NOT FOR PUBLICATION

FILED

MAY 31 2024

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WALTER BETSCHART, on their behalf, and on behalf of all others similarly situated; JOSHUA SHANE BARTLETT, on their behalf, and on behalf of all others similarly situated; CALEB AIONA, on their behalf, and on behalf of all others similarly situated; TYRIK DAWKINS, on their behalf, and on behalf of all others similarly situated; JOSHUA JAMES-RICHARDS, on their behalf, and on behalf of all others similarly situated; TANIELA KINI KIN LATU, on their behalf, and on behalf of all others similarly situated; RICHARD OWENS, on their behalf, and on behalf of all others similarly situated; LEON MICHAEL POLASKI, on their behalf, and on behalf of all others similarly situated; ALEX SARAT XOTOY, on their behalf, and on behalf of all others similarly situated; TIMOTHY WILSON, on their behalf, and on behalf of all others similarly situated; JEFFERY DAVIS; RICHARD AARON CARROLL Sr.; JENNIFER LYN BRUNETTE; NICHOLAS WALDBILLIG; DEREK PIMENO ZAVALA; CURTIS RAY ANTHONY REMINGTON; CRISTA JEAN DAVIS; NICHOLE LYNN WHALEN; JACOB ISSAC NATHANIEL

No. 23-2270

D.C. No.
3:23-cv-01097-CL

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

COLE,

Petitioners - Appellees,

v.

STATE OF OREGON,

Respondent - Appellant,

WASHINGTON COUNTY CIRCUIT COURT JUDGES, in their official capacities; PATRICK GARRETT, Sheriff, Washington County Sheriff, in his official capacity,

Respondents.

WALTER BETSCHART; JOSHUA SHANE BARTLETT; CALEB AIONA; TYRIK DAWKINS; JOSHUA JAMES-RICHARDS; TANIELA KINI KIN LATU; RICHARD OWENS; LEON MICHAEL POLASKI; ALEX SARAT XOTOY; TIMOTHY WILSON,

Petitioners - Appellants,

v.

STATE OF OREGON; WASHINGTON COUNTY CIRCUIT COURT JUDGES,

Respondents - Appellees.

No. 23-3560

D.C. No. 3:23-cv-01097-CL

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Argued and Submitted February 6, 2024
Pasadena, California

Before: OWENS, BUMATAY, and MENDOZA, Circuit Judges.

This case is the result of a class action brought by Petitioners. Petitioners sought certification of two classes of indigent criminal defendants in Oregon: a Custody Class and a Restrictive Conditions Class. The former was to be made up of indigent criminal defendants in pretrial detention. The latter was to be made up of indigent criminal defendants outside of pretrial detention, but subject to restrictive conditions. The district court certified the Custody Class but not the Restrictive Conditions Class. The district court then entered a preliminary injunction for the Custody Class.

Respondent State of Oregon appeals from the district court's grant of a preliminary injunction for the certified Custody Class. Petitioners cross-appeal the district court's denial of a preliminary injunction for the uncertified Restrictive Conditions Class.[1] We address Respondent's appeal in a concurrently filed opinion, in which we affirm. This disposition addresses only Petitioners' cross-appeal. As the parties are familiar with the facts, we do not recount them here. We abstain under *Younger v. Harris*, 401 U.S. 37 (1971), and dismiss.

[1] Petitioners also separately appealed the district court's denial of class certification for the proposed Restrictive Conditions Class. This is the subject of No. 23-3573 *Betschart v. Garrett*.

We review de novo a district court's application of the *Younger* abstention doctrine and "conduct the *Younger* analysis 'in light of the facts and circumstances existing at the time the federal action was filed.'" *Duke v. Gastelo*, 64 F.4th 1088, 1093 (9th Cir. 2023) (quoting *Rynearson v. Ferguson*, 903 F.3d 920, 924 (9th Cir. 2018)).

