JOSEPH H. HUNT
Assistant Attorney General
U.S. Department of Justice
Civil Division
WILLIAM C. PEACHEY
Director
Office of Immigration Litigation
District Court Section
JEFFREY S. ROBINS
Deputy Director
LINDSAY M. VICK (MA 685569)
450 5th Street, N.W., Rm 5223
Washington, D.C. 20530
Telephone: (202) 532-4023
Facsimile: (202) 305-7000
lindsay.vick@usdoj.gov
Attorneys for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' NOTICE OF MOTION AND MOTION TO SEVER AND DISMISS PLAINTIFFS' CLAIMS, ALTERNATIVELY TRANSFER ACTIONS, AND MOTION TO STRIKE PORTIONS OF THE COMPLAINT;

MEMORANDUM IN SUPPORT OF MOTION TO SEVER AND DISMISS PLAINTIFFS' CLAIMS, ALTERNATIVELY TRANSFER ACTIONS, AND MOTION TO STRIKE PORTIONS OF THE COMPLAINT; and [PROPOSED] ORDER

Before The Honorable Jesus G. Bernal
Hearing Date: February 24, 2020
Hearing Time: 9:00 a.m.

NOTICE OF MOTION AND MOTION TO SEVER AND DISMISS, ALTERNATIVELY TRANSFER ACTIONS, STRIKE PORTIONS OF THE COMPLAINT

PLEASE TAKE NOTICE that on February 24, 2020, at 9:00 a.m., or as soon thereafter as the matter can be heard in Courtroom 1 of the United States District Court for the Central District of California, located at 3470 Twelfth Street, Riverside, CA 92501, Defendants U.S. Immigration and Customs Enforcement, *et al.*, will and hereby move this Court for an order severing and dismissing Plaintiffs' Complaint for Declaratory and Injunctive Relief for Violations of the Due Process Clause of the Fifth Amendment and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, *et. seq.*, ECF No. 1, in accordance with Federal Rules of Civil Procedure 21, 12(b)(1), or (6) or in the alternative transferring Plaintiffs' claims to a proper jurisdiction. Defendants will and hereby move to strike portions of the Complaint in accordance with Federal Rules of Civil Procedure 12(f). Defendants' Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities and other pleadings in support of the Motion, all pleadings on file in this matter, and upon such other matters as may be presented to the Court at the time of the hearing or otherwise. This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on November 20, 2019.

Dated: November 27, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

WILLIAM C. PEACHEY
Director

JEFFREY S. ROBINS
Deputy Director

/s/ *Lindsay M. Vick*
LINDSAY M. VICK
Trial Attorney
United States Department of Justice
Office of Immigration Litigation
District Court Section

Attorneys for Defendants

JOSEPH H. HUNT
Assistant Attorney General
U.S. Department of Justice
Civil Division
WILLIAM C. PEACHEY
Director
Office of Immigration Litigation
District Court Section
JEFFREY S. ROBINS
Deputy Director
LINDSAY M. VICK
Trial Attorney
450 5th Street, N.W., Rm 5223
Washington, D.C. 20530
Telephone: (202) 532-4023
Facsimile: (202) 305-7000
Lindsay.Vick@usdoj.gov
Attorneys for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO SEVER AND DISMISS PLAINTIFFS' CLAIMS, ALTERNATIVELY TRANSFER ACTIONS, AND MOTION TO STRIKE PORTIONS OF THE COMPLAINT

Before The Honorable Jesus G. Bernal
Hearing Date: February 24, 2020
Hearing Time: 9:00 a.m.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

I. INTRODUCTION

This is a case about the medical and mental health care conditions experienced by 15 Plaintiffs while in the custody of U.S. Immigration and Customs Enforcement ("ICE") in several facilities across the United States. These 15 Plaintiffs also challenge certain instances of administrative segregation and their treatment as purportedly qualified individuals with disabilities. Two organizational Plaintiffs assert claims on their own behalf. Each Plaintiff's medical and mental health condition diverges greatly from the next; accordingly, the actual remedies for each Plaintiff's grievances in the Complaint are different. Nevertheless, in their prayer for relief, Plaintiffs seek a Court order declaring that Defendants comply with the requirements of due process under the Fifth Amendment as well as the requirements of the Rehabilitation Act. In essence, Plaintiffs seek an amorphous and impermissibly broad injunction that Defendants obey the law. Undoubtedly, the allegations in the Complaint are troubling. However, without conceding that Plaintiffs are entitled to any particular form of relief, the avenue by which Plaintiffs seek a remedy for alleged individualized harm—by asserting a constitutional due process challenge to certain of ICE's policies and procedures in detention facilities in an effort to effect nationwide, programmatic change—is inappropriate.

The Complaint in this case is unwieldy, and the majority of the allegations are irrelevant in that they have little, if anything, to do with the individual allegations pertaining to each Plaintiff. The allegations that do pertain to each of the 15 Plaintiffs are scattered across 657 paragraphs comprising 200 pages. For these reasons, Defendants seek to sever and dismiss Plaintiffs' claims. In the event that certain claims are not severed and dismissed, Defendants seek to transfer venue for claims of Plaintiffs detained outside of the Central District of California. Finally, for any surviving claims, Defendants move to strike those remaining

portions of the Complaint that contain immaterial, irrelevant, or unnecessary allegations, and dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

II. PROCEDURAL OVERVIEW

Plaintiffs' Complaint seeks declaratory and injunctive relief stemming from alleged violations of the Due Process Clause of the Fifth Amendment and § 504 of the Rehabilitation Act, 29 U.S.C. § 794, arising from conditions of confinement at federal detention facilities that hold ICE detainees for more than 72 hours.

