

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-HC-2082-BR

UNITED STATES OF AMERICA

v.

COLBY RANDALL WOODYARD

**MOTION TO DISMISS CERTIFICATE
AND TO HOLD EVALUATIONS AND
DEADLINES IN ABEYANCE PENDING
DISPOSITION OF THIS MOTION AND
INCORPORATED MEMORANDUM OF
LAW**

On May 18, 2020, the Government filed a certificate of mental disease or defect and dangerousness against Colby Randall Woodyard. DE 1. At that time, Mr. Woodyard was not in the legal custody of the Bureau of Prisons, the period in which he was committed to the custody of the Attorney General pursuant to section 4241(d) had expired, and he was not a person against whom all criminal charges had been dismissed solely for reasons relating to the mental condition of the person. As explained below, the statutory prerequisites to certification under 18 U.S.C. § 4246(a) were not met and the certificate should be dismissed under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. Mr. Woodyard also respectfully requests the Court hold in abeyance all evaluations and deadlines in this case pending disposition of the motion to dismiss. The Government opposes Mr. Woodyard's motion to dismiss and intends to file a response, but it does not object to holding all evaluations and deadlines, including the August 24, 2020, hearing, in abeyance pending disposition of the motion to dismiss.

BACKGROUND

In January 2015, Mr. Woodyard was charged in an indictment filed in the Southern District of Alabama with one count of knowingly receiving and possessing a Massachusetts

Arms Model Champion .410 gauge shotgun after having been committed involuntarily to a mental institution by commitment through the Clarke County Alabama Probate Court on February 13, 2014, March 11, 2014, and April 9, 2014 in Probate Court Case Number PC-13-84, in violation of 18 U.S.C. §§ 922(g)(4). *United States v. Woodyard*, No. 1:15-CR-13-CG-B, ECF No. 1 (S.D.Ala. filed Jan. 29, 2015). On July 14, 2017, Mr. Woodyard’s counsel moved to determine Mr. Woodyard’s competency. *Id.*, ECF No. 84. The court granted the motion on July 18, 2017, ordering a competency evaluation. *Id.*, ECF No. 86.

Five months later, on December 20, 2017, the court held a competency hearing and issued an order that day concluding that Mr. Woodyard “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.” *Id.*, ECF No. 91. It thus ordered him committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4241(d) for a reasonable time, not to exceed four months to determine whether there was a substantial probability that, in the foreseeable future, Mr. Woodyard would attain the capacity to permit the trial to proceed. *Id.* Though not expressly stated anywhere in Section 4241, the district court in a footnote ordered that the “time period shall not begin to run until the date the defendant arrives at the facility designated for treatment by the Attorney General. *Id.*

On August 9, 2018—nearly eight months after the court’s Section 4241(d) commitment order—the district court held a telephone conference, and then four days later on August 13, 2018, the court again committed Mr. Woodyard for another Section 4241(d) period, not to exceed four months. *Id.*, ECF No. 94. In its order the district court referenced a forensic evaluation report that opined “Mr. Woodyard’s prognosis with regard to his competency is good

provided he remains compliant with recommended psychotropic medication. The staff at Butner requests the Court to order another period of commitment, for 120 days, to continue treatment with psychotropic medication.” *Id.* “Accordingly, pursuant to 18 U.S.C. 4241(d), the Court ORDERS that the defendant continue in the custody of the United States Attorney General for a reasonable time, not to exceed four months, as is necessary for continued treatment with antipsychotic medication to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the revocation hearing to proceed.” *Id.*

More than five months later, on January 22, 2019, the court held a hearing and issued another order committing Mr. Woodyard once again to the custody of the Attorney General. *Id.*, ECF No. 98. The order references a forensic evaluation report that “opines that Mr. Woodyard’s restoration of competency is likely provided he remains compliant with [a] combination [of] psychotropic medication treatment at therapeutic levels. The staff at Butner requests the Court to order another period of commitment, for 120 days, to continue treatment with psychotropic medication.” *Id.* “Accordingly, pursuant to 18 U.S.C. 4241(d), the Court ORDERS that the defendant continue in the custody of the United States Attorney General for a reasonable time, not to exceed four months, as is necessary for continued treatment with antipsychotic medication to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the revocation hearing to proceed.” *Id.*

On March 26, 2019, the district court ordered Mr. Woodyard to be immediately returned to Butner. *Id.*, ECF No. 99. Mr. Woodyard had apparently been returned to the Southern District of Alabama.

