UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 19-1546 JGB (SHKx)**	Date	April 15, 2020
Title	***Faour Abdallah Fraihat, et al. v. U.S. Immigration and Customs Enforcement, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) DENYING Defendants' Motion for Reconsideration (Dkt. No. 52); and (2) DENYING Defendants' Motion to Sever and Dismiss (Dkt. No. 54) (IN CHAMBERS)

Before the Court is Defendants' motion for reconsideration re transferring the case, ("MTR," Dkt. No. 52), and motion to sever and dismiss claims, alternatively transfer actions, and to strike portions of the complaint, ("MTD," Dkt. No. 54). After considering the papers filed in support of and in opposition to the matter, and the oral argument presented, the Court DENIES the Motions.

I. BACKGROUND

A. Procedural Background

On August 19, 2019, Faour Abdallah Fraihat, Marco Montoya Amaya, Raul Alcocer Chavez, Jose Segovia Benitez, Hamida Ali, Melvin Murillo Hernandez, Jimmy Sudney, José Baca Hernández, Edilberto García Guerrero, Martín Muñoz, Luis Manuel Rodriguez Delgadillo, Ruben Darío Mencías Soto, Alex Hernandez, Aristoteles Sanchez Martinez, Sergio Salazar Artaga,[1] ("Individual Plaintiffs"), Inland Coalition for Immigrant Justice ("ICIJ"), and Al Otro

[1] The Court will refer to Individual Plaintiffs by their last names, unless Plaintiffs have the same last name, in which case the Court will use full names. The remainder of the Order will omit diacritical marks.

Lado ("Organizational Plaintiffs) (collectively, "Plaintiffs") filed a putative class action complaint for declaratory and injunctive relief. ("Complaint," Dkt. No. 1 ¶¶ 21-126.) The defendants are U.S. Immigration and Customs Enforcement ("ICE"), U.S. Department of Homeland Security ("DHS"), DHS Acting Secretary Kevin McAleenan, ICE Acting Director Matthew T. Albence, ICE Deputy Director Derek N. Brenner, ICE Enforcement and Removal Operations ("ERO") Acting Executive Associate Director Timothy S. Robbins, ERO Assistant Director of Custody Management Tae Johnson, ICE Health Service Corps ("IHSC") Assistant Director Stewart D. Smith, ERO Operations Support Assistant Director Jacki Becker Klopp, and DHS Senior Official Performing Duties of the Deputy Secretary David P. Pekoske (collectively "Defendants"). (Id. ¶¶ 127-36.)

Plaintiffs are immigration detainees with a range of serious health conditions and two organizations that provide services to detainees. (Id. at ¶¶ 21-126.) They claim Defendants have failed to ensure minimum lawful conditions of confinement at immigration detention facilities across the country. (Id. ¶¶ 1-13.) Plaintiffs assert four claims: (1) Due Process Clause of the Fifth Amendment - failure to monitor and prevent "Challenged Practices"[2] (all Plaintiffs and the Class against all Defendants); (2) Due Process Clause of the Fifth Amendment - failure to monitor and prevent "Segregation Practices" (Organizational Plaintiffs, Segregation Plaintiffs and Segregation Subclass against all Defendants); (3) Due Process Clause of the Fifth Amendment - failure to monitor and prevent "Disability-Related Practices" that constitute punishment (Organizational Plaintiffs, Disability Plaintiffs, and Disability Subclass against all Defendants); (4) violation of § 504 of the Rehabilitation Act ("Rehab Act"), 29 U.S.C. § 794 (Organizational Plaintiffs, Disability Plaintiffs, and Disability Subclass against DHS, ICE, and IHSC). (Compl.)

On August 19, 2019, the same day that they filed the Complaint, Plaintiffs filed a notice of related cases regarding Ernesto Torres, et al., v. Department of Homeland Security, et al., No. 5:18- cv-02604 (C.D. Cal. Dec. 14, 2018) ("Torres") and Raul Novoa, et al., v. The Geo Group, No. 5:17-cv-025140 (C.D. Cal. Dec. 19, 2017) ("Novoa"). ("Notice," Dkt. No. 4.) On August 22, 2019, the Court entered a transfer order, which related the Complaint to Torres and transferred the matter to this Court. ("Transfer Order," Dkt. No. 20.)

Defendants were served with the Complaint on August 29, 2019. (Dkt. Nos. 37-46.) Defendants filed the Motions on November 27, 2019. (MTS; MTD.) Plaintiffs opposed the Motions, ("MTS Opposition," Dkt. No. 70; "MTD Opposition," Dkt. No. 69), and Defendants replied. ("MTS Reply," Dkt. No. 73; "MTD Reply," Dkt. No. 75.) The Court granted the parties' requests to exceed page limitations.[3]

---

[2] The Court provides Plaintiffs' definitions of the Class and Subclasses, and of the Challenged Practices, Segregation Practices, and Disability Practices in the following Section.

[3] For each round of briefing, opposition, and reply, the parties filed an ex parte request to exceed the page limits set out by local rules. (Dkt. Nos. 53, 68, 74.) In the future, the parties should present their page-limitation and other motion-related requests in a single filing before the underlying motion is filed.

B. Factual Allegations

The following allegations are taken as true for the purposes of the Rule 12(b)(6) portion of the MTD. They are also accepted as true for the purposes of the Rule 12(b)(1) facial attack on some Plaintiffs' standing at the time of the commencement of the action:

Plaintiffs are immigration detainees in the custody of ICE who are subjected to horrific, inhumane, punitive, and unlawful conditions of confinement. (Compl. ¶ 1.) Eight of the fifteen Individual Plaintiffs are detained at Adelanto ICE Processing Center in Adelanto, California, and the rest are presently held at other detention facilities around the country, including in Alabama, Arizona, Colorado, Georgia, and Louisiana. (Id. ¶¶ 21-96.) Plaintiffs' past injuries and ongoing risk of harm are allegedly caused by the same government actions related to (1) healthcare, (2) disability, and (3) segregation. Plaintiffs are particularly vulnerable in that they have a range of serious medical and mental health conditions. (Id. ¶ 2.)

For example, Fraihat experiences vision loss and mental health disabilities and uses a wheelchair. (Id. ¶ 22.) Amaya suffers from an end-stage brain parasite that has not been treated, as well as mental health conditions. (Id. ¶ 27.) Chavez is deaf and communicates in American sign language (ASL). (Id. ¶ 32.) Benitez is a U.S. Marine Corps veteran who served in Operation Iraqi Freedom and Operation Enduring Freedom, and he endures related depression, anxiety, hearing loss, brain injury, and combat PTSD, as well as a heart condition. (Id. ¶¶ 37-38.) Ali expresses suicidal ideation and psychological distress, exacerbated by nine months of isolation. (Id. ¶¶ 41-42.) Melvin Murillo Hernandez lives with several life-threatening food allergies and has suffered anaphylactic shock in custody, resulting in four hospitalizations. (Id. ¶ 46.) Sudney bears vision loss, mental health disabilities including PTSD, and high blood pressure. (Id. ¶ 51.) Jose Baca Hernandez is blind. (Id. ¶ 57.) Guerrero experiences chronic neck and shoulder pain and low vision and hearing, resulting from an attack while he was in ICE custody, as well as swelling in his right ankle from an incident prior to his detention. (Id. ¶¶ 62-63.) Munoz has type II diabetes, high cholesterol, high blood pressure, depression, and anxiety. (Id. ¶ 65.) Delgadillo is diagnosed with schizophrenia and bipolar disorder. (Id. ¶ 72.) Soto experiences severe back and leg pain due to nerve compression and a herniated disc in his back, after falling in the shower in custody, and requires the use of mobility aids. (Id. ¶¶ 76-77.) Alex Hernandez has vision loss, Barrett's esophagus, hypertension, PTSD, a torn rotator cuff in his right shoulder and pain in his back and legs, which limit his mobility and daily activities. (Id. ¶ 79.) Martinez has diabetes, neuropathy, hypertension, a bone spur, Charcot foot, avascular necrosis, non-palpable pulses in lower extremities, venous insufficiency, and requires the use of a wheelchair. (Id. ¶¶ 86-87.) Artaga lives with cerebral palsy and endures chronic back and knee pain, requiring medication, knee braces, and a cane. (Id. ¶¶ 92-93.)

