

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-HC-2180-BO

UNITED STATES OF AMERICA,)
 Petitioner,)
))
v.))
))
SEAN MICHAEL WAYDA,)
 Respondent.)

ORDER

This cause comes before the Court on an emergency motion by respondent to dismiss the certificate of sexual dangerousness filed by petitioner on September 24, 2020. Petitioner has responded,¹ respondent has replied, and a hearing on the motion was held before the undersigned on December 17, 2020, at Raleigh, North Carolina. In this posture, the motion is ripe for ruling and, for the reasons that follow, the motion to dismiss is granted.

BACKGROUND

Respondent, Wayda, now faces a second certificate of sexual dangerousness filed pursuant to 18 U.S.C. § 4248, which provides for the civil commitment of sexually dangerous persons.² The first certificate of sexual dangerousness was filed in this district on June 11, 2019.

¹ The government’s motion for leave to file its response in opposition in excess of the page limit [DE 20] is ALLOWED. The Court has considered the government’s brief in its entirety.

² To institute proceedings under this statute, the Attorney General or any individual authorized by the Attorney General or the Director of the Bureau of Prisons may certify that the person is a sexually dangerous person, and transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

United States v. Wayda, No. 5:19-HC-2172-BO (E.D.N.C.). Prior to his first certification, Wayda was facing criminal charges in the United States District Court for the District of Maryland. *United States v. Wayda*, No. 1:16-CR-97 (D. Md.). After the Maryland court had found Wayda not competent to proceed in the criminal matter, it committed Wayda pursuant to 18 U.S.C. § 4241(d) to the custody of the Attorney General to determine whether his competency could be restored. In December 2018, the Maryland court determined that Wayda's competency could not be restored and then committed Wayda to the custody of the Attorney General to determine whether Wayda satisfied criteria for commitment under 18 U.S.C. § 4246 or 18 U.S.C. § 4248. Six months after the Maryland court determined that Wayda's competency could not be restored, the government filed its first certificate of sexual dangerousness in this court. *See United States v. Wayda (Wayda I)*, 966 F.3d 294, 298-300 (4th Cir. 2020).

On Wayda's motion, this Court dismissed the first § 4248 certificate after concluding that Wayda was not in a category of persons against whom a certificate under 18 U.S.C. § 4248(a) could be filed. The government appealed the dismissal and this Court's decision was affirmed. In *Wayda I*, the court of appeals determined that, in Wayda's case, the government ran afoul of the reasonable time constraint which permits it to retain a person in its custody pursuant to 18 U.S.C. § 4241(d) in order to file a certificate of sexual dangerousness under § 4248. The court of appeals thus determined that the government had "failed to initiate civil commitment proceedings while [Wayda] was being legitimately held." *Id.*, 966 F.3d at 296.

The court of appeals' mandate issued in *Wayda I* on September 18, 2020. On September 21, 2020, the government moved to dismiss the pending criminal charges in the District of Maryland without prejudice and with the consent of the defendant based upon Wayda's incompetence to stand trial. The Maryland court granted that motion by order entered September 18 U.S.C, § 4248(a).

24, 2020. *United States v. Wayda*, No. 1:16-cr-97-GLR (D. Md. Sept. 24, 2020). The same day, the government filed its second certificate of sexual dangerousness under § 4248 in this Court, which resulted in the opening of this case.

Wayda filed an emergency motion to dismiss this second certificate on three grounds. First, Wayda argues that 18 U.S.C. § 4248(a)'s provision allowing the certification of persons against whom all criminal charges have been dismissed for reasons relating solely to mental condition exceeds Congress' powers to enact legislation under Article I, Section 8 of the United States Constitution. Second, Wayda argues that the same provision of § 4248 also violates the Tenth Amendment to the United States Constitution. Third, Wayda argues that, in the alternative, this second certification of sexual dangerousness violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

The Court agrees that Wayda's current certification violates due process. In *United States v. Timms*, 664 F.3d 346 (4th Cir. 2012), the court of appeals addressed an early due process challenge to certification under § 4248. To resolve Timms' due process challenge, or to determine what process is due to persons certified under § 4248, the *Timms* court considered

the importance of the private interest and the harm to this interest occasioned by delay; the justification offered by the Government for delay and its relation to the underlying governmental interest; and the likelihood that the interim decision may have been mistaken.

