UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 6:21−cr−141−RBD−EJK
	)	
EMMET BOWENS,	)	
	)	
Defendant.	)	
	)	

DEFENDANT EMMET BOWENS' NOTICE TO THE COURT REGARDING THE NEED FOR A COMPETENCY HEARING

The Defendant, Emmet Bowens ("Mr. Bowens"), by and through the undersigned counsel, hereby files this Notice to the Court Regarding the Need for a Competency Hearing, pursuant to the Court's prior Orders (Docs. 55, 57). In support thereof, Mr. Bowens states as follows:

STATEMENT OF FACTS

Relevant Procedural History

1. On May 6, 2022, Mr. Bowens filed an Unopposed Motion for a Hearing and Out-Patient Examination to Determine Mental Competency ("the competency motion"). Doc. 47.

2. On May 16, 2022, the Court granted the competency motion and appointed Jeffrey A. Danziger, M.D. ("Dr. Danziger") to perform a competency

evaluation of Mr. Bowens. Docs. 52, 55. The Court's Orders regarding the competency motion set a deadline for the submission of Dr. Danziger's competency report to the Court. Docs. 55, 57. The Court also directed the parties to "file separate notices indicating whether a competency hearing, or some other related proceeding, should be scheduled," within 7 days from the filing of Dr. Danziger's report. Docs. 55, 57.

3. On June 27, 2022, the undersigned timely submitted to the Court, under seal, Dr. Danziger's report concerning the competency evaluation of Mr. Bowens. Docs. 66, 68.

4. On July 1, 2022, the government filed their Notice Regarding Competency of Defendant. Doc. 68. In this Notice, the government stated that they do not contest Dr. Danziger's findings regarding Mr. Bowens' mental competency. *Id.* The government further requests that this Court "find 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, and commit the defendant to the custody of the Bureau of Prisons pursuant to 18 U.S.C. § 4241(d) to undergo restorative competency." *Id.* In their notice, the government appears to take no position on whether or not this Court should hold a hearing pursuant to 18 U.S.C. §§ 4241(c) and 4247(d).

MEMORANDUM OF LAW

Pursuant to 18 U.S.C. § 4241, the Court "shall" hold a competency hearing "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." 18 U.S.C. § 4241(a) (emphasis added). Moreover, the statute requires that the hearing be "conducted pursuant to the provisions of section 4247(d)" which provides a defendant certain due process protections. 18 U.S.C. § 4241(c); 18 U.S.C. § 4247(d).

Section 4241 further states that if a court finds by a "preponderance of the evidence" that a defendant is incompetent to stand trial, the defendant must be committed to the Attorney General for hospitalization until it can be determined whether a probability exists that the defendant will regain the capacity to be tried. 18 U.S.C. § 4241(d). The Eleventh Circuit has held that "this statute is mandatory and that the district court [does] not have the authority to circumvent the hospitalization." *United States v. Donofrio*, 896 F.2d 1301, 1303 (11th Cir. 1990); *see also United States v. Cobble*, 724 F. App'x 753, 754 (11th Cir. 2018) (per curiam) ("A district court has no authority to circumvent the statutory mandate that a person found mentally incompetent must be committed to the Attorney General for hospitalization.").

In addition, courts have interpreted the language in 18 U.S.C. § 4241(a) as mandating or requiring a hearing upon the court's finding of a "reasonable cause" to believe the defendant has a mental disease. *United States v. White*, 887 F.2d 705, 710 (6th Cir. 1989); *Gaddis v. United States*, No. 91-3885, 1992 U.S. App. LEXIS 10008961 (6th Cir. April 29, 1992) (unpublished). In *White*, the Sixth Circuit stated as follows:

> We conclude that the provision for a hearing is mandatory upon a determination of reasonable cause to believe that the defendant is incompetent to stand trial; consequently, the only commitment that is proper at this stage of the proceedings is one for a thirty-day examination under § 4241(b). That Congress intended that the defendant be provided a hearing before hospitalization for treatment is apparent from the provision that "the court shall grant the motion" for a hearing to determine mental competency or "shall order such a hearing on its own motion" if reasonable cause to believe that defendant is incompetent to stand trial exists. Use of the word "shall" indicates a mandatory intent unless a convincing argument to the contrary is made. Legislative history forecloses any doubt that Congress intended that a hearing be mandatory. The Senate Report at various points indicates both that the court "must order a hearing . . . if there is reasonable cause to believe that the defendant is presently incompetent to stand trial," and that "it is mandatory that the court order a hearing if there is reasonable cause."

White, 887 F.2d at 710 (internal citations omitted).

To be clear, the undersigned concurs with the government in that he does not contest the findings in Dr. Danziger's report with regard to Mr. Bowens' mental competency. In light of Dr. Danziger's report, 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." *See* 18 U.S.C. § 4241(a). Because "reasonable cause" has been triggered, this Court is now required to conduct a competency hearing. *See* 18 U.S.C. § 4241(a); *White*, 887 F.2d at 710.

The undersigned acknowledges that if the Court adopts Dr. Danziger's uncontested report at the hearing, and finds by a preponderance of the evidence that Mr. Bowens is incompetent to proceed, the statute and binding precedent will require that Mr. Bowens be committed to the custody of the Attorney General for treatment. *See* 18 U.S.C. § 4241(d); *Donofrio*, 896 F.2d at 1303. However, before we reach that point, the Court is still required to conduct a competency hearing, even if such a hearing is nothing more than a formality. *See* 18 U.S.C. § 4241(a); *White*, 887 F.2d at 710. Therefore, the undersigned requests that this Court set a competency hearing so that the Court can make the appropriate findings on the record. The undersigned respectfully proposes the following dates for the competency hearing: July 11, 2022 through July 14, 2022, or to a date that is convenient for the Court's schedule on or after July 27, 2022.[1]

[1] The undersigned was informed just yesterday that Mr. Bowens is currently positive with COVID-19. Therefore, the undersigned is requesting the week of July 11, 2022 or later so that Mr. Bowens is no longer contagious and can attend the hearing in-person. Moreover, the undersigned is currently unable to confer with Mr. Bowens in-person about the anticipated competency hearing due to Mr. Bowens' current COVID-19 status. Lastly, the undersigned will be on a pre-paid family vacation starting on July 15, 2022 and continuing through July 25, 2022.

CONCLUSION

WHEREFORE, the Defendant, Emmet Bowens, respectfully requests that this Court schedule a competency hearing and proposes the following dates for the competency hearing: July 11, 2022 through July 14, 2022; or to a date that is convenient for the Court's schedule on or after July 27, 2022.

Respectfully submitted on this 1st day of July, 2022.

s/Andrew C. Searle
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on July 1, 2022 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.

s/Andrew C. Searle
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