Plaintiffs allege three sources of harm based on Defendants' operation of detention facilities. First, Plaintiffs claim a violation of the Fifth Amendment's Due Process Clause for Defendants' alleged failure to monitor and oversee medical and mental health care at detention facilities. Compl. ¶¶ 624-30. Second, Plaintiffs maintain that Defendants also violated due process by failing to monitor and oversee segregation practices in the detention facilities and by failing to monitor and oversee conditions for persons with disabilities. *Id.* at ¶¶ 631-43. Third, Plaintiffs allege Defendants DHS and ICE have violated Plaintiffs' rights under the Rehabilitation Act and its implementing regulations by failing to ensure that detention facilities reasonably accommodate disabled detainees. *Id.* at ¶¶ 644-55.

III. ARGUMENT

A. THE CLAIMS MADE BY PLAINTIFFS SERGIO SALAZAR ARTAGA, JOSE SEGOVIA BENITEZ, AND EDILBERTO GARCIA GUERRERO ARE MOOT BECAUSE THEY ARE NO LONGER DETAINED.

A case "becomes moot when it 'no longer present[s] a case or controversy under Article III, § 2, of the Constitution.'" *Abdala v. INS*, 488 F.3d 1061, 1063 (9th Cir. 2007) (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). To state a cognizable claim for injunctive relief, "Article III, § 2, of the Constitution requires

the existence of a case or controversy through all stages of federal judicial proceedings." *Shamim v. Chertoff*, No. C 07-4308 SI, 2008 WL 509335, at *2 (N.D. Cal. Feb. 22, 2008). Throughout the litigation, the plaintiff "must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Id.* (citing *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990)). Additionally, a detainee-plaintiff must prove a sufficient likelihood that the person will be subjected to defendants' alleged wrongful conduct, in this instance, while in custody of Defendant ICE. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983). As a result, a detainee's release from custody generally moots claims for injunctive relief relating to the detention facility's policies. *See Nelson v. Heiss*, 271 F.3d 891, 897 (9th Cir. 2001). Release from a detention facility also extinguishes a detainee's legal interest in a cause of action seeking injunctive relief when the requested injunction would have no effect on the detainee. *See McQuillon v. Schwarzenegger*, 369 F.3d 1091, 1095 (9th Cir. 2004). Similarly, claims for declaratory judgment would become a mere advisory opinion, which the Constitution prohibits. *See id.*; *see also Preiser v. Newkirk*, 422 U.S. 395, 401 (1975).

In this case, Plaintiffs Sergio Salazar Artaga, Jose Segovia Benitez, and Edilberto Garcia Guerrero are no longer detained in ICE custody. Mr. Artaga was released on an order of recognizance on September 12, 2019, *see* Ex. 1, Order of Release on Recognizance, Mr. Benitez was removed to El Salvador on October 23, 2019, *see* Ex. 2, Record of Persons Transferred,[1] and Mr. Guerrero left the United States pursuant to an order of voluntary departure on November 26, 2019, *see* Ex. 3, Declaration of David De La Garza. Because these three Plaintiffs are no longer

[1] The Court may take judicial notice of the document attached at Exhibit 2 as an administrative record that is part of Plaintiff Benitez's A-file. If the Court prefers, Defendants can supplement Exhibit 2 with a declaration.

detained in ICE custody, they are no longer subject to the alleged and challenged official conduct, they cannot demonstrate any realistic threat of substantial and immediate irreparable injury, and therefore they no longer have a legally cognizable interest in the outcome of this litigation. *See McQuillon*, 369 F.3d at 1095; *Nelson*, 271 F.3d at 897; *Lyons*, 461 U.S. at 101-02. Thus, the claims of Plaintiffs Artaga, Benitez, and Guerrero in this action are moot, and the Court should dismiss these Plaintiffs from this lawsuit for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

B. PLAINTIFFS' CLAIMS SHOULD BE SEVERED AND DISMISSED PURSUANT TO FED. R. CIV. P. 21.

i. Legal Background.

Federal Rule of Civil Procedure 21 authorizes a court to "sever any claim against a party." Fed. R. Civ. P. 21. A court has broad discretion to sever claims. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1297 (9th Cir. 2000). In deciding whether to sever an action under Fed. R. Civ. P. 21, courts consider: (1) whether the claims arise out of the same transaction or occurrence; (2) whether the claims present some common questions of law or fact; (3) whether settlement of the claims or judicial economy would be facilitated; (4) whether prejudice would be avoided if severance were granted; and (5) whether different witnesses and documentary proof are required for the separate claims. *H.M. v. United States*, No. 17-00786-SJO, 2017 WL 10562558, *15 (C.D. Cal. Aug. 21, 2017) (severing plaintiffs' mandamus claims in the interests of justice and judicial economy and finding that each case involved distinct factual and legal issues) (citing *Trazo v. Nestle USA, Inc.*, No. 5:12-CV-02272-PSG, 2013 WL 12214042, at *2 (N.D. Cal. Dec. 4, 2013)). If a claim is severed from an action, the court can remedy the misjoinder by dismissing the severed claims without prejudice to re-file in a

separate action. *Visendi v. Bank of America, N.A.*, 733 F.3d 863, 871 (9th Cir. 2013).

ii. The Claims Do Not Arise Out of the Same Transaction or Occurrence.

For claims to arise out of the same transaction or occurrence there must be "factual similarity in the allegations supporting plaintiffs' claims." *Visendi*, 733 F.3d at 870. In their Complaint, Plaintiffs variously allege that Defendants have failed to lawfully administer, monitor, or oversee a range of health, disability, and segregation-related conditions at detention facilities nationwide. These disparate allegations, however, lack factual similarity and cannot properly be considered part of the same transaction or occurrence.

