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' REPLY IN SUPPORT OF RULE 12.1 NOTICE OF INDICATIVE RULING

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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) appear confused about the intentions behind the United States' December 5, 2022 letter to the Clerk of Court. That letter, submitted pursuant to Federal Rule of Appellate Procedure 12.1, provided notice that the district court had made an indicative ruling on the United States' Federal Rule of Civil Procedure 60(a) motion to clarify prior orders that are now on appeal to this Court.

While the County alleges a plot to "weaponize" Rule 12.1 to "obstruct and delay" this case (Resp. 1), the reality is that the United States followed the letter of the Rule and the Court's procedural guidance in submitting the notice, and did so to facilitate efficient resolution of these appeals on a complete and accurate record.[1] Accordingly, the United States asks this Court to remand for the purpose of allowing the district court to grant the Rule 60(a) motion. Consistent with Rule 12.1, and as the County recognizes (Resp. 9), the Court may grant a limited remand while retaining jurisdiction over the consolidated appeals.

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[1] "Resp. _" refers to defendants' Response To December 5, 2022 Letter Motion to Remand; "Ex. __" refers to the exhibit attached to this reply; "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.).

FACTUAL AND PROCEDURAL BACKGROUND

1. The Case[2]

This case arises from nearly a decade of proceedings regarding unconstitutional conditions of confinement in the Hinds County Jails, which the parties tried to resolve through a consent decree in 2016. See Docs. 1, 2, 8-1. The County has never complied meaningfully with the consent decree or any other order that the district court has issued to facilitate constitutional compliance, leaving the County's main adult jail, the Raymond Detention Center (RDC), in a state of violence and neglect. See Docs. 168, 204, 211, 237 (describing the County's failure to address consistently deplorable jail conditions in orders declining to terminate consent decree, imposing receivership, and refusing to stay the latter orders).

Despite pleading the court for more time to "right[] the ship" (Doc. 105, at 23-24), the County moved earlier this year to terminate or modify the decree under the Prison Litigation Reform Act (PLRA). Docs. 111, 112. The PLRA makes prospective relief terminable unless the court finds it "remains necessary to correct a current and ongoing violation of [a] Federal right, extends no further than

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[2] In the interest of space and time, we omit a more fulsome discussion of the case's history, which can be found in the first six pages of the United States' December 19, 2022, opposition to the County's motion for stay pending appeal. See U.S. Opp'n 1-6, Dec. 19, 2022.

necessary to correct the violation," and "is narrowly drawn and the least intrusive means to correct the violation" (the "need-narrowness-intrusiveness" standard). 18 U.S.C. 3626(b)(3).

The district court partially granted and partially denied the County's PLRA motion, but not before holding the County twice in contempt for violating its orders and for failing to achieve constitutional conditions of confinement. Docs. 126, 165. The court "dramatically scaled back" the consent decree's specific terms and reach—to only one jail facility, RDC—while retaining the decree's core requirements to attain unmet constitutional minimums in a new injunction. See Doc. 211, at 6; see generally Docs. 168, 169. Both parties appealed these orders (Docs. 185, 186), and the district court denied the County's motion to stay them (Doc. 211).

The district court subsequently 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. In reaching this conclusion, the court considered factors including persistent risk of serious harm to RDC residents and the County's course of conduct over time—broken promises, wasted resources, and its leaders' game of "accountability hot-potato"—in an analysis that incorporated the PLRA's need-narrowness-intrusiveness requirement for prospective relief. Doc. 204, at 4-25.

The order stated that the receiver would begin work "no later than November 1, 2022." Doc. 204, at 26. The County appealed this order. Doc. 212.

On October 31, the district court issued two orders that appointed the receiver and outlined his role, which would commence in a transitional phase the next day and move to daily operational control of RDC on January 1, 2023. Docs. 215, 216. The County appealed both orders. Docs. 217, 218.

2. The Instant Dispute

Two days after the district court issued the orders implementing the receivership but before this Court docketed the County's appeal, the United States moved under Federal Rule of Civil Procedure 60(a) for clarification or confirmation that those orders were designed to comply with the PLRA, consistent with the receivership order that they effectuated. Doc. 221. Rule 60(a) permits the district court to correct oversights and omissions in an order before an appeal is docketed, and with the appellate court's leave thereafter. While the district court's detailed analysis strongly indicated that its orders imposing and effectuating the receivership all were tethered to the PLRA's need-narrowness-intrusiveness requirement, the United States' motion sought express confirmation of this to avoid needless dispute on appeal about the district court orders' technical compliance with the PLRA.

