

**General Docket
United States Court of Appeals for the Ninth Circuit**

Court of Appeals Docket #: 20-55568 **Docketed:** 05/28/2020
Nature of Suit: 3440 Other Civil Rights
Melissa Ahlman, et al v. Don Barnes, et al
Appeal From: U.S. District Court for Central California, Santa Ana
Fee Status: Paid

Case Type Information:

- 1) civil
- 2) private
- 3) null

Originating Court Information:

District: 0973-8 : [8:20-cv-00835-JGB-SHK](#)

Trial Judge: Jesus G. Bernal, District Judge

Date Filed: 04/30/2020

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
05/26/2020	05/26/2020	05/28/2020	05/28/2020

Prior Cases:

None

Current Cases:

Lead	Member	Start	End
Companion 20-55568	20-55668	07/01/2020	

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v.

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Defendant - Appellant,

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MELISSA AHLMAN; DANIEL KAUWE; MICHAEL SEIF; JAVIER ESPARZA; PEDRO BONILLA;
CYNTHIA CAMPBELL; MONIQUE CASTILLO; MARK TRACE; CECIBEL CARIDAD ORTIZ; DON
WAGNER, on behalf of themselves and all others similarly situated,

Plaintiffs - Appellees,

v.

DON BARNES, in his official capacity as Sheriff of Orange County, California; COUNTY OF ORANGE,

Defendants - Appellants.

05/28/2020 [1](#)
28 pg, 1.6 MB DOCKETED CAUSE AND ENTERED APPEARANCES OF
COUNSEL. SEND MQ: Yes. The schedule is set as follows:. to
be set. Preliminary Injunction Appeal. C.R. 3-3. [11704349] (RT)
[Entered: 05/28/2020 03:47 PM]

05/28/2020 [2](#)
2 pg, 124.88 KB Filed clerk order (Deputy Clerk: TSP): The appeal filed May 28,
2020 is a preliminary injunction appeal. Accordingly, Ninth
Circuit Rule 3-3 shall apply. The mediation questionnaire is due
three days after the date of this order. If they have not already
done so, within 7 calendar days after the filing date of this order,
the parties shall make arrangements to obtain from the court
reporter an official transcript of proceedings in the district court
that will be included in the record on appeal. The briefing
schedule shall proceed as follows: the opening brief and excerpts
of record are due not later than June 28, 2020; the answering brief
is due July 23, 2020 or 28 days after service of the opening brief,
whichever is earlier; and the optional reply brief is due within 21
days after service of the answering brief. See 9th Cir. R. 3-3(b).
No streamlined extensions of time will be approved. See 9th Cir.
R. 31-2.2(a)(3). Any request for an extension of time to file a
brief must be made by written motion under Ninth Circuit Rule
31-2.2(b). Failure to file timely the opening brief shall result in
the automatic dismissal of this appeal by the Clerk for failure to
prosecute. See 9th Cir. R. 42-1. [11704456] (JBS) [Entered:
05/28/2020 04:51 PM]

06/01/2020 [3](#)
2 pg, 193.22 KB Filed (ECF) Appellants Don Barnes and County of Orange
Mediation Questionnaire. Date of service: 06/01/2020.
[11707256] [20-55568] (Watson, Kayla) [Entered: 06/01/2020
03:44 PM]

