

1 Timothy P. Fox (CA Bar 157750)
2 *tfox@creeclaw.org*
3 Elizabeth Jordan*
4 *ejordan@creeclaw.org*
5 CIVIL RIGHTS EDUCATION AND
6 ENFORCEMENT CENTER
1245 E. Colfax Avenue, Suite 400
Denver, CO 80218
Tel: (303) 757-7901
Fax: (303) 872-9072

7 Lisa Graybill*
8 *lisa.graybill@splcenter.org*
9 Jared Davidson*
10 *jared.davidson@splcenter.org*
11 SOUTHERN POVERTY LAW
12 CENTER
201 St. Charles Avenue, Suite 2000
New Orleans, Louisiana 70170
Tel: (504) 486-8982
Fax: (504) 486-8947

Maia Fleischman*
maia.fleischman@splcenter.org
SOUTHERN POVERTY LAW
CENTER
2 South Biscayne Boulevard, Suite 3750
Miami, FL 33131
Tel: (786) 347-2056
Fax: (786) 237-2949

13 William F. Alderman (CA Bar 47381)
14 *walderman@orrick.com*
15 Jake Routhier (CA Bar 324452)
16 *jrouthier@orrick.com*
17 ORRICK, HERRINGTON &
18 SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
Tel: (415) 773-5700
Fax: (415) 773-5759

Stuart Seaborn (CA Bar 198590)
sseaborn@dralegal.org
Melissa Riess (CA Bar 295959)
mriess@dralegal.org
DISABILITY RIGHTS ADVOCATES
2001 Center Street, 4th Floor
Berkeley, California 94704
Tel: (510) 665-8644
Fax: (510) 665-8511

19 Attorneys for Plaintiffs (continued on next page)

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**
22 **EASTERN DIVISION – RIVERSIDE**

23 FAOUR ABDALLAH FRAIHAT, *et al.*,
24 Plaintiffs,
25 v.
26 U.S. IMMIGRATION AND CUSTOMS
27 ENFORCEMENT, *et al.*,
28 Defendants.

Case No. 19-cv-01546-JGB(SHKx)

**Plaintiffs’ Opposition to
Defendants’ Motion to Sever and
Dismiss, Transfer Actions, and
Strike Portions of the Complaint**

Date: February 24, 2020

1 Shalini Goel Agarwal (CA Bar 254540)
2 *shalini.agarwal@splcenter.org*
3 SOUTHERN POVERTY LAW CENTER
4 106 East College Avenue, Suite 1010
5 Tallahassee, FL 32301
6 Tel: (850) 521-3024
7 Fax: (850) 521-3001

8 Mark Mermelstein (CA Bar 208005)
9 *mmermelstein@orrick.com*
10 ORRICK, HERRINGTON & SUTCLIFFE LLP
11 777 South Figueroa Street, Suite 3200
12 Los Angeles, CA 90017
13 Tel: (213) 629-2020
14 Fax: (213) 612-2499

15 Christina Brandt-Young*
16 *cbrandt-young@dralegal.org*
17 DISABILITY RIGHTS ADVOCATES
18 655 Third Avenue, 14th Floor
19 New York, NY 10017
20 Tel: (212) 644-8644
21 Fax: (212) 644-8636

22 Attorneys for Plaintiffs (continued from previous page)
23 *Admitted Pro Hac Vice
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. STANDARD OF REVIEW 1

III. ARGUMENT 2

 A. PLAINTIFFS MAY MAINTAIN CLASS CLAIMS
 EVEN AFTER THEIR RELEASE FROM CUSTODY 2

 B. PLAINTIFFS’ CLAIMS ARE PROPERLY JOINED,
 AND SEVERANCE AND TRANSFER TO MULTIPLE
 COURTS WOULD THWART THE INTERESTS OF
 JUSTICE. 3

 1. Plaintiffs Satisfy the Test for Permissive Joinder 3

 a. Plaintiffs’ Claims Arise From the Same
 Occurrence 4

 b. Plaintiffs’ Claims Share Common Questions
 of Law and Fact. 5

 2. Severance Would Prejudice Plaintiffs’ Ability to
 Obtain Class-Wide Relief from Defendants’
 Systemic Misconduct. 6

 3. Severance Would Not Promote Efficiency or
 Fairness. 7

 C. DEFENDANTS VIOLATE THE DUE PROCESS
 CLAUSE BY FAILING TO PROVIDE ADEQUATE
 MEDICAL AND MENTAL HEALTH CARE AND
 IMPOSING PUNITIVE CONDITIONS OF
 CONFINEMENT. 8

 1. Plaintiffs Adequately Allege Deliberate
 Indifference. 8

 a. Plaintiffs’ Request for Injunctive Relief is
 Proper 11

 b. Plaintiffs Need Not Allege Actual Injury 11

 c. Plaintiffs Adequately Allege Objective
 Deliberate Indifference. 12

 d. Defendants’ “Professional Judgment”
 Argument Should be Rejected. 13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. PLAINTIFFS ADEQUATELY ALLEGE THAT DEFENDANTS UNLAWFULLY SUBJECT THEM TO PUNITIVE CONDITIONS14

1. Defendants Ignore Ninth Circuit Precedent Prescribing How Plaintiffs May Establish Punitive Conditions.15

2. Plaintiffs Have Established a Presumption of Punitiveness with Respect to Defendants’ Use of Segregation.....16

3. Plaintiffs Have Established a Presumption of Punitiveness With Respect to Defendants’ Treatment of People with Disabilities.18

E. PLAINTIFFS STATE A CLAIM FOR VIOLATION OF THE REHABILITATION ACT.....19

F. THE ORGANIZATIONAL PLAINTIFFS HAVE STANDING AND STATE CLAIMS FOR RELIEF.....23

1. Defendants’ Policies and Practices Frustrate Organizational Plaintiffs’ Missions and Force Them to Divert Significant Resources in Response23

2. Organizational Plaintiffs Fall Within the Zone of Interest of the Rehabilitation Act.....26

G. DEFENDANTS’ MOTION TO STRIKE THE ALLEGATIONS OF CLASSWIDE MISCONDUCT IS GROUNDLESS.....27

IV. CONCLUSION.....30

TABLE OF AUTHORITIES

Cases

1
2
3
4 *Advanced Microtherm. Inc. v. Norman Wright Mech. Equip. Corp.*,
5 2004 WL 2075445 (N.D. Cal. Sept. 15, 2004).....28
6 *Al Otro Lado, Inc. v. Nielsen*, 327 F. Supp. 3d 1284 (S.D. Cal. 2018)3
7 *Albano v. Shea Homes Ltd. P’ship*, 634 F.3d 524 (9th Cir. 2011)7
8 *Almont Ambulatory Surgery Ctr., LLC v. United Health Group, Inc.*,
9 99 F. Supp. 3d 1110 (C.D. Cal. 2015).....4, 5
10 *Am. Diabetes Ass’n v. United States Dep’t of the Army*, 938 F.3d 1147
11 (9th Cir. 2019)24
12 *Aramark Facility Servs. v. SEIU Local 1877*, 530 F.3d 817 (9th Cir.
13 2008).....19
14 *Armstrong v. Brown*, 732 F.3d 955 (9th Cir. 2013).....20
15 *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001)21
16 *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).....2
17 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).....2
18 *Bell v. Wolfish*, 441 U.S. 520 (1979) 11, 15, 17
19 *Braggs v. Dunn*, 257 F. Supp. 3d 1171 (M.D. Ala. 2017).....13
20 *Brown v. DIRECTV, LLC*, 2014 WL 12599363 (C.D. Cal. May 27,
21 2014).....29
22 *Brown v. Plata*, 563 U.S. 493 (2011)..... 12, 29
23 *Butler v. Suffolk County*, 289 F.R.D. 80 (E.D.N.Y. 2013)7
24 *Corson v. Toyota Motor Sales, U.S.A., Inc.*, 2013 WL 10068136 (C.D.
25 Cal. July 18, 2013).....29
26 *Coughlin v. Rogers*, 130 F.3d 1348 (9th Cir. 1997)3, 4
27 *Disability Rts. Mont. Inc. v. Batista*, 930 F.3d 1090 (9th Cir. 2019)..... 13, 16
28 *Dunn v. Dunn*, 219 F. Supp. 3d 1100 (M.D. Ala. 2016)13
Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001)20
E. Bay Sanctuary Covenant v. Trump, 354 F. Supp. 3d 1094 (N.D.
Cal. 2018)26

1 *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir. 2018) 24, 25, 27
 2 *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*,
 3 959 F.2d 742 (9th Cir. 1991)24
 4 *Fair Hous. Council of San Fernando Valley v. Roomate.com, LLC*,
 5 666 F.3d 1216 (9th Cir. 2012)23
 6 *Fisher v. United States*, 2015 WL 5723638 (C.D. Cal. June 18, 2015)4
 7 *Gerstein v. Pugh*, 420 U.S. 103 (1975).....2
 8 *Gordon v. County of Orange*, 888 F.3d 1118 (9th Cir. 2018)9
 9 *Gray v. County of Riverside*, 2014 WL 5304915 (C.D. Cal. Sept. 2,
 10 2014)12
 11 *Griggs v. Holt*, 2018 WL 5283448 (S.D. Ga. Oct. 24, 2018).....6
 12 *Hall v. Mims*, 2012 WL 1799179 (E.D. Cal. May 16, 2012) 13, 29
 13 *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)26
 14 *Helling v. McKinney*, 509 U.S. 25 (1993)11
 15 *Hernandez v. County of Monterey*, 305 F.R.D. 132 (N.D. Cal. 2015)13
 16 *Hernandez v. Lynch*, 2016 WL 7116611 (C.D. Cal. Nov. 10, 2016)3
 17 *Hiser v. Nev. Dep’t of Corrs.*, 708 F. App’x 297 (9th Cir. 2017)17
 18 *Houghton v. South*, 965 F.2d 1532 (9th Cir. 1992)13
 19 *In re DBSI, Inc.*, 2011 WL 607398 (Bankr. D. Del. Feb. 4, 2011)30
 20 *Inmates of Allegheny Cty. Jail v. Pierce*, 612 F.2d 754 (3d Cir. 1979).....14
 21 *Inmates of San Diego County Jail in Cell Block 3B v. Duffy*, 528 F.2d
 22 954 (9th Cir. 1975)6
 23 *Jewett v. Cal. Forensic Med. Group, Inc.*, 2017 WL 980446 (E.D. Cal.
 24 Mar. 13, 2017)27
 25 *Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004) 9, 15, 16, 19
 26 *King v. County of Los Angeles*, 885 F.3d 548 (9th Cir. 2018) 15, 19
 27 *Kohler v. Big 5 Corp.*, 2012 WL 1511748 (C.D. Cal. Apr. 30, 2012)28
 28 *Langley v. Coughlin*, 715 F. Supp. 522 (S.D.N.Y. 1989).....14
Lexmark Int’l, Inc. v. Static Control Components, Inc., 572 U.S. 118
 (2014).....26

