No. 24-3707

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RALPH COLEMAN, *et al*.,
Appellee,

v.

GAVIN NEWSOM, *et al*.,
Appellants.

On Appeal from the United States District Court
for the Eastern District of California
No. 2:90-cv-00520 KJM-DB (PC)
The Honorable Kimberly J. Mueller

DEFENDANTS-APPELLANTS' REPLY BRIEF

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INTRODUCTION

This appeal is about whether treatment of personality disorders has been required as a part of the remedy in this case. It has not. For thirty years, this class action has been focused on California's provision of care for its inmates' serious mental disorders. Serious mental disorders have a specific, clearly defined meaning set out not only in the underlying judgment here, but also in the Program Guide that governs the remedy. Both make clear that specific treatment for personality disorders is *not* part of this case's remedial plan.

Nevertheless, Defendants went beyond the requirements of the remedial plan and created an experimental treatment program to potentially address some inmates' dysfunctional behaviors. The district court, however, made those efforts court-ordered, requiring Defendants to implement a new, specific treatment program for personality disorders without first finding that a treatment program is required to remedy a never-before identified Eighth Amendment violation and without engaging in a PLRA needs-narrowness-intrusiveness analysis. This was error.

Plaintiffs misdirect, mischaracterize, and ignore the Program Guide and the history of this case to suggest the Order was proper. They recount, for example, decades of case history and point to inmate suicide rates, suggesting that personality disorders are at the core of both. But everything Plaintiffs cite merely

reference personality disorders in passing and do not suggest that the district court previously considered, let alone included, personality disorder treatment as part of the remedial plan. Instead, those references reveal what Defendants have long understood: Defendants must provide care for inmates' serious mental disorders and mental health symptoms where medically necessary.

Defendants provide individualized treatment based on patient needs. But it does not follow that all mental health issues faced by *Coleman* class members fall within the ambit of the *Coleman* remedy. And the district court cannot identify a mental health issue without regard for the remedial plan's explicit limits and force Defendants to implement a specialized program addressing that issue. As Defendants explain in the Opening Brief and below, personality disorders are one such issue that plainly falls outside the scope of the *Coleman* remedy.

Thus, the district court's expansion of the remedy to include personality disorder treatment despite the Program Guide's exclusionary language and the scope of the judgment is final, injunctive, and, most importantly, legally erroneous and plainly in conflict with the PLRA's requirements. This Court should reverse the Order.

ARGUMENT

I. THE COURT HAS JURISDICTION TO REVIEW THE DISTRICT COURT'S MAY 20, 2024 ORDER.

The Order on appeal is a final, injunctive order. It turned Defendants' voluntary treatment of personality disorders into a court mandate enforceable by contempt, stripping Defendants of their ability to unilaterally withdraw or modify the treatment program when circumstances change.

A. The Order on Appeal is a Final Decision.

The Order is a "final decision" appealable under 28 U.S.C. § 1291. Plaintiffs' argument to the contrary ignores that the Order is the district court's last word on whether focused treatment for personality disorders must be provided as a part of the remedy; the order requires Defendants to implement a pilot program that they cannot change or withdraw from unilaterally; no further proceedings are contemplated on these issues; and, indeed, Defendants have begun implementing that program at San Quentin and Valley State prisons *as ordered*. (1-ER-8.) Because Defendants have no option but to comply, the Order is final. *See Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1065 (9th Cir. 2010) (final decision where "it is possible that no further proceedings would take place before defendants were required to implement the plan that they seek to contest."); *Nat'l Distrib. Agency v. Nationwide Mut. Ins. Co.*, 117 F.3d 432, 433 (9th Cir. 1997) ("A ruling is final for purposes of § 1291 if it (1) is a full adjudication of the issues, and

(2) clearly evidences the judge's intention that it be the court's final act in the matter" (internal quotations omitted)).

Plaintiffs mischaracterize the Order as an "interim step toward further proceedings." (AB 26 (citing *Plata v. Schwarzenegger*, 560 F.3d 976, 980 (9th Cir. 2009).) Plaintiffs speculate that, because Defendants must file a status report in eight months, the district court "is highly likely to issue further orders." (*Id.*) However, the portion of the Order cited by Plaintiffs concerns the "planned roll out of personality disorder *programs* at the *additional 17 prisons* with EOP units, including the *additional* treatment modalities to be offered and at which institutions those will be offered." (1-ER-8 (emphasis added).) In other words, that portion of the Order contemplates the addition of *even more* requirements and modifications to the Program Guide. Plaintiffs seem to suggest that "the State, the Special Master, and the district court" will "assess the results of this pilot program" to determine whether a further roll out of additional personality disorder treatment programs are warranted. (AB 26.) But the Order does not contemplate any such further proceedings. Instead, the Order requires Defendants to file a status report *and* roll out additional programs. (*See* 1-ER-8 (ordering the Special Master to "monitor the pilot programs *and subsequently rolled out programs*") (emphasis added).) In any case, while Plaintiffs, like the district court, anticipate "additional future orders revisiting the pilot and *potentially expanding or modifying the*

program systemwide" (AB 20 (emphasis added)), Plaintiffs tellingly do not anticipate the court scrapping the personality disorder programs altogether.

