IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 22-60203 consolidated with Nos. 22-60301, 22-60527, 22-60597

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HINDS COUNTY BOARD OF SUPERVISORS; HINDS COUNTY SHERIFF TYREE JONES, IN HIS OFFICIAL CAPACITY,

Defendants-Appellants

(*See inside cover for continuation of caption*)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

APPELLEE/CROSS-APPELLANT UNITED STATES' REPLY IN SUPPORT OF RULE 12.1 NOTICE OF INDICATIVE RULING

KRISTEN CLARKE
Assistant Attorney General

TOVAH R. CALDERON
KATHERINE E. LAMM
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-2810

(*Continuation of caption*)

Consolidated with

No. 22-60332

UNITED STATES OF AMERICA,

Plaintiff-Appellee/Cross-Appellant

v.

HINDS COUNTY BOARD OF SUPERVISORS; HINDS COUNTY SHERIFF TYREE JONES, IN HIS OFFICIAL CAPACITY,

Defendants-Appellants/Cross-Appellees

INTRODUCTION

The United States submits this reply to explain why this Court should remand to allow the district court to reconsider its decision to eliminate the youthful detainee provisions of the parties' consent decree based on a changed circumstance, as the court said it would do in a December 6, 2022, indicative ruling (Doc. 241 (amended order)).[1] Reconsideration is proper under Federal Rule of Civil Procedure 60(b), which the United States invoked soon after it learned in mid-October of the changed circumstance—termination of a separate consent decree with which the court had wished to avoid interference. Remand for this purpose will streamline this Court's review by allowing the district court to address the changed circumstance in the first instance, thereby clarifying the issues that this Court must address and ensuring an appropriate factual record on appeal.

[1] "Doc. _, at _" refers to the docket entry number and relevant pages of the filings in *United States* v. *Hinds County, et al.*, No. 3:16-cv-00489 (S.D. Miss.); "Resp. _" refers to defendants' Response To December 7, 2022 Letter Motion to Remand.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Case[2]

This case arises from nearly a decade of proceedings regarding unconstitutional conditions of confinement in the Hinds County Jail, which the parties tried to resolve through a consent decree in 2016. See Docs. 1, 2, 8-1. The decree included provisions relating to the treatment of youth charged as adults, which required that they be separated from sight and sound by adult detainees and that they receive care and services appropriate for juveniles. Doc. 8-1, at 36-39.

Despite failing to comply with court orders or to fix deplorable jail conditions—ultimately resulting in two findings of contempt (Docs. 126, 165)—the County in January 2022 moved to terminate or modify the decree under the Prison Litigation Reform Act (PLRA). Docs. 111, 112. The district court held a two-week hearing on the termination motion and contempt remedies in February. The court heard extensive evidence regarding the treatment of youthful detainees, including hours of testimony from the member of the court-appointed monitoring team charged with assessing compliance with this aspect of the decree. See Doc. 158, at 855-964; Doc. 159, at 978-1068.

[2] A more fulsome description of the case appears in the first six pages of the United States' December 19, 2022 opposition to the County's motion for stay pending appeal.

In late April, the district court partially granted and partially denied the termination motion. Doc. 168. The district court found that "[t]he underlying fundamentals" that existed when the consent decree was entered "are unchanged," citing historically low staffing, unprecedented levels of violence and death, and abuse and deprivation of vulnerable detainees. Doc. 168, at 2. The court also described dangerous conditions at the County's facility for youthful detainees, Henley-Young, such as insufficient staff training to protect youth from harm (illustrated by "unconstitutional" staff use of force), sexual assault arising from insufficient staffing and supervision, and the prevalence of contraband. See Doc. 168, at 53 n.13, 65-66, 85-86.

