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' OPPOSITION TO MOTION FOR A STAY PENDING APPEAL

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(*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

Defendants Hinds County, Mississippi, and Sheriff Tyree Jones (together, "the County") seek stays pending appeal of district court orders designed to remedy ongoing unconstitutional conditions of confinement in the County's Raymond Detention Center (RDC). Mot.[1]

First, the County seeks to stay the court's orders amending a consent decree and imposing an abridged New Injunction, which has been in effect since April (Docs. 168, 169). Mot. 4-14. These orders "grant[ed] the relief the County requested and substantially reduc[ed] the demands of the [c]onsent [d]ecree," but maintained core provisions the court deemed necessary to diminish the ongoing risk of serious harm to RDC residents. Doc. 211, at 6-8. Second, the County seeks to stay two subsequent orders that appoint a receiver to operate RDC and outline the receiver's duties (Docs. 215, 216) (Receiver Orders). Mot. 14-22. These orders effectuate a temporary receivership imposed in July as a sanction for the County's violation of the consent decree and another order targeting jail conditions, and for the County's persistent "abdicat[ion] [of] responsibility for ensuring the health and safety of detainees in its custody." Doc. 204, at 25-26.

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[1] "Mot. _" refers to defendants' Motion To Stay Pending Appeal; "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.).

This Court should not take the drastic steps of disturbing the longstanding status quo that the New Injunction represents or the nascent operation of a receivership needed to protect human life and public safety. As the district court held in denying the stay motions, the County cannot satisfy the four-factor standard for granting a stay pending appeal established in *Nken* v. *Holder*, 556 U.S. 418 (2009). See Docs. 211, 237.

FACTUAL AND PROCEDURAL BACKGROUND

As the district court aptly wrote, "[i]t's been a long year of litigation" building on a "long decade" of proceedings regarding the Hinds County Jails, during which its residents have suffered mightily. Doc. 237, at 1-2 & n.1.

After a two-year investigation, the United States filed a complaint against the County in June 2016. Doc. 1. The complaint alleged that the County engaged in a pattern or practice of Eighth and Fourteenth Amendment violations relating to detainee-on-detainee violence, staff use of force, inadequate staffing, jail policies and procedures, housing and classification systems, a deteriorated physical plant, internal investigations, unlawful detention, and the treatment of juvenile and seriously mentally-ill detainees. Doc. 1. The parties simultaneously moved for, and the court entered, a consent decree that outlined steps for the County to achieve constitutional conditions at its jails, including appointment of a monitor. Docs. 2, 8-1. The parties stipulated that the decree complied with the Prison

Litigation Reform Act's (PLRA) requirement that prospective relief "is narrowly drawn, extends no further than necessary to correct the violation of" Federal rights, and "is the least intrusive means necessary" to correct the violation (the "need-narrowness-intrusiveness" standard), 18 U.S.C. 3626(a)(1). Doc. 8-1, at 61.

In 2019, the County was compliant with only one of the decree's 92 provisions, and the United States moved for contempt. Doc. 30. Although contempt was "warranted," the district court entered a stipulated order—which the County welcomed and the parties agreed met the need-narrowness-intrusiveness standard—containing detailed steps to help the County "finally" make "headway on the goal" of "constitutional jail conditions." Doc. 60, at 7; Doc. 60-1, at 2; Doc. 211, at 4.

By November 2021, however, the County was in sustained compliance with only three consent decree provisions, while a "record seven in-custody deaths" had occurred that year. Doc. 101, at 4, 23; Doc. 237, at 2. The district court ordered the County to "show cause and explain why it should not be held in civil contempt and why a receivership should not be created to operate RDC." Doc. 100, at 1, 28. The County claimed to be "righting the ship" and asked the court to hold in abeyance its decision on remedies until July 2022. Doc. 105, at 23-24. Instead, the County moved to terminate or modify the decree under the PLRA (Docs. 111, 112), which makes prospective relief terminable unless the court finds it "remains

necessary to correct a current and ongoing violation of [a] Federal right" and meets the need-narrowness-intrusiveness standard, 18 U.S.C. 3626(b)(3).

