

IN THE
Supreme Court of the United States

RYAN THORNELL, ET AL.,

Applicants,

— V. —

SHAWN JENSEN, ET AL.,

Respondents.

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT

**OPPOSITION TO APPLICATION TO STAY THE ORDER ISSUED BY THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA**

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INTRODUCTION

The application for a stay of the district court’s order appointing a receiver should be denied. This litigation has been ongoing for fourteen years because the Arizona Department of Corrections, Rehabilitation, and Reentry (“ADCRR” or “the Department”) has failed in its constitutional obligation to provide minimally adequate healthcare to people confined in Arizona’s prisons. In those fourteen years, the parties have twice agreed on the terms necessary to meet the constitutional standard—first in stipulating to a court-ordered settlement in 2014, and then in stipulating to an injunction in 2023, after a three-week trial that the court ordered after years of extraordinary noncompliance with the original settlement.

In both instances, ADCRR and its private, for-profit healthcare vendor failed to comply with the terms agreed upon by the parties, leaving the people confined in these prisons without access to healthcare that the Eighth Amendment guarantees. In practical terms, these failures have resulted in widespread and shocking medical and mental health neglect. People incarcerated in Arizona’s prisons “are dying. Unnecessarily.” Dkt. 4755 at 2. After holding ADCRR in contempt twice, imposing fines of more than two million dollars, vacating a settlement for noncompliance, conducting a three-week trial, appointing a physician expert that the Department itself nominated to monitor compliance with the Injunction, and reviewing numerous reports prepared by the court experts on the Department’s failure to make meaningful progress implementing the injunction, the district court appointed a receiver over the healthcare system of Arizona’s publicly run prisons.

ADCRR now claims that it is entitled to a stay because the district court's decision to appoint a receiver was erroneous as a matter of law. This argument fails for several independent reasons. First, to obtain a stay in this Court, ADCRR must demonstrate a likelihood that the Court will grant certiorari. ADCRR addresses this stay factor in a two-sentence argument, buried on page 29 of the Application, barely asserting this case is worthy of this Court's review. It is not. The underlying constitutional violations were settled years ago and are not in question here. The remedial measures ADCRR must take to address those constitutional violations were mutually agreed to years ago and are not in question here. This case does not present a question of national importance or one in which there is a circuit split. Instead, it presents a vast and unique set of facts that applies to only a single prison system.

Second, district courts have significant discretion in employing a remedy when faced with the "sensitive task of remedying unconstitutional prison conditions" and must consider all relevant options, including the appointment of receivers. *Brown v. Plata*, 563 U.S. 493, 511 (2011). There is overwhelming evidence that the district court did not abuse its discretion in appointing a receiver. ADCRR makes the novel argument that the district court erred as a matter of law because it considered the whole fourteen-year record of noncompliance in this case. Instead, ADCRR suggests that the court should have ignored everything but the last three years. Even if the Department were correct (but it is not), the lower court carefully considered that argument and determined that insufficient progress had been made in that time period to warrant another remedy. More specifically, ADCRR argues that the court

should have engaged in a third round of contempt proceedings, although there is nothing in the record showing that ADCRR and its private vendor's calculus of paying millions of dollars in fines instead of complying with court orders had changed. All these arguments are fact-bound and do not merit this Court's review, much less reversal.

Third, the Department attempts to make much of the fact that the district court appointed a receiver three years after the agreed-upon Injunction was issued, but gave the receiver five years to bring the prisons into compliance with the Injunction. The two time periods are not inconsistent. Among many other things, the court found that after three years ADCRR was failing to comply with 85% of the court-ordered remedy. On the other hand, it recognized that, given how little progress had been made, it may take the receiver five years to bring the prisons into compliance. The court did not abuse its discretion in using two different time periods for two distinct purposes.

Finally, ADCRR relies on federalism principles to oppose the receiver's appointment. The district court was keenly aware of these principles and carefully cabined the receiver's authority to ensure that state officials would retain appropriate powers. The court also appointed an experienced former prison director nominated by ADCRR as the receiver. And, recognizing the State's budgetary prerogatives, the Court set up a process requiring notification and consultation with state officials before the court would even consider a motion for more funds. The order also directs

the receiver to “endeavor to perform all responsibilities and duties in accordance with Arizona state laws, regulations, and contracts.” App. 17.

As the Department notes, the Prison Litigation Reform Act (“PLRA”) requires that the remedy must be the least intrusive means necessary to correct the constitutional violation. 18 U.S.C. § 3626(a)(1)(A). The district court fully embraced that directive. In order to protect people who are confined in Arizona’s prisons from suffering the same cruel fate as others before them, the court imposed a remedy that under these unique circumstances is the least intrusive means of preventing further unconstitutional conduct. The Court should deny the stay so that the receiver can begin the important work of implementing the injunction—work that all parties agree is essential to save lives in Arizona’s state prisons.

BACKGROUND

I. COMPLAINT AND 2014 STIPULATION

Plaintiffs—a class of all people incarcerated in Arizona’s state-operated prisons and the Arizona Center for Disability Law, a state protection and advocacy agency—filed this suit in 2012, alleging the healthcare provided in Arizona’s state prisons was grossly deficient and violated the Constitution. Dkt. 1.¹ In 2014, the parties agreed to a settlement (“the Stipulation”), designed to remedy those constitutional violations, Dkt. 1185, which the district court approved and so ordered in 2015 after receiving comments from class members, Dkt. 1458. “[A]lmost immediately,” the district court

¹ Plaintiffs use “Dkt.” to refer to the district court’s docket, No. 2:12-cv-601 (D. Ariz.). The Arizona Center for Disability Law has since changed its name to Disability Rights Arizona.

later found, ADCRR “failed to perform [its] obligations [under the Stipulation] and continued in that failure.” Dkt. 4410 at 5.

Between 2015 and July 2021, the district court engaged with the parties in exhaustive efforts in an attempt to obtain ADCRR’s compliance with the Stipulation and the Constitution. The court held numerous evidentiary hearings and status conferences, resolved twelve motions to enforce against ADCRR, appointed two investigative experts, and issued “dozens of Orders” designed to spur remedial action. App. 24. The court held ADCRR in contempt and ordered it to pay almost \$1.5 million in fines, which were upheld on appeal, and then held ADCRR in contempt a second time three years later and ordered it to pay an additional \$1.1 million in fines. *Id.*; Dkt. 3861 at 14. Despite these exhaustive efforts, the Stipulation remained far from implemented, and people incarcerated in Arizona’s prisons continued to suffer serious harm, up to and including death, due to the Department’s continued failure to provide minimally adequate medical and mental health care.

II. TRIAL AND PERMANENT INJUNCTION

In July 2021, the district court determined that continued efforts to enforce the Stipulation would be fruitless because ADCRR had “deflected their failures and employed scorched-earth tactics to oppose every attempt to resolve outstanding noncompliance” and “[t]here does not appear to be a contempt sanction robust enough to coerce compliance.” Dkt. 3921 at 33. The court rescinded the Stipulation and set the case for trial. *Id.* at 2–37.

After a fifteen-day bench trial, the court issued a 181-page order finding that

ADCRR “failed to provide, and continue[s] to refuse to provide, a constitutionally adequate medical care and mental health care system for all prisoners” and its “years of inaction, despite Court intervention and imposition of monetary sanctions, establish Defendants are acting with deliberate indifference.” Dkt. 4335 at 2. The court ordered that it would “employ an expert to assist with crafting an injunction that remedies the constitutional violations—no more and no less.” *Id.* at 179.