This putative class action challenges conditions at all ICE "Detention Facilities"—the "approximately 158 facilities that hold ICE detainees for more than 72 hours." (Id. ¶ 8.) Although Plaintiffs have diverse conditions, they claim the same systemwide failures in monitoring and oversight of Detention Facilities affect them. Plaintiffs divide themselves into a

class and two subclasses, depending on the type of systemwide practice challenged. The "Class" is subject to "Challenged Practices" on healthcare, (id. ¶ 600); the "Segregation Subclass" is subject to "Segregation Practices," (id. ¶ 608); and the Disability Subclass is subject to "Disability Practices," (id. ¶ 616). All Individual Plaintiffs would be in the putative Class, and each would be in both, one, or none of the Subclasses.[4]

The "Challenged Practices" relevant to healthcare, and the first claim for relief, include the failure to ensure:

> (1) adequate medical and mental health care without lengthy and dangerous delays and outright denials of care; (2) timely access to medically necessary specialty care or chronic care; (3) provision of health care by trained or qualified personnel; (4) provision of timely emergency health care; (5) adequate physical and mental health intake screening; (6) adequate staffing of medical and mental health care positions; (7) adequate mental health care; (8) adequate maintenance of medical records and documentation; and (9) location of Detention Facilities in places where specialists and community health care providers are readily available.

(Id. ¶ 204.) In addition, the Class challenges (10) "Defendants' policies, practices, and procedures resulting in Defendants' failure to ensure that conditions of confinement at Detention Facilities are not similar to, or worse than, conditions found in prisons." (Id.) The Challenged Practices are allegedly the result of Defendants' systematic "failure to adequately monitor and oversee medical and mental health care practices in Detention Facilities." (Id. ¶ 207.)

The "Segregation Practices" relevant to isolation policies, and the second claim for relief, include: "(1) confinement in conditions that are punitive, (2) exposure to a substantial risk of serious harm, and (3) inadequate procedural protections." (Id. ¶ 432.) The Segregation Practices also allegedly result from Defendants' failure to monitor or oversee Detention Facilities. (Id. ¶ 436.)

The "Disability-Related Practices" or "Disability Practices" relevant to the third and fourth claim for relief against Defendants include:

> (1) failing to ensure that their programs are readily accessible to and usable by detained individuals with disabilities; (2) to the extent structural changes or other measures are necessary to make such facilities readily accessible to and usable by detained individuals with disabilities, failing to ensure that such structural changes are made or other measures taken; (3) failing to conduct an adequate self-evaluation or prepare and implement an adequate Transition Plan to bring Detention Facilities into compliance with Section 504; (4) failing to ensure that

---

[4] Guerrero and Munoz would not be in any subclass. Amaya, Ali, Sudney, and Alex Hernandez would be in both subclasses.

> Detention Facilities maintain and implement adequate screening to identify, track, and accommodate the needs of detained individuals with disabilities; (5) failing to ensure that Detention Facilities do not improperly place persons with disabilities in segregation and administrative segregation in Detention Facilities; (6) failing to ensure that Detention Facilities have an effective system in place to provide detained individuals with disabilities with reasonable accommodations necessary for meaningful access to the benefits available at Detention Facilities, as well as to provide auxiliary aids necessary for detained individuals with sensory impairments to have access to effective communication; (7) making determinations concerning the location of detention facilities that have the purpose or effect of discriminating on the basis of disability; (8) using criteria in the selection of contractors to operate detention facilities that subject members of the Disability Subclass to discrimination on the basis of disability; (9) failing to administer programs and activities in the most integrated setting appropriate to the needs of individuals with disabilities; and (10) using criteria or methods of administration that have the purpose or effect of discriminating on the basis of disability.

(Id. ¶ 505.) The Disability Practices are also allegedly the result of Defendants' failure to monitor and oversee Detention Facilities. (Id. ¶ 594.)

Each challenged area of government practice therefore centers on Defendants' failure to monitor and oversee Detention Facilities. (Id. ¶¶ 207, 436, 594.) Part V of the Complaint provides encyclopedic detail on Defendants' contracting, monitoring, and oversight practices, applicable across facilities and across the health, segregation, and disability policy areas. (Id. ¶¶ 159-169.) Plaintiffs also incorporate by reference dozens of reports by governmental and nongovernmental entities that harshly criticize these monitoring and oversight practices. (Id. ¶¶ 170-202.). Parts VI, VII, VIII, and IX of the Complaint then provide examples of systematic monitoring and oversight failures relevant to each of the four claims for relief, and link the failures to Individual Plaintiffs' own experiences. For example, Part VI.A. alleges Defendants systematically fail to ensure timely medical and mental health care, and goes on to describe delays experienced by Sudney, Melvin Murillo Hernandez, Alex Hernandez, and Artaga. (Id. ¶¶ 214-19.)

In addition to individuals, Plaintiffs are comprised of two organizations that assert independent harms. ICIJ's mission is "convening organizations to collectively advocate and work to improve the lives of immigrant communities while working toward a just solution to the immigration system." (Id. ¶ 21.) Defendants' policies allegedly frustrate this mission by making it more difficult to "empower[] immigrants with disabilities." (Id. ¶ 100.) ICIJ was founded in 2008, but claims it has recently been forced to spend more resources supporting immigrants in ICE custody at Adelanto and since November 2018 has a staff member working full time to support detainees there. (Id. ¶¶ 97, 101.) ICIJ states it would prefer to conduct broad-based advocacy throughout California affirming immigrant rights and providing legal services, but has had to open an office in Adelanto and spend significant human resources addressing medical needs of detainees with detainee family members. (Id. ¶¶ 101, 105-107.)

Al Otro Lado's mission is "to coordinate and provide screening, advocacy, and legal representation for individuals in immigration proceedings; to seek redress for civil rights violations, including disability rights violations; and to provide assistance with other legal and social service needs." (Id. ¶ 111.) Defendants' policies allegedly frustrate this mission by forcing the organization to advocate for conditions issues such as healthcare and disability accommodation, rather than focusing on individuals' underlying legal proceedings. (Id. ¶¶ 115, 124-25.) Al Otro Lado claims it has expended staff time and resources as a result. (Id. ¶¶ 114-125 (estimating expenditure of one-third more staff resources for clients with untreated or unaccommodated conditions, and providing as examples extra time spent advocating for care for clients who are pregnant, HIV positive, or have mental health conditions).)

Plaintiffs seek declaratory and injunctive relief. (Id. ¶ 657.) In particular, they ask the Court to order Defendants to develop and implement a plan to eliminate the substantial risk of harm to which they are exposed, and over three pages they outline the necessary minimum steps for achieving this result. (Id.)