In February 2022, the district court held the County in contempt for breaking promises to fix unconstitutional conditions (evidenced by the monitor's reports of escalating violence, destruction, overdoses, and contraband) and for its noncompliance with 30 consent decree provisions. Doc. 126, at 1-12, 20-27. The court then held a two-week bench trial on the County's PLRA termination motion and contempt remedies. After trial, the district court held the County in contempt a second time for housing detainees in "A-Pod"—a unit the Sheriff admitted was "unsafe" and where violence and gangs reign, trash collects in unusable cells, and necessities such as lights, door locks, showers, furniture and fire-safety equipment are nonfunctional or nonexistent. Doc. 165, at 5, 7-18.

In late April, the district court nonetheless "substantially granted" the County's PLRA termination motion by "dramatically scal[ing] back" the terms of injunctive relief to address persistent constitutional violations at RDC. See Doc. 211, at 6; see generally Docs. 168, 169. The court observed 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. RDC fell below constitutional standards for detainees' protection from harm from other detainees

and themselves (including with respect to sexual misconduct and the use of segregation), staff use of force, and detention of individuals without a lawful basis. Doc. 168, at 26-149. Thus, the court declined to terminate prospective relief but imposed a New Injunction that—based on the court's assessment of the PLRA's need-narrowness-intrusiveness requirement—pertains only to one of the County's three jails, RDC, and abbreviates the decree's substantive sections. Doc. 168, at 26-149; Doc. 169. Both parties appealed (Docs. 185, 186), and the County sought a stay, which the district court denied in early September (Doc. 211).

The district court also acceded to the County's plea for more time (until July) to purge itself of contempt. After a final mitigation hearing, the court on July 29 denied the County's motion to reconsider the second contempt order, explaining "regretfully" that "the County is incapable, or unwilling, to handle its affairs" and that "[i]t is time to appoint a receiver." Doc. 204, at 4. The court held that the County's persistent failure to meet constitutional minimums, despite court oversight and negotiated remedial orders, justified the receivership. See Doc. 204. The court weighed factors including the persistent risk of serious harm to RDC residents and the County's course of conduct over time—including unmet promises, wasted resources, and its' leaders' game of "accountability hot-potato"—in an analysis that incorporated the PLRA's need-narrowness-intrusiveness requirement. Doc. 204, at 4-25. The order stated that the receiver

would begin work "no later than November 1." Doc. 204, at 26. The County appealed this order (Doc. 212), but has never sought to stay it.

The district court issued the Receiver Orders on October 31. Docs. 215, 216. The court appointed Wendell M. France, Sr., to begin his transition the next day and take operational control of RDC on January 1, 2023. Doc. 215, at 3-4. The court gave France authority over daily operations at RDC within a system of input from the County and oversight from the court, and a process for transition of power back to the County (expected to occur when detainees move from RDC to a new jail currently under construction). See Doc. 216.[2] The County appealed the Receiver Orders (Docs. 217, 218) then moved for a stay pending appeal (Doc. 228). The district court denied the stay. Doc. 237.

ARGUMENT

THIS COURT SHOULD NOT STAY THE NEW INJUNCTION OR RECEIVER ORDERS

A. Legal Standard

In deciding whether to grant a stay, courts consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the

[2] The court has confirmed "unequivocally" that it designed the receivership to be PLRA-compliant. Doc. 238, at 3.

proceeding; and (4) where the public interest lies." *Nken* v. *Holder*, 556 U.S. 418, 433 (2009). The first two factors "are the most critical." *Id.* at 434. The last two factors "merge when the [federal] Government is the opposing party." *Id.* at 435. The County bears the burden of showing that a stay is justified. *Id.* at 433-434.

B. The New Injunction Should Remain In Place

1. The County Is Unlikely To Succeed On The Merits Because The New Injunction Is Premised On And Narrowly Tailored To Current And Ongoing Violations Of Federal Law

The County's motion invokes the PLRA but in reality asks this Court to overturn the district court's well-supported findings of persistent unconstitutional conditions at RDC. For the same "149 pages of reasons" that the district court gave in its order amending the consent decree, this Court, too, should conclude that there is "nothing more than 'a mere possibility'" that the County will succeed in arguing that it is entitled to termination of prospective relief.[3] Doc. 211, at 9-10 (citation omitted).

