
In the Supreme Court of the United States

HENRY STOCKOM,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

**ON WRIT OF CERTIORARI
TO THE UNITED STATE COURT OF APPEALS
FOR THE FIFTEENTH CIRCUIT**

BRIEF FOR PETITIONER

#29

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STATEMENT OF JURISDICTION

The Supreme Court of the United States has jurisdiction of this appeal pursuant to 28 U.S.C. §1254(1). The final judgment for the Court of Appeals for the Fifteenth Circuit was entered on January 9, 2009. This Court granted petition for writ of certiorari on May 20, 2009.

Questions Presented

1. Whether Congress has the authority under the Commerce Clause and Necessary and Proper Clause to enact §4248 of the Walsh Act, which allows the BOP to label any federal prisoner who is reaching the end of their sentence as "sexually dangerous," and following a court hearing, civilly commit them for an indefinite period of time.
2. Whether §4248 violates due process by allowing federal prisoners to be indefinitely committed after a factual finding by the court of "sexual dangerousness", after using only a "clear and convincing" standard of proof.

Statement of Facts

A. Factual History

On October 19, 2000, Petitioner, Henry E. Stockom, pled guilty to one count of "receipt by computer of materials depicting a minor engaging in sexually explicit conduct," in violation of federal law 18 U.S.C. §2252(a)(2). Stockom was sentenced to a 73 month prison term, and finished his term on November 22, 2006.

Although Mr. Stockom completed his sentence, he is currently still being held in the medium security prison, Crushner-Plance, in Alabaster County, pursuant to the civil commitment provision, §4248, of the Adam Walsh Child Safety and Protection Act (Walsh Act). The proposed objective of the Act is to combat sexual violence and the exploitation, molestation, and abuse of children in the United States. The Act also aims to close the gap between state and federal efforts to identify, track, and confine sexual predators. §4248 is one of many provisions which Congress enacted as part of the Walsh Act to accomplish these goals.

§4248 allows the federal government to commit indefinitely any federal prisoner whose sentence is about to expire and who is deemed "sexually dangerous." The Bureau of Prisoners (BOP) may certify any federal prisoner as "sexually dangerous," and as

soon as the prisoner is labeled, his release is effectively stayed until the completion of a §4248 hearing. There are no restrictions on how long an individual may be held while waiting for a hearing. At the hearing, the BOP must prove by "clear and convincing" evidence, that the individual has engaged or attempted to engage in sexually violent conduct or sexual molestation and is sexually dangerous to others. A person is "sexually dangerous to others" 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 or child molestation if released." 18 U.S.C §4247(a) (6). The statute does not define "sexually violent conduct" or "child molestation."

If the court determines that the individual is "sexually dangerous", the court must commit the person to the custody of the Attorney General, who then places the individual under civil commitment. Pursuant to civil commitment, an individual remains committed indefinitely until the Director of the commitment facility determines that he is no longer sexually dangerous to others or will not be sexually dangerous if under a strict regimen of medical, psychiatric, or psychological care or treatment. A committed individual has the right to request a review of his commitment every six months, but there are no

requirements to ensure that a review is ever granted.

B. Procedural Facts

Mr. Stockom filed a lawsuit in the trial court of Alabaster County, arguing that (1) Congress exceeded its powers under the Commerce Clause and the Necessary and Proper Clause in enacting §4248, and (2) that application of the clear and convincing standard of proof in the §4248 hearing violates due process. He is currently appealing from the appellate court ruling that the Government acted constitutionally in enacting section 4248. The Government responded that §4248 was carefully drafted with Hendrick precedent in mind, in which the Supreme Court upheld against a constitutional challenge at least one violent predator act passed by a state legislature. The trial court held that §4248 is unconstitutional because it is not authorized under the Commerce Clause, and that it violates due process.