II. LEGAL STANDARD

A. Motion for Reconsideration

Motions for reconsideration are governed by Federal Rule of Civil Procedure 59(e) or Rule 60(b). See Fed. R. Civ. P. 59(e), 60(b). Rule 59(e) provides that a court may alter or amend a judgment. Fed. R. Civ. P. 59(e). Rule 60(b) provides for relief from a final judgment, order, or proceeding upon a showing of the following:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

In this District, motions for reconsideration are also governed by Central District Local Rule 7-18. "Courts in this district have interpreted Local Rule 7-18 to be coextensive with Rules 59(e) and 60(b)." Tawfilis v. Allergan, Inc., 2015 WL 9982762, at *1 (C.D. Cal. Dec. 14, 2015). Local Rule 7-18 provides that a motion for reconsideration of the decision on any motion may be made only on the grounds of:

> (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been

> known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

L. R. 7-18. Whether to grant a motion for reconsideration under Local Rule 7-18 is a matter within the court's discretion. Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003). "Unhappiness with the outcome is not included within the rule; unless the moving party shows that one of the stated grounds for reconsideration exists, the Court will not grant a reconsideration." Roe v. LexisNexis Risk Sols. Inc., 2013 WL 12134002, at *2 (C.D. Cal. May 2, 2013).

B. Motion to Sever and Dismiss, Transfer, or Strike

1. Rule 12(b)(1)

A Federal Rule of Civil Procedure 12(b)(1) motion to dismiss ("Rule 12(b)(1)") challenges the court's subject matter jurisdiction, without which, a federal district court cannot adjudicate the case before it. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994). Pursuant to Rule 12(b)(1), a party may seek dismissal of an action for lack of subject matter jurisdiction "either on the face of the pleadings or by presenting extrinsic evidence." Sierra v. Dep't. of Family and Children Servs., 2016 WL 3751954, at *3 (C.D. Cal. Feb. 26, 2016) (quoting Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003)). Thus, a jurisdictional challenge can be either facial or factual. White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). In a facial attack, the moving party asserts that the allegations contained in the complaint are insufficient on their face to invoke federal jurisdiction. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). When evaluating a facial attack, the court must accept the factual allegations in the plaintiff's complaint as true. Comm. for Immigrant Rights of Sonoma Cty. v. Cty. of Sonoma, 644 F. Supp. 2d 1177, 1189 (N.D. Cal. 2009).

"By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." Safe Air for Everyone, 373 F.3d at 1039. In resolving a factual challenge, the court "need not presume the truthfulness of the plaintiff's allegations" and "may look beyond the complaint to matters of public record without having to convert the motion into one for summary judgment." White, 227 F.3d at 1242. "Where jurisdiction is intertwined with the merits, [the Court] must 'assume the truth of the allegations in the complaint . . . unless controverted by undisputed facts in the record.'" Warren, 328 F.3d at 1139 (quoting Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987)).

//
//
//

2. Rule 21

Under Rule 21 of the Federal Rules of Civil Procedure ("Rule 21"), a district court may "sever any claim against a party," pursuant to its broad discretion. Fed R. Civ. P. 21; see Coleman v. Quaker Oats Co., 232 F.3d 1271, 1297 (9th Cir. 2000). Courts consider the following factors when determining whether to sever claims: "whether (1) the claims arise out of the same transaction or occurrence; (2) the claims present some common questions of law or fact; (3) settlement of the claims or judicial economy would be facilitated; (4) prejudice would be avoided if severance were granted; and (5) different witnesses and documentary proof are required for the separate claims." Broadcom Corp. v. Sony Corp., 2016 WL 9108039, at *2 (C.D. Cal. Dec. 20, 2016) (citations omitted).

3. Transfer Venue

Pursuant to 28 U.S.C. § 1404(a), a federal court is authorized to transfer a civil action to any other district or division where it might have been brought or where the parties have consented. 28 U.S.C. § 1404(a). A district court may discretionarily transfer a case to any district where it might have been brought "[f]or the convenience of parties and witnesses" and "in the interest of justice." Id.; Ventress v. Japan Airlines, 486 F.3d 1111, 1118 (9th Cir. 2007).

Analysis under § 1404 is two-fold. First, the movant must establish that the matter "might have been brought" in the district to which transfer is sought. 28 U.S.C. § 1404(a). "This includes demonstrating that subject matter jurisdiction, personal jurisdiction, and venue would have been proper if the plaintiff had filed the action in the district to which transfer is sought." Catch Curve, Inc. v. Venali, Inc., 2006 WL 4568799, at *1 (C.D. Cal. Feb. 27, 2006); see Hoffman v. Blaski, 363 U.S. 335, 343-44 (1960). Second, courts must consider the following three factors: (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the interests of justice. 28 U.S.C. § 1404(a); see Szegedy v. Keystone Food Prod., Inc., 2009 WL 2767683 (C.D. Cal. Aug. 26, 2009) (citing Los Angeles Mem'l Coliseum Comm'n v. N.F.L., 89 F.R.D. 497, 499 (C.D. Cal. 1981)).

In analyzing the third factor, the "interests of justice," a number of factors may be relevant, including: "(1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof." Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000). Other factors that can be considered include the relative congestion of the two courts; and the public interest in the local adjudication of local controversies. Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986).

A plaintiff's choice of forum is accorded substantial weight under 28 U.S.C. § 1404. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987). Nevertheless, "[b]ecause the central purpose of any forum non conveniens inquiry is to ensure that the trial is convenient, a[n out-of-state] plaintiff's choice deserves less deference." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 256 (1981).

Thus, a transfer is not appropriate merely to shift the inconvenience from one party to another. See Van Dusen v. Barrack, 376 U.S. 612, 646 (1964). The burden is upon the moving party to show that transfer is appropriate. Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270, 279 (9th Cir. 1979); Metz v. U.S. Life Ins. Co. in City of New York, 674 F. Supp. 2d 1141, 1146 (C.D. Cal. 2009). A district court has broad discretion "to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" Jones, 211 F.3d at 495 (quoting Stewart Org. v. Ricoh Corp., 487 U.S. 22, 30 (1988)).

4. Rule 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"), a party may bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) must be read in conjunction with Federal Rule of Civil Procedure 8(a), which requires a "short and plain statement of the claim showing that a pleader is entitled to relief," in order to give the defendant "fair notice of what the claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); see Horosny v. Burlington Coat Factory, Inc., 2015 WL 12532178, at *3 (C.D. Cal. Oct. 26, 2015). When evaluating a Rule 12(b)(6) motion, a court must accept all material allegations in the complaint — as well as any reasonable inferences to be drawn from them — as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). Rather, the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id.

To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570; Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 556). The Ninth Circuit has clarified that (1) a complaint must "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," and (2) "the factual allegations that are taken as true

must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

5. Rule 12(f)

Under Federal Rule of Civil Procedure 12(f) ("Rule 12(f)"), a district court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The function of a motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial. Whittlestone, Inc. v. Handi–Craft Co., 618 F.3d 970, 973 (9th Cir. 2010) (internal quotation marks omitted). In order to determine whether to grant a motion to strike under Rule 12(f), the Court must determine whether the matter the moving party seeks to have stricken is: (1) an insufficient defense; (2) redundant; (3) immaterial; (4) impertinent; or (5) scandalous. Id. at 973–74.

III. DISCUSSION

A. Motion for Reconsideration

Defendants argue that reconsideration of the Court's Transfer Order is warranted under Rule 59(e). They argue the Court "committed clear error or made an initial decision that was manifestly unjust," Fed. R. Civ. P. 59(e)(2), in that the Court failed to consider Defendants' response to Plaintiffs' Notice as allowed by Local Rule 83-1.3. (MTR at 2.)

