No. 21-55395

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LA ALLIANCE FOR HUMAN RIGHTS, et al.

Plaintiffs-Appellees,

v.

CITY OF LOS ANGELES, et al.

Defendants-Appellants.

Appeal From The United States District Court
Central District of California, Case No. 2:20-cv-02291
Hon. David O. Carter

APPELLANT'S REPLY IN SUPPORT OF EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR STAY PENDING APPEAL

MILLER BARONDESS, LLP
Louis R. Miller
* Mira Hashmall
Emily A. Rodriguez-Sanchirico
1999 Avenue of the Stars, Suite 1000
Los Angeles, California 90067
Telephone: (310) 552-4400
Facsimile: (310) 552-8400

OFFICE OF COUNTY COUNSEL
Rodrigo A. Castro-Silva
Lauren M. Black
Amie S. Park
500 West Temple Street, #648
Los Angeles, California 90012
Telephone: (213) 974-1830
Facsimile: (213) 626-7446

I. INTRODUCTION

Plaintiffs are attempting to prop up a sweeping injunction issuing relief that exceeds what they asked for based on a nonexistent record and claims that fail as a matter of law. To do so, they resort to empty rhetoric and vague statements about "robust hearings" and "acts and omissions."

There were no "robust hearings." In early 2020, the parties agreed to a stay and authorized *ex parte* communications for the limited purpose of engaging in settlement negotiations. As part of those negotiations, the parties participated in mediation sessions and status conferences. On April 12, 2021, Plaintiffs filed their motion for preliminary injunction. The next day, the district court lifted the stay. One week later, the district court issued its 110-page injunction. The facts are lifted from newspaper articles and other publicly available sources, with a smattering of sound bites from status conferences—not evidentiary hearings. Many of the facts are wrong. For example, the district court chastises the County for not issuing an emergency declaration on homelessness. In fact, the County issued that exact declaration over four years ago.

As for the County's "acts and omissions," Plaintiffs point to the "long history of statutory and constitutional failures" and parrot back the district court's sweeping statements on "political paralysis" and "systemic inequality." Federal courts are tasked with adjudicating cases and controversies. The controversy here

is found in Plaintiffs' Complaint—which Plaintiffs do not cite to a single time—not the history of structural racism in this country.

The Complaint alleges that the members of LA Alliance are business owners and residents in the Skid Row area of LA who want the encampments of people experiencing homelessness ("PEH") cleaned up. Paragraphs 76-122 detail representative members of LA Alliance—no one is currently experiencing homelessness. Plaintiffs now point to declarations submitted in support of their motion for preliminary injunction and an updated website description to argue that they are speaking on behalf of PEH too. That website did not include any mention of PEH members until this month. Plaintiffs are playing games with standing. They are making it up as they go.

Standing games aside, Plaintiffs' claims are not supported by the law and the district court lacks authority to usurp the role of County officials by directing policy and identifying how taxpayer dollars should be spent. As the County has argued, the school desegregation and Prison Litigation Reform Act ("PLRA") cases do not apply here. Plaintiffs have not established affirmative conduct by the County that deprived them of their constitutional rights, the Supreme Court has not directed the district courts to act, and there is no statutory framework authorizing injunctive relief.

The County's actions have been directed at helping its residents. The County has dedicated hundreds of millions of dollars annually, along with other resources, to address homelessness. There are no state laws or constitutional grounds for the extraordinary relief issued here. The County and the public will be harmed, not helped, by this injunction. A stay is necessary.

II. THERE IS NO BASIS FOR REMAND

Plaintiffs argue that the appeal should be remanded because the injunction is not the district court's final order. (Opp. at 5-8.) Their argument is based on the premise that the district court "reopened the preliminary injunction order" by ruling on the County's *ex parte* application for a stay pending appeal. That is incorrect. The Federal Rules of Appellate Procedure required the County to first ask the district court for the stay. Fed. R. App. P. 8(a)(2)(A)(ii). The district court denied the bulk of the County's application, granting a *temporary* stay pending a May 27, 2021 hearing, and only as to one element of the injunction.