As this Court explained in *Flores v. Garland*, "[o]rders contemplating further proceedings on the *same issue*, such as case management orders and contempt orders that do not impose sanctions, are unlikely to be final. A final order should not anticipate any further proceedings on the *same issue* and should have some real-world significance." 3 F.4th 1145, 1153 (9th Cir. 2021) (emphasis added). Here, neither Plaintiffs nor the district court contemplate going back on the *issue* of whether specialized treatment for personality disorders falls within the scope of the original judgment and the remedial plan despite personality disorders not being mentioned in this case's judgment and the Program Guide's exclusionary language. The court's ruling on that issue is final, not affected by any future proceedings, and thus appealable under § 1291. Likewise, the court's ruling on whether Defendants must implement the pilot program is final: Defendants are currently implementing the program as ordered.

Plaintiffs' concerns regarding the possibility of piecemeal review are overstated. (*See* AB 26–27.) In the post-judgment context, this Court is "less concerned with piecemeal review when considering post-judgment orders, and more concerned with allowing some opportunity for review, because unless such post-judgment orders are found final, there is often little prospect that further

proceedings will occur to make them final." *Armstrong*, 622 F.3d at 1064 (cleaned up). Like the final order in *Armstrong* that contained "specific features" that governed "future interactions" between defendants and multiple stakeholders, *id*. at 1064–65, the Order here requires Defendants to implement the personality disorder programs "as ordered" (1-ER-8). That the district court may issue future orders "expanding or changing the treatment program at issue" (AB 27) does not render the current Order nonfinal, because any appeals from those future orders will *not* concern the underlying issue of whether the Program Guide contains a standalone treatment requirement for personality disorders. *See Armstrong*, 622 F.3d at 1065 (an order is final where it "did not contemplate further orders except in the event of disagreement between defendants and plaintiffs over the details of the plan."). The time to appeal is now, as Defendants have done. If Plaintiffs were correct that appellate jurisdiction will not lie simply because future orders could expand or change an injunction, then no order would ever be final because the district court could always issue a subsequent ruling expanding or modifying the prior order.

Moreover, the Order also "clearly evidences" the district court's final adjudication over whether the Program Guide includes any requirement for Defendants to implement a personality disorder treatment regime. *Nat'l Distrib. Agency*, 117 F.3d at 433. The Order anticipates no "further proceedings on [that] same issue" and, as explained, has "some real-world" impact on Defendants. *See*

Flores, 3 F.4th at 1153. (*See* 1-ER-06 (Defendants are "required by court order . . . to provide treatment for class members with personality disorders.").) Thus, the Order is final, and this Court has jurisdiction to review it.

B. The Order on Appeal is an Injunction or Modification of an Injunction.

Even if the Order were nonfinal, this Court would nonetheless have jurisdiction under 28 U.S.C. § 1292(a)(1) because the Order is also an injunction. An injunction is an order "(1) directed to a party, (2) enforceable by contempt, and (3) designed to accord or protect some or all of the substantive relief sought by [the] complaint in more than preliminary fashion." *Orange Cty. Airport Hotel Assocs. v. Hongkong & Shanghai Banking Corp.*, 52 F.3d 821, 825 (9th Cir. 1995) (internal quotation marks omitted). The Order bears all the hallmarks of an injunction: it requires Defendants, for the first time, to adopt a wholly new treatment program targeted at personality disorders and does so by expanding the scope of the Program Guide set by prior court orders.

The Order also has the "practical effect of granting or denying an injunction." *Dominguez v. Better Mortg. Corp.*, 88 F.4th 782, 790 (2023). Section 1292(a)(1) "provides jurisdiction to review an interlocutory order that is not labeled as an injunction yet has the 'practical effect of granting or denying an injunction' and threatens 'serious and perhaps irreparable harm if not immediately reviewed.'" *Id.* (quoting *Abbott v. Perez*, 585 U.S. 579, 594 (2018)); *see also Carson v. Am.*

Brands Inc., 450 U.S. 79, 84 (1981)). Plaintiffs contend that the Order merely enforces an existing mandate. (AB 29.) But that contention overstates the scope of the *Coleman* remedy. As Defendants explain in their Opening Brief and below, the Program Guide does not impose a standalone requirement for programmatic treatment of personality disorders. (*See infra*, Argument § II.A.) Indeed, Plaintiffs concede that the Program Guide does not require treatment for incarcerated people diagnosed only with a personality disorder. (*See* AB 6.)