More than ten months after the third and latest “4241(d)” period not to exceed four months, on November 25, 2019, the district court entered an order finding that “the defendant is

presently incompetent to proceed in this case and that it is unlikely he would be restored to competency in the future. The Court thus finds that the defendant is subject to the provisions of 18 U.S.C. 4246. Accordingly, pursuant to 18 U.S.C. 4241 it is ORDERED that the defendant is to be continued in the custody of the Attorney General until such time as he regains competency, or until the provisions of 18 U.S.C. 4246 are implemented and further order supersedes this one.” *Id.*, ECF No. 103.

Further stretching out the time, the district court then entered what appears to be a text order granting the Bureau of Prisons a thirty day extension upon Mr. Woodyard’s arrival. *Id.*, ECF No. 105.

On May 18, 2020, the Government filed a certificate of mental disease or defect and dangerousness against Colby Randall Woodyard. DE 1.

ARGUMENT

Statutory Analysis. Section 4246(a) is very specific about how proceedings under that statute must be initiated. It applies only to persons who satisfy one of three criteria: (1) a person who is in the custody of the Bureau of Prisons whose sentence is about to expire; or (2) who has been committed to the custody of the Attorney General pursuant to section 4241(d); or (3) against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person. At the time of certification, Mr. Woodyard was not in the legal custody of the Bureau of Prisons. *See United States v. Joshua*, 607 F.3d 379, 386 (4th Cir. 2010) (quoting *United States v. Hernandez-Arenado*, 571 F.3d 662, 665 (7th Cir. 2009)) (“Because the second and third categories include only ‘persons who are in the federal criminal process and thus under the authority of the Attorney General as head of the Department of Justice,’ the first category ‘is consistent with those other categories if read as including those remanded to the custody of the

BOP *after a federal conviction.*”) (emphasis added). He was not a person against whom all criminal charges had been dismissed solely for reasons relating to the mental condition of the person. Indeed, his charges remain pending according to the docket in his criminal case in the Southern District of Alabama. *See United States v. Woodyard*, No. 1:15-CR-13-CG-B (S.D.Ala.). Nor was he a person committed to the custody of the Attorney General pursuant to section 4241(d). *See United States v. Wayda*, ___ F.3d ___, 2020 WL 4279745, at *8-*9.

18 U.S.C. § 4241(d) provides that a person may be hospitalized by the Attorney General in a suitable facility,

- (1) For such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and
- (2) For an additional reasonable period of time until—
 - (A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or
 - (B) the pending charges against him are disposed of according to law; whichever is earlier.

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.

In this case, the Southern District of Alabama conducted a competency hearing on December 20, 2017, more than two and a half years ago. *United States v. Woodyard*, No. 1:15-CR-13-CG-B, ECF No. 91 (S.D.Ala.). The same day, the court concluded that Mr. Woodyard was not competent and ordered him to be returned to custody under 18 U.S.C. § 4241(d) to determine whether there is a substantial probability that in the foreseeable future he would attain the capacity to permit the trial to proceed. *Id.* By statute, that period expired after four months: After four months, absent a finding under § 4241(d)(2)(A) of a “substantial probability that

within [an additional reasonable period of time] he will attain the capacity to permit the proceedings to go forward,” the statutory authority for the Government to hold a person under section 4241(d) expired. *Wayda*, 2020 WL 4279745, at *8 (“any additional period of confinement beyond the initial four month § 4241(d)(1) hospitalization to address competency depends on the finding of an additional justification in either § 4241(d)(2) or the initiation of a civil commitment proceeding pursuant to the relevant statute [Sections 4248 or 4246]”); *United States v. Baker*, 807 F.2d 1315, 1320 (6th Cir. 1986) (holding that there was “no authority to confine appellant beyond the four months authorized by section 4241(d)” where there was no finding “that the individual is likely to attain competency within a reasonable time”); *United States v. Donofrio*, 896 F.2d 1301, 1303 (11th Cir. 1990) (explaining that Section 4241 limits confinement for the purpose of determining restorability to a reasonable period of no longer than four months); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (“without a finding of dangerousness, one committed [under the federal incompetency statutes] can be held only for a ‘reasonable period of time’ necessary to determine whether there is a substantial chance of his attaining the capacity to stand trial in the foreseeable future. If the chances are slight, or if the defendant does not in fact improve, then he must be released or granted a [civil commitment] hearing.”).