The County opposed, arguing in part that its appeal had, by then, been docketed and that this rendered granting the Rule 60(a) motion impermissible due to this Court's jurisdiction over the case. Doc. 230. In rebuttal, the United States argued first, among other things, that Federal Rule of Civil Procedure 62.1 permitted the district court to issue an indicative ruling on the motion and then for the United States to notify this Court for purposes of a possible limited remand to allow the district court to rule on the motion. Doc. 233, at 1-2.[3]

The district court issued an indicative ruling on the Rule 60(a) motion in which it clarified that it "unequivocally believed" and "still believes, that the Receivership remedy complies with the PLRA." Doc. 238, at 3. The district court stated that while this Court "has not yet determined whether" use of "the 'magic words' is necessary to confirm that [it] made PLRA findings," it would nevertheless so state if this Court remanded for this purpose. Doc. 238, at 3. The County filed a notice of appeal from this order.

On December 5, counsel for the United States contacted the Fifth Circuit Clerk's Office for guidance on the appropriate method for providing notice of the indicative ruling under Federal Rule of Appellate Procedure 12.1. That rule

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[3] The County's claim that the United States did not rely on Rule 62.1 (Resp. 4 n.1) is false. The United States invoked this rule first in its rebuttal because it was not applicable at the time that the motion was filed, which was before this Court docketed the County's appeal.

requires the party that sought the indicative ruling to "promptly notify the circuit clerk" of such ruling. Fed. R. App. P. 12.1(a). The Clerk's Office instructed counsel to file a short letter attaching the ruling in question, using the "letter filed" function on ECF. The United States did so that same day, filing a one-page letter advising the Clerk of the ruling pursuant to Rule 12.1. See Letter, Dec. 5, 2022.

Two days later, on December 7, the case docket was modified to convert the United States' letter to a "letter motion," and the County was provided an opportunity to respond. Again, counsel for the United States contacted the Clerk's Office for guidance and was assured that its filing was proper and that the United States would have the opportunity to present argument in support of its "letter motion" in reply. Counsel for the United States also promptly contacted counsel for the County to explain the situation and to seek the County's position on the "letter motion," offering to advise the Court if the County did not oppose in the interest of expediency. Ex. 1 (Dec. 7, 2022 emails between counsel). The County advised that it would oppose. Ex. 1.

ARGUMENT

THIS COURT SHOULD REMAND THE CASE FOR THE LIMITED PURPOSE OF ALLOWING THE DISTRICT COURT TO GRANT THE UNITED STATES' RULE 60(A) MOTION

A. The United States' Rule 12.1 Notice Was Procedurally Proper

Contrary to the County's argument (Resp. 7), the United States' letter notifying the Clerk's Office of the district court's indicative ruling was procedurally proper, and the United States did not waive any arguments or abandon any issues.

Federal Rule of Appellate Procedure 12.1(a), titled "Notice to the Court of Appeals," states that a party that obtained an indicative ruling in the district court must "promptly notify the circuit clerk" of the ruling. The committee notes explain that "a local rule may prescribe the format for the litigants' notifications and the district court's statement." Fed. R. App. P. 12.1 advisory committee's note to 2009 adoption. This Court's local rules do not prescribe a format for filing a Rule 12.1 notice. In the absence of rules on point, the United States sought and followed guidance from the Clerk's Office, which advised counsel to file a letter notifying the Court of and attaching the district court's ruling. This is consistent with this circuit's past practice. See, *e.g.*, *Moore* v. *Tangipahoa Par. Sch. Bd.*, 864 F.3d 401, 404 (5th Cir. 2017) (explaining that this Court was "given notice" of a

district court order stating that new facts "merited reconsideration" of appealed order, and that this Court subsequently remanded for this limited purpose).[4]

The County argues that the United States failed to comply with Federal Rule of Appellate Procedure 27's requirements for motions (Resp. 7), but, as explained, the United States was not required to file a motion and did not intend to do so. Rather, following the guidance of the Clerk's Office, the United States filed a notification letter that later was reclassified as a "letter motion." Even if the filing of a letter is not the Court's preferred method of receiving notice under Rule 12.1, the United States' "reliance upon the clerk's office is a mitigating factor" that excuses its "procedural misstep." *In Re First City Bancorporation of Texas, Inc.*, 205 F.3d 1337, at *2 (5th Cir. 1999). Indeed, this "misstep" accrues to the benefit of the County, which had the opportunity to respond to the one-page notice—which stated its purpose (notification) and basis (Rule 12.1)—as if it were a motion but left the United States to make argument only in reply. Given these circumstances, none of the cases that the County cites (Resp. 7) supports finding waiver of any argument or abandonment of any issue here. See *Vasquez-De Martinez* v. *Garland*, 34 F.4th 412, 414 (5th Cir. 2022) (per curiam) (denying motion that sought relief for which counsel cited no legal authority or basis for