Moreover, the Program Guide certainly does not require Defendants to implement the pilot program or specific treatment modalities identified in the Order. (1-ER-6–8.) Under Plaintiffs' view, any injunction that purports to implement the Program Guide — as they all must do because the Program Guide sets the remedy in this case — would be unappealable. Thus, at the very least the Order has modified the existing injunction by expanding the scope of the Program Guide or gutting its exclusionary language for personality disorders. *See* 28 U.S.C. § 1292(a)(1) (providing appellate jurisdiction over orders "granting, continuing, modifying, refusing or dissolving injunctions . . . .").

None of the cases Plaintiffs cite suggest otherwise. The order in *Coleman v. Brown*, 743 F. App'x 875, 876 (9th Cir. 2018), required state officials to "come into compliance with Program Guide timelines for transfer of class members to inpatient care." It "did not 'change[] the terms and force of the injunction as it

stood immediately prior.'" *Id.* (quoting *Gon v. First State Ins. Co.*, 871 F.2d 863, 866 (9th Cir. 1989).) State officials were merely required to comply with timelines already in place. But here, there is no question that the START-NOW treatment modality, as well as the various other personality-disorder-specific treatment options ordered by the court, are new additions to the *Coleman* remedy. (*See* 2-ER-76 (listing specialized treatment options for personality disorders created to address the unmet needs assessments' findings).) The Program Guide contains no mention of any such programs, and no prior order required these programs either.

Coleman v. Newsom, 789 F. App'x 38, 39–40 (9th Cir. 2019) is similarly distinguishable. There, the order on appeal directed the Special Master (not appellant State officials) to draft a telepsychiatry policy. *Id.* at 40. "The district court [had not] ordered Appellants to comply with the telepsychiatry policy drafted by the Special Master . . . ." *Id.* Because the order was not directed to the appellants and did not even require appellants to comply, it was not an injunction. *Id.* This Order, however, is plainly directed at Defendants and requires compliance. (1-ER-8.)

Plata likewise provides no support. There, this Court found that an order requiring the State to transfer funds to the federal receiver for construction projects was not an appealable order, because the transfer of those funds was already required under the consent decree. 560 F.3d at 980, 982. And the order there

expressly provided that failure to comply would result in an order to show cause and evidentiary hearing on the issue of contempt. *Id*. Under the normal rules for contempt orders, until sanctions were imposed, the proceedings were not final and the order was not appealable. *Id*.

The Order on appeal also "threatens 'serious and perhaps irreparable harm if not immediately reviewed." *Dominguez*, 88 F.4th at 790. The Order not only requires Defendants to implement a new personality disorder program, but also expands the scope of the Program Guide to require specific treatment for personality disorders despite the Program Guide's explicit language to the contrary. And as Plaintiffs note, Defendants have already begun implementing the pilot program. (*See, e.g.* AB 29.) Once the pilot program concludes, the next step is to roll out the program to other CDCR institutions. (*See* 1-ER-8 (requiring roll-out of the program to an additional 17 institutions).) If Defendants had not appealed the present Order, Plaintiffs would surely argue, as they have done multiple times in other appeals, that no jurisdiction lies because Defendants should have appealed the earlier order, *see*, *e.g.*, *Coleman v. Newsom*, 789 F. App'x 38, 39 (9th Cir. 2019) (noting that Defendants did not appeal prior order and the Court therefore lacked jurisdiction over appeal of order "merely reiterating the same limitations enumerated in the [prior order]"); *see also* Answering Brief 35–36, 39, *Coleman v. Newsom*, No. 23-15755 (9th Cir. 2023) (arguing that Defendants

should have "challenged the [prior] Order's injunctive requirements at the time they were set", or should have sought relief as to the prior order under Federal Rule of Civil Procedure 60(b)).

Thus, this Court should exercise jurisdiction under § 1292(a) because the Order on appeal is an injunction and, in any event, satisfies the *Carson* test for jurisdiction.

II. THE REMEDIAL PLAN DOES NOT REQUIRE SPECIFIC TREATMENT FOR PERSONALITY DISORDERS.

Nothing in the history of this case, the underlying judgment, and the Program Guide requires Defendants to create treatment programs targeted at personality disorders. Rather, the remedial plan has always focused on "serious mental disorders," which encompasses the Axis I mental health disorders enumerated in the Program Guide and those disorders that meet the requirement of medical necessity. *Coleman v. Wilson*, 912 F. Supp. 1282, 1300 & n.15 (E.D. Cal. 1995). Thus, prior to the court's Order, Defendants had discretion to explore different, individualized treatment options that may include treatment for personality disorders if such options were available and viable. The Order, however, now makes specific treatment for personality disorders mandatory. This was error.