1 *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268 (2d Cir. 2009).....27

2 *Los Angeles Unified Sch. Dist. v. Garcia*, 669 F.3d 956 (9th Cir. 2012)3

3 *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992)26

4 *Lyon v. United States Immigration & Customs Enforcement*, 300
 5 F.R.D. 628 (N.D.Cal.2014)3

6 *Mark H. v. Hamamoto*, 620 F.3d 1090 (9th Cir. 2010) 20, 21

7 *McCrary v. Elations Co., LLC*, 2013 WL 6403073 (C.D. Cal. July 12,
 8 2013).....28

9 *Mendonado v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097 (9th Cir.
 10 2008) 1

11 *Mireskandari v. Daily Mail & Gen. Tr. PLC*, 2013 WL 12129642
 12 (C.D. Cal. July 31, 2013).....29

13 *Mitchell v. Dupnik*, 75 F.3d 517 (9th Cir. 1996)17

14 *Monster Energy Co. v. Vital Pharm., Inc.*, 2019 WL 2619666 (C.D.
 15 Cal. May 20, 2019).....28

16 *Nat’l Council of La Raza v. Cegavske*, 800 F.3d 1032 (9th Cir. 2015)..... 24, 26

17 *Nicoletti v. Brown*, 740 F. Supp. 1268 (N.D. Ohio 1987)14

18 *Nielsen v. Preap*, 139 S. Ct. 954 (2019)3

19 *Novoa v. The GEO Group, Inc.*, No. 5:17-cv-02514-JGB-SHK, Dkt.
 20 No. 223 (C.D. Cal. Nov. 26, 2019)7

21 *Oster v. Lightbourne*, 2012 WL 691833 (N.D. Cal. Mar. 2, 2012).....27

22 *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp.3d 1098 (C.D. Cal.
 23 2015).....27

24 *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014)11

25 *Peterson v. Mazda Motor of Am., Inc.*, 44 F. Supp. 3d 965 (C.D. Cal.
 26 2014).....28

27 *Pierce v. District of Columbia*, 128 F. Supp. 3d 250 (D.D.C. 2015) 20, 21

28 *Pierce v. District of Columbia*, 146 F. Supp. 3d. 197 (D.D.C. 2015)20

Pitts v. Terrible Herbst, Inc., 653 F.3d 1081 (9th Cir. 2011).....2

Quintanilla v. Bryson, 730 F. App’x 738 (11th Cir. 2018)17

Revilla v. Glanz, 7 F. Supp. 3d 1207 (N.D. Okla. 2014).....5

1 *S. Poverty Law Ctr. v. U.S. Dep’t of Homeland Sec.*, 2019 WL
 2077120 (D.D.C. May 10, 2019).....4, 7

2 *Shwarz v. U.S.*, 234 F.3d 428 (9th Cir. 2000).....2

3 *Torres v. United States Dep’t of Homeland Sec.*, 2019 WL 5883685
 4 (C.D. Cal. Oct. 24, 2019)..... passim

5 *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).....3

6 *United States v. Sanchez-Gomez*, 138 S. Ct. 1532 (2018).....2

7 *Updike v. Multnomah County*, 870 F.3d 939 (9th Cir. 2017).....20

8 *Valle Del Sol, Inc. v. Whiting*, 732 F.3d 1006 (9th Cir. 2013)23

9 *Visendi v. Bank of Am., N.A.*, 733 F.3d 863 (9th Cir. 2013).....4

10 *Weng v. Solis*, 842 F. Supp. 2d 147 (D.D.C. 2012)30

11 **Statutes**

12 29 U.S.C. § 794a(a)(2)26

13 42 U.S.C. § 12132(2)20

14 **Rules**

15 Fed. R. Civ. P. 20(a)(1)..... 3, 4, 5, 6

16 **Regulations**

17 8 C.F.R. § 1236.118

18 8 C.F.R. § 212.518

19 C.F.R. § 35.130 (b)(1)(ii).....20

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION**

2 Plaintiffs’ class action complaint paints a detailed picture of the unlawful
3 conditions at prison-like facilities throughout the country where Immigration and
4 Customs Enforcement (ICE) detains record numbers of immigrants. It draws on
5 both the experiences of the 15 named Plaintiffs and the pattern of mistreatment—in
6 many cases leading to avoidable death—suffered by countless other people
7 documented in extensive public reporting.

8 While ICE and the other Defendants acknowledge that the Complaint’s
9 allegations are “undoubtedly . . . troubling,” they seek to evade scrutiny of their
10 widespread misconduct by pretending this case is only about the named Plaintiffs,
11 by ignoring the pattern that warrants class-wide relief, and by asking this Court to
12 strike the allegations that detail the systemic defects created and perpetuated by
13 their nationwide policies and practices. Defendants further hope to deflect attention
14 from their pattern of abuse and neglect by asking the Court to ship individual
15 Plaintiffs off to various courts around the country that would scrutinize only the
16 harm inflicted on them individually—and thus prevent class-wide relief.

17 But this is not a claim for damages seeking compensation for past harm
18 suffered only by specific named Plaintiffs. Rather, it is a class action seeking
19 declaratory and injunctive relief to prevent the substantial risk of harm that awaits
20 all people in ICE custody if Defendants are permitted to continue the pattern of
21 unlawful practices and the abdication of oversight detailed in the Complaint.
22 Numerous courts have permitted joinder of plaintiffs in similar situations,
23 including where the challenged conditions create a substantial risk of harm. For the
24 reasons detailed below, Defendants’ motion to sever, dismiss, and strike should be
25 denied in its entirety.

26 **II. STANDARD OF REVIEW**

27 “Dismissal under Rule 12(b)(6) is appropriate only where the complaint
28 lacks a cognizable legal theory or sufficient facts to support a cognizable legal

1 theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir.
 2 2008). To survive, a plaintiff need only proffer “enough facts to state a claim to
 3 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
 4 (2007). “A claim has facial plausibility when the plaintiff pleads factual content
 5 that allows the court to draw the reasonable inference that the defendant is liable
 6 for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “In
 7 reviewing a Rule 12(b)(6) motion, a court must construe the complaint in the light
 8 most favorable to the plaintiff and must accept all well-pleaded factual allegations
 9 as true.” *Shwarz v. U.S.*, 234 F.3d 428, 435 (9th Cir. 2000).

10 **III. ARGUMENT**

11 **A. PLAINTIFFS MAY MAINTAIN CLASS CLAIMS EVEN** 12 **AFTER THEIR RELEASE FROM CUSTODY.**

13 Defendants erroneously contend that the claims of three Plaintiffs—Jose
 14 Segovia Benitez, Edilberto Garcia Guerrero, and Sergio Salazar Artaga—must be
 15 dismissed as moot because they have been released from ICE custody.¹ But there
 16 can be no question that these Plaintiffs—and any others released or removed
 17 pending this litigation—present a “classic example” of a claim that falls into the
 18 exception to mootness for violations “capable of repetition, yet evading review.”
 19 *Torres v. United States Dep’t of Homeland Sec.*, 2019 WL 5883685, *10 (C.D.
 20 Cal. Oct. 24, 2019); *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975).

21 The “capable of repetition, yet evading review” exception to mootness exists
 22 to “avoid[] the spectre of plaintiffs filing lawsuit after lawsuit, only to see their
 23 claims mooted before they can be resolved,” *Pitts v. Terrible Herbst, Inc.*, 653 F.3d
 24 1081, 1090 (9th Cir. 2011) and is particularly applicable to class claims for
 25 injunctive relief. *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1538 (2018).
 26 Under well-established law, putative class representatives may continue to assert
 27

28 ¹ In fact, Mr. Garcia Guerrero was still in custody when Defendants filed their motion.

1 claims on behalf of a class even if their own claims become moot before the class
 2 can be certified. *Nielsen v. Preap*, 139 S. Ct. 954, 963 (2019); *Los Angeles Unified*
 3 *Sch. Dist. v. Garcia*, 669 F.3d 956, 958 n.1 (9th Cir. 2012).

4 Courts—including this one—have repeatedly applied the exception to
 5 mootness in cases brought by people detained by ICE challenging ongoing policies
 6 on behalf of a class because such claims are “inherently transitory.” *See, e.g.*,
 7 *Nielsen*, 139 S. Ct. at 963; *Torres*, 2019 WL 5883685, *11 (on-going policies
 8 regarding access to attorneys); *Hernandez v. Lynch*, 2016 WL 7116611, *13 (C.D.
 9 Cal. Nov. 10, 2016) (on-going bond setting policies); *Al Otro Lado, Inc. v. Nielsen*,
 10 327 F. Supp. 3d 1284, 1303–04 (S.D. Cal. 2018); *Lyon v. United States*
 11 *Immigration & Customs Enforcement*, 300 F.R.D. 628, 639 (N.D. Cal. 2014).

