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United States District Court,
D. New Mexico.
UNITED STATES of America, Plaintiff,
v.
Sebastiano COHO, Defendant.
No. 09-CV-754 WJ.

Sept. 18, 2009.

**MEMORANDUM ORDER AND OPINION
DENYING DEFENDANTS MOTION TO DIS-
MISS CERTIFICATE FILED PURSUANT TO 18
U.S.C. § 4248 AND REQUEST FOR IMMEDI-
ATE RELEASE**

JOHNSON, District Judge.

*1 THIS MATTER comes before the Court on Defendant Coho's Motion to Dismiss Certificate Filed Pursuant to 18 U.S.C. § 4248 and Request for Immediate Release (Doc. 79). Federal agents charged Sebastiano Coho, a juvenile Navajo Indian,^{FN1} with aggravated sexual abuse in violation of 18 U.S.C. § 5031 *et seq.*, 18 U.S.C. §§ 1153 and 2241(c). After several psychological evaluations and competency hearings, this Court found Coho incompetent to stand trial and committed him temporarily to the custody of the Attorney General for treatment. Subsequently, this Court determined that Coho could not be restored to competency. The government then filed a certificate under 18 U.S.C. § 4248 alleging that Coho was a sexually dangerous person, which had the effect of staying Coho's release from custody pending a hearing to determine Coho's sexual dangerousness. The defendant now moves to dismiss the government's certification and requests immediate release. Having considered the parties' briefs and the applicable law, the Court DENIES Defendant's motion.

^{FN1}. Coho was a juvenile at the time he

was charged, but he has since turned 18 years of age. While the case was initially treated as a sealed juvenile proceeding, the record was unsealed pursuant to Coho's attorney's request when the case became a civil commitment proceeding. See Clerk's Minutes for Hearing on June 1, 2009 (Doc. 8).

BACKGROUND

I. Factual Background

Sebastiano Coho was arrested on December 17, 2007 and charged with aggravated sexual abuse in violation of 18 U.S.C. § 5031 *et seq.*, 18 U.S.C. §§ 1153 and 2241. While at his grandparents' home within the boundaries of the Navajo Nation, Coho allegedly sexually assaulted Jane Doe, who is also a Navajo Indian. Medical examiners found bruising and white streaks on Jane Doe's legs and hips, consistent with the sexual abuse she described. Doctors also confirmed that Coho's DNA was found in a sample recovered from Jane Doe's anus.

On January 9, 2008, with the parties' agreement, this Court ordered Coho conditionally released to the Desert Hills Juvenile Treatment Facility to complete a sex offender treatment program. Coho has remained at Desert Hills since that date. On February 20, 2008, the United States filed a motion for a psychological evaluation of the Defendant which this Court granted. Doctor Mick Jepson conducted the examination and opined that Coho was mentally incompetent to stand trial and posed a high risk of recidivism. The parties adopted Doctor Jepson's report and his findings at a hearing on July 8, but this Court expressed concern over the difficulty in finding a suitable treatment facility for the Defendant, given his youth and native Navajo language. The Court specifically noted the lack of any Bureau of Prisons ("BOP") facility in New Mexico with resources for Native American youth. While several

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BOP-contracted facilities exist in other states for Native American youth, none of those facilities appeared to have any staff who could speak the Navajo language.

On August 25, 2008, this Court entered an order committing Coho to the custody of the Attorney General, pursuant to 18 U.S.C. § 4241(d), for placement at a suitable facility for four months. Because no BOP facilities met Coho's needs, the BOP contracted with Desert Hills (the local private facility where the Defendant was already being housed) to provide both the necessary treatment and a Navajo interpreter. On February 25, this Court entered an order allowing the Attorney General to hospitalize Coho for an additional month, pursuant to 18 U.S.C. § 4241(d)(2), in an attempt to restore Coho to competency.

