No. 24-684

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re UNITED STATES OF AMERICA, et al.

UNITED STATES OF AMERICA, et al.,
Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON,
Respondent,

and

KELSEY CASCADIA ROSE JULIANA, et al.
Real Parties in Interest.

On Petition for a Writ of Mandamus to the United States District Court
for the District of Oregon (No. 6:15-cv-1517)

REPLY IN SUPPORT OF STAY AND OPPOSITION TO MOTION TO STRIKE

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INTRODUCTION

Four years ago, this Court held that the district court lacks jurisdiction to hear this case and ordered dismissal. *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020). The district court did not dismiss the case. Rather, the case remained dormant for years until the court abruptly reopened proceedings, denied the government's motion to dismiss an amended but materially identical complaint, and held a status conference on scheduling a trial. This Court should stay the district court's march to trial pending the resolution of the government's mandamus petition. The government has already prevailed on appeal and should not be required to proceed with discovery and trial while vindicating this Court's mandate.

But more than the government's litigation interests are at stake. As this Court recognized, the relief Plaintiffs seek is fundamentally at odds with the role of the courts in the democratic system of government established by the Constitution. *Juliana*, 947 F.3d at 1175. The implications of proceeding to trial in such a suit also counsel in favor of a stay.

Plaintiffs object to the government's request for a stay by suggesting that the district court's actions on remand are simply the ordinary course of litigation. But the government has petitioned for mandamus precisely because the district court's disregard for this Court's mandate and the limits of judicial power is extraordinary.

ARGUMENT

I. The government committed no procedural fault in moving this Court for a stay of the case pending resolution of the mandamus petition.

Plaintiffs argue that the government's stay request should be stricken because the government improperly sought a stay under Federal Rule of Appellate Procedure 21 and the All Writs Act, 28 U.S.C. § 1651. Motion to Strike 1, 6-7, 33. The Court's broad mandamus authority under Rule 21 and the All Writs Act plainly encompasses stays, as acknowledged in this Court's general orders. 9th Cir. General Order 6.8(a). Indeed, the government previously sought and obtained a stay under the All Writs Act in this very case. *See* Order, *In re United States*, No. 18A410 (S. Ct. Oct. 19, 2018) (Roberts, C.J., in chambers). Plaintiffs nonetheless suggest that this Court has no authority to issue stays independent of Federal Rule of Appellate Procedure 8, which governs stays pending appeal. Motion to Strike 7. The district court did not certify an appeal; consequently, Rule 8 is inapplicable.

In any event, the government first moved the district court for a stay, as Rule 8 contemplates, even though the district court already denied without explanation the government's requests to stay the litigation and to certify an appeal. Plaintiffs fault the government for not seeking to expedite its motion in district court before seeking relief in this Court. Motion to Strike 6-7. But the government seeks mandamus and a stay for overlapping reasons, and the government therefore

included its stay request in its petition rather than in two duplicative filings, consistent with past practice in this case. Plaintiffs apparently would prefer that the government defer any stay request until this Court can consider the issue only on an expedited basis under Circuit Rule 27-3, but the government is not required to resort to emergency procedures.

Plaintiffs, moreover, offer no explanation why this Court should strike the stay request. Motion to Strike 1, 6-7, 33. The only rule they suggest has been violated is Rule 8, but at most a Rule 8 defect would be grounds for denial.

II. A stay is warranted because the government's petition is likely to succeed.

To resist a stay, Plaintiffs dispute the role of mandamus in enforcing the mandate and contend that the government has not satisfied this Court's *Bauman* factors. *See Bauman v. U.S. Dist. Ct.*, 557 F.2d 650, 654-55 (9th Cir. 1977). But mandamus will lie to correct violations of the mandate, and the district court's disregard of the limits of its authority warrant mandamus under *Bauman* regardless.

A. Plaintiffs do not dispute that the multi-factor *Bauman* test "does not apply when mandamus is sought" to enforce a mandate, *Vizcaino v. U.S. District Ct. for the W. Dist. of Wash.*, 173 F.3d 713, 719 (9th Cir. 1999), but they contend that this rule applies only when litigants seek to relitigate a final judgment. Motion to Strike 15-16. Of course, Plaintiffs are seeking to relitigate this Court's judgment directing

dismissal. *Juliana*, 947 F.3d at 1175. Regardless, the leading case, *Vizcaino*, stated a broad principle that does not include Plaintiffs' gloss; nor do subsequent cases. 173 F.3d at 719; *see, e.g.*, *Perry v. Schwarzenegger*, 602 F.3d 976, 980 (9th Cir. 2010). *Vizcaino* explained that the policy against piecemeal litigation, which disfavors interlocutory appeals, has no application where litigants who obtained a judgment from an appellate court seek to enforce it. 173 F.3d at 720. That principle squarely applies here: the government is not required to go through discovery and trial before asking this Court to compel compliance with its judgment.

