaluation in 30 days or less. Staff at FMC Devens also candidly acknowledge that given the defendant's current charges, his lack of criminal record, his adjustment at FMC Devens, as well as his diagnosis and prognosis, it is unlikely that the defendant meets the criteria under 4246 that "his release would create a substantial risk of bodily injury to another person or serious damage to property of another." Given that background, the government did not object to the Court considering the defendant's (1) competency, (2) restoreability or unrestoreability, and (3) the defendant's referral or non-referral for an 18 U.S.C. § 4246 evaluation in one proceeding.

On November 1, 2024, Magistrate Judge Hoffman Price held a hearing to address the findings in the competency report issued by Dr. Brinkley dated September 12, 2024 as well as Dr. Darby's record review. At that hearing, the Court found:

I further find by a preponderance of the evidence that Defendant Evan Edwards is incompetent to proceed pursuant to 18 U.S.C. § 4241(a) and (d).

ECF No. 238, pg. 3. The Court further found “that the chances his competency will be restored in the foreseeable future is low.” *Id.* The Court also ordered further briefing regarding the applicability of the civil commitment statute (18 U.S.C. § 4246) as follows:

the parties shall each file a brief . . . addressing whether the provisions of 18 U.S.C. § 4246 – in particular the dangerousness assessment by the Bureau of Prisons and issuance of a certification on same – is mandatory or may be waived given the specific facts and circumstances of this case. The parties shall include applicable legal authority and shall also address, in the event that the provisions of § 4246 are found to be mandatory, the appropriate jurisdiction for the assessment and any resulting hearing.

ECF No. 239, pg. 1.

II. ARGUMENT

In some respects, the statutory scheme of 18 U.S.C. §§ 4241, 4246, and 4247 is less than clear. 18 U.S.C. § 4241(d) has the triggering language that initiates the applicability of 18 U.S.C. § 4246 (the civil commitment statute) in the context of competency proceedings. Pursuant to § 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. § 4241(d) (emphasis added). It follows, as a matter of statutory interpretation and practice, that the Court of original jurisdiction (the charging Court) makes the competency and restoreability determination. 18 U.S.C. § 4246(a) provides:

(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*.

18 U.S.C. § 4246(a). Clearly, then, after the charging Court makes the competency and restoreability determination, a civil commitment proceeding can be triggered by the certification by the facility in which the defendant was hospitalized. That is, the facility that rendered the competency and restoreability opinion triggers the civil commitment proceeding by filing a certificate that the defendant “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.” 18 U.S.C. § 4246(a).

The question remains whether the director’s “certification” of dangerousness is the only vehicle to initiate a § 4246 civil commitment proceeding. The apparent answer to that question is no. *See United States v. Ferguson*, No. 04-cr-14041, 2020 U.S. Dist. LEXIS 151861, 2020 WL 5100099 (S.D. FL, Aug. 5, 2020), *citing United States v. Rivera-Morales*, 365 F. Supp. 2d 1139, 1143 (S.D. Cal. 2005). *See also Sealed v. Sealed*, 802 Fed. Appx. 138 (5th Cir. 2020). The Court in *Ferguson* held that it had the authority commit a defendant to the custody of the Attorney General for

purposes of conducting a § 4246(a) evaluation even after it found the defendant incompetent and unlikely to be restored. *Ferguson*, 2020 U.S. Dist. LEXIS 151861 * 17.

The *Ferguson* and *Rivera-Morales* courts' interpretation of the ways in which a dangerousness assessment under 18 U.S.C. § 4246 can proceed is in conflict with unpublished authority from this District. See *United States v. Chappell*, NO. 8:18-cr-344-VMC-AAS (M.D. FLA, Jan. 27, 2023), attached as Exhibit A. See also Report and Recommendation *United States v. Chappell*, NO. 8:18-cr-344-VMC-AAS (M.D. FLA, Jan. 11, 2023), attached as Exhibit B. In short, there remains in the statutory scheme some question of jurisdiction. See also *United States v. Wayda*, 966 F.3d 294 (4th Cir. 2020), *United States v. Curbow*, 16 F.4th 92 (4th Cir 2021), *Sealed v. Sealed*, 802 Fed. Appx. 138 (5th Cir. 2020) (the statutory language indicates that the determination of dangerousness under § 4246 occurs after the four-month time period specified in § 4241(d)). It is for this precise reason that that government requested that the Court make a referral or non-referral to FMC Devens for a dangerousness evaluation prior to or contemporaneously with its competency-restoreability determination. It is clear, the government suggests, that the court had jurisdiction or authority to make such a referral if it so desired at the November 1, 2024 hearing. Although not critical to the Court's specific inquiry, the jurisdictional interplay of 18 U.S.C. § 4241(d) and § 4246 is critical to the Court's perceived authority to order such an evaluation.

That being said, the government is unaware of any authority mandating the Court, or the “director of a facility in which a person is hospitalized” to either (1) issue a certificate of dangerousness or (2) order an evaluation pursuant to 18 U.S.C. § 4246(b). The government notes that the competency evaluation procedures under 18 U.S.C. § 4241(d) are mandatory. That is, pursuant to 18 U.S.C. § 4241(d), once a Court makes an incompetency finding, the court is compelled by statute to commit a defendant to the custody of the Attorney General for hospitalization and treatment. 18 U.S.C. § 4241(d). However, no analogous provision exists under 18 U.S.C. § 4246(b).

WHEREFORE, the submits the briefing in response to the Court's Order dated
November 1, 2024 (ECF NO. 239).

Respectfully submitted,

ROGER B. HANDBERG
United States Attorney

By: /s/ Kara M. Wick
Kara M. Wick
Assistant United States Attorney
Florida Bar No. 0085578
400 W. Washington Street, Suite 3100
Orlando, Florida 32801
Telephone: (407) 648-7500
E-mail: Kara.Wick@usdoj.gov

By: /s/ James D. Peterson
James D. Peterson
Trial Attorney
Bar No. VA 35373
United States Department of Justice
1331 F Street N.W. 6th Floor
Washington, D.C. 20530
Desk: (202) 353-0796
E-mail: James. D.Peterson@usdoj

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November 2024, a true and correct copy of the foregoing document was filed with the Court using the Court's CM/ECF systems and was served upon each attorney of record via ECF notification:

Brian Philips, Esq.

/s/ James D. Peterson
James D. Peterson
Trial Attorney