*2 At a hearing on April 29, 2008, Doctor Michael Rodriguez, Coho's treating psychologist, testified that Coho was still not competent. The Court entered an order stating that Coho was not competent to stand trial and that it was unlikely that Coho could be treated to competency within a reasonable period of time. The United States subsequently filed a certificate under 18 U.S.C. § 4248 alleging that Coho was a sexually dangerous person. This certificate had the effect of staying Coho's release pending a hearing to determine whether Coho was, in fact, sexually dangerous. *See id.* The United States then filed a Motion for a Psychiatric or Psychological Evaluation pursuant to 18 U.S.C. § 4248(b), which permits the court to order a psychological examination before the hearing. Finally, the Defendant filed this Motion to Dismiss Certificate Filed Pursuant to 18 U.S.C. § 4248 and Request for Immediate Release. Before turning to the merits of defendant's arguments, I first lay out a brief overview of the civil commitment statutes at issue in this case.

II. Statutory Background

In 2006, Congress enacted the Adam Walsh Child

Protection and Safety Act of 2006 to protect children from, among other things, sexual exploitation and violence. Title III of the Adam Walsh Act added 18 U.S.C. § 4248 to already existing federal civil commitment provisions. Section 4248 allows the federal government to certify persons within U.S. custody as "sexually dangerous" and to seek a civil commitment order from a court. The provision states:

In relation to a person who is in the custody of the Bureau of Prisons, or who has been committed to the custody of the Attorney General pursuant to section 4241(d)[^{FN2}], or against whom all criminal charges have been dismissed solely for reasons relating to the mental condition of the person, 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....

FN2. Section 4241(d) allows a court to commit a defendant to the custody of the Attorney General if it finds that a defendant is mentally incompetent.

18 U.S.C. § 4248(a).^{FN3} When such a certification occurs, the court must order a hearing to determine whether the person is in fact sexually dangerous, and the person must remain in custody until the court makes its determination. *Id.* To assist in its determination, the court may order a psychological examination of the defendant. *Id.* § 4248(b). Finally, "[i]f, after the hearing, the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General." *Id.* § 4248(d). The Attorney General, in turn, must release the person to an appropriate State for custody and treatment. If no State will assume responsibility for the defendant's treatment and care, the Attorney General must place the person in a suitable federal facility. *Id.*

FN3. A person is sexually dangerous if he

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“suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” 18 U.S.C. § 4247(a)(6).

A related provision, 18 U.S.C. § 4246, sets out nearly identical procedures for persons in the custody of the Bureau of Prisons “whose sentence is about to expire, or who ha[ve] 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....” *Id.* § 4246(a). There is much overlap between § 4246 and § 4248, but also several differences. Section 4246 deals broadly with persons suffering from mental illness who pose a “substantial risk of bodily injury” to others, while section 4248 deals specifically with mentally ill persons who are “sexually dangerous.” Under § 4246, only the “director of a facility in which a person is hospitalized” can make the requisite certification, while § 4248 permits the Attorney General, anyone authorized by the Attorney General, or the Director of the Bureau of Prisons to certify a person as sexually dangerous. Other minor differences exist which are not relevant to this case.

DISCUSSION

I. Applicability of 18 U.S.C. § 4246

*3 Initially, the Defendant argues that the government acted improperly in attempting to commit him under the provisions of 18 U.S.C. § 4248, rather than § 4246. The Defendant's argument on this point is cursory and undeveloped; he seems to suggest that the government is foreclosed from proceeding under § 4248 because § 4246 offers (according to the Defendant) more protection for the Defendant and is more “specific to him”. First, there is nothing in either statute that requires the

Government to choose one statutory avenue over the other. As long as the Defendant meets the terms of both statutes, the Government presumably may elect to initiate commitment proceedings under either. Second, and more importantly, the Government correctly points out that it could not proceed under § 4246 because Coho was being housed in a private treatment center rather than a Bureau of Prisons facility. Section 4246 states that only the director of the facility where the defendant is housed may file the necessary certification. Although this Court had committed Coho to the custody of the Attorney General, Coho remained at Desert Hills Juvenile Facility pursuant to a private contract with the Bureau of Prisons due to the lack of any appropriate BOP facilities. Because Desert Hills was operated by a private company, only the director of the private company could file the requisite certification under § 4246. Section 4248, on the other hand, permits “the Attorney General or any individual authorized by the Attorney General or the Director of the Bureau of Prisons” to file certification regardless of where the defendant is being housed. 18 U.S.C. § 4248(a). Therefore, the Government properly chose to pursue civil commitment under the terms of § 4248 rather than § 4246.

