UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD JONES, *Plaintiff*, v. DISTRICT OF COLUMBIA, *Defendant*.	No. 16-cv-2405 (DLF)

MEMORANDUM OPINION & ORDER

Richard Jones brought this action against the District of Columbia alleging that he was detained and strip searched in D.C. Jail after a federal judge ordered him released from custody. This Court previously granted in part the District's Motion to Dismiss and, as relevant here, dismissed Jones's Fourth Amendment and common law claims. Mem. Op. at 9, Dkt. 26. Before the Court is Jones's motion to reconsider and restore those claims.[1] For the reasons that follow, the Court will grant the motion.

I. BACKGROUND

On December 7, 2015, a federal judge sentenced Jones to time served and ordered that he be released from the custody of the Department of Corrections (DOC). Am. Compl. ¶¶ 128, 129,

[1] Jones's initial motion was limited to the dismissal of his common law claims, but the motion included arguments that implicitly challenged the dismissal of his Fourth Amendment claims as well. *See* Jan. 10, 2019 Minute Order (citing Pl.'s Mot. Recons. at 8–9, Dkt. 27). The Court ordered supplemental briefing on those claims and held a hearing at which Jones made clear that he seeks reconsideration of both his common law and Fourth Amendment claims. *See* Apr. 3, 2019 Hr'g Tr. at 1–2.

135, Dkt. 12; *see also United States v. Jones*, No. 11-cr-79, Dkt. 39 at 3.[2] Jones was then transferred to D.C. Jail, where he told the receiving and discharge staff that he had been ordered released. Am. Compl. ¶ 130. Unconvinced, the staff strip searched him and returned him to a cell in the jail's general population. *Id.* ¶¶ 130–31. Jones was then held for "several hours" before he was eventually released. *Id.* ¶ 132.

According to Jones, his experience was not unique. DOC "routinely" and "systematically" holds detainees past their release times, *id.* ¶¶ 13, 117, because it relies on a system of paper release orders that are often misplaced or delayed in transit between the courthouse and the jail, *id.* ¶ 41. Further, while DOC's official policy is to transport inmates who have been ordered released to a nearby medical facility for processing, it frequently fails to follow that policy and instead transfers these inmates back to the general population, where they are strip searched upon arrival. *See id.* ¶¶ 35–38, 160–63.

Jones filed this civil action challenging his over-detention and strip search, Dkt. 1, and the District moved to dismiss for failure to state a claim, Dkt. 17. This Court previously granted the District's motion in part and, as relevant here, dismissed Jones's (1) Fourth Amendment challenge to his detention, (2) Fourth Amendment challenge to his strip search, (3) common law false imprisonment claim, and (4) common law intrusion upon seclusion claim. Mem. Op. at 3–10.

Jones now asks the Court to reconsider and restore all four claims.

II. LEGAL STANDARD

Rule 54(b) of the Federal Rules of Civil Procedure "allows a litigant to move for reconsideration or modification of a district court's interlocutory order disposing of 'fewer than

[2] The facts here are recited as alleged in the plaintiff's amended complaint.

all the claims or the rights and liabilities of fewer than all the parties' 'at any time' before the court's entry of final judgment." *Cobell v. Jewell*, 802 F.3d 12, 19 (D.C. Cir. 2015) (quoting Fed. R. Civ. P. 54(b)). A district court may reconsider an interlocutory order "as justice requires." *Capitol Sprinkler Inspection, Inc. v. Guest Servs.*, 630 F.3d 217, 227 (D.C. Cir. 2011) (internal quotation marks omitted). Applying this standard, courts will reconsider a prior opinion when they have "patently misunderstood a party, [when they have] made an error not of reasoning but of apprehension, or where a controlling or significant change in the law or facts has occurred since the submission of the issue to the Court." *Scahill v. District of Columbia*, 286 F. Supp. 3d 12, 17–18 (D.D.C. 2017) (alterations adopted and internal quotation marks omitted). "The burden is on the moving party to show that reconsideration is appropriate and that harm or injustice would result if reconsideration were denied." *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, 893 F. Supp. 2d 258, 268 (D.D.C. 2012).

III. ANALYSIS

A. The Fourth Amendment Over-Detention Claim

The Court previously dismissed Jones's Fourth Amendment over-detention claim because he did not allege a "fresh seizure" after he was ordered released from custody. Jones now argues that the Court clearly erred in two respects.