Plaintiffs' cases are inapposite. The district court did not express a willingness to vacate (*Int'l Sch. Servs., Inc. v. AAUG Ins. Co.*) or modify (*United States v. Spectrum Brands, Inc.*) the injunction. The County did not file, and the district court did not grant, a motion for reconsideration (*Bistodeau v. United States*) or a request for remand (*Balbuena v. Sullivan*). The district court certainly did not vacate the injunction (*Bank of America, NA v. SFR Investments Pool 1*,

LLC). All the district court did was rule on a stay application that the County was required to file before seeking relief in this Court.

III. THE INJUNCTION SHOULD BE STAYED PENDING APPEAL

A. The County Did Not Have Three Months' Notice

Plaintiffs contend the County had "at least three months' notice" of the injunction. (Opp. at 10-11.) They point to the district court's orders, issued before Plaintiffs' motion was filed, asking the parties to brief the limits of its equitable authority. The County complied with those orders and respectfully informed the district court that it could not issue the type of injunctive relief it might be contemplating. But the vague knowledge that a district court is contemplating testing the limits of its authority is not notice. Moreover, unsworn statements made at status conferences are not part of the record on Plaintiffs' motion. The County saw the district court's "evidence" and learned about its novel legal arguments for the first time on April 20, 2021—the day the injunction issued.

B. Plaintiffs Are Rewriting Their Complaint

The district court's authority is limited to the "case or controversy before it." *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015). Plaintiffs' Complaint does not support this injunction, so they ignore it. Instead, they point to declarations from new members of LA Alliance and an updated website description. (Opp. at 12-13.) As of February 26, 2021, the

website made no mention of PEH members. Now under a microscope, Plaintiffs rewrote their website to include PEH, just as they seek to rewrite their claims. This was never an advocacy lawsuit—Plaintiffs want the sidewalks cleared of PEH and criminal enforcement against unhoused individuals in Skid Row to resume.

C. Plaintiffs Lack Standing

With respect to traceability, Plaintiffs argued that the district court "comprehensively identified" the County's conduct and traced it to Plaintiffs. (Opp. at 13.) That is far from true. Plaintiffs are not even mentioned in the 110-page injunction. Instead, the district court detailed its own take on the history of structural racism and systemic inequality. Many of the "facts" lack evidentiary support, and they are traceable to, if anyone, society at large—not the County. Neither the district court nor Plaintiffs have explained how the County's efforts to provide services to PEH somehow *harmed* Plaintiffs. There is no showing—no evidence—that the County caused anyone to inhabit the homeless encampments in Skid Row.

Redressability remains the elephant in the room for Plaintiffs. The County has not acted to deprive Plaintiffs of their constitutional rights, and the district court does not have authority to tell local government how to handle homelessness. This is not *Brown v. Plata*, 563 U.S. 493 (2011), where the PLRA authorized a three-judge district court to issue an injunction when several conditions were met.

It is also not *Brown v. Board of Education*, 349 U.S. 294 (1955), or the related desegregation cases. There is no facially discriminatory policy of segregation and no Supreme Court admonishment to carry out "judicial appraisal" of public schools. *Id*. at 299.

Plaintiffs also point to *Rodde v. Bonta*, 357 F.3d 988 (9th Cir. 2004), and *Harris v. Board of Supervisors, Los Angeles County*, 366 F.3d 754 (9th Cir. 2004), to support the proposition that the district can enjoin "current or imminent statutory violations." (Opp. at 15.) Both cases related to whether a district court could enjoin the County from closing a public hospital, where doing so would eliminate necessary medical services. *Rodde*, 357 F.3d at 998; *Harris*, 366 F.3d at 764. The relief (an injunction barring closure of the hospital) was connected to plaintiffs' injuries (limited or nonexistent access to medically necessary services) and statutory rights (under the ADA and Welfare and Institutions Code). Plaintiffs were indigent and uninsured county residents who relied on the county healthcare system. *Rodde*, 357 F.3d at 993; *Harris*, 366 F.3d at 758.[1]

Here, there is no statutory violation, no constitutional violation, and thus no factual or legal basis for injunctive relief.

