No. 26-_____

IN THE

Supreme Court of the United States

J.D.B.,

Petitioner,

v.

STATE OF WISCONSIN,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Wisconsin

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Sell v. United States*, 539 U.S. 166 (2003), this Court established four factors that courts must address before they may order incompetent defendants to be forcibly medicated with the goal of restoring competency. The first is whether an important government interest is at stake, including whether special circumstances lessen that interest. The other three are whether involuntary medication will significantly further the government's interest in prosecution and a fair trial, whether involuntary medication is necessary to further that interest, and whether involuntary medication is medically appropriate. *Id.* at 180.

The Questions Presented are:

I. What special circumstances are courts to consider in determining whether the government's interest in prosecution is undermined to the point that forced medication is unconstitutional?

II. What are the minimum requirements for treatment plans submitted in support of an order for involuntary medication to restore competency in a criminal case?

PARTIES TO THE PROCEEDING

Petitioner is J.D.B., who was the Defendant-Appellant in the court below. Respondent, the State of Wisconsin, was the Plaintiff-Respondent-Petitioner in the court below.

RELATED PROCEEDINGS

State v. J.D.B., No. 2023AP715-CR (Wis.) (opinion filed Feb. 25, 2026)

State v. J.D.B., No. 2023AP715-CR (Wis. Ct. App.) (opinion filed Sept. 10, 2024)

State v. [*J.D.B.*],[1] No. 2022CF003407 (Milwaukee Cnty. Cir. Ct.) (order filed Apr. 24, 2023)

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[1] J.D.B.'s full name was used in the caption at the trial court level. However, because determinations of criminal competency are "separate and distinct from the defendant's underlying criminal proceeding," *State v. Scott*, 2018 WI 74, ¶11, 382 Wis. 2d 476, 914 N.W.2d 141, and involve discussion of otherwise confidential mental health information, the Supreme Court of Wisconsin has adopted a rule requiring the use of initials or pseudonyms in appeals related to criminal competency. Wis. Stat. § 809.109(6). In light of this privacy consideration, and the party designations used on appeal, this petition does not use J.D.B.'s full name, and the appendices have been redacted accordingly.

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PETITION FOR WRIT OF CERTIORARI

Petitioner J.D.B. seeks a writ of certiorari to review the opinion of the Supreme Court of Wisconsin.

OPINIONS BELOW

The opinion of the Supreme Court of Wisconsin is reported at *State v. J.D.B.*, 2026 WI 5, 419 Wis. 2d 383, 31 N.W.3d 314. It is reprinted in Appendix A to this Petition. The opinion of the Wisconsin Court of Appeals is reported at *State v. J.D.B.*, 2024 WI App 61, 414 Wis. 2d 108, 13 N.W.3d 525. It is reprinted in Appendix B to this Petition. The order of the Milwaukee County Circuit Court is reprinted in Appendix C to this Petition.

JURISDICTION

The opinion of the Supreme Court of Wisconsin was issued on February 25, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV § 1.

STATEMENT OF THE CASE AND FACTS

When this case began, Jared[2] was a 19-year-old with partial left-side paralysis, a lumbering gait, and compromised speech and cognitive abilities all stemming from a self-inflicted gunshot wound from when he was eleven. He is diagnosed with schizophrenia and major neurocognitive disorder due to traumatic brain injury.

Jared resided with his mother and siblings in Milwaukee. According to the criminal complaint, Jared's mother called police after Jared made statements about getting a gun and harming people in the home. While police arrested Jared, he allegedly threw two punches at one officer and hit him in the face.

Jared was taken to a hospital but was seemingly not admitted at that time. The record is unclear as to where Jared was held from his arrest on August 23, 2022, until his booking into the jail on August 27, 2022.

The State charged Jared with battery to a law enforcement officer, contrary to Wis. Stat. § 940.203(2) (2021-2022).[3]

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[2] "Jared" is a pseudonym adopted by the parties and appellate courts. It is used for the remainder of this petition for consistency and ease of reading.

[3] Wisconsin's battery to law enforcement officer has since been revised and renumbered. The statute as it existed at the time made it illegal to intentionally cause bodily harm to a law enforcement officer if the defendant knew or should have known the victim was a law enforcement officer, the act was in response to an action taken by the officer in their official capacity, and there was no consent by the officer. The statute is available online at: https://docs.legis.wisconsin.gov/2021/statutes/statutes/940/ii/203?view=section (last accessed May 8, 2026).

One week after his arrest, Jared appeared in court for the first time, competency was raised, and an examination was ordered. Jared was remanded into custody without the opportunity for bail. Deborah L. Collins, Psy.D. examined Jared and filed a report.

Dr. Collins' report noted that Jared's speech and cognitive abilities were compromised by a gunshot wound resulting in permanent brain damage. "His medical history is also significant for diabetes and hypertension." Jared had previously been diagnosed with schizophrenia. While at the jail, he was diagnosed with an unspecified mental disorder and secondary malignancy neoplasm brain (*i.e.* brain cancer).

According to Jared's mother, he was prescribed "Valproic acid (mood stabilizer/anti-convulsant) and Sertraline (anti-depressant)" and had received inpatient psychiatric treatment at three different hospitals. He was also seen "for homicidal thoughts" on August 23, 2022—the date of his arrest. While in jail, he was prescribed "Depakote (mood stabilizer), Fluoxetine (anti-depressant) and Hydroxyzine (for side effects)."

Based on records, Jared's history, and her observations of Jared, Dr. Collins diagnosed Jared with schizophrenia and major neurocognitive disorder due to traumatic brain injury. At the time of the report, Jared was medication compliant. Jared was found not competent and committed for competency restoration.

The offense was a Class H felony, making the maximum possible penalties a fine up to $10,000, Wis. Stat. § 939.50(3)(5), or a prison term of up to 3 years of initial confinement, Wis. Stat. § 973.01(2)(b)8., and 3 years of extended supervision. Wis. Stat. § 973.01(2)(d)5.

At the time of the 3-month commitment review[4] Sergio Sanchez, Psy.D. reported there was little change in Jared's condition and stated Jared was not medication compliant. Jared was transferred to Mendota Mental Health Institute ("Mendota") on January 25, 2023, after spending five months in jail.

The 6-month competency report was submitted to the circuit court by Ana Garcia, Ph.D., on March 28, 2023. Dr. Garcia reported that she reviewed records from seven different hospitals (including Mendota), school records, jail records, and Milwaukee County Behavioral Health Division records. In addition, she consulted with Jared's treating physician, Dr. Mitchell Illichmann, and Mendota staff who worked with Jared.

