

IN THE
Supreme Court of the United States

JOSE RAMOS-PEREZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

LOUIS C. ALLEN
ACTING FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

JENNIFER C. LEISTEN
RESEARCH & WRITING ATTORNEY
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jennifer_leisten@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Under 18 U.S.C. § 4246(d), a district court may order an individual indefinitely committed if “the court finds by clear and convincing evidence that the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury *to another person* or serious damage to property *of another* [.]” 18 U.S.C. § 4246(d) (emphasis added).

At issue here is whether § 4246(d)’s risk of bodily injury to “another person” or damage to property “of another” applies extraterritorially and extends to risk of harm to persons beyond the boundaries of the United States. It does not. Petitioner is a Mexican citizen subject to deportation against whom an active detainer has been filed by Immigration and Customs Enforcement. Because 18 U.S.C. § 4246(d) does not encompass risk to persons outside the United States, and because Petitioner will not be released within the United States but must instead be returned to Mexico, the district court erred in concluding that Petitioner’s risk to persons in Mexico permits indefinite civil commitment under § 4246(d).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jose Ramos-Perez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's unpublished opinion is available at 706 F. App'x 129 (4th Cir. 2017); *see also infra*, Pet. App. 1a.

JURISDICTION

The Fourth Circuit issued its opinion on December 15, 2017. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.”

STATUTORY PROVISION INVOLVED

Title 18, Section 4246 of the United States Code provides for indefinite civil commitment of offenders with a mental disease or defect whose release would create “a substantial risk of bodily injury to another person or serious damage to property of another.” 18 U.S.C. § 4246(d). Specifically, Subsection (d) provides as follows:

Determination and disposition. If, after the hearing, the court finds by clear and convincing evidence that the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to **another person** or serious damage to property **of another**, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility, until—

- (1) such a State will assume such responsibility; or
- (2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

18 U.S.C. § 4246(d) (emphasis added).

STATEMENT OF THE CASE

A. District Court Proceedings

On March 19, 2014, a federal grand jury sitting in the District of Arizona indicted the Petitioner, Jose Ramos-Perez, a Mexican citizen, for illegal re-entry following deportation in violation of 8 U.S.C. § 1326(b)(2). (Appellate Joint Appendix 14-15; hereinafter “J.A.”). The district court in Arizona subsequently ordered an evaluation of Petitioner’s competence to stand trial. (J.A. 14). The resulting evaluation diagnosed Petitioner as suffering from a delusional disorder, mixed type, and determined that he was not competent to participate in the legal proceedings. (J.A. 13-22).

On January 13, 2016, the district court in Arizona ruled that Petitioner was not competent to stand trial and committed him to the custody of the Attorney General under 18 U.S.C. § 4241(d) for a period of four months to determine whether restoration to competency was probable within the foreseeable future. (J.A. 25). Petitioner was subsequently admitted to the Federal Medical Center at Butner, North Carolina (“FMC Butner”) for evaluation and treatment. (J.A. 25). The evaluation at FMC Butner determined that restoration of Petitioner’s competency to stand trial would require extensive efforts. (J.A. 32). In accordance with the evaluation, the district court in Arizona found that Petitioner was not restorable to proceed to trial and dismissed the indictment against him. (J.A. 35). In addition, the district court ordered Petitioner released from confinement unless the director

of FMC Butner determined that he was dangerous under 18 U.S.C. § 4246. (J.A. 35-36).

On September 27, 2016, the government filed a certificate of mental disease of defect and dangerousness in the Eastern District of North Carolina. (J.A. 4-6). The certificate alleged that Petitioner was “currently 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.” (J.A. 6). The certificate further alleged that “suitable arrangements for State custody and care of Petitioner are not available.” (J.A. 6).

The district court held a civil commitment hearing for Petitioner on February 28, 2017. (J.A. 51-69). At the hearing, the district court admitted into evidence an evaluation by FMC Butner forensic psychologist Adeirdre Stribling Riley, Ph.D., as well as an independent evaluation by Hans Stelmach, M.D. (J.A. 35-50; 54). In addition, the government presented testimony by Dr. Stribling Riley. (J.A. 54-65). During cross-examination, Dr. Stribling Riley confirmed that Immigration and Customs Enforcement (“ICE”) had issued a detainer against Petitioner, and that, pursuant to the detainer, he would not be released within the United States but would instead be deported to Mexico. (J.A. 61, 64). Dr. Stribling Riley further agreed that her assessment of the risk posed by Petitioner was to communities within the United States, not Mexico. (J.A. 64).