[3] A stay of the New Injunction would revert to the consent decree (the status quo prior to the appealed order), not to a time before this litigation, as the County wishes. What the County actually wants is an injunction, which "grants judicial intervention that has been withheld by lower courts" and thus "demands a significantly higher justification than a request for a stay." *Respect Maine PAC* v. *McKee*, 562 U.S. 996 (2010) (citation omitted). The County cannot justify a stay or an injunction. Doc. 211, at 13.

a. The New Injunction Is Tethered To Jail Conditions At The Time Termination Was Sought

The County's first argument—that the district court did not find "current and ongoing" violations of federal law that justify prospective relief, 18 U.S.C. 3626(b)(3) (Mot. 5-6)—ignores the record.

The district court premised its order amending the consent decree on evidence of jail conditions "at the time" it "conduct[ed] the § 3626(b)(3) inquiry," meaning "conditions in the jail at the time termination is sought," not "conditions that existed in the past" or "conditions that may possibly occur in the future." *Castillo* v. *Cameron Cnty.*, 238 F.3d 339, 353 (5th Cir. 2001) (citation omitted). Within a few weeks of the County's January 2022 termination motion, the court itself visited the Jail and then conducted a two-week evidentiary hearing featuring testimony from the court's monitoring team and County officials, employees, and contractors. See Doc. 168. The order amending the decree is replete with references to evidence of conditions at RDC in January and February 2022 that the court found to contribute to unconstitutional conditions of confinement. See, *e.g.*, Doc. 168 at 17-22, 43-49, 51, 53, 63-66, 73-74, 78-79, 80-81, 84-85, 91-92, 96, 102-105, 123, 137.

The County nevertheless insists that the evidence of ongoing constitutional violations was stale because "[a]s of the time of the [mid-February] evidentiary hearing, there were no deaths at RDC in 2022," and because one incident that the

district court highlighted—a multi-perpetrator sexual assault on a juvenile—occurred four months prior. Mot. 6-7. But the County cites no authority to support the proposition that 18 U.S.C. 3626(b)(3)'s recency requirement affords the County a clean slate at the start of the calendar year, or prohibits consideration of seven deaths and an instance of child sexual assault in the months—not years—preceding a termination motion. Indeed, such a requirement would conflict with well-settled precedent holding that jail conditions creating a "substantial risk of serious harm"—not just instances of actual harm—may trigger constitutional violations. See, *e.g.*, *Farmer* v. *Brennan*, 511 U.S. 825, 828 (1994). A court cannot assess whether there are "current and ongoing" violations of federal law for PLRA purposes without considering whether recent history demonstrates a "substantial risk."

b. Ongoing Injunctive Relief Is Proper Because RDC Detainees Are At Substantial Risk Of Serious Harm, To Which The County Is Deliberately Indifferent

The County next mounts an unpersuasive challenge to the district court's findings of persistent unconstitutional conditions at RDC, cloaked awkwardly in the PLRA's narrowness-and-intrusiveness requirements. Mot. 7-11. As noted above, unconstitutional conditions of confinement arise where there is "substantial

risk of serious harm to an inmate," and where jail officials demonstrate "deliberate indifference" to that risk.[4] *Farmer*, 511 U.S. at 828.

This Court is unlikely to find that the district court "clearly erred" in finding that RDC detainees experience serious harm or substantial risk of serious harm. *Ball* v. *LeBlanc*, 792 F.3d 584, 593 (5th Cir. 2015). The district court found "unconscionably high levels of violence" at RDC and held that the "pervasiveness and severity of [violent] incidents distinguish RDC as a place where 'terror reigns.'" Doc. 168, at 51 (quoting *Alberti* v. *Klevenhagen*, 790 F.2d 1220, 1224 (5th Cir. 1986)). Indeed, the court noted that even the County's current Sheriff admitted at trial that RDC's A-Pod is "unsafe." Doc. 168, at 84. The court identified myriad conditions that constitute serious harm or substantial risk of serious harm: seven detainee deaths in 2021 relating to lack of supervision and medical care (Doc. 168, at 11-14); staffing at only 58% of the recommended level, enabling "dangerous scenarios" presented by unsupervised detainees (Doc. 168, at

[4] The district court focused on "substantial risk of serious harm," an Eighth Amendment standard for assessing unconstitutional conditions of confinement, but acknowledged that RDC residents are primarily pretrial detainees, whose rights are protected by the higher standards of the Fourteenth Amendment's Due Process Clause. Doc. 168, at 41 (citing *Bell* v. *Wolfish*, 441 U.S. 520, 545 (1979)). Nevertheless, Eighth Amendment precedents are useful "guideposts," as "[c]onditions that violate the Eighth Amendment's Cruel and Unusual Punishment Clause necessarily also violate the protections of the Fourteenth Amendment's Due Process Clause." Doc. 168, at 41 (citing *Hare* v. *City of Corinth*, 74 F.3d 633, 639 (5th Cir. 1996) (en banc)).

