Can No. 25-_____

IN THE
SUPREME COURT OF THE UNITED STATES

Robert Lewis Dear,

Petitioner,

v.

United States of America,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

When ordering that a criminal defendant be forcibly medicated to restore competence under *Sell v. United States*, 539 U.S. 166 (2003), must a district court specifically contend with substantial evidence that would undermine the case for forcible medication, as the Fourth Circuit requires in *United States v. Watson*, 793 F.3d 416 (4th Cir. 2015), or can a court order forcible medication without even addressing such evidence, as the Tenth Circuit permitted below?

Related Proceedings

- *United States v. Dear*, No. 1:19-cr-00506-REB-1, United States District Court for the District of Colorado (*Sell* order entered September 19, 2022).

- *United States v. Dear*, No. 22-1303, United States Court of Appeals for the Tenth Circuit (judgment entered June 10, 2024; rehearing denied September 20, 2024).

Table of Contents

Page

Appendix

Table of Authorities

Page

Cases

Statutes

Constitutional Provisions

Petition for Writ of Certiorari

Opinion Below

The decision of the United States Court of Appeals for the Tenth Circuit is reported at *United States v. Dear*, 104 F.4th 145 (10th Cir. 2024), and can be found in the Appendix at A21.

Basis for Jurisdiction

The Tenth Circuit issued its opinion affirming the district court's judgment on June 10, 2024. (A21.) The Tenth Circuit denied rehearing on September 20, 2024. (A27.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional Provision Involved

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Statement of the Case

An indictment alleges that in November 2015, Mr. Dear shot multiple people at the Planned Parenthood clinic in Colorado Springs, killing two, then repeatedly shot at law enforcement and firefighters during a five-hour standoff, killing one officer and injuring four others. *United States v. Dear*, 104 F.4th 145, 146. Following the standoff, Mr. Dear was arrested and taken into state custody. *Id.* Over the next several years, Mr. Dear was repeatedly found incompetent to stand trial. *Id.* at 147. Eventually, after charging Mr. Dear with federal crimes, the government moved to forcibly medicate him under *Sell v. United States*, 539 U.S. 166 (2003). *Id.*

The district court held a three-day *Sell* hearing, during which the government and Mr. Dear each presented the testimony of three expert witnesses. *Id.* at 147-48 & n.3. As relevant here, two of the government's experts opined that restoration was substantially likely, while all three defense experts opined restoration was not substantially likely. *Id.* The experts generally agreed on several basic facts underlying their opinions, namely that Mr. Dear suffered from delusional disorder, persecutory type; that delusional disorder was historically believed to be resistant to medication; that his duration of untreated psychosis (DUP) was at least 10 or 15 years; and that he was then in his 60s. *Id.* at 148. Many other points were vigorously disputed, including whether more recent studies overcame the historical consensus that delusional disorder was resistant to medication; whether Mr. Dear's advanced age and exceptional DUP undermined his likelihood of restoration; and whether Mr.

Dear suffered from any cognitive impairments and/or negative symptoms that would hinder his restoration. *Id.*

Following the hearing, the district court issued a written order granting the government's motion, finding that the government proved by clear and convincing evidence that the proposed treatment plan was substantially likely to restore Mr. Dear to competence. *Id.* In support, the district court relied almost exclusively on the ultimate opinions of the government's experts based solely on their general experience in competency restoration and their personal observations of Mr. Dear. *Id.* In other words, the district court did not engage with the bases of their opinions at all nor analyze the disputed issues. Indeed, the district court failed to even set forth, let alone meaningfully analyze, the testimony of Mr. Dear's expert witnesses beyond noting the mere fact that two of them testified and that they disagreed with the government's experts' ultimate opinion.

On appeal, Mr. Dear argued that the district court's findings and analysis were insufficient. In particular, Mr. Dear pointed out that the Fourth Circuit specifically requires a district court's *Sell* order to "contend with substantial evidence that would undermine the case for forcible medication." *United States v. Watson*, 793 F.3d 416, 424 (4th Cir. 2015); *accord United States v. Ruiz-Gaxiola*, 623 F.3d 684, 696 (9th Cir. 2010). Mr. Dear urged the Tenth Circuit to adopt that standard, conclude that the district court failed to satisfy it, and remand for further analysis.