In addition to his diagnoses of hypertension and diabetes, Dr. Garcia noted that Jared "is prescribed medication to prevent seizures that can be resultant from head injuries."

At the time of Dr. Garcia's report, Jared had been at Mendota for about two months and was being treated with antipsychotic and antidepressant medications. Despite this treatment, Jared allegedly swore and spit at staff, urinated and defecated in his room, and exhibited symptoms of schizophrenia.

Six days after Dr. Garcia filed her report, Jared began refusing medications, prompting Dr. Illichmann to request an involuntary medication order. (App.89a, 130a). Dr. Illichmann did not consider adjusting Jared's

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[4] Wisconsin law requires reexamination and reports of the same "furnished to the court 3 months after commitment, 6 months after commitment, 9 months after commitment and within 30 days prior to the expiration of commitment." Wis. Stat. § 971.14(5)(b).

medication or dosage until after Jared began refusing medication. (App.111a).

Dr. Illichmann's report stated that Jared was diagnosed with schizophrenia spectrum illness and no physical health conditions. (App.148a). The report noted that Jared had previously taken lithium, valproate, paliperidone, and quetiapine "with only partial response." (App.148a). Specifically, the report noted that Jared was "offered paliperidone with partial response in agitation, thought organization." (App.148a).

The treatment plan accompanying the report proposed seven different antipsychotics "either in combination or in succession" to be taken orally. (App.149a). Additionally, if Jared was unwilling or unable to take the oral medications, the plan recommended that the antipsychotic haloperidol be administered by injection. (App.149a). The plan also recommended one non-antipsychotic, lorazepam, be injected for "agitation." (App.149a).

MEDICATION TREATMENT TO BE PROVIDED

The following oral medications are proposed for treatment either in combination or in succession to restore the defendant's competency to stand trial: ☐ See additional materials (attached)

Name of Medication	Purpose	Dose Range
Olanzapine	Psychosis	5-40 mg
Aripiprazole	Psychosis	5-30 mg, long acting injection 300-400 mg
Risperidone	Psychosis	2-8 mg
Paliperidone	Psychosis	3-12 mg, long acting injection 156-234 mg
Haloperidol	Psychosis	5-20 mg
Quetiapine	Psychosis	50-800 mg
Clozapine	Psychosis	50-600 mg

The following medications are proposed to be given by injection if the defendant is unable or unwilling to take the proposed oral medication:

Name of Medication	Purpose	Dose Range
Haloperidol	Psychosis	5-10 mg
Lorazepam	Agitation	1-4 mg

Proposed medications from treatment plan (App.149a).

After a hearing where Dr. Illichmann testified, the circuit court found that the State had met its burden regarding each of the *Sell* factors, *see* (App.140a-43a), and ordered involuntary medication. (App.62a-64a). The intermediate appellate court stayed the medication order and ultimately reversed, finding the treatment plan was not sufficient under any of the *Sell* factors. *See State v. J.D.B.*, 2024 WI App 61, ¶¶53, 61, 414 Wis. 2d 108, 13 N.W.3d 525; (App.50a, 54a-55a).

After finding that exceptions to mootness applied, the Supreme Court of Wisconsin first addressed whether the government has an important interest in prosecution. After noting that the parties agreed that Jared was charged with a serious crime, *State v. J.D.B.*, 2026 WI 5, ¶22, 419 Wis. 2d 383, 31 N.W.2d 314; (App.9a), the court held that several factors did not lessen the government's interest in prosecution. Those factors were: the likelihood of a successful insanity plea, that Jared was improperly denied bail and illegally detained pending the competency determination, that he did not receive adequate and timely treatment, that the alleged crime was a result of a mental health crisis—indicating a civil commitment was likely, and that his time served would have been "substantially all of his sentence." *Id.*, ¶¶24-28; (App.10a-12a). In so finding, the Supreme Court of Wisconsin emphasized the government's "far broader interest in criminal justice." *Id.*, ¶26; (App.11a); *see also id.*, ¶28 ("What Jared misses, and our analysis emphasizes, is that criminal prosecution serves interests far beyond Jared himself."); (App.12a).

The court went on to address the use of individualized treatment plans as a means of proving the second, third, and fourth *Sell* factors. The court stated that "a generic treatment plan not tailored to the individual was insufficient," and "the State must present an

individualized treatment plan tailored to the individual the State is seeking to medicate." *Id.*, ¶32; (App.13a).

Still, the court went on to overrule a prior intermediate appellate court decision that required a treatment plan consider/include:

> the specific medication, the maximum dosages, the overall duration of the treatment,[5] how the plan applies to the particular defendant, the defendant's age, the defendant's weight, the duration of the defendant's illness, the defendant's past responses to psychotropic medications, the defendant's cognitive abilities, the defendant's current list of medications, and the defendant's medical record.

Id., ¶¶32-33; (App.13a). The court held that "*Sell* mandates individualized findings about the defendant's medical situation, but it permits flexibility in how this finding is determined and the evidence that might support it." *Id.*, ¶33; (App.13a).

In applying this "flexible" standard to Jared's case, the court affirmed that "the medication was substantially likely to render the defendant competent to stand trial" and "substantially unlikely to have side effects that undermine the fairness of the trial by interfering significantly with the defendant's ability to assist counsel in conducting a trial defense." *Id.*, ¶36 (internal quotation omitted) ; (App.14a). The court did so despite "the treatment plan suggest[ing]

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[5] Previously, the State conceded these first three considerations were required under *Sell*. *State v. Green*, 2021 WI App 18, ¶38, 396 Wis. 2d 658, 957 N.W.2d 583 (quoting *U.S. v. Chavez*, 734 F.3d 1247, 1253 (10th Cir. 2013)).

Jared had no physical health conditions, which contradicts other reports in the record before us." *Id.*, ¶37; (App.15a). The court wrote this off because Dr. Illichmann testified "that the antipsychotic drugs he chose help with psychosis and have relatively minor side effects." *Id.*; (App.15a). When addressing the argument "that Dr. Illichmann's proposed treatment plan and testimony state only that the named pharmaceuticals help people like Jared—those with psychosis—rather than Jared himself," the court stated that "magic words are not necessary[, and t]he circuit court could reasonably infer from this testimony that Dr. Illichmann thought the medications would also help Jared himself." *Id.*, ¶38; (App.15a). Per the court: "There were competing inferences available, but reasonable people could come to the circuit court's conclusion with the evidence before it." *Id.*; (App.16a).