II. Constitutionality of 18 U.S.C. § 4248

The Defendant next argues that 18 U.S.C. § 4248 is not a constitutional exercise of Congress' power under either the Commerce Clause or the Necessary and Proper Clause. I reject the Defendant's constitutional challenge to § 4248 for two reasons. First, I need not address Defendant's argument about the Interstate Commerce Clause because § 4248 is constitutional with respect to Coho under the Indian Commerce Clause. U.S. CONST. art. I, § 8, cl. 3. The Indian Commerce Clause gives Congress exclusive and plenary authority to regulate in the field of Indian affairs. Coho is a Navajo Indian charged with committing a federal crime against a Navajo victim on Navajo land. Regardless of the provision's constitutionality with respect to non-Indian defendants, § 4248 is an appropriate exercise of

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Congress' power with respect to this defendant. Second, even if the Indian Commerce Clause alone was not sufficient to sustain the constitutionality of § 4248, the provision is proper under the Necessary and Proper Clause. The civil commitment statute is a necessary and proper means of effectuating Congress' plenary power over Indian affairs as well as the federal power of prosecution. The Supreme Court upheld the civil commitment provisions of § 4246 as "plainly within congressional power under the Necessary and Proper Clause," *Greenwood v. United States*, 350 U.S. 366, 375, 76 S.Ct. 410, 100 L.Ed. 412 (1956), and the provisions of § 4248 are identical to the provisions of § 4246 in all relevant respects.

***4 Indian Commerce Clause.** It is well-settled that Congress has exclusive and plenary authority to regulate matters involving Indians and Indian lands pursuant to the Indian Commerce Clause. *See, e.g., Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192, 109 S.Ct. 1698, 104 L.Ed.2d 209 (1989) ("[T]he central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs."); *United States v. Lara*, 541 U.S. 193, 200, 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004) ("[T]he Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as 'plenary and exclusive.' "). This plenary authority permits Congress to enact even criminal laws regulating the conduct of Indians in Indian territory. *United States v. Kagama*, 18 U.S. 375, 383-84 (1886). Congress has exercised its exclusive jurisdiction in this area by enacting the Indian Major Crimes Act. That Act stipulates that, with respect to offenses committed in Indian Country, ^{FN4} "any Indian who commits against the person or property of another Indian ... a felony under Chapter 109A ^{FN5} ... shall be subject to the same laws and penalties as to all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States." 18 U.S.C. § 1153(a). Coho, an Indian, is charged with aggravated sexual assault against Jane Doe, also an Indian,

which occurred on the Navajo reservation in Indian Country. The charge against Coho falls squarely within the terms of 18 U.S.C. § 1153(a), and therefore the United States has exclusive jurisdiction over the underlying crime.

FN4. "Indian Country" in turn is defined as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government ..., (b) all dependent Indian communities within the borders of the United States ..., (c) all Indian allotments...." 18 U.S.C. § 1154.

FN5. Aggravated sexual assault, defined in 18 U.S.C. § 2241(c), qualifies as a felony under Chapter 109A.

The same power that Congress exercised to enact the Indian Major Crimes Act also allows Congress to enact the civil commitment statute of § 4248 at least as applied to Indians who commit crimes in Indian Country. Congress has a protectorate or trust relationship with Indian tribes and possesses broad power to legislate in the tribes' best interest. The civil commitment statute clearly lies within Congress' plenary authority to regulate matters involving Indians and Indian land. While the Fourth Circuit recently struck down the civil commitment provisions of § 4248 as unconstitutional when applied to non-Indian defendants, *United States v. Comstock*, 551 F.3d 274 (4th Cir.2009), it noted that the law may remain constitutional with respect to "persons within exclusive federal jurisdiction (e.g. residents of the District of Columbia and members of the military)." *Id.* at 278 n. 4. By virtue of the Indian Commerce Clause, Indians belong in the category of persons over which Congress exercises exclusive jurisdiction. For these reasons, I hold that 18 U.S.C. § 4248 is constitutional under the Indian Commerce Clause with respect to this defendant.

