

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:21-cr-20237-RUIZ

UNITED STATES OF AMERICA

v.

MARCOS CAMPOS,

Defendant.

ORDER REQUIRING DEFENDANT’S IMMEDIATE RELEASE

THIS CAUSE is before the Court upon the Government’s Motion to Extend the Period of Time to Restore Competency Pursuant to 18 U.S.C. § 4241(d)(2)(A), (ECF No. 54), and Defendant Marcos Campos’s (“Defendant”) Motion for Immediate Release (ECF No. 55). The motions were referred to the undersigned by the Honorable Rodolfo A. Ruiz II, United States District Judge, to take all necessary and proper action as required by law, pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Criminal Procedure 59, and the Magistrate Judge Rules of the Local Rules of the Southern District of Florida. (ECF No. 56). The undersigned ordered an expedited response (ECF No. 57); both sides filed responses in opposition to the other side’s motion. (ECF Nos. 58, 59). After the Parties filed their responses in opposition, the Government filed its Motion to File Competency Evaluation Under Seal, attaching the January 17, 2023 forensic evaluation report of Defendant thereto.¹ (ECF No. 61). Following the filing of the forensic report, Defendant filed a Supplemental Response to the Government’s Motion (ECF No. 60). And, on January 20, 2023, I convened a status conference regarding the motions.

¹ For good cause shown, the Government’s Motion to File Competency Evaluation Under Seal (ECF No. 61) is **GRANTED**.

Having considered the Motions, the Responses, the Competency Evaluation filed under seal, Defendant's Supplemental Response, the Parties' positions advanced at the status conference, the record as a whole, and being otherwise fully advised, the Government's Motion (ECF No. 54) is **DENIED**, and Defendant's Motion for Immediate Release (ECF No. 55) is **GRANTED**, for the reasons explained below.

I. BACKGROUND

On October 7, 2020, Defendant was charged in a criminal complaint with receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2) and (b)(1), and possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(b) and (b)(2). (ECF No. 3). On October 9, 2020, after Defendant was arrested, the Court held a hearing to determine whether to detain Defendant pending trial; Defendant was ordered released on a \$150,000.00 personal surety bond, co-signed by his sister, Paula Campos. (ECF Nos. 7, 9). On April 15, 2021, a grand jury in the Southern District of Florida returned the Indictment, charging Defendant with one count of receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2) and (b)(1), and one count of possession of child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B) and (b)(2). (ECF No. 19). The Indictment also contained forfeiture allegations. (*Id.* at 2–3).

That same day, on April 15, 2021, defense counsel filed a Motion for Competency Evaluation Pursuant to 18 U.S.C. §§ 4241 and 4247, requesting that the Court hold a competency hearing for Defendant because counsel had a reasonable belief that Defendant was not competent to understand the nature and consequences of the proceedings against him or assist properly in his defense. (ECF No. 18). Defense counsel's motion noted that Defendant had previously been found incompetent to proceed in another case in this District, and that no finding of restoration was made in that case. (*Id.* at 1) (citing *United States v. Campos*, No. 11-cr-20518-Altonaga (S.D.

Fla. May 4, 2012), ECF No. 57). Defense counsel's motion also represented that two clinicians conducted separate evaluations of Defendant prior to the filing of the motion, and that both formed the opinion that Defendant was not competent to proceed in this case. (*Id.* at 1–2).

Upon referral from the Honorable Ursula Ungaro,² the undersigned held a status conference and entered an order granting defense counsel's motion (ECF No. 18), requiring that Defendant undergo a psychiatric examination to determine his competency, pursuant to 18 U.S.C. § 4241(b), and appointing a qualified clinician to complete that evaluation and file a report with the Court. (ECF No. 29). On July 13, 2021, the Court entered an amended order appointing a different clinician and extending the time to conduct the examination and file the resulting report. (ECF No. 34).

On December 15, 2021, the Parties filed their Joint Recommendations Regarding Competency. (ECF No. 46). The Parties recommended, among other things, that: (1) the Court adopt the finding of the three doctors who evaluated Defendant that Defendant was not competent to proceed; (2) find by a preponderance of the evidence that Defendant was then suffering from a disease or defect rendering him mentally incompetent to proceed; and (3) commit Defendant to the custody of the Attorney General for a reasonable time, not to exceed four months, as is necessary to determine whether there is a substantial probability that Defendant will attain the capacity to proceed in the foreseeable future, pursuant to 18 U.S.C. § 4241(d).