Regarding the third factor, whether less intrusive means were unlikely to achieve the same results, *Sell*, 539 U.S. at 181, the court again relied solely on Dr. Illichmann's testimony that Jared was refusing medications, therefore involuntary medication was needed. *J.D.B.*, 31 N.W.3d 314, ¶41; (App.17a).

Finally, the court found that the medication was medically appropriate. *Id.*, ¶44; (App.18a). It acknowledged the FDA labels for the medications in the plan "call[] for caution when prescribing these medications to people with diabetes or seizures," *id.*, ¶45; (App.18a), but again stated the circuit court "reasonably inferred that Dr. Illichmann thought the medication would help Jared. Dr. Illichmann was familiar with Jared's medical history and testified extensively about the potential side effects of the medication he proposed on the treatment plan." *Id.*; (App.18a).

In dissent, Justice Crawford found: "If the circuit court had declined to order Jared forcibly medicated, a civil commitment would have been reasonably foreseeable, given the severity of Jared's mental illness and dysregulation." *Id.*, ¶66; (App.25a). The dissent also noted how the State did "not really dispute, that as a first-time offender, he would likely have received a sentence for the crime well under the statutory maximum of three years of confinement." *Id.*, ¶67; (App.26a). As a result, the dissent recognized that "[a] 'time served' disposition was becoming an increasingly likely outcome at the time of the hearing on the request to forcibly medicate Jared." *Id.*; (App.27a).

Given the specific facts of the case, the dissent disagreed that the government had a sufficiently important interest in prosecuting Jared. *Id.*, ¶68; (App.27a-28a).

REASONS FOR GRANTING THE WRIT

In *Sell*, this Court established four factors that courts must address before they may order incompetent defendants to be forcibly medicated with the goal of restoring competency.

> First, a court must find that *important* governmental interests are at stake. . . . Second, the court must conclude that involuntary medication will *significantly further* those concomitant state interests. . . . Third, the court must conclude that involuntary medication is *necessary* to further those interests. . . . Fourth, . . . the court must conclude that administration of the drugs is *medically appropriate, i.e.,* in the

> patient's best medical interest in light of his medical condition.

Id. at 180 (emphases in original).

These factors are necessary considerations to overcome a defendant's "'significant' constitutionally protected 'liberty interest' in 'avoiding the unwanted administration of antipsychotic drugs.'" *Id.* at 178 (quoting *Washington v. Harper*, 494 U.S. 210, 221 (1990).

In the intervening twenty-three years, this Court has not addressed the use of involuntary medication to restore competency of criminal defendants. As such, state and federal courts have been left to figure out how to apply the above factors in practice. This has led to different standards and criminal defendants receiving different protections based on the jurisdiction their case arises from.

Two federal courts have held that a potential insanity acquittal is a special circumstance that can lower the government's interest in prosecution. Wisconsin joined two circuits that have each issued conflicting decisions but take the stance that a potential insanity acquittal is not a special circumstance.

Four federal circuit courts recognize that treatment plans submitted in support of involuntary medication require some minimum level of detail. Wisconsin now joins Pennsylvania in refusing to place any minimum requirements on treatment plans, despite universal recognition from federal appellate courts that *Sell* requires a high level of detail to meet its stringent standards.

I. Federal courts are divided over what special circumstances may be considered in determining the government's interest in prosecution beyond those expressed in *Sell*.

Federal courts are divided over which special circumstances—aside from the two expressly stated in *Sell*—should be considered in determining the government's interest in prosecution. *Sell* did not limit the nature of special circumstances that may exist. Instead, courts are to "consider the facts of the individual case." *Sell*, 539 U.S. at 180. *Sell* offered two examples of circumstances that may lessen the interest in prosecution: the possibility of a civil commitment and the amount of pre-trial credit. *Id.* Beyond those two, this Court provided no guidance as to what other "special circumstances" may exist.

In particular, courts are divided about whether the possibility of a successful insanity defense can lessen the government's interest in prosecution.[6]

Four federal courts of appeals have suggested that a potential insanity acquittal is a relevant circumstance. However, two of those circuits issued subsequent decisions holding it is not a relevant special circumstance. The Supreme Court of Wisconsin held that the possibility of an insanity defense is never a special circumstance.

A. Two circuits suggest that a potential insanity acquittal is a special circumstance.

The Tenth Circuit vacated an involuntary medication order for failing to consider whether medication

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[6] Jared raised other special circumstances as well, which he believes the Court should consider and decide in order to provide guidance to lower courts and practitioners on assessing special circumstances.

should be ordered for another reason—the defendant's possible dangerousness. *U.S. v. Morrison*, 415 F.3d 1180, 1181-82 (10th Cir. 2005).[7] However, the court still addressed the government's interest in prosecution, first noting the amount of credit made it unlikely the defendant would serve additional time. *Id.* at 1186. The court then noted that any interest in adjudication of guilt would be similarly undermined due to the likelihood of an insanity acquittal (based on opinions of defense and Bureau of Prisons evaluators). *Id.*

The Eighth Circuit has twice upheld an involuntary medication order where the defendant raised a potential insanity acquittal as a special circumstance. *U.S. v. Nicklas*, 623 F.3d 1175, 1177-78 (8th Cir. 2010); *U.S. v. Mackey*, 717 F.3d 569 (8th Cir. 2013). Both times the court rejected the defendant's claim that an insanity acquittal was likely. *Nicklas*, 623 F.3d at 1178 (rejecting the argument because the defendant expressed he would not seek an insanity plea); *Mackey*, 717 F.3d at 574 (rejecting the argument because "the record [did] not demonstrate a strong likelihood of civil commitment"). Importantly, the court did not reject a possible insanity acquittal as a relevant consideration, it rejected the likelihood of it occurring. By analyzing the issue as though it could undermine the government's interest, the Eighth Circuit implicitly agrees that a potential insanity acquittal is a special circumstance under the first *Sell* factor.

Had Jared raised the issue of his possible insanity acquittal—evidenced by him being mentally ill and "taken directly to the hospital 'for his expression of homicidal

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[7] *See Sell*, 539 U.S. at 182 ("There are often strong reasons for a court to determine whether forced administration of drugs can be justified on these alternative grounds *before* turning to the trial competence question.") (emphasis in original).

thoughts,'" *J.D.B.*, 31 N.W.3d 314, ¶59 (Crawford, J. dissenting); (App.24a)—in either of these circuits, it is likely the medication order would have been vacated. This was the result when the intermediate appellate court analyzed the issue and determined that the facts "generally support an [insanity] defense and suggest that the alleged offense resulted from a mental health crisis," *J.D.B.*, 13 N.W.3d 525, ¶41; (App.45a), lessening the government's interest in prosecution.

