Knowlton, et al v. Armijo, al, No. 23-2143
FEDERICO, Circuit Judge, concurring

I am pleased to join in full the majority's opinion. I write separately to emphasize the importance of this litigation and to suggest that if New Mexico's Human Services Department (HSD) continues down the path of filing another frivolous appeal or pursuing an obstructionist legal strategy in the district court, a future panel of this court (and/or the district court) should consider taking additional steps – including sanctions, if appropriate – against HSD and its litigation counsel.

The history of this litigation is both frustrating and extraordinary. The district court has certified HSD's last two appeals as "frivolous." *Knowlton v. Armijo*, No. CV 88-0385 KG/GBW, 2023 WL 7114676, at *1 (D.N.M. Oct. 27, 2023). Including the dismissal of this appeal, this court has now dismissed four consecutive HSD appeals for lack of jurisdiction. *See, e.g.*, *Hatten-Gonzales v. Hyde*, 579 F.3d 1159, 1162–65 (10th Cir. 2009) (*Hatten-Gonzales I*); *Hatten-Gonzales v. Earnest*, 688 F. App'x 586, 588–89 (10th Cir. 2017) (unpublished) (*Hatten-Gonzalez II*); *Hatten-Gonzales v. Scrase*, No. 22-2115, 2023 WL 4881437, at *1 (10th Cir. Aug. 1, 2023) (per curiam and unpublished) (*Hatten-Gonzales III*).

After this appeal was filed, HSD filed a motion in the district court asking it to stay all proceedings pending our resolution of the appeal. The

district court not only denied that motion, but also certified HSD's appeal before us as "frivolous." *Knowlton*, 2023 WL 7114676, at *1. The district court's opinion shines a light on HSD's repeated attempts to evade and obstruct the annual case reviews needed to ensure HSD is delivering food assistance and medical benefits to vulnerable New Mexicans who rely on HSD for their very survival. *See id.* at *1–3.

A

The district court provided several reasons why HSD's latest appeal was not only "frivolous," but also designed to obstruct and delay enforcement of the operative consent decree. *Id.* Because this is the *fourth* time we have dismissed an appeal by HSD, it is worth detailing each of these reasons.

1

The first reason offered by the district court for certifying the appeal as "frivolous" is HSD's failure to follow our repeated guidance on seeking dissolution of an injunction. *Id.* at *2. In fact, HSD's motion to dismiss the operative consent decree lacked any legal standard and did not cite 28 U.S.C. § 1292 or Federal Rule of Civil Procedure 60, which govern dissolutions of injunctions. It also made no effort to comply with our previous guidance in *Hatten-Gonzales I*, which provided specific instructions for HSD to follow if it again sought to dissolve an injunction. *Id.* at *2 ("Here, like *Hatten-Gonzales*, HSD's Motion to Dismiss 'did not seek to alter or eliminate any of the terms of

the [Modified Settlement Agreement], nor did it cite Rule 60(b)(5) or the standards from obtaining relief from an order.'" (quoting *Hatten-Gonzales I*, 579 F.3d at 1167) (alteration in original)).

2

The district court next emphasized that HSD lacked a good faith basis to argue that the 2020 amendment to the operative consent decree deprived the district court of subject matter jurisdiction. *Id.* at *2 ("[I]t is not lost on this Court that HSD's argument that this Court lacks subject-matter jurisdiction relies on the Court granting HSD's Motion to Modify in 2020."). As the district court explained, it granted HSD's 2020 request to modify the operative consent decree only because "HSD argued for piecemeal dismissal of only specific sections and subsections of the Modified Settlement Agreement (MSA) relating to timeliness—acknowledging the MSA's remaining sections would remain effective." *Id.* And from the time the district court modified the MSA in 2020 until August 2022, "HSD was working toward compliance" and acting "with agreement that there would be a case review." *Id.* Then, "in an abrupt about-face, HSD argue[d] that no controversy exist[ed] given [the district court's] 2020 order modifying the MSA." *Id.* The district court, thus, concluded that "[s]uch a reversal further demonstrates HSD's dilatory tactics." *Id.*

3

Third, the district court explained:

> HSD is aware that the class scope has never been as narrow as it now contends. In fact, the class scope has been well-defined for decades. Each version of the settlement agreement explains that the class scope includes not only those who received untimely benefits but also those who applied for benefits and were erroneously denied. The Court finds HSD's effort to narrow the class scope—after decades of clarity—is just another delay tactic.

Id. (citation and footnote omitted).