I convened a Competency Hearing on January 14, 2022. (ECF No. 48). Following that hearing, having reviewed the three reports regarding Defendant's competency, and upon the Parties' agreement that Defendant was not competent to proceed, the Court on January 31, 2022 found by a preponderance of the evidence that Defendant was then suffering from a mental disease

² The case was reassigned by the Clerk of Court to the Honorable Rodolfo A. Ruiz II on June 6, 2021. (ECF No. 30).

or defect that rendered him unable to understand the nature and consequences of the proceedings against him and unable to assist properly in his defense. (ECF No. 49). Accordingly, pursuant to 18 U.S.C. § 4241(d), Defendant was committed to the custody of the Attorney General to be hospitalized for treatment “in a suitable facility 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 proceed.” (*Id.* at 2–3) (emphasis in original). Defendant was permitted to self-surrender to his facility within 10 days of designation; Defendant self-surrendered to his designated facility—Federal Medical Center, Butner in Butner, North Carolina (“FMC-Butner”)—on September 14, 2022. On March 9, 2022, the case was administratively closed pending Defendant’s restoration to competency. (ECF No. 50).

Now, the Government seeks a 120-day extension of time to restore Defendant to competency, pursuant to 18 U.S.C. § 4241(d)(2)(A), and Defendant seeks to be immediately released from the custody of the Bureau of Prisons (“BOP”).

II. DISCUSSION

On January 11, 2023, the Government moved for a 120-day extension of time to restore Defendant to competency upon the representation that BOP medical providers opined that Defendant could be restored to competency with further treatment. Contemporaneously, Defendant moved in opposition for his immediate release, arguing that the BOP’s authority to detain Defendant ended on January 11, 2023, four months after he self-surrendered to his designated facility on September 14, 2022. Defendant asserts that there is no substantial probability that he will be restored to competency; rather, Defendant avers that, based on the record in this case, which includes three evaluations conducted by medical providers, and Defendant’s prior case, it is unlikely that he will ever be restored to competency. In his proposed order

accompanying his Motion for Immediate Release, Defendant requested to be released to the custody of his sister, Paula Campos.

The Government responded in opposition to Defendant's Motion for Immediate Release, essentially reiterating its arguments presented in its Motion for extending the time to restore his competency. The Government advances language from the January 17, 2023 report of a BOP forensic psychologist and neuropsychologist, filed with the Court under seal (ECF No. 61-2), who both opine in that report that there is a substantial probability that Defendant's "competency related skills could improve." (ECF No. 59 at 2). The Government's response does not address Defendant's request that he be immediately released, on bond, to his sister's custody.

Defendant responded in opposition to the Government's Motion to Extend, reiterating the arguments advanced in his Motion for Immediate Release, that the Government's authority to detain him lapsed after January 11, 2023, and that the record in this case, and Defendant's prior case that was dismissed after Defendant could not be restored to competency (No. 11-cr-20518-Atonaga), do not support a finding here that there is a substantial probability that Defendant can be restored to competency.

After the Government filed the January 17, 2023 BOP report regarding Defendant's competency (ECF No. 61-2), Defendant filed his Supplemental Response to the Government's Motion. Therein, Defendant argues that, even if the Court considered the BOP forensic psychologist's and neurologist's opinions disclosed in their January 17, 2023 report, which was filed after defendant's scheduled release date, those opinions do not support a finding that there is a substantial probability that Defendant will attain the capacity to permit the proceedings to go forward. Defendant notes that the evaluating clinicians opine not that there is a substantial

probability that he will attain the capacity for the proceedings to go forward, but rather that with intensive intervention Defendant's competency related skills *could* improve.

Title 18, United States Code, Section 4241(d) "provides that if a court finds that a defendant is incompetent to stand trial, he 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." *United States v. Donofrio*, 896 F.2d 1301, 1302 (11th Cir. 1990).

The statute provides in full as follows:

If, after the hearing, the court finds by a preponderance of the evidence 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, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment 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.

18 U.S.C. § 4241(d).

As the Eleventh Circuit has explained, "[t]he statute limits confinement to four months, whether more time would be reasonable or not. Any additional period of confinement depends upon the court's finding there is a probability that within the additional time he will attain capacity

to permit trial, 18 U.S.C.A. § 4241(d)(2)(A), or if he is found to create a substantial risk to himself and to others, pursuant to 18 U.S.C.A. § 4246.” *Donofrio*, 896 F.2d at 1303.

