

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

APR 30 2010

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

DARREN THOMAS; et al.,

Plaintiffs,

and

FREDDIE FUIAVA,

Plaintiff-intervenor -

Appellant,

v.

LOS ANGELES COUNTY, a public  
entity; et al.,

Defendants - Appellees.

No. 09-55297

D.C. No. 2:90-cv-05217-TJH  
U.S. District Court for Central  
California, Los Angeles

**MANDATE**

RECEIVED  
CLERK, U.S. DISTRICT COURT

APR 30 2010

CENTRAL DISTRICT OF CALIFORNIA  
BY *DEM* DEPUTY

The judgment of this Court, entered April 08, 2010, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

**FOR THE COURT:**

**Molly C. Dwyer**  
**Clerk of Court**

**Gabriela Van Allen**  
**Deputy Clerk**

**FILED**

**NOT FOR PUBLICATION**

**APR 08 2010**

**UNITED STATES COURT OF APPEALS**

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

**FOR THE NINTH CIRCUIT**

DARREN THOMAS; JESUS AVILA;  
ERNESTO AVILA; TRACY BATTS;  
AARON BREITIGAM; ANTONIO  
CABALLERO; RUBEN CALDERON  
individually and as Guardian Ad Litem for  
Christina and David Calderon, minors;  
CAROLINA CALDERON; LINDA  
CALDERON; JORGE CALDERON;  
DEMETRIO CARILLO; ELZIE  
COLEMAN; DOLORES DALTON,  
Guardian ad Litem for a minor Ron  
Dalton; MARRIANNE ENGLISH,  
individually and as parent and heir of  
Lawrence Johnson; Deceased; SERGIO  
GALINDO; RAUL GONZALES;  
MARCELO GONZALEZ; RICHARD  
HERNANDEZ; JEFFREY HOLLIMAN;  
SOCORRO HUERTA, Guardian ad litem  
for minor Fernandez Martinez; ERIC  
JONES; SANDRA LEONARD, heir of  
William Leonard; deceased; CANDI  
LEONARD, heir of William Leonard;  
deceased; YIDEFONZA LORENZANA;  
ALFREDO MAYA, individually and as  
Guardian ad litem for Irene Maya; RAUL  
MAYA, individual and as Guardian ad  
litem for Raul Maya Jr, a minor; CARLOS  
MAYA; MARGUERITA MAYA;

No. 09-55297

D.C. No. 2:90-cv-05217-TJH

**MEMORANDUM\***

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

RUBEN MAYA; LUPE MAYA;  
NATALIE MELENDREZ, Guardian ad  
litem for a minor Jessie Melendrez;  
GEORGE MENDIBLES; ESTELLA  
MONTOKA, individually and as Guardian  
ad litem for Rebecca Montoya a minor &  
Crystal Trevino & Monique Trevino;  
RAPHAEL OCHOA; JOSE ORTEGA;  
DELIA OSITA; PATSY PEREZ Guardian  
ad litem for Adolpho Alejade a minor &  
Brian Alejade a minor; RITA PRECIADO,  
Guardian ad litem for Salvador Preciado a  
minor; TERESA RODRIGUEZ,  
individually and as Guardian ad litem  
Alice Orejel a minor Maria Orejel a minor;  
SERGIO SANCHEZ; JOSE SANCHEZ;  
ALFREDO SANCHEZ; CHARLES  
SCOTT; MICHAEL STERLING; KEVIN  
MARSHALL; WILLIAM SCOTT;  
ALVIN WASHINGTON; DANNY  
WILLIAMS; JULIA POLK Administrator  
for Estate of Lloyd Polk; ESTELA  
SANCHEZ; ALFONSO SANCHEZ;  
FRANCISCO TOVAR, individually and  
as guardian ad litem for minors Francisco  
Tovar Jr, Yesenia Tovar, Marcela Tovar,  
Jaime Tovar, Jesus Tovar and Herman  
Tovar; ELSA TOVAR; MARTA VELEZ,

Plaintiffs,

and

FREDDIE FUIAVA,

Plaintiff-Intervenor-Appellant,

v.

LOS ANGELES COUNTY, a public entity; LOS ANGELES SHERIFF'S DEPARTMENT, a public entity; CITY OF LYNWOOD, a public entity & a municipal corporation; SHERMAN BLOCK individually and as Sheriff of the County of Los Angeles; ROBERT EDMONDS, individually and as Undersheriff of the County of Los Angeles; JERRY HARPER, individually and as Assistant Sheriff of the County of Los Angeles; RICHARD FOREMAN, individually and as Assistant Sheriff of the County of Los Angeles; BERT J. CUEVA, individually and as Commander of the Los Angeles County Sheriff's Lynwood Station; PAUL ARCHAMBAULT, #213669; ANTHONY CAMPBELL, #013405; JAMES CORRIGAN, #213671; ROBERT DELGADILLO, #230237; MICHAEL J. GARCIA, #207136; KELLY MCMICHAEL, #260309; DOUGLAS GILLIES #244674; J. LESLIE, #223389; JASON MANN, #196175; GUY MATO #188894; JOHN MOSSOTTI, #232692; EDWARD M. NORDSKOG #241276; MICHAEL PIPPIN, #116212; DAN RAIMO, #207220; THOMAS ROSAS, #111632; J. SHEEHY, #207157; ELIZABETH NMI SMITH #222075; GREGORY THOMPSON, #196144; THOMAS ZAMPIELLO, #128 who is sued individually and in his official capacity; JUAN ALVARADO; UNKNOWN ANDERSON, Sgt #160080;



