

FILED: November 25, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6377
(5:24-hc-02067-M)

LARRY BLAKNEY

Petitioner - Appellant

v.

MERRICK GARLAND, Attorney General of U.S.; WARDEN T. SCARANTINO

Respondents - Appellees

ORDER

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Niemeyer, Judge Richardson,

and Judge Heytens.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX A

FILED: May 21, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6377
(5:24-hc-02067-M)

LARRY BLAKNEY

Petitioner - Appellant

v.

MERRICK GARLAND, Attorney General of U.S.; WARDEN T. SCARANTINO

Respondents - Appellees

ORDER

The court grants leave to proceed in forma pauperis.

For the Court-By Direction

/s/ Nwamaka Anowi, Clerk

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 24-6377

LARRY BLAKNEY,**Petitioner - Appellant,****v.****MERRICK GARLAND, Attorney General of U.S.; WARDEN T. SCARANTINO,****Respondents - Appellees.**

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Richard E. Myers, II, Chief District Judge. (5:24-hc-02067-M)

Submitted: September 19, 2024

Decided: September 24, 2024

Before NIEMEYER, RICHARDSON, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Larry Blakney, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Blakney appeals the district court's order dismissing for lack of exhaustion his 28 U.S.C. § 2241 petition challenging the propriety of his commitment to the custody of the Attorney General pursuant to 18 U.S.C. § 4246. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Blakney v. Garland*, No. 5:24-hc-02067-M (E.D.N.C. Apr. 12, 2024). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:24-HC-2067-M

LARRY BLAKNEY,)
Petitioner,)
v.) ORDER
MERRICK GARLAND and WARDEN T.)
SCARANTINO,)
Respondents.)

Petitioner, a federal civil committee proceeding pro se, petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter is before the court for initial review of the petition pursuant to 28 U.S.C. § 2243, providing that the court need not seek a response from the respondent when it is clear on the face of the petition that the petitioner is not entitled to relief. The matter is also before the court on petitioner's motion to proceed in forma pauperis [D.E. 3].

Petitioner seeks to challenge his commitment to the custody of the United States Attorney General pursuant to 18 U.S.C. § 4246. (Pet. [D.E. 1] at 6-7). Petitioner alleges false and misleading information and testimony was utilized in his commitment proceedings resulting in him being civilly committed. (Id. at 6). Petitioner also alleges his attorney for the commitment proceedings was ineffective. (Id. at 6-7). As relief, petitioner seeks to have his civil commitment order vacated and immediate release from custody. (Id. at 7).

A petition for a writ of habeas corpus allows a petitioner to challenge the fact, length, or conditions of custody and seek immediate release. See Preiser v. Rodriguez, 411 U.S. 475, 484-85 (1973). A civil committee may file a habeas petition under 28 U.S.C. § 2241. United States v. Tootle, 65 F.3d 381, 383 (4th Cir. 1995). However, he first must exhaust all available remedies,

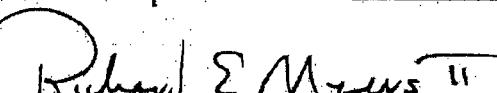
including appeals, before seeking habeas relief. Timms v. Johns, 627 F.3d 525, 531–33 (4th Cir. 2010) (noting that, because civil commitment statutes provided a procedure for the remedy sought, a detainee should first exhaust his relief in the Commitment Action before seeking habeas relief under 28 U.S.C. § 2241); Bussie v. United States, No. 5:15-HC-2149-FL, 2015 WL 12910636, at *2 (E.D.N.C. Nov. 3, 2015).

On July 5, 2023, petitioner was committed to the custody of the United States Attorney General pursuant to 18 U.S.C. § 4246. United States v. Blakney, No. 5:21-HC-2160-M-BM (E.D.N.C. July 5, 2023). Petitioner did not appeal. Accordingly, petitioner has failed to exhaust his administrative remedies prior to filing the instant action.

CONCLUSION

In sum, the court: DISMISSES WITHOUT PREJUDICE this § 2241 action and DENIES a certificate of appealability. Petitioner's motion for leave to proceed in forma pauperis [D.E. 3] is DENIED AS MOOT. The clerk is DIRECTED to close this case.

SO ORDERED, this the 11th day of April, 2024.



Richard E. Myers, II

RICHARD E. MYERS, II
Chief United States District Judge

APPENDIX A

FILED: December 3, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6377
(5:24-hc-02067-M)

LARRY BLAKNEY

Petitioner - Appellant

v.

MERRICK GARLAND, Attorney General of U.S.; WARDEN T. SCARANTINO

Respondents - Appellees

M A N D A T E

The judgment of this court, entered September 24, 2024, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk

TO,

WHOM IT MAY CONCERN MY NAME IS LARRY BLAKNEY #
34750171 I'M A CIVIL DETAINEE AT THE FEDERAL
MEDICAL CENTER OF BUTNER N.C WHO HAS BEEN CIVILLY
COMMITTED DO TO FALSE TESTIMONIES THROUGH A
PROSECUTION MADE OF ME BEING ACCUSED OF
FALSE ACCUSATION AND CLAIMS THAT I NEVER COMMITTED
A MURDER AND KILLED NO ONE A DAY IN MY LIFE THEY FALSELY
ACCUSED ME OF BEING CONVICTED FOR MURDERING SOMEONE
9-22-2000 AS WELL AS A FALSE ACCUSATION OF ME COMMITTING
ACCESSORY AFTER THE FACT OF A FELONY MURDER 3-10-2000
AS WELL AS TWO COUNTS OF ASSAULTING A POLICE OFFICER
ONE IN 2006 AND ANOTHER ASSAULTING A POLICE OFFICER
IN 2008 I NEVER COMMITTED THESE CRIMES AND I MOST
DEFINETLY NEVER WHEN TO PRISON ARE BEEN CONVICTED
FOR NONE OF THOSE CRIMES my PSYCHOLOGICAL FORENSIC
EVALUATION THAT WAS DONE BY PSYCHOLOGIST EVAN S.
DUBOIS AND SAMANTHA MADLER CONTAINS A COMPILATION
OF FALSE ACCUSATION THAT WAS USED BY THE PROSECUTOR
GENE PETRE TO CIVILLY COMMIT ME INDEFINITE AND
DEPRIVE ME OF MY LIBERTY PURSUANT TO U.S.C § 4246
ASSISTANT U.S. ATTORNEY GENE PETRE BRIEF IS INCLUDED
AS WELL AS PSYCHOLOGIST EVAN S. DUBOIS FORENSIC EVALUATION
PAGE 4 OF THE FORENSIC EVALUATION IS WHERE THE
PSYCHOLOGIST START IMPUTING my CRIMINAL RECORDS
FULL OF FALSE ACCUSATIONS THAT THEY USED TO DEPRIVE
ME OF my LIBERTY, I'M IN DIRE NEED OF YOU'LL TO
HELP SAFEGUARD my RIGHT TO DUE PROCESS AND GET
THIS CIVIL COMMITMENT VACATE, IT'S ON APPEAL

THANKS

ANTHONY

STENOTYPE: LARRY BLAKNEY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:21-HC-2160-M

UNITED STATES OF AMERICA,)
Petitioner,)
v.)
LARRY BLAKNEY,)
Reg. No. 34750-171,)
Respondent.)

BRIEFING REGARDING
ANTISOCIAL PERSONALITY
DISORDER & MENTAL
DISEASE/DEFECT

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby submits this briefing consistent with this Court's 14 December 2022 Order. [D.E. 46]. The United States now submits this supplemental briefing regarding antisocial personality disorder and requests this Court determine that Respondent not only has a qualifying mental disease or defect, but that said mental disease or defect creates a substantial risk of bodily injury to another person or serious damage to the property of another, consistent with 18

U.S.C. § 4246(d):

BACKGROUND

On 28 July 2021, Respondent was certified as a mentally ill and dangerous person consistent with 18 U.S.C. § 4246(a). [D.E. 1]. After multiple stays of the case due to pending litigation in the United States Court of Appeals for the Fourth Circuit, Respondent's case proceeded to a hearing on the merits on 14 December 2022. [D.E. 37].

During the hearing, the Court heard testimony of two experts—Ms. Samantha

Madler from the Federal Medical Center in Butner, North Carolina ("FMC Butner"), a pre-doctoral intern supervised by Dr. Evan Du Bois, and Dr. Hans Stelmach, the Court-appointed, Respondent-selected evaluator.