Specifically, § 4246 permits indefinite detention only “[i]f 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[.]” 18 U.S.C. § 4246(a); *see also United States v. Humphrey*, No. 2:20cr102-MHT, 2021 WL 5015604, at *1 (M.D. Ala. Oct. 28, 2021) (quoting *United States v. King*, 473 F. Supp. 2d 1177, 1180 (M.D. Ala. 2007)) (“When the court finds that there is no substantial probability of competency restoration within a reasonable period of time, ‘the court must determine, pursuant to 18 U.S.C. § 4246, whether the defendant should be released without trial or detained indefinitely.’”). Section 4248, in turn, permits indefinite detention only upon certification from the Attorney General or the Director of the Bureau of Prisons that the person “is a sexually dangerous person[.]” 18 U.S.C. § 4248(a). Certifications under §§ 4246(a) and 4248(a) both trigger an additional hearing.

Defendant is correct that BOP’s authority to detain Defendant has ended under § 4241(d) and this Court’s January 31, 2022 Order Finding the Defendant Incompetent to Proceed and Committing Him to the Custody of the Attorney General (ECF No. 49). But having reviewed the January 17, 2023 report on the forensic evaluation of Defendant (ECF No. 61-2), the Court further finds that the evidence advanced by the Government does not support a finding that there is a substantial probability that, within the 120-day extension requested by the Government, Defendant

will attain the capacity to permit the proceedings to go forward, as required by 18 U.S.C. § 4241(d)(2)(A).

According to the January 17, 2023 report, while Defendant has shown improvement in the time since he was last committed to BOP for competency restoration in connection with his prior case, *United States v. Campos*, No. 11-cr-20518-Altonaga (S.D. Fla.), the BOP forensic psychologist and neuropsychologist opine that Defendant nonetheless meets criteria for borderline intellectual functioning in light of his intellectual capability and adaptive functioning deficits. It was the evaluator's impression that Defendant meets the criteria for diagnoses of unspecified neurodevelopmental disorder; borderline intellectual functioning; and major depressive disorder, mild, under the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision ("DSM-5-TR"). The evaluators further noted that Defendant's mental condition, while stable over time, is developmental in nature.

Consistent with the three separate reports of Dr. Lori Butts, Dr. Michael Brannon, and Dr. Alejandro Arias referenced in the undersigned's January 31, 2022 Order Finding the Defendant Incompetent to Proceed and Committing Him to the Custody of the Attorney General (ECF No. 49), the current BOP evaluators opine in their January 17, 2023 report that Defendant still is not competent to proceed to trial despite four months of treatment to restore his competency. While the evaluators note that individuals with intellectual deficits can improve their functional skills, and that Defendant has shown some improvement, the evaluators do not opine that Defendant, through further treatment, will have regained competency to permit these proceedings to go forward at the end of the 120-day extension requested. Rather, the report describes that Defendant "could benefit" from further additional restoration, and that there is a substantial probability that Defendant's "competency related skills could improve." Again, the evaluators do not opine that

there is a substantial probability that Defendant will have regained competency to permit these proceedings to go forward to trial at the end of the 120-day extension to the restoration period requested. Rather, the evaluators note that Defendants' prognosis is guarded, and that mental defects, such as Defendants' defects, generally are "chronic and unchanging."

Accordingly, the Court finds that the record does not support a finding that there is a substantial probability that, within the 120-day extension of the restoration period requested by the Government, Defendant will attain the capacity to permit the proceedings to go forward.

This case and the Parties' competing Motions nonetheless present themselves before the Court in an unusual procedural posture. Having found that the record does not support a finding to extend Defendant's restoration period, and without the disposition of the charges pending against Defendant according to law, *see* 18 U.S.C. § 4241(d)(2)(B), Defendant is therefore subject to the provisions of § 4246 and § 4248. *See* 18 U.S.C. § 4241(d). But here, the director of the facility in which Defendant is hospitalized has not certified that 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, and that suitable arrangements for State custody and care of the person are not available[.]" 18 U.S.C. § 4246(a). Nor has the Court received a certification that Defendant is a sexually dangerous person, under 18 U.S.C. § 4248(a). Moreover, the evaluators' January 17, 2023 report does not opine that Defendant poses a substantial risk of bodily injury to another person or serious damage to property of another, or that Defendant is sexually dangerous. Indeed, the January 17, 2023 does not present circumstances from the course of his treatment at Federal Medical Center, Butner in Butner, North Carolina, indicative of violent behavior or sexually dangerous behavior.