B. Two circuits have each issued conflicting decisions.

Two federal circuits have issued decisions that conflict with language in their own prior decision. One of those circuits addressed the conflict, the other did not. Both seem to now hold that a potential insanity acquittal is never a special circumstance that lessens the government's interest in prosecution.

The Fifth Circuit first addressed the insanity defense issue in 2007, and it noted that "there is some force to Palmer's contentions" that he would be acquitted due to insanity and would likely be sentenced to time served. *U.S. v. Palmer*, 507 F.3d 300, 304 (5th Cir. 2007). However, the court related these arguments to the third factor—whether forced medication is necessary—not whether they undermined the government's interest in prosecution. *Id.*[8]

[8] In reviewing the defendant's brief, the summary of the argument correctly relates the credit and insanity acquittal to the government's interest in prosecution. Brief on Behalf of Wayne Lee Palmer, 10, *U.S. v. Palmer*, 507 F.3d 300 (2007) (No. 06-31018), 2007 WL 5040072. However, it only mentions sentence credit and a potential insanity acquittal in discussing whether medication is necessary to further the government's interest. *Id.* at 22-23.

At the very least, *Palmer* did not reject the consideration of a potential insanity acquittal as a special circumstance.

Later, the Fifth Circuit did reject the use of a potential insanity acquittal as a special circumstance under *Sell*. When raised, the court first found that even the choice to plead insanity was too uncertain to make prosecution "unnecessary." *U.S. v. Gutierrez*, 704 F.3d 442, 452 (5th Cir. 2013). The court went on to state that "even if it were certain that Gutierrez would successfully plead not guilty by reason of insanity, the government would continue to have an interest in prosecution due to the shifted burden of proof for insanity acquittees in civil commitment proceedings." *Id.* The court discussed how the defendant would bear the burden of avoiding an insanity commitment while in a traditional civil commitment the government bears the burden to commit him. *Id.* at 453. This, the court stated, "could well determine the outcome of a civil proceeding." *Id.*[9] This reasoning deals not with "the facts of the individual case," *Sell*, 539 U.S. at 180, but with the structural aspects of insanity proceedings. As such, it reads as a wholesale dismissal of a potential insanity acquittal as a special circumstance, contrary to the language in *Palmer*, which treated a potential insanity acquittal similar to pretrial credit.[10]

The Sixth Circuit issued two decisions roughly six months apart with vastly different views on whether a potential insanity acquittal lessens the government's

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[9] Jared fails to see the logic underpinning the court's decision. Presumably, the defendant bearing the burden makes it more likely he would be committed if found insane, further lowering the government's interest in prosecution than a regular civil commitment where it is the government that bears the burden. *Infra* at 25-26.

[10] The latter of which was expressly deemed a special circumstance in *Sell*. 539 U.S. at 180.

interest in prosecution. In April 2013, the court explicitly held that a potential insanity defense is a special circumstance. *U.S. v. Grigsby*, 712 F.3d 964, 970 (6th Cir. 2013) ("That Grigsby potentially may be found not guilty by reason of insanity, even if he is restored to mental competency to stand trial, is a special circumstance that should have been fully considered in weighing the government's interest in prosecution."). However, in October, it held the opposite. *U.S. v. Mikulich*, 732 F.3d 692, 699 (6th Cir. 2013) ("More fundamentally, [Mikulich] assumes that a possible insanity defense is a relevant 'special circumstance' under *Sell,* without addressing contrary authority by one of our sister circuits.[11] We conclude that it is not.").

The Sixth Circuit acknowledged the conflict. It referenced the language in *Grigsby* as "a passing comment" and noted the "argument was not central to the outcome of the case." *Mikulich*, 732 F.3d at 700. It then discussed *Gutierrez*, which was released in January 2013—prior to *Grigsby*. It interpreted *Gutierrez* to mean that the government's interest in prosecution is in obtaining the more favorable burden for commitment. *Id.* at 700 ("The unanimous panel reasoned that 'the shifted burden of proof for insanity acquittees in civil commitment proceedings' makes prosecution of these cases of interest to the Government.") (quoting *Gutierrez*, 704 F.3d at 452). It then added that it was "logically backwards to say that a potential insanity defense may somehow lessen the value of the condition precedent coming to pass in the first instance." *Id.* at 701.

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[11] The decision it is referring to is *Gutierrez*, which was issued the month after briefing was completed in *Mikulich*. *See* Reply Brief of Defendant-Appellant, *U.S. v. Mikulich*, 507 F.3d 300 (2007) (No. 12-1732), 2012 WL 6811121 (filed Dec. 21, 2012).

Finally, the Supreme Court of Wisconsin, citing *Mikulich*, stated that an insanity plea "can be raised only within the confines of the prosecution itself," and it did not believe that a possible acquittal could lessen the government's interest in the prosecution that preceded it. *J.D.B.*, 31 N.W.3d 314, ¶24; (App.10a).

Both the Sixth and Fifth circuits have issued decisions with contradictory opinions on whether an insanity defense is a special circumstance that undermines the interest in prosecution. While the Sixth Circuit seems to have overruled its prior language, the Fifth Circuit never acknowledged its conflict. Even assuming the rule in both circuits is that a potential insanity plea is not a special circumstance, there is still a 2-2 split amongst federal circuits, with the Supreme Court of Wisconsin opinion making it 2-3 overall.

II. State and federal courts are divided over what information must be provided to a trial court before the final three *Sell* factors can be met.

The decision below is on good footing with only one other state high court and is contrary to the federal courts of appeals and other state high courts that have interpreted *Sell*. Simply put, Wisconsin has rendered the *Sell* factors nothing more than magic words that doctors must recite and, if they do so, courts are encouraged to rubber stamp the treatment plans. This leaves Wisconsinites without the protections *Sell* set forth more than twenty years ago.[12]

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[12] Wisconsinites have been systematically deprived of the constitutional protections established in *Sell* for decades. In 2019, the Supreme Court of Wisconsin held that Wisconsin's criminal competency statute, Wis. Stat. § 971.14, is unconstitutional because it requires courts to order forced medication without consideration of the

While the specific conditions of the defendants at issue in these cases differ, they all share the same core issue: whether the government has submitted sufficient evidence for the trial court to order involuntary medication to restore competency. In federal court, treatment plans must meet minimum substantive requirements. In Wisconsin and Pennsylvania, trial courts are encouraged to defer to the government's doctors.