First, Plaintiffs' health and disability-related claims lack factual overlap and should be severed. *See* Compl. at ¶¶ 624-55. Here, Plaintiffs go to significant lengths to illustrate the breadth and variety of their respective health conditions and disabilities, frequently identifying the particular source of injury and detailing the Plaintiff's treatment history, current condition, and prognosis. *See* Compl. ¶ 1 ("Plaintiffs have a range of serious medical and mental health conditions . . . ."); *generally* ¶¶ 21-96. Plaintiffs, moreover, rely on the disparity in their respective conditions to argue Defendants' have failed—in a variety of detention settings and across the full spectrum of detention operations—to lawfully accommodate their health needs. Under such circumstances, however, each Plaintiff's claim arises from the respective Plaintiff's particular health or disability-related condition as well as ICE's individualized response to treat or accommodate the particular plaintiff's needs. *See Fisher v. United States*, No. CV 14-6499-MMM (RNB), 2015 WL 5723638, at *4 (C.D. Cal. June 18, 2015), *report and recommendation approved*, No. CV 14-6499-MMM (KES), 2015 WL 5705926 (C.D. Cal. Sept. 29, 2015) (severing Plaintiff's deliberate indifference claims against federal prison

officials from prisons in several states even though Plaintiff alleged an "ongoing" denial of medical care for the same chronic conditions; finding that "the alleged incidents occurred at different times, at different prisons, and involved different medical providers."). For example, depending on the circumstances, detainees with heart, vision, or back conditions would each display different symptoms and require different accommodations. Naturally, Defendants' efforts to treat or accommodate the detainee would diverge significantly based on the detention setting and the respective detainee's overall condition, symptoms, and medical history. Consequently, Plaintiffs' health and disability-related claims lack the required factual uniformity and should be severed. *See Visendi*, 733 F.3d at 870 (severing plaintiffs' claims because "[w]hile Plaintiffs allege in conclusory fashion that Defendants' misconduct was 'regular and systematic,' their interactions with Defendants were not uniform").

Similar to the health and disability-related claims, Plaintiffs' segregation-related claims lack sufficient factual overlap. As Plaintiffs acknowledge, ICE employs segregation for limited administrative or disciplinary purposes often unrelated to medical or mental health treatment or the accommodation of disabled detainees. Compl. ¶¶ 440-41. As a result, an ICE official's decision whether or for how long to segregate an alien is frequently based upon criteria distinct from a decision on how to treat a detained alien's health-related condition or accommodate an alien's disability. And Plaintiffs do not allege that having a medical or mental health condition or qualifying disability automatically results in a detainee being segregated. Accordingly, Plaintiffs' claims should be severed from each other. *See Visendi*, 733 F.3d at 870 (severing claims because they required particularized factual analysis); *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997) (severing claims that presented different factual situations).

The organizational Plaintiffs' claims likewise lack factual overlap, both with those alleged by Plaintiffs and between themselves. In sharp contrast to the claims advanced by the individual Plaintiffs, the organizational Plaintiffs assert that Defendants' failure to lawfully monitor conditions of confinement has diverted their resources and frustrated their respective organizational missions. *See* Compl. at ¶¶ 100, 112, 205, 433, 506. These claims have little, if any, factual overlap with the disparate claims of the individual Plaintiffs. The organizational Plaintiffs' claims should therefore be severed from those of the Plaintiffs.

To compensate for the dissimilarity in the factual background of their claims, Plaintiffs allege that Defendants systemically failed to monitor and oversee a number of policies, practices, and conditions related to Plaintiffs' health or well-being. *See, e.g.*, Compl. ¶ 203 (failure to monitor and oversee medical and mental health care); ¶ 430 (failure to monitor and oversee segregation practices); ¶ 502 (failure to monitor and oversee disability-related practices). But merely advancing claims asserting similar misconduct does not result in the same transaction or occurrence because Plaintiffs allege a different factual basis for how Defendants' alleged failures affected each of them. *See Coughlin*, 130 F.3d at 1350 (existence of a common allegation of delay, in and of itself, does not suffice to create a common transaction or occurrence). Thus, despite allegations that Defendants "systemically" failed to ensure lawful conditions in their detention facilities, Plaintiffs' factually dissimilar claims do not arise out of the same transaction or occurrence. As there is insufficient factual overlap to these allegations, this factor supports severance. *See Visendi*, 733 F.3d at 870; *Coughlin*, 130 F.3d at 1350.

iii. The Claims Do Not Present Common Questions of Law or Fact.

Plaintiffs' due process claims should be severed because they do not present a common question of law or fact. As noted above, Plaintiffs allege due process

violations based upon Defendants' supposed failure to adequately monitor and oversee a variety of health and segregation-related policies and practices. *See* Compl. ¶¶ 624-43. In this regard, however, the question of what due process requires of Defendants across the range of Plaintiffs' allegations will vary depending on the individual circumstances giving rise to the claim. Furthermore, the lack of common questions of law or fact across the Plaintiff's individual claims highlights the impermissibly broad nature of Plaintiffs' prayer for relief, which is essentially a declaration or injunction that Defendants obey the requirements of the Constitution and the Rehabilitation Act. *See MGM Studios, Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1226 (C.D. Cal. 2007) ("blanket injunctions to obey the law are disfavored"); *see also Melan, Inc. v. Advanced Orthomolecular Research, Inc.*, No. EDCV 18-482 JGB (SHKx), 2018 WL 8333423, at *5 (C.D. Cal. 2018) (Bernal, J.) (quoting *MGM Studios* and concluding that the proposed injunction was overbroad).