First, he contends that the Court overlooked that a seizure that is reasonable at the outset can *become* unreasonable through the passage of time, making a fresh seizure unnecessary for Fourth Amendment purposes. Pl.'s Supp. Br. at 2–6, Dkt. 35. In the alternative, he argues that he *did* allege a fresh seizure, either when DOC took him back into custody after a court ordered him released or when DOC placed him back in the jail's general population. *Id.* at 4–5. The

Court disagrees with Jones's first argument but agrees with his second and will restore his Fourth Amendment claim on that basis.

Jones is correct that, to survive Fourth Amendment scrutiny, a seizure must not only be reasonable in the first instance but must also remain reasonable over time and in light of new facts and circumstances. *See Segura v. United States*, 468 U.S. 796, 812 (1984) ("[A] seizure reasonable at its inception because based upon probable cause may become unreasonable as a result of its duration or for other reasons."). Courts have held, for example, that a vehicle seized for evidentiary purposes cannot continue to be held for months after it has been searched and emptied of all relevant evidence. *See Avila v. Dailey*, 246 F. Supp. 3d 347, 355 (D.D.C. 2017). Similarly, property reasonably seized under the community caretaking exception cannot remain impounded long after the "exigency that justified the seizure [has] vanished." *Brewster v. Beck*, 859 F.3d 1194, 1196 (9th Cir. 2017).

But this line of cases does not assist Jones because the Supreme Court has recognized a "constitutional division of labor" between the Fourth Amendment and the Due Process Clause. *Manuel v. City of Joliet*, 137 S. Ct. 911, 920 n.8 (2017). The former governs pretrial detentions, while the latter takes over as soon as the jury has returned a verdict (or the judge has accepted a guilty plea). *Id.* In the Court's words, "once a trial [or guilty plea] has occurred, the Fourth Amendment drops out," and the plaintiff must challenge "any ensuing incarceration . . . under the Due Process Clause." *Id.* Jones's guilty plea therefore serves as an intervening event that prevents him from challenging his continued post-conviction confinement under the Fourth Amendment.

Deciding this much, however, only leads to Jones's second argument: that the Court incorrectly assumed that he had not alleged a second seizure, when he had. On this point, the

Court agrees with Jones and confesses error. Any confinement that Jones experienced as punishment for his underlying conviction ended the moment he was sentenced to time served and ordered released. And DOC's subsequent decision to take him *back* into custody (either in the courtroom or upon his return to D.C. Jail) constituted an actual or constructive re-seizure of his person that required an independent justification. *See, e.g.*, *Shultz v. Dart*, No. 13 C 3641, 2013 WL 5873325, at *5 (N.D. Ill. Oct. 31, 2013) (collecting cases holding that a plaintiff who has been "sentenced to time served and told by the judge that he [i]s free to leave" becomes "a free person protected by the Fourth Amendment").

Although the Supreme Court and D.C. Circuit have yet to resolve whether a brief period of confinement following a sentence of time served (or acquittal) qualifies as a distinct Fourth Amendment "seizure," that conclusion follows from the distinction the Supreme Court has elsewhere drawn between *punitive* and *regulatory* confinement. *See United States v. Salerno*, 481 U.S. 739, 746–48 (1987). In assessing which constitutional standards apply to a given confinement, courts look to its nature and purpose. *Id.* If the confinement serves *penological* interests, courts require a criminal conviction—with all the procedural and evidentiary safeguards that entails. But if the confinement serves purely *regulatory* interests, such as community safety, courts balance those interests against the individual's weighty liberty interest without regard for the specific protections that accompany a criminal trial. *See id.* at 748–51.

This conceptual distinction between punitive and regulatory confinement sheds light on what happened to Jones in this case. A judge sentenced him to "time served" (past tense) and, in doing so, declared an end to any punitive confinement. But, moments later, a new period of regulatory confinement began. The District does not attempt to characterize this confinement as an extension of Jones's sentence, which had unquestionably run. Nor does it point to any

punitive reason—such as retribution, incapacitation, or deterrence—for Jones's continued confinement. Instead, it points to purely "administrative," or regulatory, reasons: namely, the need to check for other detention orders and outstanding warrants. *See* Def.'s Mot. to Dismiss Br. at 9, Dkt. 17-1. The different character and purpose of this second period of detention demonstrates that it cannot be viewed as a mere extension of the same detention that began months before with Jones's initial arrest. Because it took on an entirely different character, it was (or became) a distinct "seizure" that must be justified on its own terms.[3]