Thus, where the Government did not substantiate its request for an extension with evidence until after the end of Defendant's legal period of detention for restoration, where I find that that evidence advanced does not support a substantial probability finding, and where there is no certificate under § 4246 or § 4248, this case presents itself in a posture where § 4241(d) would require Defendant's immediate release. However, in Defendant's Motion defense counsel requested that Defendant be released to the third-party custody of Defendant's sister, Ms. Campos, subject to the conditions of Defendant's bond in this case as previously ordered. I convened a status conference on January 20, 2023, regarding this request in light of the procedural posture of this case. At the status conference, and in light of my ruling on the Government's Motion, both defense counsel and government counsel agreed to Defendant being released on bond to the third-party custody of Ms. Campos.³ Defendant's pretrial services officer was also in attendance to advise on the request.

Based on the foregoing, I will order Defendant's immediate release from the custody of the Bureau of Prisons, subject to the conditions of release previously imposed in this case; the Government will be required to submit supplemental briefing on the matter.

III. CONCLUSION

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

- (1) The Government's Motion to Extend the Period of Time to Restore Competency Pursuant to 18 U.S.C. § 4241(d)(2)(A), (ECF No. 54), is **DENIED**;
- (2) Defendant Marcos Campos's Motion for Immediate Release (ECF No. 55) is **GRANTED**;

³ Defense counsel represented to the Court that Ms. Campos was prepared to effectuate Defendant's release on Saturday, January 21, 2023.

(3) The Government's Motion to File Competency Evaluation Under Seal (ECF No. 61) is **GRANTED**. The Clerk of Court is **DIRECTED** to maintain the Forensic Evaluation of Defendant (ECF No. 61-2) under **SEAL** until further order of the Court;

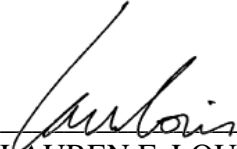
(4) The Warden of Federal Medical Center, Butner in Butner, North Carolina, is **ORDERED** to **RELEASE** Defendant Marcos Campos (#95335-004) to the third-party custody of his sister, Paula Campos, **by no later than Saturday, January 21, 2023**. The following conditions shall apply:

- a. Ms. Paula Campos, as third-party custodian, shall transport Defendant directly to his residence in the Southern District of Florida, where Defendant shall remain on pretrial release subject to the conditions of release previously ordered by this Court on October 15, 2020, *see* (ECF No. 9). Ms. Campos shall endeavor to contact the Pretrial Services Officer at the number provided to her by defense counsel, upon Defendant's release into her custody.
- b. Upon Defendant Campos's return to the Southern District of Florida, Defendant shall report to the Pretrial Services Office in Miami, Florida **by 5:00 PM on Monday, January 23, 2023**. The Pretrial Services Agency shall resume its supervision of Defendant consistent with the conditions of release previously ordered by this Court.
- c. Defendant's assigned Pretrial Services Officer is encouraged to contact Ms. Campos to remind her of her responsibilities with respect to Defendant Campos during his transport to his residence in the Southern District of Florida, Defendant's continued release to her custody, and that Defendant must report to the Pretrial Services Office by no later than 5:00 PM on Monday, January 23, 2023.

d. For purposes of the travel described in this Paragraph 4, and solely for those purposes, Defendant may transit the Southern District of Florida and the other judicial districts necessary to complete his return travel.

(5) On or before February 3, 2032, the Government shall file supplemental briefing reflecting its position where Defendant has been found incompetent, the Court has found that the evidence does not support by a substantial probability the finding that Defendant can be restored to competency during the requested extension, where there is no certification under § 4246 or § 4248, and where the charges pending against Defendant have not been disposed of according to law.

DONE AND ORDERED in Chambers at Miami, Florida, this 20th day of January, 2023.



LAUREN F. LOUIS
UNITED STATES MAGISTRATE JUDGE

cc: Honorable Rodolfo A. Ruiz, II, United States District Judge
Counsel of Record
Complex Warden, Federal Correctional Complex, Butner, North Carolina
United States Marshals Service (USMS)
Pretrial Services (Miami)