Ms. Madler testified consistent with her report [D.E. 38], submitted under the supervision of Dr. Du Bois, that Respondent is appropriately diagnosed with schizoaffective disorder, bipolar type, unspecified; and antisocial personality disorder. [D.E. 38 at 9]. Ms. Madler explained that during her evaluation of Respondent, he presented with auditory hallucinations and persecutory delusions, as well as disorganized speech. [D.E. 38 at 9]. In support of her diagnosis of schizoaffective disorder, Ms. Madler described some of Respondent's recent behavior and interactions with staff at FMC Butner, which she felt evidenced Respondent's continued symptomatology. Ms. Madler discussed a recent medical note in Respondent's records, dated 12 December 2022, in which an FMC Butner staff member indicated Respondent was responding to internal stimuli. [D.E. 49-1 at 3]. Specifically, the note indicates that Respondent was speaking to a staff member when his attention seemed to shift to an unseen entity, stating "I told FBI everything I know about you." [D.E. 49-1 at 3]. When asked to whom he was speaking, Respondent responded "... Police." [D.E. 49-1 at 3]. The staff member goes on to indicate in the medical note, "[h]e denied [auditory hallucinations]/[visual hallucinations] despite his visible response to internal stimuli." [D.E. 49-1 at 3].

In another note, dated 9 December 2022, Respondent was observed to continue endorsing delusional beliefs. [D.E. 49-2 at 1]. As Ms. Madler testified, Respondent

regularly refused medications that might improve his condition. [D.E. 49-2 at 1]. Ms. Madler also testified regarding a medical note, dated 12 November 2022, in which Respondent admitted to hearing voices from Hartsville, South Carolina. [D.E. 49-3 at 1]. Respondent was observed on this occasion yelling at unseen entities. [D.E. 49-3 at 2]. When the nursing staff member checked in on him, Respondent affirmed that he was having a difficult time, stating "some people are conniving with the police and the justice department." [D.E. 49-3 at 2]. He then explained that he was hearing people from Hartsville, South Carolina plotting with Merrick Garland. [D.E. 49-3 at 2]. Finally, Ms. Madler explained to the Court that on 19 October 2022, during a meeting with his treatment provider and Dr. Du Bois, Respondent became upset and left the conference room "shouting delusional, vaguely threatening and verbally abusive insults and statements." [D.E. 49-4 at 1]. Respondent was observed pacing around the unit and yelling for approximately twenty minutes before he was asked to return to his cell. [D.E. 49-4 at 1]. Once he was secured in his cell, Respondent continued yelling and began throwing a plastic chair repeatedly against the wall. [D.E. 49-4 at 1].

Ms. Madler noted that historically, Respondent has indicated he believes he hears derogatory things being said about him from the institution's loudspeakers, as well as through the radio. [D.E. 88 at 9]. Respondent also reported that the rapper Jay-Z is attempting to harm Respondent's reputation and ability to be successful by spreading false information about him and having the police harass and arrest him. [D.E. 88 at 9]. Ms. Madler also testified that since his hospitalization at FMC Butner,

Respondent has filed a number of lawsuits against his treatment team, the Warden, and the Honorable Judge Donald C. Coggins, Jr., citing beliefs related to "foreign intelligence surveillance" and "falsifying records" that appear rife with delusional content. [D.E. 38 at 9]; see also Blakney v. United States of America, et al., No. 5:22-CT-2246-D, D.E. 1 (E.D.N.C. filed Sept. 13, 2022) ("Plaintiff was put under investigation through means of electronic surveillance upon his day of arrival to the F.M.C. of Butner N.C. through the Foreign Intelligence Surveillance Act[...]."); Blakney v. SLED, et al., No. 5:21-CT-3071-FL, D.E. 1 (E.D.N.C. filed Mar. 9, 2021) ("The SLED of Hartsville S.C. have been using people of Hartsville S.C. to broadcast criminal threats of killing Larry Blakney if he don't remove his Facebook page, through means of electronic communicating and recording devises by illegal means[...]."); Blakney v. United States of America, et al., No. 5:22-CT-3094-M, D.E. 1 (E.D.N.C. filed Mar. 11, 2022) ("[t]he Federal Medical Center of Butner N.C. are [sic] allowing the Plaintiff to be intruded and invaded by the S.C. law enforcement division and the general public of Hartsville S.C. through audio and visual surveillance[...] through the day and night for the whole Butner F.M.C. to hear[...]."); Blakney v. United States of America, No. 5:22-CT-3225-D, D.E. 1 (E.D.N.C. filed July 11, 2022) ("The defendants, by and through it [sic] agency since the arrival of the Plaintiff to the F.M.C. of Butner deployed the device that mentioned [sic] in the complaint for the Hartsville S.C. police officials, Catherine Brewton A.K.A. 'Cat', Shawn Carter A.K.A. Jay-Z and others of the general public of Hartsville S.C. to do an intrusion and invasion of the Plaintiff privacy through an electronic

surveillance."); Blakney v. Hartsville S.C. Police Dept., No. 5:22-CT-3245-M, D.E. 1 (E.D.N.C. filed July 27, 2022) ("The Hartsville S.C. Police Department has gotten the U.S. District Court for the Eastern District of North Carolina (Western Division) to authorize him to be investigated through the electronic surveillance thats [sic] mention [sic] at all times in this complaint at the prison 'the Federal Medical Center of Butner N.C. so that they can communicate with him through the FISA and be overheard at the prison harassing him about the C.D. ministry."); Blakney v. S.C. Law Enforcement Division, et al., No. 5:21-CT-3080-M, D.E. 38 (E.D.N.C. filed July 12, 2022) ("The Defendant, its officers, managers, agents, and employees under the court authorization deployed the electronic devise [sic] and radio transmitter [...] they're eavesdropping his information and gather it to be broadcasting and circulated on radio stations by radio personnel without his consent are [sic] his lawyer consent.").

Ms. Madler also testified regarding the mood component of Respondent's schizoaffective disorder diagnosis. [D.E. 38 at 9]. Specifically, Ms. Madler noted Respondent has experienced instances of mania, to include requiring minimal sleep, presenting as talkative with limited ability to inhibit speech, and exhibited marked distractibility. [D.E. 38 at 9]. Ms. Madler also noted that staff have reported Respondent engaging in "purposeless behavior" or physical movement lacking a purpose or goal. [D.E. 38 at 10].

Ms. Madler and Dr. Du Bois also diagnosed Respondent with antisocial personality disorder due to Respondent's history of failing "to conform to societal

norms with respect to lawful behavior, impulsivity, consistent irresponsibility and aggression." [D.E. 38 at 10]. Respondent's history of disregarding societal norms appears to date back to his youth (prior to age 15), including physical altercations, substance use, and school suspensions or expulsions. [D.E. 38 at 10]. Respondent reported his first arrest was at age twelve for "accessory after the fact... for murder." [D.E. 38 at 10].

As to Respondent's risk of dangerousness, Ms. Madler opined that Respondent's risk of engaging in dangerous or violent behavior is high. [D.E. 38 at 11]. Ms. Madler based her opinion on her analysis of the factors outlined in the HCR-20, Version 3 ("HCR-20"). [D.E. 38 at 11]. Ms. Madler analyzed the historical, clinical, and risk management factors in Respondent's case, as well as the applicable protective factors, to determine that Respondent met criteria for commitment. [D.E. 38 at 11-14].

Dr. Stelmach diagnosed Respondent with antisocial personality disorder and unspecified psychosis, in remission, and testified consistent with his report regarding these diagnoses. [D.E. 41 at 6-7]. Dr. Stelmach expressed concern about the diagnosis of schizoaffective disorder, as he did not believe the mania component was strong enough to support the diagnosis. Rather, he found the more appropriate diagnosis was unspecified psychosis. [D.E. 41 at 6]. Dr. Stelmach agreed that if Respondent was recently responding to internal stimuli, as Ms. Madler testified, Respondent's condition might no longer be in remission. In his report, Dr. Stelmach opined that Respondent "has acted in a dangerous manner in the past primarily due

to his Antisocial Personality Disorder." [D.E. 41 at 7]. He further opined "respondent's risk factors correlated with a risk of future violence are not due to a mental illness, but rather due to Antisocial Personality Disorder." [D.E. 41 at 6].

Dr. Stelmach acknowledged that Respondent does not believe he is mentally ill and only take Abilify to help him sleep. Dr. Stelmach was unable to testify regarding any research indicating that violence risk is exacerbated by the combination of both a psychotic disorder and a personality disorder. He did, however, acknowledge that Respondent's mental condition has caused him significant interpersonal difficulties, distress, and instability.

As Dr. Stelmach does not believe that antisocial personality disorder is a "mental disease or defect", Dr. Stelmach determined that Respondent does not meet criteria for commitment. [D.E. 31 at 10].¹

Following the commitment hearing, this Court requested briefing on two issues: first, whether antisocial personality disorder is a "mental disease or defect" within the meaning of 18 U.S.C. § 4246; and second, if antisocial personality disorder is not, on its own, a "mental disease or defect", how much additional evidence of underlying mental illness is necessary to rise to the level of a qualifying "mental disease or defect."

¹ As noted during the hearing and referenced in the caselaw cited *infra*, the decision as to whether any of the diagnoses rendered in this case constitute a qualifying mental disease or defect is a determination for this Court, not for the testifying experts.