12 **B. PLAINTIFFS’ CLAIMS ARE PROPERLY JOINED, AND**
 13 **SEVERANCE AND TRANSFER TO MULTIPLE COURTS**
 14 **WOULD THWART THE INTERESTS OF JUSTICE.**

15 Ignoring that this is a putative class action, Defendants move to sever and
 16 transfer this case—a procedure appropriate only “[i]f the test for permissive joinder
 17 [under Fed. R. Civ. P. 20(a)(1)] is not satisfied” and if “no substantial right will be
 18 prejudiced by the severance.” *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir.
 19 1997). Here, Plaintiffs not only satisfy the test for permissive joinder, but
 20 severance would bar them from invoking their well-established right to seek class-
 wide injunctive relief.

21 1. Plaintiffs Satisfy the Test for Permissive Joinder.

22 Pursuant to Fed. R. Civ. P. 20(a)(1), “[p]ersons may join in one action as
 23 plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative
 24 with respect to or arising out of the same transaction, occurrence, or series of
 25 transactions or occurrences; and (B) any question of law or fact common to all
 26 plaintiffs will arise in the action.” Courts construe Rule 20 liberally to favor
 27 expansive joinder where consistent with principles of fairness. *See United Mine*
 28 *Workers v. Gibbs*, 383 U.S. 715, 724 (1966) (“Under the Rules, the impulse is

1 toward entertaining the broadest possible scope of action consistent with fairness to
 2 the parties; joinder of claims, parties and remedies is strongly encouraged”);
 3 *Almont Ambulatory Surgery Ctr., LLC v. United Health Group, Inc.*, 99 F. Supp.
 4 3d 1110, 1187-8 (C.D. Cal. 2015) (Rule 20 read as broadly as possible to promote
 5 judicial economy). Plaintiffs here satisfy both the same transaction and the
 6 common question requirements for proper joinder under Rule 20.

7 ***a. Plaintiffs’ Claims Arise From the Same Occurrence.***

8 Claims arising from the “same systematic pattern of events” on the part of
 9 defendants meet the “same transaction or occurrence” requirement. *Coughlin*, 130
 10 F.3d at 1350; *Almont Ambulatory Surgery Ctr., LLC*, 99 F. Supp. 3d at 1188
 11 (rejecting defendants’ argument that plaintiffs’ claims stemmed from “thousands of
 12 independent and unique out-of-network benefit claims” and holding that “each
 13 discrete claim is part of the larger systemic behavior” and thus “arise[s] out of the
 14 same series of transactions or occurrences.”); *S. Poverty Law Ctr. v. U.S. Dep’t of*
 15 *Homeland Sec.*, 2019 WL 2077120, *2-3 (D.D.C. May 10, 2019) (declining to
 16 sever claims involving people in detention in three facilities in two states, where
 17 the complaint challenged “Defendants’ administration of national standards”).²

18 Plaintiffs allege that such systematic conduct on the part of Defendants gives
 19 rise to their claims. Specifically, Plaintiffs allege that, on a centralized basis,
 20 Defendants (1) contract with entities to detain people in their custody, manage and
 21

22 ² Defendants cite *Fisher v. United States*, 2015 WL 5723638 (C.D. Cal. June 18,
 23 2015), as supporting severance. It does not. *Fisher* involved one individual who
 24 claimed personally to have experienced various unrelated difficulties at several
 25 facilities. He did not allege systemic claims on behalf of a class. Defendants’
 26 reliance on *Visendi v. Bank of Am., N.A.*, 733 F.3d 863 (9th Cir. 2013) is also
 27 inapposite. There, plaintiffs brought negligence and other claims regarding over
 28 one hundred unrelated loan transactions requiring “particularized factual analysis.”
Id. at 870. Unlike the present case, they did not allege that these transactions
 stemmed from a centralized failure at the highest level of the bank’s structure.

1 administer those contracts, and evaluate the level of care provided by those entities
2 (Complaint, ECF No. 1, ¶¶ 159-160);³ (2) fail to employ appropriate procurement
3 processes and to monitor relevant contractual arrangements with appropriate rigor
4 (¶¶ 161-62); (3) make determinations to expand the use of contractors to operate
5 facilities, despite knowledge that these contractors have histories of negligence and
6 abuse toward people in detention, as well as substandard conditions (¶¶ 163-169);
7 (4) fail to ensure appropriate monitoring of detention facilities through oversight
8 (¶¶ 170-191); (5) fail to take appropriate corrective action when notified of abuse,
9 deficiencies, or substandard conditions (¶¶ 192-193); (6) evade their reporting
10 responsibilities (¶¶ 194-195); and (7) fail to act even on their own findings and the
11 findings of other entities (¶¶ 196-202).

12 These centralized failures both constitute and result in systematic patterns of
13 events that create the substantial risk of harm facing Plaintiffs and the class.
14 ¶¶ 203-599. Plaintiffs also target these centralized failures in their prayer for
15 systematic relief. ¶ 657. They meet the “same transaction or occurrence”
16 requirement of Rule 20.

17
18 ***b. Plaintiffs’ Claims Share Common Questions of Law and Fact.***

19 Systemic violations, such as those described above and throughout the
20 complaint, present common questions of law and fact for purposes of Fed. R. Civ.
21 P. 20(a)(1). *See, e.g., Almont Ambulatory Surgery Ctr., LLC*, 99 F. Supp. 3d at
22 1187-88. Courts have reached the same conclusion in cases targeting detention
23 conditions. *See, e.g., Revilla v. Glanz*, 7 F. Supp. 3d 1207, 1213-14 (N.D. Okla.
24 2014) (in a case involving alleged systemic jail deficiencies, holding that “judicial
25 economy would be served by denying severance at this time, as the common issues
26

27 ³ Citations containing ¶ refer to a paragraph in the Complaint. All page numbers
28 referenced in connection with ECF citations are to the page number in the ECF
stamp printed at the top of the page.

1 of law and fact and logical relationship between the claims would likely result in
 2 duplicative discovery and dispositive motions covering common issues of law and
 3 fact”); *Griggs v. Holt*, 2018 WL 5283448, *11 (S.D. Ga. Oct. 24, 2018) (denying
 4 severance motion in case involving a pattern and practice of excessive force at a
 5 prison facility because “[w]hile Defendants correctly point out that an Eighth
 6 Amendment analysis of each of Plaintiff’s individual incidents will present
 7 different facts, the determination of all other claims requires answers to
 8 overlapping questions of policies and practices . . .”).

9 Here, too, Plaintiffs’ claims arise from common facts and share a common
 10 legal basis. They allege that Defendants have centralized control over the
 11 processes, contracts, policies, and institutional practices that determine where and
 12 under what conditions Plaintiffs are detained, and that Defendants have failed to
 13 exercise that centralized control in accordance with federal law. Based on these
 14 allegations, Plaintiffs assert due process claims under the Fifth Amendment
 15 (¶¶ 624-643) and disability discrimination claims under Section 504 of the
 16 Rehabilitation Act (¶¶ 644-655). All of the Plaintiffs thus challenge the same
 17 centralized failures of Defendants using the same legal mechanisms, thereby
 18 satisfying the “common question of law or fact” requirement of Rule 20.

19
 20 2. Severance Would Prejudice Plaintiffs’ Ability to Obtain Class-
 Wide Relief from Defendants’ Systemic Misconduct.

21 Defendants ask the Court to sever the claims of the 15 named Plaintiffs and
 22 ship them off to multiple individual courts elsewhere. But the Ninth Circuit has
 23 long recognized that plaintiffs can most effectively seek systemic relief in
 24 connection with substandard detention conditions through class actions. *See, e.g.,*
 25 *Inmates of San Diego County Jail in Cell Block 3B v. Duffy*, 528 F.2d 954, 957
 26 (9th Cir. 1975) (“Realistically, class actions are the only practicable judicial
 27 mechanism for the cleansing reformation and purification of these penal
 28 institutions”) (citation and internal quotation marks omitted). Plaintiffs seek just

1 such class relief to compel Defendants to fulfill their constitutional and statutory
2 obligations by correcting systemic deficiencies that affect not only Plaintiffs but
3 also current and future putative class members. *See* ¶¶ 600-623.

4 Class actions can drive such systemic change in part because they promote
5 judicial economy. *See, e.g., Albano v. Shea Homes Ltd. P’ship*, 634 F.3d 524, 536
6 (9th Cir. 2011) (“Rule 23 encourages judicial economy by eliminating the need for
7 potential class members to file individual claims”); *Novoa v. The GEO Group,*
8 *Inc.*, No. 5:17-cv-02514-JGB-SHK, Dkt. No. 223, 20 (C.D. Cal. Nov. 26, 2019)
9 (certifying nationwide class of people detained at GEO facilities and noting that
10 “[t]he geographic dispersion of class members speaks to the impracticability of
11 joinder and the judicial economy of class certification”); *see also Butler v. Suffolk*
12 *County*, 289 F.R.D. 80, 97 (E.D.N.Y. 2013) (where complaint alleged inhumane
13 prison conditions for more than a hundred people, “proceeding as a class action
14 will save significant time and resources for both the Court and defense counsel”).

15 3. Severance Would Not Promote Efficiency or Fairness.

16 Severance for purposes of transfer to the venue of each facility in which a
17 Plaintiff is detained would not promote fairness or efficiency. As an initial matter,
18 because nine of the fifteen named Plaintiffs reside in this district, as do the
19 organizational Plaintiffs, their chosen forum is proper.

20 Further, the multiple transfers proposed by Defendants would cause
21 inconvenience to relevant witnesses and relevant evidence. Because Plaintiffs
22 challenge centralized failures in the administration and monitoring of practices and
23 policies governing all of the facilities at issue, the same witnesses and evidence
24 will pertain to the adjudication of their claims. Allowing the examination of those
25 witnesses and the evaluation of that evidence in one forum promotes convenience
26 and efficiency for the courts, the parties, and the witnesses. As the court noted in *S.*
27 *Poverty Law Ctr.*, 2019 WL 2077120, *2:

28 [S]plitting the claims into separate cases would unnecessarily

1 multiply litigation; the gravamen is not the practices of the
2 different contractors running the three facilities, but rather
3 Defendants' responsibility for enforcing their own standards.
4 From that perspective, a substantial portion of the witnesses and
5 other evidentiary proof are likely common to, or
6 interchangeable across, problems at each of the facilities. And
7 proceeding separately may hinder the expeditious resolution of
8 Plaintiffs' concerns due to the risk of inconsistent timelines and
9 decisions across the various courts.