The MTR lacks merit for at least three reasons. First, Rule 59(e) deals with motions to alter or amend judgments, and it also specifies that such motions must be made within 28 days of the entry of judgment. Fed. R. Civ. P. 59(e). Here, the MTR is with respect to an internal transfer order, not a final judgment, see Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir. 1985) (discussing reconsideration of summary judgment),[5] and Defendants filed the MTR more than three months after the Transfer Order and after they were served with the Complaint. Second, Local Rule 83-1.3.3 provided Defendants with five days to challenge the Notice after

[5] Even assuming Defendants had invoked rule 60(b)(1), which allows reconsideration based on "mistake" and has been interpreted to cover clear legal error, Touma v. General Counsel of Regents, 2018 WL 6164328, *7 (C.D. Cal. Oct. 1, 2018), Defendants fail to point to a legal error, let alone a "clear" one affecting their substantial rights. "[C]lear error occurs when 'the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed.'" Monterey Bay Military Housing, LLC v. Pinnacle Monterey LLC, 2015 WL 1548833, at *5 (N.D. Cal. Apr. 7, 2015). "A district court does not commit clear error warranting reconsideration when the question before it is a debatable one." Id. (citation omitted). The Court discerns numerous overlapping questions of law and fact between Torres, Novoa, and this action, and is not persuaded any objective legal error was committed.

being served or first appearing. Defendants did not avail themselves of this opportunity within five days of appearing.[6] Third, Defendants do not cite any ground for reconsideration provided by the Local Rules, nor do they provide an example of a court granting reconsideration of a transfer order. L.R. 7-18. For these reasons, the Court DENIES the MTR.

B. Motion to Sever, Dismiss, Transfer, or Strike

Defendants seek to sever and dismiss Plaintiffs' claims, or in the alternative transfer venue for any non-dismissed claims concerning Plaintiffs outside this District, and to dismiss remaining claims under Rule 12(b)(1) or 12(b)(6), or to strike portions of the Complaint they deem irrelevant. (MTD at 1-2.) Plaintiffs respond the MTD should be denied in full, because they satisfy minimum pleading standards and may join their claims in this putative class action. (MTD Opp'n at 1-2.) The Court begins by tackling Defendants' Rule 12(b)(1) mootness and standing arguments, then moves to the request to sever or transfer venue for some or all of the claims under Rule 21 and 28 U.S.C § 1404(a) respectively. The Court concludes by evaluating whether under Rule 12(b)(6) Plaintiffs fail to state a claim and whether any portion of the Complaint should be stricken under Rule 12(f).

1. Rule 12(b)(1)

Defendants contend that Artaga, Benitez, and Guerrero's claims are moot and should be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1), because they are no longer detained.[7] (MTD at 2; MTD Reply at 17.) Plaintiffs argue the Court has subject matter jurisdiction over their claims, because the injuries they describe are capable of repetition, yet evade review, and class representatives can continue to assert claims as class representatives even if their own claims are moot before class certification. (MTD Opp'n at 2.) Defendants also challenge the standing of the Organizational Plaintiffs. (MTD at 24.)

To establish Article III standing, a plaintiff must demonstrate that: (1) he suffered an injury in fact that is concrete, particularized, and actual or imminent (not conjectural or

---

[6] Defendants state they were "deprived of the opportunity" to oppose Plaintiffs' notice, (Reply at 2), because the Court entered the Transfer Order before Defendants were served with the Complaint. However, L.R. 83-1.3.3 is not inconsistent with the Court entering a transfer order and Defendants timely opposing the notice or objecting to transfer within five days of first appearing in the case. See Ayer v. Frontier Commc'ns Corp., 2017 WL 3891358, at *1 (C.D. Cal. Sept. 5, 2017) (noting counsel neither objected to the notice of related Case or to the court's subsequent order deeming the cases related).

[7] Originally, Defendants argued Guerrero's claims were moot, because he had accepted voluntary departure and left the United States on November 26, 2019. (MTD at 3.) Defendants subsequently submitted a notice of errata explaining Guerrero had not in fact left the country because he had not been medically cleared to depart. (Dkt. No. 65.) The Reply provides an update: Guerrero was medically cleared and departed the United States on January 7, 2020. (MTD Reply at 17, Ex. 1.)

hypothetical); (2) the injury is fairly traceable to the challenged conduct; and (3) the injury is likely to be redressed by a favorable court decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992). A plaintiff's standing is assessed as of the inception of the action and is unaffected by subsequent developments. See D'Lil v. Best W. Encina Lodge & Suites, 538 F.3d 1031, 1036 (9th Cir. 2008). A plaintiff must establish standing with respect to each claim and form of relief. Wildearth Guardians v. United States EPA, 759 F.3d 1064, 1070–1072 (9th Cir. 2014) (organization had standing to challenge only certain EPA decisions); Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 185 (2000) (requiring plaintiff to show standing separately for injunctive relief and civil penalties).

Mootness is "the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness)." United States Parole Comm'n v. Geraghty, 445 U.S. 388, 397 (1980) (internal quotation marks omitted). A claim becomes moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. Haro v. Sebelius, 747 F.3d 1099, 1110 (9th Cir. 2014) (citation omitted).

a. Mootness of Released Individuals' Claims

Artaga, Benitez, and Guerrero's release from custody, Defendants argue, moots their claims for injunctive relief relating to a detention facility's policies. (MTD at 3-4; MTD Reply at 17.) However, the cases upon which Defendants rely for this argument were not putative class actions. Nelson v. Heiss, 271 F.3d 891, 897 (9th Cir. 2001); McQuillon v. Schwarzenegger, 369 F.3d 1091, 1095 n.3 (9th Cir. 2004) (explicitly noting McQuillion and co-plaintiffs were not and did not seek to be certified as a class).

As Plaintiffs note, an exception to mootness doctrine exists for legal violations "capable of repetition, yet evading review." Gerstein v. Pugh, 420 U.S. 103, 110 n.11 (1975). Individuals with mooted claims can maintain claims for injunctive relief where they "are challenging an ongoing government policy." See United States v. Howard, 480 F.3d 1005, 1010 (9th Cir. 2007), overruled on other grounds, United States v. Sanchez-Gomez, 859 F.3d 649 (9th Cir. 2017). In particular, this mootness exception "applies to ongoing policies affecting pretrial detainees, because pretrial detention usually will be too brief for the challenged policy to be reviewed before becoming moot." Los Angeles Unified Sch. Dist. v. Garcia, 669 F.3d 956, 958 n.1 (9th Cir. 2012).

Moreover, where a plaintiff's claim becomes moot while he seeks to certify a class, his action will not be rendered moot if his claims are "inherently transitory" (such that the trial court could not have ruled on the motion for class certification before his or her claim expired), as similarly-situated class members would have the same complaint. See Pitts v. Terrible Herbst, Inc., 653 F.3d 1081, 1090-91 (9th Cir. 2011) (describing how this "relation back" doctrine applies in class actions). The justification for this rule is that such claims fall into Gerstein's class of cases "capable of repetition, yet evading review." See id.

Defendants do not challenge the standing of Artaga, Benitez, or Guerrero at the time the action commenced. Although these individuals are no longer in ICE custody, Defendants do not purport to have voluntarily ceased the challenged conduct, and ignore the fact that the three are putative class representatives. Two of them would be members of the Class as well as the Disability Subclass.[8] As a result, Defendants' Motion to dismiss Artaga and Benitez's claims under Rule 12(b)(1) for mootness is DENIED.

b. Organizational Plaintiffs' Standing

Defendants also contend that the Organizational Plaintiffs lack direct organizational standing on the face of the pleadings, because they do not demonstrate harm in the form of a diversion of resources and frustration of mission. (MTD at 24-25.) Plaintiffs counter that they plead both prongs of direct organizational standing in more than sufficient detail. (MTD Opp'n at 25.)

