

UNITED STATES COURT OF APPEALS

**FILED**

FOR THE NINTH CIRCUIT

MAY 18 2023

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

MAXWELL RANGEL JOELSON, And On  
Behalf of All others Similarly situated,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 22-55122

D.C. No. 3:20-cv-01568-TWR-KSC  
Southern District of California,  
San Diego

ORDER

Before: BENNETT, MILLER, and VANDYKE, Circuit Judges.

The district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On March 14, 2022, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's March 14, 2022 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 8) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

**DISMISSED.**

ATTACHMENT 1

## STATUTORY AUTHORITIES

Pertinent statutory provisions are included within the points of authorities.

### ISSUES PRESENTED

**WHETHER THE LOWER COURT ABUSED ITS DISCRETION IN DISMISSING PLAINTIFFS TORT OR ANCILLARY REQUESTS--EVEN THOUGH THERE IS A A SUBSTANTIAL CONTROVERSY-- WHEN IT FAILED [AMONG OTHERS] TO CONSIDER PLAINTIFFS "UNUSUAL" POST-HABEAS POSTURE; 2) THAT THE DEFENDANT'S ULTRA-VIRES CONDUCT "SUSPENDED" PLAINTIFFS IMMUNITIES TO THE "GREAT WRIT" AND THAT OF THE "EQUAL PROTECTION OF THE LAWS;" AND, 3) THE PRINCIPLES UNDER "HECK" OR "ABSOLUTE IMMUNITY" DO NOT APPLY IN THE INSTANT CASE**

### STATEMENT OF THE CASE

#### I. INTRODUCTION

Its undisputed that plaintiffs' habeas and post-habeas litigation struggles has been long and arduous [through no fault in their part], transpiring a span of two decades since Joelson's 1998 and Valdez's 2001 habeas denials---with no end in sight. This is so, because the [*defendant*] United States---attorneys representing the defendant and the federal judges [judiciary courts] presiding upon and over the plaintiffs' judicial proceedings---acted in an ultra-vires manner by [among others] *suspending the immunities and protections accorded on under the "Suspension" & "Equal Protection of the Laws," and upon the right to petition the government for redress.*

Here, the record reveals defendant's court officers acted individually, jointly, in concert, or aided and abetted [among other misgivings] to illegally misrepresent, omit, and conceal actual facts and law during plaintiffs habeas and post-habeas fact-finding processes; as a consequence, the judicial fact-finding processes were held defectively and deficiently since they fundamentally ignored and disregarded plaintiffs' proffered non-record material [2-declarations ], key portions of the resentencing transcript [E.R. 19a-c], communications/discussions with trial counsel, or orders from this Court from their fact-finding processes---even though the United States [court officers]

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MAXWELL JOELSON, and JUAN  
VALDEZ, on behalf of all others similarly  
situated,

Plaintiffs,

v.

UNITED STATES OF AMERICA,  
Defendant.

Case No.: 20-CV-1568 TWR (KSC)

**ORDER DENYING PLAINTIFFS’  
MOTION FOR  
RECONSIDERATION**

(ECF No. 17)

Presently before the Court is Plaintiffs Maxwell Joelson and Juan Valdez’s Motion for Reconsideration Pursuant to Fed. R. Civ. P. 59(e) on the D[ismissal] of Plaintiffs’ Second Amended Complaint (“Mot.,” ECF No. 17). Plaintiffs noticed the Motion to be heard on January 10, 2022, without calling chambers to obtain a hearing date as required under this District’s Local Rules and the undersigned’s Standing Order for Civil Cases. Nonetheless, because this was action was dismissed prior to being served, the Court determines that this matter is suitable for determination on the papers without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons discussed below, the Court **DENIES** Plaintiffs’ Motion.

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1 **BACKGROUND**

2 On August 13, 2020, Plaintiffs, proceeding *pro se*, filed a putative class action  
3 against Defendant United States of America and numerous federal judges and prosecutors.  
4 (*See generally* “Compl.,” ECF No. 1.) Plaintiffs asserted nineteen causes of action under  
5 the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346 and 2674, and the Alien Tort  
6 Claims Act (“ATCA”), 28 U.S.C. § 1350, alleging misconduct in the post-trial and habeas  
7 process by the named federal judges and prosecutors. *Id.*

8 On November 3, 2020, the Court issued an Order granting Plaintiffs’ Motion to  
9 Proceed *in Forma Pauperis*. (“Order,” ECF No. 6.) In the Order, the Court screened the  
10 Complaint *sua sponte*, as required by 28 U.S.C. § 1915(a). (Order at 2–8.) The Court  
11 found that Plaintiffs’ claims were predicated on the actions of federal prosecutors and  
12 judges, who were absolutely immune from liability. (*Id.* at 5–7.) The Court further found  
13 that a judgment in favor of Plaintiffs would necessarily imply the invalidity of their  
14 convictions or sentences, which had not been reversed, expunged, or invalidated, and  
15 therefore Plaintiffs’ claims were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). (*Id.*  
16 at 7–8.) The Court granted Plaintiffs leave to amend the Complaint. (*Id.* at 8.)