That is not to say that the District necessarily lacks such a justification. As Jones acknowledges, defendants who are released in one matter will often be subject to detention on other court matters, or subject to arrest on outstanding warrants. Am. Compl. ¶¶ 25, 62–64. This far-from-remote possibility distinguishes former inmates from the general public and may well justify at least some brief period of additional custody for administrative processing. *See Brass v. Cty. of Los Angeles*, 328 F.3d 1192, 1202 (9th Cir. 2003) ("'[T]he Fourth Amendment . . . permit[s] a reasonable postponement' of a prisoner's release 'while the County copes with the everyday problem of processing' the release of the large number of prisoners who pass through its incarceration system" (quoting *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 55 (1991)); *Lewis v. O'Grady*, 853 F.2d 1366, 1370 (7th Cir. 1988) (similar). At this stage, however, the Court is in no position to evaluate the reasons the District might offer for holding Jones for processing. Nor can the Court decide, as a matter of law, where (or for how long) the

[3] This conclusion honors the "constitutional division of labor" between the Fourth Amendment and due process discussed above. *Manuel*, 137 S. Ct. at 920 n.8. The Due Process Clauses provide the exclusive standard for detention imposed as punishment for a criminal conviction because those Clauses, rather than the Fourth Amendment, govern the procedures and standards for obtaining such a conviction. But when detention is justified without regard for any criminal conviction, then the general prohibition on unreasonable seizures retains its force.

District may have held Jones for processing without violating his Fourth Amendment rights. *See Lewis*, 853 F.2d at 1370 ("Reasonable time must be allowed for such matters as transportation, identity verification, and processing," and "[w]hat is a reasonable time for detaining a prisoner in custody is a question best left open for juries to answer based on the facts presented in each case."); *Arline v. City of Jacksonville*, 359 F. Supp. 2d 1300, 1310 (M.D. Fla. 2005) (jury question whether a two-and-a-half hour detention following the plaintiff's acquittal on all charges violated the Fourth Amendment); *Shultz*, 2013 WL 5873325, at *5 (denying motion to dismiss where the reasons for and circumstances surrounding alleged over-detentions remained unclear and subject to dispute).

In short, the Court holds that Jones's guilty plea forecloses any Fourth Amendment challenge to his continued confinement. However, Jones has adequately alleged that he was seized for a second time by DOC after he was ordered released. Because this Court's prior decision to the contrary was premised on a misapprehension of Jones's legal theory, it will restore his Fourth Amendment over-detention claim.[4]

B. Fourth Amendment Strip Search

The Court will also restore Jones's Fourth Amendment challenge to his strip search in D.C. Jail. In assessing that claim, the Court took the District's decision to return him to D.C. Jail's general population as a given and evaluated his strip search in the context of his re-entry

[4] The parties have not briefed whether the standards for liability will differ under the Fourth Amendment and the Due Process Clause. The Court does not resolve that question today but notes the possibility that Jones's two constitutional claims for over-detention may ultimately merge as a practical matter. *Cf. Villanova v. Abrams*, 972 F.2d 792, 797 (7th Cir. 1992) (noting that "the distinction between . . . search and seizure, and due process" would "[p]robably not" "make any practical difference" in a related context because both provisions require the court to compare "the benefits of confinement to the government" with "the costs to the person confined").

into the general population. But, in doing so, the Court overlooked Jones's argument that the decision to place Jones into the general population was itself an error that lacked any reasonable justification.

As the court in *Barnes* explained, the security and contraband concerns that justify strip-searching all "persons who are *legitimately introduced* into the general jail population" do not necessarily extend to prisoners like Jones who are "entitled to release." 793 F. Supp. 2d at 289 (emphasis added). That is because the latter class of prisoners "are subjected to strip searches solely due to the fact that the DOC has made the unfortunate choice to bring them back into the general inmate population . . ., rather than temporarily housing them apart from that population." *Id.* At least in the District of Columbia, "[t]hat choice" ignores other, existing "alternatives" for temporarily housing court returns and "creates the security problem that the . . . strip searches are designed to solve." *Id.*

The Supreme Court's decision in *Florence* does not require a different conclusion. To be sure, the Court held that prisoners who are properly introduced to a jail's general population may be subjected to a blanket strip-search policy upon entry. *See Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318, 328, 338 (2012). But the *Florence* Court expressly reserved whether those same search procedures could be constitutionally applied to arrestees "who can be held in available facilities removed from the general population." *Id.* at 339 (plurality opinion); *see also id.* at 340 (Roberts, C.J., concurring) (emphasizing that the Court's holding is limited to circumstances in which there is "no alternative" to "holding [the plaintiff] in the general jail population"); *id.* at 341–42 (Alito, J., concurring) (emphasizing that

"admission to the general jail population, with the concomitant humiliation of a strip search, may not be reasonable, particularly if an alternative procedure is feasible").

