

No. 25-7497

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

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

	Page
ARGUMENT.....	1
I. Jared would be relieved of financial liability, if the involuntary medication order were vacated.	2
A. The State has conceded that Jared was medicated.	3
B. Jared is statutorily liable for the costs of the medication.....	5
II. This issue is capable of repetition, yet evades review.....	8
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<i>Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez,</i> 561 U.S. 661 (2010).....	4
<i>Indiana v. Edwards,</i> 554 U.S. 164 (2008).....	10
<i>Nelson v. Colorado,</i> 581 U.S. 128 (2017).....	7
<i>Sauk Cnty. v. S.A.M.,</i> 2022 WI 46, 402 Wis. 2d 379, 975 N.W.2d 162.....	6
<i>Sell v. U.S.,</i> 539 U.S. 166 (2003).....	1, 9
<i>Spencer v. Kemna,</i> 523 U.S. 1 (1998).....	8
<i>State v. Braunsdorf,</i> 98 Wis. 2d 569, 297 N.W.2d 808 (1980)	9
<i>State v. Clark,</i> 162 Wis. 2d 406, 469 N.W.2d 871 (Wis. Ct. App. 1991).....	9
<i>State v. Fitzgerald,</i> 2019 WI 69, 387 Wis. 2d 384, 929 N.W.2d 165.....	3
<i>U.S. v. Juvenile Male,</i> 564 U.S. 932 (2011).....	2

<i>Waukesha Cnty. v. R.D.T.</i> , 2026 WI 24, 421 Wis. 2d 133, 36 N.W.2d 944.....	7
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Statutes

Wis. Stat. § 46.10(2)	5
Wis. Stat. § 51.61(1)(g)3	10
Wis. Stat. § 971.14(5)(a)1	8
Wis. Stat. § 971.14(5)(d)	10
Wis. Stat. § 971.14(6)(a)	9
Wis. Stat. § 971.14(6)(c)	9
Wis. Stat. § 971.14(6)(d)	9

Other Authorities

USA MedPremium, Haloperidol Lactate 5 mg/mL Injection Vial - Antipsychotic Treatment https://usamedpremium.com/product/USAMP80469429/haloperidol-lactate-5-mg-ml-injection-single-dose-vial-1-ml/00143950125	6
ForwardHealth Portal Maximum Allowable Fee Schedule User Guide https://www.dhs.wisconsin.gov/publications/p00957.pdf	5
Transcript of Oral Argument, <i>Nelson v. Colorado</i> , 581 U.S. 128 (2017) (No. 15-1256)	7
Wis. Admin. Code § DHS 1.03	105

ARGUMENT

“Given that the U.S. Supreme Court has offered little guidance on what exactly a government must do to meet its burden under *Sell*,¹ and because litigants frequently debate the import of Wisconsin’s only published case on the matter, this Court should step in to interpret and apply the *Sell* factors.” Pet. for Review, *State v. J.D.B.*, 2023AP000715-CR, 8.²

In an about-face regarding the importance of litigants needing guidance as to the application of the *Sell* factors and whether exceptions to mootness apply, the State of Wisconsin asserts this case is moot and no exceptions apply. While consistent with the State’s position in the state court of appeals, Resp. Br., *State v. J.D.B.*, 2023AP000715-CR, 17-22 (“COA Resp. Br.”),³ this position is inconsistent with the State’s arguments to the Supreme Court of Wisconsin when it sought review of an unfavorable court of appeals’ decision. Pet. for Review, 7-8; (App.5a) (“[N]either party at this stage of review makes a vigorous argument for dismissing this case on mootness grounds. Instead, both ask us to clarify these pressing and disputed issues of law.”).

The State’s view on mootness is transparently tied to whether the most recent decision is favorable to its position. The State sought clarification on *Sell* until it got

¹ *Sell v. U.S.*, 539 U.S. 166 (2003).