The Government filed an appeal in the United States Court of Appeal for the Fifteenth Circuit. The Court granted the Government's appeal, and held that Congress was authorized under the Commerce Clause and the Necessary and Proper Clause to enact §4248, and that the "clear and convincing" standard of proof is constitutionally permissible.

SUMMARY OF ARGUMENT:

Congress overstepped their constitutional authority by enacting §4248 because it is not authorized under the commerce clause and necessary and proper clause, and because application of the "clear and convincing" standard of proof in the §4248 hearing violates due process.

A. Commerce Clause and Necessary and Proper Clause

Congress is not authorized under the commerce clause and necessary and proper clause to enact §4248. In Lopez, the Court enumerated four criteria to consider when determining a law's constitutionality under the commerce clause. The first criteria required the law to be categorized under a commerce category - channels of interstate commerce, instrumentalities and things in interstate commerce, and activities having a substantial affect on interstate commerce. We are concerned only with the third category for this case.

§4248 is not authorized under the third category, despite the added power of the necessary and proper clause. For something to be necessary and proper, it must be based on Congress' enumerated powers, must be a reasonable way to exercise that power, and must be consistent with the spirit of the Constitution. §4248 does not satisfy these requirements and

therefore fails the first Lopez criteria.

The second criteria in Lopez, which §4248 lacks, is whether a jurisdictional element exists in the statute to limit Congress' authority to activity dealing with interstate commerce.

The third criteria is whether the statute contains congressional findings to aid the Court in understanding Congress' reasoning for regulating under the commerce clause. §4248 does not include any findings by Congress.

The last criteria was whether the law intruded into states' rights. In this case, Congress is intruding into state supremacy over police powers. Thus, since §4248 fails the four criteria, and is invalid under the commerce clause and necessary and proper clause.

B. Due Process Clause

§4248 is also invalid because it violates due process. Although §4248 is considered a "civil" proceeding, this label is not sufficient justification to require only a "clear and convincing" standard of proof. Due to Congress' construction of §4248, it is is punitive in its effect, lacks procedural safeguards, and presents significant consequences to the individual's liberty and reputation. Therefore, §4248 should be struck down for not placing a "beyond a reasonable doubt" burden

of proof on the Government.

ARGUMENT

A. Congress exceeded their authority under both the Commerce Clause and Necessary and Proper Clause, when they enacted §4248 of the Walsh Act.

§4248 of the Walsh Act is inconsistent with the Court's criteria for validating a law under the commerce clause and necessary and proper clause. In Lopez, the Court identified the following four factors to determine whether a law passed by Congress was appropriate under the commerce clause: (1) Does it fit into one of the three commerce clause categories, (2) Is there a jurisdictional element, (3) Are there congressional findings, and (4) Does it interfere with states' powers. United States v Lopez, 514 U.S. 549, 558 (1994). The Court reasoned that these factors must be considered to prevent Congress from having unlimited power.

In Lopez, Congress enacted the Gun-Free School Zones Act (GFSZA) of 1990, which made the possession of firearms near a school zone a federal offense. Id. at 551. The defendant in the case had arrived at school with a firearm, and was arrested and charged under Texas law. The state charges were dismissed after federal agents charged the defendant under the GFSZA. The defendant was convicted under the federal law, and appealed his conviction, arguing that Congress exceeded their authority under

the commerce clause. Id. at 552.

The Court concluded that Congress exceeded the limits of the commerce clause, reasoning that the GFSZA was a criminal statute that was unrelated to any form of economic enterprise and had little predictable impact on future commercial activity. Id. at 631. More specifically, the Court found that the GFSA could not be defined by any of the commerce categories, did not contain a jurisdictional element, did not provide congressional findings, and was a significant intrusion into states' authority of criminal law. Id. at 562, 563. §4248 similarly fails on the basis of all four criteria, and therefore is not constitutional under either the commerce clause or the necessary and proper clause. The appropriate standard of review to apply when determining the validity of congressional statutes is de novo.

