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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA) No. 21CR2627-CAB
11)
Plaintiff,) MOTION OF THE UNITED STATES FOR
12) ORDER DIRECTING BOP TO PROVIDE
v.) INVOLUNTARY MEDICATION PLAN
13)
14 MATTHEW TAYLOR COLEMAN,) DATE: None set
TIME: None set
15 Defendant.)
16 _____)

17 The United States of America moves for an order finding
18 that important government interests are at stake and directing
19 the Bureau of Prisons to provide an involuntary medication plan
20 for defendant Matthew Coleman.

21 1. Coleman was committed to the Attorney General's
22 custody under 18 U.S.C. 4241(d), because evidence suggested he
23 has a mental disease or defect and cannot understand the
24 proceedings or help his defense. A Bureau of Prisons doctor,
25 Burton, evaluated Coleman for 21 weeks and, despite Coleman not
26 participating, thinks he meets the *DSM-5-TR's* criteria for
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1 Unspecified Schizophrenia Spectrum and Other Psychotic Disorder
2 and is not competent to proceed or make decisions in his case.
3 Burton Rep. 4/4/24 at 33, 35. Burton says this is a chronic
4 condition that probably will not remit without antipsychotic
5 medication. *Id.* at 35.

6 The BOP considered involuntarily medicating Coleman under
7 *Washington v. Harper*, 494 U.S. 210 (1990). But an administrative
8 hearing officer thought he did not seem gravely disabled or a
9 danger to himself or others in custody and did not satisfy
10 *Harper's* criteria, 494 U.S. at 227, notwithstanding that in
11 2022, while in custody, he cut himself with a razor, dove
12 headfirst into a toilet, punched himself in the face, and
13 slammed his head into the floor. See Burton Rep. 19-20, 28, 36.

14 2. Unless Coleman is malingering—a possibility, according
15 to Burton, see *id.* at 35—that leaves involuntary medication
16 under *Sell v. United States*, 539 U.S. 166 (2003), as the only
17 other way he might become competent for trial. *Sell* established
18 four requirements for an order to be entered for that purpose.
19 *Id.* at 179-81. One is important governmental interests must be
20 at stake. *Id.* at 180. Circuit decisions say that inquiry must be
21 undertaken in two steps. The first asks if the charged crimes
22 are sufficiently serious to establish such interests; if they
23 are, the second asks if any “special circumstances” lessen that
24 interest. *United States v. Onuoha*, 820 F.3d 1049, 1054 (9th Cir.
25 2016).

1 a. On the first: *Sell* says the "Government's interest in
2 bringing to trial an individual accused of a serious crime is
3 important," 539 U.S. at 180, and Coleman's crimes obviously are
4 serious. The recommended guideline sentence for two counts of
5 first-degree murder without prior convictions is life in prison
6 without an adjustment for acceptance of responsibility and 360
7 months to life in prison with. See USSG 2A1.1 and Chap. 3. The
8 statute *requires* life in prison and made capital punishment a
9 possibility until the Attorney General chose not to seek it. 18
10 U.S.C. 1119, 1111(a)-(b). The advisory or mandatory penalty is
11 the first sign of a crime's severity, *United States v.*
12 *Hernandez-Vasquez*, 513 F.3d 908, 918-19 (9th Cir. 2008), and in
13 this case it is one step below the highest sanction (death) that
14 courts can impose.

15 Decisions like *Onuoha* also have considered "the specific
16 facts of the alleged crime." 820 F.3d at 1055. Onuoha's conduct
17 was "without doubt sufficiently serious to support a strong
18 governmental interest." He made "phone calls to [airport]
19 officials on the eve of the anniversary of the September 11th
20 attacks" that "were reasonably perceived as terrorism threats."
21 *Id.* Serious no doubt, but Coleman took his 10-month-old daughter
22 and 2-year-old son from their mother, stabbed them to death with
23 a fishing spear, and left their bodies in the dirt.

24 b. The question then is whether "special circumstances"
25 override the importance of the government's interest in trying a
26 father accused of murdering his infant children that is
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1 "fundamental to a scheme of ordered liberty and prerequisite to
2 social justice and peace." *Sell*, 539 U.S. at 180. Coleman faces
3 a mandatory life sentence, so the possibility raised by *Sell* and
4 other decisions that he already has served much of his likely
5 sentence is not a factor. *Id.* At all events, *Onuoha* recognizes
6 "there is an important distinction between incarceration itself,
7 and the significance for society of gaining a criminal
8 conviction for a defendant's violation of the law," because
9 conviction serves "general deterrence of the serious crime." 820
10 F.3d at 1056.

11 Another possibility cited by *Sell*, 539 U.S. at 180, is
12 leaving the offender untreated and instead civilly committing
13 him under 18 U.S.C. 4246. But at this stage there is no
14 assurance Coleman meets the criteria for civil commitment. See
15 18 U.S.C. 4246(d) (requiring clear and convincing evidence that
16 release poses a substantial risk of bodily injury to another or
17 serious damage to another's property). *United States v. Ruiz-*
18 *Gaxiola*, 623 F.3d 684, 694 (9th Cir. 2010), *United States v.*
19 *Gillenwater*, 749 F.3d 1094, 1101 (9th Cir. 2014), and *Onuoha*,
20 820 F.3d at 1057, all dismissed this prospect for that reason.
21 At any rate, *Sell* already cautioned that potential civil
22 commitment could only "moderate [and] not eliminate" "the
23 importance of the governmental interest in prosecution." 539
24 U.S. at 186. It might keep Coleman off the street (until he
25 recovers) but disserves other interests. "The Government has a
26 substantial interest in timely prosecution. And it may be
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