² Available online at

<https://wscca.wicourts.gov/api/case/2023AP000715/document/862128>
(last accessed July 31, 2026).

³ Available online at

<https://wscca.wicourts.gov/api/case/2023AP000715/document/723645>
(last accessed July 31, 2026).

its preferred interpretation, and now it asks this Court to decline review.⁴

Regardless of the sincerity of the State’s arguments, this case is not moot, and, even if it were, an exception to mootness applies.

I. Jared would be relieved of financial liability, if the involuntary medication order were vacated.

Jared was medicated because of this order, he is liable for the costs of the medication, and vacating the order would relieve him of that financial obligation. The State’s arguments ignore both truth and its prior concession.

For this Court to have jurisdiction, “a justiciable case or controversy must remain extant at all stages of review, not merely at the time the complaint is filed.” *U.S. v. Juvenile Male*, 564 U.S. 932, 936 (2011) (internal quotes omitted). Following release from custody and supervision, criminal cases are moot unless the defendant can identify “some ongoing collateral consequenc[e] that is traceable to the challenged portion of the sentence and likely to be redressed by a favorable judicial decision.” *Id.* (internal quotes omitted).⁵ Here, that collateral consequence is the financial liability Jared has related to the medication.

⁴ The State’s claim that Jared forfeited his special circumstances arguments is forfeited and waived. Br. in Opposition at 11-12 n.4. The State never argued forfeiture below, *see generally* COA Resp. Br., and it sought review of that issue in the Supreme Court of Wisconsin. Pet. for Review at 19.

⁵ The discussion of mootness was not included in the original petition for two reasons. First, the State asked the Supreme Court of Wisconsin to overlook mootness, so Jared believed it was a non-issue. Second, due to the undersigned’s lack of experience in federal court, he

A. The State has conceded that Jared was medicated.

The State argues there are no collateral consequences of the involuntary medication order “[b]ecause ‘there is no evidence in the record that [petitioner] ever received treatment under the involuntary medication order,’ he cannot even claim a hypothetical consequence of the order: a collection action due to cost-of-care liability.” Br. in Opposition at 6 (quoting App.38a-39a). After initiating this appeal, a competency report was filed stating that Jared was involuntarily medicated between the time the order was entered and when Jared obtained a stay. (App.38a). Jared moved to supplement the record with this information, which the court of appeals denied. (App.38a).

The State does not deny that Jared was medicated pursuant to this order; instead, it relies on the court of appeals’ denial of Jared’s motion to supplement the record. The State fails to inform this Court that in response to Jared’s motion it never contested the accuracy of the report. It argued two things: first, the “report is not evidence that J.D.B. is liable for the cost of any medication rendered involuntarily,” (Supp. App.29supp.a), and second, because the report was filed two months after the appeal was initiated, it should not be made a part of the appellate record. (Supp. App.29supp.a).

The State went on:

was not aware of the jurisdictional component. In Wisconsin, there is a greater range of exceptions to mootness, *see State v. Fitzgerald*, 2019 WI 69, ¶¶21-22, 387 Wis. 2d 384, 929 N.W.2d 165, and it is treated more as a doctrine of judicial restraint.

[f]or these reasons, the State opposes supplementing the record with the report. That said, **for the purposes of this appeal, the State does not dispute that the June 27, 2023 report contains the statement noted in paragraph 8 above.**^[6]

(Supp. App.29supp.a-30supp.a) (emphasis added). After the report was presented, the State stopped contesting that Jared was involuntarily medicated, instead arguing that the report was not evidence of liability.⁷

Despite the court of appeals' refusal to enter the report stating that Jared was medicated into the record, (App.38a-39a), the State has conceded for the purposes of this appeal that Jared was medicated under this order.⁸ While not a stipulation to a fact, this Court should hold the State to its concession. *See Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 675-78 (2010).