Necessary and Proper Clause. Even if the Indian Commerce Clause does not give Congress direct authority to enact the civil commitment statute,

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however, Congress has additional authority under the Necessary and Proper Clause. The Necessary and Proper Clause grants Congress the power to “make all Laws which shall be necessary and proper for carrying into Execution” Congress' enumerated powers. U.S. CONST. art. I, § 8, cl. 18. A law is validly enacted under the Necessary and Proper Clause so long as it is “reasonably adapted to the attainment of a legitimate end” under one of Congress' enumerated powers. *Gonzales v. Raich*, 545 U.S. 1, 37, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005) (Scalia, J., concurring). In *Greenwood v. United States*, the Supreme Court upheld the similar civil commitment provisions of 18 U.S.C. § 4246 as “plainly within congressional power under the Necessary and Proper Clause.” 350 U.S. 366, 275 (1956). It reasoned:

*5 The petitioner came legally into the custody of the United States. The power that put him into such custody-the power to prosecute for federal offenses-is not exhausted. It's assertion in the form of the pending indictment persists. The District Court has found that the accused is mentally incompetent to stand trial at the present time ... [and] entered an order retaining and restraining petitioner.... This commitment, and therefore the legislation authorizing commitment in the context of this case, involve an assertion of authority, duly guarded, auxiliary to incontestable national power.

Id. The provisions of § 4248 are similar to § 4246 in all relevant respects. Coho was charged with a federal crime and the indictment against him is still pending. Due to his mental illness, he has been duly committed to federal custody until he is competent to stand trial. The federal power to prosecute him has not been exhausted; presumably, if Coho regains competence, he will be required to stand trial for his alleged offense.

The Eighth Circuit relied on *Greenwood* to uphold § 4248 as constitutional because “the civil commitment of persons in a variety of circumstances is necessary and proper to the functions of federal crim-

inal laws.” *United States v. Tom*, 565 F.3d 497, 504 (8th Cir.2009). So long as Congress constitutionally enacted the federal law which the defendant was charged with violating, then the civil commitment statute operates as a rational and appropriate means of effectuating the underlying criminal statute. “In each case the operation of the underlying federal criminal law would be frustrated without the related civil commitment provision. Otherwise, the power to prosecute or punish could be defeated or the opportunity to prevent a federal crime could be lost.” *Id.* at 504-05 (citations omitted). As noted above, the Fourth Circuit reached the opposite conclusion and struck down § 4248 as unconstitutional. *Comstock*, 551 F.3d 274.^{FN6} Specifically, the Fourth Circuit rejected the government's argument that the civil commitment statute is necessary and proper to the federal prosecutorial power, noting that four of the five defendants in that case had already been charged, tried and convicted; any federal prosecutorial power authority over those defendants had lapsed. *Id.* at 283.^{FN7} Unlike the defendants at issue in the Fourth Circuit case, Coho has merely been charged; due to his mental incompetence he has been neither tried nor convicted. Therefore, the Fourth Circuit's reasoning is inapposite here.

^{FN6}. On June 22, 2009, the U.S. Supreme Court granted certiorari in this case.

^{FN7}. The fifth defendant, like our defendant in this case, was found incompetent to stand trial and was civilly committed under § 4248. The Fourth Circuit recognized that this defendant presented “unique circumstances”, but ultimately avoided the issue by noting that “no party asks us to bifurcate [this defendant's] unique challenge to § 4248[and] we decline to do so.” *Id.* at 284 n. 10.

The Tenth Circuit has yet to rule on the constitutionality of § 4248, but I find the reasoning of the Eighth Circuit persuasive. The civil commitment provisions of § 4248 are necessary and proper to the federal prosecutorial power. As the Eighth Cir-

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cuit aptly stated, the civil commitment provisions are reasonably necessary to ensure that the federal prosecutorial power is effective; otherwise, dangerous persons charged with federal crimes could be released from custody and escape continued prosecution. For the same reasons, § 4248 is also necessary and proper to Congress' specifically enumerated power under the Indian Commerce Clause to regulate crimes committed by Indians on Indian lands. Congress has exclusive and plenary authority to regulate crime committed by Indians on Indian land—that authority would be frustrated without the attendant civil commitment provisions. For these reasons, I find that 18 U.S.C. § 4248 has been constitutionally enacted by Congress under both the Indian Commerce Clause and the Necessary and Proper Clause.

