

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-2139

United States of America,

Appellee,

v.

Nelson O. Hernandez,

Appellant.

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Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: April 28, 2009

Filed: May 4, 2009

Before RILEY, SMITH, and BENTON, Circuit Judges.

PER CURIAM.

Nelson Hernandez appeals the district court's¹ order committing him to the custody of the Attorney General under 18 U.S.C. § 4246, and we affirm.

Section 4246 provides for the indefinite hospitalization of a person who has been committed to the custody of the Attorney General under 18 U.S.C. § 4241(d)

¹The Honorable Richard E. Dorr, United States District Judge for the Western District of Missouri, adopting the report and recommendations of the Honorable James C. England, United States Magistrate Judge for the Western District of Missouri.

(concerning mental incompetence to stand trial) and who is found--after a hearing, by clear and convincing evidence--to be 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. See 18 U.S.C. § 4246. In this case, the district court found that commitment was appropriate because state placement was unavailable and the mental health professionals who examined Hernandez unanimously believed that his paranoid beliefs, delusion ideation, and history of threatening statements and aggressive and antisocial behavior, would create a risk of dangerousness within the meaning of section 4246 if Hernandez were unconditionally released. We hold that this finding is not clearly erroneous. See United States v. Williams, 299 F.3d 673, 676-77 (8th Cir. 2002) (standard of review). We note that Hernandez's custodians are under an ongoing obligation to prepare annual reports concerning his mental condition and the need for his continued hospitalization, see 18 U.S.C. § 4247(e)(1)(B), and to exert reasonable efforts to place him in a suitable state facility, see 18 U.S.C. § 4246(d).

The judgment of the district court is affirmed, and counsel's motion to withdraw is granted.