43-47); the related prevalence of gangs and "excessive" violence (Doc. 168, at 48-51); inadequate medical and mental health training that "imperils detainees' wellbeing" (Doc. 168, at 53-54); excessive use of force and failure to prevent its repetition (Doc. 168, at 59-61, 63-66, 73-74); sexual assaults (Doc. 168, at 83-86); inhumane treatment of detainees in segregation (Doc. 168, at 102-105); heightened risks of serious harm arising from deficient incident reporting, investigations, and handling of detainee grievances (Doc. 168, at 77-81, 91-94, 96-98); and due process violations arising from unlawful detention (Doc. 168, at 121-123).

The County is similarly unlikely to convince this Court to overturn the district court's finding of deliberate indifference. The County does not argue the predicates for a deliberate indifference finding—awareness of facts from which substantial risk of serious harm can be inferred, and actually making that inference—but instead argues that it should escape liability because it "responded reasonably," if unsuccessfully, to the risk. Mot. 8-11 (quoting *Farmer*, 511 U.S. at 844-845). As this Court has held, however, "taking some reasonable precautions does not mean [a defendant], on the whole, behaved reasonably." *Converse* v. *City of Kemah*, 961 F.3d 771, 779 (2020) (citing *Jacobs* v. *West Feliciana Sheriff's Dep't*, 228 F.3d 388, 395-396 (5th Cir. 2000)).

The County's record is one of deliberate indifference, not reasonable response. See, *e.g.*, Doc. 168 at 43, 48, 54, 85, 97-98 (identifying the County's

deliberate indifference to risk of specific harms). The County indisputably has known of grave conditions at its jails since receiving the findings of the United States' investigation in 2015, and it consented to undertake dozens of specific measures to ameliorate those conditions in 2016—only three of which it ever completed. This is unreasonable.

Further, the district court has documented the County's history of half-hearted remedial efforts and broken promises in entering the stipulated order, twice holding the County in contempt, amending the consent decree, and ordering a receivership. See Doc. 60, at 1-8; Doc. 126, at 6-9; Doc. 165, at 1-3; Doc. 168, at 3-23; Doc. 204, at 1-4, 14-22. The court acknowledged that the County has taken "a few" steps toward constitutional compliance, such as "fix[ing] some door locks" and "approv[ing] (but not implement[ing]) a 5% raise for correctional officers," and "working on" physical plant issues. Doc. 168, at 1-2. But the County's "inaction" has left the "underlying fundamentals * * * unchanged." Doc. 168, at 2. At-best partial completion of known, necessary measures to resolve persistent constitutional violations does not negate deliberate indifference. See *Jacobs*, 228 F.3d at 397-398 (jailer's "disregard for precautions" that he "knew should be

taken" supported finding of deliberate indifference). None of the evidence the County cites undercuts the court's findings. Mot. 9-11.[5]

2. The New Injunction Does Not Harm The County

This Court need look no further than the County's conduct to see that the New Injunction poses it no irreparable injury. The New Injunction became effective eight months ago and the district court declined to stay it in early September. The County allowed three more months of the New Injunction to pass before seeking a stay from this Court.

Consistent with this lack of urgency, the County strains to explain the harm that the New Injunction causes. Mot. 12-13. Indeed, as the district court pointed out, the New Injunction "does not impose any new requirements on the County," "reduce[s] the requirements imposed on the County," and "is substantially less onerous than its predecessor," such that "adhering to the New Injunction cannot irreparably injure the County." Doc. 211, at 10-11. Moreover, the County cannot claim irreparable harm from getting what it wanted—its "alternative request" for "the [c]onsent [d]ecree to be dramatically scaled back" (Doc. 168, at 2). Cf.

[5] For example, the County cites the good intentions of Kathryn Bryan, a short-tenured Jail Administrator whom the Sheriff fired and told "to clean out her car and find her own way home." Doc. 168, at 19. The court heard Bryan's testimony and other evidence the County cites but concluded that the County was deliberately indifferent. The County offers no reason for this Court to overturn these findings.

