

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **SACV 20-835 JGB (SHKx)**Date **June 2, 2020**Title ***Melissa Ahlman, et al. v. Don Barnes, et al.***Present: The Honorable **JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE****MAYNOR GALVEZ**

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: Order DENYING Defendants' Ex Parte Application to Stay Case
(IN CHAMBERS)**

Before the Court is an Ex Parte Application to Stay All Proceedings Pending Appeal to the Ninth Circuit filed by Defendants Don Barnes and Orange County on May 27, 2020. ("Application," Dkt. No. 66.) Plaintiffs opposed the Application on May 28, 2020. ("Opposition," Dkt. No. 70.) After considering the papers filed in support of and in opposition to the Application, the Court DENIES the Application.

On May 26, 2020, the Court issued an injunction compelling Defendants to implement several practices within the Orange County Jails to quell the spread of COVID-19. ("PI Order," Dkt. No. 65.) Defendants now ask the Court to stay the case, along with the relief ordered in the PI Order, while they appeal the PI Order to the Ninth Circuit. (See Application.)

When deciding to issue a stay pending appeal pursuant to Federal Rule of Civil Procedure 62, courts consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Sierra Club v. Trump, 929 F.3d 670, 687 (9th Cir. 2019) (quoting Nken v. Holder, 556 U.S. 418, 434 (2009)). Defendants have not met their burden on any of these factors.

First, while Defendants have identified issues that they intend to raise on appeal, they have not demonstrated that they are likely to succeed on these issues. Indeed, the Court already considered—and rejected—many of the arguments Defendants raise. (See generally PI Order.) Defendants rely heavily on the Ninth Circuit's partial staying of an order of similar protocols in

Immigration and Customs Enforcement's Adelanto Detention Center to the extent those protocols exceeded Centers for Disease Control ("CDC") Guidelines. See Kelvin Hernandez Roman v. Chad F. Wolf, 5:20-cv-00768-TJH. The analogy between Roman and this case is a poor one: there have been only two confirmed COVID-19 cases at Adelanto Detention Center; as of May 29, 2020, there have been 377 confirmed cases in the Orange County Jails.¹ See Kelvin Hernandez Roman v. Chad F. Wolf, 5:20-cv-00768-TJH, Dkt. No. 95 (C.D. Cal. June 1, 2020) (informing Court of second confirmed COVID-19 case). As the Court previously explained, the CDC Guidelines are just that—guidelines. While a detention center with only two confirmed cases need not exceed those guidelines, more must be done when there are nearly four hundred confirmed cases in a facility. Moreover, the Ninth Circuit did not stay the portion of the order that mandated that the detention center comply with the Centers for Disease Control ("CDC") Guidelines. Id. at Dkt. No. 73.

Second, Defendants submit no evidence of irreparable injury. Indeed, in a declaration submitted in opposition to Plaintiffs' Motion for Preliminary Injunction, Orange County Sherriff Department Officer Balicki claimed that "OCSD has, *at a minimum* already implemented all of the mitigation efforts outlined in plaintiffs' request for relief." (Dkt. No. 44-10 ¶ 2 (emphasis added).) The PI Order did not order Defendants to implement anything beyond what was requested in Plaintiffs' complaint. Defendants cannot claim to have already implemented the requested mitigation efforts and also claim that the implementation will cause irreparable injury.

Third, as this Court already concluded, without these measures, individuals incarcerated at the Orange County Jail are likely to be irreparably injured. (See PI Order at 18-19.) And fourth, there is a public interest in preventing the spread of a potentially deadly disease among inmates. (See id. at 19.)

For the foregoing reasons, the Application is DENIED.

IT IS SO ORDERED.

¹ <https://www.ocsd.org/documents/sheriff/COVIDStats5.29.20.pdf>