ARGUMENT

The purpose of section 4246 is to, among other things, protect the public from mentally ill and dangerous persons. See generally United States v. Comstock, 560 U.S. 126, 138–39 (2010). The statute allows for the civil commitment of a person who 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 the property of another. 18 U.S.C. § 4246(a). “To warrant commitment under 18 U.S.C. § 4246, the government must demonstrate, by clear and convincing evidence: ‘(1) a mental disease or defect; (2) dangerousness if released; and (3) the absence of suitable state placement.’” United States v. S.A., 129 F.3d 995, 998 (8th Cir. 1997) (quoting United States v. Ecker, 30 F.3d 966, 970 (8th Cir. 1994)).

The issue before the Court is whether Respondent presently suffers from a qualifying mental disease or defect under section 4246. Should this Court determine that antisocial personality disorder, on its own, or in conjunction with another diagnosis (either schizoaffective disorder, bipolar type, or unspecified psychosis), qualifies as a mental disease or defect under the statute, both experts agree that Respondent is dangerous.² [D.E. 38 at 14; D.E. 41 at 6–7].

² The United States maintains that the diagnosis of either schizoaffective disorder, as diagnosed by Ms. Madler and Dr. Du Bois, or unspecified psychosis, as diagnosed by Dr. Stelmach, alone would meet criteria as a mental disease or defect. However, at the Court’s request, this brief will address only whether antisocial personality disorder, on its own, or in conjunction with the other diagnoses, is sufficient to form the basis of commitment.

A. A personality disorder can rise to the level of a qualifying mental disease or defect within the meaning of section 4246 based on the nature and severity of the condition, its symptoms, and the resulting impairment.

The diagnosis of a personality disorder may qualify as a mental disease or defect within the meaning of 18 U.S.C. § 4246 depending on the nature and severity of the condition as it relates to the respondent. In this case, Ms. Madler, Dr. Du Bois, and Dr. Stelmach diagnosed Respondent with antisocial personality disorder, which meets criteria as a mental disease or defect in this case due to the severity of the presentation and the functional impairment that has manifested as a result.

The Diagnostic and Statistical Manual Fifth Edition ("DSM-5") defines a personality disorder as "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment." Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 645 (5th ed. 2013). The DSM-5 recognizes and describes ten diagnosable personality disorders, including antisocial personality disorder, among others. Id.

In order to be eligible for commitment under section 4246, the individual must have a qualifying mental disease or defect. 18 U.S.C. § 4246(d). Neither section 4246, nor Chapter 313 more generally, offers a definition for "mental disease or defect." See 18 U.S.C. §§ 4246, 4247(a). As such, there is no definitive categorization of which DSM-5 diagnoses qualify as a "mental disease or defect" and which do not.

At least one circuit court has determined that a personality disorder can form the basis of a commitment under section 4246. See United States v. Williams, 299 F.3d 673, 678 (8th Cir. 2002) (finding that a person suffering from a personality disorder with antisocial and narcissistic traits was dangerous under 18 U.S.C. § 4246 due to a mental disease or defect).

The use of the term "mental disease or defect" is not exclusive to section 4246, but rather appears multiple times in Chapter 313, including in section 4243, which addresses the hospitalization of a person found not guilty by reason of insanity. See 18 U.S.C. § 4243. Specifically, section 4243(e) requires the court to make a finding as to whether the person's release would create a substantial risk of bodily injury to another person or serious damage of the property of another due to a present mental disease or defect. 18 U.S.C. § 4243(e). This language is the equivalent of the language utilized in 18 U.S.C. § 4246(d). Compare 18 U.S.C. § 4246(d) with 18 U.S.C. § 4243(e).

As the language in the determination and disposition sections of these two statutes is analogous, it thus follows that the term "mental disease or defect" should be read to have a similar meaning.⁹ While section 4243 similarly does not offer a definition of "mental disease or defect," several circuits have adopted the definition established by the United States Court of Appeals for the District of Columbia ("D.C. Circuit") in McDonald v. United States, 312 F.2d 847, 851 (D.C. Cir. 1962), which defined mental disease or defect as "any abnormal condition of the mind which

⁹ Notably, section 4243 was enacted at the same time as section 4246 as part of the Insanity Defense Reform Act of 1984. See Insanity Defense Reform Act of 1984, § 403, 98 Stat. 2057, 2057–67 (1984) (codified at 18 U.S.C. §§ 4241–4247).

substantially affects mental or emotional processes and substantially impairs behavior controls." See, e.g., United States v. McIntosh, 900 F.3d 1301, 1308 (11th Cir. 2018). The D.C. Circuit further explained that "[w]hat psychiatrists may consider a 'mental disease or defect' for clinical purposes, where their concern is treatment, may or may not be the same as mental disease or defect for the [court's] purpose in determining criminal responsibility." Id. Thus, "mental disease or defect" is a legal term that must be "construed and applied by the district court to the specific facts of each case, rather than a clinical term to be decided by medical professionals." McIntosh, 900 F.3d at 1308; see also United States v. Weed, 389 F.3d 1060, 1072-73 (10th Cir. 2004) (finding that the defendant qualified under law as having a mental disease or defect, despite not meeting clinical criteria for a mental illness); United States v. Murdoch, 98 F.3d 472, 478 (9th Cir. 1996) (Wilson, J., concurring) (explaining that a personality defect in certain circumstances may be "so encompassing and impairing that it rises to the level of a disease or defect"); United States v. Lyons, 731 F.2d 243, 246 (5th Cir. 1984) ("[W]hat definition of 'mental disease or defect' is to be employed by courts enforcing the criminal law is, in the final analysis, a question of legal, moral and policy—not of medical—judgment.")

In this vein, several federal courts have determined that a personality disorder may be sufficient to support a civil commitment under section 4243.⁴ Such courts have made a case-specific determination based on "severity, symptoms, and resulting

⁴ There is no suggestion that involuntary commitment of an individual with a personality disorder that is linked to future dangerousness would be unconstitutional. See United States v. Henley, 8 F. Supp. 2d 503, 505-06 (E.D.N.C. June 8, 1998); see also Kansas v. Hendricks, 521 U.S. 346 (1997).

"impairment" caused by the person's mental condition. McIntosh, 900 F.3d at 1309 (finding that a diagnosis of narcissistic personality disorder with borderline, histrionic, and antisocial traits was a qualifying mental disease or defect under section 4243 due to the severe impairment caused by the condition that "manifested in [defendant's] perceptions of the world, emotional responses, interpersonal functioning, and impulse control"); see also Murdoch, 98 F.3d at 477 (holding that a person with a personality disorder suffered from a mental disease or defect); United States v. Bilyk 949 F.2d 259, 261 (8th Cir. 1991) (holding that a personality disorder can constitute a mental disease or defect even if medical professionals disagree); United States v. Beatty, 642 F.3d 514, 516 (6th Cir. 2011) (recognizing that antisocial personality disorder could potentially "form part of the basis for civil commitment").

In United States v. Murdoch, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") upheld the commitment of an individual under section 4243 who was diagnosed with a personality disorder, not otherwise specified, with narcissistic and passive-aggressive traits. Murdoch, 98 F.3d at 477. The Ninth Circuit concluded that the district court had not erred in finding that, based on the personality disorder diagnosis, the defendant suffered from a mental disease or defect.⁵ Id. During the hearing, testimony was provided to the district court that "personality disorders are not *generally* considered to be mental diseases or defects." Id. at 475 (emphasis added). Nonetheless, the Ninth Circuit opined the "district court

⁵ At oral argument, the defendant in Murdoch also "conceded that a personality disorder can constitute a mental disease or defect under certain circumstances." Murdoch, 98 F.3d at 477.

could consider Murdoch's personality disorder to be a mental disease or defect." *Id.* at 474-75. In so finding, the Ninth Circuit noted the defendant's personality disorder "could affect his propensity to commit future acts of violence given the right circumstances" since the defendant "could perceive future situations in a manner that would lead to similar dissociative episodes with possible violent acting out." *Id.* Accordingly, the Ninth Circuit upheld the district court's finding that the defendant suffered from a qualifying mental disease or defect. *Id.* at 477.

In the instant case, Respondent has been diagnosed with at least three different diagnoses from the DSM-5 by Ms. Madler/Dr. Du Bois and Dr. Stelmach. The commonality between them and their assessment of Respondent's mental condition is the shared diagnosis of antisocial personality disorder. [D.E. 38 at 9-10; D.E. 41 at 6-7]. Based on the testimony of these experts, there is sufficient evidence in the record for this Court to determine that Respondent's antisocial personality disorder rises to the level of a mental disease or defect on its own accord.

In regard to the diagnosis of antisocial personality disorder, there is ample evidence in the record to support a finding that Respondent's presentation is severe. The traits of antisocial personality disorder develop during childhood or adolescence and include a "pervasive pattern of disregard for the rights of others." [D.E. 38 at 10]. Thus, in order to be diagnosed, sufficient evidence of Respondent's failure to adhere to rules and conform to societal norms must exist. To this point, Respondent's criminal history is rife with examples of disregard for rules and the rights of others, to include instances of simple assault and battery, accessory after the fact to felony

murder, murder, criminal domestic violence, malicious injury to personal property, assaulting a police officer while resisting arrest, and carjacking without great bodily harm. [D.E. 38 at 4–6, 11]. Respondent himself reported his first arrest at age twelve for “accessory after the fact... for murder.” [D.E. 38 at 10]. In regard to Respondent’s instant offense, he allegedly reached for his waistband where a revolving handgun was later located. [D.E. 38 at 11]. In subsequent interviews, Respondent indicated he “should have pulled the gun out and filled [the arresting officer’s] face full of bullets.” [D.E. 38 at 11].