⁶ That paragraph reads:

According to CCAP, in a hearing on 04/24/2023, the OTT [Order to Treat] was granted. [J.D.B.] then received one injectable dose before his attorney filed a motion to stay the OTT pending appeal, which was also granted. As such, aside from the one injectable dose he received, [J.D.B.] has not been subject to the provisions of an OTT during his current course of hospitalization.

(Supp. App.16supp.a-17supp.a).

⁷ In the court of appeals, the State argued that Jared was not liable for the costs of the medication, because he could not “separate out liability for medication that is rendered involuntarily.” COA Resp. Br., 20. That is untrue. *Infra* at 5-6; Reply Br., *State v. J.D.B.*, 2023AP000715-CR, 4-6 (available online at <https://wscca.wicourts.gov/api/case/2023AP000715/document/741919>) (last accessed Aug. 5, 2026) (“COA Reply Br.”).

⁸ The court of appeals never addressed the concession, which Jared noted in his reply brief. COA Reply Br. at 4n.1.

B. Jared is statutorily liable for the costs of the medication.

Jared's liability for the cost of the medication is established by statute, not the report that Jared sought to admit. Under Wisconsin law, any person committed under the competency restoration statute "shall be liable for the cost of the care, maintenance, services and supplies in accordance with the fee schedule established by the department under s. 46.03 (18)." Wis. Stat. § 46.10(2). Wis. Admin. Code § DHS 1.03 establishes that the Department of Health Services ("DHS") "shall establish fees for services provided." Despite the State's assertion that the administrative code "does not reveal a fee structure showing it is possible to separate out liability for medication that is rendered involuntarily," COA Resp. Br. at 20, the fee schedules can be found online.⁹

Using the drug search tool to search for injectable versions of haloperidol (the medication the treatment plan said would be administered if Jared refused medication), (App.149a), the minimum dosage that appears is 50mg/mL,

⁹ DHS has published the "ForwardHealth Portal Maximum Allowable Fee Schedule User Guide" ("User Guide"). <https://www.dhs.wisconsin.gov/publications/p00957.pdf> (last accessed Aug. 4, 2026). That guide states:

For most services, Wisconsin Medicaid reimburses providers the lesser of the billed amount or the maximum allowable fee established by the Wisconsin Department of Health Services based on legislative directives. Maximum allowable fee information is available on the ForwardHealth Portal . . .

ForwardHealth User Guide at 1.

The portal can be found at <https://www.forwardhealth.wi.gov/>. ForwardHealth User Guide at 2. A drug search tool is found at <https://www.forwardhealth.wi.gov/WIPortal/Subsystem/Provider/DrugSearch.aspx>. See ForwardHealth User Guide at 76-85.

rather than the 5-10mg proposed by the plan. However, the drug search tool comes with this notice:

ForwardHealth uses the National Average Drug Acquisition Cost (NADAC) pricing for the reimbursement of drugs. When there is not a NADAC reimbursement rate available for the drug, ForwardHealth uses the drug's Wholesale Acquisition Cost (WAC), State Maximum Allowable Cost (SMAC), if available, or the billed amount for reimbursement. Specialty drugs will be reimbursed at the specialty rate.

After further research, it appears that there is no NADAC reimbursement rate for this dose of haloperidol.¹⁰ Regardless of what that cost is, it is apparent that there is a definite and separable cost of the medication Jared was involuntarily injected with.

Despite being unable to ascertain the dollar amount using easily accessed, publicly available sources,¹¹ Jared is liable for the cost of medication under Wisconsin law. The Supreme Court of Wisconsin has now twice held that this liability is mandatory and renders orders associated with such costs not moot. In *Sauk Cnty. v. S.A.M.*, 2022 WI 46, 402 Wis. 2d 379, 975 N.W.2d 162 the court held that individuals are mandatorily liable under the statute. *Id.*, ¶25. As such, “[t]he threat of potential collection actions to

¹⁰ The best estimate of a WAC that Jared could find is a single-dose vial of “Haloperidol Lactate 5 mg/mL Injection Vial” listed at a price of \$70.64. USA MedPremium, Haloperidol Lactate 5 mg/mL Injection Vial - Antipsychotic Treatment <https://usamedpremium.com/product/USAMP80469429/haloperidol-lactate-5-mg-ml-injection-single-dose-vial-1-ml/00143950125> (last accessed Aug. 5, 2026).