1. §4248 cannot be identified under any of the commerce categories enumerated by the Court in Lopez, even with the additional authority of the necessary and proper clause.

§4248 cannot be placed in any of the interstate commerce categories. In Lopez, the Court explained that to be valid under the commerce clause, a law must be a regulation of channels of interstate commerce, instrumentalities or things in interstate commerce, or an activity having a substantial affect on interstate commerce. Id. at 558.

The first category enables Congress to regulate the channels

of interstate commerce. A regulation of channels of interstate commerce would include the misuse of channels of commerce such as a shipment of stolen goods or of persons who have been kidnapped. Perez v United States, 146, 150 (1971). §4248 cannot be placed in the channels of commerce category because civil commitment for sexual dangerousness has nothing to do with travel or transport across interstate lines.

The second category allows Congress to regulate instrumentalities, persons, or things in interstate commerce, such as the destruction of an aircraft, or thefts from interstate shipments. Perez v United States, 146, 150 (1971). §4248 is not a regulation of instrumentalities or persons in interstate commerce because the civil commitment provision is not limited to things or persons which travel across state lines.

Third, Congress has the authority to regulate activities which have a substantial affect on interstate commerce. Lopez at 558. In Raich, Justice Scalia, concurring with the majority stated that the power to regulate activities that merely affect interstate commerce is derived from the Constitution's necessary and proper clause. Gonzalez v Raich, 545 U.S. 1, 34 (2005). Thus, in evaluating whether Congress has the jurisdiction to enact §4248 under this third category, we must consider it jointly with the necessary and proper clause, which allows

Congress to make laws which shall be necessary and proper for carrying into execution any of its enumerated powers.

In this case, Congress argues that §4248 substantially affects interstate commerce, because the necessary and proper clause licenses Congress to make regulations to execute valid federal laws. In McCulloch, the Court states the test for analyzing a law's validity under the necessary and proper clause as "whether the means chosen are reasonably adapted to the attainment of a legitimate end under the commerce power, and whether the law is consistent with the spirit of the Constitution". McCulloch v Maryland, 17 U.S. 316, 421 (1819). In enacting §4248, Congress fails the test because §4248 is not based on Congress' commerce power, it is unreasonable, and it is not within the spirit of the Constitution.

Congress does not have the authority under the commerce power to enact §4248. Although Congress may criminalize, punish, and impose penalties in aid of the exercise of any of its enumerated powers, its authority ends as soon as the power to prosecute terminates. Greenwood v United States, 350 US 366, 375, (1956). Congress might have had the power to penalize individuals for their crimes in the first place, but §4248 is an attempt by Congress to exercise control over them after the power to prosecute has ended.

In Morrison, the issue before the Court was whether Congress could provide a civil remedy for victims of gender-motivated violence. Congress argued that gender-motivated violence substantially affected interstate commerce, and provided various findings as support. However, the Court rejected their argument, stating that "Congress may not regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." United States v Morrison, 529 U.S. 598, 617. Similarly, §4248 is also not sufficiently related to interstate commerce because it is a civil provision which deals with sexual criminal conduct.

The Court's analysis in Raich exemplifies the type of case where the necessary and proper clause is applicable because the issue deals with an activity which has a substantial affect on interstate commerce. In Raich, the Court validated Congress' regulation of marijuana under the Controlled Substances Act, stating that "Congress can regulate purely intrastate activity that is not produced for sale, if it concludes that failure to regulate that class of activity would undercut the regulation of the interstate market in that commodity." Gonzalez v Raich, 545 U.S. 1, 18 (2005). Unlike Congress' regulation in Raich, which impacted the interstate market for illegal drugs, §4248 is in no way connected to economic activity.