A. Plaintiffs Misconstrue the History of this Case to Require Personality Disorder Treatment.

As Defendants explained in the opening brief, the history of this case demonstrates that specific treatment for personality disorders has never been part of the remedial plan. Plaintiffs fault Defendants for failing to "cite even one instance where the district court or the Special Master have ever read the Program Guide to exclude personality disorder treatment for class members." (AB 37.) But no citations like this exist because for thirty years, personality disorders *simply were not part of the discussion* because they were outside the scope of remediation. Rather, personality disorders have historically been understood as case factors that make mental health treatment more difficult, not disorders requiring specific treatment. (*See, e.g.*, 1-SER-248, 253 (discussing violent tendencies and personality disorders as obstacles to mental health treatment).) And the repeated "reports" by the Special Master cited by Plaintiffs in their attempt to re-write the history of this case do not come close to suggesting that personality-disorder treatment was always part of the remedial plan.

Instead, every report cited by Plaintiffs highlights the clear distinction drawn between serious mental disorders (which are treated under the Program Guide) and personality disorders (which are not). For example, despite Plaintiffs' suggestion to the contrary, the first report by the Special Master in 1998 neither mentioned personality disorders nor suggested that Defendants were required to provide

personality-disorder treatment. (1-ER-256–263.) Nor could it. As Plaintiffs themselves acknowledged in their filings below, personality disorders were once thought to be an untreatable condition (2-ER-82–83) and many personality disorders still lack evidence-based treatments (3-ER-217).

Subsequent reports by the Special Master are no different. In 2004, the Special Master expressed "consternation" about the lack of inmate candidates for an intermediate inpatient level of care program designed to treat "severely mentally ill inmates with a history of violence and personality disorders." (1-SER-253.) That program, however, was designed to treat the inmates' severe mental illness, not their "history of violence and personality disorders." (*Id.*) The Special Master did not suggest otherwise. Rather, inmates' personality disorders were considered in the same manner as their history (*id.*) or "penchant for volatility and violence" (1-SER-248): case factors that complicate and make mental health treatment more difficult, not disorders that needed specific treatment.

The other reports Plaintiffs cite follow a similar pattern. In each, the Special Master and his team identify inmates with personality disorders who received inadequate treatment, but each inmate had serious mental disorders or displayed significant dysfunction that explicitly require treatment under the Program Guide. (*See, e.g.*, 1-SER-41–42 (major depressive disorder), 43–44 (schizoaffective disorder), 45–47 (schizoaffective disorder and eating disorder), 67–68 (bipolar

disorder), 144–45 (schizoaffective disorder), 145–46 (schizoaffective disorder), 141–43 (suicidal behavior).) And while the Special Master found that more treatment for those individuals was required, the Special Master never said that treatment of personality disorders was part of the *Coleman* remedy or that the Program Guide required specific treatment programs for personality disorders. (*See id.* (focusing on treatment of dysfunctional behaviors of individual inmates).) Moreover, to the extent those inmates' symptoms threatened life or caused serious dysfunction, the Program Guide already requires treatment for those symptoms. (*See* 4-ER-370 ("Mental health intervention is necessary to protect life and/or treat significant disability/dysfunction in an individual diagnosed with or suspected of having a mental disorder.").) Thus, those instances also do not demonstrate a long-held understanding that specific personality disorder treatment is within the scope of the remedial plan.

Plaintiffs also mischaracterize Defendants' "words and actions." (AB 38.) Defendants never understood specific treatment for personality disorders to be a part of the remedial plan. The high-security inpatient program referenced by Plaintiffs (*id.*) sought to provide inpatient treatment for severely mentally ill inmates for whom other treatment options proved difficult because of their history of violence and personality disorders. (1-SER-253–55.) As noted above, that

program was not designed to treat personality disorders or the inmates' penchant for violence. It aimed to treat those inmates' severe mental illness.

Similarly, Plaintiffs truncate and disregard the record with respect to Defendants' treatment programs, none of which sought to specifically treat personality disorders on a programmatic basis. (*See* AB 12–14, 39.) For example, the 2017 Dialectical Behavior Treatment (DBT) program was initially implemented at the California Medical Facility (CMF). (2-ER-77.) However, CMF is a low-security facility and many inmates referred to the DBT program could not transfer to CMF due to their custody factors. (*Id.*) While the DBT Program may have benefited inmates with personality disorders, that program was designed to address behaviors well understood to be within the remedial plan, namely chronic suicidal ideation, "self-harm behavior," and readmissions or recent discharges from higher levels of care. (1-SER-75.)