06/01/2020	4	The Mediation Questionnaire for this case was filed on 06/01/2020. To submit pertinent confidential information directly to the Circuit Mediators, please use the following link. Confidential submissions may include any information relevant to mediation of the case and settlement potential, including, but not limited to, settlement history, ongoing or potential settlement discussions, non-litigated party related issues, other pending actions, and timing considerations that may impact mediation efforts.[11707500]. [20-55568] (AD) [Entered: 06/01/2020 06:44 PM]
06/03/2020	5 5 pg, 168.21 KB	MEDIATION CONFERENCE SCHEDULED - DIAL-IN AssessmentConference, 06/19/2020, 10:00 a.m., PACIFIC Time. The briefing schedule previously set by the court remains in effect. See order for instructions and details. [11709460] (VS) [Entered: 06/03/2020 10:01 AM]
06/03/2020	6	Filed (ECF) notice of appearance of Stacey K. Grigsby (Covington & Burling, 850 10th Street NW, Washington, DC 20001) for Appellees Melissa Ahlman, Pedro Bonilla, Cynthia Campbell, Monique Castillo, Javier Esparza, Daniel Kauwe, Cecibel Caridad Ortiz, Michael Seif, Mark Trace and Don Wagner. Date of service: 06/03/2020. (Party was previously proceeding with counsel.) [11709845] [20-55568] (Grigsby, Stacey) [Entered: 06/03/2020 01:10 PM]
06/03/2020	7	Added Attorney(s) Stacey Grigsby for party(s) Appellee Don Wagner Appellee Pedro Bonilla Appellee Daniel Kauwe Appellee Monique Castillo Appellee Mark Trace Appellee Cynthia Campbell Appellee Melissa Ahlman Appellee Cecibel Caridad Ortiz Appellee Javier Esparza Appellee Michael Seif, in case 20-55568. [11709859] (QDL) [Entered: 06/03/2020 01:17 PM]
06/03/2020	8 1009 pg, 71.17 MB	Filed (ECF) Appellants Don Barnes and County of Orange EMERGENCY Motion to stay lower court action. Date of service: 06/03/2020. [11710031] [20-55568] (Watson, Kayla) [Entered: 06/03/2020 02:40 PM]
06/03/2020	9 11 pg, 254.27 KB	Filed (ECF) Appellants Don Barnes and County of Orange Correspondence: Amended Declaration of Commander Joseph Balicki. Date of service: 06/03/2020. [11710277] [20-55568] -- [COURT UPDATE: Updated docket text to reflect correct ECF filing type. 6/4/2020 by TYL] (Watson, Kayla) [Entered: 06/03/2020 04:50 PM]

06/04/2020	10 1 pg, 98.73 KB	Filed order (SUSAN P. GRABER and KIM MCLANE WARDLAW) We have received appellants' supplemented emergency motion at Docket Entry No. [8] seeking to stay the district court's May 26, 2020 order pending resolution of this appeal. Appellees' response to the emergency motion is due June 8, 2020. Appellants' optional reply is due June 10, 2020. To the extent that appellants' emergency motion requests an immediate stay of the district court's May 26, 2020 order pending resolution of the emergency motion, the request is denied. [11710738] (JBS) [Entered: 06/04/2020 09:35 AM]
06/08/2020	11	Filed (ECF) notice of appearance of Zoe Brennan-Krohn (American Civil Liberties Union Foundation, 39 Drumm St, San Francisco, CA 94111) for Appellees Melissa Ahlman, Pedro Bonilla, Cynthia Campbell, Monique Castillo, Javier Esparza, Daniel Kauwe, Cecibel Caridad Ortiz, Michael Seif, Mark Trace and Don Wagner. Date of service: 06/08/2020. (Party was previously proceeding with counsel.) [11714763] [20-55568] (Brennan-Krohn, Zoe) [Entered: 06/08/2020 03:50 PM]
06/08/2020	12	Added Attorney(s) Zoe Brennan-Krohn for party(s) Appellee Don Wagner Appellee Pedro Bonilla Appellee Daniel Kauwe Appellee Monique Castillo Appellee Mark Trace Appellee Cynthia Campbell Appellee Melissa Ahlman Appellee Cecibel Caridad Ortiz Appellee Javier Esparza Appellee Michael Seif, in case 20-55568. [11714884] (QDL) [Entered: 06/08/2020 04:24 PM]
06/08/2020	13 59 pg, 630.49 KB	Filed (ECF) Appellees Melissa Ahlman, Pedro Bonilla, Cynthia Campbell, Monique Castillo, Javier Esparza, Daniel Kauwe, Cecibel Caridad Ortiz, Michael Seif, Mark Trace and Don Wagner response opposing motion ([8] Motion (ECF Filing), [8] Motion (ECF Filing)). Date of service: 06/08/2020. [11715102] [20-55568] (Kamin, Mitchell) [Entered: 06/08/2020 06:09 PM]
06/10/2020	14 12 pg, 193.24 KB	Filed (ECF) Appellants Don Barnes and County of Orange reply to response (). Date of service: 06/10/2020. [11717959] [20-55568] (Watson, Kayla) [Entered: 06/10/2020 04:47 PM]
06/10/2020	15 35 pg, 4.83 MB	Filed (ECF) Appellants Don Barnes and County of Orange EMERGENCY Motion to supplement record on appeal. Date of service: 06/10/2020. [11717962] [20-55568] (Watson, Kayla) [Entered: 06/10/2020 04:51 PM]
06/12/2020	16 2 pg, 142.31 KB	Filed order (SUSAN P. GRABER, KIM MCLANE WARDLAW and RYAN D. NELSON) Appellants' emergency motion to stay the district court's May 26, 2020 order (Docket Entry No. [8]) is denied. See Nken v. Holder, 556 U.S. 418, 426 (2009). A written