Also, enacting §4248 is not within Congress' power because it aims to prevent all sex crimes, a majority of which are within states' power to regulate. Federal sex crimes are specific to activities involving interstate commerce such as child molestation involving postal services or crimes which occur in the maritime or territorial jurisdiction of the United States. 18 USCS §2252A. Allowing §4248 would result in a significant intrusion into states' regulation of sex crimes, and would enable them to regulate crimes which they currently do not have the authority to criminalize. Therefore, this provision fails the requirement of the necessary and proper clause to apply only to laws based on Congress' enumerated powers.

§4248 is unreasonable because it is ambiguous and overly broad. For instance, although the federal government does have the power to civilly commit individuals in certain cases, this power is not applicable to the case at hand. In Greenwood, the petitioner was indicted for a felony, but was found by the District Court to be mentally incompetent and unable to stand trial. Greenwood at 369. The court further found that if released, he would probably endanger the safety of the officers, property, or other interests of the US, that alternative arrangements were unavailable, and that he could therefore be civilly committed. Id. at 371.

Unlike Greenwood where the petitioner did not serve any time for his crime, Mr. Stockom has completed serving his entire sentence. (R., at 3). Furthermore the court's reasoning for the validity of committing the petitioner in Greenwood was partly because if he regained his mental capacity, he could be tried since the power to prosecute had not ended. (R., at 30). In this case Mr. Stockom has been prosecuted and has served his sentence, the power to prosecute has terminated, and the federal government cannot lawfully continue exercising control over him.

§4248 allows the BOP to classify any federal prisoner as "sexually dangerous" regardless of the crime they committed. (R. at). Under the provision, an individual committed for bank robbery can be classified as "sexually dangerous" on the individual judgment of a BOP officer, and then forced to remain in prison for an indefinite amount of days while awaiting a hearing. Validating this provision would enable Congress to enact civil commitment provisions for any or all federal crime. For example, Congress could argue that a similar provision should be enacted for federal drug offenders, since it had the authority to criminalize and regulate the crime itself. Eventually, Congress could expand their authority to civilly commit any federal prisoner for any crime.

Furthermore, Congress does not define "sexual dangerousness"

and has not specified the federal crime which they are trying to prevent. Instead the Act resorts to broad and ambiguous terminology which applies to all federal prisoners, who have already completed their terms.

Lastly, §4248 is not consistent with the spirit of the Constitution. Our Constitution creates a federal government of limited and enumerated powers, based on the principle that to do otherwise, would create a centralized government. The importance of this principle has been reaffirmed by the Court in various commerce clause cases, such as Morrison, where they stated:

"The scope of the interstate commerce power must be considered in the light of the dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." Morrison at 557.

§4248 violates this principle since it is not based on Congress' enumerated powers, and it allows the federal government to infringe on states' authoritative powers. Affirming Congress' decision to enact §4248 would open the door to increased federal involvement with state matters and would "obliterate the distinction between what is federal and what is local." Id.

2. §4248 does not contain a jurisdictional element to ensure its application to cases dealing with interstate commerce.

The second factor the Lopez court considered was whether

there was a jurisdictional element in the GFSZA which restricted the law's application to cases dealing with or affecting interstate commerce. Lopez at 558. In this case, as in Lopez, no such jurisdictional element exists. Instead, the Walsh Act applies to all federal prisoners, despite a lack of connection to interstate commerce. §4248 is even more removed from interstate commerce in this case compared to Lopez because §4248 is based on an individual's hypothetical actions.

3. §4248 does not satisfy the third standard because Congress has not included any legislative findings to assist the Court in understanding how and why §4248 is proper under the commerce clause and necessary and proper clause.

The Lopez court stated that the third factor they would consider under the commerce clause was whether there were congressional findings illustrating the law's impact on interstate commerce. Id. at 559. The Court explained that although congressional findings would not be dispositive, they would assist the Court in their evaluation of the law and Congress' intent. In this case, as in Lopez, Congress did not provide any findings showing the connection between future sex crimes and their affect on interstate commerce. If Congress had provided some findings, their argument that sec. 4248 deals with activity having a substantial affect on interstate commerce might have been persuasive, but the lack of findings in this

case suggests that there is no connection.