Libertarian Party of Ill. v. *Cadigan*, 820 F. App'x 446, 446 (7th Cir. 2020) (finding no irreparable harm where party seeking stay had agreed to relief from which it appealed).

The County's vague grievances do not amount to irreparable injury. The County claims that the New Injunction is not narrowly tailored because it lacks termination provisions. Mot. 12. But it is unclear why such provisions are necessary given the PLRA's termination regime, 18 U.S.C. 3626(b), or how their absence harms the County. Mot. 12. The County also claims that the New Injunction "improperly allows the district court to micromanage RDC" (Mot. 13), but the County has declined the district court's offers to draft its own decree and now faces the "least stringent injunction" since the case began (Doc. 211, at 11-12). The County's last complaint, that ongoing monitoring is "cost prohibitive" (Mot. 13), is puzzling both because the County agreed to pay for monitoring when it negotiated the consent decree and because the court has ordered monitoring to cease unless the receiver determines otherwise. Doc. 204, at 24-25.

In sum, the New Injunction does not harm the County.

3. Failing To Enforce The New Injunction Will Harm The United States And The Public By Interrupting Oversight Needed To Achieve Constitutional Conditions Of Confinement

The final two *Nken* factors—injury to other parties and the public interest—merge because the United States is a party to this litigation, 556 U.S. at 435.

These, too, favor denying a stay. The County's arguments to the contrary merely rehash their prior efforts to undercut the district court's overwhelming findings of ongoing constitutional violations or simply miss the mark. Mot. 13-14.

The federal government's interest, and the public's, lies in ensuring expeditious correction of "egregious or flagrant" conditions of confinement that put detainees at risk of serious harm in violation of their federal rights and imperil public safety. 42 U.S.C. 1997a(a); see Doc. 237, at 11. The district court explained that the County's "failure to remedy its jail conditions has caused 'needless suffering and death.'" Doc. 211, at 13 (quoting *Brown* v. *Plata*, 563 U.S. 493, 501 (2011)). The County's violation of detainees' constitutional rights, "for even minimal periods of time . . . unquestionably constitutes irreparable injury." Doc. 211, at 13 (quoting *BST Holdings, L.L.C.* v. *OSHA*, 17 F.4th 604, 618 (5th Cir. 2021)). The court explained that these constitutional harms result from the County's "lack of urgency and competency" in correcting conditions known to be "deplorable and dangerous." Doc. 211, at 13. Although the County asserts that injunctive relief has not been "helpful in improving conditions at RDC" (Mot. 14), the court found that "there is no indication that if [the County is] left to its own devices, the situation will change any time soon." Doc. 211, at 13. Thus, absent

"federal oversight, irreparable injury would result to detainees, the United States, and the public interest." Doc. 211, at 13.[6]

Accordingly, the County has not satisfied the final two *Nken* factors.

C. The Receiver Orders Should Proceed

1. The County Is Unlikely To Succeed On The Merits Because The Receivership Is A Tailored, Temporary Measure To Address The County's Abdication Of Its Constitutional Obligations

Citing not a single authority, the County argues that it is likely to succeed in its appeal because the Receiver Orders are a sanction for contempt of a consent decree that has since been replaced by the New Injunction and therefore exceed the PLRA's need-narrowness-intrusiveness requirement. Mot. 14-16. As the district court explained, the County misunderstands the PLRA's requirements and the court's orders, which are tailored to remedying ongoing constitutional harm. Doc. 237, at 6-9.

First, the County's argument that the Receiver Orders do not comply with the need-narrowness-intrusiveness standard rests on the flawed premise that the PLRA requires narrow tailoring of relief to the order that "appears most recently on the docket" (Doc. 237, at 6), rather than to correction of the "violation of [a]

[6] Indeed, the monitor's December report described deplorable conditions and deemed the County substantially compliant with only two New Injunction provisions, partially compliant with 27, and noncompliant with eight. Doc. 242, at 4, 8, 10-15, 21-22, 38-39, 43-44.