III. Due Process & Equal Protection Challenges

*6 The Defendant also argues that 18 U.S.C. § 4248 violates both his Due Process and Equal Protection rights under the Fifth Amendment. Neither of Defendant's arguments are persuasive. The statute meets the Due Process requirements laid out by the Supreme Court, and it passes the rational-basis review that applies to Equal Protection challenges to civil commitment statutes. Therefore, both of Defendant's arguments fail.

Due Process. Coho first argues that § 4248 violates his substantive due process rights for three reasons: (1) the statute permits the government to commit any person who is sexually dangerous, regardless of whether that person has ever been charged with or convicted of a sexual offense; (2) it only requires the government to prove that a person is sexually dangerous by clear and convincing evidence, and (3) it subjects the person to indefinite civil commitment unless and until he can prove that he is not sexually dangerous. In general, the Supreme Court has consistently upheld civil commitment statutes against substantive due process challenges because “it cannot be said that the involuntary civil confinement of the limited subclass of dangerous persons

is contrary to our understanding of ordered liberty.” *Kansas v. Hendricks*, 521 U.S. 346, 357, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997). The Defendant first objects that the statute impermissibly permits the government to commit persons who have never been charged with or convicted of a sexually violent crime.^{FN8} However, the Supreme Court has never made conviction or a criminal charge a prerequisite to civil commitment. Rather, the Court has held that civil commitment statutes meet the requirements of due process so long as they “couple[] proof of dangerousness with the proof of some additional factor, such as a ‘mental illness’ or ‘mental abnormality.’” *Id.* at 358. The statute at issue here requires proof of both. First, the government may only commit a person to federal custody if it proves at a hearing that the person is sexually dangerous. The statute defines a “sexually dangerous person” as “a person who has engaged or attempted to engage in sexually violent conduct ... and who is sexually dangerous to others.” 18 U.S.C. § 4247(a)(5) (emphasis added). Second, a person is considered sexually dangerous to others, in turn, if “the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct ... if released.” 18 U.S.C. § 4247(a)(6). In other words, § 4248 comports with Due Process because it requires the government to prove both sexual dangerousness and mental illness.

^{FN8}. Notably, the Defendant here *has* been charged with a violent sexual felony-aggravated sexual assault.

Second, the Defendant's challenge to the clear-and-convincing evidence standard is meritless.^{FN9} In *United States v. Addington*, 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979), the Supreme Court explicitly approved the use of the clear-and-convincing evidence standard in civil commitment cases. After balancing the individual's interest in not being involuntarily confined against the State's interest in protecting society against those

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who are both dangerous and mentally ill, the Court rejected the reasonable-doubt standard stating: “Given the lack of certainty and the fallibility of psychiatric diagnosis, there is a serious question as to whether a state could ever prove beyond a reasonable doubt that an individual is both mentally ill and likely to be dangerous ... Such ‘freedom’ for a mentally ill person would be purchased at a high price.” *Id.* at 429, 431. It concluded instead that a clear-and-convincing standard was constitutionally adequate. *Id.* at 433.

FN9. The Defendant styles this as a substantive-due-process challenge, but it is more properly characterized as a procedural-due-process challenge.

*7 Finally, the Defendant argues that the statute impermissibly subjects a person to indefinite civil confinement unless and until the person can prove that he is *not* dangerous. The Defendant characterizes this as “impermissible burden shifting” relying on *Foucha v. Louisiana*, 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992). In *Foucha*, however, the State of Louisiana wanted to continue to confine a person who was dangerous but no longer mentally ill. The Supreme Court rejected this approach, stating that a person “may be held as long as he is both mentally ill and dangerous, but not longer.” *Id.* at 77. In contrast, the Government here merely wants a chance to prove that Coho remains both mentally ill and sexually dangerous. Furthermore, the statute requires the government to release immediately any person who ceases to be either dangerous or mentally ill. Section 4248(e) states that the director of the treatment facility in which the person is placed “shall promptly file a certificate” with the court as soon as the person is no longer sexually dangerous (or will not be sexually dangerous if released under medical, psychiatric or psychological care or treatment). 18 U.S.C. § 4248(e). Once a certificate is filed, the court *must* order the person's release. If the government objects, the court must hold a hearing to determine, by a preponderance of the evidence, whether the per-

son remains sexually dangerous. *Id.* The statute, then, fully comports with Due Process by permitting the government to hold a person only as long as that person remains both sexually dangerous and mentally ill.