[1] Plaintiffs also cite *Tyler v. Cuomo*, 236 F.3d 1124 (9th Cir. 2000). (Opp. at 14.) In that case, plaintiff residents were suing over one specific project they wanted enjoined. Here, Plaintiffs are suing over homelessness and seek to dictate how local government tackles it. *Tyler* does not show redressability here.

D. There Is No County-Created Danger

Plaintiffs resort to conclusory allegations that "[t]he County has placed its homeless and housed constituents in danger and then, knowing the health and safety risks involved, acted with deliberate indifference to those risks." (Opp. at 16.) The County has done nothing of the sort. It created the Los Angeles County Homeless Initiative, declared a homelessness emergency, supported the adoption of Measure H to fund comprehensive solutions, and designed a regional approach to combat homelessness in Los Angeles County.

Plaintiffs point to inapposite cases. In *Santa Cruz Homeless Union v. Bernal*, No. 20-cv-09425-SVK, 2021 WL 222005 (N.D. Cal. Jan. 20, 2021), a district court granted a motion for preliminary injunction to stop closure of one specific homeless encampment, in which plaintiffs lived. Here, the district court's injunction lacks that narrowly tailored specificity. It is, in essence, an order to allow the district court to dictate homeless policy in the Skid Row area—and beyond.[2] The injunction also paves the way for exactly what the *Santa Cruz* plaintiffs did not want—enforcement of city ordinances.

[2] Citing to *Hernandez v. City of San Jose*, 897 F.3d 1125 (9th Cir. 2018), also underscores what this case is not. In *Hernandez*, this Court was dealing with a motion to dismiss—not a 110-page injunction. This Court held only that allegations that officers required plaintiffs at a rally to walk directly into violent protesters were sufficient at the pleading stage. *Id*. at 1133.

E. Plaintiffs Pay Lip Service To "Other Constitutional Claims"

Plaintiffs dedicate one paragraph to "other constitutional claims." (Opp. at 17-18.) Plaintiffs claim the district court applied "well-established law." (*Id.*) In contrast, the district court said it was "advanc[ing] equal protection jurisprudence" by concluding that "state inaction has become state action that is strongly likely in violation of the Equal Protection Clause." [Dkt. 277 at 78, 76-79.] There is no basis in this record to expand the contours of the law to address what Plaintiffs vaguely describe as "historical failures and intentional discriminatory treatment." (Opp. at 18.) The injunction has grown a life of its own, completely untethered from the Complaint or the Plaintiffs who filed it.

F. Plaintiffs Misread The Welfare And Institutions Code

Plaintiffs try to convert Welfare and Institutions Code section 17000 from a statute requiring the County to provide general assistance and medically necessary care for indigent residents into a springboard for unprecedented injunctive relief. In the motion they argued that "housing is healthcare." They now assert that the County's purported failure to provide sufficient beds and services for mentally ill persons is the basis for the injunction. (Opp. at 19.) At the core, Plaintiffs want to substitute their judgment for the County's and adopt their own standards for care.

G. The County Will Be Irreparably Harmed

Plaintiffs fashion themselves as public policy experts to argue that the County can easily comply with the injunction. (Opp. at 8-10.) It is arrogant to suggest that Plaintiffs know better than the public servants who have dedicated their careers to serving the people of the County.

Plaintiffs misunderstand sound policymaking when they suggest the County can quickly build tiny homes, membrane structures, and modular units. Plaintiffs' declarations—which were improperly filed with their Opposition—claim it is possible to "work with 3-4 contractors simultaneously to build 3-4 separate structures to accommodate the immediate need of 2,093 beds." (Declaration of David Renard ¶ 4.)

Plaintiffs' newly-minted evidence is a sideshow. The County cannot ignore the regional nature of homelessness by focusing its efforts on the Skid Row area at the expense of other PEH in the region. That would have an immediate adverse impact on services and shelter throughout the County. It is a shortsighted "out of sight, out of mind" solution to a complex problem.

H. Plaintiffs Have Not Shown They Will Be Injured If A Stay Issues

Plaintiffs state they "are in fact PEH living in Skid Row and face very real risks every day." (Opp. at 20.) Given their recent website machinations, Plaintiffs

appear more like self-serving chameleons. Plaintiffs fail to point to any *evidence* that a stay pending appeal will harm them.

