



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

March 1, 2021

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Re: *United States v. Wayda*, No. 20-hc-2180 (E.D.N.C. Jan. 15, 2021)

Dear Madam Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has decided not to seek further review of the above-referenced decision of the United States District Court for the Eastern District of North Carolina. A copy of the decision is attached.

This dispute involves 18 U.S.C. 4248, which provides that the government may initiate civil commitment proceedings against a person in one of three categories by filing a certification in federal district court that the person is a “sexually dangerous person.” 18 U.S.C. 4248(a). In 2016, the respondent in this case was charged in the United States District Court in Maryland with several crimes relating to child pornography. The court found that respondent was not competent to stand trial and committed him to the custody of the Attorney General pursuant to 18 U.S.C. 4241(d), which provides for the temporary hospitalization of individuals found not competent to stand trial. In 2018, the court found that respondent was unlikely to be restored to competency in the foreseeable future. Six months later, the government filed a certification that respondent was a “sexually dangerous person” and fell within the second category of persons subject to Section 4248, consisting of those who had been “committed to the custody of the Attorney General pursuant to section 4241(d).” 18 U.S.C. 4248(a). That certification was filed in the Eastern District of North Carolina, where respondent was in custody. The North Carolina District Court granted respondent’s motion to dismiss the certification as untimely, and the government appealed. The court of appeals affirmed on the ground that on the facts of this case, the “six month delay between the [district court’s] Unrestorability Determination and the certification’s filing was not reasonable.” *United States v. Wayda*, 966 F.3d 294, 308 (4th Cir. 2020).

Following issuance of the mandate on that appeal, the Maryland District Court granted the government’s consent motion to dismiss the charges against respondent. The government then filed a second certification initiating civil commitment proceedings against respondent under the third category of persons subject to Section 4248, consisting of those “against whom all charges have been dismissed solely for reasons relating to the mental condition of the person.” 18 U.S.C. 4248(a).

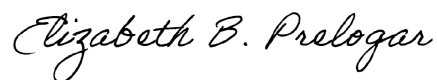
On January 15, 2021, the North Carolina District Court granted respondent's motion to dismiss the second certification. The court held that on the facts of this case—including that the first certification had been unreasonably delayed—the second certification violated due process. Op. 5. The court also held, in the alternative, that with respect to the third category of persons subject to certification under Section 4248, the statute exceeds Congress's powers. Op. 5. The court acknowledged that in *United States v. Comstock*, 560 U.S. 126 (2010), the Supreme Court had upheld Section 4248 under the Necessary and Proper Clause. Op. 5. But the North Carolina District Court observed that “none of the respondents” in *Comstock* were within the third category. Op. 5. And in the court's view, Section 4248 applies only to “individuals who are in federal custody,” but once criminal charges against a person are dismissed, and absent a stay, the person will be released. Op. 6.

The Department of Justice disagrees with the North Carolina District Court's ruling concerning Section 4248, and it intends to continue to defend the constitutionality of Section 4248's civil-commitment procedures for persons who fall within the statute's third category. The Department has decided, however, not to pursue an appeal of the court's ruling in the circumstances of this particular case.

The North Carolina District Court's due process ruling was closely tied to the prior decision of the Fourth Circuit holding that the first certification of respondent was untimely. Because the district court addressed the constitutionality of Section 4248 with respect to the third category of covered persons only in the alternative, an appeal would not necessarily require the court of appeals to reach that issue. In addition, the district court observed that respondent appears to be the only person who is currently subject to certification under Section 4248's third category. Op. 9. Finally, because respondent is subject to detainers on criminal charges in two States, the decision not to appeal in this case will not result in his immediate release into the community.

A notice of appeal would be due March 16, 2021. Please let me know if we can be of further assistance in this matter.

Sincerely,



Elizabeth B. Prelogar
Acting Solicitor General

Enclosure