The court declined to terminate prospective relief but imposed a New Injunction that pertains only to the County's primary adult jail, Raymond Detention Center (RDC). Doc. 168, at 26-149; Doc. 169. The court excised the decree's youthful detainee provisions because "there is a separate [c]onsent [d]ecree governing" Henley-Young, with which the court "wishe[d] to avoid interference." Doc. 168, at 110 (citing *J.H.* v. *Hinds Cnty.*, No. 3:11-CV-327 (S.D. Miss.), a private class action filed in 2011). The court concluded that "[o]n a going-forward basis, therefore, concerns about Henley-Young are best submitted to the discretion and sound judgment of the Presiding Judge in that case." Doc. 168, at 110.

Both parties appealed the order amending the consent decree and the New Injunction. Docs. 185, 186.

2. The Instant Dispute

The district court conducted further proceedings on contempt, resulting in the imposition of a receivership to operate RDC on July 29. Doc. 204. While the parties awaited the court's orders appointing the receiver and outlining his duties, the United States learned that the plaintiffs in the *J.H.* action had consented to, and a court granted, termination of the consent decree. Order, *J.H.*, No. 3:11-CV-327 (S.D. Miss. Oct. 13, 2022), ECF No. 196.

In light of this changed circumstance, the United States on November 2 moved the district court to reconsider termination of the consent decree's youthful detainee provisions. Doc. 219. The United States relied on Federal Rule of Civil Procedure 60(b)(5), which permits relief from a final judgment where "applying it prospectively is no longer equitable,"[3] and Federal Rule of Civil Procedure Rule 62.1, which permits the district court to make an indicative ruling that it would grant a motion or that the motion presents a "substantial issue" once the docketing of an appeal divests the court of jurisdiction. Docs. 219, 220, 235. The County opposed. Doc. 229.

---

[3] The United States also cited Federal Rule of Civil Procedure 60(b)(6), which permits relief from judgment for "any other reason that justifies" it, as an alternative basis for its motion. Doc. 220, at 6.

The district court issued an indicative ruling on December 6. Doc. 241. The court held that "the United States' motion raises a substantial issue" because [c]ritical facts have changed." Doc. 241, at 4. The court explained that it had not terminated the youthful detainee provisions because of "the correction of all unconstitutional harms at Henley-Young" but instead because "[o]versight by one federal judge was sufficient." Doc. 241, at 4-5. Because the basis for terminating the youthful detainee provisions had "been eliminated," the court held that "relief concerns, at minimum, a substantial issue" that requires "further proceedings." Doc. 241, at 5. The court stated that on remand it would "examine the facts and law to determine whether tailored youthful-offender provisions should be added into the New Injunction." Doc. 241, at 5. The County appealed this order. Doc. 244.

Pursuant to Federal Rule of Appellate Procedure 12.1, the United States notified this Court of the indicative ruling in a letter filed the next day.[4]

[4] As discussed more fully at pages 5-8 of its December 21, 2022 Reply In Support Of Rule 12.1 Notice Of Indicative Ruling, the United States filed a short letter providing notice to the Court, consistent with Rule 12.1 and the guidance of the Fifth Circuit Clerk's Office. The United States did not anticipate that this filing would be reclassified as a "letter motion" or that it would have to present both its affirmative arguments and rebuttal to the County's response in its reply.

ARGUMENT

THIS COURT SHOULD REMAND THE CASE TO ALLOW THE DISTRICT COURT TO RULE ON THE RULE 60(B) MOTION DUE TO A CHANGED CIRCUMSTANCE

A. A Limited Remand To Allow The District Court To Reconsider Termination Of The Youthful Detainee Provisions Is Appropriate Given The Changed Circumstance And Will Facilitate This Court's Efficient Review

This Court should remand under Rule 12.1(b) for the purpose of allowing the district court to address the "substantial issue" that the district court found in the United States' motion for reconsideration. See Doc. 241, at 4-5. Reconsidering termination of the youthful detainee provisions is a proper application of Rule 60(b)(5), which allows for relief from a judgment that is no longer "equitable," because the basis for the termination—court oversight of youthful detainees' treatment through the *J.H.* decree—no longer exists. See Doc. 241, at 4-5; see also *League of United Latin Am. Citizens, Dist. 19* v. *City of Boerne*, 659 F.3d 421, 437-438 (5th Cir. 2011) (although Rule 60(b)(5) movants in institutional reform cases usually are defendants, making clear that any party can invoke the rule, which must be interpreted under a "flexible approach" to achieve the litigation's goals).