In Morrison, on the other hand, Congress provided numerous findings to support their argument that gender-motivated violence had a substantial impact on interstate commerce. Morrison at 612. However, the Court rejected these findings, stating that if accepted, Congress would be allowed to regulate any crime as long as the "aggregated impact of that crime has substantial effects on employment, production, transit, or consumption". They further stated that allowing Congress to regulate gender motivated violence would make it possible for Congress to regulate any type of violence, such as murder, "since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part". Morrison 528 US 598, 615.

The Court's reasoning in Morrison could likewise be applied to §4248. As in Morrison, where the Court stated that a regulation of gender motivated violence would allow Congress to regulate any criminal activity, validating §4248 's regulation of sex crimes would also allow Congress to extend their authority. Although Congress is not required to provide findings, the fact that it did not, suggests it had no basis for claiming §4248 affects interstate commerce. Furthermore, even if there were findings, they would probably not have been enough to

prove a connection to interstate commerce.

4. §4248 is a significant intrusion into state police powers.

The last factor the Lopez Court considered was the impact of the federal legislation on states' authority. Lopez at 561. The Court stated that the Constitution requires a distinction between what is national and what is local and that "the regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States." Id. at 568. In Lopez, the court reasoned that the GFSZA intruded on states' rights by regulating possession of simple firearms and management of education. Id. The Court also rejected the government's "costs of crime" rationale, stating that this reasoning would allow Congress to regulate anything, because everything has some impact on the economy. Id. at 565. The same analysis is applicable here because §4248 is an attempt to regulate sexual crimes which have traditionally been the province of the states, and the "costs of crime" rationale cannot be used to validate §4248.

The Court repeated its reasoning about state supremacy regarding noneconomic criminal matters in Morrison, stating that "Congress may not regulate noneconomic, violent criminal conduct based solely on its aggregate effect on interstate commerce.

Morrison at 617. States have historically maintained primary responsibility for the police power of defining and enforcing criminal law. If Congress is allowed to regulate all sex crimes based on its right to criminalize and regulate valid federal laws, it could extend this reasoning to any crime which it currently has authority to regulate.

The Walsh Act was designed to close the gap between state and federal efforts to identify, track, and confine sexual predators. (R., at 2). However, the statute does more than it purports to do and severely intrudes into states rights. The federal government could make the same "closing the gap" argument for every other crime they regulate. For example, they could take their limited authority over assault with a deadly weapon cases, and broaden this authority to enact preventive regulation such as §4248 for all crimes of assault with deadly weapons, even if the underlying crime may only be regulated by states. Consequently, §4248 should not be validated because under the fourth criteria, it interferes with states' authority of the police power, and affirming it could obliterate the separation between the two aspects of our government.

In conclusion, the court should strike down §4248 because it is not authorized under either the commerce or necessary and proper clauses. The commerce clause does not support §4249

because: (1) it cannot be defined in any commerce category; (2) it does not contain a jurisdictional element; (3) it provides no congressional findings; and (4) it significantly intrudes into state authority. However, even if the court determines that Congress acted properly in enacting §4248, the provision should still fail because it is a violation of due process.

B. Due Process: §4248 violates due process protections because it allows the court to indefinitely commit an individual pursuant to a factual finding of "sexual dangerousness" based only on a "clear and convincing" standard of proof.

"The function of a standard of proof, as that concept is embodied in the Due Process Clause" is to inform the factfinder of the degree of confidence he should have in making factual determinations in legal proceedings. Addington v Texas 441 US 418,424. In Hendricks, the Court stated that when determining whether a proceeding is civil or criminal, they will typically defer to the legislator's statutory intent. However this presumption can be overridden by "the clearest proof" that "the statutory scheme [is] so punitive either in purpose or effect as to negate [the State's] intention" to deem it "civil". In the case at hand, Congress' construction of §4248 indicates that it should be considered criminal even though it is defined as a civil commitment provision. Accordingly, due to the serious implications civil commitment has to the individual under §4248, because of the stigma attached and the complete loss of liberty,

a "beyond a reasonable doubt" standard is required.