17 After filing a First Amended Complaint (ECF No. 12), Plaintiffs then filed a Second  
18 Amended Complaint on August 26, 2021. (ECF No. 14.) Although Plaintiffs did not  
19 request or receive leave to amend the First Amended Complaint, on November 12, 2021,  
20 the Court granted Plaintiffs leave to file the Second Amended Complaint pursuant to  
21 Federal Rule of Civil Procedure 15(a)(2), which the Court then dismissed with prejudice  
22 on the same grounds as the original Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). (*See*  
23 ECF No. 15.) The Clerk entered judgment accordingly, (*see* ECF No. 16), and the instant  
24 Motion timely followed on November 30, 2021. (*See generally* ECF No. 17.)

25 **LEGAL STANDARD**

26 District courts “may relieve a party or its legal representative from a final judgment,  
27 order, or proceeding” under limited circumstances, such as where there exists “newly  
28 discovered evidence[,]” “fraud[,]” or “any other reason that justifies relief.” *See* Fed. R.

1 Civ. P. 60(b). “The law in this circuit is that errors of law are cognizable under Rule 60(b).”  
2 *Liberty Mut. Ins. Co. v. E.E.O.C.*, 691 F.2d 438, 441 (9th Cir. 1982) (citing *Gila River*  
3 *Ranch, Inc. v. United States*, 368 F.2d 354, 356 (9th Cir. 1966)). In the Southern District  
4 of California, a party may apply for reconsideration “[w]henver any motion or any  
5 application or petition for any order or other relief has been made to any judge and has  
6 been refused in whole or in part.” Civ. Local R. 7.1(i)(1). Under the Civil Local Rules,  
7 the moving party must file for reconsideration within twenty-eight days after entry of the  
8 ruling and provide an affidavit setting forth, among other things, “new or different facts  
9 and circumstances” which previously did not exist at the time the previous motion was  
10 filed. *Id.*

11 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of  
12 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229  
13 F.3d 877, 890 (9th Cir. 2000). Courts “should generally leave a previous decision  
14 undisturbed absent a showing that it either represented clear error or would work a manifest  
15 injustice.” *Hydranautics v. FilmTec Corp.*, 306 F. Supp. 2d 958, 968 (S.D. Cal. 2003)  
16 (citing *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988)). A party  
17 seeking reconsideration may not raise new arguments or present new evidence if it could  
18 have reasonably raised them earlier. *Kona Enters.*, 229 F.3d at 890 (citing *389 Orange St.*  
19 *Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)). Ultimately, whether to grant or  
20 deny a motion for reconsideration is in the “sound discretion” of the district court. *Navajo*  
21 *Nation v. Norris*, 331 F.3d 1041, 1046 (9th Cir. 2003) (citing *Kona Enters.*, 229 F.3d at  
22 883).

### 23 ANALYSIS

24 Contending that the Court “misapplied and misapprehended federal law,” (*see* Mot.  
25 at 1), Plaintiffs raise the following arguments for reconsideration of the Court’s dismissal  
26 of their Second Amended Complaint: (1) Even if the Court lacks jurisdiction over  
27 Plaintiffs’ claims for monetary damages, the Court may entertain Plaintiffs’ requests for  
28 declaratory or injunctive relief or for a writ of mandamus, (*see id.* at 1– 3), and state law

1 tort claims, (*see id.* at 3–4); (2) Judicial and prosecutorial immunity should not apply in  
2 Plaintiffs’ case because the federal judges and prosecutors exceeded their authority under  
3 the United States, California, and Alaska Constitutions, (*see id.* at 4–7); (3) The  
4 Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) should apply to  
5 Plaintiffs’ Federal Rule of Civil Procedure 60(b) motion, (*see Mot.* at 7–10); and (4) The  
6 *Heck* doctrine does not bar Plaintiffs’ causes of action for declaratory, injunctive, or  
7 mandamus relief, (*see Mot.* at 10–12), and is not applicable to Plaintiffs’ claims for  
8 damages related to procedural defects. (*See id.* at 12–14.) The Court addresses each in  
9 turn.

