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**UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

Maria Guadalupe Lucero-Gonzalez, et al.,  
  
Plaintiffs-Petitioners,  
  
v.  
  
Kris Kline, et al.,  
  
Defendants-Respondents.

NO. CV-20-00901-PHX-DJH (DMF)

**DEFENDANTS-RESPONDENTS'  
RESPONSE TO PLAINTIFFS-  
PETITIONERS' MOTION FOR  
RECONSIDERATION (Dkt. 35)**

Defendants-Respondents Kris Kline, Warden of the Central Arizona Florence Correctional Complex ("CAFCC"); David Gonzales, U.S. Marshal for the District of Arizona; Donald W. Washington, Director of the U.S. Marshals Service ("USMS"); and

1 Michael Carvajal, Director of the Federal Bureau of Prisons (“BOP”), through their  
 2 respective counsel, hereby respond to Plaintiffs-Petitioners’ Motion for Reconsideration.  
 3 Plaintiffs correctly note that the Supreme Court in *Monell v. Department of Social Services*,  
 4 436 U.S. 658, 690–95 (1978), addressed whether a municipality (or other local entity) is  
 5 considered a “person” for purposes of liability under 42 U.S.C. § 1983. Plaintiffs are also  
 6 correct that their claims are not brought pursuant to § 1983; Defendants are federal officials  
 7 or private individuals acting under color of federal law and sued in their official capacity;  
 8 and Plaintiffs seek only injunctive relief.<sup>1</sup> (Dkt. 1, ¶¶ 17, 24–27 & Prayer for Relief.)

9 But the Court’s brief reference in its Order to *Monell* did not affect its subsequent  
 10 substantive analysis or its conclusion—that Plaintiffs “failed to demonstrate that they are  
 11 likely to succeed on the merits of their [constitutional] claim[s], and are thus not entitled to  
 12 preliminary injunctive relief.” (Dkt. 29 at 15, 18.) *See, e.g., Farmer v. Brennan*, 511 U.S.  
 13 825, 829–30 (1994) (analyzing constitutionality of federal prison officials’ practices to  
 14 determine whether injunctive relief was available); *Simmat v. U.S. Bureau of Prisons*, 413  
 15 F.3d 1225, 1238 (10th Cir. 2005) (same); *Hallinan v. Scarantino*, No. 5:20-HC-2088-FL,  
 16 2020 WL 3105094, at \*15 (E.D.N.C. June 11, 2020) (same). Indeed, Plaintiffs do not raise  
 17 any argument concerning, or otherwise take issue with, the ultimate result of the Court’s  
 18 Order; they do not request that the Court reconsider the result of its Order, nor do they  
 19 request the Court to vacate its ruling. (Dkt. 35 at 6.) In other words, although styled as a  
 20 Motion for Reconsideration, Plaintiffs’ motion—which asks the Court to do no more than

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21  
 22 <sup>1</sup> Defendants disagree with Plaintiffs’ contentions that their claims are cognizable in  
 23 an action for writ of habeas corpus under 28 U.S.C. § 2241 and that release from detention  
 24 is an available remedy. (*See* Dkt. 16 at 18–21.) *See also, e.g., Ibarra-Perez v. Howard*, No.  
 25 CV-20-00739-PHX-DWL, 2020 WL 3440298, at \*10 (D. Ariz. June 23, 2020) (“Were the  
 26 Court forced to answer the question, it would rule that Counts Two, Three, and Four of the  
 27 Petition are subject to dismissal because they are not cognizable in a § 2241 action. The  
 28 appropriate way to address complaints about health care deficiencies in a detention facility  
 is to order the facility (via injunctive relief) to fix the deficiencies, not to compel the facility  
 to release all of its detainees (or the subset of detainees who happened to file § 2241  
 petitions).”). While Plaintiffs’ Motion for Reconsideration does not require a robust  
 response, given its limited scope, Defendants expressly state, out of an abundance of  
 caution, that any and all arguments not raised herein are not waived for any purposes going  
 forward.

1 “clarify the record” as to *Monell*’s applicability “going forward”—is more akin to a  
2 conspicuously narrow motion for clarification. (*Id.*) Defendants defer to the Court as to  
3 whether further clarification is necessary.

4 DATED this 26th day of June 2020.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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