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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Maria Guadalupe Lucero-Gonzalez; Claudia Romero-Lorenzo; Tracy Ann Peuplie; James Tyler Ciecierski; and Marvin Lee Enos; each individually and on behalf of all others similarly situated,

Plaintiffs–Petitioners,

v.

Kris Kline, Warden of the Central Arizona Florence Correctional Complex; David Gonzales, U.S. Marshal for the District of Arizona; Donald W. Washington, Director of the U.S. Marshals Service; Michael Carvajal, Director of the Federal Bureau of Prisons, in their official capacities,

Defendants–Respondents.

No. 2:20-cv-00901-DJH

MOTION FOR RECONSIDERATION

MOTION FOR RECONSIDERATION

Pursuant to LRCiv 7.2(g) and Federal Rules of Civil Procedure 54(b) and 60, Plaintiffs-Petitioners ("Plaintiffs") move for partial reconsideration of the reasoning in the Court's June 2, 2020 Order denying Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 29) (the "Order"). Plaintiffs respectfully request that the Court reconsider the applicability of the standard set forth in *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978), to Plaintiffs' claims in this case.

MEMORANDUM IN SUPPORT

Though the Court's Order relied on *Monell*, no party argued that *Monell* applied or referenced it in the briefing submitted to this Court or at the hearing on Plaintiffs' Motion. This is because *Monell* does not apply to Plaintiffs' claims, which are for injunctive relief against federal officials. In *Monell*, the Supreme Court interpreted 42 U.S.C. § 1983, a statute that creates a cause of action for victims of constitutional torts committed by state and local actors under color of state law. *Monell*, and the cases citing it that this Court references in its Order, involve only state and local actors. Plaintiffs' claims, by contrast, involve only federal actors; these claims do not, and cannot, arise under 42 U.S.C. § 1983. Plaintiffs therefore respectfully request that the Court reconsider this portion of the Order.

I. Background.

The Order concluded that Plaintiffs failed to demonstrate they were likely to succeed on the merits of their claims, for purposes of injunctive relief, because Plaintiffs sued Defendants-Respondents ("Defendants") in their official capacities but did not demonstrate that Plaintiffs could satisfy the standard set forth in *Monell*, 436 U.S. 658. (Doc. 29 at 13–14, 17–18.) Defendants did not rely on—or even cite—*Monell* in their Response (*see* Doc. 16) or at the May 22, 2020 hearing (*see* Doc. 32). Nor did any party brief or argue the issue.

II. Argument.

Any decision "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . may be revised at any time before the entry of a [final] judgment." Fed. R. Civ. P. 54(b); *see also id.* 60(a), (b) (noting that courts may correct an order or relieve a

party from an order because of mistake or "any other reason that justifies relief"). A motion for reconsideration must "point out with specificity the matters that the movant believes were overlooked or misapprehended by the Court, any new matters being brought to the Court's attention for the first time and the reasons they were not presented earlier, and any specific modifications being sought in the Court's Order." LRCiv 7.2(g)(1).

Plaintiffs request that the Court modify its Order to clarify that *Monell* does not apply to Plaintiffs' claims. Plaintiffs did not raise this argument earlier because, as noted above, this issue was not raised either in Defendants' Response or at the May 22 hearing. The Court's Order was the first time Plaintiffs were notified of the issue.

A. *Monell* Does Not Apply Here.

The Ninth Circuit has held that there is "no valid basis for a claim under" 42 U.S.C. § 1983 where, as here, a plaintiff sues "federal officials acting under color of federal law," because § 1983 "provides a remedy only for deprivation of constitutional rights by a person acting under color of law of any state or territory or the District of Columbia." *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1987).

Monell applies to § 1983 claims. Specifically, *Monell* held that a plaintiff can sue a municipality or other local government entity directly (rather than indirectly against the officers in their individual capacities) under § 1983, if the plaintiff can demonstrate that the plaintiff's constitutional rights were violated pursuant to the municipality's official policy, custom, or practice. 436 U.S. at 690 ("Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies. Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a" policy, custom, or usage of the government entity.) (footnotes omitted). Thus, *Monell* sets forth the standard applicable to claims that are (a) brought under § 1983, (b) against municipalities, (c) acting under color of state law. *See Hudson v. Michigan*, 547 U.S. 586, 597 (2006) (noting that "the § 1983 remedy was extended to reach the deep pocket of municipalities [in *Monell*]"); *District of Columbia v. Carter*, 409 U.S. 418, 424 (1973) (Section 1983 "deals only with those

deprivations of rights that are accomplished under the color of the law of 'any State or Territory.'" (footnote omitted) (quoting a prior version of § 1983, which did not yet include the District of Columbia)); *Avalos v. Baca*, 596 F.3d 583, 587 (9th Cir. 2010) (holding that *Monell* is the standard applicable to "a public entity defendant" under § 1983).