In Mr. Woodyard’s case, the Southern District of Alabama never made the requisite 4241(d)(2)(A) finding extending the original 4241(d)(1) time period not to exceed four months. Instead of making the necessary 4241(d)(2)(A) finding, the Southern District of Alabama twice purported to recommit Mr. Woodyard under 4241(d) stating in two orders that he was being committed “to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the revocation hearing to proceed.” *United States v.*

Woodyard, No. 1:15-CR-13-CG-B, ECF Nos. 94, 98 (S.D.Ala.). Here the Southern District of Alabama did not make the “substantial probability” finding, and instead recommitted Mr. Woodyard for the purpose of the BOP “to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the revocation hearing to proceed.” *Id.* That procedure did not comply with the statute.

Therefore, and because a 4241(d)(2)(A) was never properly made, the original 4241(d) period ordered on December 20, 2017 expired on April 17, 2018. The Southern District of Alabama in a footnote purported to order that original time period not to exceed four months would not begin until Mr. Woodyard’s arrival at the BOP. *Id.*, ECF No. 91. Nothing in the statute specifically allows this, so notwithstanding the propriety of that additional extension of time, that four month period still long ago expired prior to his 4246 certification.

Although the Southern District of Alabama purported to extend Mr. Woodyard’s custody by ordering an evaluation under section 4246, it was without authority to do so. Proceedings under section 4246 must be initiated by a certificate filed by the director of the facility in which the person is hospitalized: “If the director of a facility in which a person is hospitalized certifies that a 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).

The Fourth Circuit has made plain that it is certification by the director of the facility—not an order entered by any court—that begins proceedings under Section 4246(a). *Wayda*, 2020 WL 4279745, at *4 n.4 (“Importantly, our evaluation in this case is not affected by the Maryland

district court’s December 2018 assertion that it was ordering Appellee committed to the custody of the Attorney General for the purposes of 18 U.S.C. § 4246 and 18 U.S.C. § 4248 evaluations. Both § 4246 and § 4248 expressly provide that the proceedings thereunder are to be initiated by a certification by (i) for § 4246, the director of the facility in which a person is hospitalized, or (ii) for § 4248, the Attorney General, Director of BOP, or a person authorized thereby. Nothing in these provisions independently authorizes a court to sua sponte initiate civil commitment proceedings, so the relevant date for the § 4248 certification here is June 11, 2019, when the Government itself—not any district court—filed the requisite certification.”). *See also United States v. Locklear*, 483 F. App’x 842, 847 (4th Cir. 2012) (“[W]ithout a certificate from the director of FMC Butner [alleging that a person meets criteria for commitment], the district court was without authority to have Locklear held [I]t is not the province of the district court to make that decision in the first instance. Instead, as previously noted, Congress has conferred that authority only upon the director of FMC Butner.”)

Mr. Woodyard’s status as a person “committed to the custody of the Attorney General pursuant to section 4241(d)” thus expired by statute on April 17, 2018, two years and one month before the filing of a Section 4246 certificate. And that means that he was ineligible to be certified: “[T]he Government was require to certify [Mr. Woodyard] . . . if it wanted to do so, before his period of commitment to the Attorney General’s custody for treatment had ended.” *Wayda*, 2020 WL 4279745, at *9. In other words, “an eligible person *is presently* committed to the Attorney General’s custody, as opposed to a person who has *previously* been committed, even if their hospitalization has ended.” *Id.* at *8. Section 4246 certification “must occur during the Attorney General’s time-limited custody over [Respondent].” *Id.*

Even if this Court were somehow to excuse the significant delays that preceded the November 25, 2019 order that purported to commit Mr. Woodyard for a Section 4246 evaluation, *that* order was entered nearly *six months* before a certificate was filed in the Eastern District of North Carolina¹. Not to mention, the November 25, 2019 order in effect commits Mr. Woodyard *indefinitely* to the custody of the Attorney General. As was true in *Wayda*, “any custodial commitment to the Attorney General is limited to a ‘reasonable period of time.’ ” *Wayda*, 2020 WL 4279745, at *9. And the Government has not provided any information to suggest any legitimate “physical, behavioral, or administrative obstacles to the BOP’s evaluation of [Mr. Woodyard] or the filing of the § [4246] certification.” *Id.* at *11. And there is no reason why it should be able to point to such reasons with respect to a person who has been in the custody of the Attorney General since July 2017, more than a year prior to filing the Section 4246 certificate. *See Woodyard*, No. 1:15-CR-13-CG-B (S.D.Ala.).

Because Mr. Woodyard was not properly in the custody of the Attorney General pursuant to section 4241(d) on May 18, 2020, the Government lacked subject-matter jurisdiction and statutory authority to file a certificate pursuant to 18 U.S.C. § 4246(a) and the certificate should be dismissed.