I. The Public Interest Favors A Stay

Plaintiffs argue the injunction would not require a "shift in priority for the County." (Opp. at 20.) It would. (*See* County's Motion at 28-30.) They contend the County should simultaneously work on interim solutions and permanent solutions. But policymaking is best left to elected officials and subject matter experts. As Intervenors' experts explained, the injunction "would have a significant negative impact not only on people living in Skid Row, but also to those people experiencing homelessness outside of Skid Row, and the community as a whole. . . . . [I]t will elevate form over substance, offers of shelter over real housing solutions." [Dkt. 275 at 12:25-13.3.]

IV. CONCLUSION

The County respectfully requests that the Court grant its motion and issue a stay pending appeal.

DATED: May 5, 2021

MILLER BARONDESS, LLP

By: _____

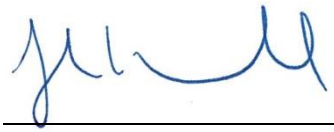
MIRA HASHMALL
Attorneys for Defendant and Appellant
County of Los Angeles

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2021, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. Counsel in this case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

DATED: May 5, 2021

MILLER BARONDESS, LLP

By: 

MIRA HASHMALL
Attorneys for Defendant and Appellant
County of Los Angeles

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 2,115 words and the page limitation of Circuit Rule 27-1 because it does not exceed 10 pages. This motion complies with the typeface and type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

DATED: May 5, 2021

MILLER BARONDESS, LLP

By: 

MIRA HASHMALL
Attorneys for Defendant and Appellant
County of Los Angeles

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1999 Avenue of the Stars, Suite 1000, Los Angeles, CA 90067.

On May 5, 2021, I served true copies of the following document(s) described as:

APPELLANT'S REPLY IN SUPPORT OF EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR STAY PENDING APPEAL

on the interested parties in this action as follows:

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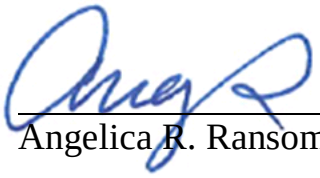
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 5, 2021, at Los Angeles, California.



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Contact Info	Case Number/s	Service Preference	ECF Filing Status
Lauren Michelle Black 6th Floor 648 Kenneth Hahn Hall of Administration 500 West Temple Street Los Angeles, CA 90012-2713 Email: lblack@counsel.lacounty.gov	21-55395	Email	Active
Christian Contreras Guizar, Henderson & Carrazco, LLP 3500 W. Beverly Blvd. Montebello, CA 90640 Email: ccontreras@ghclegal.com	21-55395	Email	Active
Jennifer Mira Hashmall Miller Barondess, LLP 1999 Avenue of the Stars Suite 1000 Los Angeles, CA 90067 Email: mhashmall@millerbarondess.com	21-55395	Email	Active
Byron Jesse McLain Foley & Lardner LLP 555 S. Flower Street Suite 3300 Los Angeles, CA 90071-2418 Email: bmclain@foley.com	21-55395	Email	Active
Louis R. Miller Miller Barondess, LLP 1999 Avenue of the Stars Suite 1000 Los Angeles, CA 90067 Email: smiller@millerbarondess.com	21-55395	Email	Active
Elizabeth A. Mitchell Spertus, Landes & Umhofer, LLP 617 West 7th Street Suite 200 Los Angeles, CA 90017 Email: emitchell@spertuslaw.com	21-55395	Email	Active
Amie Park Los Angeles County Counsel Sixth Floor 500 West Temple Street Los Angeles, CA 90012 Email: apark@counsel.lacounty.gov	21-55395	Email	Active

Contact Info	Case Number/s	Service Preference	ECF Filing Status
Emily A. Rodriguez-Sanchirico Miller Barondess, LLP 1999 Avenue of the Stars Suite 1000 Los Angeles, CA 90067 Email: esanchirico@millerbarondess.com	21-55395	Email	Active
Matthew Umhofer Spertus, Landes & Umhofer, LLP 1990 South Bundy Drive Suite 705 Los Angeles, CA 90025 Email: matthew@spertuslaw.com	21-55395	Email	Active