Equal Protection. The Defendant next argues that § 4248 violates his equal protection rights because the statute is overinclusive and bears no rational relationship to the government's goal of protecting the public from sexually dangerous, mentally ill persons.^{FN10} The Defendant correctly points out that the statute permits the government to seek a certification of sexual dangerousness for *any* person in federal custody. He argues that the government cannot use one's status as a prisoner to control whether or not the person may be subject to a civil commitment hearing. The Tenth Circuit applies rational basis review to Equal Protection challenges of this kind. “Insanity acquittees are not members of a suspect or quasi-suspect class, nor is a fundamental right at stake.” *United States v. Weed*, 389 F.3d 1060, 1071 (10th Cir.2004). Persons charged with criminal behavior and civilly committed to the custody of the Attorney General, like persons acquitted by reason of insanity, are not members of a suspect class. The only question for this Court, then, is whether the classification in § 4248 bears any rational relationship to a legitimate governmental purpose. Clearly, it does. Section 4248 furthers the government's legitimate interest in preventing crime by those who are both mentally ill and have exhibited sexually dangerous behavior through a prior act or attempt. Furthermore, the Supreme Court does not require a perfect fit between means and ends when a suspect classification is not in play; in other words, some measure of over- or under-inclusiveness is permitted when using rational basis review. *Vance v. Bradley*, 440 U.S. 93, 108, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979). Therefore, this provision does not violate Defendant's equal protection rights.

FN10. If a classification would violate the Equal Protection Clause of the Fourteenth

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Amendment, then it violates the Fifth Amendment's Due Process Clause as a matter of law.

IV. Double Jeopardy, Ex Post Facto and Eighth Amendment Challenges

*8 Finally, Defendant argues briefly that § 4248 operates as a criminal rather than a civil provision, and thus violates the Double Jeopardy Clause, the Ex Post Facto Clause, the Eighth Amendment prohibition against cruel and unusual punishment, and the right to a jury trial contained in the Sixth Amendment. I reject the Defendant's arguments on this point because 18 U.S.C. § 4248 is clearly civil, not criminal. Section 4248 is titled “Civil commitment of a sexually dangerous person.” While statutory titles are not always dispositive, the Defendant can only negate Congress' presumed intent by providing “the clearest proof that the statutory scheme [is] so punitive either in purpose or effect as to negate [Congress'] intention that the proceeding be civil.” *Allen v. Illinois*, 478 U.S. 364, 369, 106 S.Ct. 2988, 92 L.Ed.2d 296 (1986) (internal quotations omitted). Coho has provided no such proof. In *Addington*, the Supreme Court stated explicitly that state power in a civil commitment proceeding is “not exercised in a punitive sense.” 441 U.S. at 428. More recently, in *Kansas v. Hendricks*, 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997), the Supreme Court concluded that similar commitment provisions in the Kansas Sexually Violent Predator Act were not so punitive to transform the statute into a criminal one. In a particularly relevant passage, the Court stated:

We have previously concluded that an Illinois statute was nonpunitive even though it was triggered by the commission of a sexual assault, explaining that evidence of the prior criminal conduct was “received not to punish past misdeeds, but primarily to show the accused's mental condition and to predict future behavior.” ... [T]he fact that the Act may be “tied to criminal activity” is “insufficient to render the statute punitive.”

Id. at 362 (internal citations omitted). In fact, every court to consider this question has concluded that the civil commitment provisions at issue here are civil, not criminal. *See, e.g., United States v. Abregana*, 574 F.Supp.2d 1123, 1135 (D. HI 2008). Without significant evidence to the contrary, I reject Defendant's contention that the provisions of § 4248 operate as criminal proceedings rather than civil ones.

CONCLUSION

For the foregoing reasons, the Court holds that 18 U.S.C. § 4248 is a constitutional exercise of Congress' power with respect to Defendant Coho. THEREFORE, IT IS ORDERED that Defendant's Motion to Dismiss Certificate Filed Pursuant to 18 U.S.C. § 4248 and Request for Immediate Release is DENIED. Furthermore, the United States' Motion for Psychiatric or Psychological Evaluation is GRANTED.

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