10 First, “[t]he judicial or quasi-judicial immunity available to federal officers is not  
11 limited to immunity from damages, but extends to actions for declaratory, injunctive and  
12 other equitable relief.” *See Mullis v. U.S. Bankr. Ct. for Dist. of Nev.*, 828 F.2d 1385, 1394  
13 (9th Cir. 1987). All of Plaintiffs’ federal claims are therefore subject to dismissal. *See,*  
14 *e.g., Lucore v. Bowie*, No. 12-CV-1288 BEN WVG, 2012 WL 5863248, at \*2 (S.D. Cal.  
15 Nov. 16, 2012) (dismissing with prejudice claims for declaratory and injunctive relief  
16 against federal judicial officer (citing *Mullis*, 828 F.2d at 1394)). As for Plaintiffs’ state  
17 law claims, “district courts may decline to exercise supplemental jurisdiction over [state  
18 law] claim[s] . . . if . . . the district court has dismissed all claims over which it has original  
19 jurisdiction[.]” *See* 28 U.S.C. § 1367(c)(3). Because the Court determined that Plaintiffs’  
20 federal cases of action were subject to dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B), the  
21 Court declines to exercise supplemental jurisdiction over any surviving state law causes of  
22 action. *See, e.g., Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001) (affirming the district  
23 court’s dismissal of surviving state law claims where the federal claims had been  
24 dismissed).

25 Second, “[a] judge will not be deprived of immunity because the action he took was  
26 in error, was done maliciously, or was in excess of his authority; rather, he will be subject  
27 to liability only when he has acted in the clear absence of all jurisdiction.” *Mullis*, 828 F.2d  
28 at 1388 (internal quotation marks omitted) (quoting *Stump v. Sparkman*, 435 U.S. 349,

1 356–57 (1978)). There is no indication that the judges and prosecutors here acted “in the  
2 clear absence of all jurisdiction[;]” consequently, the Court does not have the discretion to  
3 allow Plaintiffs’ claims to proceed in light of Plaintiffs’ argument that “prosecutorial  
4 immunity should be the exception to the rule due to the rare and exceptional circumstances  
5 surrounding the Plaintiffs’ judicial reviews.” (*See Mot.* at 4.)

6 Third, Plaintiffs cite no authority to support their proposition that “AEDPA’s  
7 provisions should not only apply to the plaintiffs’ habeas process[,] but also to their Rule  
8 []60(b)’s, §[ ]2241’s, and declaratory and mandamus relief requests,” nor do they explain  
9 why the application of AEDPA would compel reconsideration of the Court’s prior  
10 dismissal. (*See Mot.* at 8.)

11 Fourth and finally, *Heck* bars Plaintiffs’ claims “(absent prior invalidation)—no  
12 matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s  
13 suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that  
14 action would necessarily demonstrate the invalidity of confinement or its duration.” *See*  
15 *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (emphasis in original). As to Plaintiffs’ first  
16 contention, then, *Heck* applies not only to Plaintiffs’ damages claims, but also to their  
17 claims for equitable relief. *See id.* at 82–83. Regarding their second argument, *Heck* does  
18 employ “a bright-line rule” to determine whether or not an action is barred, (*cf.* *Mot.* at 12),  
19 and that line is whether success on Plaintiffs’ causes of action would necessarily  
20 demonstrate the invalidity of their confinement or its duration. Here, Plaintiffs “seek[] to  
21 relitigate issues already decided against [them] in the[ir] habeas proceeding[s], and thus to  
22 challenge [their] underlying conviction[s].” *See Moran v. Beale*, No. SACV0701057-  
23 MMM-RNBX, 2008 WL 11409861, at \*6 n.31 (C.D. Cal. Mar. 17, 2008). *Heck* therefore  
24 bars Plaintiffs claims.<sup>1</sup>

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27 <sup>1</sup> Even if *Heck* did not bar Plaintiffs’ claims, Plaintiffs claims are still doomed by judicial and prosecutorial  
28 immunity. Further, because Plaintiffs essentially “attempt to litigate . . . successive habeas petition[s],”  
dismissal is warranted on grounds of claim preclusions and under *Gonzalez v. Crosby*, 545 U.S. 524, 530  
(2005). *See Moran*, 2008 WL 11409861, at \*4–7.

1 Because none of Plaintiffs' arguments for reconsideration under Rule 60(b)(6) have  
2 merit, the Court **DENIES** Plaintiffs' Motion.

3 **CONCLUSION**

4 For the reasons discussed above, the Court **DENIES** Plaintiffs' Motion for  
5 Reconsideration (ECF No. 17).

6 **IT IS SO ORDERED.**

7 Dated: December 9, 2021



Honorable Todd W. Robinson  
United States District Judge

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