order giving the court's reasoning will follow in due course. Appellants' emergency motion to supplement the record on appeal (Docket Entry No. [15](#)) is denied. However, we sua sponte remand the case to the district court for the limited purpose of allowing the parties to present any evidence of changed circumstances that might merit modification or dissolution of the preliminary injunction. See Fed. R. App. P. 8(a)(1)(C) ("A party must ordinarily move first in the district court for . . . an order suspending [or] modifying . . . an injunction while an appeal is pending."); Nat'l Wildlife Fed'n v. Burlington N.R.R., 23 F.3d 1508, 1511 n.5 (9th Cir. 1994) (declining to consider new evidence in a preliminary injunction appeal because "[f]acts not presented to the district court are not part of the record on appeal"). In the event that such evidence is presented, the district court may consider whether it is appropriate to hold an evidentiary hearing. After reviewing any new evidence, the district court may, in its discretion, modify or dissolve the preliminary injunction as it deems appropriate. The previously established briefing schedule remains in effect. (SEE ORDER FOR FULL TEXT) [11720788] (JBS) [Entered: 06/12/2020 04:53 PM]

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|------------|--|--|
| 06/16/2020 | 17 | Filed (ECF) notice of appearance of Aaron M. Lewis (Covington & Burling LLP, 1999 Avenue of the Stars, Los Angeles, CA 90067) for Appellees Melissa Ahlman, Pedro Bonilla, Cynthia Campbell, Monique Castillo, Javier Esparza, Daniel Kauwe, Cecibel Caridad Ortiz, Michael Seif, Mark Trace and Don Wagner. Date of service: 06/16/2020. (Party was previously proceeding with counsel.) [11723582] [20-55568] (Lewis, Aaron) [Entered: 06/16/2020 01:09 PM] |
| 06/16/2020 | 18 | Added Attorney(s) Aaron Lewis for party(s) Appellee Don Wagner Appellee Pedro Bonilla Appellee Daniel Kauwe Appellee Monique Castillo Appellee Mark Trace Appellee Cynthia Campbell Appellee Melissa Ahlman Appellee Cecibel Caridad Ortiz Appellee Javier Esparza Appellee Michael Seif, in case 20-55568. [11723627] (QDL) [Entered: 06/16/2020 01:28 PM] |
| 06/17/2020 | 19
35 pg, 374.99 KB | Filed order (SUSAN P. GRABER, KIM MCLANE WARDLAW and RYAN D. NELSON) Defendants-Appellants Orange County and Sheriff Don Barnes (Defendants) have filed a motion to stay the district court's May 26, 2020, preliminary injunction order. We deny the motion to stay, but remand for the limited purpose of allowing the district court to consider whether changed circumstances justify modifying or dissolving the injunction....In sum, we conclude that Defendants have failed to carry their |