In other words, an independent fact-specific inquiry would be required for each Plaintiff's claim before the Court could determine whether Defendants satisfied due process on any particular occasion with regard to any particular Plaintiff. The need for independent inquiries remains regardless of Plaintiffs' challenge to Defendants' general detention policies. Even against the backdrop of Defendants' general policies, resolution of each claim would inexorably center on the particular details of each Plaintiff's health or disability-related condition as well as the specifics of Defendants' actions or omissions in response to that condition. *See Visendi*, 733 F.3d at 870; *Coughlin*, 130 F.3d at 1350-51. Lastly, without more, Plaintiffs' mere allegation that their collective claims arise under the Due Process Clause does not create a common question of law or fact sufficient for joinder. *See Coughlin*, 130 F.3d at 1351 ("[A]lthough Plaintiffs' claims are all brought under the Constitution and the Administrative Procedure Act, the mere

fact that all Plaintiffs' claims arise under the same general law does not necessarily establish a common question of law or fact.").

Finally, whether Defendants' violated the Rehabilitation Act on any particular occasion is a legally and factually distinct question from whether the same conduct violates due process. As relevant here, claims under the Rehabilitation Act allege Executive agency discrimination in the administration of programs on the basis of a qualifying disability. *See e.g.*, Compl. ¶¶ 502-07; *see also* 29 U.S.C. § 794(a). On the other hand, due process claims allege conditions of confinement that amount—not to discrimination—but to punishment. *Hatter v. Dyer*, 154 F. Supp. 3d 940, 945 (C.D. Cal. 2015) (citing *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)). Accordingly, because due process and the Rehabilitation Act protect discrete individual rights, claims arising under either raise distinct legal and factual issues. As a result, Plaintiff's Rehabilitation Act claims should be severed because they likewise do not present a common question of law or fact.

iv. Litigating the Claims Together Would Not Promote Judicial Economy or Settlement.

Litigating the allegations contained in Plaintiffs' complaint together in a single action would be unwieldy and would not promote judicial economy. Without severance, this action would require the adjudication of 15 individual claims (without consideration of Plaintiffs' class action allegations) and two organizational claims. Plaintiffs, moreover, divide themselves into two groups based on either a claimed physical disability or having been segregated at some point during their detention. Compl. ¶¶ 616-23, 608-15. Further, as discussed, Plaintiffs' claims—whether based on due process or the Rehabilitation Act—arise from individualized interactions with ICE in detention facilities throughout several states and across multiple judicial circuits. Consequently, proceeding as the complaint is currently constituted would require over 17 separate mini-trials. *See*

Padron v. Onewest Bank, No. 2:14-CV-01340-ODW, 2014 WL 1364901, at *5 (C.D. Cal. Apr. 7, 2014) (severing claims because trying them together would be inefficient and require separate mini-trials). Lastly, Plaintiffs are detained in geographically dispersed facilities across several states, including Georgia, Alabama, Colorado, and Louisiana and have ready access to local courts where they may make the same claims made in this suit. *See* Compl. ¶¶ 41, 45, 79, 86. For these reasons, the concerns of judicial economy favor severance.

v. The Claims Require the Presentation of Different Evidence.

Severance is also warranted because Plaintiffs' disparate claims will require the presentation of different evidence. As an initial matter, the manner in which Defendants' practices and policies are applied to each Plaintiff is often dependent on the nature of the detention facility at issue and ICE's relationship with that detention facility; the named Plaintiffs alone raise claims involving at least 11 different detention facilities that employ different sets of standards and guidance. Further, Plaintiffs' medical and mental health claims will involve evidence of Defendants' practices and policies to identify and treat detainees' medical and mental health conditions.[2] On the other hand, Plaintiffs' segregation claims will involve evidence of ICE's segregation policies and practices, an area largely unrelated to ICE's provision of medical or mental healthcare. Plaintiffs' disability claims, likewise, will involve evidence unique to violations of the Rehabilitation Act, including, for example, ICE's policies and practices for providing disabled detainees access to the benefits available at detention facilities; properly screening for disabilities and providing reasonable accommodations. *See* Compl. at ¶¶ 513-

[2] Even here Individual Plaintiffs divide their medical and mental health claim into challenges to at least eight discrete ICE health-related practices, each one presenting a different factual scenario requiring different evidence. *See e.g.*, Compl. at ¶ 204 (dividing claim into such disparate areas as access to specialty care, staffing, and record maintenance).

21 (access to ICE programs and services for disabled detainees), ¶ 523 (screening), ¶ 549 (accommodations); *see also*, *e.g.*, *Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir. 2002) ("[W]hether a particular accommodation is reasonable under Section 504 depends on the individual circumstances of each case" and "requires a fact-specific, individualized analysis of the disabled individual's circumstances and the accommodations that might allow him to meet the program's standards.") (internal citation omitted).

Finally, because they allege harm in the form of diverted resources, the organizational Plaintiffs' claims will involve distinct evidence related to each organization's structure, funding, operations, and decision-making. The preceding evidence is plainly separate and distinct. Thus, this factor also supports severance. *See Visendi*, 733 F.3d at 870; *Coughlin*, 130 F.3d at 1351.

C. THE COURT SHOULD TRANSFER CLAIMS BY PLAINTIFFS DETAINED OUTSIDE OF THIS COURT'S JURISDICTION.

If the Court is not inclined to dismiss Plaintiffs' improperly joined claims, Defendants request, pursuant to 28 U.S.C. § 1404(a), that the Court transfer the actions of those Plaintiffs detained in detention facilities outside the Court's jurisdiction, and organizations with no connection to this district, to the appropriate district courts and divisions. A district court may transfer an action to a different district court under § 1404(a) "[f]or the convenience of the parties and witnesses" and "in the interest of justice," so long as the action could have been filed in the transferee district in the first instance. Section 1404(a). A district court has broad discretion to transfer a case where venue is also proper. *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 639 (9th Cir. 1988). The district court "must adjudicate a motion to transfer [venue] according to an individualized case-by-case consideration of convenience and fairness." *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (internal quotation omitted).

i. Five Plaintiffs Could Have Properly Filed in Another Venue.

