UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 26 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WILLIAM RAY ESPOINOZA,

Plaintiff,

and

WILLIAM ESPINOZA, Jr.; et al.,

Plaintiffs-Appellants,

v.

STANLEY SNIFF, an individual; et al.,

Defendants-Appellees.

No. 15-56890

D.C. No.
5:14-cv-00085-JGB-SP

MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Argued and Submitted July 13, 2017
Pasadena, California

Before: REINHARDT, FERNANDEZ, and WARDLAW, Circuit Judges.

Espinoza appeals the district court's refusal to instruct the jury on presumptive negligence under California Evidence Code § 669 based on alleged violations of the Riverside County Sheriff's Department Corrections Division Policy regarding classification and housing, which plaintiffs contend led to the death of an inmate.

California Evidence Code § 669.1 provides that an internal policy cannot be the basis of a presumptive negligence instruction unless it "has been formally adopted as a statute, as an ordinance of a local governmental entity, . . . or as a regulation by an agency of the state pursuant to the Administrative Procedure Act." There is no indication that the Policy was ever so adopted. Instead, Espinoza points out that a state regulation (Cal. Code Regs., tit. 15, § 1050) required the jail to adopt *some* policy governing inmate classifications.

However, an ex ante direction to adopt a general policy that does not specify its specific terms is not the same as an ex post adoption of that policy. The regulation is thus not an adoption of the Policy as a statute, ordinance, or regulation. The Policy therefore cannot be the basis of a presumptive negligence instruction, and the district court did not err by refusing to give that instruction.

The judgment of the district court is **AFFIRMED**.