¹¹ DHS surely has records of what it injected Jared with and the cost of the medication at the time.

recoup the costs associated with S.A.M.'s recommitment care may follow S.A.M. unless and until his recommitment order is vacated or the liability is satisfied." *Id.* The court further held that "an appeal of an expired recommitment order is not moot because vacating the order would still have" the practical effect of relieving individuals of financial liability. *Id.*, ¶27. The court reaffirmed this interpretation of Wisconsin's mandatory liability for costs associated with these orders in its most recent term. *See Waukesha Cnty. v. R.D.T.*, 2026 WI 24, ¶14, 421 Wis. 2d 133, 36 N.W.2d 944.

Even if it were the case that Jared had satisfied whatever debt was incurred by this order¹² the case would still not be moot, as he would be entitled to recoup those costs. *See Nelson v. Colorado*, 581 U.S. 128, 135-36 (2017) (holding that it violates due process for states to retain fees obtained as a result of overturned criminal convictions); *see also* Transcript of Oral Argument at 48, *Nelson v. Colorado*, 581 U.S. 128 (2017) (No. 15-1256) ("[Y]ou can't give them back whatever time they've spent in jail. You just can't do it, but you can give them the money back.") (Chief Justice Roberts, speaking). The State cannot undo forcibly injecting Jared with antipsychotic medication, but it can refund any costs of that medication already collected.

Pursuant to Wisconsin law, Jared is liable for the costs of the medication he was injected with, and this case is not moot because a favorable resolution will either relieve him of that liability or require the State to refund any money collected.

¹² *See R.D.T.*, 421 Wis. 2d 133, ¶¶15-16 (county argued that if costs were paid, the case is moot),

II. This issue is capable of repetition, yet evades review.

There were less than six months to restore Jared's competency when the circuit court ordered involuntary medication. And, having sole discretion over whether to dismiss Jared's criminal case, the State has chosen to keep it open so that it may prosecute him in the future. As such, this issue is capable of repetition, yet escapes review.

"[T]he capable-of-repetition doctrine applies only in exceptional situations where the following two circumstances [are] simultaneously present: (1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998) (internal citations and quotes omitted).

Under Wisconsin law, the State had one year to restore Jared to competency. *See* Wis. Stat. § 971.14(5)(a)1. By the time the circuit court issued the involuntary medication order, 195 days¹³ of that one year had elapsed. It goes without saying that it would have been impossible for Jared to have fully litigated the appeal through this Court in 170 days.¹⁴ No Wisconsin case will ever reach this Court in the twelve months before the commitment expires.

¹³ Jared was found incompetent and committed for treatment beginning October 11, 2022. (App.24a). The order for involuntary medication was entered April 24, 2023. (App.62a).

¹⁴ It was 505 days from the date the order was entered until the court of appeals issued its decision on September 10, 2024. (App.29a). It was another 533 days before the Supreme Court of Wisconsin issued its decision on February 25, 2026. (App.2a).

The State asserts that “[t]here is no reasonable expectation that petitioner will *again* be subjected to an involuntary medication order with the *same* alleged deficiencies.” Br. in Opposition at 13. It acknowledges that Jared’s criminal case remains suspended. Br. in Opposition at 13. Under Wisconsin law, when a defendant is not restored to competency, their case is indefinitely suspended. Wis. Stat. § 971.14(6)(a).¹⁵ What the State ignores is that Jared was placed under a civil commitment following his discharge. *See* (App.11a) (noting the civil commitment “had not yet begun”), *see also* (App.45a) (noting Jared’s mental health was “currently being addressed through civil commitment proceedings”). Thus, the case resuming is not contingent on Jared “becom[ing] competent on his own.” Br. in Opposition at 13. In fact, Wisconsin law specifically requires notification to the State before any civil commitment order is allowed to expire, so that they can ask the court to order a competency examination and possibly reinitiate proceedings. Wis. Stat. §§ 971.14(6)(c)&(d).