HSD argues in this appeal that the 1989 class definition dictates how to interpret and enforce the operative consent decree in 2024. But a consent decree is not a class action settlement; instead, it is "a negotiated agreement that is entered as a judgment of the court." *Johnson v. Lodge #93*, 393 F.3d 1096, 1101 (10th Cir. 2004). Consent decrees are finalized and entered only "after careful negotiation has produced agreement on their precise terms." *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). As a result, we interpret a consent decree "basically as a contract," which means that "the terms of the decree and the respective obligations of the parties must be found *within the four corners of the consent decree*." *Sinclair Oil Corp. v. Scherer*, 7 F.3d 191, 194 (10th Cir. 1993) (quoting *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 238 (1975)) (emphasis added); *accord Armour & Co.*, 402 U.S. at 681–82 ("[T]he scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it."). Thus, HSD may not stray outside the four corners of the operative consent decree in an effort to rewrite its scope, let alone seek to do so

by relying on a class definition from a 1989 class certification order predating the modern amendments to Federal Rule of Civil Procedure 23.

4

Fourth, and most troubling, the district court observed that the timing of HSD's last two appeals and motions to stay display that HSD is using litigation to try to dodge the annual case reviews required by the operative consent decree. *Knowlton*, 2023 WL 7114676, at *3. As the district court concluded, "[s]uch conspicuous timing evinces a pattern of dilatory tactics." *Id*.

B

Any court should pause and consider carefully even the threat of sanctions against a litigant or its counsel. Imposing sanctions against litigants or their counsel is a serious step and one not to be taken lightly without good cause and notice and an opportunity to be heard. Both Congress and this Court have cautioned against imposing any sanction that would "dampen the legitimate zeal of an attorney in representing [their] client." *Braley v. Campbell*, 832 F.2d 1504, 1512 (10th Cir. 1987) (en banc) (quoting H.R. Conf. Rep. No. 1234, 96th Cong., 2d Sess. 8, *reprinted in* 1980 U.S. Code Cong. & Ad. News 2716, 2781, 2782). Indeed, litigation often turns on unsettled or complex areas of the law, and litigants and attorneys are often required to construct novel or controversial arguments to advance or change the law.

However, against this backdrop and the history of this litigation, if HSD pursues yet again legal action that a court determines to be "frivolous," then sanctions against HSD and its litigation counsel should be strongly considered under Federal Rule of Civil Procedure 11, Federal Rule of Appellate Procedure 38, and 28 U.S.C. § 1927. *See, e.g.*, *Braley*, 832 F.2d at 1510 (discussing the federal courts' broad powers to impose sanctions on litigants and their counsel "[t]o deter frivolous and abusive litigation" and to "promote justice and judicial efficiency"); *see id.* at 1512 ("The power to assess costs, expenses, and attorney's fees against an attorney personally in the appropriate case is an essential tool to protect both litigants and the ability of the federal courts to decide cases expeditiously and fairly.").

In my view, this appeal lands beyond the outer limits of reasonable advocacy, and it reflects a pattern of recurring appeals used by HSD not to win on the merits, but to avoid and delay enforcement of the operative consent decree. As a state agency, HSD is a sophisticated litigant. According to its website, it pledges that its mission is to "ensure that New Mexicans attain their highest level of health by providing whole-person, cost-effective, accessible, and high-quality health care and safety-net service." *New Mexico Health Care Authority*, https://www.hca.nm.gov/ (last visited Oct. 25, 2024), [https://perma.cc/7KXB-83JZ].

HSD should honor its pledge, because HSD's failure to comply with the operative consent decree has the potential to devastate the lives of New Mexicans who depend on HSD to provide food assistance and medical benefits. HSD administers programs to the neediest New Mexicans – Medicaid, Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Veterans Property Tax Exemptions, and others.

In its latest motion to stay filed before the district court, HSD argued that it would suffer irreparable harm if forced to comply with the operative consent decree. As the district court correctly explained, however, HSD following a consent decree (an injunction it agreed to after a settlement and negotiation) is not irreparable harm. *Knowlton*, 2023 WL 7114676, at *3–4. Rather, it is HSD's multi-decade failure to comply with federal law that might continue to inflict irreparable harm on New Mexico's most vulnerable citizens.

One more observation about this litigation. From the record, it is obvious that HSD is frustrated too. I take it as a given that HSD is staffed by people who care about its mission and the people it serves. My assumption is that HSD is frustrated by having to operate under court supervision, even though it agreed to do so as part of the settlement that created the consent decree. However, the road to relief from this frustration is not frivolous litigation but compliance.

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RE: 23-2143, Knowlton, et al v. Armijo, et al
Dist/Ag docket: 1:88-CV-00385-KG-JHR

Dear Counsel:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40(a)(1), any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. *See* Fed. R. App. P. Rules 35 and 40, and 10th Cir. R.35 and 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.