burden of establishing that a stay of the preliminary injunction is appropriate. We therefore deny the motion for a stay pending appeal. Nevertheless, we recognize that the circumstances surrounding the COVID-19 pandemic are evolving rapidly. While we express no view on the new evidence proffered by Defendants on appeal, we believe the parties should be permitted to present any evidence of changed circumstances to the district court, which can determine in the first instance whether it is appropriate to modify or dissolve the injunction. See Fed. R. App. P. 8(a)(1)(C) (“A party must ordinarily move first in the district court for . . . an order suspending [or] modifying . . . an injunction while an appeal is pending.”). Accordingly, we sua sponte remand the case to the district court for the limited purpose of allowing the parties to present any evidence of changed circumstances that might merit modification or dissolution of the preliminary injunction. In the event such evidence is presented, the district court may consider whether it is appropriate to hold an evidentiary hearing. After reviewing any new evidence, the district court may, in its discretion, modify or dissolve the preliminary injunction as it deems appropriate. The previously established briefing schedule remains in effect. IT IS SO ORDERED. (SEE ORDER FOR FULL TEXT) [11725446] (OC) [Entered: 06/17/2020 05:03 PM]

06/19/2020	<u>20</u> 1 pg, 86.7 KB	MEDIATION STATUS REPORT DUE - 07/06/2020. See order for details. [11727575] (VS) [Entered: 06/19/2020 11:40 AM]
06/22/2020	<u>21</u> 8 pg, 397.61 KB	Filed (ECF) Appellants Don Barnes and County of Orange Motion to extend time to file Opening brief until 07/29/2020. Date of service: 06/22/2020. [11729551] [20-55568] (Watson, Kayla) [Entered: 06/22/2020 02:54 PM]
06/23/2020	22	Filed (ECF) notice of appearance of Carl Takei (American Civil Liberties Union Foundation, 125 Broad St., 18th Floor, New York, NY 10004) for Appellees Melissa Ahlman, Pedro Bonilla, Cynthia Campbell, Monique Castillo, Javier Esparza, Daniel Kauwe, Cecibel Caridad Ortiz, Michael Seif, Mark Trace and Don Wagner. Date of service: 06/23/2020. (Party was previously proceeding with counsel.) [11730052] [20-55568] (Takei, Carl) [Entered: 06/23/2020 05:27 AM]
06/23/2020	23	Filed (ECF) notice of appearance of Cassandra Stubbs (American Civil Liberties Union Foundation, 201 W. Main St. Suite 402, Durham, NC 27701) for Appellees Melissa Ahlman, Pedro Bonilla, Cynthia Campbell, Monique Castillo, Javier Esparza, Daniel Kauwe, Cecibel Caridad Ortiz, Michael Seif, Mark Trace and Don Wagner. Date of service: 06/23/2020. (Party was

		previously proceeding with counsel.) [11730055] [20-55568] (Stubbs, Cassandra) [Entered: 06/23/2020 05:33 AM]
06/23/2020	24	Added Attorney(s) Carl Takei, Cassandra Stubbs for party(s) Appellee Don Wagner, Appellee Pedro Bonilla, Appellee Daniel Kauwe, Appellee Monique Castillo, Appellee Mark Trace, Appellee Cynthia Campbell, Appellee Melissa Ahlman, Appellee Cecibel Caridad Ortiz, Appellee Javier Esparza and Appellee Michael Seif, in case 20-55568. [11730258] (QDL) [Entered: 06/23/2020 09:08 AM]
06/24/2020	25 1 pg, 122.17 KB	Filed clerk order (Deputy Clerk: LBS): Appellants' unopposed motion (Docket Entry No. 21) for an extension of time to file the opening brief is granted. The opening brief is due July 29, 2020. The answering brief is due August 26, 2020, or 28 days after service of the opening brief, whichever is earlier. The optional reply brief is due within 21 days after service of the answering brief. See 9th Cir. R. 3-3(b). [11732307] (JBS) [Entered: 06/24/2020 01:16 PM]
06/26/2020	26 177 pg, 14.7 MB	Filed (ECF) Appellants Don Barnes and County of Orange Urgent Motion to stay lower court action. Date of service: 06/26/2020. [11735588] [20-55568] (Watson, Kayla) [Entered: 06/26/2020 06:03 PM]
06/29/2020	27 27 pg, 379.55 KB	Filed (ECF) Appellees Melissa Ahlman, Pedro Bonilla, Cynthia Campbell, Monique Castillo, Javier Esparza, Daniel Kauwe, Cecibel Caridad Ortiz, Michael Seif, Mark Trace and Don Wagner response opposing motion (26 Motion (ECF Filing), 26 Motion (ECF Filing)). Date of service: 06/29/2020. [11737008] [20-55568] (Kamin, Mitchell) [Entered: 06/29/2020 03:50 PM]
06/29/2020	28 1 pg, 123.11 KB	Filed order (SUSAN P. GRABER, KIM MCLANE WARDLAW and RYAN D. NELSON) Appellants' urgent motion to stay the district court's May 26, 2020 order (Docket Entry No. 26) is denied. Appellants' urgent motion raises arguments regarding the district court's evaluation of evidence presented in support of appellants' ex parte application to dissolve the May 26, 2020 preliminary injunction. We lack jurisdiction to review the district court's June 26, 2020 order denying appellants' ex parte request absent the filing of a new or amended notice of appeal. See Fed. R. App. P. 3(c)(1)(B) ("The notice of appeal must . . . designate the judgment, order, or part thereof being appealed . . ."). The previously established briefing schedule remains in effect. [11737050] (JBS) [Entered: 06/29/2020 04:03 PM]