Likewise, neither the System to Encourage Progress (STEP) nor Steps Towards Accomplishment Growth and Education (STAGE) programs were created to treat personality disorders. (1-SER-38, 94, 99.) As the Special Master explains, the STEP program aimed to "encourage treatment participation and positive patient conduct within the [Psychiatric Inpatient Program] setting." (*Id.*) Because these patients were in the Psychiatric Inpatient Program, they were already diagnosed with a serious mental disorder. (*See* 4-ER-469 (noting criteria for inclusion in the

inpatient program).) The STAGE level system tracks and guides inmates through mental health treatment in a similar way. (1-SER-99.) As with the DBT Program, while the STEP and STAGE systems could benefit inmates with personality disorders, nothing in the Special Master's reports suggests that they were created to treat personality disorders. Indeed, personality disorders are not even mentioned in the reports Plaintiffs cite.

The Positive Behavior Support Team (PBST) program is even further afield. (AB 13, 39.) The Special Master specifically noted that while the PBST was "clinically indicated for many *Coleman* class members" the program "is *not* a specific requirement of the Program Guide." (1-SER-37 (emphasis added).) And, as with all the programs discussed above, Plaintiffs cite nothing to show that the PBST was created to specifically treat personality disorders.

At bottom, Plaintiffs misconstrue the scope of the Program Guide and Defendants' obligations under the remedial plan. Defendants provide individualized treatment to address *Coleman* class members' clinical and sometimes behavioral symptoms caused by Axis I serious mental disorders. In addition, when inmates exhibit mental health symptoms that threaten life or cause serious dysfunction, Defendants also provide treatment for those symptoms, regardless of whether they are caused by personality disorders. But treatment is required because mental health intervention in those cases "is necessary to protect

life and/or treat significant disability/dysfunction in an individual diagnosed with or suspected of having a mental disorder" (4-ER-370), not because it is caused by a personality disorder. These distinctions make sense because, as explained below, the Program Guide focuses on inmates with serious mental disorders or for whom treatment meets the requirements of medical necessity. (4-ER-383–84.)

B. Plaintiffs Misread the Program Guide to Require Specific Treatment for Personality Disorders on a Class-Wide Basis.

The plain text of the Program Guide does not require personality disorder treatment, much less the creation of a program targeted at personality disorders. In the chapter of the Program Guide dealing with the screening procedures and policies for identifying class members, it states:

> It is important to emphasize that the population this program seeks to identify is defined as those inmates who are dysfunctional in the prison environment as a result of a serious mental disorder. **Specifically, these are inmates with a Diagnostic and Statistical Manual (DSM) Axis I diagnosis, with current symptoms, or evidence of medical necessity.** Inmates who are prescribed psychotropic medications are also included in MHSDS. Inmates suffering suicidal ideation shall also receive crisis care to protect life. Mental health intervention is also provided to treat significant disability/dysfunction in an individual diagnosed with or suspected of having a mental disorder.

(4-ER-383–84 (emphasis added).)[1] This paragraph limits the *Coleman* class to inmates with Axis I serious mental disorders, not just any or every inmate with mental health issues.

The subsequent paragraph, which contains the language cited by the district court (1-ER-6), explicitly narrows the scope of the class to exclude sexual, substance abuse, and personality disorders, while clarifying that the excluded disorders are not disqualifying. This paragraph states:

> Mental health issues which may be identified in the screening process, but which are not included in the treatment services provided by the CDCR's mental health treatment programs, are sexual and substance abuse disorders and personality disorders. However, if these mental health issues are also accompanied by an Axis I serious mental disorder or meet the requirements of medical necessity, treatment is provided by the CDCR's mental health treatment programs.

(4-ER-384.) The first sentence expressly excludes the treatment of personality disorders from the treatment provided under the Program Guide. The second sentence simply recognizes that Defendants will provide "treatment" through the mental health treatment programs, but does not require Defendants to provide specific treatment for personality disorders. All it requires is "treatment." And because this action has always been focused on "serious mental disorders" as understood by the underlying judgment, required "treatment" has not and does not

[1] Personality disorders are not Axis I diagnoses. (4-ER-370.)

include specific, across-the-board personality-disorder treatment for all class members with such disorders. *See Coleman*, 912 F. Supp. at 1300 & n.15 (defining "serious mental disorders" as "Organic Brain Syndrome - Severe, Schizophrenia, Major Depression and the Bipolar Disorders" and "offenders with nonpsychotic disorders" who are "sufficiently impaired to meet the [relevant] criteria."); (4-ER-370 (listing "serious mental disorders" governed by the *Coleman* remedy)). Yet, contrary to the remedial plan, the district court now insists upon such a treatment program for its class members with personality disorders despite the remedial plan stating otherwise.