A limited remand for this purpose would promote judicial economy, as it would enable the district court to "examine the facts and law" and "ma[k]e express findings" about whether the County is entitled to termination of the youthful

detainee provisions under the PLRA—something the court did not do in its order amending the consent decree because the *J.H.* decree was in place. See Doc. 241, at 5. Such findings will help clarify the issues on appeal and provide this Court with a sufficient factual record to evaluate the district court's ruling on the County's termination motion, potentially avoiding the need for a remand after briefing and oral argument on the merits. See *Ruiz* v. *United States*, 243 F.3d 941, 952-953 (5th Cir. 2001) (discussing appellate courts' practice of remanding to permit district courts to make particularized findings in relation to PLRA termination motion).

Finally, remand will not cause undue delay in the resolution of the consolidated appeals in this case. Although the district court referenced "further proceedings" on remand, it explained that it would "examine the facts and law to determine whether tailored youthful-offender provisions should be added into the New Injunction." Doc. 241, at 5. The court already heard extensive evidence and argument from the parties relating to youthful detainees during the February hearing and in related briefing and therefore already has a record upon which it can make particularized findings regarding conditions "at the time termination [was] sought." *Castillo* v. *Cameron Cnty.*, 238 F.3d 339, 353 (5th Cir. 2001) (citation omitted); see also *Ruiz*, 243 F.3d at 952-953 (instructing district court on remand to make particularized PLRA findings based on existing record evidence). Should

the court desire further briefing or evidence, there is no reason to believe that this process will be lengthy. In any event, there presently is no briefing schedule in this case, so any claim of delay is speculative.

B. The United States Did Not Engage In Improper Delay Or Gamesmanship

The County's suggestion that the United States slept on its rights or engaged in judge-shopping following the district court's ruling on the County's termination motion (Resp. 7-11) is not borne out by the facts. At the time of the court's decision, the *J.H.* plaintiffs had recently moved to hold the County in contempt of their consent decree, while the County had filed an opposed motion to terminate the decree. Mots., *J.H.* v. *Hinds Cnty.*, No. 3:11-CV-327 (S.D. Miss. Mar. 18, 2022), ECF Nos. 170, 173. Although that decree later was stayed under the PLRA's automatic stay provision, the litigation proceeded over the following months until the plaintiffs abruptly agreed to termination. Only then, with the elimination of federal court oversight in *J.H.*, was the assumption underlying this court's decision on youthful detainees disrupted. And only then was it appropriate to seek reconsideration based on a changed circumstance, which the United States did soon thereafter.

Given this timeline, the County's assertion that the United States should have filed a Rule 59(e) motion to amend the judgment (Resp. 9) makes no sense. A Rule 59(e) motion must be filed within 28 days of an order's entry, but the

changed circumstance did not occur until several months after the district court issued its termination order. Nor is it clear why the United States should have sought a stay of the court's order (Resp. 9), as the United States' timely appeal—not a stay motion—is the proper means for contesting the merits of that order. And the County fails to cite any authority for the proposition that appealing an order precludes seeking that order's reconsideration based on a changed circumstance (Resp. 10-11). To the contrary, this Court previously remanded a case under Rule 12.1(b), following an indicative ruling, to allow a district court to rule on a Rule 60(b) motion for reconsideration of an appealed order based on newly-discovered information. See *Moore* v. *Tangipahoa Par. Sch. Bd.*, 864 F.3d 401, 404-405 (5th Cir. 2017).