Both Ms. Madler and Stelmach testified that Respondent’s antisocial personality disorder has led to significant impairment and distress for him, including constant legal issues. Dr. Stelmach opined that Respondent “has acted in a dangerous manner in the past primarily due to his Antisocial Personality Disorder.” [D.E. 41 at 7]. As Dr. Stelmach testified, research shows that the majority of violent offenders suffer from antisocial personality disorder. See Izabela Filov, *Antisocial Personality Traits as a Risk Factor of Violence between Individuals with Mental Disorders*, Open Access Maced. J. Med. Sci., 657–62 (2019) [hereinafter “*Antisocial Personality Traits*”].⁶

Just as in Murdoch, Respondent’s propensity to commit future acts of violence is significantly increased by Respondent’s diagnosis of antisocial personality disorder, and it is likely that Respondent will “perceive future situations in a manner that would lead to similar” episodes of violence and acting out. Murdoch, 98 F.3d at 474–

⁶ This article is publicly available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6420958/#>.

75. This Court should not ignore the significant risk posed by Respondent's antisocial personality disorder.

As a result, based on the diagnoses rendered in this case, Respondent is a person who meets criteria for commitment, as he suffers from a qualifying mental disease or defect that renders him dangerous.

B. The combination of a personality disorder with another DSM-5 diagnosis is sufficient to meet criteria for mental disease or defect within the meaning of section 4246.

Assuming, arguendo, that this Court determines none of the diagnoses rendered in this case, on their own, rise to the level of a "mental disease or defect" within the meaning of section 4246, the combination of Respondent's diagnoses, taken as a whole, are sufficient to qualify as a "mental disease or defect."

While no district court in the Eastern District of North Carolina has determined that a personality disorder, on its own, can form the basis of a mental disease or defect under section 4246, one district court did find that the combination of two personality disorders created a "synergistic effect" that constituted a mental disease or defect. United States v. Henley, 8 F. Supp. 2d 503, 507 (E.D.N.C. June 3, 1998). In Henley, the respondent was diagnosed with antisocial personality disorder and borderline personality disorder. Id. at 505. In analyzing the factual basis and legal issue before it, the district court found that the "synergistic effect of the two disorders results in a substantial impairment of Respondent's ability to function in society and to control his behavior." Id. at 507.

Similarly, in United States v. Crawford, the Fourth Circuit upheld the

commitment of an individual under section 4246 who was diagnosed with borderline personality disorder, and "schizo triple personality disorder."⁷ United States v. Crawford, No. 97-7524, 1998 WL 792224, at *2 (4th Cir. Nov. 16, 1998) (unpublished). A second evaluator diagnosed the respondent with schizophrenia, residual type. Id. at *3. The Fourth Circuit concluded that "[t]here is no dispute in the medical evidence that Crawford suffers from a mental illness" and upheld his commitment under section 4246. Id. at *2.

Relatedly, under section 4243, the United States Court of Appeals for the Sixth Circuit ("Sixth Circuit") upheld a civil commitment where the individual's primary diagnosis was a personality disorder. In United States v. Beatty, the Sixth Circuit recognized that antisocial personality disorder could possibly "form part of the basis for civil commitment." Beatty, 642 F.3d at 517. Beatty was diagnosed with antisocial personality disorder, in addition to narcissistic personality disorder and narcotics dependence. Id. at 516. Despite Beatty's argument that antisocial personality disorder was not "typically" seen as a mental disease or defect, the Sixth Circuit determined that "this generalization would not prove by clear and convincing evidence that Antisocial Personality Disorder can never form part of the basis for civil commitment." Id. Accordingly, the Sixth Circuit upheld the commitment after finding no clear error in the district court's determination that the defendant suffered from a qualifying mental disease or defect. Id.

⁷ While the court's opinion is unclear, it appears this diagnosis might be an error in the record, as no such diagnosis exists. It is likely the correct diagnosis is "schizotypal personality disorder."

Various courts have also found that a combination of diagnoses, one of which is a personality disorder, is sufficient to meet the requirements of section 4246, without making clear which disorder is the primary diagnosis resulting in dangerousness. See, e.g., United States v. Little, No. 6:15-CV-03141-MDH, 2019 WL 1408902, at *1-2 (W.D. Mo. Mar. 28, 2019) (revoking the conditional release of a respondent committed under section 4246 who was diagnosed with schizophrenia, in remission; antisocial personality disorder; and alcohol and drug abuse disorders); United States v. Jones, 471 F. App'x 551, 552 (8th Cir. 2012) (upholding the district court's finding that the synergistic effect of moderate mental retardation, antisocial personality disorder, and other possible diagnoses was a sufficient basis for a mental disease or defect under section 4246); United States v. Thompson, 317 F. App'x 575, 575-76 (8th Cir. 2009) (upholding commitment under section 4246 of a person with "limited intelligence, history of substance abuse, and antisocial personality disorder, coupled with self-reported hallucinations sometimes commanding him to hurt others"); United States v. Williams, 299 F.3d 673, 678 (8th Cir. 2002) (upholding a commitment under section 4246 of an individual with delusional disorder and personality disorder); United States v. Schneider, No. 90-7333, 1990 WL 210792, at *1 (4th Cir. Dec. 27, 1990) (upholding commitment of an individual diagnosed with paranoid disorder, organic personality disorder, and schizotypal personality disorder).

Here, both Ms. Madler/Dr. Du Bois and Dr. Stelmach diagnosed Respondent with at least two diagnoses, each opining that Respondent suffers from antisocial

personality disorder and another DSM-5 diagnosis.⁸ The evidence presented at the hearing is sufficient to determine that the combination of these diagnoses in Respondent's case rise to the level of a mental disease or defect.

There has been significant research in the field of forensic psychology regarding the interplay, or comorbidity, of antisocial personality disorder and a psychotic disorder, such as schizophrenia or schizoaffective disorder. In part, the research shows that individuals with a psychotic disorder "who commit violent behaviours [sic] can be reincorporated into society once they are receiving medication and attended to since they immediately stop being dangerous. The same doesn't occur with psychopaths or antisocial personal disorders." See Antisocial Personality Traits.

Rather, the research reveals that "individuals with antisocial personality disorder in comorbidity with mental disorders are more criminally active than other perpetrators of violent acts." Id.; see also Safa Maghasoodloo et al., The relationship of antisocial personality disorder and history of conduct disorder with crime incidence in schizophrenia, J. Res. Med. Sci. 566-71 (2012).⁹

Research further indicates that the presence of delusional ideation within a personality disorder, especially severe delusional ideation, is an identifier not only of the type of personality disorder present, but the overall severity of the personality

⁸ While their opinions as to the proper diagnosis for Respondent's conduct differs, each doctor is looking at the same factual circumstances and presentation in rendering his opinion. Thus, for the purposes of this section, whether the Court accepts the diagnosis of schizoaffective disorder, bipolar type or unspecified psychosis is immaterial. What is relevant is Respondent's symptoms, presentation, and the interplay of this presentation with his antisocial personality disorder, diagnosis and symptomatology.

⁹ This article is publicly available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3634297/>.

disorder. See Richard Howard, Personality disorders and violence: what is the link?

2 Borderline Personality Disorder and Emotion Dysregulation 12 (2015).¹⁰

This is consistent with evidence that severity of [personality disorder] is related to metacognitive deficits that include an impaired ability to recognize the subjective nature of one's thoughts and to achieve a critical distance when considering one's beliefs. This would necessarily result in idiosyncratic interpretations of external reality, and would likely result in the types of deficit in social cognition seen in [borderline personality disorder] patients, namely: a tendency to misinterpret neutral situations, to feel socially rejected during normative inclusion conditions, and to have difficulty restoring cooperation after experiencing disappointment. A bias towards interpreting neutral or ambiguous social encounters as threatening, [...] would impact negatively on borderline patients' everyday social interactions and predispose them to react to interpersonal stress with aggression and violence.

Id. This is entirely consistent with Respondent's presentation—he perceives threats and violations of his rights where no threat or violation exists and reacts aggressively, resulting in harm to others. [D.E. 38].

