

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

**CASE NO. 21-20237-RAR**

**UNITED STATES OF AMERICA**

vs.

**MARCOS CAMPOS,**

Defendant.

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**ORDER SUSTAINING THE UNITED STATES' OBJECTION TO  
THE MAGISTRATE JUDGE'S ORDER REGARDING COMPETENCY**

**THIS CAUSE** comes before the Court upon the United States' Objection to the Magistrate Judge's Order Denying the Government's Motion to Extend the Period of Time to Restore Competency [ECF No. 66] ("Objection"). The Court has carefully reviewed the Objection, the Order Requiring Defendant's Immediate Release issued by Magistrate Judge Lauren F. Louis [ECF No. 64] ("Order"), 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], Defendant's Motion for Immediate Release [ECF No 55], and all related responses [ECF Nos. 58, 59, 67, 70, 71]. The Court has also analyzed Defendant's Competency Evaluation [ECF No. 61], filed under seal.

Magistrate Judge Louis' decision to deny the Government's Motion to Extend the Period of Time to Restore Competency and grant Defendant's Motion for Immediate Release is non-dispositive in nature. Accordingly, the Court's review is governed by Federal Rule of Criminal Procedure 59(a) and 28 U.S.C. § 636(b)(1)(A). Rule 59(a) provides that, as to a magistrate judge's ruling on a nondispositive matter, "[t]he district judge must consider timely objections and modify or set aside any part of the [magistrate judge's] order that is contrary to law or clearly erroneous." FED. R. CRIM. P. 59(a); 28 U.S.C. § 636(b)(1)(A) (reciting same standard);

*see also United States v. Schultz*, 565 F.3d 1353, 1357 (11th Cir. 2009) (explaining that magistrate judges are authorized to “hear and determine any pretrial matter”). A finding of fact is “clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1246 (11th Cir. 2002) (citation omitted); *see also In re Commissioner’s Subpoenas*, 325 F.3d 1287, 1292 n.2 (11th Cir. 2003) (observing the district court properly applied “clearly erroneous or contrary to law” standard of review in reconsidering magistrate judge’s determination of pretrial matter). Though review for clear error is deferential, a reviewing court’s deference is “not unlimited,” and reversal is required where “the record lacks substantial evidence to support” a factual finding. *Lincoln v. Bd. of Regents of Univ. Sys. of Ga.*, 697 F.2d 928, 939 (11th Cir. 1983); *see also United States v. Spriggs*, 666 F.3d 1284, 1289 (11th Cir. 2012) (reiterating this standard). Further, a review of a magistrate judge’s application of the law is *de novo*, as the application of an improper legal standard is never within the discretion of a magistrate judge. *See Johnson & Johnson Vision Care, Inc.*, 299 F.3d at 1246.

The issue here is whether the Magistrate Judge committed clear error in finding there is no substantial probability that Defendant’s competency will be restored within an additional reasonable period of time. As set forth in 18 U.S.C. § 4241(d)(2), a court may hospitalize a defendant for treatment in a suitable facility for “an additional reasonable period of time” beyond the four-month window established by the statute, provided 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.” *See also United States v. Donofrio*, 896 F.2d 1301, 1303 (11th Cir. 1990) (“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.”). The plain text of the statute does not require certainty—only a sufficient probability the defendant will attain the capacity to permit the proceedings to go forward. 18 U.S.C. § 4241(d)(2); *see also United States v. Loughner*, 672 F.3d 731, 769–70 (9th Cir. 2012) (defining substantial probability as “likely” but “not necessarily ‘more likely than not’”); *United States v. Brown*, 352 F. Supp. 3d 589, 595 (E.D. Va. 2018) (interpreting “substantial probability” to mean that “the chance of competency must be firmly established and be more likely than not”).

Magistrate Judge Louis, after reviewing Defendant’s Competency Evaluation, found “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).” Order at 7–8. Magistrate Judge Louis acknowledged that “Defendant has shown improvement in the time since he was last committed to BOP for competency restoration in connection with his prior case.”<sup>1</sup> Order at 8. Nonetheless, Magistrate Judge Louis found no substantial probability Defendant would attain competency because: (i) “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”; (ii) Defendant met the criteria for certain diagnoses evidenced in the Competency Evaluation; (iii) Defendant’s “mental condition, while stable over time, is developmental in nature”; and (iv) the evaluators did

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<sup>1</sup> The “prior case” referred to throughout the Order is a similar case brought against Defendant in which a grand jury indicted him for three counts of distributing child pornography and one count of possession of child pornography. *See generally United States v. Campos*, No. 11-CR-20518. Defendant has now been indicted for one count of receipt of child pornography and one count of possession of child pornography. *See* Indictment [ECF No. 19].