B. Even if the *Bauman* factors applied, mandamus is warranted. Plaintiffs dispute that the district court made a clear error of law, the third and most important factor. *In re U.S. Dep't of Educ.*, 25 F.4th 692, 698 (9th Cir. 2022). This Court, however, held that the district court lacks authority to issue declaratory or injunctive relief in this case and mandated dismissal. *Juliana*, 947 F.3d at 1175. Plaintiffs argue that the mandate did not expressly foreclose an amended pleading, Motion to Strike 3-4, 19-21, but the district court is bound by the spirit of this Court's mandate, not just its letter. *Creech v. Tewalt*, 84 F.4th 777, 787 (9th Cir. 2023); *Vizcaino*, 173 F.3d at 719. And the spirit of the mandate foreclosed the district court's exercise of jurisdiction over Plaintiffs' claims in this case. Petition 24-25. Plaintiffs suggest that simply adding allegations that declaratory relief would redress their injuries is enough to permit this case to go forward. But the

"innovative" declaratory relief the district court proposes to redress Plaintiffs' injuries is foreclosed by this Court's mandate and Article III and equitable limitations. Petition 27-28, 35-37.

Plaintiffs mischaracterize this Court's decision as "narrow," Motion to Strike 23, but the Court reached fundamental conclusions about the limits of Article III. *Juliana*, 947 F.3d at 1170-75. The Court did not identify a technical pleading defect amenable to a quick fix through an amendment that does not "updat[e] facts," "add[] new claims for relief," or "challeng[e] conduct" of different defendants. ECF No. 462 at 9. Rather, the Court held that the district court cannot issue a declaration that would redress Plaintiffs' claims and cannot otherwise exercise broad supervisory powers over the government's response to climate change in its entirety, the "innovation" the district court now proposes. *Juliana*, 947 F.3d at 1173; *see also* Petition 31-38. Plaintiffs' second amended complaint does not remedy the fundamental Article III failing identified by this Court.

C. Plaintiffs' arguments contesting the other *Bauman* factors are equally unavailing. On the first factor, whether the government has adequate other means of obtaining the relief sought, Plaintiffs assert that eventual appeal can afford relief. Motion to Strike 16. But the government seeks relief from discovery and a trial that this Court already has said the district court has no authority to hold, and

that relief cannot be obtained after trial. Mandamus, not appeal, is the appropriate remedy for a violation of the mandate. *Vizcaino*, 173 F.3d at 719.

On the second factor, whether the government will suffer damage or prejudice that cannot be corrected on appeal, Plaintiffs contend that the burdens of litigation generally are not a basis for mandamus, Motion to Strike 17-19, as the government has acknowledged, Petition 48-49, 52. But Plaintiffs fail to address the core of the government's argument: that further proceedings in violation of this Court's mandate harm the government by nullifying a decision the government obtained from this Court and contravening our constitutional order (see below pp. 7-12).

On the fourth factor, whether the district court's errors are oft repeated or in disregard of federal rules, Plaintiffs argue this Court reversed the district court "only once, on a single narrow issue" that was "clarified" by a different Supreme Court case. Motion to Strike 23. Plaintiffs are wrong that the Supreme Court's decision in *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021), has any bearing here, *see* Petition 28-29, but more importantly, the problem is not simply that this Court reversed the district court. The problem is that the district court has repeatedly disregarded the limits of its Article III jurisdiction *and* has now violated this Court's mandate, even while citing this Court's opinion as contrary precedent. ECF No. 565 (Petition Exhibit 1) at 7 & n.13.

On the fifth factor, whether there are new and important issues at stake, Plaintiffs argue that their "routine" amendment does not raise issues of first impression. Motion to Strike 23. A district court's disregard of the Court's mandate is necessarily "new" and "important" (which may be why *Vizcaino* obviates *Bauman* -style analysis). Furthermore, while Plaintiffs' lack of standing should have been thought settled years ago, the unprecedented relief sought raises issues that are both "new" and "important." Petition 38-46.

III. The equities favor a stay pending resolution of the petition.

While no consideration of the equities is needed to justify a stay under *Vizcaino*, the balance of equities also favors a stay. The government will suffer certain harm if it is deprived of the benefit of this Court's earlier judgment ordering dismissal, and Plaintiffs proffer no evidence of serious harm from a modest delay in the district court's proceedings. A stay is also in the public interest because it would protect this Court's authority and prevent the district court from holding a trial, without jurisdiction, on significant matters of policy that are properly committed to the political Branches.

A. Allowing this case to proceed would impose clear "hardship [and] inequity" on the government because it would deprive the government of the benefit of the judgment it won in this Court. *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007). As explained above (pp.

3-4), this Court's mandate ordered the district court to dismiss, so the government should not have to litigate this case at all.