Following the testimony, counsel for Petitioner argued that his release would not pose a substantial risk of danger to persons or property within the United States

because, in fact, Petitioner would not be released within the United States. (J.A. 66). Instead, he would be released into the custody of ICE, who would return him to Mexico. Because Petitioner “cannot be released into the United States of America – which is where Dr. Stribling Riley believes that his danger would pose” and because “4246 does not apply extraterritorially,” counsel asked the court to deny the government’s request for civil commitment. (J.A. 66).

Notably, the district court has previously held in an earlier case that § 4246(d) applies extraterritorially. *United States v. Ramirez-Alaniz*, 637 F. App’x 721 (4th Cir. 2016). In *Ramirez-Alaniz*, the district court held that under § 4246(d), “a person should be civilly committed if he suffers from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person, *regardless of their citizenship or geographic location*.” *Id.* at 724 (emphasis added). Thus, the district court found that the risk of harm to persons in Mexico posed by Ramirez-Alaniz supported civil commitment. *Id.* Applying its holding in *Ramirez-Alaniz* to Petitioner’s case, the district court found “by clear and convincing evidence that [Petitioner] 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” and ordered Petitioner to be indefinitely committed under § 4246. (J.A. 68). The court entered its order and judgment of commitment the same day. (J.A. 9-10). The court made no other findings in support of its order of commitment.

Petitioner filed a timely notice of appeal to the United States Court of Appeals for the Fourth Circuit. (J.A. 11-12).

B. Court of Appeals Proceedings

On appeal to the Fourth Circuit, Petitioner argued that the district court erred by applying § 4246(d)'s dangerousness prong extraterritorially when it found that Petitioner's release would create a substantial risk of bodily injury to another person. Because § 4246 does not encompass risk to persons outside the United States, and because Petitioner would not be released within the United States but would instead be returned to Mexico, Petitioner maintained that the district court erred in concluding that indefinite commitment was necessary under § 4246. The Fourth Circuit rejected this argument and affirmed the judgment of the district court. This petition followed.

THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The question of whether § 4248 applies extraterritorially was presented to the Fourth Circuit. The Court of Appeals rejected Petitioner's appeal and affirmed the district court. Thus, the federal claim was properly presented and reviewed below and is appropriate for this Court's consideration.

REASONS FOR GRANTING THE PETITION

18 U.S.C. § 4246(d) DOES NOT APPLY EXTRATERRITORIALLY.

A. The plain text of the statute does not support extraterritorial application.

The district court erred in giving extraterritorial effect to 18 U.S.C. § 4246(d). Under § 4246(d), a district court may order an individual indefinitely committed if,

following a hearing, “the court finds by clear and convincing evidence that the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury *to another person* or serious damage to property *of another* [.]” 18 U.S.C. § 4246(d) (emphasis added).

At issue here is whether § 4246(d)’s risk of bodily injury to “another person” or damage to property “of another” applies extraterritorially and extends to risk of harm to persons beyond the boundaries of the United States. It does not. As explained below, it is well established that statutes extend extraterritorially only if Congress clearly so provides. *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1664-65 (2013); *Morrison v. Nat’l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010). The text of § 4246 contains no such “clear provision” extending its application to persons outside the United States. Because § 4246 does not encompass risk to persons outside the United States, and because Petitioner will not be released within the United States but must instead be returned to Mexico, the district court erred in concluding that indefinite commitment was necessary under § 4246.

“Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application.” *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2100 (2016); accord *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991) (“It is a longstanding principle of American law ‘that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.’”). The presumption against extraterritoriality rests on the perception that Congress ordinarily legislates with

respect to domestic concerns, not foreign matters. *Morrison*, 561 U.S. at 255 (citing *Smith v. United States*, 507 U.S. 197, 204 n. 5 (1993)). Thus, “[w]hen a statute gives no clear indication of an extraterritorial application, it has none.” *RJR Nabisco, Inc.*, 136 S. Ct. at 2100 (quoting *Morrison*, 561 U.S. at 255).