10 Likewise, the gravamen here is Defendants' responsibility for their own
11 failures in implementing, administering, and monitoring their own institutional
12 policies and practices. The same witnesses and the same evidence will establish
13 these high-level failures affecting people detained at facilities across the country,
14 in contrast to damages claims that depend on individual circumstances requiring
15 separate trials. Further, by preventing class-wide relief, countless lawsuits would
16 likely need to be filed to remediate the risk of harm impacting the tens of
17 thousands of people in Defendants' custody, thereby further undermining fairness.

18 For all these reasons, Defendants cannot meet their burden to show the
19 appropriateness of severance or transfer, and this Court should deny their motion in
20 its entirety.

21 **C. DEFENDANTS VIOLATE THE DUE PROCESS CLAUSE BY**
22 **FAILING TO PROVIDE ADEQUATE MEDICAL AND**
23 **MENTAL HEALTH CARE AND IMPOSING PUNITIVE**
24 **CONDITIONS OF CONFINEMENT.**

25 1. Plaintiffs Adequately Allege Deliberate Indifference.

26 Plaintiffs' First Claim challenges widespread systemic practices and policies
27 resulting in dangerously substandard healthcare at detention facilities (the
28 "Challenged Practices"), that subject all people in ICE custody to a substantial risk
of serious harm. Defendants erroneously contend that the Complaint fails to

1 adequately allege two elements of a due process claim: (1) that the Challenged
 2 Practices place Plaintiffs (and other detained people) at substantial risk of serious
 3 harm; and (2) that the Defendants are objectively deliberately indifferent to those
 4 risks, which requires allegations that the Defendants' response to those risks is
 5 "objectively unreasonable," or that Defendants "reckless[ly] disregard" the risks.
 6 *Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018).⁴

7 Plaintiffs' allegations are more than sufficient to plead both that the
 8 Challenged Practices subject them and the class to a substantial risk of serious
 9 harm and that Defendants have been objectively deliberately indifferent to those
 10 risks.

11 First, the allegation that the Challenged Practices create a substantial risk of
 12 serious harm is supported by citations to numerous internal reports demonstrating
 13 deficiencies in healthcare in detention facilities, including eight reports and twenty-
 14 two Detainee Death Reviews conducted by DHS entities;⁵ two reports by other
 15 government entities;⁶ fifteen reports by non-governmental entities;⁷ a memo from a
 16 DHS employee warning ICE leadership that due to deficient healthcare,
 17 "preventable harm and death to detainees has occurred;"⁸ statements from people
 18

19 ⁴ The plaintiff in *Gordon* was in pretrial criminal detention, whereas Plaintiffs in
 20 this case are in civil detention. People in civil detention are entitled to greater
 21 constitutional protections than people in pretrial criminal detention. *Jones v.*
 22 *Blanas*, 393 F.3d 918, 934 (9th Cir. 2004). Thus, Plaintiffs and the class may be
 23 entitled to even more protection than the *Gordon* standard. Because Plaintiffs
 24 easily meet the *Gordon* standard, they do not propose a less stringent one for
 25 purposes of this motion.

26 ⁵ ¶¶ 221-22, 226-28, 269-79, 283-84, 296-302, 305, 311, 319-334, 343-45, 347-55,
 27 358, 365-66, 369, 371-74, 378-86, 404, 406-11, 426. Detainee Death Reviews are
 28 conducted by, or at the direction of, Defendants' own internal departments. ¶ 173.

⁶ ¶¶ 238, 241, 346.

⁷ ¶¶ 224, 229-35, 240-41, 287, 302-05, 319, 330, 332, 334, 354, 364-68, 370, 375-
 76, 399-402, 405-09, 412, 426-28.

⁸ ¶ 186; *see also* ¶ 374.

1 working in detention facilities warning that understaffing was adversely impacting
 2 healthcare;⁹ and descriptions of the harm suffered by the Plaintiffs from
 3 substandard healthcare.¹⁰

4 Second, numerous allegations establish that Defendants’ response to the
 5 risks posed by the Challenged Practices has been objectively unreasonable,
 6 including Defendants’ decision to continue to use the same monitoring and
 7 inspection system despite the fact that Defendants’ own departments, as well as
 8 other governmental and nongovernmental entities, have repeatedly found that the
 9 system is fatally flawed (and has been for a long time);¹¹ Defendants’ own
 10 employees’ warning that ICE’s primary inspection system has “no credibility
 11 because of the volume of problems it has failed to uncover at multiple facilities
 12 over multiple years;”¹² Defendants’ use of contracting practices and policies that,
 13 according to a comprehensive report by the Office of Inspector General (OIG),
 14 actively prevent effective monitoring and oversight of contractors with the result
 15 that contractors are “effectively insulated from government scrutiny;”¹³
 16 Defendants’ failure to take any effective steps when they find out that contractors
 17 have not provided required healthcare;¹⁴ Defendants’ decision to enter into new
 18 contracts, and expand existing contracts, with contractors that have repeatedly
 19 violated detention standards, and/or who have been repeatedly sued for
 20 substandard healthcare;¹⁵ and Defendants’ failure to timely and adequately respond
 21 to reports of grossly inadequate healthcare by other government agencies.¹⁶

22 Because these allegations, when taken as true and construed most favorably
 23

24 ⁹ ¶ 376.

25 ¹⁰ *See, e.g.*, ¶¶ 214-19, 246-67, 289-92, 313-16, 337-41, 359-62, 390-97, 419-22.

26 ¹¹ ¶¶ 167, 178-85, 188-89, 191-92.

27 ¹² ¶ 190; *see also* ¶ 186.

28 ¹³ ¶¶ 161-62, 196-202.

¹⁴ ¶ 198.

¹⁵ ¶¶ 165-69.

¹⁶ ¶ 193.

1 to Plaintiffs, plausibly allege a Due Process claim, Plaintiffs have met their
 2 pleading obligations. As shown below, Defendants’ four arguments to the contrary
 3 should each be rejected.

4 ***a. Plaintiffs’ Request for Injunctive Relief is Proper.***

5 Defendants wrongly argue that Plaintiffs seek an “obey the law” injunction.
 6 This argument is meritless for at least two reasons. First, the requested injunctive
 7 relief spans three pages of the Complaint (ECF No. 1, 206-209) and is far more
 8 detailed than the 13 relevant words of the Due Process Clause. Second, discovery
 9 has not commenced, and it is far too early to require Plaintiffs to provide details of
 10 the requested injunction absent additional fact-finding. *See, e.g., Parsons v. Ryan*,
 11 754 F.3d 657, 689 n.35 (9th Cir. 2014) (even at class certification stage, a court
 12 should wait to fashion injunction until sufficient fact-finding has occurred).

13 ***b. Plaintiffs Need Not Allege Actual Injury.***

14 Defendants argue that Plaintiffs have failed to show objective deliberate
 15 indifference because none of the Plaintiffs allege that they actually suffered an
 16 injury. ECF No. 54 at 27-28. Even if it were not belied by the actual allegations,¹⁷
 17 this argument fails because Plaintiffs need only allege that they face a substantial
 18 risk of serious harm.¹⁸

19 Exposure to a substantial risk of serious harm is, “in its own right, a
 20 constitutional injury.” *Parsons*, 754 F.3d at 680; *see also Helling v. McKinney*, 509
 21 U.S. 25, 33 (1993) (holding that it “would be odd to deny an injunction to inmates
 22 who plainly proved an unsafe, life-threatening condition in their prison on the
 23 ground that nothing yet had happened to them”). Defendants pay lip service to the
 24 “substantial risk” standard, but rely entirely on their erroneous characterization of
 25

26 ¹⁷ *See, e.g.*, ¶¶ 214-19, 246-67, 289-92, 313-16, 337-41, 359-62, 390-97, 419-22.

27 ¹⁸ Many of the cases cited herein were brought under the Eighth Amendment,
 28 which prohibits cruel and unusual punishment. Because the Due Process Clause
 prohibits any punishment, a violation of the Eighth Amendment is necessarily a
 violation of the Due Process Clause. *Bell v. Wolfish*, 441 U.S. 520, 545 (1979).

1 Plaintiffs’ allegations as failing to show that the Plaintiffs have actually been
2 injured. *See* ECF No. 54 at 28. Applying the correct standard, the Complaint
3 sufficiently alleges that the Plaintiffs face a substantial risk of serious harm.

4
5 ***c. Plaintiffs Adequately Allege Objective Deliberate Indifference.***

6 Defendants assert that Plaintiffs’ allegations do not establish that Defendants
7 acted with reckless disregard as to each individual Plaintiff’s care. ECF. No. 54 at
8 28. Because this is a class action challenging systemic practices and policies, the
9 issue is not whether the individual experiences of the Plaintiffs standing alone
10 establish a constitutional violation, but rather whether all of the allegations in the
11 Complaint taken as a whole satisfactorily allege objective deliberate indifference.
12 As the Supreme Court held in *Brown v. Plata*, 563 U.S. 493, 505 n. 3 (2011):

13 Because plaintiffs do not base their case on deficiencies in care
14 provided on any one occasion, this Court has no occasion to
15 consider whether these instances of delay—or any other
16 particular deficiency in medical care complained of by the
17 plaintiffs—would violate the Constitution . . . if considered in
18 isolation. Plaintiffs rely on systemwide deficiencies in the
19 provision of medical and mental health care that, taken as a
20 whole, subject sick and mentally ill prisoners in California to
21 “substantial risk of serious harm” . . .