"[O]rganizations are entitled to sue on their own behalf for injuries they have sustained." Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 n.19 (1982). In order to establish standing, an organization, like an individual, must establish: "(1) injury in fact; (2) causation; and (3) redressability." La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest, 624 F.3d 1083, 1088 (9th Cir. 2010). Direct organizational standing can be satisfied if the organization alleges "(1) frustration of its organizational mission; and (2) diversion of its resources to combat the particular [issue] in question." Smith v. Pac. Props. & Dev. Corp., 358 F.3d 1097, 1105 (9th Cir. 2004); Fair Hous. of Marin v. Combs, 285 F.3d 899, 905 (9th Cir. 2002). A setback to the organization's abstract social interest without a discussion of resources would not be sufficient to constitute standing. Serv. Women's Action Network v. Mattis, 2018 WL 2021220, at *14 (N.D. Cal. May 1, 2018).

Defendants argue that ICIJ and Al Otro Lado have not shown either a frustration of mission or diversion of resources, because they "fail to allege . . . that either [] has done anything more than the ordinary work tailored to their missions, which includes advocating for clients with disabilities." (MTD at 24-25.) Defendants protest that this type of advocacy is "exactly the type of work these organizations set out to do according to their mission statements." (Id. at 25.) Defendants also argue that the pleadings on resource diversion are conclusory, because it is impossible to discern whether Plaintiffs already devote resources to representation of clients with disabilities. (Id. at 26.)

[8] Defendants argue in the MTD Reply that the "inherently transitory" rule should not apply here because some Plaintiffs remain and they may adequately represent the claims of the putative class. (MTD Reply at 16-17.) Defendants offer no authority in support of this view. (Id.) Their argument also overlooks the fact that at the time the action commenced, Artaga was the only individual detained at Florence Correctional Center in Arizona, and Guerrero was the only one detained at Aurora ICE Processing Center in Colorado, and that dismissing them from the action could impact Plaintiffs' ability to adequately represent a nationwide class. (Compl. ¶¶ 62, 91.)

Plaintiffs respond by referencing relevant case law and indicating the many paragraphs in the Complaint which provide examples of organizational injury. They argue that frustration of mission can occur when the challenged practices impair the organization's ability to provide services it was formed to provide, (MTD Opp'n at 69 (citing E. Bay Sanctuary Covenant v. Trump, 932 F.3d 742, 765 (9th Cir. 2018)), and that diversion of resources is shown where the organization alters resource allocation in response to the policy rather than simply going about business as usual, (id. (citing Am. Diabetes Ass'n v. United States Dep't of the Army, 938 F.3d 1147, 1154 (9th Cir. 2019)).

The Court is satisfied that Organizational Plaintiffs plead sufficient injuries to satisfy the requirements of direct organizational standing. See Supra Part II.B (summarizing Organizational Plaintiffs' pleadings). Both organizations explain clearly how the Challenged Practices, (Compl. ¶ 204), have frustrated their organizational missions and resulted in resource diversions. Defendants cite no case for their argument that an organization performing its mission cannot suffer injury in fact,[9] and their characterization of the organizations' work is in most cases directly contradicted by the pleadings, which must be taken as true for the purposes of a facial attack on standing. Accordingly, Defendants' Motion to dismiss the Organizational Plaintiffs for lack of standing is DENIED.

2. Rule 21

Defendants ask the Court to apply Rule 21 to sever one or more claims from the case, because the claims do not arise out of the same transaction or occurrence, or present common questions of law or fact, and because litigating the claims together would not promote judicial economy. (MTD at 5-11.) Defendants contend that whether an individual is being denied treatment or a reasonable accommodation in violation of Due Process is a highly particularized inquiry that necessarily varies by the circumstances of each facility and individual. (Id.; MTD Reply at 1 (citing Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997) (severing claims that presented different factual situations).) Plaintiffs respond that they satisfy the liberal test for permissive joinder. (MTD Opp'n at 3 (citing Fed. R. Civ. P. 20(a)(1)).) They argue their claims significantly overlap, in that each individual's plight results from the same high-level policies and systematic conduct regarding monitoring and oversight. (MTD Opp'n at 3-8.)

The Court exercises its "broad discretion" to permit joinder of claims, Quaker Oats Co., 232 F.3d at 1297, and determines that Plaintiffs' claims should not be severed. Defendants' request to sever claims would hold water if Plaintiffs were seeking highly individualized

[9] Unlike Torres v. United States Department of Homeland Security, the Organizational Plaintiffs here plead resource diversion and mission impact directly related to one or more of the detention centers at issue. Cf. 2019 WL 5883685, at *23 (C.D. Cal. Oct. 24, 2019) (finding that development of practice resources was "too tenuously linked to [the specific detention facility at issue] to give rise to direct organizational standing.").

accommodations for their particular disabilities or conditions. Clearly, that is not the tenor of the Complaint.

Instead, the allegations focus on Defendants' conduct administering detention contracts, Defendants' procurement processes, management, and oversight, and Defendants' failure to correct reported deficiencies or abuse at Detention Facilities. (Compl. ¶¶ 162-202, 455-57, 486-87.) To be sure, Plaintiffs provide numerous particularized examples of harm suffered and substantial risks born as a result of these failures. Those pleadings go more to standing, and Plaintiffs' unifying claim is that Defendants' failure to "monitor and oversee" constitutes a violation in and of itself, as the Complaint's headings indicate. (Id. at 41, 47, 62, 130, 157.) Plaintiffs' claims of failed oversight will likely be subject to overlapping proof and testimony about Defendants' practices. Thus pleaded, Plaintiffs' claims arise out of the same administrative practices, S. Poverty Law Ctr. v. U.S. Dep't of Homeland Sec., 2019 WL 2077120, *2-3 (D.D.C. May 10, 2019) (finding immigrants' claims should not be severed because they stemmed from the defendants' administration of national standards), and out of the same "transaction or occurrence," see Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997) (stating a "systematic pattern of events" such as a "pattern or policy of delay" in considering immigration applications would be "the same transaction or occurrence" under FRCP 20(a)).

Plaintiffs also share common questions of law and fact. Each of the four claims for relief involves DHS and ICE, and the alleged violations occurred around the same time. Although there are surely differences in how Defendants' practices impacted each Plaintiff, Plaintiffs assert violations of the same rights and complain of similar types of injuries. Overwhelming overlap is not required. The common question requirement in Rule 20(a) "does not require that every question of law or fact in the action be common among the parties; rather, the rule permits party joinder whenever there will be at least one common question of law or fact." 7 Charles Alan Wright, Arthur R. Miller, et al., Federal Practice and Procedure § 1653 (3d ed. rev. 2014) (footnotes omitted). It is abundantly clear from Plaintiffs' extensive pleadings that the most important question is whether Defendants' alleged systematic failure to monitor and enforce adequate health, disability, and segregation practices amounts to a violation of law. (Compl. ¶ 93, 213, 413, 486.) The legal and factual questions are therefore similar or identical.[10]

Defendants rely heavily on Coughlin v. Rogers, to resist this outcome, but the case does not require the Court to sever all claims that present different factual iterations of the same policies or procedures. (MTD Reply at 1-2.) In Coughlin, the plaintiffs sought a writ to compel