The court appointed a physician “strongly recommended” by ADCRR itself for his expertise and history with the case, as well as additional experts, including a psychologist to advise on mental health matters. Dkt. 4339 at 3–4; Dkt. 4352; Dkt. 4362; *see also* App. 46, n.36 (detailing the experts’ qualifications). The court shared a draft injunction with the parties in January 2023. Neither party objected, and they instead jointly stipulated to the draft injunction, with a few agreed-upon modifications. Dkt. 4410 at 3–4; Dkt. 4402 at 2; *see also* Dkt. 4405; Dkt. 4408. In April 2023, the court issued the stipulated Permanent Injunction (“the Injunction”). Dkt. 4410. Neither party appealed.

In its order issuing the Injunction, the district court observed that it “has no interest in micromanaging Defendants’ operations,” but that it “cannot impose an injunction that is even minutely ambiguous because Defendants have proven they will exploit any ambiguity to the maximum extent possible.” *Id.* at 4–5. The court appointed “its own experts to serve as neutral monitors to evaluate Defendants’ performance.” *Id.* at 6.

III. POST-INJUNCTION COMPLIANCE EFFORTS

Monitoring began in April 2023. Later that year, the parties jointly asked the court to direct its experts to provide written reports, agreeing that “[t]he experts’ opinions are critical because they are independent, neutral, and are based on expertise that the parties themselves lack.” Dkt. 4507 at 5–6. The experts filed reports in February 2024, October 2024, and January 2025 documenting both ADCRR’s failure to make meaningful progress implementing the Injunction and the unabated risk of harm to the Plaintiff class. Dkt. 4539; Dkt. 4691; Dkt. 4755.

A. First Interim Report (February 2024)

In the February 2024 report, the experts found that “the quality of care provided by [ADCRR’s private healthcare vendor] NaphCare remains woefully inadequate” and warned: “Patients are in daily danger.” Dkt. 4539 at 30.² They found “pervasive dangers in the delivery of [mental health] care,” “significantly deficient” clinical documentation, and “inadequate conceptualization of the patients’ mental illness, functional impairment, and suicide risk.” *Id.* at 10. Critically, they found that ADCRR was still unable to identify problems with its healthcare system, and documented numerous examples of “dangerous care being judged as adequate as part of self-assessments.” *Id.* at 21; *see, e.g., id.* at 11–15.

² The Department currently contracts with NaphCare to provide healthcare to people incarcerated in the prisons. Since 2012, the Department has had four such contractors. Dkt. 4335 at 9–10.

B. Special Report on Five Suicides (October 2024)

In October 2024, the court’s mental health expert filed a report on five suicides that occurred over the first three months of 2024. Dkt. 4691. He found that “adherence to the [Injunction] would have decreased the probability of, if not prevented, these deaths.” *Id.* at 1. He highlighted three main areas of deficiencies: inadequate evaluation of mental health needs, inadequate treatment encounters, and lack of continuity of care. *Id.* at 1, 6. He observed that none of these areas are “unique to the cases under review” and that “these same deficiencies have contributed to, and continue to contribute to, risk of, and actual morbidity and mortality since monitoring began in April of 2023.” *Id.* at 1, 6.

C. Second Interim Report (January 2025)

In January 2025, the medical experts filed another report, finding that healthcare in the ADCRR prisons “remains poor, has shown little improvement since the start of the Injunction, and continues to place the residents at significant risk of serious harm, including death.” Dkt. 4755 at 2. The experts detailed preventable deaths that occurred from the broken medical and mental health care system, found that “little progress has been made in the vast majority of key operations,” and came to a grim and unflinching conclusion: “And patients are dying. Unnecessarily.” *Id.*

The experts again found that ADCRR was unable or unwilling to monitor its compliance accurately, even when the experts “informed [them] of [a] methodological flaw” leading to inflated and “obviously absurd” results. *Id.* at 3–4. When ADCRR officials were made aware of a serious error, they “made no plan to understand how

this error occurred” and “failed to implement any recommendations or plan to prevent its recurrence.” *Id.* at 7.

D. Staffing Pilot Project (July 2024 to January 2025)

To address the court’s finding that “staffing is woefully insufficient,” Dkt. 4335 at 27, the Injunction also required the court to appoint experts to develop a plan for healthcare staffing in Arizona’s prisons, Dkt. 4410 at 14 § 1.17; Dkt. 4425 at 1–2. In April 2024, the court’s experts filed a staffing analysis and plan, recommending it be tested on a pilot basis. Dkt. 4599 at 2–3. The court ordered the pilot be implemented at two sites chosen by the Department, Dkt. 4637, Dkt. 4599 at 3, 37; pursuant to a schedule developed by the experts and ADCRR, Dkt. 4642-2 at 2, 5; with specific modifications agreed to by the parties, Dkt. 4642, Dkt. 4643.

The pilot ran for 28 weeks between July 2024 and January 2025. Dkt. 4761 at 3. The experts filed reports about the pilot in September 2024, November 2024, and January 2025, documenting myriad ways in which ADCRR and its vendor were unable or unwilling to implement the pilot. Dkt. 4681; Dkt. 4700; Dkt. 4761. At one of the sites, “[t]he pilot operated for just eight days” because of insufficient space—even though ADCRR had selected this site for the pilot and had been on notice of the inadequacy of space at that site since at least July 2024. Dkt. 4761 at 4, 13; Dkt. 4814 at 2, 4, 6, 8; Dkt. 4599 at 3, 37. ADCRR also violated the district court’s express orders related to staffing for the pilot. *See* Dkt. 4642 at 3–5; Dkt. 4643 at 1; Dkt. 4795 at 14–15 (citing Dkt. 4761 at 2–7).

Ultimately, of the court-ordered requirements for the pilot, the experts found only 22% were fully completed, 14% were partially completed, and 63% were not completed. Dkt. 4761 at 6. They concluded: “ADCRR lacks the human resources, the space and the administrative and professional project management capacity to successfully implement the [staffing plan] statewide or at any individual prison.” *Id.* at 16. They also found that “ADCRR does not have a plan to implement the staffing plan beyond the end of the Pilot,” although the staffing plan would “be finalized shortly with relatively minor revisions,” and “the Court required it to be implemented immediately upon completion of the Pilot.” *Id.*

The Court ordered the statewide implementation of the staffing plan in June 2025. Dkt. 4962; *see also* Dkt. 4916 at 2. That plan required ADCRR to hire approximately 600 additional full-time equivalent (“FTE”) healthcare professionals. *See* Dkt. 4870 at 2–3. As of February 2026, ADCRR had increased its healthcare staff by only *three* FTEs. *See* Dkt. 5160 at 8, Dkt. 5160-1 at 9, 16 (excerpts of ADCRR’s Monthly Staffing Reports, listing a total of 1342.3 FTEs in June 2025 and 1345.3 FTEs in February 2026).

IV. MOTION FOR RECEIVER

In February 2025, Plaintiffs filed a motion requesting the appointment of a receiver to oversee healthcare in Arizona’s prisons, citing ADCRR’s failure to make meaningful progress implementing the Injunction and the disastrous staffing pilot. Dkt. 4792. After briefing, the parties agreed that no discovery or evidentiary hearing was necessary to decide the motion. Dkt. 4850 at 2. The court ordered its experts to

complete “a comprehensive Report addressing material issues concerning the Motion for a Receiver,” and ordered the parties to file responses. Dkt. 4867.

A. Third Interim Report (July 2025)

In July 2025, the court experts filed a 306-page responsive report, cataloging “ADCRR’s profound lack of compliance with the vast majority of individual elements of the Injunction two years after its implementation,” “the daily risk to which patients are subjected,” and “the lack of improvement since monitoring began.” Dkt. 4942; Dkt. 4968 at 39. The experts again found “multiple fundamental system level failings in ADCRR’s health care operation,” causing avoidable suffering and death. Dkt. 4968 at 4, 12, 26, 69. The experts concluded: “The system changes required by the Injunction to protect human life and limb and prevent suffering are still broken, and ADCRR is still struggling to identify and prioritize the changes it needs to make, let alone actually make those changes.” *Id.* at 5.

In the largest section of the report, the monitors reported on each healthcare requirement of the Injunction. Dkt. 4968 at 44–306. They found ADCRR “remains noncompliant with the vast majority, with slow (or little) progress toward achieving substantial compliance.” *Id.* at 1. Specifically, the experts determined ADCRR was noncompliant with 131 of 154—85%—of the requirements. *See id.* at 39; App. 49. Significantly, they found that ADCRR’s noncompliance was in areas “where non-compliance pose[d] the highest risk” to incarcerated persons. Dkt. 4968 at 38–39. They further found “Defendants’ own data shows their overall lack of improvement” and “does not reflect any significant improvement over time.” *Id.* at 39.

The experts found serious methodological problems with many of ADCRR’s self-reported compliance scores, *see id.* at 60, 78, 87, 147–48, 152–54, 168, 180, 212, including that ADCRR had relied on invalid, and possibly falsified, documentation and data when evaluating their own compliance, *see id.* at 95, 105, 119, 145–46.

The experts also reviewed recent deaths and uncovered a panoply of serious, often compounding, errors, including “dangerous” infirmary admission orders, significant delays in specialty care (e.g., scheduling an urgent cardiology appointment for two months out, “by which date the patient had been dead for almost a month”), ignoring or failing to respond with urgency to obviously serious medical symptoms (such as severe and sudden stomach pain or high blood pressure), preventable suicides, and “evidence of falsification of records.” Dkt. 4968 at 5–12, 14–21. The court experts found that ADCRR regularly failed to identify, much less solve, systemic errors. *Id.* at 4–12.

The parties submitted extensive written responses to the experts’ report in August 2025. Dkt. 4973; Dkt. 4974. The court held a hearing on Plaintiffs’ motion in September 2025. Dkt. 4988. The parties filed supplemental evidence after the hearing. Dkt. 4989; Dkt. 4997; Dkt. 4998. The experts also responded to the parties’ written submissions, Dkt. 5040, and the court permitted the parties to respond to the experts’ responses, raising any serious and prejudicial errors, Dkt. 5039; Dkt. 5052.

B. Appointment of Receiver

In February 2026, the court issued an eighty-three-page order granting Plaintiffs’ motion to appoint a Receiver. App. 22–149. It found that:

To declare a government will not accept the constitutional responsibility to provide adequate healthcare is huge. Ordering the implementation of a receivership is extraordinary, and the Court has exercised caution and critical reflection in making the decision. But since the beginning of the case, the Court has forborne imposing the harshest penalties, opting instead to guide Defendants with the help of the Monitors towards comprehensive constitutional compliance. But now after nearly 14 years of litigation with Defendants having not gained compliance, or even a semblance of compliance with the Injunction and the Constitution, this approach has not only failed completely, but, if continued, would be nothing short of judicial indulgence of deeply entrenched unconstitutional conduct. Plainly, only the imposition of the extraordinary can bring an end to this litigation and the reasons it was brought. An end to unconstitutional preventable suicides. An end to unconstitutional preventable deaths. An end to unconstitutional failures to treat those in severe pain.

App. 23.

The court requested nominations and further briefing from the parties on the scope of the receiver's authority. App. 103–04. ADCRR nominated Annette Chambers-Smith, the former Director of the Ohio Department of Rehabilitation and Corrections. Dkt. 5193. The court appointed Ms. Chambers-Smith and issued an order setting out the scope of her authority. App. 7–21.

The order grants Ms. Chambers-Smith leadership and management authority over ADCRR's healthcare system but requires her to “work closely with Defendants” in order to support “a seamless transition of health care operations back to ADCRR.” App. 19. The order requires the receiver to consult with ADCRR, the Governor, and the Legislature regarding budgetary matters. App. 10. The order also requires the receiver to comply with all state laws and regulations, absent an express waiver from the district court. App. 17–18. Finally, the order clarifies that “[t]he Receiver's authority, actions, and decisions shall be subject to review of the Court.” App. 11.

ADCRR appealed both the receivership and appointment orders to the Ninth Circuit. *See* Nos. 26-1746, 26-5060 (9th Cir.). ADCRR also sought a stay of the district court’s order pending appeal. Dkt. 5315. The district court and the Ninth Circuit both denied that request. App. 1–6. The district court thereafter ordered the receivership to begin on October 19, 2026. Dkt. 5363.

ARGUMENT

After repeatedly flouting its obligations before the district court over the course of this fourteen-year litigation—culminating in the court’s resort to a significant but plainly permissible remedy to address constitutional violations that have persisted over those fourteen years—ADCRR asks this Court to grant a stay that both the district court and the court of appeals have denied. This Court should decline that invitation.

Nothing about the district court’s order here warrants certiorari, much less the “extraordinary” remedy of a “stay pending appeal.” *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316 (1983) (Blackmun, J., in chambers). To secure that particularly unusual relief, the Department shoulders the burden of making a “strong showing” that it is “likely to succeed on the merits,” that it “will be irreparably injured” without a stay, that a stay will not “substantially injure the other parties,” and that a stay furthers “the public interest.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Where this intensely fact-bound matter has not yet been fully briefed and remains “pending before the Court of Appeals” and “the Court of Appeals denied” a stay, that burden is “especially heavy.” *Packwood v.*

Senate Select Comm. on Ethics, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers). Stays in pending matters are “rarely granted,” *Heckler v. Redbud Hosp. Dist.*, 473 U.S. 1308, 1312 (1985) (Rehnquist, J., in chambers) (citing *Atiyeh v. Capps*, 449 U.S. 1312, 1313 (1981) (Rehnquist, J., in chambers)), and the confluence here of settled law, a highly discretionary judgment, a long-running and tortuous factual and procedural record, and robust evidence of loss of life and limb, make a stay particularly inappropriate. A stay would only further delay the implementation of long-promised reforms that the Department itself has acknowledged are needed to address long-running unconstitutional conditions in Arizona’s prisons.

I. THE COURT IS UNLIKELY TO REVIEW, MUCH LESS REVERSE, THE DISTRICT COURT’S FACT-BOUND EXERCISE OF DISCRETION.

A. ADCRR’s Fact-Focused Objections to this Remedial Measure After Fourteen Years of Litigation Are Not Remotely Worthy of Certiorari.

This Court frequently “[e]mphasiz[es] certworthiness as a threshold consideration” when considering applications in this extraordinary posture. *Labrador v. Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring); *see also Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring); *Graves v. Barnes*, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers). The issue here falls far short of that threshold. The application presents no circuit split, no departure from precedent, nor any other “compelling reason[]” to grant review. Sup. Ct. R. 10. Fundamentally, ADCRR disagrees with how the district court exercised its broad discretion in applying settled law to an extensive and voluminous factual and historical record. But the court committed no error, let alone an abuse of its considerable discretion.

And even if the Department could somehow show error, a one-off request for fact-bound error-correction would not merit this Court’s attention. *See id.* (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”); *see also Texas v. Mead*, 465 U.S. 1041, 1043 (1984) (Stevens, J., respecting denial of certiorari) (“We do not grant a certiorari to review evidence and discuss specific facts.” (quoting *United States v. Johnston*, 268 U.S. 220, 227 (1925))).

1. The Application does not present any legal issue that demands Supreme Court resolution, let alone one that has divided the lower courts or that requires emergency intervention from this Court before the Ninth Circuit has an opportunity to weigh in. The governing law applied by the district court was not only correctly stated, but well-established. As this Court has recognized, receivership is an “available” remedy for unconstitutional prison conditions: “Courts faced with the sensitive task of remedying unconstitutional prison conditions must consider a range of available options, *including appointment of . . . receivers* and the possibility of consent decrees.” *Brown v. Plata*, 563 U.S. at 511 (emphasis added). Federal courts have, on select occasions when warranted by the circumstances, granted this precise remedy under the PLRA. *See, e.g., Plata v. Schwarzenegger*, 603 F.3d 1088, 1093–94 (9th Cir. 2010); *United States v. Hinds Cnty.*, No. 3:16-cv-489, 2023 WL 1186925, at *4–5 (S.D. Miss. Jan. 30, 2023), *aff’d in relevant part by United States v. Hinds Cnty. Bd. of Supervisors*, 128 F.4th 616, 635–37 (5th Cir. 2025). ADCRR points to no

disagreement among any courts over the authority of district courts to do so. Nor can they point to any case—*ever*—that denies that authority.

2. ADCRR nonetheless alludes to “questions” about that settled authority that could flow from this Court’s decision just last year in *Trump v. CASA*, 606 U.S. 831 (2025)—querying whether receiverships over “non-consenting state institution[s]” might be considered “different in kind” from other receiverships and suggesting their historical bases are “hardly clear.” Appl. 28. But ADCRR just as quickly disclaims that very argument, acknowledging that “[i]n all events, for purposes of this application, the Court need not resolve” that question because the opinion below, it contends, should not stand on other grounds. *Id.* As it must, because any academic questions flowing from *CASA* are plainly forfeited. ADCRR failed to raise this argument in the district court. And the Ninth Circuit, which has not had the opportunity to weigh in on the Department’s appeal of the district court’s order, is unlikely to decide it. See *In re Mercury Interactive Corp. Secs. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010) (“We apply a ‘general rule’ against entertaining arguments on appeal that were not presented or developed before the district court.”). This Court seldom “entertain[s] such forfeited arguments.” *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 173 (2016). Passing musings aside, then, both sides agree that any newly minted and unelaborated legal question centered on *CASA* does not demand this Court’s resolution.³

³ In any event, the issue here is distinguishable from *CASA* at least in part because (1) the ordered relief is not universal and (2) Section 1983 affirmatively authorizes “suits in equity” against state officials who violate federal rights. 42 U.S.C. § 1983. Even ADCRR does not seem to buy its own half-hearted argument: as ADCRR concedes, “[j]udicial reliance on

3. There is also no issue of national importance requiring resolution by the Court. The district court's tailored order was based on specific factual findings about ADCRR's long record of noncompliance with previous orders, and the order has no bearing on the administration of other prison systems. The district court's order has no impact beyond this particular stage of this particular case.

4. Absent any serious dispute over any question of law, ADCRR's sundry objections distill down to complaints about how the district court applied settled law to the vast factual record and procedural history of this case. But the course of proceedings below makes clear that the court engaged in protracted deliberations and careful consideration before resorting to what it fully recognized was the "huge," "extraordinary," and "harsh[]" step of appointing a receiver. App. 23. It explained that "since the beginning of the case, the Court has forborne imposing the harshest penalties," but that its hand was finally forced by ADCRR's failure to gain "even a semblance of compliance with the Injunction and the Constitution" after "14 years of litigation." *Id.* As the district court explained, its previous, less restrictive measures had "not only failed completely, but, if continued, would be nothing short of judicial indulgence of deeply entrenched unconstitutional conduct." *Id.* That is, it elected to go down this path only after a succession of abject failures by ADCRR demonstrated to the court its "deliberate indifference" to commitments the Department itself had

receivers dates back at least to sixteenth century England." Appl. 27. And, starting with our country's inception, courts have exercised robust oversight over prisons. *See* Con Reynolds, *The Judicial Role in Federal Imprisonment*, 175 U. Pa. L. Rev. 1, 16 (2027) (forthcoming), <https://perma.cc/5ZWL-Z74Z> (citations omitted).

“unreservedly agreed to abide by.” App. 22; *see also* App. 18 (“Plainly, only the imposition of the extraordinary can bring an end to this litigation.”).

In finding that “the most extreme circumstances” necessitating receivership were satisfied here—and “the situation at ADCRR is such an extremity,” App. 101—the district court relied on its intimate familiarity with the record. That fact-intensive, record-specific determination is owed “substantial deference,” coming from the court that has “developed an understanding of the difficulties involved in constructing and managing a jail that an appellate court, even with the best possible briefing, could never hope to match.” *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 393–94 (1992) (O’Connor, J., concurring); *see also Brown v. Plata*, 563 U.S. at 513 (“Deference to trial court factfinding reflects an understanding that ‘[t]he trial judge’s major role is the determination of fact, and with experience in fulfilling that role comes expertise.”); *Hutto v. Finney*, 437 U.S. 678, 688 (1978) (“[T]he exercise of discretion in this [prison reform] case is entitled to special deference because of the trial judge’s years of experience with the problem at hand.”).

5. There are also glaring vehicle problems. Not only is the belatedly, only partially advanced CASA “question” forfeited, *supra* at Section I.A.2, but the court of appeals’ motions panel, in denying the stay, expressly permitted the merits panel to revisit the stay. App. 1–2. That merits panel has not yet weighed in. App. 2; *see Atiyeh*, 449 U.S. at 1313 (“[B]ecause an appeal from the District Court order is presently pending before the Court of Appeals for the Ninth Circuit, the rule to be followed is that ordinarily a stay application to a Circuit Justice on a matter before a

court of appeals is rarely granted.”) (citation modified); *Va. Mil. Inst. v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting denial of certiorari) (denying cert where lower courts had not yet reached final judgment). Wading in prematurely on the basis of barebones, fast-paced briefing—especially where a circuit court is actively considering the case—risks needlessly embroiling this Court in a dispute whose contours may shift substantially as appellate proceedings unfold. *See Moyle v. United States*, 603 U.S. 324, 334 (2024) (Barrett, J., concurring) (concurring with dismissal of certiorari as improvidently granted, explaining that “briefing and oral argument have ‘shed more light on this case than in the nature of things was afforded at the time’ the Court considered petitioners’ emergency applications. I am now convinced that these cases are no longer appropriate for early resolution.”) (citation modified).

II. The Department Is Unlikely to Prevail on the Merits.

On the merits, the Application fares no better. The dispute presented boils down to whether the factual circumstances justified the remedy. Here, the court most familiar with the lengthy and voluminous factual record determined that they did. That was not an abuse of discretion.

ADCRR’s attempt to twist the district court’s inextricably fact-bound determination into a series of pure legal questions is not only unavailing, but it rests precariously atop a false premise: that the district court was limited to considering only ADCRR’s intransigence following the approval of the 2023 Injunction when determining whether to appoint a receiver. That premise is wrong. Because ADCRR

is wrong on the merits, there is all the more reason for this Court to deny the Application.

A. ADCRR Improperly Elides Its Fourteen-Year History of Intransigence.

The Application’s core legal argument rests on a sleight of hand. As the district court observed, throughout this decade-and-a-half-long litigation, “rather than imposing the most punitive sanctions” the court “painstakingly sought to and imposed the least restrictive measures and requirements on Defendants to incentivize compliance with the Constitution.” App. 75; *see also* App. 102 (“The Court has exercised restraint for much of this litigation, to the point that any[]more tolerance of unconstitutional healthcare becomes judicial indulgence.”). In brief, those efforts included: twelve motions by Plaintiffs to enforce the parties’ 2014 Stipulation, which resulted in dozens of additional orders to enforce the Stipulation; three orders to show cause why ADCRR should not be held in contempt; appointment of Rule 706 experts; millions of dollars in contempt sanctions in two separate findings of contempt; rescission of the parties’ Stipulation based on ADCRR’s persistent noncompliance; a fifteen-day bench trial; and the appointment of multiple correctional healthcare experts to aid the court and parties in crafting the 2023 Injunction, which “offer[ed] Defendants a hoped-for final opportunity to remedy their constitutional violations.” App. 22–25, 75–77; *see also* Dkt. 4335 at 2, 4–5. All those “efforts,” however, “prove[d] to be an exercise in futility.” App. 79.

ADCRR does not contest that its performance regarding the district court’s remedial efforts prior to 2023 was abysmal. Instead, it brushes over its

noncompliance and the court's many years of enforcement efforts prior to the 2023 Injunction and insists that the district court *erred as a matter of law* in considering this history. *See, e.g.*, Appl. 18–25. But this attempt to sweep under the rug ADCRR's "long and regrettable history of delays, noncompliance, and contempt," *Jensen v. Thornell*, No. 25-4365, 2026 WL 2043607, at *2 (9th Cir. June 5, 2026), is not supported by the law. The Department cites no authority requiring a federal court, in exercising its equitable authority over noncompliance with its orders, to ignore the full litigation record that produced those orders. Nor could it. Under settled caselaw (and common sense), the efficacy of a court's prior efforts is plainly relevant to whether additional remedies are needed. *See, e.g., Hutto*, 437 U.S. at 687 ("[T]aking the long and unhappy history of the litigation into account, the court was justified in entering a comprehensive order to insure against the risk of inadequate compliance."); *Freeman v. Pitts*, 503 U.S. 467, 491–92 (1992) (court exercising discretion over desegregation decree must consider defendant's "good-faith commitment to the whole of the court's decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance," with "particular attention to the [defendant's] record of compliance."); *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949) (when a record exists of "continuing and persistent violations" of the law and a party "undertook to make their own determination of what the decree meant," then subsequent orders are "wholly warranted"); *Rouser v. White*, 825 F.3d 1076, 1081 (9th Cir. 2016) (reversing vacatur of consent decree governing prison's operations where trial court failed to consider

“the defendants’ record of compliance—either with the 2011 Decree or its predecessor—‘which over the course of the litigation has been far from exemplary’”); *Armstrong v. Brown*, 768 F.3d 975, 986 (9th Cir. 2014) (“The ongoing, intractable nature of this litigation affords the district court considerable discretion in fashioning relief.”).

Put simply, ADCRR acts as if this case started with the 2023 Injunction. But that blinks reality. Both the 2023 Injunction and the 2014 Stipulation were crafted to address the same constitutional violations. The years of litigation both leading up to and following the 2023 Injunction have been focused on remedying the exact same constitutional harms and ending a pattern in which the Department has repeatedly agreed to remedies only to renege when it comes time to implement them. App. 76–77.⁴ In rejecting this very argument, the district court explained, the 2023 Injunction “is not a ‘dramatic’ alteration of Defendants’ obligations. Rather, it is a comprehensive elucidation of what has always been required of the Defendants. And the obligations of the Injunction are the same as those required of Defendants in the 2014 Joint Stipulation.” App. 77. When the Stipulation failed to spur ADCRR to address the unconstitutional conditions in its prisons, the court appropriately created the 2023

⁴ ADCRR also attempts to distinguish the 2023 Injunction from prior remediation efforts on the basis that “the district court found the Department in violation of the Constitution *only* after the bench trial in 2022.” Appl. 19 (emphasis added). That too is wrong. The district court, in 2015, found the Stipulation the parties agreed to in 2014 was “necessary to correct” and “the least intrusive means necessary to correct the violations of the Federal right of the Plaintiffs.” Dkt. 1458 at 6. That finding “necessarily required a finding of a constitutional violation.” *Parsons v. Ryan*, 912 F.3d 486, 501 (9th Cir. 2018).

Injunction. The Department should not get a pass for failing to implement the remedies the court tried before crafting the Injunction.

Finally, ADCRR argues that the district court was wrong to consider “events that occurred . . . before the Department’s current leadership assumed responsibility.” Appl. 19–23. But government defendants do not get to restart the clock every time a new official takes office. *See* Fed. R. Civ. P. 25(d) (actions do not abate when a public officer ceases to hold office; successor automatically substitutes as party); *see also Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989) (“[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office.”). It cannot be that any time a new Governor of Arizona is elected, or appoints new leadership of ADCRR, the compliance clock restarts and people in prisons must suffer and wait for years for effective relief. Defendants in this case are, in their official capacities, the Director of ADCRR and the Assistant Director of ADCRR’s Medical Services Contract Monitoring Bureau. Dkt. 4335 at 3. Over the course of this fourteen-year litigation, there have been at least three ADCRR Directors and four people in the Assistant Director position (punctuated by absences), as well as four for-profit healthcare contractors. Dkt. 4309 at 12, 13, 17, 39; Dkt. 4818 at 3, 17; Dkt. 4377; Dkt. 4871-2 at 4–5; Dkt. 4973 at 11–12; Dkt. 5095 at 1; Dkt. 5239 at 1. This suit is against ADCRR, which is responsible for implementing court orders and complying with the Constitution’s requirements, and the court did not err in considering its fourteen-year history of obstinance.

In any event, the district court did not confine its analysis to compliance efforts prior to 2023. The court acknowledged that “alone, a historical failure to fully comply may not warrant the extraordinary remedy of a receivership,” App. 102, and reviewed, in detail, the efficacy of the court’s efforts since the Injunction issued. App. 27–42, 77–79. The court explicitly found that “since entry of the Injunction, Defendants’ paltry efforts to remedy the constitutional violations in the provision of healthcare have been in substantial conformity with their behavior throughout the litigation” and that “[t]o date, and despite the repeated offers of assistance and advice from the Monitors, Defendants offer no concrete plan to achieve compliance other than to limp along with their continuing failure to comply with the Injunction.” App. 77, 79. The court’s conclusions were supported by a detailed, fifteen-page account of ADCRR’s failure to implement the 2023 Injunction, despite exhaustive efforts of the court and the Monitors. App. 27–42, 77–79.

B. The District Court Was Not Required to Initiate a Third Round of Contempt Proceedings Before Appointing a Receiver.

Even focusing on ADCRR’s preferred post-2023 time period, it is wrong to insist that “the district court did not,” after 2023, “try *anything else* before imposing a receivership.” Appl. 20 (emphasis in original). Since issuing the 2023 Injunction, the court’s efforts included: requiring ADCRR to monitor all elements of the Injunction on a monthly basis and make its findings available for inspection and analysis by the experts; holding multiple status conferences and hearings to address ADCRR’s noncompliance; ordering the completion of six reports on ADCRR’s state of compliance by the court experts; directing the experts’ dedication of “hundreds of

hours evaluating Defendants’ performance and engaging with Defendants to assist them with compliance”; issuing an order clarifying expectations of ADCRR under the Injunction and expressly finding that ADCRR was in violation of the Injunction; issuing an order setting out ADCRR’s failure to address inadequate staffing; issuing an order requiring ADCRR to implement the Pilot Project proposed by the experts; and ordering implementation of the statewide staffing plan. App. 26–42. Far from doing nothing before imposing a receivership, the court over the course of three years went to great lengths to ensure ADCRR was aware of what was required of it under the Injunction and that it had the tools necessary to comply. Simply put, the claim that the court did not “take any other intermediate steps,” Appl. 19, “is both inaccurate and unavailing,” App. 4.

ADCRR takes specific issue with the fact that the district court did not first find it in contempt for noncompliance with the 2023 Injunction before appointing a receiver. Appl. 18–20. But the court previously tried contempt—*twice*—to no avail. Dkt. 3921 at 7, 11, 17, 33. “The first sanction was \$1.445 million and the second was \$1.10 million. Neither sanction coerced or even motivated complete compliance.” Dkt. 3921 at 17. As a result, the court correctly concluded that further contempt sanctions would be ineffective. *See, e.g.*, Dkt. 4335 at 4 (“Imposition of substantial fines, and threats of even more, did not prompt Defendants to make required efforts to perform as they agreed under the Stipulation.”); Dkt. 3921 at 33 (“There does not appear to be a contempt sanction robust enough to coerce compliance.”); *id.* at 35 (finding “the inability for monetary sanctions to have effect”); *id.* at 36 (finding that

“[t]here is no indication a contempt fine of \$1.4 million would change things” and that “it would be absurd to continue down a path of trying to elicit Defendants to act differently”). On the contrary, contempt sanctions create little to no financial incentive for ADCRR to change because its healthcare vendor NaphCare largely indemnifies the Department. *See* Dkt. 3921 at 33 n.14 (noting that “Defendants are indemnified from having to pay any fines themselves”); Dkt. 4507-1 at 44–45 (amendment to indemnification agreement). Fines also do not motivate NaphCare to change course—the CEO stated under oath that sanctions “have not in any way incentivized or influenced NaphCare’s performance or compliance.” Dkt. 4616-1 at 25 ¶ 10.

ADCRR’s suggestion that a *third* contempt proceeding might have finally spurred it to correct course is nonsense. ADCRR chose to incur millions of dollars in contempt fines rather than comply with the court’s orders, and nothing in the record suggests that calculus has changed. Nothing in the law required the district court to engage in the same failed, futile steps. *See Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 440 (2004) (“Federal courts are not reduced to approving consent decrees and hoping for compliance. Once entered, a consent decree may be enforced.”); *United States v. Hinds Cnty.*, No. 3:16-cv-489, 2022 WL 17408643, at *3–4 (S.D. Miss. Dec. 2, 2022) (denying stay of appointment of receiver because the appointment four months after vacating previous consent decree and without new contempt-purge cycle was not inappropriate, as there was “an obvious through-line” between the previous consent decree and the new injunction’s requirements), *aff’d in relevant part by*

United States v. Hinds Cnty. Bd. of Supervisors, 128 F.4th 616 (5th Cir. 2025); *Newman v. Alabama*, 466 F. Supp. 628, 635 (M.D. Ala. 1979) (imposing receivership prior to contempt actions, as contempt proceedings “promise only confrontation and delay” due to defendants’ noncompliance); *Wayne Cnty. Jail Inmates v. Wayne Cnty. Chief Exec. Officer*, 178 Mich. App. 634, 660 (Mich. 1989) (finding that receivership was warranted even absent contempt orders, because bringing “[t]housands” of noncompliant jail operations into compliance through a cycle of contempt proceedings “would be inefficient and seemingly endless” and “would never bring full implementation of its orders”).

C. The District Court Reasonably Concluded That ADCRR’s Self-Reported Assertions of Recent Progress Were Overblown.

ADCRR next argues that a receivership cannot, as a matter of law, be the least intrusive means if it is imposed “while the defendant state agency is making progress.” Appl. 20–21. This position is risible. The argument that receivership was improper simply because the state was “making progress” suggests that the Department believes it should get a pass to continue, after over a decade of litigation, to violate the Constitution so long as it is doing more than nothing. Appl. 21. Regardless, the assertion that the court ignored these efforts “is simply untrue.” App. 4. ADCRR claims the district court ignored “the Department’s significant progress since April 2023.” Appl. 21. There was very little progress to ignore. In any event, the court afforded ADCRR numerous opportunities to submit evidence of its compliance, and the court acknowledged the evidence that the Department here says it ignored. *See* App. 43, 82, 86 (court’s order noting progress in Hepatitis-C and opioid

use disorder treatment); App. 43, 97 (expenditures); App. 43, 52 (staffing increases); App. 43, 112 (facility-based improvements); App. 95 (Patient-Centered Care Model implementation). The neutral court experts, too, considered this evidence, and ultimately found that “taking into account the nature, number, and speed of improvements,” any progress made to date “does not change the core findings that non-compliance with the Injunction persists and poses serious risks of harm to the prisoners.” App. 82–83 (citation modified); *see also* Dkt. 5040 (experts’ analysis of Defendants’ assertions of progress). ADCRR’s argument thus reflects nothing more than a disagreement with the neutral experts’ findings and the court’s weighing of the evidence.

The court’s conclusion was amply supported by the record. Contrary to ADCRR’s assertions of “significant progress,” Appl. 21, the court credited the neutral experts’ findings that more than two years after the issuance of the Injunction, ADCRR was still noncompliant with 131 of the 154 healthcare requirements, *see* App. 49, 105–49, including those provisions at “the core of the Injunction,” App. 51, and those that “could have been implemented soon after the Injunction was issued,” App. 87–88. There was no ignoring of these efforts; the court just weighed them differently than ADCRR wanted. And because the district court *did* consider the evidence of progress that ADCRR asks this court to now weigh, their attempt to create a conflict with *Parker v. Hooper* falls flat. *See* 171 F.4th 736, 757–58 (5th Cir. 2026) (en banc) (reversing where lower court erred in refusing to admit evidence of

significant new improvements “a few months after the remedial trial—but more than a year before it issued its Remedial Opinion and Order”).

ADCRR’s related suggestion that the court experts, and by extension, the district court, held it to a standard of 100% compliance is likewise unavailing. App.13. ADCRR did not miss compliance by a few percentage points—the experts acknowledged “no non-heavenly system is perfect nor should the Court expect this of ADCRR,” but found the Department was “light years” away from complying with the Injunction. Dkt. 4968 at 41–42; *see also id.* at 1 (noting, regarding the Department’s compliance with the Injunction, that it “remains non compliant with the vast majority, with slow (or little) progress toward achieving substantial compliance”). Even according to its own data, ADCRR came nowhere close to complying with the Injunction during these three years. *Id.* at 39. In the end, and as the district court reasonably concluded, ADCRR cannot recast its 85% noncompliance as “sustained progress”—particularly when the human stakes could not be higher, *see infra* Section III.B.

Finally, ADCRR argues that the appointment of a receiver is improper as a matter of law because the district court gave it just three years before appointing a receiver yet estimated that a receiver would need at least five years to cure the constitutional violations. Appl. 24. To start, the district court did not give Arizona just three years to comply with the Constitution; this appointment order comes after fourteen years of litigation replete with evidence of noncompliance with basic constitutional guarantees concerning the delivery of minimally adequate healthcare

to people in ADCRR custody. In any event, this argument conflates how long it will take a receiver, appointed to oversee a state agency with a demonstrated record of recalcitrance to obey court orders, to remedy the constitutional violations that have continued to plague the Arizona prison system over the fourteen years of this litigation, with how long the district court needed to decide whether ADCRR would remedy them on their own. The district court’s finding that ADCRR made very little progress over those last three years is supported by the record and is not an abuse of discretion. *See supra* Section II.C.

III. THE EQUITIES ALSO DO NOT JUSTIFY A STAY.

A. ADCRR Overstates the Extent of Any Potential Harms it Might Suffer Absent a Stay.

An applicant who cannot show irreparable injury cannot obtain a stay, regardless of the merits. *See, e.g., Nken*, 556 U.S. at 434 (establishing irreparable injury absent a stay is “critical.”); *Ruckelshaus*, 463 U.S. at 1317 (Blackmun, J., in chambers) (“An applicant’s likelihood of success on the merits need not be considered, however, if the applicant fails to show irreparable injury from the denial of the stay” (citing *Whalen v. Roe*, 432 U.S. 1313, 1317–18 (1975))). And “simply showing some ‘possibility of irreparable injury,’ fails to satisfy” this factor. *Nken*, 556 U.S. at 434–35 (quoting *Abbassi v. I.N.S.*, 143 F.3d 513, 514 (9th Cir. 1998)).

Here, ADCRR asserts two harms: an intrusion on Arizona’s sovereignty and allegedly unrecoverable costs. Appl. 29–30. Both founder on the same fact. The measures the receiver will implement are measures that ADCRR had “unreservedly” agreed to. App. 22. This is far afield from a prototypical stay request, whereupon a

new law is enacted and an adversely affected party seeks to preserve the status quo to avert the challenged adverse effects. *Cf., e.g., Louisiana v. Callais*, 146 S. Ct. 1131, 1149 (2026) (state legislature seeking stay of a permanent injunction against state’s redistricting plan); *Mullin v. Doe*, 146 S. Ct. 2121, 2127 (2026) (executive branch seeking stay of order postponing effective date of executive branch’s termination of Temporary Protected Status designations). A stay here would suspend measures that all parties *including ADCRR* acknowledge are needed. The question is just who oversees them.

Allowing the receivership to go into effect would merely permit the mutually-agreed-upon receiver, who was nominated by Arizona prison officials and who is mandated to work collaboratively with them, to begin work in facilitating their implementation of the very substantive measures they committed to. *See* App. 9, 17. The obligations the receiver will help implement are the same ones ADCRR is already compelled to implement, and the costs of that implementation are costs that the State’s compliance would incur in any event. The receivership changes who carries out the work—not what the work is or what it costs. A party is not injured—let alone irreparably—by the implementation of its own commitments. *See Haskins v. Stanton*, 794 F.2d 1273, 1277 (7th Cir. 1986) (holding an injunction imposed no burden where it “merely s[ought] to prevent the defendants from shirking their responsibilities under [an act]”); *M.G. through Garcia v. Armijo*, 117 F.4th 1230, 1246 (10th Cir. 2024) (same).

ADCRR’s federalism argument fails for the additional reason that a State retains no sovereign interest in administering its prisons unconstitutionally. Of course, litigation involving correctional facilities can have federalism implications. But, just like in any other area of law, vague handwaving and the bare invocation of state sovereignty do not justify evading specific constitutional requirements. Rather, as this Court recognized, “[c]ourts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.” *Brown v. Plata*, 563 U.S. at 511; *Bounds v. Smith*, 430 U.S. 817, 832 (1977) (“While we have recognized that judicial restraint is often appropriate in prisoners’ rights cases, we have also repeatedly held that this policy cannot encompass any failure to take cognizance of valid constitutional claims.” (citation modified)), *abrogated in part on other grounds by Lewis v. Casey*, 518 U.S. 343 (1996); *Hutto*, 437 U.S. at 687 n.9 (noting that judicial authority may be invoked where state and local authorities have failed in their affirmative obligations to cure constitutional violations (citing *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971))), *abrogated on other grounds as recognized by Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42 (2024). The district court found “deeply entrenched unconstitutional conduct,” and appointed a receiver only after exercising restraint for more than a decade and affording ADCRR numerous opportunities to remedy the violations itself. App. 23. Whatever consequences ADCRR is facing are of its own making, and claims of “sovereignty” do not excuse its failure to comply with court orders and the Constitution. *See Newman*, 466 F. Supp. at 635–36 (“[W]hen a state

fails to comply with the Constitution, the federal courts are compelled to enforce it. . . . [S]uch orders result in the loss of some of the autonomy and flexibility the state might have exercised in the control of its public institutions had it chosen to accept the responsibility for their management before it was too late.”).

In any event, ADCRR drastically overstates the impingement on its interests. The court was careful to craft a remedy that limits intrusions on the State’s authority. *See* App. 7–21. The receiver is required to “endeavor to perform all responsibilities and duties in accordance with Arizona state laws, regulations, and contracts.” App. 17. She has no unilateral authority to set state law aside. If a waiver is necessary, she must request one from the district court, which “shall solicit input from Defendants and Plaintiffs before rendering a decision.” App. 17–18. That structure follows the PLRA, which expressly contemplates relief that displaces state law where “[f]ederal law requires such relief to be ordered in violation of State or local law,” “the relief is necessary to correct the violation of a Federal right,” and “no other relief will correct the violation of the Federal right.” 18 U.S.C. § 3626(a)(1)(B).

And the contention that any victory on the merits in the ordinary course of proceedings would “come too late” is likewise unfounded. Appl. 30. As this Court has explained, “[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.” *Sampson v. Murray*, 415 U.S. 61, 90 (1974). ADCRR’s opportunity for corrective relief is imminent. The Ninth Circuit has expedited this appeal and argument is scheduled for December 2026. ADCRR identifies no

consequence of the receivership that could not be undone if it prevails. The Department describes nothing beyond the transfer of authority itself, when “[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.” *Id.* That is all ADCRR has offered, and it does not satisfy the burden. *See Nken*, 556 U.S. at 434–35.

Finally, the unrecoverable-costs argument fares no better. Appl. 30. It is not enough that an applicant “may have trouble recouping any funds they disburse”; it must establish “that recoupment will be impossible.” *Conkright v. Frommert*, 556 U.S. 1401, 1403 (2009) (Ginsburg, J., in chambers); *see also Nat’l Inst. of Health v. Am. Public Health Assoc.*, 145 S. Ct. 2658, 2659 (2025) (“[T]he loss of money is not typically considered irreparable harm [unless] the funds cannot be recouped and are thus irrevocably expended.”) (citation modified). ADCRR cannot make such a showing. They rely on the receivership order’s allocation of costs to the Department, Appl. 30, which says nothing about whether those costs could be recovered or reallocated should ADCRR prevail on appeal. In fact, ADCRR offers no estimate of the receivership’s costs at all. Meanwhile, funds are already available for this purpose. The parties agreed, and the court ordered, that the to-date unspent \$2.2 million balance of contempt fines—paid by ADCRR’s private, for-profit healthcare vendor at the time—could be used “to support the Receiver in the execution of her duties.” App. 16.

In any event, ADCRR again relies on the erroneous premise that the receivership would generate spending that the State would otherwise avoid. ADCRR

must remedy these constitutional violations—regardless of who administers the work—and the measures the receiver will facilitate are ones ADCRR already committed to in the Injunction. What the Department describes is not an unrecoverable loss but an allocation of money already committed for the purpose of complying with the Constitution.

Moreover, regarding funding, the appointment order is especially targeted and careful: The receiver is ordered to “engage in essential efforts to secure adequate funding in consultation with Plaintiffs and Defendants, the Governor, and the Legislature” App. 10. If that process fails and she determines budgeted funds “are inadequate to accomplish the Receiver’s authorities and duties,” she is required to “first consult the Director” and then “notify[] the Legislature and the Governor’s Office of such deficiency.” App. 20. If additional funding is still not provided, the parties or receiver “may prompt the Court to order the waiver of Arizona State laws, regulations, and contracts that interfere with the requirements and desired outcome of the Receivership.” *Id.*

B. A Stay Would Inflict Serious, Irreparable Harms on Respondents.

On the other side of the ledger, ADCRR ignores the district court’s findings of “appalling healthcare conditions” and “callous, inhumane indifference displayed on a regular basis,” App. 48–49, 54, and suggests instead that Plaintiffs “face the prospect of only a months-long delay to a receivership that is slated to last at least until late 2031,” Appl. 31. This grievously minimizes the risk of harm to the more than 25,000 people incarcerated in Arizona state prisons. They face the risk of injury up to and

including death—harm that is happening now and has been ongoing for a decade and a half precisely because of ADCRR’s demonstrated unwillingness or inability to provide minimally adequate care. App. 45, 49–50, 53–54.

Critically—and after more than a decade of noncompliance in the face of external monitors, sanctions, and repeated efforts by the court to resolve the serious constitutional violations—the court concluded “no lesser measure” than a receiver “will suffice to remedy the pervasive constitutional violations present in Defendants’ healthcare delivery system.” App. 102. In so concluding, the court spent over a third of its order detailing the “overwhelming evidence” showing the Department still fails to “deliver[] clinically required healthcare” after the 2023 Injunction—including evidence of patients dying after experiencing extreme delays in accessing specialty care, being denied necessary higher levels of care, and receiving grossly incompetent treatment. App. 53, 61, 65–66, 69–70; *see also* App. 75–91 (recounting numerous additional examples of seriously deficient care and finding they reflected that “prisoners still remain exposed to an intolerable grave and immediate threat of continuing harm and suffering”).

Among the serious cases cited by the experts and the court were:

- **Patient 20**, who died in March 2025 at the age of 78. He had a history of seizure disorder (and other serious diagnoses) and was prescribed an antiseizure medication in 2023 that improved his seizures. In February 2025, healthcare staff discontinued that medication without reviewing his medical history. Two weeks later, he suffered a prolonged seizure requiring intubation

and placement in the hospital intensive care unit. He died four days later. App. 55; Dkt. 4968 at 8.

- **Patient 49**, who had an untreated infection that had invaded the bones of his spine and required urgent management. A nurse repeatedly dismissed his symptoms and told him his neck pain was because he had slept wrong. By the time he was finally sent to the hospital for treatment, almost a month later, the infection had spread to his blood, heart valve, heart tissue, brain, and spine. He required antibiotics administered directly into the fluid around his brain. App. 67–70; Dkt. 4968 at 55.
- **Patient 58**, who was diagnosed with cancer and had been waiting for more than eight months to see an oncologist at the time of the experts’ report. He reported suffering from increasing pain, fear, and crying himself to sleep as he waited for critical care. App. 72; Dkt. 4968 at 69.
- **Multiple patients** who required mental health treatment and were seen by a revolving door of different therapists, none of whom knew the patients, their history, or the interventions previously tried. For example, **Patient 3** was briefly seen by no fewer than 15 different mental health staff in the month leading up to his death by suicide. Dkt. 4968 at 18.
- **Patient 23**, who died in March 2025 at 35 years old, of pneumonia. The experts opined his death “would likely have been prevented” had he been seen by “a competent practitioner” when he requested medical care from ADCRR. App. 58–59; Dkt. 4968 at 10–12.

- **Patient 59**, who from September 2024 until June 2025 waited more than nine months to have cancerous tumors removed, “creating significant – but avoidable – risk” that his tumors grew to a size “associated with lower rates of cure and . . . decreased overall survival.” App. 72–73; Dkt. 4968 at 72.
- **Patient 78**, who has Type 1 diabetes and experienced four emergency episodes of hypoglycemia in a single year, yet ADCRR repeatedly refused to provide him necessary medication (oral glucose) to keep in his possession, choosing instead to only provide glucose at the prison clinic once he was “delirious or unconscious.” App. 74; Dkt. 4968 at 112.

Maintaining the status quo would not only freeze in place the established Eighth Amendment violations—unconstitutional real-world prison conditions—but suspend the only meaningful path to remedial progress. A stay would “delay the Receiver’s needed remedial work” and unquestionably injure Respondents. *See* App. 3–6. And though ADCRR suggests that delay will extend no further than the beginning of 2027, that presupposes—implausibly—that the Ninth Circuit and this Court would *both* resolve the issue on the merits in less than a month. *See* App. 1–2. The more just and prudent course would be to permit the proceedings to unfold in the ordinary course of litigation.

* * *

At bottom, this application amounts to second-guessing the district court’s exercise of discretion in a fact-laden context that broke no new legal ground. It does not present any question of law for this Court’s resolution, let alone a significant or outcome-determinative question of law on which the circuits have split. Rather, the

district court issued a carefully considered, discretionary remedial order, based on an extraordinary evidentiary record of severe harm and ADCRR's decade-plus history of noncompliance. The district court's order was aimed at ending that noncompliance and the resulting pattern of deaths and extreme suffering of people in the custody of the State of Arizona. The district court's underlying findings of constitutional violations are not in question here, and the substantive remedial measures required to address those constitutional violations were mutually agreed to years ago, were never appealed by ADCRR, and also are not in question here. App. 24–25. The Department has given no good reason for the Court to override two lower courts' determinations that there was no basis to stay the long-delayed implementation of promised reforms to address longstanding, continuing—and deadly—constitutional violations.

CONCLUSION

For the foregoing reasons, the Court should deny the application for a stay pending appeal.

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