The County's insistence that the United States should have intervened in *J.H.* lacks merit. The federal government has an independent "right and duty to seek an injunction to protect the public interest [that] exist without regard to any private suit or decree." *United States* v. *Borden Co.*, 347 U.S. 514, 519 (1954). The County offers no authority suggesting that the United States was required to carry out its independent obligation to protect the public interest by intervening in the *J.H.* litigation.

Regardless, a district court may permit intervention only upon a "timely" motion. Fed. R. Civ. P. 24. It is hard to imagine that the County (the defendant in

the *J.H.* action) would not have opposed as untimely the United States' motion in 2022 to intervene in a case filed in 2011. It also is hard to imagine that the County would not have levied accusations of "judge-shopping" had the United States tried to do so. Such accusations might even be more plausible in that scenario than they are here (Resp. 7-10), where the United States has tried to do nothing more than revive its claims before the same judge to which its case has long been assigned, rather than seeking to bring the case before a different judge.

C. The Receivership Is Irrelevant To The Instant Matter

Finally, the County revisits the same complaints about the receivership imposed to operate RDC that it raised in its December 9 motion for stay pending appeal. Resp. 11-15. This has nothing to do with the instant dispute, and only a couple of its points merit response—the rest are addressed at pages 16-23 of the United States' December 19, 2022, opposition to the County's motion for stay.

First, the County's discussion of *Horne* v. *Flores*, 557 U.S. 433 (2009)—which begins as an attack on the receivership and then morphs into a challenge to Rule 60(b)(5)'s application here (Resp. 13-14)—misses the mark. *Horne* explains that Rule 60(b)(5) allows for modification of an order "if a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest." 557 U.S. at 447 (citation and internal quotation marks omitted). *Horne* also endorses the Rule's "flexible" application to granting a state

or local government relief from a federal decree "when circumstances warrant." *Id.* at 450. Other than making clear that changed factual circumstances are proper grounds for relief under Rule 60(b)(5), however, *Horne* has no bearing on whether the district court in this case should grant the United States' Rule 60(b) motion.

Second, the County's claimed fear that remand will result in the receiver having "total authority over Henley-Young" (Resp. 14) has no apparent basis. The receivership is limited to operation of RDC, not to carrying out the County's compliance with the New Injunction more broadly. See Docs. 204, 215, 216. Neither the United States' Rule 60(b) filings (Docs. 219, 220, 235) nor the district court's indicative ruling (Doc. 241) propose extending the receivership to Henley-Young, even if youthful detainee provisions are reincorporated into the New Injunction.

Finally, the County's complaint that "the receivership becomes further entrenched every day" (Resp. 3, 15) has no place here, as it relates only to the "irreparable harm" factor of the County's stay motion. In any event, the receivership was imposed on July 29. Doc. 204. If the County was concerned about the receivership's "entrenchment," it could have sought a stay much earlier than when it first did, on November 10 (Docs. 227, 228)—nine days after the receiver's transition began (Doc. 204, at 26) and less than eight weeks before he was scheduled to take operational control of RDC (Doc. 215, at 4).

CONCLUSION

This Court should remand for the limited purpose of allowing the district court to rule on the Rule 60(b) motion.

Respectfully submitted,

Kristen Clarke
Assistant Attorney General

s/ Katherine E. Lamm
TOVAH R. CALDERON
KATHERINE E. LAMM
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-2810

CERTIFICATE OF SERVICE

I certify that on December 27, 2022, I electronically filed the foregoing APPELLEE/CROSS-APPELLANT UNITED STATES' REPLY IN SUPPORT OF RULE 12.1 NOTICE OF INDICATIVE RULING with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

CERTIFICATE OF COMPLIANCE

I certify that the attached APPELLEE/CROSS-APPELLANT UNITED STATES' REPLY IN SUPPORT OF RULE 12.1 NOTICE OF INDICATIVE RULING (1) does not exceed the type-volume limitation imposed by Federal Rule of Appellate Procedure 27(d)(2)(C) because it contains 2573 words; and (2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2019, in 14-point Times New Roman font.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

Date: December 27, 2022