IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOUTHERN POVERTY LAW CENTER, *Plaintiff*, v. U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*, *Defendants*.	Civil Action No. 18-0760 (CKK-RMM)

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER ORDER DENYING MOTION TO SEVER AND TRANSFER VENUE

INTRODUCTION

LEGAL STANDARD

"Motions for reconsideration of prior rulings are strongly discouraged," and "may not reassert arguments previously raised and rejected by the Court or arguments which should have been previously raised but are being raised for the first time." Dkt. 215 at 2–3 (cleaned up).

A motion to reconsider brought under Federal Rule of Civil Procedure 54(b) is evaluated by the "as justice requires" standard. *Isse v. Am. Univ.*, 544 F. Supp. 2d 25, 29 (D.D.C. 2008) (Kollar-Kotelly, J.) (citation omitted). The movant bears the burden of demonstrating "that some

"once the parties have battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again." *Banks v. Booth*, 518 F. Supp. 3d 57, 63 (D.D.C.) (Kollar-Kotelly, J.) (citation omitted), *appeal dismissed, cause remanded*, 3 F.4th 445 (D.C. Cir. 2021).

ARGUMENT

A. Defendants Waive Any Argument Regarding Severance

Although Defendants reference severance in the title and first paragraph of their Motion, they never again mention it other than when discussing the history of the underlying motion. *See* Dkt. 216 at 5. They make no argument that the Court should reconsider its previous order denying severance, and thus waive the issue.[1] *Seo v. Oh*, 573 F. Supp. 3d 277, 288 (D.D.C. 2021) ("In this Court, 'perfunctory and undeveloped arguments, and arguments that are unsupported by pertinent authority, are deemed waived[.]'"

made clear that its authority to sever and its authority to transfer were distinct: Fed. R. Civ. P. 21 and 28 U.S.C. § 1404(a), respectively. *Id.*

The consequence of this waiver is that Defendants seek to transfer this case *in toto* out of the District of Columbia to either the Middle District of Georgia or the Western District of Louisiana. However, as Defendants never before asked the Court to transfer the entire case to the Western District of Louisiana, they cannot seek reconsideration of that issue. Dkt. 25 at ¶ 13 (“

Defendants that are predominantly located [in D.C.]."[4] Dkt. 62 at 4. The developments Defendants cite—even if one could call them "factual" as opposed to procedural—do not bear on that reasoning, and thus do not justify reconsideration. *McLaughlin*, 864 F. Supp. 2d at 141.

First, Defendants assert that this case has morphed into "a conditions of confinement claim at individual facilities" based on the Temporary Restraining Order the Court entered in June 2020, Dkt. 123, one line in the Court's recent Order granting in part and denying in part Defendants' Renewed Motion to Partially Dismiss the Second Amended Complaint ("Motion to Dismiss Order"), Dkt. 201 at 2, and Defendants' [illegible] incomplete description of the discovery SPAeheecatcorppfe(h

another source of jurisdiction to decide the motion then in front of it. *Id.* at 32 n.4. But the jurisdictional basis for the TRO is not "new evidence" and does not bear on the Court's reasoning behind the denial of transfer. It is not even a "change in the . . . *facts*." *Dynamic Visions*, 321 F.R.D. at 17 (emphasis added).

Defendants also attempt to argue that the Court's description in the Motion to Dismiss Order of SPLC's Fifth Amendment claims[6] makes this a "conditions of confinement" case. Dkt. 216 at 6.

Defendants' mere oversight of them." Dkt. 216 at 6. SPLC's theory of the case, outside of its First Amendment claim, is and has been that Defendants have a non-delegable duty to ensure that the individuals they detain in their vast network of isolated immigration detention facilities can exercise both their procedural and substantive due process rights, and that Defendants are required to follow their own regulations under the APA. *See* Dkt. 70. Defendants—all but two of whom are based in D.C.—selected the facilities at issue, chose to detain specific numbers of people in them, and failed to oversee and monitor them sufficiently. *Id.* Proving these claims requires evidence of constitutional and regulatory violations at the facility level, and evidence that Defendants in D.C. created, implemented, and enforced policies that led to those violations.

To obtain the latter, SPLC has pursued discovery into Defendants' monitoring, oversight, contracting and procurement, and has sought discovery from custodians at key federal sub-agencies. *See* Dkt. 116-1 at 21–26, 41–42; *see also* Dkt. 213 at 13. Defendants have fought these discovery requests, *see* Dkt. 121 at 34–41—requests that they fail to mention in their Motion for Reconsideration. SPLC's requests for additional facility-level information stem from Defendants' refusal to produce documents or include additional relevant custodians and are not a definitive statement about the scope of the case. Defendants' cherry-picked description of discovery to date is not new evidence and does not bear on the Court's reasoning denying transchc4(s)-1(-2.3 60 Tc 0 not)- (—)

Meet-and-Confer Report, "SPLC's substantive due process 'punitive conditions' claim (Count V) continues to allow SPLC to challenge Defendants' restrictions on access to and communication with counsel, including in the removal defense context." Dkt. 213 at 11. In addition, SPLC's remaining Fifth Amendment claims—

Respectfully submitted, this 29th day of July, 2022.

/s/ Sarah Rich
Sarah M. Rich (GA Bar No. 281985)*

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2022, I electronically filed the forgoing Plaintiff's Response in Opposition to Defendants' Motion to Reconsider Order Denying Motion to Sever and Transfer Venue with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered CM/ECF users.

/s/ William E. Dorris
William E. Dorris