A. Four federal circuits and one state impose minimum requirements for treatment plans.

Four federal courts of appeals and one state high court all conclude that implicit in *Sell* is some minimum requirement regarding information that needs to be provided before courts can find that involuntary medication will significantly further the government's

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Sell factors. *State v. Fitzgerald*, 2019 WI 69, ¶2, 987 Wis. 2d 384, 939 N.W.2d 165. For more than fifteen years, Wisconsin courts were statutorily obligated to order involuntary medication without considering *Sell*. Counsel can represent that, even after *Fitzgerald*, some courts continued ordering involuntary medication without considering *Sell*.

In the latter half of the 2010s the failure to abide by *Sell* and other involuntary medication issues became increasingly litigated, and the Supreme Court of Wisconsin adopted special procedures for competency appeals in 2024. *See generally* Wis. Stat. § 809.109; Wis. Sup. Ct. Order No. 23-05 (reported at 2024 WI 20) (available online at https://docs.legis.wisconsin.gov/misc/sco/422.pdf) (last accessed May 8, 2026). The memorandum in support of the rule change confirms "circuit courts across the state have handled proceedings challenging [competency] orders in disparate ways." Petition 23-05 Memorandum in Support (available online at https://www.wicourts.gov/supreme/docs/2305memo.pdf) (last accessed May 8, 2026).

Given Wisconsin courts' historically indifferent approach to *Sell*, the need for this Court to intervene and protect the constitutional rights of Wisconsinites is particularly acute.

interests in prosecution, that involuntary medication is necessary to further those interests, and that involuntary medication is medically appropriate. Those minimum requirements vary slightly, but all require information about the particular medications and dosing.

The Fourth Circuit has addressed the issue numerous times. First, it held that "the government must set forth the particular medication, including the dose range, it proposes to administer . . . . " *U.S. v. Evans*, 404 F.3d 227, 240 (4th Cir. 2005). It explained without this information prison medical staff would have "carte blanche to experiment with what might even be dangerous drugs or dangerously high dosages of otherwise safe drugs." *Id.* at 241. The court noted a "reasonable range rather than an exact dosage is appropriate because the latter would unduly limit the medical provider's ability to adapt its treatment . . . ." *Id.* However, particular medication(s) and dose range are not the only requirements. "Rather, the government must also relate the proposed treatment plan to the individual defendant's particular medical condition." *Id.* at 241-42; *see, e.g. U.S. v. Bush*, 585 F.3d 806, 818 (4th Cir. 2009) (plan insufficient when it failed to address how medication would affect defendant's diabetic condition); *see also U.S. v. Watson*, 793. F.3d 416, 424 (4th Cir. 2015) (necessary to consider defendant's age and nature/duration of his delusions).

The Seventh Circuit similarly held, "[t]o satisfy its duty, the district court must indicate the medication or range of medications to be administered, the dose range and the length of treatment." *U.S. v. Breedlove*, 756 F.3d 1036, 1043 (7th Cir. 2014) (citing *Evans*, 404 F.3d at 241-42; *U.S. v. Hernandez-Vasquez*, 513 F.3d 908 (9th Cir. 2008)). The purpose of requiring details is to impose "meaningful constraints that protect defendants from the

physician's unfettered discretion to forcibly administer potentially dangerous amounts of antipsychotic drugs." *U.S. v. Fieste*, 84 F.4th 713, 730 (7th Cir. 2023).

The Ninth Circuit first stated that "[s]pecificity as to the medications to be administered is critical." *U.S. v. Rivera-Guerrero*, 426 F.3d 1130, 1140 (9th Cir. 2005). It later listed minimum requirements that the Seventh Circuit would adopt in *Breedlove*:

> (1) the specific medication or range of medications that the treating physicians are permitted to use in their treatment of the defendant, (2) the maximum dosages that may be administered, and (3) the duration of time that involuntary treatment of the defendant may continue before the treating physicians are required to report back to the court on the defendant's mental condition and progress.

Hernandez-Vasquez, 513 F.3d at 916-17.

Finally, the Tenth Circuit noted that while "*Sell* does not explicitly identify what level of specificity is required[,] . . . the need for a high level of detail is plainly contemplated by the comprehensive findings *Sell* requires." *Chavez,* 743 F.3d at 1252. As such, it adopted the minimum requirement that involuntary medication orders "specify which medications might be administered and their maximum dosages." *Id.* at 1253. Recently, the court noted that "[o]ur caselaw does not provide a definitive standard for the required level of detail in an order directing involuntary medication," while reemphasizing the need for "particularized findings." *U.S. v. Dear*, 104 F.4th 145, 149 (10th Cir. 2024).

The Supreme Court of Georgia addressed a case where the trial court did not specify "what antipsychotic medication or medications may be forcibly administered to [the defendant], in what dosage or range of dosages, for what period of time, and with what oversight by the court." *Warren v. State*, 778 S.E.2d 749, 762 (Ga. 2015). Ultimately, the court approvingly cited several of the above cases, *id.* at 763-65, before holding that treatment plans must identify: "(1) the drug or drugs the treating physicians are permitted to use on the defendant, (2) the maximum dosages that may be administered, and (3) the duration the drugs may be used before the physicians report back to the court." *Id.* at 765.

Had Jared's case occurred in any of the above jurisdictions, the treatment plan would not have been upheld because the plan did not include the frequency with which medication would be administered, allowing doctors to inject him with "dangerously high dosages of otherwise safe drugs." *Evans*, 404 F.3d at 241.[13]

B. Two state high courts and possibly one federal court of appeals do not apply any minimum standards before a treatment plan can be approved.

Contrary to the federal circuits that have expressly addressed the issue, two states have held that there are no minimum requirements implicit in *Sell*, and an early Second Circuit decision seems to reflect the same.

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[13] As the state appellate court noted: "there is no limit on the number of doses Jared can receive in any given period of time, i.e., on a 'per day' or 'per month' basis. . . . Without this information, it is impossible for a circuit court to know how much of any proposed drug will ultimately be administered to the defendant." *J.D.B.*, 13 N.W.3d 525, ¶¶56-57; (App.52a-53a).

As discussed, the Supreme Court of Wisconsin acknowledged that "a generic treatment plan is insufficient," but overturned a prior intermediate court decision that

> outline[d] a broader itemization of evidentiary requisites: the specific medication, the maximum dosages, the overall duration of the treatment, how the plan applies to the particular defendant, the defendant's age, the defendant's weight, the duration of the defendant's illness, the defendant's past responses to psychotropic medications, the defendant's cognitive abilities, the defendant's current list of medications, and the defendant's medical record.

