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This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of Appeals, Ninth Circuit.

Ralph COLEMAN; et al., Plaintiffs-Appellees,
v.
Edmund G. BROWN, Jr., Governor of the State of California; et al., Defendants-Appellants.

No. 17-17328

Argued and Submitted November 13, 2018 San Francisco, California

Filed November 28, 2018

Synopsis

Background: State prisoners who suffered from serious mental disorders brought § 1983 class action against State Governor and State officials, alleging that the mental health care provided at most institutions within the California Department of Corrections were so inadequate that their rights under the Eighth Amendment was violated. The United States District Court for the Eastern District of California, Karlton, Chief Judge Emeritus, [912 F.Supp. 1282](#), entered judgment in favor of prisoners, ordered defendants to develop and implement screening forms and protocols, and appointed special master to monitor compliance with court-ordered injunctive relief. Subsequently, the United States District Court for the Eastern District of California, [Kimberly Mueller, J., 2017 WL 1398828](#), entered order requiring State to comply with operative remedial plan's requirement for 24-hour timeline for transfer of prisoners to mental health crisis beds. State and state officials appealed.

Holdings: The Court of Appeals held that:

district court was entitled to rely on its previous rulings as law of the case, and

district court did not abuse its discretion in denying state's request to change when 24-hour clock would stop and start.

Affirmed.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

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Appeal from the United States District Court for the Eastern District of California, Kimberly J. Mueller, District Judge, Presiding, D.C. No. 2:90-cv-00520-KJM-DB

Before: [SCHROEDER](#) and [WATFORD](#), Circuit Judges, and [KORMAN](#), District Judge.

MEMORANDUM**

State officials appeal from the district court's orders of April and October 2017, which required them to complete transfers of class members to Mental Health Crisis Beds ("MHCBS") within twenty-four hours of referral, subject to exceptions, and denied their requests to change the way

that time period would be measured. We have jurisdiction under 28 U.S.C. § 1292(a)(1), and affirm.

1. Appellants contend that the district court erred by treating the requirements of the Program Guide as a constitutional minimum and by failing to evaluate the “deliberate indifference” element of an Eighth Amendment violation. See [Farmer v. Brennan](#), 511 U.S. 825, 828, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). But the district court was entitled to rely on its previous *679 rulings in these areas, which had become final, as the law of the case. See [United States v. Washington](#), 235 F.3d 438, 441 (9th Cir. 2000). It was therefore established that the Program Guide sets out the objective standards that the Constitution requires in this context, and that the persistence of objectively unconstitutional conditions satisfies the subjective “deliberate indifference” inquiry. See [Coleman v. Brown](#), 28 F.Supp.3d 1068, 1077 (E.D. Cal. 2014); [Coleman v. Brown](#), 938 F.Supp.2d 955, 972 n.30, 989 (E.D. Cal. 2013). There is no “manifest injustice” in declining to overturn those decisions years later. See [Jeffries v. Wood](#), 114 F.3d 1484, 1489 (9th Cir. 1997) (en banc), *overruled on other grounds by* [Gonzalez v. Arizona](#), 677 F.3d 383 (9th Cir. 2012) (en banc).

2. The district court’s determination that the Eighth Amendment requires full compliance with the Program Guide’s twenty-four-hour timeline, subject to exceptions, was not erroneous. The Program Guide itself provides that the twenty-four-hour timeline applies “[i]n most cases.” And the record makes clear that longer waits create “a substantial risk of serious harm.” [Farmer](#), 511 U.S. at 828, 114 S.Ct. 1970. We observe that before negotiations were halted by the filing of this appeal, the parties had already agreed to three categories of exceptions to the transfer timeline, including a broad exception for “circumstances outside of Defendant’s control ... which cause a delay in transfer to a [MHCB] beyond the Program Guide timelines.” The district court has approved similar exceptions in the in-patient context.

We have no reason to believe that the district court will reject the parties’ proposed exceptions once its jurisdiction is restored. In sum, the district court correctly held that, except in certain classes of cases in which there is good reason for delay, waits for MHCBs longer than twenty-four hours violate the Eighth Amendment.

3. Nor did the district court’s decisions on the State’s request to change when the twenty-four-hour clock would start and stop constitute an abuse of discretion. See [Trueblood v. Washington State Department of Social and Health Services](#), 822 F.3d 1037, 1042 (9th Cir. 2016). Appellants argue that these decisions were new injunctions to which the limitations of the Prison Litigation Reform Act apply. See 18 U.S.C. § 3626(a)(1). Even if the court’s orders were new injunctions—not denials of requests to modify old ones—we find no error. Stopping the clock later or starting it sooner, the district court found, would cause patients to spend more time in “alternative housing” waiting for constitutionally adequate treatment. That in turn would create a “substantial risk of serious harm.” [Farmer](#), 511 U.S. at 828, 114 S.Ct. 1970. The district court’s factual findings are well supported and not clearly erroneous. The court’s order was therefore necessary to correct the ongoing violation of the appellees’ rights, and there was no less restrictive or intrusive means available to remedy the Eighth Amendment violation. 18 U.S.C. § 3626(a)(1).

We **DENY** appellants’ request for judicial notice in support of reply brief (Docket No. 36) and appellees’ third request for judicial notice (Docket No. 45).

AFFIRMED.

All Citations

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Footnotes

* The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

** This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).