Id. at 451 (quoting *FDIC v. Mallen*, 486 U.S. 230, 242 (1988)).

The *Timms* court held that persons against whom § 4248 certificates of sexual dangerousness have been filed possess, without question, "a substantial private interest affected by certification under § 4248, i.e., [their] interest in liberty and freedom from physical restraint." *Id.* (internal quotation marks omitted). There is further, as outlined in *Timms*, a likelihood that the interim decision, here, certification under § 4248, may have been mistaken. *Id.* at 451-52. No

specific steps are required prior to filing a § 4248 certification, which may be based upon the signature of one person, and there is no initial adversarial review or pre-certification hearing. *Id.* at 452.

Thus, the only question here is whether the government's justification for its delay and its relationship to an underlying governmental interest satisfies due process. And as the court of appeals has made clear, particularly now when § 4248 is no longer new and the government and the courts in this circuit are well-versed in § 4248 commitment proceedings, the government must "strive to certify individuals in sufficient time to minimize delay", *Id.* at 453, and the window of time during which the government may file a § 4248 certification must be strictly construed. *Wayda I*, 966 F.3d at 308. It has already been determined in this case that the government had no sufficient explanation for its delay of six months between Wayda's unrestorability determination and the filing of the certificate of sexual dangerousness. Such delay was held to be unreasonable, resulting in Wayda no longer being in the Attorney General's legitimate custody at the time he was previously certified. *Id.* at 308-09.

Under other circumstances, the government may indeed be correct that its certification of a person within hours of a triggering event, for example a determination of unrestorability under § 4241(d), would not offend due process.³ This case, however, is different. Commitment under § 4248 "is not some indefinite threat unmoored in time." *United States v. Searcy*, 880 F.3d 116, 122 (4th Cir. 2018). Wayda has been in some form of federal custody since 2016. He was first certified as sexually dangerous after it was determined that he was not competent to proceed with his criminal charges and was unrestorable to competence. Once that first sexual dangerousness

³ Whether the timing would offend due process is an inquiry distinct from Wayda's challenge that the statute violates the Necessary and Proper Clause as to those persons subject to § 4248 certification because their criminal charges have been dismissed solely due to reasons related to their mental condition.

certification was dismissed and the dismissal was affirmed on appeal, the government elected to dismiss Wayda's criminal charges and certify him under the third category of persons subject to § 4248. Though the government frames this certification as simply a new case under new circumstances, the Court is loathe to adopt such a limited view in light of Wayda's "extraordinarily weighty" liberty interest and this history of this case. *United States v. White*, 927 F.3d 257, 264 (4th Cir. 2019).

The Court finds that the government's delay in certifying Wayda is unjustified and that the dismissal of Wayda's criminal charges did not cure the government's prior unreasonable delay. His certification thus violated due process and is appropriately dismissed on this ground.

The Court further agrees with Wayda that the third category of persons subject to § 4248 certification, those against whom all criminal charges have been dismissed solely for reasons relating to that person's mental condition, exceeds Congress' authority to enact legislation under Article I, Section 8 of the United States Constitution.

Section 4248 is "unambiguous with respect to those eligible for certification, and it identifies three categories of persons who may be certified as sexually dangerous . . ." *United States v. Broncheau*, 645 F.3d 676, 684 (4th Cir. 2011). The first category consists of persons who are in the custody of the Bureau of Prisons; the second consists of persons who have been committed to the custody of the Attorney General pursuant to § 4241(d); and the third consists of persons against whom all criminal charges have been dismissed due to the person's mental condition.

In *United States v. Comstock*, the Supreme Court upheld § 4248 as a constitutionally necessary and proper exercise of Congress' power. *United States v. Comstock*, 560 U.S. 126, 130 (2010). However, none of the respondents in the *Comstock* case had been certified as within the

third category of persons. *Id.* at 132. Thus, although the *Comstock* opinion did address § 4248’s constitutionality generally, a case is not binding for issues not “raised in briefs or argument nor discussed in the opinion of the Court.” *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952).