[10] Defendants argue that different legal standards across judicial circuits defeats the commonality of legal questions, (MTD Reply at 4), and provide as an example the standard for deliberate indifference, which varies from circuit to circuit, (id. at 1). However, joinder is allowed where there is "any" question of law "or" fact common to all Plaintiffs. Fed. R. Civ. P. 21(a)(1)(B). In addition, Defendants do not provide authority for their contention that differences among circuits is a bar to the joinder of claims. If this were the case, courts would not allow nationwide classes, and plaintiffs from different circuits would be prevented from joining together in any judicial district to challenge the same nationwide practices.

the government to adjudicate forty-nine pending immigration petitions or petitions. Coughlin, 130 F.3d at 1349. The district court granted a motion to sever plaintiffs on the ground of misjoinder because the "mere allegation of general delay" was the only thread connecting all the claims. 130 F.3d at 1350. In particular, the plaintiffs did not allege a "policy of delay." 139 F.3d at 1351. Here, in contrast, Plaintiffs set forth extensive allegations of broad policies and procedures, and they attack the Challenged Practices, which put them all at risk of harm. In addition, Coughlin was not a putative class action, and therefore no substantial right of the plaintiffs to pursue class-wide relief was prejudiced by the severance. 139 F.3d at 1351. Here, Plaintiffs' ability to challenge Defendants' monitoring and oversight practices would be severely prejudiced by severance. Finally, the Ninth Circuit affirmed the district court's severance of claims in Coughlin, not because that was the only acceptable outcome, but because the severance did not rise to an abuse of discretion. 139 F.3d at 1352.

On the remaining severance factors, the Court is not persuaded at this time that litigating the claims separately would promote judicial economy or settlement, as Defendants suggest. (MTD at 9.) The grand unifying allegation is that Defendants committed systematic violations of the Fifth Amendment and the Rehab Act by failing to monitor and oversee facilities. If Plaintiffs were forced to litigate individually in geographically dispersed fora, many courts would have to conduct repetitive inquiries into Defendants' alleged systematic conduct, and might never get a full picture. The same witnesses would be repeatedly inconvenienced.

On balance, the Rule 21 factors weigh against severance. Defendants' arguments are better suited for the class certification stage, and the Court cannot agree that joinder is so defective as to warrant severance at this juncture. As a result, Defendants' Motion to sever under Rule 21 is DENIED.

3. Transfer

Pursuant to 28 U.S.C. § 1404(a), "[f]or the convenience of parties and witnesses, in the interest of justice," an action may be transferred to another "district or division" where it may have been initially brought or a "district or division to which all parties have consented." 28 U.S.C. § 1404(a). Defendants ask that the Court apply § 1404(a) to transfer the claims by Plaintiffs detained outside this district to the appropriate district courts and divisions.[11] For reasons similar to those presented in their opposition to severance, Plaintiffs argue transfer is inappropriate. Nine of the fifteen Plaintiffs reside in this district, as do the organizational Plaintiffs, and they argue transfer would pose an inconvenience to witnesses. (MTD Opp'n at 7-8.)

---

[11] Defendants argue five Individual Plaintiffs could have properly filed in another venue: Amaya (detained in Bakersfield, California within the Eastern District); Ali (detained in Teller, Colorado, within the Tenth Circuit); Melvin Murillo Hernandez (detained in Jena, Louisiana); Alex Hernandez (detained in Gadsen, Alabama, within the Fifth Circuit); and Martinez (detained in Lumpkin, Georgia within the Eleventh Circuit). (MTD at 11.)

Defendants are incorrect that venue is improper in this district for the five Individual Plaintiffs that do not reside in this District, and the major premise of their transfer request is therefore invalid. (MTD at 12 ("Thus, under § 1391(e), as to each Plaintiff listed above, venue is not proper . . . .").) In a civil action of the type governed by the venue provisions in 28 U.S.C. § 1391(e),[12] the action may be brought in a district where any plaintiff resides. 17 Moore's Federal Practice - Civil § 110.31 (2019) ("[O]nly one plaintiff must reside in the district in order for venue to be proper with respect to any additional plaintiffs."). Because several (but not all) Plaintiffs reside in this district, venue is proper here under § 1391(e)(1)(C). Lucas R. v. Azar, 2018 WL 7200716, at *5 (C.D. Cal. Dec. 27, 2018) (citing Immigrant Assistance Project of L.A. Cty. v. Immigration & Naturalization Serv., 306 F.3d 842, 868 (9th Cir. 2002) ("A civil action . . . in which a defendant is an agency of the United States and in which no real property is involved, may be brought, inter alia, in any judicial district in which a plaintiff resides." (emphasis added)); Railway Labor Executives Ass'n v. Interstate Commerce Comm'n, 958 F.2d 252, 256 (9th Cir. 1991) (holding that "venue need be proper for only one plaintiff" under Section 1391(e))).

Transfer of the whole action under § 1404(a) to another district where it might have been brought is not warranted. The majority of Plaintiffs reside in this district, and their choice of forum is accorded substantial weight under 28 U.S.C. § 1404. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987). The alternate venues mentioned by Defendants offer no obvious efficiency gain relative to this District. The existence of a related case in this District is also a factor against transfer. The remaining factors are either neutral or indeterminate at this stage of litigation, (MTD at 13 (" . . . Location of [e]vidence is [s]peculative.")), and therefore Defendants have not satisfied their burden as the party moving for transfer. Savage, 611 F.2d at 279. As a result, Defendants' Motion to transfer is DENIED.

4. Rule 12(b)(6)

Defendants also move to dismiss for failure to state a claim under Rule 12(b)(6). (MTD at 15.) They argue that Plaintiffs' requested relief is impermissibly overbroad,[13] (id.), and contend that Plaintiffs fail to adequately plead the elements of a medical care due process claim, a punishment conditions claim, or a Rehab Act claim. (Id. at 15, 20, 21, 26-27.)

---

[12] 28 U.S.C § 1391(e) deals with venue determinations where the defendant is an officer or employee of the United States, or an agency of the United States.

[13] At this early stage of litigation, the appropriate scope of injunctive relief sought is not at issue. On a 12(b)(6) motion, the question is whether the Complaint must be dismissed for failure to state a cognizable legal theory or for insufficiently pleading facts to make a legal claim. The parties do not dispute that injunctive relief is available, assuming violations of the Fifth Amendment or Rehab Act. Further, Plaintiffs' requested relief is somewhat more detailed than Defendants' characterization, (Compl. at 198-200), and also requests "such other or further relief as the Court deems just and proper." (Id.)

a. Medical Indifference

Plaintiffs' first claim for relief is that Defendants' failure to monitor and prevent certain failed healthcare practices violates the Due Process Clause of the Fifth Amendment. (Compl. at 189.) Both parties agree that the objective deliberate indifference standard is an appropriate benchmark to apply in this case. (MTD at 6; MTD Opp'n at 12.) That standard was recently articulated in a case involving pretrial detainees, Gordon v. County of Orange, 888 F.3d 1118 (9th Cir. 2018).[14] The elements of a medical indifference claim by pretrial detainees are:

> (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries.

888 F.3d at 1125. "With respect to the third element, the defendant's conduct must be objectively unreasonable, a test that will necessarily 'turn[ ] on the facts and circumstances of each particular case.'" Id. (quoting Castro v. Cty. of Los Angeles, 833 F.3d 1060, 1070 (9th Cir. 2016)). Objective unreasonableness is "more than negligence but less than subjective intent—something akin to reckless disregard." Id.