Ms. Madler diagnosed Respondent with both antisocial personality disorder and schizoaffective disorder, bipolar type, a psychotic disorder with a mood component. [D.E. 38 at 9–10]. Ms. Madler's analysis of the risk factors enumerated in the HCR-20 highlights the comorbidity between these two diagnoses in Respondent's case. Unlike Dr. Stelmach, Ms. Madler's risk assessment seems to indicate that we cannot parse the two diagnoses rendered for Respondent to determine that only one or the other makes him dangerous. [D.E. 38 at 11–14]. Rather, both Respondent's psychotic disorder *and* personality disorder render him

¹⁰ This article is publicly available at <https://bphd.biomedcentral.com/articles/10.1186/s40479-015-0089-x>.

mentally ill and dangerous. See Henley, 8 F. Supp. 2d at 503; Beatty, 642 F.3d at 517; Little, 2019 WL 1403302, at *1-2; Jones, 471 F. App'x at 552; Thompson, 317 F. App'x at 575-76; Williams, 299 F.3d at 678; Schneider, 1990 WL 210792, at *1.

In sum, this Court should reject Respondent's argument that he is not suffering from a mental disease or defect and find, at the very least, that the combination of his antisocial personality disorder and schizoaffective disorder or unspecified psychosis has a synergistic effect that meaningfully impacts his ability to function in society and control his behavior.

CONCLUSION

Based on the foregoing, the United States requests this Court find that Respondent suffers from a qualifying mental disease or defect under the statute and commit him to the custody of the Attorney General as a mentally ill and dangerous person pursuant to 18 U.S.C. § 4246(d).

Respectfully submitted, this 16th day of February 2023.

MICHAEL F. EASLEY, JR.
United States Attorney

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CERTIFICATE OF SERVICE

This is to certify that I have this 16th day of February 2023, served a copy of the foregoing upon respondent's counsel of record by filing the same via the District Court's CM/ECF Document Filing System.

/s/ Genna D. Petre
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FORENSIC EVALUATION
Mental Health Department
Federal Medical Center
Butner, North Carolina

NAME: Blakney, Larry
REGISTER NUMBER: 34750-171
DOCKET NUMBER: 5:21-HC-2160-M
DATE OF BIRTH: 01/21/1981
DATE OF ADMISSION: 09/08/2021
DATE OF REPORT: 10/17/2022

IDENTIFYING INFORMATION: Larry Blakney is a 41-year-old, single man who was charged in the District of South Carolina with one count of Unlawful Transport of Firearms in violation of Title 18, United States Code (U.S.C.) §§ 922(g)(1), 924(a)(2), and 924(e) on 05/04/17.

Mr. Blakney was previously hospitalized at FMC Butner for competency restoration from 09/16/20 to 07/26/21. In a report dated 07/01/21, the undersigned completed a report for the criminal court in the District of South Carolina opining Mr. Blakney remained incompetent and was unlikely to be restored without the use of involuntary medication. Based on this opinion and a risk assessment screening, a Certificate of Mental Disease or Defect and Dangerousness was filed in the Eastern District of North Carolina on 07/23/21, while Mr. Blakney was housed at FMC Butner. He was transferred to South Carolina on 07/26/21 and on 07/28/21 a competency hearing was held in which the Government declined to pursue involuntary medication. In an order dated 08/03/21, the Honorable Donald C. Coggins, Jr. found Mr. Blakney incompetent to proceed and that, absent the involuntary administration of psychiatric medication, there was not a substantial probability that an additional reasonable period of treatment would restore him to competency.

On 09/06/2022, the Honorable Brian S. Meyers, United States Magistrate Judge for the Eastern District of North Carolina, Western Division, ordered Mr. Blakney undergo an evaluation consistent with 18 U.S.C. §§ 4246(b) and 4247(b).

NOTIFICATION: At the outset of and periodically throughout the current admission, Mr. Blakney was advised of the purpose of his study and the limits of confidentiality. Specifically, he was notified his dangerousness due to a mental disease or defect would be evaluated. He was told the interviews and any other information he provided or was obtained about him would not be confidential and would be reported to the Court, in a written report and/or through oral testimony. He indicated an understanding of this and agreed to proceed with interviews.

EVALUATION PROCEDURES: During the current study period, Mr. Blakney participated in interviews with Evan S. Du Bois, Psy.D., Forensic Psychologist and Samantha R. Madler, Predoctoral Psychology Intern. Psychiatric consultation was provided by members of the

Psychiatry Department, Medical, correctional, and other mental health staff had an opportunity to observe Mr. Blakney's behavior throughout his stay at FMC Butner, and their observations and comments were considered in the preparation of this report. The following procedures were administered:

1. Clinical Interviews (ongoing)
2. Behavioral Observations (ongoing)
3. Risk Assessment Panel (07/02/21)
4. Historical Clinical Risk Management – 20 Version 3 (HCR-20 V3; 09/23/22; 10/04/2022)

The following collateral sources of information were available for review:

1. Indictment, dated 10/22/19
2. Court Orders from criminal case, dated 06/10/20, 03/15/21, & 08/03/21
3. Forensic Evaluation, completed by Lisa B. Feldman, Psy.D., dated 05/20/20
4. Criminal Docket, retrieved from PACER on 08/20/20
5. Discovery documents provided by AUSA, various dates (155 pages)
6. Forensic Evaluations, completed by Evan S. Du Bois, Psy.D., dated 01/15/21 & 07/01/21
7. Status Report, completed by Evan S. Du Bois, Psy.D., dated 04/29/21
8. Telephone and email communication with criminal defense counsel, various dates
9. Bureau of Prisons Medical and Mental Health records, dated 02/11/20 to present

BACKGROUND INFORMATION: Mr. Blakney provided the following background information during this evaluation period. He presented as a fair historian, though some elements of his self-report are influenced by delusional beliefs and limited insight. The information contained below is solely based on his self-report and was not corroborated unless otherwise noted.

DEVELOPMENTAL HISTORY: Mr. Blakney reported he was born in Hartsville, South Carolina and raised by his biological mother alongside two older sisters. He denied knowledge of prenatal alcohol exposure and denied any developmental delays. He denied any history of physical or sexual abuse or neglect in childhood. He also denied any instances of domestic violence in the home.

EDUCATIONAL HISTORY: Mr. Blakney reported he left high school in the 10th grade due to difficulty with using substances, getting into trouble and getting "caught up in the fast life." He stated he earned his General Educational Development (GED) approximately seven years ago, attending adult education in the evening. He stated that he enjoyed attending school and described taking other classes online. He reported skipping school sometimes, particularly in the ninth and tenth grade.

EMPLOYMENT HISTORY: Mr. Blakney reported he was working for his pastor prior to his arrest by helping repair lawn equipment at the church. He also noted earning money "on the side" as a gospel artist and starting "Gate Movement Records," a gospel entertainment business.

He noted the business is "small" but that he sells his record. He stated this helps him to "get by" and do something "positive to earn money."

MARITAL/RELATIONSHIP HISTORY: Mr. Blakney denied ever being married. He indicated he has three children, including two daughters and a son. He noted his children are from two separate relationships. He described being in a 10-year relationship with the mother of one of his daughters and his son. He reported a history of arguments and one significant domestic violence incident in which Mr. Blakney was stabbed. He denied being in a relationship currently.

SUBSTANCE ABUSE HISTORY: Mr. Blakney reported he began using cannabis at the age of 10. He reported using on a daily basis but stated he has been "drug free for a long time." He also described a history of daily cocaine use. He acknowledged problems from his cocaine use, spending money, not taking care of business and personal responsibilities, and other difficulties. Mr. Blakney stated he stopped using substances as "drugs devastated [his] life."

MENTAL HEALTH HISTORY: Mr. Blakney stated he was first hospitalized due to someone "lacing [his] marijuana" when he was approximately "16 or 17" years old. He reported he had inadvertently used PCP and was acting erratically. He noted his mother brought him to the hospital and had PCP in his blood. He described remaining hospitalized for 45 to 60 days and taking olanzapine. He stated he discontinued using the medication shortly after his release from the hospital, stating he felt sedated. He also reported taking olanzapine while at FDC Miami but stopping due to the way it made him feel. He denied any history of mental health treatment after the one hospitalization as a juvenile.

Mr. Blakney denied hearing voices. However, he then stated he has been harassed by "South Carolina Law Enforcement Division (SLED)." He claimed he has heard people in the community talking badly about him. He described a person named "Kat, Katherine" who has a ministry in Charlotte, North Carolina. He reported her being affiliated with big celebrities, and noted he was as well. He reported having a celebrity publicist as well. Mr. Blakney stated since he left the church in Charlotte, he reported having people "extort" him to return to that church. He claimed people come into restaurants to harass him and threaten him. He noted this was the reason for him feeling the need to carry a weapon.

He also reported another artist in Hartsville who has been involved in threatening him, named "J Blade." He stated the person's voice can communicate to him when not there. When asked how this was possible, he cited the government having technology to be able to communicate with others.

MEDICAL HISTORY: Mr. Blakney denied any current medical concerns. He denied any history of head injuries with loss of consciousness.