Plaintiffs defend the court's specific treatment requirement based on the second sentence of the Program Guide's exclusionary paragraph, arguing that the "treatment . . . provided" must include personality disorder treatment. (AB 33–34.) But if Plaintiffs' reading were true, that second sentence would read: "[I]f these mental health issues [e.g., personality disorders] are also accompanied by an Axis I serious mental disorder or meet the requirements of medical necessity, treatment *for these mental health issues* is provided by the CDCR's mental health treatment programs treatment." (4-ER-384 (alterations added).) The Program Guide, however, does not include that additional language. Instead, the second sentence serves to clarify that inmates with co-occurring personality disorders are not categorically excluded from the *Coleman* class if they would otherwise be part of

the class. Put simply, the language ensures that *Coleman* class members do not lack serious mental disorder treatment, while leaving any residual, personality disorder treatment to the case-by-case discretion of the medical professionals administering Program Guide care.

Reading the *entire* Program Guide further highlights the unreasonableness of Plaintiffs' expansive interpretation. Personality disorders are mentioned only four times in the entire 600-plus page plan. Other than the single mention in the sentence quoted above, personality disorders are mentioned once in the context of inmate transfers to Department of Mental Health custody to explicitly *distinguish* personality disorders from "mental disorders." (*See* 4-SER-478 (distinguishing security risks "on the basis of mental disorder rather than criminality or personality disorder.").) The remaining two mentions are similarly limited. They explain that inmates with "severe personality disorder that is manifested by frequent episodes of psychosis or depression and results in significant function impairment" cannot be admitted to the Pelican Bay State Prison Secure Housing Unit. (4-ER-503, 517.) Every mention of personality disorders in the Program Guide is narrow, limited, and does not mandate treatment. In fact, every mention of personality disorders in the Program Guide makes clear that treatment for personality disorders is simply not part of the remedial plan.

Plaintiffs' attempt to find support for their expansive reading falls flat. First, Plaintiffs point to exclusionary language for developmental disorders. After the sentences at issue in this appeal, the Program Guide provides:

> While all inmates are screened in the [Reception Center] for developmental disabilities, services for inmates with developmental disabilities, although provided by mental health staff in numerous institutions, are not addressed in this Program Guide, as they fall under the oversight of the Clark Remedial Plan. Inmates with developmental disabilities who also have an Axis I serious mental disorder are, of course, included in the MHSDS, and some inmates with developmental disabilities may be included in MHSDS programs under medical necessity criteria.

(4-ER-384.) As Plaintiffs acknowledge, developmental disorders occupy a unique space in CDCR's healthcare services because those disorders specifically "fall under the oversight of the *Clark* Remedial Plan." (*Id.*; *see also* AB 35.) Moreover, the *Clark* exclusionary language explicitly states that "[i]nmates with developmental disabilities who also have an Axis I serious mental disorders are, of course," not categorically excluded from the *Coleman* class by virtue of their developmental disability — just as with individuals having co-occurring personality disorders — further supporting Defendants' interpretation. (4-ER-384.)

In support of their argument, Plaintiffs also point to the Program Guide's treatment of substance abuse disorders (but notably fail to address sexual disorders, which are addressed in the *same* sentence). Plaintiffs note that the Program Guide

provides a list of fourteen broad "Examples of Treatment Activities," which lists "Substance Abuse Group" as one such example. (AB 35–36 (citing 4-ER-422).) Other "Examples of Treatment Activities" include "Daily Living Skills," "Social Skills/Communication," and "Clinical Pre-Release Group." (4-ER-421–22.) Reading that list in context reveals that those examples are indeed just examples, not mandatory treatment programs, and that Defendants' Enhanced Outpatient Programs "*may* offer some or all of the following treatment activities, depending on the needs of the inmate-patient population and the resources available." (4-ER-421 (emphasis added).) The district court's Order, however, makes a specific personality disorder treatment program mandatory, not discretionary. That Defendants decided to voluntarily provide treatment outside the scope of the Program Guide neither changes the constitutional minima nor expands the Program Guide. *Cf. Rasho v. Jeffreys*, 22 F.4th 703, 713–14 (7th Cir. 2022) (reversing where court imposed injunction with requirements "lifted from [ ] settlement and" voluntary staffing plan because those requirements exceeded the constitutional minima).

