

May 8, 2019

Via CM/ECF

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *Kelsey Cascadia Rose Juliana, et al. v. United States, et al.*,
No. 18-36082

Dear Ms. Dwyer,

Pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28-6, Plaintiffs-Appellees submit *B.K. v. Snyder*, No. 17-17501, 2019 WL 1868287 (9th Cir. April 26, 2019), as supplemental authority relevant to the interlocutory appeal and Plaintiffs' Urgent Motion for Preliminary Injunction, Doc. 21-1, in the above-captioned matter.

B.K. is pertinent to: (1) Plaintiffs' standing to constitutionally challenge the system-wide actions, policies, and practices of Defendants-Appellants in creating, controlling, and sanctioning the national fossil fuel-based energy system, *Answering Brief*, Doc. 37 at 9-29; (2) the judiciary's authority to hear, and issue relief in, systemic due process cases, *id.* at 29-32; and (3) Plaintiffs' state-created danger claim. *Id.* at 50-54; *Urgent Motion for Preliminary Injunction*, Doc. 21-1, at 25-34.

In *B.K.*, children in the Arizona foster care system alleged "state-wide policies and practices . . . violated their rights to due process . . ." 2019 WL 1868287 at *3. This Court ruled "these allegations and evidence describe imminent, concrete injuries – fairly traceable to the alleged state-wide practices and redressable by abatement of those practices." *Id.* at *10. This Court reiterated that "for purposes of standing to seek injunctive relief 'the plaintiff may demonstrate that the harm is part of a pattern of officially sanctioned behavior, violative of the plaintiffs' federal rights[.]'" *Id.* at 11 (citation omitted). Regarding redressability, this Court affirmed "the 'general contours of an injunction' are enjoining [defendant] to abate the nine policies identified by the district court" and a "more specific injunction will depend on further fact-finding and what claims the plaintiffs actually prove through further litigation." *Id.* at *10; *see also id.* at *10 (noting "the district court will be able to

Molly C. Dwyer

May 7, 2019

Page 2

determine whether the Directors have an unconstitutional practice of placing children in substantial risk of harm by evaluating these practices as a whole, rather than as to each individual class member.”). This Court stated that, in a deliberate indifference claim, “proving a substantial risk of harm is all that is necessary to prove the claim.” *Id.* at *13. The difficulty of proof or fashioning relief are issues for the merits. *Id.* at *10.

Respectfully submitted,

s/ Julia A. Olson

JULIA A. OLSON

(OSB No. 062230, CSB No. 192642)

Wild Earth Advocates

1216 Lincoln Street

Eugene, OR 97401

PHILIP L. GREGORY

(CSB No. 95217)

Gregory Law Group

1250 Godetia Drive

Redwood City, CA 94062

ANDREA K. RODGERS

(OSB No. 041029)

Law Offices of Andrea K. Rodgers

3026 NW Esplanade

Seattle, WA 98117

Attorneys for Plaintiffs-Appellees

cc: All Counsel of Record (via CM/ECF)