As described in the Complaint, ICE detains the following Plaintiffs outside of the Central District of California: Marco Montoya Amaya, currently detained in Bakersfield, California within the Eastern District of California (Compl. at ¶ 27); Hamida Ali, currently detained in Teller County, Colorado within the Tenth Circuit (Compl. at ¶ 41); Melvin Murillo Hernandez, currently detained in Jena, Louisiana, and Alex Hernandez, currently detained in Gadsen, Alabama, within the Fifth Circuit (Compl. at ¶¶ 12, 45, 79), and Aristotles Sanchez Martinez, currently detained in Lumpkin, Georgia, within Eleventh Circuit (Compl. at ¶ 12). Under 28 U.S.C. § 1391(e), civil actions against federal defendants, such as this one, may be brought in any judicial district in which either a defendant in the action resides; a substantial part of the events or omissions giving rise to the claim occurred, or where the plaintiff resides if no real property is involved in the action. *Rangel v. United States*, No. 10-00129-DDP(FMOx), 2012 WL 1164080, at *1 (C.D. Cal. Apr. 9, 2012) (transferring case in the interests of justice). Here, the preceding Plaintiffs all complain of acts or omissions occurring substantially at the detention facility in which they are detained. Moreover, each Plaintiff is incarcerated in the district in which the detention facility is located. Thus, under § 1391(e), as to each Plaintiff listed above, venue is not proper and the action could have been brought in a district outside Central District of California. *See Quinonez v. Pioneer Medical Center*, No. 12-CV-629-WQH-DHB, 2014 WL 229332, at *1, *16-17 (S.D. Cal. Jan. 17, 2014) (finding that federal prisoner incarcerated at the Victorville Federal Correctional Complex ("FCC Victorville") in Adelanto, California could have brought suit in Central District of California because a substantial part of the events or omissions giving rise to his claim occurred at FCC Victorville within the jurisdiction of Central District of California; Plaintiff was incarcerated in Central District of California, and no real property was involved in the action).

ii. Public and Private Factors Favor Transfer.

In deciding a motion to transfer venue, the court typically weighs a number of public and private factors. *Rubio v. Monsanto Co.*, 181 F. Supp. 3d 746, 759 (C.D. Cal. 2016). These include "(1) plaintiff's choice of forum; (2) the convenience of the parties; (3) the conveniences of the witnesses; (4) the location of books and records; (5) which forum's laws applies; (6) the interests of justice; and (7) administrative considerations." *Id.* (internal citation omitted). The moving party bears the burden of showing transfer will allow a case to "proceed more conveniently and better serve the interests of justice." *Monsanto Co.*, 181 F. Supp. at 759-60.

iii. Transfer is Favored Because the Location of Evidence is Speculative.

If a motion to transfer venue is based on the location of evidence, the defendant must show "with particularity the location, difficulty of transportation, and the importance of such records." *Rubio*, 181 F. Supp. 3d at 764 (internal citations omitted). This Court, like others, has noted that electronic transmission lessens the burden otherwise imposed by transporting documentary evidence. *See id.*; *see also Szegedy v. Keystone Food Prods.*, No. CV-08-5369-CAS(FFMx), 2009 WL 2767683, *6 (C.D. Cal. Aug. 26, 2009) (The "ease of access to documents does not weigh heavily in the transfer analysis, given that advances in technology have made it easy for documents to be transferred to different locations."). Regardless, at this time, neither side has sought discovery, and Plaintiffs have not identified a list of witnesses or documents they intend to rely upon to show that this Court is a more appropriate venue. As a result, any justification by Plaintiffs in support of remaining in the Central District of California is speculative. Therefore, this factor favors transfer. *See Metz v. U.S. Life Ins. Co. in City of New York*, 674 F. Supp. 2d 1141, 1149 (C.D. Cal. 2009)

(finding evidence in support of remaining in the Central District of California "too speculative" where "no discovery has been taken and Plaintiff has failed to provide a list of witnesses she intends to call, or documents on which she intends to rely, which might otherwise indicate that the Central District of California is a more appropriate venue than the Southern District of New York").

iv. Interests of Justice.

"The 'interest[s] of justice' include such concerns as ensuring speedy trials, trying related litigation together, and having a judge who is familiar with the applicable law try the case." *Rubio*, 181 F. Supp. at 765 (quoting *Heller Financial, Inc. v. Midwhey Powder, Inc.*, 883 F.2d 1286, 1293 (7th Cir. 1989)). Here, the law with respect to the applicable standard for each Plaintiff's claim, that Defendants' acted with deliberate indifference in their provision of medical and mental health care, varies by circuit. *See Waddell v. Lloyd*, Case No. 16-14078, 2019 WL 1354253, *4 (E.D. Mich. Mar. 26, 2019) (noting the circuit split concerning the deliberate indifference standard applicable to medical care claims by pretrial detainees and identifying the Fifth and Eleventh Circuits as applying a different standard from the Ninth Circuit). Therefore, it serves the interests of justice to have these cases tried in the jurisdictions where venue is proper and where a judge is familiar with the applicable law.

Finally, courts in foreign jurisdictions will undoubtedly process claims filed by individual plaintiffs residing in their respective jurisdictions quicker and more effectively than would be the case if this Court elects to process all claims, especially if such claims are made part of a class action. Class-wide discovery into class members' medical records and the agencies' nationwide policies, as well as other class issues and a wide array of experts on several medical conditions, would result in significant litigation before the merits of each individual Plaintiff's medical and mental health claims could be resolved. For all of these reasons, the

Court should transfer any of Plaintiffs' surviving claims that are not severed and dismissed.