Lastly, Plaintiffs argue that the Program Guide requires Defendants to provide individualized treatment for inmate-patients. (AB 36.) Defendants agree that treatment must be individualized, but that does not mean Defendants are required to offer treatment outside the scope of the remedial plan, which requires "an

individualized treatment plan that provides for treatment consistent with [] inmate-patient's clinical needs." (4-ER-419.) Prior to the court's Order, Defendants could explore different treatment options that may include treatment for personality disorders if such options were available and viable. For example, with respect to the 470 class members identified by the Unmet Needs Assessment study, their individualized treatment plans may call for a specialized treatment program not previously offered. (3-ER-217.) But the fact that 470 inmates—out of the total *Coleman* class of more than 32,500 inmates (3-ER-176)—may benefit from specialized treatment does not mean that specific, class-wide personality disorder treatment is part of the overarching *Coleman* remedy.

The Order, however, now makes specific treatment for personality disorders mandatory class-wide. (1-ER-6, 8.) It does so without finding an Eighth Amendment violation connected to personality disorders, without conducting a PLRA analysis, and without meaningfully analyzing (as Plaintiffs attempt to now do) whether the Program Guide already required it.[2] If Plaintiffs believe that the judgment and Program Guide need to be modified to require specific treatment for personality disorders, they could move to modify through a Rule 60 motion. But

[2] Indeed, none of Plaintiffs' arguments interpreting the Program Guide find any support in the Order. (*See generally*, 1-ER-2–8.) The Order merely ordered Defendants to provide focused treatment for personality disorders without analyzing whether Defendants had a pre-existing obligation to do so.

the district court cannot unilaterally expand the remedy without making the necessary findings.

III. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO MAKE THE REQUISITE PLRA FINDINGS.

Plaintiffs do not dispute that the district court failed to conduct a PLRA analysis. While no "magic words" are required to satisfy the PLRA, the district court must still identify the correct legal standard. *Armstrong*, 622 F.3d at 1070. Because the Order does not do so, this Court should reverse.

A. The Order Is Not Necessary to Remedy the Eighth Amendment Violation.

Even if the district court had a proper basis to expand the *Coleman* remedial plan to include personality disorders, courts cannot order prospective relief without first finding that the relief is "necessary to correct the violation of the federal right" at issue. 18 U.S.C. § 3626 (a)(1)(A). For thirty years, the constitutional question underlying this case has been understood to be "whether the mental health care delivery system operated by defendants is so deficient that it deprives seriously mentally ill inmates of access to adequate mental health care." *Coleman*, 912 F. Supp. at 1298. And there has been "no trouble" or dispute over the definition of "serious mental disorders," which encompasses the Axis I mental health disorders enumerated in the Program Guide and those disorders that meet the requirement of medical necessity. *Id.* at 1300 & n.15. (*See also* 4-SER-370.) Critically, "serious

mental disorders" have *never* included personality disorders when they do not meet the requirements of medical necessity defining class membership. (4-SER-370.)

Plaintiffs do not meaningfully dispute that long-understood definition of "serious mental disorders." They simply cite to the district court's class certification order, but, as they acknowledge, that order defines the class as "prisoners with serious mental disorders." (AB 44 (quoting 1-SER-147).) And, as noted, "serious mental disorders" has a clear definition set out in the district court's judgment, *Coleman* 912 F. Supp. at 1300 & n.15, and repeated in the Program Guide (4-SER-370) — and notably does not include personality disorders. No part of the class certification order or judgment cited by Plaintiffs challenges that definition or scope of this class action.

Instead, Plaintiffs truncate and quote to the district court's 2014 order to suggest that the district court understood the Eighth Amendment right to include "borderline personality disorders" or "impulse-ridden personalities." (AB 42.) But that order mentions personality disorders once and only in a footnote discussing a *separate* class action lawsuit relating to Secure Housing Unit placement of "the already mentally ill, as well as persons with borderline personality disorders, brain damage or mental retardation, impulse-ridden personalities, or a history of prior psychiatric problems or chronic depression." *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1104 n.47 (E.D. Cal. 2014). The 2014

order does not come close to suggesting that personality disorders are part of the *Coleman* remedial plan.

Because the relief ordered by the district court exceeds the scope of this lawsuit and raised the constitutional floor by locking in Defendants' experimental efforts to identify more effective treatment services and strategies, the Order should be reversed. *Pacific Radiation Oncology, LLC v. Queen's Medical Center*, 810 F.3d 631, 636 (9th Cir. 2015).

B. The Order Is Not the Least Intrusive or Narrowly Tailored Means to Address Patients with Personality Disorders.

The PLRA prohibits courts from issuing prospective relief unless they find that the relief is narrowly drawn and the least intrusive means necessary to correct the constitutional violation. 18 U.S.C. § 3626(a)(1)(A). These findings are mandatory in every prison condition case regardless whether the prospective relief is designed by the State. *Oluwa v. Gomez*, 133 F.3d 1237, 1239 (9th Cir. 1998).