CRIMINAL HISTORY: Mr. Blakney reported having charges for driving with a suspended license. He stated he was once arrested for felony carjacking. He claimed he was out promoting his CD and tried to sell one to somebody in a car. He stated he accepted a plea for that in order to

get "time served." He also reported a charge for "accessory after the fact" in a murder that occurred when he was 12-years-old. Records indicate, but are not limited to the following criminal convictions and arrests:

Date of Arrest	Charges	Disposition
08-27-1998	Driving Under Suspension	Convicted
06-12-1999	Simple Possession of Marijuana Resisting Arrest	Convicted
03-10-2000 (Earliest event date)	Accessory After the Fact to Felony Murder	Convicted
09-22-2000 (Earliest event date)	Murder	Convicted
06-17-2001	Simple Assault	Convicted
10-30-2001	Parole Revocation	Convicted
04-19-2002	Giving False Information Resisting Arrest	Disposition Unknown Convicted
05-24-2002	Driving Under Suspension	Convicted
07-31-2002	Simple Assault	Convicted
11-18-2002	Criminal Domestic Violence	Convicted
04-03-2003	Manufacture, Distribute Crack Cocaine	Convicted
05-29-2003	Driving Under Suspension (DUI) Possess less than One Gram Crack Cocaine	Nolle Prossed Convicted Nolle Prossed
06-09-2003	Resisting Arrest	Convicted
08-29-2003	Possess less than one Gram Crack Cocaine	Disposition Unknown
11-07-2003	Trespassing	Convicted
05-04-2004	Driving Under Suspension	Convicted
12-09-2004	Public Disorderly Conduct	Convicted
04-03-2005	Resisting Arrest Malicious Injury to Personal Property	Convicted Convicted
05-14-2005	Violation of Restraining Order	Nolle Prossed
05-15-2005	Unlawful Use of Telephone	Nolle Prossed
06-11-2005	Driving Under Suspension Transp. Alcohol in Motor Veh. with Seal Broken	Convicted Convicted
07-18-2005	Driving Under Suspension Criminal Domestic Violence Transp. Alcohol in Motor Veh. with Seal Broken	Convicted Convicted Convicted
01-24-2006	Public Disorderly Conduct Littering	Convicted Convicted

	Entering Premise After Warning Assault Police Officer While Resisting Arrest	Disposition Unknown Convicted
05-13-2006	Refusing to Leave Public Premises	Convicted
07-23-2006	Trespassing Purse Snatching	Nolle Prossed Disposition Unknown
03-16-2007	Driving Under Suspension	Convicted
05-07-2007	Unlawful Use of Telephone	Nolle Prossed
06-20-2007	Driving Under Suspension Shoplifting X2	Convicted Convicted
01-04-2008	Public Disorderly Conduct	Convicted
01-16-2008	Shoplifting Escape/Attempt/Possession of Tools Resisting Arrest	Nolle Prossed Convicted
01-27-2008	Trespassing Loitering	Not Guilty Nolle Prossed
03-18-2008	Trespassing Distribute, Sell Crack Cocaine Near School	Nolle Prossed
04-02-2008	Resisting Arrest Public Disorderly Conduct	Convicted
06-15-2008	Petty Larceny	Convicted
06-19-2008	Shoplifting	Disposition Unknown
08-20-2008	Trespassing Criminal Domestic Violence	Nolle Prossed Dismissed at Prelim
08-28-2008	Shoplifting (3 rd of Sub Offense)	Nolle Prossed
09-17-2008	Assault Police Officer While Resisting Arrest Resisting Arrest X2 Criminal Domestic Violence (2 nd Offense)	Convicted Convicted Convicted
06-30-2009	Burglary - First Degree Grand Larceny Assault and Battery with Intent to Kill	Disposition Unknown Disposition Unknown Disposition Unknown
09-07-2010	Distribute, Sell, Crack Cocaine Near School	Disposition Unknown
10-18-2010	Non-Support	Disposition Unknown
02-10-2011	Shoplifting	Disposition Unknown
09-10-2014	Non-Support X2	Disposition Unknown

11-20-2016	Trespassing Drugs/ Distribute, Sell, Manufacture Near a School Manufacture, Possess, Other Substance	Disposition Unknown Nolle Prossed
03-06-2017	Resisting Arrest Entering Premises After Warning	Disposition Unknown Disposition Unknown
03-11-2017	Possess Less than One Gram Crack Cocaine	Disposition Unknown
05-19-2017	Shoplifting Entering Premises After Warning	Convicted
08-01-2017	Public Disorderly Conduct	Disposition Nolle Prossed
09-07-2017	Entering Premises After Warning	Disposition Unknown
09-25-2017	Operation of Retail Business without License	Disposition Unknown
09-30-2017	Entering Premises After Warning	Disposition Unknown
11-01-2017	Operation of Retail Business without License Entering Premises After Warning	Disposition Unknown Disposition Unknown
11-03-2017	Operating without License	Disposition Unknown
11-23-2017	Trespassing Operation of Retail Business without License	Disposition Unknown Disposition Unknown
12-23-2017	Carjacking without Great Bodily Harm	Convicted
09-22-2018	Assault and Battery 3 rd Degree Entering Premises After Warning Operating Motor Vehicle Without License Public Disorderly Conduct	Convicted Convicted Convicted Disposition Unknown Convicted
10-25-2018	Threatening Life, Person, or Family of Official Unlawful Carrying of Weapon	Disposition Unknown Disposition Unknown

HOSPITAL COURSE: Upon re-admission to FMC Butner on 09/08/21, Mr. Blakney was seen in the Receiving and Discharge department by the undersigned psychologist. During that contact, he was aware, alert, calm, and spoke in a logical and goal-directed manner. He expressed understanding he returned to FMC Butner to undergo an evaluation for dangerousness due to a mental disease or defect. During the intake, persecutory delusions were noteworthy. Specifically, he identified delusional beliefs regarding South Carolina law enforcement "harassing" him by using "technologies."

On 10/15/21 Mr. Blakney received an incident report for Threatening Bodily Harm and Being Insolent to a Staff Member. Specifically, Mr. Blakney was walking the unit and yelling, stating he was going to "murder that bitch" while simultaneously spitting on other inmates' doors and on the unit phones. After multiple attempts by staff to redirect Mr. Blakney, he directed his statements toward a staff member, stating, "I'm gonna fucking murder you, you cracker ass bitch." During the institution disciplinary evaluation, Mr. Blakney presented with delusional ideation, particularly with regard to the alleged offense. He indicated he was responding to the "South Carolina Law Enforcement Division of police because they were threatening [him] through the recording device." He was found not competent or responsible for the alleged infraction.

Between September 2021 and February 2022, Mr. Blakney's clinical presentation remained largely unchanged. He continued to display symptoms of auditory and visual hallucinations as well as persecutory and referential delusional ideations. Specifically, Mr. Blakney repeatedly reported beliefs that the South Carolina Law Enforcement Division (SLED) were "threatening" and "harassing" him by "sending people to talk in [his] ears." He reported to staff on numerous occasions he had a "restraining order on [SLED] and [his] lawyer filed a criminal complaint against them because... he can hear them too." On multiple occasions throughout this time frame, Mr. Blakney was overheard by nursing and custody staff in the secure housing unit yelling loudly, slamming his toilet seat, and throwing books or other items in his cell. When asked about his behavior, Mr. Blakney stated, "The people are trying to hurt me. I'm going to get a shotgun and I'm going to kill those sons of bitches." He was further overheard by secured housing staff yelling sexually inappropriate statements, for example, "Bitch, you cannot suck my dick." Mr. Blakney remained on the secured housing unit due to his disruptive and overtly psychotic behavior between October 2021 until March 2022.

Throughout this time frame, Mr. Blakney was refusing all offered psychiatric medication, despite encouragement from providers. On a few occasions during contacts with his primary evaluator, Mr. Blakney became irate and hostile stating, "Fuck you, get the fuck away from my door," primarily after psychiatric medication was encouraged. During a treatment team meeting with his psychiatrist and primary evaluator, Mr. Blakney evidenced significant symptoms of psychosis, specifically auditory hallucinations and bizarre disorganized thought processes with minimal insight. He indicated he feels harassed and compelled to respond to distressing auditory hallucinations. His observed method of responding to auditory hallucinations involved graphic sexual insults and banter that was not conducive to reasonable or logical conversation. He refused even a small increase in psychotropic medication.

Beginning in February 2022, Mr. Blakney was approved for a Gradual Release Plan (GRP), in which he was allowed one-hour periods on the open mental health unit to assist with, and observe, his adjustment to the open unit. During his one-hour GRP, Mr. Blakney attended Modified Illness Management and Recovery (IMR) groups on the housing unit. In a monthly group progress note, group facilitators remarked he was a willing and engaging participant with minimal behavioral disruptions. Mr. Blakney remained behaviorally appropriate for one-hour releases on the open unit throughout February and March 2022, however, his one-hour GRP was revoked on 04/07/22 and he was placed on Increased Psychological Observation (IPO) status on the secured mental health unit after becoming increasingly disruptive and yelling obscenities toward nursing staff and his primary evaluator. Mr. Blakney resumed his GRP after he became compliant with his psychotropic medications and demonstrated behavioral stability.