The Tenth Circuit declined to do so and affirmed the district court. *Dear*, 104 F.4th at 150. It acknowledged that this Court's "caselaw does not provide a definitive

standard for the required level of detail in an order directing involuntary medication." Id. at 149. Although it did not purport to establish one, it reaffirmed the "basic principle" that "the need for a high level of detail is plainly contemplated by the comprehensive findings *Sell* requires" and that "orders directing involuntary medication require at least some level of particularized findings." *Id.* It ultimately determined the district court's order satisfied this basic principle. *Id.* at 150. "To be sure," the court recognized, "the district court could have addressed this and other topics in more detail." *Id.* Specifically, "the district court could have offered more explanation for why it placed greater weight on the government experts' opinions and discounted the defense experts' opinions." *Id.* Nevertheless, the Tenth Circuit affirmed.

By declining to adopt the Fourth Circuit's requirement that a district court actually contend with substantial evidence that would undermine the case for forcible medication, the Tenth Circuit created a circuit split. Accordingly, Mr. Dear now petitions for this Court's review.

Reasons for Granting the Petition

This Court should grant certiorari to resolve an important circuit split regarding the procedural requirements for ordering involuntary medication under *Sell*. While the Fourth Circuit requires district courts to "consider and contend with substantial evidence that would undermine the case for forcible medication," *Watson*, 793 F.3d at 424, the Tenth Circuit has now expressly declined to adopt this requirement. This conflict creates inconsistent protections for a fundamental liberty

interest, as defendants in the Fourth Circuit receive more rigorous judicial review of evidence opposing forcible medication than those in the Tenth Circuit.

I. The Tenth Circuit broke with the Fourth Circuit when it declined to require district courts to consider and contend with substantial evidence undermining the government's case for forcible medication.

In *United States v. Watson*, 793 F.3d 416, 424 (4th Cir. 2015), the district court ordered that a defendant suffering from delusional disorder be forcibly medicated in an effort to restore the defendant's competence. In support, the district court relied exclusively on the government's expert while summarily discounting the defense expert's testimony. The Fourth Circuit held the district court's *Sell* order was deficient because it failed to "consider and contend with substantial evidence that would undermine the case for forcible medication," a requirement the Fourth Circuit called "especially important." *Id.*

As the Fourth Circuit explained, there were "substantial questions raised about the government's proposed treatment plan by [the defense expert]—questions never addressed by the magistrate judge or district court." *Id.* at 427. The district court "did not examine and then reject the concerns raised by [the defense expert] in his report, making subsidiary factual determinations." *Id.* at 428. Instead, "they summarily disregarded [the expert's] report in its entirety." *Id.* at 428.

"For example," the Court explained, the defense expert "dispute[d] [the government expert's] reading of the scientific literature," maintaining that "what research does exist as to Delusional Disorder indicates that individuals suffering from the Persecutory Type are 'most resistant' to treatment." *Id.* "Yet these concerns [we]re

barely acknowledged, let alone adequately addressed, in the district court order." *Id.* Likewise, the court's *Sell* order "failed to give adequate consideration to [the defense expert's] concern that [the defendant's] particular persecutory delusions are especially unlikely to respond to treatment" in light of the "chronic nature of [his] illness and the fixed, well established nature of his aberrant thoughts." *Id.* Accordingly, the Fourth Circuit held that the *Sell* order was deficient.

Mr. Dear's case is materially indistinguishable from the underlying facts of *Watson*. As in *Watson*, the district court here never addressed the substantial questions raised by Mr. Dear's three experts in their hours of testimony. It "did not examine and then reject the concerns raised by" Mr. Dear's experts, nor make any "subsidiary factual determinations." *Id.* "Instead," the district court "summarily disregarded [their testimonies] in [their] entirety." *Id.* Indeed, just as in *Watson*, the district court here failed to address the defense experts' view of the scientific literature, namely that patients with Persecutory Type Delusional Disorder are most resistant to medication. And it failed to contend with their testimonies that someone with Mr. Dear's particular circumstances—namely his age, his duration of untreated psychosis, and the strength of his delusions—was especially unlikely to be restored with medication. *Id.* Accordingly, the district court here plainly failed the Fourth Circuit's "especially important" requirement that a district court's *Sell* order "contend with substantial evidence that would undermine the case for forcible medication." *Id.*