Thus, Jared was subject to a civil commitment designed to treat his mental illness, which the State asserted throughout these proceedings was able to be remediated with medication to the point where Jared could stand trial for the charged offense. *Sell v. U.S.*, 539 U.S.

¹⁵ Only the State can move to dismiss the case at that point. Court’s do not have the inherent authority to dismiss cases. *See State v. Clark*, 162 Wis. 2d 406, 410, 469 N.W.2d 871 (Wis. Ct. App. 1991) (“The authority to seek dismissal, with or without prejudice . . . rests in the discretion of the prosecutor. The trial court then has the discretion to grant or deny the state’s motion.”); *see also* *See State v. Braunsdorf*, 98 Wis. 2d 569, 586, 297 N.W.2d 808 (1980) (Wisconsin courts do not have inherent authority to dismiss criminal cases with prejudice prior to the attachment of jeopardy, except in cases of constitutional speedy trial violations).

166, 181 (2003) (noting that involuntary medication must be “substantially likely to render the defendant competent to stand trial”). The State cannot now say that after initiating a commitment designed to treat that same illness¹⁶ that there is not a reasonable expectation that Jared will be restored to competency and the proceedings reinstated.

Once those proceedings are reinstated, there is always a likelihood that Jared would go off his medication. That occurred in this case; Jared was initially compliant with all medications before he began refusing. (App.89a). Moreover, this Court has recognized that “[m]ental illness itself is not a unitary concept. It varies in degree. It can vary over time. It interferes with an individual’s functioning at different times in different ways.” *Indiana v. Edwards*, 554 U.S. 164, 175 (2008). Wisconsin law recognizes the same, allowing the State additional time to restore a defendant to competency if they are restored to competency and thereafter become incompetent again. Wis. Stat. § 971.14(5)(d). Thus, it is not unreasonable to think that, if the State reinitiates proceedings, Jared will again become incompetent and the State will seek involuntary medication.

Additionally, a decision by this Court would affect any future medication order. Jared specifically seeks review of whether the special circumstances of his case undermined the State’s interest in prosecution. Pet. at 23-30. The State’s interest is not going to become stronger as time goes on. Moreover, the special circumstances raised

¹⁶ Notably, Jared could be subject to forced medication while on commitment, if found incompetent to refuse medications. Wis. Stat. § 51.61(1)(g)3. The Supreme Court of Wisconsin already reversed the court of appeals’ decision on this and found that the State presented sufficient evidence of this in these proceedings. (App.20a-21a).

are all fixed and would need to be considered at any future hearing.

The potential for an insanity acquittal is based on the allegations against Jared and his mental state at the time and will not change for the purposes of this analysis. Pet. at 24-27. Whether the State's interest is undermined by its illegal pretrial detention of Jared is similarly fixed by events that will not change. Pet. at 27-28. That Jared has already been committed due to not being restored will only strengthen that argument when made in the future. Pet. at 29. Finally, Jared's sentence credit only increased following the imposition of the involuntary medication order, further lessening the State's interest in prosecution.¹⁷ Pet. at 30.

If this Court accepts review and finds that the State's interest in prosecution was sufficiently undermined by one or a combination of any of the above special circumstances, then the decision will have a meaningful impact on the litigation. It would ensure the State does not seek a similar order, if it chooses to reinstate proceedings in the future.

¹⁷ Adding 74 days until the proceedings were suspended on July 6, 2023.

CONCLUSION

The appeal is not moot; if the appeal is moot, it is capable of repetition, yet evades review. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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