In late April 2022, Mr. Blakney resumed his one-hour GRP on the open mental health unit after evidencing behavioral stability in the secured mental health unit. He continued to attend IMR groups, although facilitators observed he became overwhelmed by internal stimuli and left group at least once each group session. Facilitators also commented on his inability to apply group topics (i.e., Nonadherence to medication treatment) to his symptoms of mental illness, as he asserted he did not suffer from a mental illness. Additionally, he continued to report belief that he was being "harassed" by the Hartsville, South Carolina police department and that he is under surveillance by the rapper, Jay-Z. In August 2022, Mr. Blakney was observed by nursing staff responding to internal stimuli using obscene language. When asked to return to his room, Mr. Blakney was heard yelling at unseen others. When given feedback by providers that his symptoms are related to a mental illness, he adamantly disagreed and denied interest in increasing or changing his medication regimen. Mr. Blakney was released from the GRP in early July 2022 and he has remained on the open mental health unit through the writing of this report.

In regard to psychiatric treatment during this time frame, Mr. Blakney had aripiprazole 15mg and olanzapine 15mg prescribed upon arrival to FMC Butner, although largely refused psychotropic medications between September 2021 and March 2022. Olanzapine was discontinued on 12/31/21 following noncompliance and per Mr. Blakney's request. Beginning in early April 2022, Mr. Blakney has been mostly compliant with prescribed aripiprazole 15mg. During this time frame, he was observed by staff and his primary providers to be less irritable at times and displayed more logical thought processes. Despite his medication compliance, Mr. Blakney continues to report persecutory delusional themes. Specifically, during an interaction with psychology staff, Mr. Blakney reported he still feels as though he is being recorded and "harassed" by the South Carolina police department and continues to file civil lawsuits against SLED, the United States of America, FMC Butner, the Warden of FMC Butner, Hartsville South Carolina Police Department Commissioners, Honorable Judge Donald C. Coggins, Jr., and rapper Jay-Z. At the writing of this report, Mr. Blakney is prescribed aripiprazole 15mg daily, he consistently refuses to increase dosage of his current medication despite encouragement from his psychiatrist.

PSYCHOLOGICAL TESTING: No psychological testing was conducted for the current evaluation, given Mr. Blakney's disorganized presentation and likely inability to focus during the administration of a measure.

DIAGNOSIS AND PROGNOSIS: Based on available information, the following diagnoses from the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)* are considered applicable to Mr. Blakney:

Schizoaffective disorder, bipolar type, unspecified
Antisocial personality disorder

Schizoaffective disorder is characterized by periods of major mood disturbance (i.e., major depressive episodes or manic episodes) concurrent with symptoms of schizophrenia. Major depressive episodes consist of at least five of the following symptoms: depressed mood most of the day, loss of interest or pleasure in previously enjoyable activities, weight loss/gain, sleep disturbance, slowed or agitated psychomotor activity, fatigue, feelings of worthlessness or guilt, inability to concentrate, or suicidal ideation. On the contrary, manic episodes consist of distinct periods of abnormally and persistently elevated or irritable mood and increased activity or energy lasting at least one week. Manic episodes also include three to four of the following symptoms: inflated self-esteem or grandiosity, decreased need for sleep, more talkative than usual, racing thoughts, distractibility, psychomotor agitation, or risk-taking behaviors. Schizophrenia is characterized by at least two of the following: delusions, hallucinations, disorganized speech or behavior, and negative symptoms (i.e., diminished emotional expression or lack of drive or motivation).

Mr. Blakney currently presents with symptoms of schizophrenia, including auditory hallucinations and persecutory delusions, as well as disorganized speech. He has reported auditory hallucinations in the past, as well as currently noting he hears derogatory things being said about him which he perceives as coming from the institution's loudspeakers. He has similarly perceived these messages being shared through the radio and other means in the past, noting they were intended for others and to degrade his reputation. The overall theme of these hallucinations is related to his delusional belief that others are persecuting him and enlisting the aid of law enforcement officers to do so. He has repeatedly cited the belief that specific individuals (e.g. "Cat," "J Blade," and rapper Jay-Z) are attempting to harm his reputation and ability to be successful by spreading false information about him or having police harass and arrest him. Additionally, he has reported persecutory delusional beliefs related to perceived harassment from SLED who are attempting to remove his Facebook page. Throughout his evaluation period, he has filed numerous lawsuits against his primary evaluator, psychiatrist, Warden of FMC Butner, and Honorable Judge Donald C. Coggins, Jr., citing beliefs related to "foreign intelligence surveillance" and "falsifying records." While he has, at times, expressed some superficial flexibility in these beliefs, he returns to them and is fixated on them as being truthful and that he will enlighten others to these truths in the court and elsewhere. Mr. Blakney has exhibited disorganized speech, including loose associations and tangential speech, where he has difficulty remaining on topic and or completing a point he has started to make.

In addition to the above symptoms, Mr. Blakney presents with prominent mood symptoms, specifically mania. While he has denied current sleep difficulties, he has reported periods where he required minimal sleep. He also presented as talkative and with limited ability to inhibit this, even when asked specifically to do so. He was markedly distractible, and not only to internal

stimuli, but to external events happening during periods where he was being interviewed. While he does not appear to have grandiose delusions, his self-esteem is inflated. He also exhibits significant psychomotor agitation, as evidenced by his increased physical movement within the unit and associated behaviors. He is often seen on the unit as overly physically active in purposeless behavior. He also often had difficulty controlling his impulsive behavior, such as remaining on task and goal-oriented during forensic assessments. Given this combination of symptoms, the diagnosis of schizoaffective disorder, bipolar type was provided. As the presence of remission or distinct episodes is unknown at this time, an "unspecified" course was noted.

The core feature of antisocial personality disorder is a pervasive pattern of disregard for the rights of others. As noted in prior evaluations, Mr. Blakney has a significant history of failing to conform to social norms with respect to lawful behaviors, impulsivity, consistent irresponsibility, and aggression. A history of significant disregard for social norms was present in his youth (prior to age 15), including physical altercations, substance use, and school suspensions/expulsions. In fact, he reported his first arrest being at the age of 12 for "accessory after the fact...for murder." Given this presentation, Mr. Blakney was diagnosed with antisocial personality disorder.

It is also noted Mr. Blakney has a significant history of maladaptive substance use, which he stated began at the age of 10 with cannabis. He reported daily cocaine use and numerous interpersonal problems and difficulties with responsibilities secondary to his use. However, Mr. Blakney claimed he has been "drug free for a long time." The veracity of this statement is questioned. Nevertheless, he has been in custody for an extended period of time and there does not appear to be current substance use. While he likely has met criteria for a substance use disorder in the past, this area was not explored further as it does not appear to be currently related to dangerousness. It should be addressed in future treatment or evaluations, as long as it is relevant.

Mr. Blakney's prognosis is guarded. Specifically, he suffers from a chronic mental illness, schizoaffective disorder, bipolar type, and has limited insight into the impacts of this illness. In conjunction with his limited insight, he has been noncompliant with prescribed medication or resistant to changes in medications, doses, or administration methods. Positively, Mr. Blakney has exhibited some improvement when he is more compliant with medication. This suggests additional treatment with confirmed administration of medication (i.e., via injection) may provide adequate symptom reduction. Without a sustained medication regimen, significant concerns persist regarding his violent statements and agitation when undermedicated or noncompliant with medication.

FORENSIC ASSESSMENT: Title 18, U.S.C., § 4246 outlines procedures for indefinite civil commitment of a person who is presently suffering from a mental disease or defect such that his release would create a substantial risk of bodily injury to another person or serious damage to the property of another and arrangements for state custody and care are not available.

It should be noted that whether a person will engage in future violence is a function of a variety of factors, including history, personal disposition, and anticipated situational variables, keeping in mind that not all potential circumstances will be known in advance. Although consistently

accurate predictions of future dangerousness cannot be conclusively made by mental health professionals at this time, it is possible to estimate relative risk by considering several well-researched historical and situational correlates of future violence.

Historical Clinical Risk Management - 20 -Version 3: The HCR-20-V3 is a 20-item broadband violence risk assessment instrument. The HCR-20-V3 was designed to help clinicians structure their assessments and increase reliability and validity. It was developed from a thorough consideration of the empirical literature concerning factors which relate to violence in criminal and psychiatric populations. The instrument categorizes risk markers into three domains: past (Historical), present (Clinical), and future (Risk Management). Each of the 20 items is rated after a comprehensive clinical interview and review of collateral file information. The rating is made according to three levels of certainty (i.e., Present; possibly/partially present, or Not present/does not apply). Unlike an actuarial measure, the HCR-20-V3 does not provide a numeric estimate of risk; rather, final judgment is labeled as Low, Moderate, or High and is based on a careful analysis of the 20 risk factor items and clinical judgment. Based on the factors discussed below, Mr. Blakney's risk of harm to others is considered High.