[4] The letter that this Court appears to have deemed appropriate notice under Rule 12.1 in *Moore* is substantially similar to the one the United States filed. See June 24, 2016 Letter & Sept. 7, 2016 Order, *Moore*, *supra* (No. 15-31119).

evaluation); *United States* v. *Callahan*, 589 F. App'x 299, 300 (5th Cir. 2022) (per curiam) (finding waiver and abandonment where defendant did not provide a basis for relief for issue raised on appeal); *Thibeaux* v. *Fulbruge*, 102 F. App'x 392, 393 (5th Cir. 2004) (per curiam) (dismissing appeal of pro se litigant who filed frivolous pleadings that included a one-sentence request for remand).

B. Remand For The Limited Purpose Of Allowing The District Court To Grant The Rule 60(a) Motion Will Ensure The Most Efficient Resolution Of This Case

Under Rule 12.1, once a "district court states that it would grant [a] motion" in a case already on appeal, this Court "may remand for further proceedings" while "retain[ing] jurisdiction." Fed. R. App. P. 12.1(b). This Court should exercise its discretion to remand for the limited purpose of allowing the district court to grant the United States' Rule 60(a) motion for clarification that the receivership remedy was designed to comply with the PLRA.

In addressing the United States' request for an indicative ruling, the district court stated that while its sequential orders on the County's PLRA motion and the receivership remedy reflect its "unequivocal[]" belief that this "remedy complies with the PLRA," the court would clarify on remand by expressly incorporating the PLRA's language. Doc. 238, at 3. Such a correction may narrow the issues on appeal by confirming for this Court and eliminating any potential dispute over whether the district court indeed found that the receivership remedy satisfied

PLRA requirements—which it surely did. See Doc. 204, 4-26. This clarification also may eliminate needless dispute over whether such a recitation (the "magic words," as the district court put it) is necessary in imposing prospective relief where the court has performed an analysis that otherwise complies with the law.

The County is wrong that "waste and delay" will come from such a limited remand. The County undercuts its own argument about delay by emphasizing that all the district court wishes to do is confirm that its order meets the PLRA's technical requirements. This process surely will be brief, and perhaps could have been completed already if the County had not contested the United States' Rule 12.1 notice. Moreover, there presently is no briefing schedule in place that would be delayed by remand.

Regarding waste, the County's first claim—that remand is "unnecessary" because "the district court has already made clear what it would do if remand took place" (Resp. 8)—makes little sense. Rule 12.1's indicative ruling protocol would not exist if a circuit court simply could take notice of district courts' statements about appealed orders rather than remanding for entry of an appropriate order or further proceedings, which may then properly be considered on appeal. Nor would it be "futile" for this Court to remand for the purpose of correcting what was at most an inadvertent omission in the district court's orders effectuating the receivership. See *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002)

(explaining that Rule 60(a) permits correction of what amounts to clerical errors but not errors in judgment). The parties appear to agree that the substance of the district court's analysis is the basis on which this Court should assess the sufficiency of its findings for PLRA purposes. Resp. 9. As discussed more thoroughly in the United States' opposition to the County's motion for a stay pending appeal, the district court's orders easily satisfy this standard. See U.S. Opp'n 6-7, 16-18, Dec. 19, 2022. To the extent there is any uncertainty about the district court's intentions or in the law as to a court's need to say the "magic words" on top of a PLRA-compliant analysis of prospective relief, however, the proposed clarification will limit this Court's need to address additional questions on appeal.

In sum, a limited remand to allow the district court to grant the United States' Rule 60(a) motion will be an expedient means of achieving more focused and efficient appellate review in this complex matter.

CONCLUSION

This Court should take notice of the district court's indicative ruling and remand for the limited purpose of allowing the district court to grant the United States' Rule 60(a) motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 21, 2022, I electronically filed the foregoing APPELLEE/CROSS-APPELLANT UNITED STATES' REPLY IN SUPPORT OF RULE 12.1 NOTICE OF INDICATIVE RULING 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
KATHERINE E. LAMM
Attorney

CERTIFICATE OF COMPLIANCE

I certify that the attached APPELLEE/CROSS-APPELLANT UNITED STATES' REPLY IN SUPPORT OF RULE 12.1 NOTICE OF INDICATIVE RULING (1) does not exceed the type-volume limitation imposed by Federal Rule of Appellate Procedure 27(d)(2)(C) because it contains 2555 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.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

Date: December 21, 2022