06/29/2020	29	Deleted Incorrect Entry. Opened as a new appeal. Notice about deletion sent to case participants registered for electronic filing. Original Text: Received copy of amended notice of appeal from district court filed on 06/29/2020. [11739558] (QDL) [Entered: 07/01/2020 10:45 AM]
07/07/2020	30 1 pg, 87.17 KB	MEDIATION STATUS REPORT DUE - 07/24/2020. See order for details. [11744981] (VS) [Entered: 07/07/2020 03:41 PM]
07/21/2020	31 5 pg, 261.25 KB	Filed (ECF) Appellants Don Barnes and County of Orange Motion to extend time to file Opening brief until 08/31/2020. Date of service: 07/21/2020. [11760174] [20-55568] (Watson, Kayla) [Entered: 07/21/2020 10:08 AM]
07/22/2020	32 1 pg, 121.54 KB	Filed clerk order (Deputy Clerk: LBS): Appellants' unopposed motion (Docket Entry No. 31) for an extension of time to file the opening brief is granted. The opening brief is due August 31, 2020. The answering brief is due September 28, 2020 or 28 days after service of the opening brief, whichever is earlier. The optional reply brief is due within 21 days after service of the answering brief. See 9th Cir. R. 3-3(b). [11761886] (JBS) [Entered: 07/22/2020 11:02 AM]
07/28/2020	33 2 pg, 65.67 KB	Filed (ECF) Appellants Don Barnes and County of Orange Stipulated Motion to consolidate cases 20-55568; 20-55668. Date of service: 07/28/2020. [11768764] [20-55568] (Watson, Kayla) [Entered: 07/28/2020 10:02 AM]
07/30/2020	34 1 pg, 99.37 KB	MEDIATION CONFERENCE SCHEDULED - DIAL-IN Conference, 08/05/2020, 3:00 p.m., Pacific Time. See order for details. [11771529] (VS) [Entered: 07/30/2020 08:22 AM]
08/05/2020	35 8 pg, 74.94 KB	Received letter from the Supreme Court dated 08/05/2020: The application for stay presented to JUSTICE KAGAN and by her referred to the Court is granted, and the districtcourt's May 26, 2020 order granting a preliminary injunction is stayed pending disposition of the appeal in the United States Court of Appeals for the Ninth Circuit anddisposition of the petition for a writ of certiorari, if such writis timely sought. Should the petition for a writ of certioraribe denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stayshall terminate upon the sending down of the judgment of this Court. JUSTICE BREYER and JUSTICE KAGAN would deny the application. JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting from the grant of stay. Supreme Court No. 20A19. [11778739] [20-55568, 20-55668] (HH) [Entered: 08/05/2020 03:20 PM]

08/07/2020 [36](#)

1 pg, 100.19 KB

MEDIATION CONFERENCE SCHEDULED - DIAL-IN
Conference, 08/10/2020, 11:00 a.m., Pacific Time. See order for
details. [11780739] (VS) [Entered: 08/07/2020 08:37 AM]

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