D. PLAINTIFFS' MEDICAL CLAIMS MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM.

Even if the Court does not sever and dismiss or transfer any of Plaintiffs' claims, the Court should nonetheless dismiss Plaintiffs' medical care claims for failure to state a claim upon which relief can be granted. As discussed *infra*, Plaintiffs seek relief in the form of an injunction that is impermissibly overbroad. *See MGM Studios, Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1226 (C.D. Cal. 2007) ("blanket injunctions to obey the law are disfavored"); *see also Melan, Inc. v. Advanced Orthomolecular Research, Inc.*, No. EDCV 18-482 JGB (SHKx), 2018 WL 8333423, at *5 (C.D. Cal. 2018) (Bernal, J.) (quoting *MGM Studios* and concluding that the proposed injunction was overbroad). In essence, Plaintiffs seek an inappropriate "obey the law" injunction; Plaintiffs attempt to make an amorphous, programmatic challenge for equally amorphous, class-wide relief based upon a violation of the constitutional rights of specifically named Plaintiffs.

The Court may dismiss a complaint as a matter of law for "(1) lack of a cognizable legal theory or (2) insufficient facts under a cognizable legal claim." *SmileCare Dental Grp. v. Delta Dental Plan of Cal., Inc.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted). To avoid dismissal, a plaintiff must plead facts sufficient to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "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.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

i. Plaintiffs' First Claim Concerning Constitutionally Inadequate Medical and Mental Health Care Fails As a Matter of Law

a. The Elements of a Due Process Violation for Inadequate Medical Care

The right to adequate medical care for immigration detainees, comparable to pretrial detainees, stems from an established right to be free from unconstitutional punishment. *See Bell v. Wolfish*, 441 U.S. 520, 534-37 (1979). Unlike the related Eighth Amendment protections afforded to criminal prisoners, for civil/ immigration detainees, this right stems instead from the Due Process Clause of the Fifth Amendment. Thus, detainees are entitled to receive "adequate" medical care as part of their constitutional right to Due Process. *Gibson v. Cty. of Washoe, Nev.*, 290 F.3d 1175, 1187 (9th Cir. 2002); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

Although the constitutional derivation of rights between criminal prisoners and civil detainees differ, the Ninth Circuit applies the Eighth Amendment's analysis of inadequate medical care to detainees who otherwise derive their freedom from unconstitutional punishment from their due process protections. *Lolli v. Cty. of Orange*, 351 F.3d 410, 418-19 (9th Cir. 2003); *see also Alvarez-Machain v. United States*, 107 F.3d 696, 701 (9th Cir. 1996).

However, recently the Ninth Circuit has adopted a slightly different "objective deliberate indifference standard" from that previously applied in the Eighth Amendment context. *See Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124-25 & n.4 (9th Cir. 2018). The elements of a pretrial detainee's deliberate indifference claim with respect to adequate medical care under due process are the following:

> (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.

Id. at 1125. Essentially, a plaintiff must prove more than negligence but less then subjective intent—something akin to reckless disregard." *Id.* (internal citation omitted). Neither general allegations of negligence nor a plaintiff's general disagreement with treatment received is enough. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). An official's denial, delay, or intentional interference with medical treatment may constitute evidence of deliberate indifference. *See Lolli*, 351 F.3d at 419 (internal citation omitted). Further, a medical need is deemed to be "serious" if the failure to treat the detainee's condition would result in further significant injury or in the unnecessary and wanton infliction of pain contrary to contemporary standards of human decency. *See Helling v. McKinney*, 509 U.S. 25, 32-35 (1993); *see also Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc).

b. Plaintiffs Have Failed to Show Deliberate Indifference.

While Plaintiffs go to great lengths to allege the receipt of delayed care and disagreement with their individual treatment plans, Plaintiffs fail to allege an outright refusal on the part of Defendants to treat any alleged medical or mental health condition. In fact, one Plaintiff fails to allege that Defendants were even aware of his medical condition. *See* Compl. ¶¶ 27, 471 (Amaya fails to allege Defendants were aware of his "tentative diagnosis of end-stage neurocysticercosis" and "likely brain parasite"). Moreover, while Plaintiffs broadly assert a claim for delayed medical care, no Plaintiff alleges a delay in medical or mental health care that resulted in substantial risk of harm or in the unnecessary and wanton infliction

of pain. *See* Compl. ¶¶ 1-2. Specifically, Plaintiffs Fraihat, Amaya, Ali, Melvin Hernandez, Sudney, Munoz, Delgadillo, Soto, Alex Hernandez, and Martinez do not allege that any purported delay in medical care resulted in significant injury or wanton infliction of pain, or that such delay was the result of Defendants' reckless disregard for their care. *See e.g.*, Compl. ¶¶ 24-25 (Fraihat fails to allege that the delay in receiving a wheelchair for mobility purposes resulted in significant injury; fails to show how the passage of three months between surgery recommendation and follow-up doctor visit resulted in injury); ¶¶ 46, 216-17, 289, 339 (Melvin Hernandez fails to allege delay in care relative to his allergies that resulted in significant and avoidable injury); ¶¶ 54, 214-15, 337, 390 (Sudney fails to allege delays in mental health screening and care for PTSD, and that delay in receiving a third surgery, after two prior surgeries while in detention, resulted in significant harm); ¶¶ 68, 292, 313-314 (Munoz fails to allege that the purported delay in receiving medication or missed doses of diabetes, blood pressure, and cholesterol medications resulted in significant harm); ¶ 338 (Delgadillo fails to allege that delay in receiving mental health medication resulted in significant injury); ¶¶ 76, 265, 267 (Soto fails to allege that delay in receiving additional physical therapy or in seeing a neurologist after having received an x-ray and MRI resulted in significant injury); ¶¶ 255-57, 393, 394, 419 (Alex Hernandez fails to allege that he experienced significant injury as a result of delay in care concerning his rotator cuff and mental health issues); ¶¶ 261-63 (Martinez fails to allege significant harm as a result of any alleged delays in receiving diabetes medication or food). Overall, no Plaintiff alleges sufficient facts that Defendants acted with reckless disregard such that this Court could find that Defendants were deliberately indifferent to Plaintiffs' medical conditions. *See Gordon*, 888 F.3d at 1124-25.

c. Plaintiffs Have Failed to Show More Than a General Disagreement With the Treatment Received.