The Walsh Act defines civil commitment as a program that involves "secure civil confinement, including appropriate control, care and treatment during such confinement; and following confinement".⁴² USC 16971 §301. This definition is ambiguous, in that it doesn't define what is considered "appropriate control, care, and treatment." It does not say that civilly committed individuals will be held in a different facility than a federal prison, and does not clarify what treatment is required.

The Court's analysis in In re Winship is instructive for evaluating the burden of proof required by §4248. In Winship, the Court considered whether a "preponderance of evidence" standard was sufficient in a juvenile proceeding. In re Winship, 397 US 358 (1970). The state argued that the lower standard was appropriate because the juvenile proceeding was a civil hearing, and because the purpose of the sentencing was to rehabilitate, not to punish. Id. at 365. The Court disagreed, and concluded that even a juvenile proceeding required the use of a "beyond a reasonable doubt" burden of proof. The Court stated that the accused has "at stake interests of immense importance," both because of the potential loss of liberty and the stigma associated with a conviction. Id. They further explained that

the "civil proceeding," label is not sufficient reason to justify a lower burden of proof. Id.

The Court's reasoning in Winship is applicable to the case at hand, and the Court here should arrive at the same conclusion. In this case, Congress attempts to justify §4248 using the same arguments - that it allows a civil and not criminal proceeding, and that its aim is to rehabilitate the individual and protect society. As in Winship, where the Court wrote that labeling a proceeding as "civil" is not sufficient to apply a lower standard of proof, labeling §4248 as civil is similarly insufficient because the individual's liberty is still at stake. The individual in a criminal case is at least sentenced to a definite number of years, whereas under §4248, he is held indefinitely. Also, the Court in Winship discusses the stigma involved, with even a juvenile proceeding. Id. at 367. The label of being "sexually violent" subjects individuals to a harsh stigma especially when related to crimes against children. Since §4248 deprives an individual of their liberty for an indefinite period of time, subjects them to a harsh stigma, and lacks procedural safeguards, it should require the use of the "beyond a reasonable doubt" standard of proof, despite being a "civil" and not "criminal" proceeding.

The Government argues that §2428 was narrowly drafted based

on the Court decision in Kansas v Hendricks. (R., at 4). However, the civil commitment statute that was at issue in Hendricks is significantly different from the one outlined in the Walsh Act. Kansas v Hendricks 521 U.S. 346, 350 (1997). In Hendricks the Court upheld a state civil commitment statute for sexual offenders, stating that due process was not violated. Id. The Kansas statute allows the civil commitment of individuals who, due to a mental abnormality or a personality disorder, are likely to engage in "predatory acts of sexual violence." Id. The petitioner in Hendricks had been found guilty of multiple acts of sexually molesting children, and had stated that he was unable to control his sexual urges. Id. at 355.

The Kansas provision only applies to individuals who satisfy the dual criteria of having committed or been charged with sexually violent crimes and who suffer from a mental or personality disorder. Id. at 352. Furthermore, the Kansas statute only allows commitment for more than a year if the court finds, beyond a reasonable doubt, that they continue to be dangerous. Id. Additionally, the Kansas statute requires an professional mental health exam, and the prosecutor only has 45 days to decide whether to file a petition for a civil hearing with a court. Id. Also, confined persons are afforded three avenues of review: (1) annual review by the committing court,

(2) a petition for release by the Secretary of Social and Rehabilitation Services, or a (3) personal petition for release by the individual. Lastly, the Kansas statute requires a "beyond a reasonable doubt" standard for the factual finding of whether an individual is a "sexually violent predator." Id. at 353.