22 *See also Gray v. County of Riverside*, 2014 WL 5304915, *9 (C.D. Cal. Sept. 2,
23 2014) (holding that in a class action challenging systemic healthcare problems,
24 “there is no ‘claim’ that may be dismissed based on the constitutional adequacy of
25 [a named plaintiff’s] individual” experience).

26 As the Supreme Court recognized in *Plata*, the focus is not on each
27 Plaintiff’s experiences, but rather whether all of the Complaint’s allegations
28 collectively and properly allege deliberate indifference. Deliberate indifference in

1 systemic cases can be shown, for example, with evidence of: “systematic or gross
2 deficiencies in staffing, facilities, equipment, or procedures,” (*Hernandez v.*
3 *County of Monterey*, 305 F.R.D. 132, 152-53, 155 n. 138 (N.D. Cal. 2015));
4 “repeated examples of negligent acts which disclose a pattern of conduct by the
5 prison medical staff,” (*Hall v. Mims*, 2012 WL 1799179, *6 (E.D. Cal. May 16,
6 2012)); a failure to conduct more than minimal auditing of healthcare or otherwise
7 properly respond to concerns raised by audits or inspections, (*Dunn v. Dunn*, 219
8 F. Supp. 3d 1100, 1151-52 (M.D. Ala. 2016)) or respond to reports of substandard
9 care, (*Disability Rts. Mont. Inc. v. Batista*, 930 F.3d 1090, 1099 (9th Cir. 2019));
10 repeated examples of delayed or denied healthcare, (*Braggs v. Dunn*, 257 F. Supp.
11 3d 1171, 1252 (M.D. Ala. 2017) (citations omitted)); and renewal of third-party
12 contracts despite serious problems with care provided by those third parties (*Dunn*,
13 219 F. Supp. 3d at 1149-52).

14 As described above, the Complaint’s allegations establish that Defendants’
15 response to the health care needs of people in ICE custody has been objectively
16 unreasonable. Viewed most favorably to Plaintiffs, these allegations plausibly
17 demonstrate that Defendants acted with objective deliberate indifference to the
18 serious risks posed by the Challenged Practices.

19
20 ***d. Defendants’ “Professional Judgment” Argument
Should be Rejected.***

21 Defendants also argue in vain that Plaintiffs’ medical claims should be
22 dismissed because the inadequate medical treatment they received was based on
23 the professional judgment of medical care providers. The professional judgment
24 doctrine applies only if (1) the medical decision maker is a “qualified
25 professional,” and (2) the decision was not “gross[ly] negligen[t].” *Houghton v.*
26 *South*, 965 F.2d 1532, 1536 (9th Cir. 1992). On a motion to dismiss, Defendants
27 must show—based on the Complaint’s allegations—that both of these prerequisites
28 exist. They have not done so. Indeed, Defendants rely entirely on allegations

1 relevant to only two of the fifteen individual Plaintiffs. ECF No. 54 at 29.

2 In any event, the Complaint’s allegations demonstrate that professional
 3 judgment is not relevant to many of the Challenged Practices. For example,
 4 professional judgment does not apply to understaffing of medical care positions at
 5 detention centers (*see, e.g., Inmates of Allegheny Cty. Jail v. Pierce*, 612 F.2d 754,
 6 762–63 (3d Cir. 1979) (holding that professional judgment doctrine was precluded
 7 where understaffing constituted an effective denial of medical care), or provision
 8 of medical care by untrained or unqualified staff (*see, e.g., Langley v. Coughlin*,
 9 715 F. Supp. 522, 542 (S.D.N.Y. 1989) (holding that a person who is
 10 “professionally unqualified for his position [is] . . . by definition incapable of
 11 exercising ‘professional judgment’”). Further, the Complaint includes numerous
 12 allegations establishing that medical care in detention facilities is substandard, such
 13 as citations to eight different reports from departments and offices within
 14 Defendant DHS documenting substandard medical care. ¶¶ 221-22, 269-71, 284,
 15 311, 343-45, 347, 371-74. These allegations plausibly suggest that medical
 16 decisions have been grossly negligent. *See Nicoletti v. Brown*, 740 F. Supp. 1268,
 17 1280–81 (N.D. Ohio 1987) (holding that studies describing dangerous conditions
 18 at a detention facility indicated a total failure to exercise professional judgment).

19 Finally, even if the professional judgment doctrine applied to some of the
 20 Plaintiffs’ individual experiences, the Complaint’s remaining allegations suffice
 21 because together they plausibly suggest a Due Process claim.

22 **D. PLAINTIFFS ADEQUATELY ALLEGE THAT DEFENDANTS**
 23 **UNLAWFULLY SUBJECT THEM TO PUNITIVE**
 24 **CONDITIONS**

25 Plaintiffs’ Second and Third Claims allege, respectively, that use of
 26 segregation and treatment of people with disabilities in detention centers constitute
 27 punitive conditions in violation of the Due Process Clause. ¶¶ 631-43. In support,
 28 Plaintiffs have alleged a great deal of individual and systemic evidence—far
 exceeding the plausibility required at this juncture—that the challenged practices

1 are punitive. Defendants cursorily assert that these claims fail simply because
2 Plaintiffs did not allege that they were segregated “for punitive purposes,” ignoring
3 contrary Ninth Circuit precedent. ECF No. 54 at page 30.

4
5 1. Defendants Ignore Ninth Circuit Precedent Prescribing How
Plaintiffs May Establish Punitive Conditions.

6 “In evaluating the constitutionality of conditions or restrictions of pretrial
7 detention . . . the proper inquiry is whether those conditions amount to punishment
8 of the detainee.” *Bell*, 441 U.S. at 535. Defendants acknowledge, ECF No. 54 at
9 page 30, that the conditions of pretrial detention may not be more restrictive than
10 those of post-conviction detention, and that, in the case of civil detention, the
11 standard is even higher: People in civil detention are entitled to “more considerate”
12 treatment than people convicted of crimes. *See Jones*, 393 F.3d at 934.

13 A presumption of punitiveness can be established in two ways. First, “a
14 presumption of punitive conditions arises” where the conditions of civil detention
15 are identical or similar to, or more restrictive than, those in which people pre- or
16 post-criminal conviction criminal are held. *Id.*; *Torres*, 2019 WL 5883685, at *19.
17 Second, conditions are presumptively punitive where “the restrictions are
18 ‘employed to achieve objectives that could be accomplished in so many alternative
19 and less harsh methods.’” *Id.* (quoting *Jones*, 393 F.3d at 932).

20 If Plaintiffs establish even one of these presumptions, “the burden shifts to
21 the defendant to show (1) ‘legitimate, non-punitive interests justifying the
22 conditions of [the detained person’s] confinement’ and (2) ‘that the restrictions
23 imposed ... [are] not ‘excessive’” in relation to these interests.’” *King v. County of*
24 *Los Angeles*, 885 F.3d 548, 557 (9th Cir. 2018) (internal quotations and citation
25 omitted). Because this case is at the pleading stage, the Court must “accept[]
26 [Plaintiffs’] factual allegations in the complaint, and construe[] the pleadings in the
27 light most favorable to the non-moving party.” *Torres*, 2019 WL 5883685, at *3.
28 In addition, Defendants can “only rebut the presumption [of punitive conditions]

1 by referencing assertions in the [Complaint] or by reference to judicially noticeable
2 material showing the detainees are treated better than prisoners.” *Id.* at *19.

3 Here, Defendants do not attempt to rebut the presumption of punitiveness, so
4 the question is only whether the Complaint “contains sufficient factual allegations
5 to make it plausible”¹⁹ either (1) that subclass representatives and subclass
6 members are being detained “under conditions identical to, similar to, or more
7 restrictive than those under which” people are held pre-trial or post-conviction,
8 and/or (2) that the objectives of the restrictions at issue could be accomplished by
9 less harsh methods. *Jones*, 393 F.3d at 932, 934. As shown below, the Complaint
10 contains sufficient plausible allegations establishing the presumption of
11 punitiveness under both standards.

12
13 2. Plaintiffs Have Established a Presumption of Punitiveness with
Respect to Defendants’ Use of Segregation.

14 Plaintiffs’ Complaint contains extensive individual and systemic allegations
15 establishing that segregation in Defendants’ facilities is similar to or more
16 restrictive than in prison and thus violates the Fifth Amendment rights of the
17 Segregation Plaintiffs and Segregation Subclass. For example, Plaintiffs allege that
18 people in segregation in Defendants’ facilities often receive no or very limited
19 access to commissary, showers, or recreation. *See, e.g.*, ¶¶ 441, 452, 453. In some
20 cases, they are isolated 24 hours per day. ¶¶ 453, 546, 547. These are practices that
21 would violate the Eighth Amendment rights of convicted prisoners.²⁰ Because
22

23 ¹⁹ *Disability Rts. Mont.*, 930 F.3d at 1097.

24 ²⁰ For example, the Ninth Circuit reversed the dismissal of an Eighth Amendment
25 challenge to segregation in the prison context, holding that the plaintiff made
26 sufficient allegations concerning the placement of prisoners with disabilities in
27 segregation, including placing people in segregation for long periods of time
28 without proper care, using segregation as punishment for behavior stemming from
mental illness, and alleging that defendants’ improper responses increased a risk of
suicide. *Disability Rts. Mont.*, 930 F.3d at 1098. *See also Quintanilla v. Bryson*,

1 these conditions violate the Eighth Amendment, by definition they violate the Fifth
2 Amendment rights of civil people in civil detention. *See Bell*, 441 U.S. at 545. The
3 Complaint cites multiple reports establishing that the conditions in segregation
4 violated the rights of people in civil detention, that disciplinary and non-
5 disciplinary segregation are indistinguishable, and that conditions are “overly
6 restrictive.” ¶¶ 442-44, 449, 490.