A civilly-committed individual's claim that his medical care violated constitutional standards is governed by the "professional judgment" standard set forth in *Youngberg v. Romeo*, 457 U.S. 307 (1982). The Supreme Court has declared:

> [T]he decision if made by a professional, is presumptively valid; liability may be imposed only when the decision is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.

Id. at 323. Thus, under any standard, mere negligence or medical malpractice does not violate the Constitution. *See Estelle*, 429 U.S. at 106.

None of the Plaintiffs allege sufficient facts to rebut the presumption of validity attached to the diagnoses, opinions, and professional judgment by facility staff in his particular case. For example, Plaintiff Fraihat alleges that in April 2019, he was recommended by an off-site doctor to have surgery on his eye as a result of vision loss. Compl. ¶ 24. Then, he alleges that in July 2019, another doctor told him he could not have laser eye surgery because of the degree of his vision loss. *Id.* These bare assertions do not demonstrate anything more than a difference in medical opinion as to whether Fraihat is a viable candidate for eye surgery. Additionally, Plaintiff Soto alleges that he saw a neurologist and was given two treatment options: surgery or physical therapy. Compl. ¶ 267. After considering the options, Soto "opted for attempting physical therapy and medication before surgery." *Id.* That Soto was given several viable treatment options, and selected his preferred treatment plan, weighs against the finding that Soto received inadequate medical care. If anything, Soto's multiple treatment options supports a finding that Soto received more than adequate medical care and his concerns regarding his care amounts to merely a disagreement with the treatment received. In the case of the

other named Plaintiffs, none have alleged enough to overcome the professional judgment standard or show a violation of the Constitution.

ii. Plaintiffs' Second and Third Claims Concerning Punitive Conditions of Confinement Fail As a Matter of Law.

Due process requires that the nature and duration of detention bear some reasonable relation to the purpose for which an individual is detained. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Pretrial detainees retain greater liberty protections than individuals detained under criminal process. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Similarly, individuals "who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." *Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982). But "it is not always clearly established how much more expansive the rights of civilly detained persons are than those of criminally detained persons." *Hydrick v. Hunter*, 500 F.3d 978, 990 (9th Cir. 2007). What is clear is that the Government's legitimate interests stemming from its need to manage the facility in which the individual is detained may justify imposing conditions on an individual without rendering the detention unconstitutional. *See Bell*, 441 U.S. at 539-540.

Defendants do not dispute that immigration detainees, like other individuals not criminally detained, merit "conditions of confinement that are not punitive." *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004). But that detention may be subject to conditions that relate to legitimate non-punitive governmental objectives such as "maintaining security and order' and 'operating the [detention facility] in a manageable fashion." *Pierce v. County of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008) (quoting *Bell*, 441 U.S. at 540 n.23).

Here, Plaintiffs fail to allege that Defendants segregated Plaintiffs for punitive purposes. Plaintiffs Fraihat and Melvin Hernandez admit that they were

placed in segregation for short periods of time for medical reasons. *See* Compl. ¶ 546 (Fraihat admits when he was in medical segregation he saw a nurse twice a day); ¶ 547 (Melvin Hernandez admits he was placed in segregation for his "severe allergies"). Furthermore, Plaintiffs Amaya, Ali, Sudney, and Alex Hernandez make vague and conclusory allegations concerning their instances of segregation that do not rise to the level of a constitutional violation and fail to state a claim for relief. *See id.* at ¶ 471 ("Mr. Montoya Amaya was confused as to whether the segregation was disciplinary, or instead for his health or protection, as he was housed in medical isolation."); ¶ 391, 469 (Ali alleges that she was "effectively placed in segregation" and "housed in Aurora alone in a dormitory designed for dozens of people"); ¶ 543 (Sudney alleges that he was placed in disciplinary segregation because he filed a grievance against an officer after a verbal altercation); ¶ 446 (Alex Hernandez admits he was placed in segregation for "safety reasons"). Plaintiff Amaya's confusion about the basis for his segregation, Plaintiff Ali's vague allegation of "effective segregation," Plaintiff Sudney's conclusory allegation that he was segregated for filing a grievance, and Plaintiff Hernandez's vague allegation concerning the "safety reasons" for his segregation do not meet the standard to sufficiently allege a due process violation with respect to administrative segregation.

E. PLAINTIFFS' REHABILITATION ACT CLAIMS MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM.

The Rehabilitation Act prohibits federal agencies from discriminating against people with disabilities. 29 U.S.C. § 794(b)(2)(B). Section 504 of the Act provides that "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).

Plaintiff has the burden of showing that Defendants violated Section 504 of the Rehabilitation Act and must show that: "(1) he needed the accommodation to enjoy meaningful access to benefits, (2) the government was on notice that he needed the accommodation but did not provide it, and (3) there was a specific reasonable accommodation available." *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010) (emphasis added).