§4248 differs significantly from the one enacted by the Kansas legislature. The Kansas statute requires a standard of "beyond a reasonable doubt" to civilly commit an individual, while the Walsh Act only requires a "clear and convincing" evidence standard. The Kansas statute applies only to individuals who satisfy the criteria of having committed a sexual crime and suffering from a mental disorder, whereas §4248 is potentially applicable to any federal prisoner, even if the underlying crime is sale of narcotics or stealing mail. The Kansas statute has a maximum commitment period of one year unless there is further review, whereas §4248 permits indefinite commitment based only on one hearing. Also, the Kansas provision requires an examination by a mental health professional, but the Walsh Act leaves this decision to the court's discretion. 42 USC 16971 §302. In Hendricks, an individual must not wait more than 45 days for his hearing, whereas §4248 places no such limitation. This means that even if an individual would not be considered "sexually dangerous" by the court, he must still

remain in prison until the hearing. Unlike the Kansas statute which allows three avenues of review, the Walsh Act states that an individual may be released only when the Director of the commitment facility determines that they can. Also, in contrast to the Kansas statute which requires mandatory review at least once a year, the Walsh Act does not mandate that the case ever has to be reviewed. Hendricks at 352. Essentially, an individual civilly committed is at the mercy of either the Director of their program or the review board to determine that they are no longer "sexually dangerous."

The Court's ruling in Addington is also not comparable to the case at hand. In Addington, the Court determined that a "clear and convincing" standard of proof was necessary to involuntarily commit the defendant to a state mental hospital for an indefinite period of time. Addington v Texas, 441 U.S. 418, 424 (1979). The Court required this standard because although the Texas statute constituted a significant deprivation of the individual's liberty, this was outweighed by the safety risk to the individual and society, and was based on a mental health evaluation instead of a factual evaluation. Id. But unlike Addington, §4248 does not require a mental health evaluation, and involves a significant amount of factfinding because the individual's prior offense is considered to be a critical

predictor of future actions.

Furthermore, Mr. Stockom is neither a "sexually dangerous person" nor "sexually dangerous to others" as defined by §4248, whereas Addington met the Texas statute's criteria for having a mental disability. Addington often threatened to injure his parents and others, was involved in several assaultive episodes, and caused substantial property damage. Id. at 420. Mr. Stockom on the other hand, has no prior history of violent or sexually violent acts, and has never been accused or convicted of child molestation despite having worked with children since he was in high school. (R. Ex.B at 10,12). Even if Mr. Stockom has inappropriate sexual impulses, it seems evident from his actions that he is able to control them. Furthermore, the defendant in Addington was committed to a state mental hospital to get treatment for his mental disabilities, whereas Stockom has been re-committed to the Crushner-Plance prison. Addington at 419.

Also, Texas, as a state, had a legitimate interest in confining Addington, whereas the federal government has no legitimate interests in this case because it is attempting to regulate activity which it has no authority to regulate. Id. Therefore, the intermediate standard is not sufficient for §4248.

Therefore, the Court should strike down §4248, which violates due process by requiring only a clear and convincing

standard of proof to indefinitely commit federal prisoners.

CONCLUSION

The Court should strike down §4248 of the Adam Walsh Act because it is not authorized under the commerce clause, and because it violates the due process rights of individuals who are subject to civil commitment. §4248 is not proper under the commerce clause because: (1) it cannot be defined in the commerce categories; (2) it does not include a jurisdictional element; (3) it does not provide congressional findings, (4) and it intrudes into state powers. Since it is not valid under the commerce clause, it is also invalid under the necessary and proper clause, which requires a law enacted by Congress to be based on an enumerated power. Lastly, §4248 violates due process by allowing courts to civilly commit federal prisoners nearing the end of their prison terms without requiring a "beyond a reasonable doubt" standard of proof. Thus, §4248 violates two significant provisions in the Constitution, and should not be upheld by the Court.