Central to the conclusion of *Comstock*’s majority opinion, as well as the concurrences, was the fact that § 4248 applies only individuals who are in federal custody: § 4248’s “reach is limited to individuals already ‘in the custody of the’ Federal Government” *id.* at 148; “The federal program in question applies only to those in federal custody: *id.* at 154 (Kennedy, J. concurring); “Section 4248 was enacted to protect the public from federal prisoners . . .” *id.* at 155 (Alito, J., concurring). This is simply not the case where all of the criminal charges against a person have been dismissed. Absent a stay, a person in custody against whom all criminal charges have been dismissed is released, either to the public or to a pending detainer. *See, e.g., United States v. Romero*, 360 F.3d 1248, 1254 (10th Cir. 2004). Certainly, there may be an administrative period during which the person remains in the physical custody of the Bureau of Prisons or Attorney General, but § 4248 requires *legal*, not merely physical custody. *United States v. Joshua*, 607 F.3d 379, 388 (4th Cir. 2010).

The importance of the custody requirement is also present in post-*Comstock* litigation addressing the time within which the government must certify a person. In *Searcy*, the court of appeals held that

[Section 4248] imposes a clear start and end point during which the government must initiate civil commitment proceedings: the period of time in which that person is in custody of the federal government. Because this rule anchors civil commitment proceedings to a discrete duration of time, no additional statute of limitations is required.

Searcy, 880 F.3d at 122. But there is no limitation provided by § 4248 or any other statute to determine how quickly the government must, or how slowly it may, elect to certify an individual

in the third category as sexually dangerous. The *Wayda I* decision, which permits the government an additional reasonable period within which to certify a person as sexually dangerous, does not control the outcome in this case. First, that decision was not concerned with this third category of persons. Second, § 4241(d), which governs the second category of persons at issue in *Wayda I*, provides its own timing provisions, to include an additional reasonable period of custody, after the expiration of the original, four month period, until either competency is restored or the pending charges are disposed. 18 U.S.C. § 4241(d)(1)-(2).

In other words, unlike those persons in § 4248's first and second categories, those in the third become, at the time of the dismissal of their criminal charges, untethered to the federal custody status on which the *Comstock* court so heavily relied. The government's reliance on cases interpreting a similar provision under 18 U.S.C. § 4246 does not change this result. In *United States v. Pedro Godinez-Ortiz*, 563 F.3d 1022 (9th Cir. 2009), the Ninth Circuit considered a constitutional challenge by a person subject to certification as dangerous pursuant to 18 U.S.C. § 4246, a statute similar to § 4248.⁴ In *Godinez-Ortiz*, after the district court had

⁴ Specifically, section 4246 provides:

If the director of a facility in which a person is hospitalized certifies that a person in the custody of the Bureau of Prisons whose sentence is about to expire, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons related to the mental condition of 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, and that suitable arrangements for State custody and care of the person are not available, he shall transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether 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. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

determined that Godinez-Ortiz was incompetent and unrestorable, the government moved to dismiss its criminal charges and for Godinez-Ortiz to be returned to a Federal Medical Center to determine whether a certificate of dangerousness should be filed. The district court had stayed its order of dismissal pending appeal and the dangerousness determination. *Id.* at 1026. Indeed, the Ninth Circuit notes that the charges against Godinez-Ortiz are “*to be* dropped for reasons related to his mental condition.” *Id.* at 1029 (emphasis added). Thus, Godinez-Ortiz was not in the third category of persons subject to commitment under § 4246. And in this case, the Maryland court did not stay or condition its dismissal of Wayda’s criminal charges.⁵

In another case on which the government relies, the charges against the respondent also had not yet been dismissed, and indeed that court noted the government’s own argument that the court should not “require dismissal of the charges *before* the certificate of dangerousness can issue because, once the charges are dismissed, the court has no more authority over the defendant and cannot then send the defendant to a Bureau of Prisons [] medical facility for evaluation.” *United States v. Hardy*, 770 F. Supp. 2d 410, 413 (D. Me. 2011). This is in accord with *United States v. Copely*, 935 F.2d 669 (4th Cir. 1991), in which this circuit held that certification under § 4246 *prior to* dismissal of criminal charges solely for reasons related to the person’s mental condition conferred jurisdiction on the § 4246 commitment court because to require that the charges actually be dismissed prior to filing the § 4246 certificate “would be administratively unrealistic.” *Id.* at 672. At bottom, none of the cases relied upon by the government in the analogous setting of § 4246 are controlling or persuasive to the outcome of this case.

