

FILED

SEP 16 2021

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: KERMIT ALEXANDER;
BRADLEY WINCHELL,

KERMIT ALEXANDER; BRADLEY
WINCHELL,

Movants-Petitioners,

v.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA, SAN FRANCISCO,

Respondent,

MICHAEL ANGELO MORALES;
TIEQUON AUNDRAY COX; ALBERT
GREENWOOD BROWN; MITCHELL
CARLTON SIMS; DAVID A. RALEY;
ROBERT G. FAIRBANK; KEVIN
COOPER; SCOTT LYNN PINHOLSTER;
WILLIAM CHARLES PAYTON;
ROYAL HAYES; RICHARD DELMER
BOYER; RONALD LEE DEERE;
HARVEY LEE HEISHMAN III;
ANTHONY J. SULLY; ALBERT
CUNNINGHAM; DOUGLAS S
MICKEY; HECTOR JUAN AYALA;
RICHARD GONZALES SAMAYOA;
RAYNARD PAUL CUMMINGS;

No. 19-70232

D.C. Nos. 3:06-cv-00219-RS
3:06-cv-00926-RS

ORDER

CONRAD ZAPIEN; RONALDO
AYALA; JOHN LOUIS VISCIOTTI,

Plaintiffs-
Real Parties in Interest,

RALPH M. DIAZ, Acting Secretary for
the California Department of Corrections
and Rehabilitation; RONALD DAVIS,
Warden, Warden of San Quentin Prison;
GAVIN NEWSOM, Governor of the State
of California,

Defendants-
Real Parties in Interest.

Petition for Writ of Mandamus

Submitted September 16, 2020*
San Francisco, California

Before: W. FLETCHER, FORREST**, and VANDYKE, Circuit Judges.

Petitioners, who are family members of the victims of plaintiffs Michael Morales and Tiequon Cox, ask this court for a writ of mandate or prohibition.

Petitioners sought an order requiring the district court to (1) vacate all stays of execution; (2) conditionally refrain from issuing further stays or injunctions of

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

** Formerly known as Danielle J. Hunsaker.

executions or preparations; and (3) include in any future stay order an expiration period of 90 days. After Petitioners filed their petition in this court, Governor Gavin Newsom issued an Executive Order imposing a moratorium on all executions, repealing California's lethal-injection regulations, and closing the death chambers. In light of the Executive Order, all Plaintiffs and all Defendants filed a stipulated dismissal in the district court. Thereafter, Defendants filed a motion to dismiss Petitioner's mandamus petition.¹ (Dkt. No. 41). Petitioners do not oppose this motion.

We therefore GRANT the motion to DISMISS this petition. Each party shall bear its own costs and fees. The petition is **DISMISSED**.

¹ Before filing their motion to dismiss, Defendants filed a request for judicial notice regarding their answer to Petitioner's writ of mandamus. (Dkt. No. 17). Because we dismiss Petitioners' appeal as moot, we need not rule on the request for judicial notice.