Younger abstention is appropriate when "(1) there is an ongoing state judicial proceeding; (2) the proceeding implicates important state interests; (3) there is an adequate opportunity in the state proceedings to raise constitutional challenges; and (4) the requested relief seeks to enjoin or has the practical effect of enjoining the ongoing state judicial proceeding." *Page v. King*, 932 F.3d 898, 901–02 (9th Cir. 2019). Even when all four factors are met, the *Younger* Court "left room for federal equitable intervention in a state criminal trial . . . where there exist other 'extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment.'" *Kuglar v. Helfant*, 421 U.S. 117, 124 (1975) (quoting *Younger*, 401 U.S. at 53).

The first and second factors are met; neither party disputes that this case involves ongoing state judicial proceedings that implicate important state interests. *Younger*, 401 U.S. at 43–49 (holding that state criminal proceedings implicate important state interests).

The third factor is met because there are no procedural bars to Petitioners

raising their federal claims in state court. *See Commc'n Telesystems Int'l v. Cal. Pub. Util. Comm'n*, 196 F.3d 1011, 1020 (9th Cir. 1999) ("*Younger* requires only the absence of 'procedural bars' to raising a federal claim in the state proceedings."). Petitioners contend that the indefinite delay in appointing counsel renders the state proceedings inadequate. But delay in state proceedings is not enough unless the "timeliness issue amounts to a procedural bar." *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 620 (9th Cir. 2020) ("the peculiar facts of [plaintiff's] case interacted with the unavailability of a stay . . . in such a way that the state courts would *never* have an opportunity to address his federal claims in a meaningful way").

Petitioners rely on *Gibson v. Berryhill*, 411 U.S. 564 (1973), and *Meredith v. Oregon*, 321 F.3d 807 (9th Cir. 2003), but both cases are distinguishable. In *Gibson*, the court decided that an administrative tribunal was inadequate because it was biased, not because it was untimely. 411 U.S. at 577. In *Meredith*, the court decided that the state proceeding was inadequate because the timeline to request a stay of an order forced compliance with the order before the stay could be considered. 321 F.3d at 819. Neither of these situations applies here.

The fourth factor is also met. As the district court held, "Petitioners' requested relief—dismissal of the prosecution within 48 hours of first appearance if counsel is not secured" would undoubtedly impede prosecution in state court.

Petitioners contend that the fourth factor is not implicated because their requested relief is aimed at pretrial constitutional violations, not the state prosecution itself. They rely on *Arevalo v. Hennessy*, 882 F.3d 763 (9th Cir. 2018) and *Gerstein v. Pugh*, 420 U.S. 103 (1975). Both cases are distinguishable because neither involved dismissing pending state criminal charges. *See Arevalo*, 882 F.3d at 766 ("Regardless of how the bail issue is resolved, the prosecution will move forward unimpeded."). In *Gerstein*, the relief requested from the court was simply a determination that "the prosecutor's assessment of probable cause [was] not sufficient alone to justify restraint of liberty pending trial." 420 U.S. at 118–19. By contrast, the injunction here applies statewide, to every criminal defendant who may have restrictions on their liberty due to an ongoing prosecution. *See O'Shea v. Littleton*, 414 U.S. 488, 501 (1974) (highlighting the enforcement difficulties of an injunction with a "broadly defined class"). It has multiple nuances and exceptions that may require federal courts to intervene to properly enforce the injunction. *See id.* (rejecting an injunction that would require the "continuing intrusion of the equitable power of the federal courts into the daily conduct of state criminal proceedings").

Petitioners contend that even if all four *Younger* factors are met, extraordinary circumstances justify federal court intervention because members of their proposed class are suffering "'severe' and immediate restraints on their

liberty." The facts undercut this assertion. As the district court found, "[a]ccording to statistics provided by Petitioners, as of September 21, 2023 . . . [a] significant portion of the Restrictive Conditions Class" is "subject only to the statutorily mandated restrictions that would apply irrespective of counsel—namely, an order to return to court for a later proceeding and to remain in the state." Petitioners are not suffering irreparable harm of the kind contemplated in *Page* and *Arevalo*, both of which involved a person in jail for a substantial period. *See Page*, 932 F.3d at 899 (thirteen years); *Arevalo*, 882 F.3d at 767 (over six months).

Because we abstain from Petitioners' cross-appeal under *Younger*, we do not reach, and express no opinion on, the district court's denial of a preliminary injunction to the proposed Restrictive Conditions class.

DISMISSED.