In this case, Jones has alleged that the District had in place a readily available alternative to holding him in the general jail population. In fact, DOC's own stated policy is to "divert[] in-custody defendants ordered released" to "a holding facility on the grounds of DC General Hospital" where they can be processed without being subjected to a strip search. Am. Compl. ¶ 35. Without discovery, Jones cannot know for sure why he was sent back to the general population instead of the hospital, but he alleges upon information and belief that his strip search was one of many caused by "recurring problems" with D.C. Jail's computer system, and by DOC's decision to maintain a system of paper records that often get misplaced during transport to and from court hearings. *Id.* ¶ 38; *see also generally* ¶¶ 39–104 (describing in detail the problems with DOC's system for handling court returns). Under these circumstances, "the DOC's invasion of [Jones's] personal rights is balanced against nothing, because the DOC's blanket strip searches of court returns entitled to release are needless" and inflicted on "persons who are no longer prisoners in the eyes of the law." *Barnes*, 793 F. Supp. 2d at 290.

One additional wrinkle remains. The Court previously treated Jones's re-entry and strip search as an aberration that did not reflect a practice or policy of the District and therefore could not establish municipal liability. But although DOC's official policy may be to divert court returns entitled to release to the hospital for processing, the complaint alleges that DOC's other official policies and practices have prevented it from doing so in a consistent fashion. At this stage, assuming the truth of Jones's allegations and drawing all reasonable inferences from those allegations in his favor, the Court cannot conclude that the District's stated policy reflected its actual policy and practice. Accordingly, Jones has stated a Fourth Amendment claim for an

unreasonable strip search and has adequately alleged a basis for municipal liability against the District. The Court finds that justice requires Jones's Fourth Amendment claim to be restored.[5]

C. False Imprisonment

Jones next argues that the Court misapprehended his first common law claim by analyzing it as a claim for false arrest, as opposed to a failure to release. He also points to a decision issued after the parties had fully briefed the motion to dismiss in which another Judge in this District granted summary judgment for the plaintiff on a similar false imprisonment claim. *See Smith v. District of Columbia*, 306 F. Supp. 3d 223, 260–61 (D.D.C. 2018). The Court agrees that *Smith* sheds light on the issues raised here and that justice requires the Court to reconsider its prior order.

The Court begins by clarifying the distinction between a common law false arrest claim and a common law false imprisonment claim. Although the two are often practically "indistinguishable," *Enders v. District of Columbia*, 4 A.3d 457, 461 (D.C. 2010), they differ in scope. False imprisonment is an umbrella category that includes false arrest. *See* 32 Am. Jur. 2d *False Imprisonment* § 3 (2019) (footnote omitted). Specifically, "[f]alse arrest is a term that describes the setting for false imprisonment when it is committed by an officer or by one who claims the power to make an arrest." Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 41 (2d ed. 2019). It follows that false arrest is not the only way to commit false imprisonment. Indeed, the Second Restatement of Torts provides a list of the many ways that a

[5] Jones also challenged his strip search under the doctrine of substantive due process. The Court previously dismissed that claim because the Fourth Amendment "provides an explicit textual source of constitutional protection" against the kind of search Jones challenges, making "the generalized notion of substantive due process" inapplicable. Mem. Op. at 8 (quoting *Albright v. Oliver*, 510 U.S. 266 (1994)). Jones does not appear to seek reconsideration of that decision, but to the extent he does, his request is denied.

defendant can commit false imprisonment, *see, e.g.*, Restatement (Second) of Torts §§ 38–41 (1965), and the D.C. Court of Appeals has looked to that list to evaluate questions of unlawful confinement, *see Faniel v. Chesapeake & Potomac Tel. Co.*, 404 A.2d 147, 151 n.11 (D.C. 1979).