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.” *Id.*

Upon careful review of the record—namely, Defendant’s Competency Evaluation issued on January 17, 2023—the Court concludes that Magistrate Judge Louis clearly erred in finding that there is no substantial probability Defendant will attain the capacity to permit the proceedings to go forward. To be sure, the sections of the Competency Evaluation cited in the Order—when read in isolation—could support such a finding. But upon reading the Competency Evaluation in its entirety, it is apparent that the Government has offered sufficient evidence regarding Defendant’s potential for attaining competency.

As recounted in the Competency Evaluation, during Defendant’s forensic examination he demonstrated considerable—albeit imperfect—knowledge of the nature of legal proceedings and the consequences he may face should he ultimately face trial. Comp. Eval. at 16–17. Notably, Defendant’s current knowledge appears to be improving, as the Competency Evaluation reflects that Defendant’s “factual understanding of certain aspects of courtroom proceedings appears to have improved compared to prior evaluations.” *Id.* at 19. This is consistent with the Competency Evaluation’s finding that Defendant’s “current cognitive profile is remarkably improved compared to his prior neuropsychological evaluation at FMC Butner in 2012.” *Id.* at 15.

The Magistrate Judge appears to have overly relied on the forensic evaluators’ statement that “there is a substantial probability that [Defendant’s] competency related skills could improve” rather than directly stating there is a substantial probability Defendant will attain the capacity to permit the proceedings to go forward. Comp. Eval. at 20. The Court, however, finds that this statement supports a finding of substantial probability for two reasons. First, while the Court takes no position on an ultimate competency determination, Defendant has demonstrated growing,

considerable knowledge of the nature of legal proceedings and their consequences. Thus, the Court sees the evaluators' possibility of an improvement in competency-related skills tantamount to the probability of attaining the capacity to permit the proceedings to go forward, despite the alternative phrasing utilized in the Competency Evaluation. Second, the evaluators explicitly cite 18 U.S.C. § 4241(d) in requesting that the Court extend the deadline for 120 days. Comp. Eval. at 20. The Court fails to see how this request for an extension can be interpreted as anything other than an indication that the evaluators—who are in the best position to monitor Defendant's progress and future potential—believe that Defendant has a substantial probability of attaining competency.

Even assuming, then, that a substantial probability is one that is more likely than not, the record lacks substantial evidence to support the Magistrate Judge's finding. *Lincoln*, 697 F.2d at 939. Indeed, when reviewed in its entirety, the record only supports one permissible view: that there is a substantial probability Defendant may attain competency if an extension is granted. *See, e.g., Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985) (stating that “[w]here there are *two* permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous (emphasis added)); *FTC v. AbbVie Prods. LLC*, 713 F.3d 54, 69 (11th Cir. 2013) (stating that under clearly erroneous standard of review the court reviews “the evidence as a whole”). Thus, the Government has sufficiently demonstrated that—at this time—there is a substantial probability Defendant will attain the capacity to permit the proceedings to go forward if a 120-day extension is granted. It is therefore

**ORDERED AND ADJUDGED** as follows:

1. The United States' Objection to the Magistrate Judge's Order Denying the Government's Motion to Extend the Period of Time to Restore Competency [ECF No. 66] is

**SUSTAINED**, and the Order Requiring Defendant's Immediate Release [ECF No. 64] is **SET ASIDE** as stated herein.

2. 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 **GRANTED**, and Defendant's Motion for Immediate Release [ECF No. 55] is **DENIED**.

3. The parties shall appear for a telephonic status conference on **February 16, 2023, at 3:30 P.M.**, at which the Court will discuss Defendant's self-surrender to the custody of the Attorney General. The parties are instructed to call 1-877-402-9753 by no later than 3:25 P.M. The access code is 9372453 and the password is 0918. The Court requires that the parties appear via a landline (i.e., not a cellular phone or a speaker phone) if possible for clarity.

**DONE AND ORDERED** in Miami, Florida, this 13th day of February, 2023.



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**RODOLFO A. RUIZ II**  
**UNITED STATES DISTRICT JUDGE**