7 While people may be segregated as a punishment for infractions committed
8 while in civil detention, this is permissible only following a due process hearing
9 and cannot be arbitrary or purposeless. *Mitchell v. Dupnik*, 75 F.3d 517, 524 (9th
10 Cir. 1996); *Bell*, 441 U.S. at 539 (restrictions or conditions on people in detention
11 that are “arbitrary or purposeless” violate due process).²¹ The Complaint contains
12 numerous allegations that people were placed in segregation without a hearing
13 based on medical, disability, or unexplained “safety” reasons, or for no clear
14 reason at all. *See* ¶¶ 445-46, 463-71, 491-92, 534, 542-43, 547. Each of these
15 allegations supports an inference of punitiveness. *Mitchell*, 75 F.3d at 524; *see also*
16 *Hiser v. Nev. Dep’t of Corrs.*, 708 F. App’x 297, 300 (9th Cir. 2017) (person in
17 pretrial detention stated due process claim when he alleged placement in
18 segregation as punishment for complaining about transfer).

19 Plaintiffs also satisfy *Jones*’s alternative test for establishing a presumption
20

21 730 F. App’x 738 (11th Cir. 2018) (finding that a prisoner’s claim that his long
22 stay in administrative segregation in a Georgia prison violated his constitutional
rights was plausible).

23 ²¹ The Defendants, relying on *Bell*, imply that “security and order” excuse these
24 punitive conditions, presumably those related to disciplinary segregation. ECF No.
25 54 at 30. However, maintaining security and order by sacrificing procedural due
26 process while imposing disciplinary segregation is harsh and/or excessive. Further,
27 at the pleading stage, Defendants cannot simply invoke such fact-based arguments,
which fall outside the four corners of the Complaint, to overcome the well-pleaded
allegations in the Complaint.

1 of punitiveness by properly alleging that there are less harsh alternatives to
 2 segregation. Crucially, since the Plaintiffs and class and subclass members are in
 3 civil immigration detention, Defendants have the authority to release the majority
 4 of them pending their hearings. *See* ¶¶ 156-57 (citing 8 C.F.R. § 212.5 and §
 5 1236.1). Plaintiffs further allege that equally effective and significantly less harsh
 6 alternatives to detention are available. ¶ 158. Finally, Plaintiffs allege that
 7 Defendants’ own standards require “a host of protections that are not implemented
 8 in practice.” ¶ 455.²² And even though it is a defense on which Defendants have
 9 the burden of proof, Plaintiffs also allege facts showing that the restrictions are
 10 excessive in relation to the ostensible interests served.²³

11 In sum, Plaintiffs have pleaded individual and systemic facts making more
 12 than plausible the Second Claim for Relief, that Defendants’ Segregation Practices
 13 are unjustifiably punitive and thus violate the Fifth Amendment.

14 3. Plaintiffs Have Established a Presumption of Punitiveness With
 15 Respect to Defendants’ Treatment of People With Disabilities.

16 Although Defendants seek dismissal of Plaintiffs’ Third Claim—asserting
 17 punitive conditions of confinement with respect to people with disabilities—their
 18 briefing includes only a passing reference to dismissing the claim in one of their
 19 headings and otherwise totally ignores this issue, thereby waiving the argument.

20
 21 ²² Plaintiffs allege that their treatment is more restrictive than Defendants’ specific
 22 policies, including in their Segregation and Disability Directives, allow. *See*
 23 *Torres*, at *21 (finding that plaintiffs’ arguments that the conditions at an ICE
 24 facility are more restrictive than those in the detention standards governing the
 facility were sufficient to state a claim).

25 ²³ For example, Plaintiff Montoya Amaya was placed in disciplinary segregation
 26 for a week for eating an extra tray of food he was accidentally given. ¶ 471.
 27 Plaintiff Ali was placed all alone for months on end by security staff in a housing
 28 unit designed for dozens of people, causing her mental health disability to become
 exacerbated to the point of attempting suicide. ¶¶ 469-70. And Plaintiff Fraihat was
 not allowed out of his cell in medical segregation at any time, despite requests to
 be let out. ¶ 546.

1 *See Aramark Facility Servs. v. SEIU Local 1877*, 530 F.3d 817, 8924 n.2 (9th Cir.
2 2008) (failure to adequately brief an argument waives the argument.).

3 On the merits, Defendants’ treatment of people with disabilities in ICE
4 custody is also impermissibly punitive. The Complaint provides examples of
5 people with disabilities who received needed accommodations in jails or prisons,
6 but were not provided them in immigration detention. ¶¶ 597-99. This is precisely
7 the kind of comparison with criminal facilities that this Court recently found
8 sufficient to create a presumption of punitiveness for people in immigration
9 detention. *Torres*, 2019 WL 5883685 at *19. Plaintiffs also allege that people with
10 disabilities are placed in segregation in lieu of providing services or
11 accommodations and without the monitoring required by their disabilities. ¶¶ 463,
12 465, 491-92, 542, 544.

13 Ultimately, as this Court recently held as to these same Defendants, their
14 “policies and procedures are so needlessly restrictive as to be punitive.” *Torres*,
15 2019 WL 5883685, at *2. As in *Torres*, Plaintiffs here allege that Defendants have
16 failed to afford them “more considerate treatment than that typically afforded non-
17 immigration detainees;” these allegations “are sufficient to create a presumption of
18 punitiveness.” *Id.* at *19. Plaintiffs have properly alleged that the Disability
19 Plaintiffs and Disability Subclass could be detained under less harsh conditions, for
20 example, by being paroled. These allegations suffice to establish two of the
21 *Jones/King/Torres* presumptions—either one of which is sufficient—and to shift
22 the burden to Defendants to justify these conditions, which they have not done.

23
24 **E. PLAINTIFFS STATE A CLAIM FOR VIOLATION OF THE
REHABILITATION ACT**

25 Defendants misstate the legal standard under the Rehabilitation Act for
26 allegations against covered entities operating detention facilities. Specifically, they
27 ignore the fact that the Rehabilitation Act requires more than simply providing a
28 reasonable accommodation after a person with a disability asks for it—the Act

1 places an affirmative obligation on such entities to make the benefits of their
2 programs and services accessible to such persons. *See Updike v. Multnomah*
3 *County*, 870 F.3d 939, 949 (9th Cir. 2017) (citing *Duvall v. County of Kitsap*, 260
4 F.3d 1124, 1136 (9th Cir. 2001); *Pierce v. District of Columbia*, 128 F. Supp. 3d
5 250, 266-67 (D.D.C. 2015) (citing 42 U.S.C. § 12132(2) and 28 C.F.R. § 35.130
6 (b)(1)(ii)), *reconsideration denied*, 146 F. Supp. 3d. 197 (D.D.C. 2015)).

7 In the context of detention facilities, this means that covered entities cannot
8 wait for detained persons to self-identify and request specific accommodations as
9 Defendants suggest—rather, covered entities must *affirmatively* evaluate the
10 programs and services they offer to ensure that people with disabilities have
11 meaningful access to those services. *See Armstrong v. Brown*, 732 F.3d 955, 958-
12 62 (9th Cir. 2013) (affirming order requiring state department of corrections to
13 ensure county facilities housing their people in detention affirmatively track and
14 accommodate the needs of people in detention with disabilities, including within
15 24 hours of intake). This affirmative duty “is seemingly at its apex” in the
16 detention context; detention facilities “have even more responsibility in this regard,
17 because inmates necessarily rely totally upon corrections departments for all of
18 their needs while in custody and do not have the freedom to obtain such services
19 (or the accommodations that permit them to access those services) elsewhere.”
20 *Pierce*, 128 F. Supp. 3d at 269 (emphasis in original) (referring to the affirmative
21 obligations of state prison facilities to accommodate the needs of inmates with
22 disabilities).

23 Defendants’ reliance on *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th
24 Cir. 2010), ECF No. 54 at 32, for the proposition that they can escape liability
25 where detained persons fail to request specific accommodations, is misplaced. That
26 case involved a failure to accommodate claim made by a person in a public
27 education context and did not address a covered entity’s affirmative obligation to
28 ensure that its programs and services, when viewed in their entirety, are readily

1 accessible to people with disabilities. *Id.* Moreover, “[t]he law permits broadly
2 defined classes of disabled individuals to challenge accommodation policies, so
3 long as the class representatives suffer from the disability.” *Pierce v. Cty. of*
4 *Orange*, 761 F. Supp. 2d 915, 921 (C.D. Cal. 2011) (citing *Armstrong v. Davis*,
5 275 F.3d 849, 868–69 (9th Cir. 2001)).

6 Here, Plaintiffs allege that despite the centralized control Defendants
7 maintain over detention facilities nationwide, they systemically fail to comply with
8 their affirmative obligations under the Rehabilitation Act as a matter of practice.
9 Among other systemic failures, these allegations show that Defendants fail to
10 adequately evaluate the accessibility of their programs and services (¶¶ 513-521);
11 fail to ensure detention facilities maintain and implement adequate screening to
12 identify, track, and accommodate the needs of detained people with disabilities (¶¶
13 522-537); fail to ensure detention facilities have adequate systems in place for the
14 provision of reasonable accommodations, including accommodations needed to
15 provide effective communication for detained persons (¶¶ 549-579); improperly
16 place persons with disabilities in segregation (¶¶ 538-548); and fail to administer
17 their programs and services in the most integrated setting appropriate for detained
18 persons with disabilities (¶¶ 16, 591).

19 Defendants also mischaracterize the factual allegations in the Complaint.
20 The Complaint documents disability subclass members’ experience that illustrate
21 the ongoing harms they and other detained persons with disabilities face as a result
22 of Defendants’ continued failure to comply with their affirmative obligations under
23 the Rehabilitation Act. Additionally, the Complaint is rife with examples of
24 situations where, despite being on notice of the disability-related needs of the
25 disability subclass Plaintiffs, Defendants’ failure to accommodate those needs is
26 ongoing.