CHARLES BARTON; TIMOTHY E. BENSON, #246380; GARY BLACKWELL; STEVE BLAIR #236778; ROBERT BLUME, #273451; UNKNOWN BRANDENBURG #209523; C. BRANTLEY, Lt.; TIMOTHY BROAD; KATHERINE BROWN- VOYER, #258489; T. BROWNELL; RICHARD CALZADA; SCOTT CARTER #150582; RICHARD L. CASTRO, Lt.; JOHN CHAPMAN, #220837; JAVIER CLIFT; JOHN NIM CORINA, #213435; DANIEL COOPER; DANIELLE CORMIER; UNKNOWN COSTLEIGH, #173151; FRUSTINO DELVALLE; UNKNOWN DEVINE, Sgt; ROBERT DILLARD; CRAIG DITSCH; STEPHEN DOWNEY, #219137; RAYMOND ESQUERRA, #137451; LANCE FRALICK; RONALD E. GILBERT, #207131; UNKNOWN GIRON, #033144; NEILS GITTISARN, #236616; TIMOTHY GLOVER; CURTIS GOLDEN; FRANK NMI GONZALES; KEVIN GORAN, #222021; RAYMOND GOTT Captain; RUBEN GRACIA, #213459; ALBERT GROTEFEND, #034657; JOSEPH NMI GUZMAN; ALLEN HARRIS; TOMMY HARRIS, Sgt.; T. J. HARVEY, #038535; A. HERRERA, Lt.; UNKNOWN HOLBROOK, #209619; JOSEPH HOLMES, #041885; ERIC HUBNER, #37190; DALE HUFFMAN #265013; KEVIN J. KIFF, #235151; LOY LUNA, #201663; ALLYN LAWRENCE MARTIN, #223374; SCOTT LEE MCCORMICK, #248043; ABEL A.

MORENO, #195912; JACK NEIHOUSE;  
UNKNOWN NELSON, #220245;  
UNKNOWN NUNEZ, #067434;  
RODOLFO O'DELL; UNKNOWN  
O'HARA #183119; RICHARD OROSCO,  
#068734; JAMES PACINA; ANDRE  
PINESETT, #260171; UNKNOWN  
RADELEFF, Lt.; JACK RAMIREZ  
#211246; R. A. REED, #236792;  
MICHAEL NMI REYNOLDS;  
UNKNOWN RIFKIN, #207195; ALLEN  
NMI RIPLEY; MARTIN RODRIGUEZ;  
WILLIAM ROMAN, #077668; T.  
RUNNING; MICHAEL SALVATORE,  
#044852; MICHAEL SCHNEIDER,  
#244092; LARRY SHULTZ; SAMUEL  
SILVA; M. SPARKS, Lt.; BRIAN NMI  
STEINWAND, #218524; JACK  
TARASIUK #244912; GERALD  
RICHARD THOMPSON, #238853;  
GREG THURMAN; PATRICK VALDEZ;  
MICHAEL VOGEL, #186761; BYRON  
WAINIE #222015; K. WALL, #238868;  
TODD LAWRENCE WALLACE,  
#248150; JOHN A. WEST, #248032;  
JAMES WHITTEN; MICHAEL NMI  
WILBER; ROBERT WINDRIM; CHRIS  
JAMES YOUNG, #248084, each of whom  
is sued individually in his or her official  
capacity as an agent or employee of the  
County of Los Angeles,

Defendants - Appellees.

Appeal from the United States District Court

for the Central District of California  
Terry J. Hatter, District Judge, Presiding

Argued and Submitted April 6, 2010\*\*  
Pasadena, California

Before: FERNANDEZ, SILVERMAN and GRABER, Circuit Judges.

Intervenor-Appellant Freddie Fuiava's petition for habeas corpus is currently pending in state court. The state court partially granted Fuiava's motion under California Penal Code § 1054.9 to take additional discovery in support of his petition. Fuiava then moved to intervene in this closed case in the Central District of California seeking modification of any protective order covering the discovery generated during the life of this case. After the district court denied his motion without stating a reason for its denial, a panel of this circuit remanded to give the district court an opportunity to state the reasons for its ruling. *See Thomas v. County of L.A.*, No. 06-56228, 275 Fed. Appx. 664 (9th Cir. 2008) (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003)).

On remand, the district court again denied the motion to intervene, concluding that Fuiava had not articulated how access to the evidence he sought would be relevant to his collateral litigation. The district court further concluded

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\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.



that the reliance interest of the County in maintaining the protective order outweighed the policy of avoiding duplicative discovery. Fuiava appealed and we now vacate the district court's order because the motion to intervene to modify the protective order is moot.

In response to the panel's inquiries, neither party has identified a protective order that covers the discovery in this case. Fuiava's motion to intervene seeking modification of a protective order is therefore moot. No protective order prevents Fuiava from obtaining the discovery he seeks.

The district court's order denying Fuiava's renewed motion to intervene to modify the protective order is VACATED and the case is REMANDED with directions to dismiss the motion as moot.