On appeal, Mr. Dear urged the Tenth Circuit to adopt the Fourth Circuit's requirement, find the district court failed to satisfy it, and remand for further

findings and analysis. However, rather than address this requirement, the Tenth Circuit summarily distinguished *Watson* on an irrelevant ground.[1] Rather than adopting the Fourth Circuit's standard, the Tenth Circuit recognized only that "orders directing involuntary medication require at least some level of particularized findings." *Dear*, 104 F.4th at 149. In doing so, the Tenth Circuit clearly split from the Fourth Circuit. This Court should grant certiorari to resolve this circuit split.

II. This is an important federal question that warrants this Court's review.

It is not just by virtue of the newly created circuit split that this issue is an important one—it is also important in light of "the vital constitutional liberty interest at stake." *United States v. Bradley*, 417 F.3d 1107, 1114 (10th Cir. 2005). The Supreme Court has long "recognized that an individual has a 'significant' constitutionally protected 'liberty interest' in 'avoiding the unwanted administration of antipsychotic drugs.'" *Sell v. United States*, 539 U.S. 166, 178 (2003) (quoting *Washington v. Harper*, 494 U.S. 210, 221 (1990)). As one judge has put it, what is at stake is that a defendant will "lose freedom over his own thought processes." *United States v. Seaton*, 773 F. App'x 1013, 1022 (10th Cir. 2019) (Bacharach, J., dissenting). Thus, courts have recognized that "*Sell* orders are strong medicines that courts

[1] The Tenth Circuit distinguished *Watson* on the ground that the district court there failed to relate the proposed treatment plan to the defendant's particular circumstances. *Dear*, 104 F.4th 14950. However, that was only one of two *independent* deficiencies in the district court's order. *See Watson*, 793 F.3d at 424, 427, 429. The other one—the one directly relevant to Mr. Dear's appeal and essential to his argument—is that it failed to contend with substantial evidence undermining the case for forcible medication. *Id.* at 427-29.

should not lightly dispense." *United States v. Osborn*, 921 F.3d 975, 982 (10th Cir. 2019).

This unique and important liberty interest "call[s] for equally significant procedural safeguards." *United States v. Ruiz-Gaxiola*, 623 F.3d 684, 692 (9th Cir. 2010). Thus, when issuing a *Sell* order, it is critical that a district court make specific factual findings supporting its determinations. *Id.* at 696. As the Ninth Circuit explained:

> 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.

Id.

Recognizing this, the Fourth Circuit requires a district court to "contend with substantial evidence undermining the case for forcible medication." *Watson*, 793 F.3d 416. Following the decision in Mr. Dear's case, the Tenth Circuit does not. In deviating from the Fourth Circuit's standard, the Tenth Circuit fails to provide sufficient procedural safeguards to ensure that the district court is effectively protecting a defendant's constitutionally protected liberty interests. For example, when confronted with a battle of the experts, a district court need not engage with the bases of any experts' opinions, nor even address the defendant's expert testimony at all. Instead, it is permitted to defer wholesale to the government's experts simply by invoking their general experience in competency restorations and personal observations of the defendant. The problem is that the government's expert is

invariably a Bureau of Prisons psychiatrist with experience in competency restorations who has more access to the defendant than the defendant's own experts. Thus, the Tenth Circuit's watered-down standard creates a regime where a district court can simply defer to the government in every case, regardless of the soundness of the bases of their opinions. *Cf. Watson*, 793 F.3d at 425 ("Permitting the government to meet its burden through generalized evidence alone would effectively allow it to prevail in every case . . . ."). Such a decision would then be virtually unreviewable on appeal.

This standard clearly fails to adhere to the spirit of *Sell*, which contemplated rigorous procedural safeguards designed to ensure that "instances of involuntary medication of a non-dangerous defendant solely to render him competent to stand trial should be 'rare' and occur only in 'limited circumstances.'" *United States v. Valenzuela-Puentes*, 479 F.3d 1220, 1223 (10th Cir. 2007) (quoting *Sell*, 539 U.S. at 169, 180). Given the court's decision below, these instances will be anything but in the Tenth Circuit. Accordingly, this Court's review is warranted.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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