27 These include allegations that Defendants continue to deny Plaintiff Alcocer
28 Chavez access to an ASL interpreter and videophone, despite being on notice of

1 these requests (¶¶ 557-558); that Defendants continue to deny Plaintiff Sudney
2 access to a wedge and special shoes for his physical disabilities, despite the fact
3 that he received those same accommodations while in prison (¶ 567 (noting
4 detention facility official’s comment that ICE has a “different standard”)); that
5 Plaintiff Mencias Soto remains without access to crutches and physical therapy for
6 his mobility disabilities, despite multiple requests (¶¶ 76-77, 266-67); that
7 Defendants continue to deny Plaintiff Hernandez, who has mobility disabilities, a
8 special chair he requested after experiencing increased pain with prolonged sitting
9 or standing and handrails to assist him in using the toilet (¶¶ 568-70); that despite
10 the fact that ICE designated Mr. Hernandez’s cell as “accessible,” its lack of
11 handrails for the toilet further demonstrates the breakdown in ICE’s system for
12 accommodating disability-related needs (*id.*); that Defendants continue to deny
13 Plaintiff Sanchez Martinez a back brace, twice daily insulin checks, and an
14 appropriate diet for his diabetes, despite being on notice of those needs (¶¶ 260-64,
15 290); that Defendants still fail to provide Plaintiff Baca Hernandez
16 accommodations for his vision disability, thus requiring him to have others read his
17 immigration documents to him (¶ 16); that Defendants still fail to provide Plaintiff
18 Munoz an appropriate diet for his diabetes, despite his extensive history of
19 complications from diabetes, including an insulin overdose while in ICE custody
20 (¶¶ 313-15); that Defendants still fail to provide Plaintiff Rodriguez Delgadillo
21 appropriate therapy for his mental health disabilities, despite being on notice of
22 that need (¶¶ 72-73, 361, 521); and that Defendants continue to place Plaintiff
23 Murillo Hernandez in 24-hour segregation rather than providing him
24 accommodations for his severe allergies in a more integrated setting (¶¶ 47, 520,
25 547).

26 Further, in light of the affirmative nature of Defendants’ Rehabilitation Act
27 obligations, disability subclass plaintiffs and putative subclass members remain
28 subject to Defendants’ ongoing policy failures, including the failure to identify,

1 track and accommodate the needs of persons with disabilities in ICE facilities,
 2 irrespective of whether individual plaintiffs have pled that they put Defendants on
 3 notice of their disability-related needs. Thus, contrary to Defendants’ assertion,
 4 ECF No. 54 at page 33, Plaintiffs such as Ms. Ali (mental health disability) and
 5 Mr. Montoya Amaya (mental health disability and untreated brain parasite) who
 6 have ongoing disability-related needs and continue to be imprisoned in detention
 7 facilities need not specifically plead that they asserted a need for a particular
 8 accommodation for their Rehabilitation Act claims to survive.

9 And, even where Defendants have eventually responded to accommodation
 10 requests made by detained people (*e.g.*, after more than a year of denying Plaintiff
 11 Fraihat access to a wheelchair, leaving him without access to the cafeteria, among
 12 other essential services, Defendants eventually provided him one, ¶ 25), such
 13 people are still subject to Defendants’ failed policies and practices for identifying,
 14 tracking and accommodating the needs of persons with disabilities in detention,
 15 and thus have ongoing claims for injunctive relief.

16 Plaintiffs have more than adequately pled allegations of Defendants’
 17 ongoing failures of their affirmative obligations to meet the disability-related needs
 18 of persons detained in detention facilities.

19 **F. THE ORGANIZATIONAL PLAINTIFFS HAVE STANDING**
 20 **AND STATE CLAIMS FOR RELIEF**

21 1. Defendants’ Policies and Practices Frustrate Organizational
 22 Plaintiffs’ Missions and Force Them to Divert Significant
Resources in Response

23 An organization establishes direct standing if it shows (1) that the challenged
 24 practice frustrates its core mission, and (2) that it has diverted its resources to
 25 combat the challenged practice. *See Torres*, 2019 WL 5883685 at *8; *Valle Del*
 26 *Sol, Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013); *Fair Hous. Council of*
 27 *San Fernando Valley v. Roomate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012).

28 Frustration of mission occurs when “challenged practices have perceptibly

1 impaired [an organization’s] ability to provide the services [it was] formed to
2 provide.” *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 765 (9th Cir. 2018)
3 (internal quotations omitted); *see also Nat’l Council of La Raza v. Cegavske*, 800
4 F.3d 1032, 1040 (9th Cir. 2015) (frustration of mission when an organization is
5 forced to focus on one element of its mission, at the expense of “some other aspect
6 of their organizational purpose”). An organization shows injury by diversion of
7 resources when it is forced to dedicate resources it “otherwise would spend in other
8 ways” to combat the challenged policy. *El Rescate Legal Servs., Inc. v. Exec.*
9 *Office of Immigration Review*, 959 F.2d 742, 748 (9th Cir. 1991). Such a diversion
10 occurs when the organization alters its resource allocation in response to the
11 policy, rather than “simply going about their ‘business as usual.’” *Am. Diabetes*
12 *Ass’n v. United States Dep’t of the Army*, 938 F.3d 1147, 1154 (9th Cir. 2019). The
13 organizational Plaintiffs have each adequately alleged both frustration of their
14 missions and diversion of resources sufficient to establish standing.

15 While a “setback to the organization’s abstract social interest” is insufficient
16 to establish standing, both Inland Coalition for Immigrant Justice (“ICIJ”) and Al
17 Otro Lado (“AOL”) have suffered a frustration of mission that is far from abstract,
18 as is made clear by the allegations in the Complaint. *Torres*, 2019 WL 5883685 at
19 *8. ICIJ’s mission is to advocate for and improve the lives of immigrants through
20 community engagement. ¶¶ 98-99. Defendants’ policies and practices have forced
21 ICIJ to shift its focus away from its broad community-oriented mission in order to
22 support medically vulnerable people and people with disabilities in ICE custody.
23 ¶¶ 99-101. AOL’s mission is to “coordinate and provide screening, advocacy, and
24 legal representation” for people in immigration proceedings, including detention.
25 ¶ 111. AOL has alleged in detail how Defendants’ policies and practices frustrate
26 this mission by forcing AOL’s employees to advocate for their detained clients’
27 access to healthcare and disability-related accommodations, rather than supporting
28 them in their immigration proceedings. *See, e.g.*, ¶¶ 115, 124-125 (staff attorney

1 forced to spend “several days investigating and advocating for a client with HIV to
2 get the medicine they needed . . . such that the client would be healthy and stable
3 enough to proceed on their immigration case for which [AOL] was originally
4 retained”). ICIJ and AOL have both alleged frustration of mission surpassing what
5 the Ninth Circuit has previously accepted. *See, e.g., E. Bay Sanctuary Covenant,*
6 *932 F.3d at 766; Fair Hous. Council of San Fernando Valley, 666 F.3d at 1219.*

7 Each organization also alleges in detail how it has been forced to divert
8 significant resources toward one piece of its mission at the expense of its broader
9 organizational goals. For example, ICIJ hired full-time staff specifically to
10 advocate for people in detention who require medical, mental health, or disability-
11 related supports (¶ 101); developed a protocol on advocating for people facing
12 medical emergencies in detention, including resource-intensive coordination with
13 family members, medical providers, and social workers (¶ 104); and diverted
14 funding to open a new office at Adelanto (¶ 105). Absent Defendants’ challenged
15 practices, ICIJ would have more capacity “to promote the rights of and justice for
16 immigrant communities in Southern California.” ¶ 106.

17 Similarly, AOL staff spends time and resources advocating for clients to
18 receive access to healthcare care and accommodations, requiring them to forgo
19 other cases they would typically take. ¶¶ 112-125. For example, after two of
20 AOL’s clients suffered miscarriages in detention due to Defendants’ failure to
21 provide timely medical care, AOL staff began spending resources preparing
22 pregnant asylum seekers as they enter custody and coordinating with medical
23 professionals to document pregnancy to ensure that their pregnant clients receive
24 the support they need. ¶ 116. AOL diverts resources towards cases of clients with
25 poorly treated mental health conditions; if Defendants treated those conditions
26 properly, AOL could instead represent more clients and pursue other programs. *See*
27 ¶¶ 117-118; *see also* ¶¶ 120-121. AOL has also spent additional time on cases that
28 were delayed due to quarantines after outbreaks of infectious diseases that could

1 have been prevented if Defendants provided adequate care. ¶ 124. AOL must
 2 divert resources “away from its other programs and its assistance of other
 3 migrants,” making it “much harder” for the organization to support and empower
 4 its client base as a whole. ¶¶ 112-113, 125.

5 As these allegations demonstrate, ICIJ and AOL have alleged frustration of
 6 mission and diversion of resources far exceeding what courts have accepted in
 7 previous cases,²⁴ confirming that both organizations have standing to challenge the
 8 Defendants’ constitutionally inadequate policies in immigration detention.

9
 10 2. Organizational Plaintiffs Fall Within the Zone of Interest of the
 Rehabilitation Act

11 Defendants also contend that ICIJ and AOL fall outside the “zone of
 12 interest” of the Rehabilitation Act. This argument is meritless. Whether a plaintiff
 13 comes within the zone of interest protected by a statute, as required for statutory
 14 standing, depends on “whether a legislatively conferred cause of action
 15 encompasses a particular plaintiff’s claim.” *E. Bay Sanctuary Covenant v. Trump*,
 16 354 F. Supp. 3d 1094, 1111 (N.D. Cal. 2018); *see also Lexmark Int’l, Inc. v. Static*
 17 *Control Components, Inc.*, 572 U.S. 118, 127 (2014). The Rehabilitation Act
 18 protects “‘any person aggrieved’ by the discrimination of a person on the basis of
 19

20
 21 ²⁴ Defendants also place too high a burden of proof on Organizational Plaintiffs to
 22 show diversion of resources as related to organizational standing. Controlling
 23 precedent has made clear that a diversion of resources is sufficiently established at
 24 the pleading stage when it is “broadly alleged.” *See Nat’l Council of La Raza*, 800
 25 F.3d at 1040; *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)
 26 (“If, as broadly alleged, [defendants’] steering practices have perceptibly impaired
 27 [plaintiff organization’s] ability to provide counseling and referral services for
 28 low- and moderate-income homeseekers, there can be no question that the
 organization has suffered injury in fact.”); *Lujan v. Defs. of Wildlife*, 504 U.S. 555,
 561 (1992) (“At the pleading stage, general factual allegations of injury resulting
 from the defendant’s conduct may suffice, for on a motion to dismiss we presume
 that general allegations embrace those specific facts that are necessary to support
 the claim.”) (internal quotations omitted).