Plaintiffs argue that the Order was minimally intrusive because it only ordered Defendants to implement a pilot program they designed. (AB 46–47.) But as Defendants explained in the Opening Brief, that alone does not satisfy the PLRA. (*See* AOB 20–21.); *Rasho*, 22 F.4th at 713–14. This is particularly true when the pilot program in question sought to address inmates' personality disorder issues outside of *Coleman* and as part of their general responsibility to care for inmates in their custody, or efforts to exceed the constitutional minimum. (1-ER-

20.) As the Seventh Circuit correctly noted, prison officials may promulgate policy or enter agreements that exceed the constitutional minimum and are not the least intrusive means to safeguard federal rights. *Rasho*, 22 F.4th at 713–14; *Westefer v. Neal*, 682 F.3d 679, 682, 686 (7th Cir. 2012). Courts, however, may not make such policies or agreements court-ordered and deprive prison administrators of future operational flexibility and discretion under the PLRA. *Westefer*, 682 F.3d at 685.

Plaintiffs criticize *Rasho* as contravening this Court and the Supreme Court's precedent, but their attempt to undermine the decision are thin. While this Court has held that a plan drafted and promulgated by the State may undermine an intrusiveness argument, *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1071 (9th Cir. 2010), no precedents from this Court and the Supreme Court have assumed that State-created policies or programs are automatically the least intrusive or most narrowly drawn means to address the federal right. *Rasho* exemplifies why this assumption does not suffice. There, the district court adopted a prison's staffing plan into court-ordered relief even though the plan "explicitly stated that it set staffing levels sufficient to *exceed* the constitutional minimum." 22 F.4th at 714 (emphasis in original). Relief that exceeds the constitutional minimum, however, "can hardly be the least intrusive means of correcting a constitutional violation." *Id.*

The same is true here. In response to the court-ordered assessment, Defendants created a personality disorder treatment program that they repeatedly stated was not required by the Eighth Amendment. (1-ER-20; 2-ER-74–75.) And Defendants repeatedly explained why: Not only was the treatment program outside the scope of the Program Guide, "there is not currently an unambiguous correctional standard for specialized treatment for some or all personality disorders" and "there is no clear single standard treatment guaranteed to be effective, even for the percentage of patients that agree to engage with treatment." (2-ER-75.) Treatment that is neither supported by an unambiguous standard nor necessarily effective, cannot be the least intrusive means to address inmates' mental health needs. Plaintiffs disagree with Defendants' assessment (*see* AB 50 n.6) and the district court was free to share that disagreement, but the PLRA requires the court to explain its reasons why and provide evidentiary support for its analysis. The court engaged in no analysis whatsoever, and therefore its Order fails to comply with the PLRA.

Moreover, Defendants' dispute with the Order goes beyond its requirement that Defendants implement the pilot program. The Order violates the PLRA because it also expanded the scope of the Program Guide to include specific treatment for personality disorders class-wide to address the special mental health needs of just 470 class members. A class-wide expansion of the remedial plan to

treat less than two percent of the class (*see* 3-ER-176 (estimating size of *Coleman* class to be "more than 32,500 patients") cannot be the "least restrictive" or "narrowly tailored."

For the same reason, Plaintiffs' rebuttal to the PLRA's narrowly tailored requirement is unavailing. They confusingly argue that Defendants failed to provide a narrower alternative. (AB 52–53.) First, Defendants had no obligation to propose a narrower alternative. If the court is to impose an injunction in a prison condition case, the court must ensure that the injunction is necessary and the most narrowly tailored and least intrusive way to remedy any federal rights violation. 28 U.S.C. § 3626(a)(1)(A). Second, Defendants did in fact pursue a narrower alternative: they proposed further study of the 470 identified patients and created experimental treatment options targeted at those patients while noting that those options may need to be removed or replaced as appropriate. (2-ER-76.) The court, however, made those options court-ordered, locked Defendants into providing those options,[3] and expanded the scope of the remedial plan by requiring personality disorder treatment across the board. (1-ER-8.) Thus, the Order failed

[3] Plaintiffs suggest that the Order left "flexibility for the State to propose a fine-tuning, or even a full revamp, of its initial plan." (AB 49–50.) But ordering Defendants to implement the plan, subjecting it the Special Master's monitoring, and requiring Defendants to obtain Plaintiffs' and the Special Master's approval before seeking court ratification to make any such changes to the plan is not "flexibility."

to comply with the PLRA's needs-narrowness-intrusiveness requirements and constituted an abuse of discretion.

CONCLUSION

The Court has jurisdiction to hear this appeal and it should reverse the district court's order.

Dated: November 12, 2024

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
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