J.D.B., 31 N.W.3d 314, ¶32 (citing *Green*, 957 N.W.2d 583, ¶38) ; (App.13a). Importantly, the intermediate court pulled that list from the decisions in *Chavez*, *Hernandez-Vasquez*, *Evans*, and *Watson*. *Id.*, ¶38.

Contrary to those three federal courts of appeals, the Supreme Court of Wisconsin opined that *Sell* does not demand that kind of specificity. *J.D.B.*, 31 N.W.3d 314, ¶33; (App.13a). As such, there are no minimum requirements and Wisconsin courts, who already handle these cases in "disparate ways," *supra* at 17n.12, are now left completely unguided in determining whether treatment plans are constitutional.

Before Wisconsin, Pennsylvania reversed a trial court finding that "the Commonwealth has failed to prove, and the record is devoid of any concrete details regarding the particular medication that would be administered, dosages, or how the proposed treatment (monitoring, in

particular) could be accomplished with a defendant on death row." *Commw. v. Sam*, 952 A.2d 565, 572 (Pa. 2008).[14] The Supreme Court of Pennsylvania noted how the trial court relied on *Evans*, which it described as "non-binding lower federal court authority." *Id.*

The court went on to find *Evans* was not "persuasive on the issue of the specificity required with respect to the medication administered to render a psychotic inmate competent to assist counsel." *Id.* at 580. It noted "the requisite level of specificity is difficult to pinpoint in the abstract," but that the government did not need "to provide 'concrete details' of particular medications and dosages to satisfy the second *Sell* factor." *Id.*

In its decision, the Supreme Court of Pennsylvania noted how "other Circuits have not required such specificity." *Id.* (citing *U.S. v. Bradley*, 417 F.3d 1107 (10th Cir. 2005) and *U.S. v. Gomes*, 387 F.3d 157 (2d Cir. 2004)). In both cases, like *Sam*, the courts upheld orders that simply allowed involuntary administration of "antipsychotic medication." Neither case addressed whether specific medications and dosages are required. As stated, the Tenth Circuit would later hold in *Chavez* that an involuntary medication order "must specify which medications might be administered and their maximum dosages." 734 F.3d at 1253.

In addition to Wisconsin and Pennsylvania, the Second Circuit is the only jurisdiction with an opinion suggesting that details regarding particular medications

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[14] Reviewing that decision, it appears that the government sought to forcibly administer antipsychotics, without further explaining which medication or dosages. *Sam*, 952 A.2d at 570 (doctor testified that "antipsychotic medications . . . would be 'the treatment of choice,'" and he "wouldn't dictate a specific choice of medication").

and dosages are not necessary under *Sell*. Unlike the Tenth Circuit, the Second Circuit has not had a case addressing this since *Gomes* was issued in 2004. Given that *Gomes* did not specifically address this issue, it is unknown if the decision would be the same.[15]

With this, there is either a 5-2 or 5-3 split amongst lower courts that have addressed whether there are minimum requirements for a treatment plan to meet the requirement of *Sell*.

III. The decision below is wrong.

The Supreme Court of Wisconsin's opinion is wrong in its analysis of special circumstances and whether there are minimum substantive requirements for treatment plans submitted in support of involuntary medication orders.

A. The special circumstances Jared raised all lessened the State's interest in prosecution to the point where involuntary medication was not warranted.

The Supreme Court of Wisconsin's opinion addressed five different special circumstances and dismissed them all while failing to address Jared's arguments. As a threshold matter, the Supreme Court of Wisconsin stated that: "By using the language "*special* circumstances," [*Sell*] communicated that such mitigating circumstances will not be ordinary." *J.D.B.*, 31 N.W.3d 314, ¶14; (App.6a). This Court suggesting no such

[15] It is also worth noting that it is unclear in many cases what the proposed treatment plan entailed, given variations in how courts discuss it. *Gomes* refers to the government prescribing "a course of anti-psychotic medication," 387 F.3d at 159, but the only detail is that treatment would involve "atypical" antipsychotics. *Id.* at 162. *Cf.*

thing. *Sell* instructed courts to " consider the facts of the individual case in evaluating the Government's interest in prosecution." 539 U.S. at 180. It immediately stated: that "Special circumstances may lessen the importance of that interest." *Id.* The simplest interpretation is that "special" means unique to the case, not rare.[16]

i. A potential insanity acquittal lessens the government's interest in prosecution.

First, as discussed, the Supreme Court of Wisconsin held that a potential insanity acquittal can never diminish the government's interest in prosecution. *J.D.B.*, 31 N.W.3d 314, ¶24; (App.10a). Despite the court's inability to "see how a possible [insanity acquittal] would diminish the State's interest in prosecuting a serious crime," *id.*; (App.10a), it is simple: nearly all the government's interests are undermined by an insanity acquittal.

Once a defendant is acquitted, there is no conviction. This undermines the interest in obtaining the conviction. *See, e.g. Fieste*, 84 F.4th at 726 (noting a conviction limits the ability for a defendant to own a firearm and allows courts to order supervised release to protect the public). Further, the collateral consequences are also addressed by an insanity acquittal. Individuals found insane in a criminal case are barred from possessing firearms. 18 U.S.C. § 922(2)(g)(4); 27 CFR § 478.11(b)(1). Moreover,

[16] This is further evidenced because *Sell* specifically discussed something that "may be rare;" that being situations that would warrant "involuntary administration of drugs solely for trial competence purposes in certain instances." 539 U.S. at 180. Ironically, the Supreme Court of Wisconsin ignored this language entirely in its opinion where it repeatedly invoked the general interests in prosecution while ignoring the facts of the case. *Infra* at 27-30, 32-33.

commitments are designed to address ongoing concerns related to the safety of both the public and the individual if they are, in fact, dangerous. *Infra* at 26, 29-30.

The remaining interests that can be found in the case law are largely generic, and even those are lessened by an insanity acquittal. General deterrence is one, *Fieste*, 84 F.4th at 726, but it is unclear how one can deter conduct that occurs because someone is mentally ill and for which the law recognizes they are not responsible. *See* Wis. Stat. § 971.15(1) ("A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect . . . "). Similarly, appeals to "justice for the community and crime victims," *J.D.B.*, 31 N.W.3d 314, ¶26; (App.11a), are universally applicable and presumably justify prosecution in every case. Reliance on such broad principles by the Supreme Court of Wisconsin is directly contrary to this Court's recognition that the State's interest in prosecution is not absolute. *Sell*, 539 U.S. at 180.

This Court already found that potential for civil commitment undermines—at least to some degree—the government's interest in prosecution. *Id.* There is no reason a potential insanity acquittal would not similarly undermine that interest.