The government's situation is analogous to that of other litigants who claim a right not to go to trial and seek relief from the court of appeals to vindicate that right. As this Court has held, such litigants "would be irreparably harmed if the trial court continued to proceed to trial prior to the disposition of the appeal." *United States v. LaMere*, 951 F.2d 1106, 1108 (9th Cir. 1991). And for that reason, this Court has held that a district court *must* stay proceedings while this Court considers a colorable appeal from, for example, the denial of an immunity or double jeopardy defense. *Id*. (double jeopardy); *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1090 (9th Cir. 2007) (tribal sovereign immunity); *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992) (qualified immunity); *see also Coinbase, Inc. v. Bielski*, 599 U.S. 736, 741 (2023) (denial of motion to compel arbitration) ("[I]t makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one." (quotation omitted)).

While those precedents arose from interlocutory appeals, their reasoning is instructive to this mandamus proceeding.[1] The government has more than a

[1] Had the district court certified its orders for appeal, as the government asked, the district court would have had to stay proceedings. *See Coinbase*, 599 U.S. at 740-41 (holding that a district court must stay proceedings pending an interlocutory appeal addressing the court's power to hold a trial).

colorable argument that the district court's refusal to dismiss the case violates this Court's mandate and that the district court lacks jurisdiction to continue with its proceedings. If the district court proceeds to trial while the government's mandamus petition is pending, the government would be deprived of a substantial measure of relief it won in the prior judgment. A stay is therefore warranted.

Nor would the injury to the government from proceeding to trial be trivial. The government expects that conducting a trial in this case would require a minimum of 7,300 hours of professional time and cost millions of dollars. Petition 48. Plaintiffs do not contest those estimates. Instead, they argue that those costs are insignificant in the context of the potential harms of climate change. But, as explained below (pp. 10-11, Plaintiffs do not substantiate their assertion that a temporary stay will exacerbate the harms of climate change, whereas the harm to the government of proceeding to trial is certain.

Plaintiffs also ignore that the government will be harmed in other ways if this district court moves forward. Defending against Plaintiffs' strikingly broad claims will inevitably require the government to take positions on controversial factual and policy issues and to do so outside of the administrative processes mandated by Congress to provide for broad consideration of varying perspectives in the formulation of government policy. And requiring agencies to take such positions would disregard the substantive authority Congress has given them by

depriving the agencies of the discretion to determine their own policy priorities. *Cf. Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985) ("The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities."). Accordingly, allowing this case to move forward—when this Court has already held that the district court lacks jurisdiction—would show a lack of respect for the independence of the political Branches.

B. Plaintiffs explain at length that they have been harmed by climate change. The question is not, however, whether Plaintiffs will be harmed by climate change, but whether and to what extent they will be harmed by a stay while the Court considers the government's mandamus. Plaintiffs do not make any plausible argument that they will suffer significant harm. The closest they come to asserting harm from a stay is their allegation that "[a]ny delay that prevents [them] from making their case at trial only serves to exacerbate their existing mental health injuries." Motion to Strike 26. But it has been more than four years since this Court ruled that Plaintiffs lack standing, and in that time, Plaintiffs never moved to expedite proceedings in the district court.

In any event, Plaintiffs do not explain how a modest delay in the district court proceedings would harm them, particularly when the government is already taking numerous actions to address climate change. Petition 1 & n.1. Nor could they, as this Court has already held that the district court lacks the power to

"supervise[]" or "enforce[]" the government's response to climate change in this case, *Juliana*, 947 F.3d at 1173, and Plaintiffs state that they are no longer seeking such relief, Motion to Strike 3.

C. The government is not seeking the writ of mandamus because it disagrees that climate change is an urgent concern or that action by the federal government must be a key part of the solution. The government agrees that there is a crisis, which the Executive Branch is taking numerous actions to address with the authorities Congress provided to it.

Rather, the government is seeking the writ of mandamus because it has a duty to uphold the democratic system established by the Constitution, as well as the substantive and procedural standards and limitations Congress has provided for the Executive Branch to follow in addressing climate issues. That democratic system and statutory framework do not contemplate judicial resolution of complex social problems, which require the balancing of "competing social, political, and economic forces." *Juliana*, 947 F.3d at 1172 (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 128-29 (1992)). Yet by proceeding to trial and judgment in this litigation, the district court would do just that. Because merely continuing this litigation has grave implications, the case should be stayed until this Court has determined whether the case may proceed.

The public interest also favors the orderly resolution of litigation and the observance of the hierarchical structure of the judiciary. *Cf. United States v. Thrasher*, 483 F. 3d 977, 982 (9th Cir. 2007) ("[T]he mandate rule also serves an interest in preserving the hierarchical structure of the court system."). Because the district court's orders violate this Court's mandate, further proceedings will harm not only the Executive, but also the Judicial Branch. This Court should ensure the integrity of its judgments by requiring the district court to stay its hand until this Court is able to resolve the scope and limits of the district court's jurisdiction.

CONCLUSION

For the foregoing reasons, the Court should grant a stay pending resolution of the government's mandamus petition and deny Plaintiffs' motion to strike.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this response complies with the length limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 2,795 words.

/s/ *Daniel Halainen*
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Counsel for Petitioners