

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

22-CR-35-JLS

LUKE MARSHALL WENKE,

Defendant.

**GOVERNMENT’S RESPONSE TO DEFENDANT’S MOTION FOR A STAY OF
DECISION AND ORDER OF COMMITMENT PENDING APPEAL**

THE UNITED STATES OF AMERICA, by and through its attorney, Michael DiGiacomo, United States Attorney for the Western District of New York, and the undersigned Assistant United States Attorney, hereby submits this response to the defendant, Luke Marshall Wenke’s Motion of a Stay of Decision and Order of Commitment Pending Appeal (Dkt. 202). For the reasons set forth herein, the defendant’s Motion should be denied, and the Court should proceed with the defendant’s Order of Commitment pursuant to Title 18, United States Code, Section 4244.

LEGAL STANDARD

Deciding whether to issue a stay pending appeal focuses on four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007). These factors are interrelated considerations that must be balanced together, although the first

two factors are the most critical. *United States v. Moore*, 2024 U.S. App. LEXIS 1783 at *1 (6th Cir. Jan. 25, 2024)

ARGUMENT

A. The defendant has not made a strong showing that he is likely to succeed on the merits.

The defendant seeks to bootstrap the analysis done by Doctors Watkins and Nelson under Title 18, United States Code, 4241 and apply that determination to the Section 4244 issue that the Court examined in the evidentiary hearing. This reflects the inherent weakness in the defendant's arguments about his likelihood to succeed on the merits. Dr. Leidenfrost examined the defendant himself on two occasions, and utilized several sources of information and observations before rendering his opinion that the defendant is need of custody for care or treatment, in a suitable facility, for his mental disease or defect. *See* Gov. Ex. 2 - Dr. Leidenfrost's January 13, 2025 Forensic Report. After a two-day hearing on this very matter, the Court found that the defendant was suffering from a mental disease or defect and ordered the defendant committed to the custody of the Attorney General so he could receive the requisite treatment.

Dr. Leidenfrost pointedly discussed the differences his evaluation versus Drs. Watkins and Nelson's BOP evaluation. For instance, Dr. Leidenfrost discussed that the evidence he reviewed suggests a "marked change of personality behavior" in the defendant around 2019 and 2020. *See* Feb. 18, 2025 Tr. at 43-44. Further, Dr. Leidenfrost acknowledged that the defendant's belief in spiritualism is not, within itself, a delusional belief, as people in the general public visit psychics and follow their advice. *Id.* Dr. Leidenfrost explained, however,

that the defendant was delusional because the defendant's beliefs were so idiosyncratic to him, that even when challenged with evidence from other sources of information, the defendant persisted in believing these incongruent beliefs. *Id.* at 44-45. Indeed, Dr. Leidenfrost accounted for the difference between delusions and overvalued or extreme beliefs by examining the "idiosyncratic nature of the belief" in his analysis. *Id.* at 17-18. Dr. Leidenfrost's goal in his examination was to evaluate whether defendant's belief systems were congruent with something in culture, religion, or political affiliation, and found they were not. *Id.*

Dr. Leidenfrost offered credible support for his reasoning under a Section 4244 analysis. Drs. Nelson and Watkins could not because they conducted a different type of evaluation. Therefore, the defendant is not likely to succeed on the merits.

B. The defendant would not irreparably harmed if the Motion was denied, and the public interest lies in the defendant's commitment for treatment.

Even Drs. Watkins and Nelson admitted that without specifically examining the defendant under a Section 4244 evaluation, they could not render an opinion on whether the presently suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. Dr. Leidenfrost's forensic evaluation, however, answered this limited question. Further, the defendant pled guilty to violating a term and condition of his term of supervised release, where the maximum term is set to expire in only a few months. Here, the defendant was evaluated and then diagnosed with not only being a violence risk or danger to others; the defendant was also diagnosed with presently suffering from a mental disease or defect for which he needs treatment.

The Order of Commitment provides the defendant with an opportunity to receive treatment for his mental disease or defect before the maximum term expires. The defendant avers that he is appealing the Court's Order of Commitment, yet it is uncertain when the appeal would be heard and decided by the Second Circuit. Here, the Court had the opportunity to review various sources of evidence in the Section 4244 hearing process, as well as review many of the letters, for instance, that the defendant mailed to the Court. The Court weighed all this information in ordering that the defendant be committed to the Attorney General for care or treatment for his mental disease or defect. The priority is acting now to provide the defendant with the treatment and resources needed between now and the maximum term of sentence so that some active steps can be taken to help the defendant with his diagnosed mental disease or defect. The goal in the Court's Order of Commitment is not to lock the defendant away, the goal is to provide an opportunity for the defendant to rehabilitate and receive treatment. All of this weighs in favor of the public's interest in the defendant's commitment for treatment for his medical disease or defect.

As such, the Court should deny the defendant's Motion.

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