Some argue that because individuals cannot be committed unless there is a showing of dangerousness, [17] the possibility of acquittal might not lower the government's interest in prosecution in cases where dangerousness is absent and a commitment would not follow from the acquittal. *See Mackey*, 717 F.3d at 574 (noting that defendant did not concede he presented a danger as described by 18 U.S.C. § 4246(d)(2)); *see also*

[17] This applies to regular civil commitments and those resulting from insanity acquittals.

Mikulich, 732 F.3d at 699 (defendant had "been cooperative and nonviolent" during incarceration). However, this argument fails to acknowledge that if a defendant overcomes the presumption of dangerousness associated with an insanity acquittal, and proves they are not dangerous, the government's interest in prosecution is significantly lessened, as there is little ongoing risk to the public. Moreover, if the defendant is dangerous, they presumably meet the criteria for a regular civil commitment, without the need to restore competency and prosecute a criminal case to get to that point. *See Sell*, 539 U.S. at 183 (suggesting involuntary medication to address dangerousness should be pursued prior to seeking involuntary medication to restore competency).

Additionally, near-universal adoption of insanity as a defense reflects society's willingness to forgo the traditional punitive interests underlying the criminal legal system. Jurisdictions that have adopted the insanity defense have implicitly agreed that the government does not have an interest in obtaining a conviction or punishing a person who is not responsible for their conduct, due to mental illness. This Court should respect this policy choice. Were there concerns about people being acquitted and not being committed, one would expect jurisdictions to do away with the defense entirely. Because they have not, this should not be a concern.

The arguments of the Sixth Circuit and Supreme Court of Wisconsin that focus on the order of procedures are overly technical. If at the end of a criminal prosecution, the result is an insanity acquittal, then the process did not achieve numerous goals the government has in prosecution. There is no conviction. There is no punishment. There is no general deterrence. If the person is dangerous enough to warrant ongoing supervision and

treatment, that can be achieved through a commitment. If that burden cannot be met—that is society's recognition that the government does not have an interest in that treatment and supervision.

As such, the Supreme Court of Wisconsin wrongly determined that a potential insanity acquittal was not a proper special circumstance that lessened the government's interest in prosecution.

ii. The other special circumstances Jared raised lessened the government's interest in prosecution.

In addition to the possibility of an insanity acquittal, Jared raised several other special circumstances that the Supreme Court of Wisconsin rejected. First, the court rejected Jared's claim that being improperly denied the opportunity for pretrial release and being illegally detained lessened the government's interest in prosecution. *J.D.B.*, 31 N.W.3d 314, ¶25; (App.10a). According to the court, "Jared does not connect the dots on why this alleged legal error . . . is relevant to the State's interest in the prosecution itself. He names the issue but does not explain its supposed mitigating effect." *Id.*; (App.10a). Respectfully, this is untrue. Jared specifically addressed two reasons illegal pretrial detention limited the government's interest in prosecution:

1) the State "has a concomitant, constitutionally essential interest in assuring that the defendant's trial is a fair one," *Sell*, 539 U.S. at 180, and this is undermined by illegal pretrial detention that hampers preparation of a defense, and

> 2) in Wisconsin, defendants can receive outpatient competency treatment, but this is severely limited by being disconnected from housing, already-established mental health services, and natural supports—all considerations for outpatient participation—and by hampering this opportunity the government exacerbates its complained bed shortage and lessens the probability of restoration to competency.

Response Brief of Defendant-Appellant, 39-40, *State v. J.D.B.*, 2026 WI 5, 31 N.W.3d 314, 31 N.W. 3d 314 (No. 2023AP715-CR), 2025 WL 2495260 ("Resp. Br."). Jared made the arguments; the court ignored them.

Second, the court rejected Jared's argument that by not providing timely treatment (*i.e.* allowing Jared to remain untreated in the jail for five months, knowing he needed medication he was not getting) the government's interest in prosecution was lessened. The court "fail[ed] to see the connection." *J.D.B.*, 31 N.W.3d 314, ¶26; (App.11a). According to the court, the government's interest in prosecution is separate from its interest in treatment and the latter could not impact the former. *Id.*; (App.11a). This is plainly contrary to the discussion in *Sell*. The government's interest in involuntarily medicating defendants exists only because it has an interest in prosecution. *Sell*, 538 U.S. at 179. For *Sell*'s purposes, the two are one in the same.[18]

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[18] The court again ignored Jared's arguments "that by not providing adequate or timely treatment it signals that it does not have an important interest in prosecution" and that a lack of bed space was the result of the government failing to adequately fund the necessary number of inpatient beds, further demonstrating the State's lack of interest in prosecution because it was not taking steps to ensure defendants would be restored by the time the commitment expired.

Third, the Supreme Court of Wisconsin rejected Jared's argument that the possibility of a civil commitment would lessen the government's interest in prosecution. *J.D.B.*, 31 N.W.3d 314, ¶27; (App.11a). The court contended that because the commitment proceedings had not begun, it was too speculative that he would be committed in the future.[19] *Id.*; (App.11a). However, this reasoning fails for multiple reasons.

To begin, the government decides whether to pursue a civil commitment; it cannot be that the government can dictate a finding in its favor by choosing to let a mentally ill defendant languish in jail.

Next, the court ignored that there was never a discussion by the trial court about whether a commitment was appropriate, directly contrary to *Sell*. 539 U.S. at 183 ("We consequently believe that a court, asked to approve forced administration of drugs for purposes of rendering a defendant competent to stand trial, should ordinarily determine whether the Government seeks, or has first sought, permission for forced administration of drugs on these other *Harper*-type grounds; and, if not, why not.").

Lastly, the possibility of a civil commitment is an inherently speculative consideration, but that does not mean that courts should not do the analysis. Here, it was plain that Jared was a proper subject for a civil commitment. Jared was mentally ill, Wis. Stat. § 51.20(1)(a)1., the government claimed he could be treated, Wis. Stat. § 51.20(1)(a)2., and he "evidence[d] a substantial

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Resp. Br. at 34-35; *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.")

[19] He was.

probability of physical harm to other individuals" by allegedly threatening to get a gun and kill the people in his home and punching a police officer. Wis. Stat. § 51.20(1)(a)3.b. That the government chose to criminally prosecute instead of seeking a commitment does not mean the latter did not undermine its interest in the former.