Federal right" (18 U.S.C. 3626(a)(1)(A)). The PLRA's focus is ensuring a "'fit' between the [remedy's] ends"—eliminating prison conditions that violate federal law—"and the means chosen to accomplish those ends." *Brown*, 563 U.S. at 531 (citation omitted; alteration in original). A receivership, therefore, is an appropriate and PLRA-compliant remedy where a defendant has failed to "comply with consent orders intended to remedy the constitutional violations in its" jails, and where the receivership satisfies the need-narrowness-intrusiveness standard. *Plata* v. *Schwarzenegger*, 603 F.3d 1088, 1097-1098 (9th Cir. 2010).

Second, the County is simply wrong that the Receiver Orders merely remedy violations of the now-inoperative consent decree. Relying expressly on evidence developed at hearings in February and July 2022, the district court found that ongoing constitutional violations—not simply the County's failure to satisfy court orders—justified the receivership. See Doc. 204, at 7-13.

Even if the Receiver Orders were designed only to remedy violations of the now-narrowed consent decree, they would not be improper (Mot. 15-16). The district court explained that "the New Injunction is a substantially pared down version of the [c]onsent [d]ecree," to which all provisions of the New Injunction "can be directly traced back." Doc. 237, at 7. "There is an obvious through-line" between the County's noncompliance with terms designed to achieve constitutional minimums in the two orders, such as the "sufficient staffing" requirements of each

order that target the primary source of RDC's troubles. Doc. 238, at 7-8. The court did not impose "new conditions on the County, only to then measure its efforts to comply using an entirely different metric," but instead decided to "impose a receivership" based on "a long timeline of worsening Constitutional violations." Doc. 237, at 8.

Accordingly, the County is unlikely to prevail in arguing that the Receivership Orders violate the PLRA.

2. The Receiver Orders Do Not Irreparably Harm The County Because They Are Tailored And Temporary

The County's claims of irreparable harm arising from the Receiver Orders—that they improperly strip the County of "all power[]" over RDC, will bankrupt the County or tax its citizens, and have no end point (Mot. 16-21)—are not borne out by its invocations of "federalism" or by the Receiver Orders' actual content. The district court was sensitive to the County's "strong interest in the administration of jails." Doc. 237, at 12. It imposed the receivership "regretfully," "[a]fter ample time and opportunity" had proven that the County was "incapable, or unwilling, to handle its affairs" and "[a]dditional intervention [was] required." Doc. 204, at 4. Accordingly, the court crafted the Receiver Orders to achieve prompt remediation while preserving the County's stake in RDC's operations until its control over the facility resumes. See Doc. 216; Doc. 237, at 9-10.

A receivership is a serious but well-established mechanism that enables courts "to remedy otherwise uncorrectable violations of the Constitution or law." *Plata*, 603 F.3d at 1093-1094 (collecting cases); see also *Netsphere, Inc.* v. *Baron*, 703 F.3d 297, 306 (5th Cir. 2012). Although federalism principles and the PLRA require district courts to avoid "micromanag[ing] state prisons," *Gates* v. *Cook*, 376 F.3d 323, 338 (5th Cir. 2004), courts nevertheless have a "duty to protect constitutional rights" when "a prison regulation or practice offends a fundamental constitutional guarantee." *Turner* v. *Safley*, 482 U.S. 78, 84 (1987) (citation omitted). Thus, temporarily transferring daily operation of a single County jail facility to a receiver to ensure constitutional conditions does not automatically cause irreparable harm, as the County suggests. See *Valentine* v. *Collier*, 978 F.3d 154, 165 (5th Cir. 2020) (finding irreparable harm were prospective relief "address[ed] a problem *beyond* what the Constitution requires") (emphasis added).

Moving to the County's specific grievances, it is simply wrong that its power over RDC becomes "nil" under the Receiver Orders. Mot. 17. As the district court explained, this claim "cleverly glosses over several 'checks and balances' designed to ensure a reciprocal working relationship between the Receiver, the County, and the Court." Doc. 237, at 9. While the receiver's powers over RDC's daily operation are substantial, the Receiver Orders are limited to RDC (not County corrections more broadly) and leave the County a meaningful

role in the facility's management. See Doc. 216, at 3 (mandating that the County "work closely with the Receiver to facilitate the accomplishment of the Receiver's duties"); Doc. 216, at 4 (describing notice-and-comment process for receiver's proposed plans of action); Doc. 216, at 5-6 (describing process for review and dispute of receiver's proposed budgets, and periodic budget reports from the receiver to the County's Board of Supervisors); Doc. 216, at 7 (requiring receiver to consult with parties on conflicts with state or local law); Doc. 216, at 12 (requiring receiver to prepare a transition plan to return RDC to the County, and allowing parties to seek receiver's removal). Thus the Receiver Orders prudently balance the County's interest in running its affairs against the need to rectify constitutional violations.