Here, Plaintiffs seek only injunctive relief against federal officials in their official capacities. Plaintiffs do not assert a claim under § 1983, nor do they assert claims against a municipal entity. Indeed, Plaintiffs are prohibited from asserting a § 1983 claim because the Defendants are federal officials, and § 1983 "does not apply to federal officials acting under color of federal law." *Settles v. U.S. Parole Comm'n*, 429 F.3d 1098, 1104 (D.C. Cir. 2005); *see also Daly-Murphy*, 837 F.2d at 355. Nor do Plaintiffs assert a claim under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), the "federal analog" to § 1983. *See Ashcroft v. Iqbal*, 556 U.S. 662, 675–76 (2009). Plaintiffs cannot bring a *Bivens* claim for the injunctive relief they seek because "*Bivens* is both inappropriate and unnecessary for claims seeking solely equitable relief against actions by the federal government." *Solida v. McKelvey*, 820 F.3d 1090, 1094–95 (9th Cir. 2016). And Plaintiffs must assert their injunctive-relief claims against Defendants in their official capacities. *Id.* at 1094 (noting that the Supreme Court has held that courts may grant injunctive relief if the Eighth Amendment's requirements are satisfied, but has "distinguished between [a] plaintiff's damages claims against defendants in their individual capacities and [a] plaintiff's related claims for injunctive relief" (citing *Farmer v. Brennan*, 511 U.S. 825, 850–51 (1994))); *see also Vaccaro v. Dobre*, 81 F.3d 854, 856 (9th Cir. 1996) (holding that "a *Bivens* action is, by definition, against defendants in their individual and not their official capacity"); *Farmer v. Perrill*, 275 F.3d 958, 963 (10th Cir. 2001) ("There is no such animal as a *Bivens* suit against a public official tortfeasor in his or her official capacity.").

B. This Court Has Inherent Authority to Enjoin Constitutional Violations by Federal Officials and Is Not Constrained by *Monell*.

Plaintiffs' claims are brought under the Fifth and Eighth Amendments to the U.S. Constitution, and 28 U.S.C. §§ 2241 and 1331. The Supreme Court has noted that where, as here, a *Bivens* claim is unavailable against federal prison officials, the "alternative remedies" of

"a writ of habeas corpus," "an injunction requiring the warden to bring his prison into compliance," or "some other form of equitable relief" are often still available. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1865 (2017); *see also Vanaman v. Molinar*, No. CV-17-00222-TUC-JGZ, 2018 WL 4698655, at *4 (D. Ariz. Sept. 28, 2018) (noting that, "[e]ven if Plaintiff cannot seek monetary damages pursuant to *Bivens*, he may still seek declaratory or injunctive relief pursuant to 28 U.S.C. § 1331"). In fact, "it is established practice for [the Supreme Court] to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution." *Bell v. Hood*, 327 U.S. 678, 684 (1946); *see also Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1231 (10th Cir. 2005) ("Federal courts have long exercised the traditional powers of equity, in cases within their jurisdiction, to prevent violations of constitutional rights."). Thus, in a landmark case regarding alleged unconstitutional deliberate indifference by federal prison officials, the Supreme Court stated that district courts may "grant appropriate injunctive relief" to prevent the ongoing violation of a federal prisoner's Eighth Amendment rights. *Brennan*, 511 U.S. at 827. And the Court specifically distinguished between the petitioner's damages claims brought against federal officials "in their individual capacities" and his injunctive-relief claims. *See id.* at 850; *Solida*, 820 F.3d at 1094.

Monell does not constrain this Court's authority to remedy the constitutional violations by federal officials in this case through injunctive relief. *See, e.g.*, *Brennan*, 511 U.S. at 846 (noting that courts may grant injunctive relief against federal prison officials to stop ongoing violations of an inmate's Eighth Amendment rights if the inmate can demonstrate deliberate indifference to substantial risk of serious harm—without mention of *Monell* or any requirement of an official policy, practice, or custom, and notwithstanding that some defendants were sued in their official capacities); *Ziglar*, 137 S. Ct. at 1860–62 (finding that a *Bivens* claim was inappropriate against high-level federal executives because "*Bivens* is not designed to hold officers responsible for acts of their subordinates," but nonetheless finding that the "detainees may seek injunctive relief" to address their concerns).

III. Conclusion.

Because this case is still in its early stages, and to clarify the record going forward, Plaintiffs respectfully request that the Court modify the Order to clarify that *Monell*—and its requirement of an official "policy, practice, or custom" (*see* Doc. 29 at 14, 17)—does not apply to Plaintiffs' claims.[1]

[1] Should the Court still conclude that *Monell* has some application here, Plaintiffs request that the Court clarify that *Monell* is not limited to formal or written policies. Rather, *Monell* is also satisfied if there is an *unwritten* unconstitutional practice or custom. *See, e.g.*, *Board of County Com'rs v. Brown*, 520 U.S. 397, 404 (1997) ("[A]n act performed pursuant to a 'custom' that has not been formally approved by an appropriate decisionmaker may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law."). Corrections officials cannot excuse a pattern of unconstitutional conduct simply by writing a facially constitutional policy. *See Price v. Sery*, 513 F.3d 962, 972 (9th Cir. 2008) (custom or practice can establish a *Monell* claim "even though the formal written police does not").

Dated: June 16, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2020, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of same to:

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No. 2:20-cv-00901-DJH

[PROPOSED] ORDER GRANTING PLAINTIFFS-PETITIONERS' MOTION FOR RECONSIDERATION

The Court having reviewed Plaintiffs–Petitioners' Motion for Reconsideration, Defendants-Respondents' response, and Plaintiffs–Petitioners' reply, and good cause appearing in support thereof, **IT IS ORDERED THAT** Plaintiffs–Petitioners' Motion for Reconsideration is **GRANTED**.