One way to commit false imprisonment is through a "refusal to release." Restatement (Second) of Torts § 45 (capitalization omitted). "If the actor is under a duty to release the other from confinement . . . his refusal to do so with the intention of confining the other is a sufficient act of confinement to make him subject to liability" for false imprisonment. *Id*. The Second Restatement provides the following illustration: "A is confined in jail under a sentence for a term. At the end of the term B, the jailor, is under a legal duty to release A, but refuses to do so. B is subject to liability to A." *Id.* cmt. a, illus. 1.

That the labels "false arrest" and "false imprisonment" can be used to refer to the same act of confinement explains the frequent, but imprecise, observation that "[t]here is no real difference as a practical matter between false arrest and false imprisonment." *Barnhardt v. District of Columbia*, 723 F. Supp. 2d at 197, 214 (D.D.C. 2010) (internal quotation marks omitted). That observation holds true where the claim concerns only the illegality of the plaintiff's initial confinement. *See, e.g.*, *Enders*, 4 A.3d at 466; *Maldonado v. District of Columbia*, 924 F. Supp. 2d 323, 330 n.6 (D.D.C. 2013). But it does not apply where, as here, the defendant refuses to release the plaintiff from confinement that began lawfully but has become unlawful over time. *See Dent v. May Dep't Stores Co.*, 459 A.2d 1042, 1044 (D.C. 1982) ("[A] detention which is unreasonable in length or manner could constitute a false imprisonment despite the legality of the initial confinement."); *cf. Abourezk v. New York Airline, Inc.*, 705 F. Supp. 656, 664 (D.D.C. 1989) (the refusal to release a plaintiff from confinement upon request

can establish false imprisonment even if the plaintiff consented to the initial confinement), *aff'd*, 895 F.2d 1456 (D.C. Cir. 1990).

The distinction between false arrest and false imprisonment leads to a related distinction between a Fourth Amendment false arrest claim and a common law false imprisonment claim. In its previous opinion, the Court concluded that Jones's common law claim was coextensive with his Fourth Amendment claim, and it dismissed both claims because Jones failed to allege a "fresh seizure." *See* Mem. Op. at 9. In reaching that conclusion, however, the Court overlooked that the cases equating Fourth Amendment and false imprisonment claims invariably involve the false arrest species of false imprisonment—not a failure to release. *See, e.g.*, *Maldonado*, 924 F. Supp. 2d at 330 n.6 (false imprisonment claim premised on police officers' warrantless arrest); *Barnhardt*, 723 F. Supp. 2d at 215 (same). By contrast, where false imprisonment arises from over-detention, courts do not apply Fourth Amendment principles or require a new seizure or arrest. *See Smith*, 306 F. Supp. 3d at 260–61 (concluding that holding a prisoner in D.C. Jail beyond his court-ordered release time constituted false imprisonment without analyzing whether a fresh seizure occurred); *Whirl v. Kern*, 407 F.2d 781, 791 (5th Cir. 1968) (collecting cases and observing that "the breadth of a peace officer's privilege in an arrest situation is not necessarily the test of the breadth of a jailer's privilege in the context of a false imprisonment" and concluding that "the jailer is liable for false imprisonment" if "a prisoner is held in jail without a court order").

Without an additional "seizure" requirement imported from the Fourth Amendment, Jones's claim requires only: "(1) the detention or restraint of one against his will, within boundaries fixed by the defendant, and (2) the unlawfulness of the restraint." *Faniel*, 404 A.2d at 150. "Confinement, no matter how brief, suffices to establish a prima facie case of false

arrest," *Marshall v. District of Columbia*, 391 A.2d 1374, 1381 (D.C. 1978), and a "showing of detention without process raises a presumption of unlawful restraint and shifts to defendant the burden of justifying the restraint as lawful," *id.* at 1380 (internal quotation marks omitted).

Under this standard, Jones has stated a false imprisonment claim. Jones alleges that he was restrained when he was taken to D.C. jail after a judge ordered his release. Am. Compl. ¶¶ 128–29. He further alleges that this detention violated DOC policy and a settlement agreement that required the District to either make releases from courthouses or to take prisoners ordered released to a holding facility at D.C. General Hospital while they await processing. *Id.* ¶¶ 67–74, 129. The District did not raise any affirmative defenses in its Motion to Dismiss, and Jones was not required to plead the absence of potential affirmative defenses. *See Flying Food Grp., Inc. v. NLRB*, 471 F.3d 178, 183 (D.C. Cir. 2006).