18 U.S.C. § 4246(a).

⁵ Because the dismissal of Wayda’s charges was not stayed, the Court offers no opinion as to whether such a stay would cure the Constitutional problem identified herein.

In the absence of any indication in § 4248 or a related statute that the government should be permitted a reasonable period to file a certificate of sexual dangerousness after a person's criminal charges have been dismissed solely for reasons related to his mental condition, the Court concludes that this section of the statute exceeds Congress' authority to legislate under Article I, Section 8 of the Constitution. This is so because this third class of persons is no longer in the lawful custody of the federal government, a circumstance which was critical to upholding § 4248's constitutionality in *Comstock*.

The Court notes that its holding will not have a watershed effect. First, it is long settled that "one section of a statute may be repugnant to the Constitution without rendering the whole act void." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2208 (2020) (internal quotation and citation omitted). Thus, removal of the third category of persons from § 4248 will not in any way invalidate the entirety of the sexually dangerous civil commitment statute. Second, Wayda appears to be *the only* individual who belongs to this third category of persons against whom a § 4248 certificate of sexual dangerousness has been filed. His being alone in this category does not diminish, however, the importance of his claim.

Nor does the Court undertake to run afoul of *Comstock* or to call into question its holding. Rather, the Court has considered Wayda's narrowly tailored challenge and agrees with his reasoning that he has raised an issue not directly presented to or addressed by the Supreme Court. This Court's decision is further guided by the *Wayda I* decision, which made plain that, in light of the deprivation of liberty at stake, section 4248 should not be construed broadly and Fourth Circuit precedent "supports a relatively tight window for filing certifications." *Wayda I*, 966 F.3d at 307.

As discussed above, what makes this third category of persons subject to certification different from the other two categories is that no statute provides any time frame within which to define a “relatively tight window.” In the first category of persons, legal Bureau of Prisons custody sets the limit. *See United States v. Wetmore*, 700 F.3d 570, 575 (1st Cir. 2012) (last day of sentence is part of sentence, and thus certificate of sexual dangerousness filed on the last day of the sentence is valid). In the second, the limit is set by legal Attorney General custody pursuant to § 4241(d) plus an additional, *reasonable* period of time until the charges are disposed of according to law. *Wayda I*, 966 F.3d at 309. No such limit exists for the third category of persons, such that § 4248 certification could arguably come days, weeks, months, or, most concerningly, years after the dismissal of criminal charges due to mental condition. This would result in operation of what the *Comstock* court was assured by the government would not be the case under § 4248 – general federal police power. *Comstock*, 560 U.S. at 148 (§ 4248’s “reach is limited to individuals already ‘in the custody of the’ Federal Government. . . . [and] ‘the Federal Government would not have ... the power to commit a person who ... has been released from prison and whose period of supervised release is also completed.’” (internal citations omitted)).⁶


CONCLUSION

Accordingly, for the foregoing reasons, respondent’s emergency motion to dismiss [DE 10] is GRANTED. The certificate of sexual dangerousness [DE 1] is DISMISSED. Respondent’s motion to seal exhibits containing confidential personal information [DE 12] is GRANTED. Petitioner’s motion for leave to file its response in opposition in excess of the page limit [DE 20] is ALLOWED.

⁶ In light of the foregoing, the Court declines to address Wayda’s remaining argument under the Tenth Amendment.

Should the government elect to appeal this decision the Court will consider a motion to stay respondent's release pending appeal.

SO ORDERED, this 14 day of January, 2021.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE