

FILED

FEB 28 2022

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOY GARNER, individually and on behalf
of The Control Group; et al.,

Plaintiffs-Appellants,

v.

JOSEPH R. BIDEN, in his official
capacity as President of the United States
of America,

Defendant-Appellee.

No. 21-15587

D.C. No.

2:20-cv-02470-WBS-JDP

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted February 24, 2022**
San Francisco, California

Before: IKUTA, MILLER, and BADE, Circuit Judges.

Joy Garner, individually and on behalf of The Control Group—a non-profit
organization that surveyed unvaccinated individuals for the purposes of this

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

litigation—and a group of parents, who sue individually and on behalf of their minor children (collectively, Appellants), appeal the district court’s dismissal of their complaint against the President of the United States in his official capacity for lack of standing. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.¹

Appellants’ First Amended Complaint (FAC) does not plausibly allege a causal connection between Appellants’ alleged injuries and any actions by the President. Because Appellants’ alleged injuries, ranging from being discriminated against due to local vaccine mandates to “the mathematically proven imminent dissolution of America from within,” are not “fairly traceable to the challenged action[s] of the defendant,” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560

¹ We note the district court’s February 11, 2022 order (Dkt. No. 39), which purported to vacate the order on appeal. The court’s order had no effect, however, because it was issued after Appellants filed their notice of appeal in our court. *See Matter of Visioneering Constr.*, 661 F.2d 119, 124 n.6 (9th Cir. 1981) (“Once a notice of appeal is filed jurisdiction is vested in the Court of Appeals, and the trial court thereafter has no power to modify its judgment in the case or proceed further except by leave of the Court of Appeals.”). Neither party requested leave for a limited remand to the district court to issue an indicative ruling. *See* Fed. R. Civ. P. 62.1; Fed. R. App. P. 12.1. Assuming without deciding that we may nonetheless remand in these circumstances, *Mendia v. Garcia*, 874 F.3d 1118, 1122 (9th Cir. 2017), we decline to do so here. Instead, we exercise our jurisdiction to determine de novo whether Appellants have standing. *Cf. United States v. Rodriguez*, 851 F.3d 931, 938–39 (9th Cir. 2017) (concluding that “a remand to the district court would be superfluous” when this court was required to conduct de novo review on appeal).

(1992) (cleaned up), Appellants lack standing. As Appellants note in their FAC, there is no federally mandated vaccine requirement; instead, the CDC recommends various vaccine schedules, and state and local governments adopt their own mandates based on those recommendations. Appellants' FAC does not allege any plausible connection between any of the President's actions and the injuries Appellants have allegedly suffered as a result of state and local vaccine requirements.

Further, because Appellants seek declaratory and injunctive relief that we cannot grant against the President of the United States, such as ordering the President to conduct a national survey, *see Juliana v. United States*, 947 F.3d 1159, 1171 (9th Cir. 2020), Appellants' alleged injuries are not likely to be "redressed by a favorable decision." *Lujan*, 504 U.S. at 561 (internal quotation marks omitted). Finally, the district court did not abuse its discretion in denying leave to amend because permitting leave to amend would have been futile. *See Perez v. Mortg. Elec. Registration Sys., Inc.*, 959 F.3d 334, 340–41 (9th Cir. 2020).

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

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95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- A response, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or response must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send an email or letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista (maria.b.evangelista@tr.com));
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

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The Clerk is requested to award costs to *(party name(s))*:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

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