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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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United States of America,

No. CV 13-1316-TUC-CRP

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Plaintiff,

**ORDER**

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vs.

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\$229,850.00 in U.S. Currency,

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Defendant.

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Robert and Debra Osborne,

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Claimants.

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Pending before the Court is Claimants’ Motion for Reconsideration of Order Denying  
19 Motion to Dismiss. (Doc. 28). On September 25, 2014, the Court denied Claimants’ Motion  
20 to Dismiss which was based on Claimants’ argument that the Complaint in this matter was  
21 untimely filed. Although the Court agreed with Claimants that the Complaint was untimely  
22 filed by one day, the Court determined that the doctrine of equitable tolling properly applied  
23 to excuse the late filing. (Doc. 27).

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Whether to grant or deny a motion for reconsideration is within the discretion of the  
25 court. *See Barber v. State of Hawaii*, 42 F.3d 1185, 1198 (9<sup>th</sup> Cir. 1994). “Motions to  
26 reconsider are appropriate only in rare circumstances[.]” *Defenders of Wildlife v. Browner*,  
27 909 F.supp. 1342, 1351 (D. Ariz. 1995). “[A] motion for reconsideration should not be  
28 granted, absent highly unusual circumstances, unless the district court is presented with

1 newly discovered evidence, committed clear error, or if there is an intervening change in the  
2 controlling law.” *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9<sup>th</sup> Cir. 1999)  
3 (citing *School Dist. No. 1J, Multnomah County, Or. v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9<sup>th</sup>  
4 Cir. 1993)). Motions for reconsideration should not be used for the purpose of requesting  
5 the court “to rethink what the court had already thought through—rightly or wrongly.”  
6 *Defenders of Wildlife*, 909 F.Supp. at 1352 (quoting *Above the Belt, Inc. v. Mel Bohannan*  
7 *Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)); *see also Sullivan v. Faras-RLS Group,*  
8 *Ltd.*, 795 F.Supp. 305, 308-09 (D.Ariz. 1992) (same). Moreover, the Rules of Practice of the  
9 U.S. District Court for the District of Arizona, state that: “No motion for reconsideration of  
10 an Order may repeat any oral or written argument made by the movant in support of or in  
11 opposition to the motion that resulted in the Order. Failure to comply with this subsection  
12 may be grounds for denial of the motion.” LRCiv 7.2(g).

13         Claimants take issue with the Court’s conclusion that equitable tolling excused the  
14 government’s delay in this case. Although Claimants agree with the Court’s statement of the  
15 standard for equitable tolling, they argue that the Court misapplied the standard in this case.  
16 As Claimants have recognized, a party is entitled to equitable tolling where “he shows ‘(1)  
17 that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance  
18 stood in his way’ and prevented the timely filing.” *Holland v. Florida*, 560 U.S. 631, 649  
19 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)). (See Motion for  
20 Reconsideration, pp. 1-2) (citing September 25, 2014 Order, p. 17). Claimant’s Motion for  
21 Reconsideration focuses on their position that the government waited until what it  
22 determined was the last day to file the Complaint. According to Claimants, such conduct  
23 fails to establish good faith or diligence on the government’s part. Claimants contend that  
24 the government failed to make a showing that “circumstances arose requiring last minute  
25 compliance.” (Motion for Reconsideration, p. 2).

26         In denying Claimants’ Motion to Dismiss, the Court specifically recognized  
27 Claimants’ argument that the government did not have to wait to file the Complaint until  
28 what it thought was the last day. (See Order, p. 19 (citing Reply (Doc. 20), p. 7)). The Court

1 pointed out that had “this Court adopted the government’s position, the Complaint would  
2 have been timely.” (Order, p.19). In sum, the Court held that “[g]iven the government’s  
3 diligence and the extraordinary circumstance of the unsettled law on this issue,...the  
4 government is entitled to equitable tolling.” (*Id.*)

5 Claimants’ Motion for Reconsideration essentially requests that the Court “rethink  
6 what the [C]ourt ha[s] already thought through—rightly or wrongly.” *Defenders of Wildlife*,  
7 909 F.Supp. at 1351 (quoting *Above the Belt, Inc.*, 99 F.R.D. at 101). As such, the Court  
8 declines to reconsider its September 25, 2014 determination. Accordingly,

9 IT IS ORDERED that Claimants’ Motion for Reconsideration (Doc. 28) is DENIED.

10 DATED this 20<sup>th</sup> day of October, 2014.

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13 **CHARLES R. PYLE**  
14 **UNITED STATES MAGISTRATE JUDGE**

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