Case No. 20-56233

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JONAH MARTINEZ, et al.
Plaintiffs/Appellants,

v.

ALEX VILLANUEVA, et al.
Defendants/Appellees

Appeal From The United States District Court
for the Central District of California
Honorable André Birotte Jr.
Lower Court Docket No. 2:20-cv-02874-AB-SK

DEFENDANTS' MOTION UNDER F.R.A.P. 41 AND CIRCUIT RULE 41-1 FOR TEMPORARY STAY OF MANDATE PENDING *EN BANC* PROCEEDING IN RELATED MATTER; DECLARATION OF JIN S. CHOI

PAUL B. BEACH, STATE BAR NO. 166265
JIN S. CHOI, STATE BAR NO. 180270
LAWRENCE BEACH ALLEN & CHOI, PC
100 West Broadway, Suite 1200
Glendale, California 91210
(818) 545-1925 Telephone / (818) 545-1937 Facsimile

Attorneys for Defendants-Appellees
COUNTY OF LOS ANGELES,
ALEX VILLANUEVA and BARBARA FERRER

This Panel "resolve[d] this case for the reasons set forth in *McDougall v. County of Ventura*, No. 20-56220, __ F.4th __ (9th Cir. Jan. 20, 2022), a related case involving different parties but materially similar issues." *See*, Panel Memorandum at 1-2, filed January 20, 2022.

On March 8, 2022, however, this Court entered an order that *sua sponte* granted *en banc* review in *McDougall*, and vacated the Panel's published opinion in said case. *See*, *McDougall* Docket. *En banc* oral argument is scheduled for June 21, 2022. *Id*.

Thus, the basis for this Panel's ruling in the instant case no longer exists. Moreover, obviously, this Court's ultimate *en banc* ruling in *McDougall* shall substantially impact the proper disposition of this case. Therefore, Defendants/Appellees respectfully request that the Panel temporarily stay issuance of the mandate. The issuance of a stay shall further the proper resolution of this case, result in greater efficiency in this and the district court, and preserve the limited resources of this Court and the parties.

Accordingly, for the aforementioned reasons, and in accordance with Rule 41 of the Federal Rules of Appellate Procedure and Circuit Rule 41-1, Defendants/Appellees respectfully request that the issuance of mandate in this matter be temporarily stayed pending disposition of the pending *en banc* proceeding in the related *McDougall* matter.

Plaintiffs/Appellants were notified of this Motion and they have advised Appellees that they take no position with respect to this Motion. (Declaration of Jin S. Choi, ¶ 2.)

Dated: March 10, 2022

Respectfully submitted,

LAWRENCE BEACH ALLEN & CHOI, PC

By /s/ Jin S. Choi

Paul B. Beach
Jin S. Choi
Attorneys for Defendants/Appellees
County of Los Angeles, Barbara
Ferrer, and Alex Villanueva

DECLARATION OF JIN S. CHOI

I, Jin S. Choi, declare as follows:

1. I am an attorney at law, duly authorized to practice before this Court and I am a shareholder in the law firm of Lawrence Beach Allen & Choi, PC, attorneys of record for Defendants/Appellees County of Los Angeles, Sheriff Alex Villanueva (in his official capacity only), and County Public Health Director Barbara Ferrer (in her official capacity only) in the within entitled action. I have personal knowledge of the facts stated herein. If called to testify to the matters herein, I could and would competently do so.

2. On March 10, 2022, Plaintiffs/Appellants' counsel, Mr. Raymond DiGuiseppe, was advised by email and telephone of this Motion. Counsel for Appellants advised my office that Appellants take no position with respect to this Motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 10, 2022, at Glendale, California.

s/ Jin. S. Choi
Jin S. Choi