Defendants argue that Plaintiffs fail to adequately plead medical indifference, because Plaintiffs do not allege any deliberate indifference resulted in injury or more than a general disagreement with the treatment they received. (MTD at 18-20). Plaintiffs counter that their allegations do not hinge on any single Plaintiff's injury or experiences, because Defendants' systemic practices and systematic failures in oversight subject all people in ICE custody to a risk of serious harm. (MTD Opp'n at 8.) They emphasize that under Gordon, it is enough to plead substantial risk of harm, and they need not allege actual injury. (Id. at 11). Whereas Defendants focus on the adequacy of the pleadings as to a few individuals, Plaintiffs pin their hopes on the objective unreasonableness of Defendants' actions at a structural level. (MTD Opp'n at 9.)

The Court finds Plaintiffs' systemwide theory that Defendants' healthcare practices are objectively unreasonable is adequate to state a claim of medical indifference. The theory is familiar to district courts and is buttressed by precedent like Brown v. Plata, a case brought by

---

[14] Gordon sets out the relevant case history and contrasts the standards applicable to convicted prisoners (subjective deliberate indifference) and civil detainees (objective deliberate indifference). 888 F.3d at 1122. Plaintiffs accept the use of the Gordon framework but note it dealt with criminal pretrial detention and that individuals in civil detention are typically entitled to greater constitutional protections. (MTD Opp'n at 9 n.4 (citing Jones v. Blanas, 393 F.3d 918, 934 (9th Cir. 2004).) Defendants agree Gordon applies, but are concerned about differing standards across circuits. (MTD at 14.)

California prisoners with serious mental disorders against the State alleging statewide conditions of medical neglect based on overcrowding and widespread lapses in medical care. 563 U.S. 493 (2011); (see also MTD Opp'n at 12-13 (collecting cases)). If the Court were to accept Defendants' individual-only approach, there would be no way to challenge systematic conduct by institutions of confinement run by any state or the federal government.

The Court is not persuaded by Defendants' arguments otherwise. First, the argument that the challenged policies are shielded by "professional judgment" doctrine is ultimately duplicative of the medical indifference standard.[15] Similarly, the Court agrees with Plaintiffs, and Defendants ultimately concede, (MTD Reply at 7), that the allegation of actual harm is not required, where each Plaintiff alleges a substantial risk of serious harm. Gordon, 888 F.3d at 1125; Parsons v. Ryan, 754 F.3d 657, 679 (9th Cir. 2014) (concluding that whether "policies pose a risk of serious harm to all [] prisoners can [] be answered as to the entire class in one stroke," and "there is no need for an inmate-by-inmate inquiry") (quotations omitted).) At the time this action started, each Plaintiff was detained and had a qualifying disability or serious medical condition that allegedly exposed them to substantial risk of harm. (Compl. ¶¶ 21-109 (alleging Individual Plaintiffs have serious conditions and/or disabilities ranging from brain parasites to suicidal ideation, schizophrenia, severe food allergies, PTSD, herniated discs, cerebral palsy, vision loss, blindness, and deafness).)

In their Reply, Defendants repeat these same arguments, (MTD Reply at 8), and add a new argument[16] that Plaintiffs do not adequately plead causation, (id. at 9). Defendants' causation argument is ultimately a factual dispute. It would require the Court to make inferences

---

[15] Defendants' assertion of "professional judgment" doctrine regarding medical decisions is based on a mischaracterization of the claims as individual gripes with the discrete decisions of medical decisionmakers. (MTD at 19 (citing Youngberg v. Romeo, 457 U.S. 307 (1982).) Youngberg did not involve a systemwide challenge outside of the hospital context. In addition, the Youngberg professional judgment standard has been equated to the standard in ordinary tort cases for a finding of conscious indifference amounting to gross negligence. Ammons v. Washington Dep't of Soc. & Health Servs., 648 F.3d 1020, 1029-30 (9th Cir. 2011) (citations omitted). The "conscious indifference" standard is largely duplicative of the "objective test" for deliberate indifference, and does not amount to a generalized liability shield as Defendants imply. (Id.; MTD Reply at 6-7.) Indeed, Youngberg has been applied to require officials to take adequate affirmative steps in accordance with professional standards to prevent harm from occurring, Ammons, 648 F.3d at 1030 (citations omitted), which is exactly what Plaintiffs extensively allege Defendants have not done, on a systemwide basis. Finally, the holding in Youngberg was developed in part to shield hospital staff from individual capacity actions for damages related to their professionally acceptable choices. See 457 U.S. at 323. This is a suit for injunctive relief only.

[16] The Court is not required to consider facts or arguments raised for the first time in a reply brief. See Zamani v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider arguments raised for the first time in a reply brief.").

that contradict Plaintiffs' allegations, accepted as true at this stage, that ICE has: the discretion to aggressively enforce contract compliance and initiate new procurements; has a wide variety of legal and policy tools at its disposal to monitor and enforce detention standards; but has circumvented ordinary federal procurement procedures to insulate detention centers from scrutiny. (See Compl. ¶¶ 159-169.) Plaintiffs also adequately plead causation when they recount the patterns of risk and inaction observed by DHS and other entities. (MTD Opp'n at 9 (referencing the Complaint's incorporation of eight reports and twenty-two death reviews conducted by DHS entities, reports by other government entities, fifteen reports by NGOs, DHS memos, and Plaintiffs' own experiences).) Accordingly, the Court DENIES the Motion to dismiss the medical indifference claim.

b. Punitive Conditions

Plaintiffs allege that Detention Facility conditions are punitive in violation of the Due Process Clause as a result of Defendants' Segregation Practices (second cause of action) and Disability-Related Practices (third cause of action).[17] (Compl. ¶¶ 537, 610(c), 618(c), 632, 635, 638, 641.) Defendants accept that immigration detainees are entitled to non-punitive conditions of confinement, but argue that Plaintiffs do not plead sufficient facts for the Court to find Defendants had a punitive purpose or that the conditions are not justified by legitimate governmental interests. (MTD at 20.) However, explicitly pleading punitive purpose is not necessary to showing punitive conditions.[18] On a motion to dismiss, moreover, the Court must draw reasonable inferences in Plaintiffs' favor, and cannot conclude Defendants' segregation or disability-related policies are reasonably related to a legitimate governmental objective.[19]

---

[17] Plaintiffs also allege the Challenged Practices constitute punishment, (Compl. ¶ 626), but the parties focus on the second and third claims for relief.

[18] If a civil detainee is not afforded "more considerate" treatment than that available in a criminal pretrial facility, this creates a rebuttable presumption of punitiveness, which defendants may counter (after the pleading stage), by offering legitimate, non-punitive justifications for the restrictions. Jones v. Blanas, 393 F.3d 918, 934 (9th Cir. 2004) (citing Youngberg v. Romeo, 457 U.S. 307, 321-22 (1982)). Restrictions are also presumptively punitive where they are "employed to achieve objectives that could be accomplished in so many alternative and less harsh methods." Id. (citing Hallstrom v. City of Garden City, 991 F.2d 1473, 1484 (9th Cir. 1993)). Plaintiffs adequately plead punitive conditions by alleging individuals were placed in segregation based on their disability or medical condition or for no clear reason, and that less harsh alternatives are set forth in Defendants' own standards. (Compl. ¶¶ 155-57, 441-55, 463-71, 491-92, 534, 542-43, 547, 596-99.)

