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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Unknown Parties, et al.,
Plaintiffs,
v.
Jeh Johnson, et al.,
Defendants.

No. CV-15-00250-TUC-DCB
ORDER

On December 2, 2016, the Defendants filed a Motion for Clarification and Motion for Reconsideration of this Court’s Order issued on November 18, 2016, granting a preliminary injunction in favor of the Plaintiffs. The Defendants ask the Court to reconsider its directive that detainees held longer than 12 hours have certain constitutional rights related to sleeping and personal hygiene and instead allow 24 hours before Defendants have to provide sleeping mats or showers for detainees. Defendants ask the Court to clarify its Order in regard to when the 12 hours begins to run, whether wipes instead of showers may be provided to meet the personal hygiene needs of detainees, and whether detainees may opt-out of receiving mats and blankets in exchange for faster intake-processing.¹

¹ Defendants sought and Plaintiffs agreed to use freeform e3EM Fields as interim measure as follows: Mat provided, Blanket provided, Toothbrush provided, Toothpaste provided, Shower provided, Body wipes provided, Medical screening completed, Feminine hygiene items provided, Baby food provided, and Diapers provided. (Response (Doc. 254) at 8.)

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1 The Court notes that motions to reconsider are appropriate only in rare
2 circumstances:

3 The motion to reconsider would be appropriate where, for example, the
4 court has patently misunderstood a party, or has made a decision outside
5 the adversarial issues presented to the court by the parties, or has made an
6 error not of reasoning but of apprehension. A further basis for a motion to
reconsider would be a controlling or significant change in the law or facts
since the submission of the issue to the court. Such problems rarely arise
and the motion to reconsider should be equally rare.

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8 *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983);
9 *see also, Sullivan v. Faras-RLS Group, Ltd.*, 795 F. Supp. 305, 308-09 (D. Ariz. 1992).

10 The purpose of a motion for reconsideration is to correct manifest errors of law or
11 fact or to present newly discovered evidence. *School Dist. No. 1J, Multnomah County,*
12 *Oregon v. AcandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). A motion for reconsideration
13 should not be used to ask a court "to rethink what the court had already thought through--
14 rightly or wrongly". *Above the Belt, Inc.*, 99 F.R.D. at 101; *See Refrigeration Sales Co.*
15 *v. Mitchell-Jackson, Inc.*, 605 F. Supp. 6, 7 (N.D. Ill. 1983). Arguments that a court was
16 in error on the issues it considered should be directed to the court of appeals. *Id.* at 7.

17 Defendants argue that there have been unexpected consequences from the
18 injunction that warrant reconsideration. Defendants assert that cell capacity has been
19 substantially reduced because lying down on mats takes up more space than sitting up in
20 the holding cells. The Court reminds the Defendants that well before the Court issued the
21 preliminary injunction, detainees were lying down in the holding cells. Because the
22 majority of detainees are held longer than 12 hours,² detainees lie down on the floors.
23 The Preliminary Injunction only requires these detainees be given mats. The Court
24 expected lying down on a mat, which measures about 30 inches by 75 inches, to take up
25 more space than being sandwiched side by side on the cell floors. The Court saw direct
26 evidence of the crowded conditions in the border patrol station holding cells. The Court
27 took this information into consideration when it granted the preliminary injunction.

28 ² By Defendants own admission, only about half the detainees are released within
24 hours.

1 Defendants submit that due to 24-7 operational needs in the Tucson-sector border
2 patrol stations, they are unable to separate out detainees who approach 12 hour detentions
3 and have, therefore, been forced to basically cut all holding cell capacities in half. The
4 Court questions this assertion because it remembers seeing empty holding cells adjacent
5 to full cells, and Defendants admit to separating out at-risk vulnerable populations of
6 detainees, pursuant to the Prison Rape Elimination Act (PREA), under the Flores
7 Settlement Agreement. Defendants ask the Court to reconsider the 12-hour trigger for
8 mats because they have had to forego criminal prosecution of some detainees since the
9 Court issued the preliminary injunction in November. The Court notes this is not the
10 same as releasing detainees. Defendants ask the Court to let 24 hours pass before
11 detainees are given sleeping mats, but 24 hours is an arbitrary measure and not rationally
12 related to the need to sleep and lie down.

13 Defendants admit that alternatives exist to comply with the Court's Order, such as
14 building or leasing additional facilities and/or restructuring transportation, but this would
15 take time. They report that Santa Cruz County and ICE have been unable to take many
16 more detainees due to their own capacity issues, but do not report on any other
17 interagency efforts to relieve overcrowding at the border patrol stations. The Defendants
18 ask the Court to suspend the 12-hour limit without offering any plan or time-line for full
19 compliance. The Court cannot suspend what it believes are constitutional rights. The
20 Court denies reconsideration and Defendants' opt-out proposal.

21 The facts and circumstances surrounding the Court's entry of the Preliminary
22 Injunction in favor of the Plaintiffs have not changed; there are no new facts which were
23 discovered since the Court's disposition of it, and there is no manifest error of law. The
24 Court denies reconsideration.

25 As for clarification, the Court believes that the Preliminary Injunction is clear. For
26 detainees held longer than 12 hours, Defendants must provide bedding, including mats
27 and Mylar blankets and some means to maintain personal hygiene. The Court did not
28 order Defendants to provide showers. Finally, the only evidence presented regarding

1 conditions of confinement were those existing within the confines of the border patrol
2 stations, therefore, the 12-hours begins to run from when the detainee arrives at the
3 station.

4 **Accordingly,**

5 **IT IS ORDERED** that the Motion for Reconsideration (Doc. 252) is DENIED.

6 **IT IS FURTHER ORDERED** that the Motion for Clarification (Doc. 252) is
7 DENIED, except the Court clarifies that the 12-hour confinement period begins when a
8 detainee arrives at a border patrol station.

9 Dated this 3rd day of January, 2017.

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13 Honorable David C. Bury
14 United States District Judge
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