Applying these principles here, Section 4246 lacks any “clear indication” that Congress intended that the risk of bodily injury “to another person” or damage to property “of another” posed by civil detainees under the statute should include all persons and property everywhere, regardless of geography. Without such “clearly expressed congressional intent,” the risk of bodily injury to “another person,” as required by § 4246, must be “construed to have only domestic application.” *RJR Nabisco, Inc.*, 136 S. Ct. at 2100. In other words, § 4246 contemplates that the risk of harm must lie with persons and property within the United States. Thus, the district court should have concluded that because the statute fails to clearly state Congressional intent for extraterritorial application, the dangerousness prong of 18 U.S.C. § 4246(d) applies only to persons within the United States.

If Congress intended for § 4246 to mitigate risk to persons outside of the United States, it could have easily included language indicating such extraterritorial concern. Indeed, other statutes illustrate this point. For example, 18 U.S.C. § 2423(c), which proscribes “engaging in illicit sexual conduct in foreign places,” prohibits United States citizens and aliens admitted for permanent residence from engaging in illicit sexual conduct “with another person” while traveling or residing in a foreign country. 18 U.S.C. § 2423(c). Unlike 18 U.S.C. §

2423(c), Congress included no language in § 4246 indicating its intended application in foreign jurisdictions. Thus, by its plain text, § 4246 applies only to risk to persons within the United States. *Cf. Nichols v. United States*, 136 S. Ct. 1113, 1118 (2016) (applying plain text analysis).

Additional language of 18 U.S.C. § 4246 supports this reading. Section 4246(d) provides that “[t]he Attorney General shall make all reasonable efforts to cause . . . a State to assume . . . responsibility” for mentally ill persons found to be dangerous. The term “State” includes the District of Columbia. *See* 18 U.S.C. § 4247(a)(3). But the term “State” does not include foreign jurisdictions, and § 4246 provides no mechanism for the Attorney General to coordinate with foreign jurisdictions to assume responsibility for persons civilly committed under § 4246. This focus on “States” and omission of foreign jurisdictions further demonstrate that § 4246 contemplates domestic application within the United States and does not apply to extraterritorial risk to persons outside of the country. For these reasons, the district court erred in giving extraterritorial effect to § 4246.

B. Petitioner cannot be released within the United States.

At the commitment hearing, counsel for Petitioner argued that because there was an active ICE detainer against him, he could not be released in the United States and would instead be deported to Mexico. ICE detainers are placed against non-citizens arrested in the United States for whom ICE has probable cause to believe are “removable” from the United States. *See* U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Policy No. 10074.2, *Issuance of Immigration Detainers by*

ICE Immigration Officers (Mar. 24, 2017) (available at <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>).

Once a detainer has been lodged, ICE may take custody of the detained person when the person is released from local custody. *Id.* Such a detainer informs local law enforcement to continue holding that individual in custody for up to 48 hours until ICE detains them. *Id.* Because Petitioner has an ICE detainer lodged against him, he will not be automatically released into the United States. Instead, he will be released into ICE custody and held for deportation to Mexico.

The evidence at the civil commitment hearing supports this conclusion. The government offered no evidence at the hearing to show that Petitioner would not be deported, despite his prior deportations and his criminal record, and despite the presence of an active ICE detainer. On the contrary, the government's own witness at the hearing testified that Petitioner "would be deported if there's an active ICE detainer." (J.A. 64). Moreover, the district court made no findings on these issues. The court did not determine, for instance, that Petitioner would not be deported, despite being a non-citizen with an active ICE detainer and a criminal record. Nor did the court determine that the possibility of non-deportation meant that Petitioner posed a substantial risk to persons and property in the United States. Indeed, the court made no findings on deportation at all. Likewise, the court made no findings or conclusions regarding Petitioner's risk of re-entry and how such risk contributed to a finding of dangerousness.

Accordingly, since the evidence establishes that Petitioner will not be released into the United States, he does not pose a risk to persons in the United States. Any harm that Petitioner poses is limited to persons in Mexico. The district court erred by applying the statute extraterritorially and ordering Petitioner indefinitely committed. For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

LOUIS C. ALLEN
ACTING FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA



JENNIFER C. LEISTEN
RESEARCH & WRITING ATTORNEY
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jennifer_leisten@fd.org

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Counsel for Petitioner