[19] Although Defendants may have legitimate reasons for their policies or failures to act, they are not so apparent from the face of the Complaint that the Court must dismiss the claims. Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005) (noting courts must construe material allegations in the light most favorable to the non-moving party). Although they are not required to do so, Plaintiffs allege Defendants "can proffer no legitimate rationale for imposing conditions

Defendants also argue that in some individuals' cases, medical isolation was necessary. (MTD Reply at 10.) Plaintiffs still establish a presumption of punitiveness by alleging disciplinary and non-disciplinary segregation are indistinguishable, that segregated persons receive little access to commissary, showers, or other benefits, and may be isolated for long periods at a time. (Compl. ¶¶ 441-44, 449, 490, 452-53, 553, 547.) Plaintiffs also allege less restrictive alternatives are available, and that Defendants' own standards require protections that Defendants do not in practice require Detention Facilities to implement. (Id. ¶¶ 156-58, 455.) For these reasons, the Court DENIES the Motion to dismiss claims of punitive conditions.

c. Rehab Act Section 504

Section 504 of the Rehabilitation Act provides:

> No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .

29 U.S.C. § 794(a) ("Section 504"). To bring a § 504 claim, a plaintiff must show that "(1) he is an individual with a disability; (2) he is otherwise qualified to receive the benefit; (3) he was denied the benefits of the program solely by reason of his disability; and (4) the program receives federal financial assistance." Updike v. Multnomah Cty., 870 F.3d 939, 949 (9th Cir. 2017) (quoting Duvall v. Cty. of Kitsap, 260 F.3d 1124, 1135 (9th Cir. 2001)). Section 504 includes an "affirmative obligation" to make benefits, services, and programs accessible to people with disabilities. Id. (citations omitted).

Here again, Defendants quarrel with the sufficiency of allegations with regard to a few Individual Plaintiffs, whereas Plaintiffs highlight the structural nature of their claims and the ongoing risks posed to all disabled detainees by Defendants' Disability Practices. Here again, the Court finds Plaintiffs' allegations to be sufficient. The Disability Plaintiffs each claim they are qualified individuals with disabilities under the Rehab Act, and each adequately describes his or her disability. (Compl. ¶¶ 22, 29, 32, 37, 41, 48, 51, 57, 72, 76, 79, 86, 92.) Defendants argue Plaintiffs' claims fail because some individuals eventually received a form of accommodation, while others did not assert a need for any specific accommodation or otherwise put Defendants on notice of their needs. (MTD at 21-25 (providing examples).) However, the fact that an individual ultimately obtained one form of accommodation (e.g. a wheelchair) does not imply that their disability has not been accommodated in other ways, (e.g. accessible pathways, bathrooms, lower bunk, etc.) Moreover, for each accommodation mentioned by Defendants, Plaintiffs provide an opposing example of the same individual being denied access. (MTD Opp'n at 21-23.) Defendants abandon this line of attack in their Reply. (MTD Reply at 11-12).

---

in segregation that so closely mirror the conditions of segregation in prison." (Compl. ¶¶ 456, 595, 642.)

In an appeal to purposeful ignorance that proves Plaintiffs' point, Defendants argue they are shielded from the claim they inadequately identify and track disabled individuals because they had no notice those individuals were disabled or required an accommodation. (Id.) Plaintiffs' chief response to this argument is that the government cannot wait for detainees to self-identify as disabled or to request specific accommodations, but must affirmatively evaluate services to ensure access. (MTD Opp'n at 20.) Keeping with their theme, Plaintiffs focus on Defendants' overarching failure to adequately evaluate the accessibility of their detention programs, (id.; Compl. ¶¶ 513-21), failure to screen, track the needs of, and accommodate detainees with disabilities transferred from facility to facility, (id. ¶¶ 522-537), improper placement of detainees in segregation (id. ¶¶ 538-48), and failure to require the provision of services in an appropriate integrative setting, (id. ¶¶ 16, 591).

Defendants rely on Mark H. v. Hamamoto, 620 F.3d 1090, 1097 (9th Cir. 2010), for the proposition that "notice" that each individual needs a specific accommodation is a pleading requirement. (Reply at 12). However, Hamamoto said notice was a relevant, not necessary, factor in a Rehab Act claim, and the case may be distinguished where the government entity allegedly fails to adequately screen for and track disabled individuals in the first instance, (Compl. at 162), or is responsible for other crosscutting failures that amount to discrimination or denial of services, programs, or activities. (MTD Opp'n at 20 (citing Updike v. Multnomah County, 870 F.3d 939, 949 (9th Cir. 2017); Duvall v. County of Kitsap, 260 F.3d 1124, 1136 (9th Cir. 2001); Armstrong v. Brown, 732 F.3d 955, 958-62 (9th Cir. 2013) (noting state defendants failed to ensure county facilities knew of class members' disabilities, and failed to assist with appropriate disability related policies).) Indeed, Hamamoto itself implies that pleading denial of a specific reasonable accommodation is but one way of showing a public entity discriminated against, excluded, or denied benefits to a person with a disability. Hamamoto, 620 F.3d at 1096 (9th Cir. 2010) ("This includes showing . . .").

Finally, Defendants argue the Organizational Plaintiffs do not have standing to assert Rehab Act claims, because organizations do not need disability accommodations and therefore cannot fall within the zone of interest of the Rehab Act. (MTD at 26-27; Reply at 14.) In support of this argument, Defendants do not cite any case discussing why the Rehab Act's statutory scheme or zone of interests cannot extend to organizations. Plaintiffs respond persuasively that courts have repeatedly interpreted the Rehab Act to extend not only to persons with disabilities, but to those who advocate for them. (MTD Opp'n at 26-27 (collecting cases, including Jewett v. Cal. Forensic Med. Group, Inc., 2017 WL 980446, *8 (E.D. Cal. Mar. 13, 2017) (finding standing for both incarcerated people seeking accommodations and an organization advocating for them).) As discussed in the Rule 12(b)(1) Section above, ICIJ and Al Otro Lado adequately allege direct injuries resulting from their assistance to detained clients with disabilities, in the form of diverted resources and frustrated mission.

For these reasons, Defendants' arguments for dismissal for failure to state a claim are unsuccessful. Plaintiffs have adequately and exhaustively pleaded the existence of systemic

policies or practices that, accepted as true, violate the rights asserted. Accordingly, the Court DENIES Defendants' Motion to dismiss the Rehab Act claims.

5. Rule 12(f)

Defendants' final request is that the Court strike Plaintiffs' immaterial, irrelevant, or unnecessary allegations under Rule 12(f). (MTD at 27; MTD Reply at 14.) Defendants' main objection to the Complaint is that it is too long and that many parts do not directly involve Plaintiffs. (Id.) However, in a case bringing a structural challenge to government policies, the existence of a systemic practice is bolstered by allegations regarding similarly situated non-Plaintiffs. Likewise, background information and other entities' observations are highly pertinent to such claims, which in this case implicate the rights of thousands of individuals in ICE custody. For example, Defendants insist the discussion of detainee deaths and death reviews is irrelevant and unnecessary. (MTD at 29; MTD Reply at 15.) However, the circumstances of detainee deaths and Defendants' responses bear directly on Defendants' systemwide policies on healthcare and the alleged existence of an ongoing substantial risk to Plaintiffs. The background and allegations regarding the experiences of non-Plaintiffs are relevant to claims that they, as well as putative class members, suffer the same rights violations when subjected to Defendants' national policy or practice. Gray v. Cty. of Riverside, 2014 WL 5304915, at *9 (C.D. Cal. Sept. 2, 2014).

Plaintiffs' allegations—though lengthy—are material and are warranted in light of the alleged nationwide application of the challenged government policies. Accordingly, the Defendants' Motion to strike under Rule 12(f) is DENIED.

IV. CONCLUSION

For the above reasons, the Court DENIES Defendants' motion for reconsideration and further DENIES Defendants' Motion to sever, dismiss, transfer, or strike.

IT IS SO ORDERED.