Fourth and finally, the Supreme Court of Wisconsin rejected Jared's argument that any eventual sentence would amount to a time-served outcome, given his substantial credit (245 days), youth, and lack of criminal history. The dissent noted how the State "does not really dispute that as a first-time offender, he would likely have received a sentence for the crime well under the statutory maximum of three years of confinement." *J.D.B.*, 31 N.W.3d 314, ¶67 (Crawford, J. dissenting); (App.26a). Similarly, the majority did not dispute the likelihood of a time-served disposition. Instead, it asserted "criminal prosecution serves interests far beyond Jared himself," *id.*, ¶28; (App.12a), without naming a single one.

The Supreme Court of Wisconsin's analysis of the special circumstances is woefully inadequate from any perspective. Even if one agrees with the outcome, the reasoning—the portion lower courts rely on for guidance—is lacking because the opinion ignores Jared's arguments. This Court should step in and provide the necessary guidance to practitioners nationwide by analyzing the special circumstances presented in Jared's case.

B. *Sell* implies that treatment plans must contain information about specific medications and dosages and both must relate to the individual defendant.

The Supreme Court of Wisconsin's opinion is contrary to every federal appeals court that has addressed

the minimum requirements of *Sell*. The only company it has is the Pennsylvania decision that rejected the interpretation that would be adopted by every other court that addressed the issue. Moreover, the Supreme Court of Wisconsin discards tangible minimum requirements for treatment plans and replaces them with a mandate for courts to rubber stamp treatment plans.

Sell repeatedly references the "particular" drugs and course of treatment in setting fourth its factors. 539 U.S. at 182, 183, 185. As stated, courts have repeatedly found this requires information as to particular medication and dosage.[20] *Supra* at 18-20. The amount and frequency are necessary to evaluate "how much of any proposed drug will ultimately be administered to the defendant." *J.D.B.*, 13 N.W.3d 525, ¶57; (App.52a).

And yet, the Supreme Court of Wisconsin held that *Sell* does not require the government to provide trial courts with:

> the specific medication, the maximum dosages, the overall duration of the treatment, how the plan applies to the particular defendant, the defendant's age, the defendant's weight, the duration of the defendant's illness, the defendant's past

[20] Dosage describes the amount and frequency with which individual doses are administered: "A dose is the quantity to be administered at one time or the total quantity administered during a specified period. Dosage implies a regimen; it is the regulated administration of individual doses and is usually expressed as a quantity per unit of time." Tracy Frey & Roxanne K. Young, Correct and Preferred Usage, AMA Manual of Style: A Guide for Authors and Editors (online ed. 2020), https://doi.org/10.1093/jama/9780190246556.003.0011 (last accessed May 15, 2026).

> responses to psychotropic medications, the defendant's cognitive abilities, the defendant's current list of medications, and the defendant's medical record.

J.D.B., 31 N.W.3d 314, ¶¶32-33; (App.13a). However, if *Sell* does not require some, if not all, of those things, what does it require?

The Supreme Court of Wisconsin did not say. It instead ignored the lack of information as to how often medication would be administered, *supra* at 5, 20, ignored Dr. Illichmann overlooking Jared's "complicated medical history," which includes a TBI, hypertension, diabetes, depression, and requires him to take seizure medication, *J.D.B.*, 31 N.W.3d 314, ¶37n.7; (App.15a), and ignored Jared's lack of improvement when he voluntarily took medication. (App.148a).

Instead, the opinion relies heavily on inferences the circuit court **could have** made.[21] It notes how Dr.

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[21] Jared would be remiss if he did not point out that while the Supreme Court of Wisconsin repeatedly offered deference based on the clear error standard of review, the opinion never once notes that the State was required to prove the *Sell* factors by clear and convincing evidence. *U.S. v. James*, 938 F.3d 719, 723 (5th Cir. 2019) (collecting cases to show that all ten federal circuit courts that have considered the question agree on this burden). Jared believes that, if this Court accepts review, it should hold that clear and convincing evidence cannot be met through a series of inferences not put on the record by the trial court. *See U.S. v. Ruiz-Gaxiola*, 623 F.3d 684, 696 (9th Cir. 2010) ("There is a compelling need in cases such as this for the district court to make factual findings so that the defendant may be assured that the trial court has conducted the stringent review mandated in light of the substantial infringement on his liberty interests, and so that upon review the appellate court may determine whether the findings are supported by clear and convincing evidence.")

Illichmann only testified that the proposed medications "help people like Jared—those with psychosis—rather than Jared himself." *J.D.B.*, 31 N.W.3d 314, ¶¶38, 45; (App.15a, 18a). It finds that the "circuit court could reasonably infer from this testimony that Dr. Illichmann thought the medications would also help Jared himself." *Id.*, ¶38; (App.15a). Those inferences ignore that while voluntarily taking medication, Jared continued to swear and spit at staff, urinated and defecated in his room, and exhibited symptoms of schizophrenia. *J.D.B.*, 13 N.W.3d 525, ¶14; (App.34a). They further ignore that the treatment plan asserted Jared had no physical health conditions, (App.148a), and Dr. Illichmann never acknowledged Jared's traumatic brain injury, diabetes, hypertension, or seizure medications.

The Supreme Court of Wisconsin's opinion amounts to 'Dr. Illichmann said so, and that is good enough.' Ironically, "magic words are not necessary," *J.D.B.*, 31 N.W.3d 314, ¶38; (App.15a), but they are, apparently, sufficient. This is contrary to the plain language of *Sell*, which focuses on what courts "must conclude," not what the government's doctors must believe. 539 U.S. at 181. The federal circuits agree, demonstrated by their repeated admonishments that *Sell* requires oversight by trial courts, not handing unbridled authority to government doctors. *See Evans*, 404 F.3d at 241; *Hernandez-Vasquez*, 513 F.3d at 916-17; *Chavez*, 734 F.3d at 1253.

At base, the opinion removes what guidance trial courts had and all it offers is an implicit holding that courts can and should wholly defer to the government's doctors, even when their opinions are based on information not supported by the record. This is contrary to *Sell* and allows recitation of its four factors to overcome a defendant's "'significant' constitutionally protected 'liberty interest' in

'avoiding the unwanted administration of antipsychotic drugs,' *Sell*, 539 U.S. at 178 (quoting *Harper,* 494 U.S. at 221). The Constitution demands more, as most courts have recognized.

Review is warranted to both provide guidance to lower courts on addressing the *Sell* factors and ensure defendants are not deprived of *Sell*'s protections. This case is a good vehicle, because all of the factors were litigated in the courts below, allowing this Court to issue a comprehensive decision and resolve conflicting interpretations of which special circumstances to consider, how to weigh them, and what the government is required to provide to courts to prove that involuntary medication is necessary, least intrusive, and medically appropriate by clear and convincing evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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