Subject-matter jurisdiction. Section 4246(a) imposes a jurisdictional condition, as reflected in the text and structure of the statute. “Only Congress may determine a lower federal court’s subject-matter jurisdiction.” *Kontrick v. Ryan*, 540 U.S. 443, 452 (2004). So determining whether a statute imposes a jurisdictional requirement is a question of congressional

¹ At the latest, Mr. Woodyard’s legitimate commitment under Section 4241(d) expired on November 25, 2019, when the court found him incompetent and unrestorable. That order “disposed of” Mr. Woodyard’s criminal charges “according to law” and ended the Section 4241(d) period by the terms of 18 U.S.C. § 4241(d)(2)(B), (notwithstanding that the order itself purports to commit him indefinitely). *See Wayda*, 2020 WL 4279745, at *9 n.8.

intent. As the Supreme Court has explained, “the general approach to distinguish[ing] ‘jurisdictional’ conditions from claim-processing requirements or elements of a claim” involves determining what Congress intended, using tools of statutory construction. *Reed Elsevier v. Muchnick*, 559 U.S. 154, 161-162 (2010).

Section 4246(a)’s plain language, coupled with its role in the Adam Walsh Act, make “clear[]” that Congress’s goal was for section 4246(a) to provide “a threshold limitation on [the] statute’s scope [that] shall count as jurisdictional.” *Id.* at 161 (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 515-516 (2006)). Section 4246(a)’s purpose within the civil-commitment statute is to set an outer limit on who is *eligible* for civil commitment by a federal court, if certain elements are met. It therefore acts as a gatekeeper: It “delineat[es] the classes of cases . . . and the *persons* . . . falling within a court’s adjudicatory authority.” *Kontrick*, 540 U.S. at 455 (emphasis added). That is a quintessentially jurisdictional function.

Two courts of appeals, including the Fourth Circuit, have addressed related questions under the rubric of subject-matter jurisdiction. *See United States v. S.A.*, 129 F.3d 995, 998 (8th Cir. 1997) (reviewing question of whether 18 U.S.C. § 4246 applies to people held pursuant to the Juvenile Justice and Delinquency Prevention Act as a “question of subject matter jurisdiction”); *United States v. Copley*, 935 F.2d 669, 672 (4th Cir. 1991) (reviewing question regarding timeliness of filing certificate under section 4246 as one of subject matter jurisdiction); *United States v. Savage*, 737 F.3d 304, 307 (4th Cir. 2013) (“Because the BOP lacked legal custody over Joshua, there was no jurisdictional authority for civil commitment under § 4248”); *but see United States v. Welsh*, 879 F.3d 530, 535 (4th Cir. 2018) (declining to decide whether § 4248(a)’s categories are jurisdictional because the nature of the categories did not affect the outcome); *Wayda*, 2020 WL 4279745, at *6 n.6 (same).

In fact, this Court has dismissed a Section 4246 certificate for precisely this reason. *United States v. White*, No. 5:18-HC-2295-BR, DE 22 (E.D.N.C. Mar. 15, 2019). The Government filed a section 4246 certificate more than twenty-two months after Mr. White's section 4241(d) commitment. The Court dismissed the certificate: "This court cannot hold that respondent's commitment status under § 4241(d) has a limitless duration. Because respondent's certification occurred almost a year and a half after the time allotted under § 4241(d), he was not properly committed to the Attorney General pursuant to § 4241(d) at the time petitioner filed the certificate." *Id.* at 5. The Court concluded it "does not possess subject matter jurisdiction." *Id.* at 5. The Government did not appeal that decision.

Mandatory statutory prerequisites. Even if this Court were to conclude that section 4246(a) is not subject-matter jurisdictional, it at least contains mandatory statutory prerequisites that the Government cannot satisfy and dismissal under Federal Rule of Civil Procedure 12(b)(6) is warranted. *Wayda*, 2020 WL 4279745, at *8 (Section 4246 certification "must occur during the Attorney General's time-limited custody over [Respondent]."); *see also Baker*, 807 F.2d at 1324 (holding that "by failing to adhere to the procedure outlined in section 4246, the district court lacked statutory authority to commit Baker and deprived Baker of his liberty without due process").

CONCLUSION

The certificate filed against Mr. Woodyard on May 18, 2020, should be dismissed and all deadlines and evaluations held in abeyance pending disposition of this motion.

Respectfully submitted this 13th day of August, 2020.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon:

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by electronically filing the foregoing with the Clerk of Court on August 13, 2020, using the CM/ECF system, which will send notification of such filing to the above.

Respectfully submitted this 13th day of August, 2020.

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