

Jean-Jacques Cabou (#022835)
Matthew R. Koerner (#035018)
Margo R. Casselman (#034963)
Benjamin C. Calleros (#034763)
PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788
Telephone: 602-351-8000
Facsimile: 602-648-7000
JCabou@perkinscoie.com
MKoerner@perkinscoie.com
MCasselman@perkinscoie.com
BCalleros@perkinscoie.com
DocketPHX@perkinscoie.com

Attorneys for Plaintiffs-Petitioners
(additional counsel identified on signature page)

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

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

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

10 **A. *Monell* Does Not Apply Here.**

11 The Ninth Circuit has held that there is “no valid basis for a claim under” 42 U.S.C.
 12 § 1983 where, as here, a plaintiff sues “federal officials acting under color of federal law,”
 13 because § 1983 “provides a remedy only for deprivation of constitutional rights by a person
 14 acting under color of law of any state or territory or the District of Columbia.” *Daly-Murphy v.*
 15 *Winston*, 837 F.2d 348, 355 (9th Cir. 1987).

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

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

5 Here, Plaintiffs seek only injunctive relief against federal officials in their official
 6 capacities. Plaintiffs do not assert a claim under § 1983, nor do they assert claims against a
 7 municipal entity. Indeed, Plaintiffs are prohibited from asserting a § 1983 claim because the
 8 Defendants are federal officials, and § 1983 “does not apply to federal officials acting under
 9 color of federal law.” *Settles v. U.S. Parole Comm’n*, 429 F.3d 1098, 1104 (D.C. Cir. 2005); *see also*
 10 *Daly-Murphy*, 837 F.2d at 355. Nor do Plaintiffs assert a claim under *Bivens v. Six Unknown Named*
 11 *Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), the “federal analog” to § 1983. *See Ashcroft*
 12 *v. Iqbal*, 556 U.S. 662, 675–76 (2009). Plaintiffs cannot bring a *Bivens* claim for the injunctive
 13 relief they seek because “*Bivens* is both inappropriate and unnecessary for claims seeking solely
 14 equitable relief against actions by the federal government.” *Solida v. McKelvey*, 820 F.3d 1090,
 15 1094–95 (9th Cir. 2016). And Plaintiffs must assert their injunctive-relief claims against
 16 Defendants in their official capacities. *Id.* at 1094 (noting that the Supreme Court has held that
 17 courts may grant injunctive relief if the Eighth Amendment’s requirements are satisfied, but
 18 has “distinguished between [a] plaintiff’s damages claims against defendants in their individual
 19 capacities and [a] plaintiff’s related claims for injunctive relief” (citing *Farmer v. Brennan*, 511
 20 U.S. 825, 850–51 (1994))); *see also Vaccaro v. Dobre*, 81 F.3d 854, 856 (9th Cir. 1996) (holding
 21 that “a *Bivens* action is, by definition, against defendants in their individual and not their official
 22 capacity”); *Farmer v. Perrill*, 275 F.3d 958, 963 (10th Cir. 2001) (“There is no such animal as a
 23 *Bivens* suit against a public official tortfeasor in his or her official capacity.”).

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

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

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

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

1 **III. Conclusion.**

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

24 ¹ Should the Court still conclude that *Monell* has some application here, Plaintiffs request
25 that the Court clarify that *Monell* is not limited to formal or written policies. Rather, *Monell* is
26 also satisfied if there is an *unwritten* unconstitutional practice or custom. *See, e.g., Board of County*
27 *Com’rs v. Brown*, 520 U.S. 397, 404 (1997) (“[A]n act performed pursuant to a ‘custom’ that has
28 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”).

1 Dated: June 16, 2020

PERKINS COIE LLP

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3 By: s/ Margo R. Casselman

Jean-Jacques Cabou (#022835)
Matthew R. Koerner (#035018)
Margo R. Casselman (#034963)
Benjamin C. Calleros (#034763)
PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788

7 Emma Andersson (*admitted pro hac vice*)
eandersson@aclu.org

8 Taylor Brown*

tbrown@aclu.org

9 Alejandro Ortiz (*admitted pro hac vice*)

ortiza@aclu.org

10 Chase Strangio*

cstrangio@aclu.org

11 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

12 125 Broad St., 18th Fl.

13 New York, New York 10004

Telephone: 917-345-1742

14 Somil Trivedi*

strivedi@aclu.org

15 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

16 915 15th St., NW

17 Washington, DC 20012

Telephone: 202-715-0802

18 Jared G. Keenan (#027068)

jkeen@acluaz.org

19 Christine K. Wee (#028535)

CWee@acluaz.org

20 AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF ARIZONA

21 3707 N. 7th Street, Suite 235

22 Phoenix, AZ 85014

23 *Attorneys for Plaintiffs–Petitioners*

24 *Applications for *pro hac vice* forthcoming.

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:

Daniel P. Struck, Bar No. 012377
Rachel Love, Bar No. 019881
Nicholas D. Acedo, Bar No. 021644
Jacob B. Lee, Bar No. 030371
STRUCK LOVE BOJANOWSKI & ACEDO, PLC
3100 West Ray Road, Suite 300
Chandler, Arizona 85226
Telephone: (480) 420-1600
dstruck@strucklove.com
rlove@strucklove.com
nacedo@strucklove.com
jlee@strucklove.com
Attorneys for Respondent Kline

AUSA William Staes
Two Renaissance Square
40 N. Central Ave, Suite 1200
Phoenix, Arizona 85004
William.Staes@usdoj.gov
Attorney for David Gonzales, Donald W. Washington and Michael Carvajal

By: s/ Daniel R. Graziano
Perkins Coie, LLP

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

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