1 his or her disability.” 29 U.S.C. § 794a(a)(2). Courts have interpreted the Act’s
 2 zone of interest to extend broadly, including not only people with disabilities, but
 3 also those who advocate for them. *See Jewett v. Cal. Forensic Med. Group, Inc.*,
 4 2017 WL 980446, *8 (E.D. Cal. Mar. 13, 2017) (finding standing for both
 5 incarcerated people seeking accommodations and an organization advocating for
 6 them); *P.P. v. Compton Unified Sch. Dist.*, 135 F.Supp.3d 1098, 1125 (C.D. Cal.
 7 2015) (finding standing for both students with disabilities and their teachers); *Oster*
 8 *v. Lightbourne*, 2012 WL 691833, at *11 (N.D. Cal. Mar. 2, 2012) (finding
 9 standing for both people with disabilities who require supportive services and the
 10 union representing the service providers). It is sufficient that the organization’s
 11 “asserted interests are consistent with and more than marginally related to the
 12 purposes of” the statute. *E. Bay Sanctuary Covenant*, 932 F. 3d 768.

13 Both organizations’ interests fall squarely within the zone of interest of the
 14 Act: their injuries arise from the need to assert and enforce the rights of their
 15 clients with disabilities. Defendants’ challenged policies have required ICIJ and
 16 AOL to make advocacy for their clients’ disability rights a priority, aligning their
 17 interests increasingly with the purposes of the Act. ¶¶ 101, 112-13, 122. Because
 18 their injuries are rooted in Defendants’ disability discrimination against their
 19 clients, ICIJ’s and AOL’s claims place them within the zone of interest of Section
 20 504 of the Rehabilitation Act.

21 **G. DEFENDANTS’ MOTION TO STRIKE THE ALLEGATIONS**
 22 **OF CLASSWIDE MISCONDUCT IS GROUNDLESS**

23 Defendants’ motion to strike seeks to exclude volumes of Plaintiffs’
 24 Complaint in an extraordinary attempt to unilaterally convert this nationwide
 25 putative class action on behalf of more than 50,000 people into a narrow case on
 26 behalf of only 15 people at a handful of facilities. In so doing, Defendants again
 27 ignore that Plaintiffs seek declaratory and injunctive relief to remediate systemic
 28 failures that subject the tens of thousands of people in ICE’s custody—and not just

1 themselves—to a substantial risk of serious harm.

2 “Courts generally disfavor and rarely grant motions to strike, since they
3 impose a drastic and extreme remedy.” *Kohler v. Big 5 Corp.*, 2012 WL 1511748,
4 *2 (C.D. Cal. Apr. 30, 2012). Accordingly, a motion to strike shall be granted only
5 where “the pleadings in dispute are redundant, immaterial, impertinent or
6 scandalous” *and* where the moving party additionally demonstrates “prejudice.”
7 *Monster Energy Co. v. Vital Pharm., Inc.*, 2019 WL 2619666, at *17 (C.D. Cal.
8 May 20, 2019). Motions to strike should be denied “unless the allegations have no
9 possible relation to the controversy and may cause prejudice to one of the parties.”
10 *Peterson v. Mazda Motor of Am., Inc.*, 44 F. Supp. 3d 965, 968 (C.D. Cal. 2014).
11 “In determining whether to grant a motion to strike, a district court views the
12 pleadings in a light most favorable to the non-moving party, and resolves any
13 doubt as to the relevance of the challenged allegations in the plaintiff’s favor.”
14 *McCrary v. Elations Co., LLC*, 2013 WL 6403073, at *4 (C.D. Cal. July 12, 2013)
15 (internal quotation omitted).

16 Defendants here cannot meet their “heavy burden” of proving both that the
17 challenged allegations have no possible relation to the case and that they will suffer
18 prejudice. *See Advanced Microtherm, Inc. v. Norman Wright Mech. Equip. Corp.*,
19 2004 WL 2075445, *12 (N.D. Cal. Sept. 15, 2004).

20 First, each of the challenged allegations relates directly to Plaintiffs’ legal
21 claims, and Defendants’ erroneous contentions to the contrary ignore both the
22 scope and legal basis of this suit.²⁵ Plaintiffs seek to represent a class of all people
23 who are currently, or in the future will be, in ICE custody and subjected to the
24 challenged policies and practices. ¶ 600. At the time the Complaint was filed, the
25

26
27 ²⁵ Indeed, Defendants betray their motive for asking the Court to strike the bulk of
28 the Complaint’s allegations by conceding that the allegations are “undoubtedly . . .
troubling.” ECF No. 54 at 11.

1 putative class consisted of over 50,000 people in approximately 158 different
 2 facilities. *See* ¶¶ 7, 12. For this reason alone, Defendants cannot seriously dispute
 3 the relevance of Plaintiffs’ allegations concerning conditions in facilities where
 4 putative class members are detained.²⁶ Further, although Defendants broadly object
 5 to numerous allegations demonstrating the nationwide scope of inadequate
 6 conditions and their often fatal consequences (*e.g.*, so-called “old reports” and
 7 Detainee Death Reviews), such allegations provide crucial evidence for Plaintiffs’
 8 systemic claims.²⁷ *See Plata*, 563 U.S. at 505 n.3 (“Plaintiffs rely on systemwide
 9 deficiencies in the provision of medical and mental health care that, taken as a
 10 whole, subject sick and mentally ill prisoners in California to “substantial risk of
 11 serious harm”); *see also Gray*, 2014 WL 5304915, at *9 (holding that the
 12 experiences of the named plaintiff in a class action was only one piece of
 13 evidence—among others—of a deficient policy and thus whether those experiences
 14 alone were actionable was irrelevant).

15 Moreover, information that helps establish a “pattern of misconduct” or
 16 “establish Defendants’ knowledge or willfulness” should not be stricken. *See*
 17 *Corson v. Toyota Motor Sales, U.S.A., Inc.*, 2013 WL 10068136, at *8 (C.D. Cal.
 18 July 18, 2013) (internal citations omitted); *see also Hall v. Mims*, 2012 WL
 19 1799179, at *6 (E.D. Cal. May 16, 2012). For example, Plaintiffs’ allegations
 20 concerning Detainee Death Reviews that resulted from lengthy and dangerous
 21

22 ²⁶ To the extent Defendants’ motion implicitly seeks to strike Plaintiffs’ class
 23 allegations, it is premature. *See Brown v. DIRECTV, LLC*, 2014 WL 12599363, at
 24 *2 (C.D. Cal. May 27, 2014) (collecting cases).

25 ²⁷ In addition to providing direct evidence of Plaintiffs’ claims, these allegations also
 26 provide relevant historical context and should not be stricken. *Monster Energy Co.*,
 27 2019 WL 2619666, at *17 (allegations that provide “background,” “historical
 28 material,” or relevant “context for Plaintiff’s claims” should not be stricken);
Mireskandari v. Daily Mail & Gen. Tr. PLC, 2013 WL 12129642, at *2 (C.D. Cal.
 July 31, 2013) (collecting cases).

1 denials of medical and mental health care support the inference that Defendants
2 have a policy and practice of failing to adequately monitor, oversee, and administer
3 detention facilities. ¶¶ 624-55. The same is true of Plaintiffs’ other allegations
4 evincing Defendants’ pattern of maintaining inadequate conditions in its facilities
5 across the country.

6 Finally, even if Defendants had been able to prove that the challenged
7 allegations have no possible relation to this case (which they cannot), they would
8 not satisfy the additional burden that they establish prejudice. Defendants’
9 conclusory contention that it will be difficult to “meaningfully respond” to the
10 allegations does not show prejudice. As other courts have recognized, Defendants
11 can simply admit or deny the allegations or state that they lack sufficient
12 information to do so. *See In re DBSI, Inc.*, 2011 WL 607398, at *4 (Bankr. D. Del.
13 Feb. 4, 2011) (rejecting defendants’ argument that responding to extensive factual
14 allegations in the complaint would lead to extensive discovery as defendants could
15 easily “deny factual allegations by responding that they were without knowledge or
16 information sufficient to form a belief as to their truth.”); *see also Weng v. Solis*,
17 842 F. Supp. 2d 147, 161 (D.D.C. 2012) (denying defendant’s motion to strike
18 even where some allegations were arguably irrelevant because defendants failed to
19 show any specific prejudice would result).

20 The Motion to Strike should be denied in its entirety.

21 **IV. CONCLUSION**

22 For the reasons above, Defendants’ motions to sever, dismiss, and strike
23 should be denied.

24 //
25 //
26 //
27 //
28 //

1 Dated: January 20, 2020

Respectfully Submitted,

3 /s/ Timothy P. Fox

/s/ William F. Alderman

4 Timothy P. Fox
Elizabeth Jordan
5 CIVIL RIGHTS EDUCATION AND
ENFORCEMENT CENTER

William F. Alderman
Mark Mermelstein
Jake Routhier
ORRICK, HERRINGTON &
SUTCLIFFE LLP

7 /s/ Stuart Seaborn

/s/ Lisa Graybill

8 Stuart Seaborn
Christina Brandt-Young
9 Melissa Riess
10 DISABILITY RIGHTS
ADVOCATES

Lisa Graybill
Shalini Goel Agarwal
Jared Davidson
Maia Fleischman
SOUTHERN POVERTY LAW
CENTER

12 Attorneys for Plaintiffs

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28