The County's "doomsday prediction that the receivership will impose extreme financial burdens" (Doc. 237, at 10) has no basis in reality. The County imagines that the receiver has unchecked authority to reallocate funds from schools to jails, or to raise taxes (Mot. 17-18), but in fact the County is not required to accept the receiver's budget, and unresolvable disputes go before the court (Doc. 216, at 5-6). Moreover, the receiver's proposed budget has not been circulated, such that "the County's fears are mere theoretical assertions not supported by any evidence in the record." Doc. 237, at 10. The County's claims of financial ruin are too speculative to establish irreparable harm. See *Nken*, 556 U.S. at 434-435

("simply showing some 'possibility of irreparable injury' fails to satisfy the second factor") (internal citation omitted).

Finally, that the Receiver Orders lack a date certain for their termination is not problematic. Mot. 20. The County again ignores that the PLRA makes prospective relief terminable after two years. 18 U.S.C. 3626(b). In any event, while the district court has tied the receivership's termination to achievement of constitutional compliance, it identified the opening of the County's new jail, anticipated in 2025, as "a natural projected end-date." See Doc. 204, at 23 & n.17. Further, the Receiver Orders include a process to return RDC to the County's control once the facility achieves constitutional compliance. Doc. 216, at 11. Indeed, a court properly undertakes its duty to "vigilantly enforce federal law" by imposing "necessary relief" when it creates a mechanism for returning "responsibility for discharging the [County's] obligations" to County officials "when the circumstances warrant." *Horne* v. *Flores*, 557 U.S. 433, 450 (2009) (citation omitted). Such a design cannot irreparably injure the County.

3. Staying The Receiver Orders Will Harm The United States And The Public By Halting An Expedient Solution To Persistent Unconstitutional Conditions Of Confinement

As noted above, the final two *Nken* factors—substantial injury to other parties and the public interest—merge when the United States is a party, and here again counsel against a stay. Promptly alleviating unconstitutional conditions that

have made RDC a facility where "terror reigns" is unquestionably in the public interest, while further delay may imperil the safety of RDC and County residents. See Doc. 204, at 7 (quoting *Alberti*, 790 F.2d at 1226); Doc. 237, at 11.

The County's argument that there are no individual plaintiffs who seek relief in this case (Mot. 21) ignores that the subject of this case is the treatment of detainees at the County's own jail. It should be beyond dispute that the lives of RDC detainees, "persons presumed to be innocent," are a matter of public interest and a proper concern of the federal government. Doc. 237, at 11.

The County's argument about the public's interest in accountability similarly glosses over its "own lack of accountability to the people of Hinds County," evident from the threat of escapes and systemic failure of County leaders to cure problems at its jail. Doc. 237, at 11-12. Moreover, although a receivership represents a disruption of normal democratic processes—albeit a limited and temporary one—it is justified where the court "has no choice but to step in and fill the void" left by a government entity that neglects its constitutional obligations. *Plata* v. *Schwarzenegger*, No. C01-1351, 2005 WL 2932253, at *31 (N.D. Cal. Oct. 3, 2005).

The County also makes a hodgepodge of complaints reviving earlier arguments about irreparable harm posed by the New Injunction and likelihood of

success on the merits in challenging the receivership. Mot. 21. These need not be addressed again.

In sum, the interests of the United States and the public heavily favor letting the receiver proceed to pursue constitutional compliance at RDC.

CONCLUSION

This Court should not stay the New Injunction or Receiver Orders.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 19, 2022, I electronically filed the foregoing APPELLEE/CROSS-APPELLANT UNITED STATES' OPPOSITION TO MOTION FOR A STAY PENDING APPEAL 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
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CERTIFICATE OF COMPLIANCE

I certify that the attached APPELLEE/CROSS-APPELLANT UNITED STATES' OPPOSITION TO MOTION FOR A STAY PENDING APPEAL (1) does not exceed the type-volume limitation imposed by Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5198 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.

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Date: December 19, 2022