This conclusion follows directly from *Smith*, which was decided after the completion of briefing on the defendant's motion to dismiss and which the Court considers persuasive. The District does not dispute that *Smith* was correctly decided. *See* Def.'s Opp'n at 5–6. Instead, it tries to distinguish *Smith*. *Id.* Its efforts are unpersuasive.

First, the District argues that *Smith* involved a false imprisonment claim, whereas the complaint here alleges only a false arrest claim. *Id.* at 5. To support that interpretation of Jones's complaint, the District relies on the fact that Jones labeled his claim "False Arrest" in the heading of count 4. *See* Def.'s Opp'n at 4 (citing Am. Compl. at 22). Elsewhere, however, the complaint describes the same count as a "common law over-detention (false imprisonment) . . . claim[]." *Id.* ¶ 5. And, regardless, federal pleading rules "do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *Johnson v. City of Shelby*, 135 S. Ct. 346, 346 (2014) (per curiam). The allegations in the complaint—

including those specific to count 4—clearly advance a false imprisonment claim premised on over-detention, *see* Am. Compl. ¶¶ 2, 26, 130–32, 166, and no more is required.

The District next argues that *Smith* is distinguishable because it involved a longer period of detention—twenty-three days compared to a few hours here. Def.'s Opp'n at 5. But the length of detention, while potentially relevant to damages and affirmative defenses, has no bearing on Jones's prima facie case. *See Marshall*, 391 A.2d at 1381 ("Confinement, no matter how brief, suffices to establish a prima facie case of false arrest.").

Lastly, the District argues that, unlike the detention in *Smith*, Jones's detention was lawful because he was "sent directly back to D.C. Jail while his arrest was processed." *Id.* at 6. This argument simply ignores Jones's allegations—which this Court must take as true at the motion-to-dismiss stage—that his over-detention violated a federal court order, DOC policy, an existing settlement agreement, and the D.C. Code. *See* Am. Compl. ¶¶ 2–3, 26–29, 37, 72, 129, 166. At a minimum, Jones has alleged continued confinement without process, and the burden now shifts to the District to justify that confinement as lawful. *See Marshall*, 391 A.2d at 1380.

Given the Court's error in analyzing Jones's claim exclusively under Fourth Amendment principles of false arrest, as well as the existence of new and persuasive authority, the Court concludes that justice requires the restoration of Jones's common-law false imprisonment claim.[6]

D. Intrusion upon Seclusion

Finally, Jones argues that the Court clearly erred in dismissing his common law privacy claim. Pl.'s Mot. Recons. at 9. The Court agrees.

[6] The Court has also now held that Jones did allege a fresh seizure under the Fourth Amendment. That holding provides another, independent basis for restoring Jones's common law false imprisonment claim, though it is not necessary to the Court's decision.

"The tort of intrusion upon seclusion has three elements: (1) an invasion or interference by physical intrusion, by use of a defendant's sense of sight or hearing, or by use of some other form of investigation or examination; (2) into a place where the plaintiff has secluded himself; or into his private or secret concerns; (3) that would be highly offensive to an ordinary, reasonable person." *Helton v. United States*, 191 F. Supp. 2d 179, 181 (D.D.C. 2002) (internal quotation marks omitted). The Court previously concluded that Jones failed to establish the third element because a strip search would not be viewed as unreasonable in the context of Jones's re-entry into the general population. Mem. Op. at 10. In reaching that conclusion, however, the Court assumed that Jones's strip search was constitutional under the Fourth Amendment—a position it has now disavowed. In addition, the Court underestimated the extent to which the District of Columbia might provide common law privacy protections that go beyond the minimum requirements of the Constitution. *See Helton*, 191 F. Supp. 2d at 183 (holding that plaintiffs stated a claim for intrusion upon seclusion based on strip searches conducted by the U.S. Marshals Service and rejecting the District's contention "that District of Columbia law limits the availability of invasion of privacy to the bounds recognized by the United States Constitution"). For these reasons, justice requires that the Court restore Jones's common law privacy claim.

CONCLUSION

For the foregoing reasons, the Court grants the plaintiff's motion for reconsideration. Counts 1 and 3 are restored to the extent they assert claims under the Fourth Amendment, and counts 4 and 5 are restored in full.

DABNEY L. FRIEDRICH
United States District Judge

Date: June 13, 2019