Violence, as defined by the HCR-20^{V3}, involves actual, attempted, or threatened harm to a person or persons. The degree of harm to a victim does not define violence but rather the act itself. Additionally, acts that would induce fear in the average person but not cause harm *per se* would also be considered violent (e.g., stalking, shooting a gun into a crowd of people, but harming no one). Lastly, threats of violence must be clear and specific (e.g., "I am going to kill you!") as opposed to a vague statement of hostility.

Historical Items: The best predictor of future violence is a history of violence. Mr. Blakney has a history of violent criminal activity, which includes several convictions for assaultive behavior, including: Simple Assault and Battery, Accessory after the fact to Felony Murder & Murder, Criminal Domestic Violence, Malicious Injury to Personal Property, assaulting a Police Officer while Resisting Arrest, and Carjacking without Great Bodily Harm. His instant offense is for Unlawful Transport of Firearms. During Mr. Blakney's instant offense, he allegedly reached for his waistband where a revolving handgun was later found and stated he "should have pulled the gun out and filled [the arresting officer's] face full of bullets." Mr. Blakney's past behavior reflects violent attitudes and have occurred both in the community and in correctional settings. As previously mentioned, Mr. Blakney received an incident report on 10/15/2021 for Threatening Bodily Harm and Being Insolent to a staff member. Despite limited number of formal incident reports, staff have reported numerous instances of aggressive and threatening behavior while noncompliant with psychiatric medication. Specifically, on 10/18/2021 he was heard yelling and cursing in his cell secondary to hearing auditory hallucinations of the Hartsville police stating they were going to kill him. In response to these auditory hallucinations, Mr. Blakney was heard yelling he was letting the police know he was going to kill them first.

Mr. Blakney also has a history of engaging in non-violent antisocial behavior beginning in adolescence. Mr. Blakney reported leaving school prematurely and getting involved "in the fast life." Additionally, his criminal history reflects a clear pattern of antisocial behavior with multiple convictions for Resisting Arrest, Possession of Marijuana, Driving under Suspension,

Trespassing, Shoplifting, Disorderly Conduct, and Petty Larceny. His records suggest he has been arrested multiple times for similar charges in succession. While in BOP custody, Mr. Blakney has incurred incident reports for Misusing Authorized Medication and Phone Abuse, both of which he was sanctioned to 30 days loss of privileges.

Some forms of mental illness are associated with an increased risk for violence, including psychosis and cognitive disorders. As noted above, Mr. Blakney has a diagnosis of schizoaffective disorder, bipolar type. This condition may be associated with a modest increase in volatile and unpredictable behavior associated with violence. As noted, Mr. Blakney has engaged in abetment behaviors while acutely mentally ill. He has been psychiatrically hospitalized and has presented with delusional thinking (persecutory and grandiose), auditory hallucinations, impulsivity, and aggressive behavior. Additionally, Mr. Blakney has been inconsistently compliant with medication both in-and out of custody, resulting in significant decompensation.

Substance abuse is a well-established risk factor for violent or aggressive behavior that increases the risk of violence among persons with psychosis. Mr. Blakney has a history of substance use beginning at the age of 10 years old continuing into adulthood with daily, chronic use. Further, Mr. Blakney has documented arrests and convictions for possession of marijuana and methamphetamine. In terms of history of problems in relationships, there is limited information available regarding the nature of his previous intimate relationships. Per his self-report, Mr. Blakney described being in a 10-year long relationship which involved arguments and domestic violence. Regarding employment history, Mr. Blakney's self-reported main form of employment has been working for his pastor helping with repairing lawn equipment. He has further reported additional "side" businesses, such as "website development" and "coordinating" for nonprofit organizations, although it is unclear how much he relies on those businesses for financial stability.

In terms of his compliance with treatment and supervision, Mr. Blakney's history is suggestive of medication non-compliance as well as failure to comply with conditions of supervision. While in BOP custody, Mr. Blakney has demonstrated an uncooperative and hostile attitude toward recommendations made by treatment providers related to medication compliance. Additionally, records indicate while on parole he was revoked on at least one account after failure to comply with conditions of his release.

With respect to protective factors, Mr. Blakney has denied a history of traumatic experiences or stressor-related diagnosis. He also speaks often about his record company, called Gate Movement Records, and has shared information about his hosting events and ministry through this company. His involvement in providing a positive message to others, through this company, is encouraging, though he also cites his involvement as part of the reason he is targeted by others and his continued involvement without adequate treatment would likely further his acting on symptoms.

In summary, Mr. Blakney has a significant number of historical risk factors which are highly relevant to his risk of violence. His history of violence, antisocial behavior, relationship

instability, poor employment record, severe mental illness, substance use history, documented personality disorder, history of violent attitudes, and poor response to treatment are most relevant and greatly outweigh the few protective factors.

Clinical Items: Clinical items address current difficulties that may increase or decrease Mr. Blakney's risk of harm to others. Mr. Blakney has been acutely psychotic throughout the majority of his hospitalization at FMC Butner, with only brief periods of relative and partial stability secondary to medication compliance. Mr. Blakney has agreed to take aripiprazole 15 mg, although despite recommendations from psychiatry due to continued symptoms of psychosis, he has refused to increase or change his medication regimen. Mr. Blakney's insight into his mental illness is generally poor. Specifically, he has limited awareness of his current circumstances and need to comply with treatment regularly, and when provided education related to his mental illness, he has become highly agitated and used obscene language toward his primary evaluator. Mr. Blakney has also demonstrated consistent cognitive, behavioral, and affective instability while at FMC Butner. He is often impulsive and hostile in an unpredictable manner. He has expressed violent ideation and has threatened staff and unseen others associated with law enforcement in South Carolina. Mr. Blakney has required placements in secure housing since entering BOP custody due to using obscene, sexually inappropriate language and making verbal threats. He has had several interactions with staff which include hostility and aggressive posturing.

In sum, Mr. Blakney's current clinical presentation provides evidence of an increased risk of violence in every category. He has active symptoms of a mental illness, instability, poor insight, recent violent ideation, and insufficient response to treatment.

Risk Management: Risk management factors reflect features of an individual's anticipated psychosocial adjustment, based on goals and plans for the future. Regarding treatment, he described a plan to attend outpatient treatment at Pee Dee Mental Health Center in Hartsville, South Carolina. However, the amount and intensity of treatment does not appear adequate when compared to his current risk level. When asked about the specific treatment he would obtain, he initially stated he would likely receive outpatient treatment "once a week" and then provided a disorganized response related to being a mentor to others and aiding others in need. When asked if he would abide by the recommendations of treatment providers, he affirmed, stating, "if it's part of my freedom and emancipation, I'm going." Additionally, Mr. Blakney identified his niece as someone who would provide "homedate" and ensure he attended his appointments and complied with his medications. This information was not verified with his niece prior to the completion of this report. Regarding social support, Mr. Blakney reported he would likely spend "all day everyday" with his Pastor. When asked about additional friendships, Mr. Blakney began citing scripture related to learning how to form relationships with people who are beneficial for you. When asked where he might live, Mr. Blakney reported he would live with his mother in Hartsville, South Carolina. He indicated she recently underwent surgery and can "hardly move" around the house. He voiced desire to help her "heal up." Nevertheless, even with some supportive individuals in his life, his history of treatment adherence while residing in the community demonstrates that Mr. Blakney requires a higher level of supervision than afforded at his mother's home. Regarding treatment and supervision response, Mr. Blakney has made

statements related to perception he does not suffer from a mental illness, and therefore does not believe he requires medication. Additionally, Mr. Blakney has demonstrated past difficulty in participating in treatment and abiding by the conditions of supervised release.

Overall, while Mr. Blakney is able to discuss a plan if released and is aware to some extent of the need for further treatment if required by conditions of release, his plan is largely inequivalent to his risk level and corresponding treatment need. While he superficially expressed willingness to engage in treatment while in the community, he has voiced conflicting opinions regarding his need for treatment throughout his evaluation periods. It also appears highly unlikely he would engage in any of those treatment recommendations if it were not mandated, as would be the case if he were unconditionally released.

SUMMARY AND OPINION: Title 18, U.S.C. § 4246 requires that an individual presently suffering from a mental disease or defect as the result of which his release to the community would create a substantial risk for bodily injury to another person or serious damage to the property of another. After consideration of the relevant risk and protective factors, though ultimately a decision for the court, the undersigned opine Mr. Blakney's release to the community would pose a substantial risk of bodily injury to another person or serious damage to the property of another. Mr. Blakney has evidenced aggressive and assaultive behavior toward others which appears directly related to symptoms of his mental illness (schizoaffective disorder). As assessed using the HCR-20-V3, Mr. Blakney has numerous historical and clinical risk factors that increase his risk for future violence, with insufficient mitigating factors in terms of his current clinical status and future release plans. Treatment should focus on Mr. Blakney adjusting his medication as needed to better target psychotic symptoms, improve insight, develop stress management and coping strategies, and develop a stable and regimented release plan, when appropriate. These goals can be accomplished within an inpatient setting such as FMC Butner, though release to a state psychiatric facility would also be appropriate, if accepted.

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