First, Plaintiffs Fraihat, Chavez, Melvin Hernandez, Sudney, Delgadillo, Soto, Alex Hernandez, Martinez, and Jose Hernandez do not demonstrate that Defendants denied them an accommodation. To the contrary, all of these Plaintiffs state that Defendants have provided them reasonable accommodations. *See* Compl. ¶ 25 (Fraihat, an individual with mobility issues, received his desired accommodation, a wheelchair); ¶¶ 33, 558 (Chavez, a deaf individual, admits that he was given access to a teletypewriter and Skype access); ¶¶ 47, 216, 520 (Melvin Hernandez was placed in medical segregation and put on a special diet in response to his need for an allergy free environment); ¶ 567 (Sudney was provided prescription glasses after he complained about vision loss); ¶¶ 72-73, 361 (Delgadillo, an individual with mental health disorders, was provided medication, placed in medical observation, and has received mental health services); ¶¶ 76-77, 265, 267 (Soto, an individual with mobility issues, was given a physical therapy appointment, received an X-ray and an MRI scan from Adelanto medical staff, saw a neurologist, and was provided a wheelchair); ¶¶ 569, 571 (Alex Hernandez, an individual with mobility issues, was placed in a designated accessible cell and was approved for a bottom bunk); ¶ 564 (Martinez was provided a suitable wheelchair); ¶¶ 527, 560, 599 (Plaintiff Jose Hernandez, a blind individual, met with the ADA coordinator and has guards and others assist him with reading and writing). Thus, all eight of these Plaintiffs have failed to state a claim under the Rehabilitation Act and their claims should be dismissed.

Second, Plaintiffs Amaya, Munoz, and Ali have not asserted the need for a specific accommodation at all. Based on Plaintiffs' allegations, it is not clear that Plaintiffs needed an accommodation to enjoy meaningful access to benefits, were denied a requested accommodation, or that any specific reasonable accommodation was available. *See* Compl. ¶¶ 396, 545 (Amaya, an individual who alleges end-stage neurocysticercosis and mental health conditions, fails to allege that Defendants were aware of his diagnosis and that he needed an accommodation); ¶ 69 (Munoz, an individual with diabetes, makes a conclusory allegation that Defendants' failed to comply with Section 504 at detention facilities but asserts no additional facts related to the Rehabilitation Act); ¶¶ 502, 548, 587 (Ali lists herself as part of the disability subclass and makes conclusory allegations that Defendants' failed to comply with the Rehabilitation Act at detention facilities but asserts no additional facts related to the Rehabilitation Act). Thus, these Plaintiffs have failed to state a claim under the Rehabilitation Act and their claims should dismissed. To the extent any other Plaintiffs' claims under the Rehabilitation Act survive, Plaintiffs Melvin Hernandez, Alex Hernandez, Martinez, Amaya, Ali, are detained outside the district and their claims should be severed and dismissed or, in the alternative, transferred to the appropriate district. *See supra* Section III.B.

F. THE ORGANIZATIONAL PLAINTIFFS' CLAIMS SHOULD BE DISMISSED.

The Complaint names two organizational Plaintiffs, Inland Coalition for Immigrant Justice ("ICIJ") and Al Otro Lado ("AOL"). ICIJ is an immigrant-led community-based coalition organization that promotes justice for immigrants in the Inland Empire region of California. Compl. ¶ 98. ICIJ admits that part of its mission and organizational interest is empowering immigrants with disabilities. *Id.* at ¶ 100. AOL is a legal services organization that services indigent migrants, refugees, deportees, and their families and operates primarily in Los Angeles,

California, San Diego, California, and Tijuana, Mexico. *Id.* at ¶ 111. Part of AOL's mission is to seek redress for disability rights violations. *Id.*

i. The Organizational Plaintiffs Lack Standing.

The organizational Plaintiffs lack standing, and their claims should be dismissed. *See Lujan v. Defenders of Wildlife*, 504 U.S. 560-61 (1992). To satisfy the "'irreducible constitutional minimum' of standing" under Article III, the party invoking federal jurisdiction must demonstrate that it has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (quoting *Lujan*, 504 U.S. at 560). "Foremost among these requirements is injury in fact—a plaintiff's pleading and proof that he has suffered the 'invasion of a legally protected interest' that is 'concrete and particularized.'" *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Lujan*, 504 U.S. at 560). Where, as here, an organization sues on its own behalf, it must establish standing in the same manner as an individual. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975). Most relevant here, an organizational plaintiff must show that the claimed harm is "both a diversion of its resources *and* a frustration of its mission." *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010) (emphasis added).

Here, the organizational Plaintiffs do not sufficiently allege that the Government's purported failure to provide constitutionally adequate medical care and accommodations to detained individuals with disabilities amounts to a cognizable injury suffered by them or that their operations are meaningfully impacted by Defendants' actions. Organizational Plaintiff's ICIJ and AOL fail to show a frustration of their mission and a diversion of their resources. First, and most importantly, both organizations fail to allege, beyond mere conclusions, that either organization has done anything more than the ordinary work tailored to their

missions, which includes advocating for clients with disabilities or medical conditions, providing assistance with social service needs, and empowering immigrants with disabilities. *See* Compl. ¶¶ 98, 100, 111-12. In fact, part of the central missions of ICIJ and AOL is to advocate for individuals with disabilities, regardless of whether or not they request accommodations or specific medical treatment. Compl. ¶ 98 (stating that "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."); ¶ 111 (stating that AOL'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.") (emphasis added). Thus, both organizational Plaintiffs advocate on behalf of individuals with disabilities and, if anything, this type of advocacy is exactly the type of work these organizations set out to do according to their mission statements. *Id.*; *see also* ¶ 101 (ICIJ additionally admits that they have "a staff member who works full-time to support people at Adelanto, including those who are vulnerable in detention due to medical conditions, mental health disabilities, and other disabilities. Along with several partner organizations, the staff member organizes a network of volunteer visitors to detained people at Adelanto."); Compl. ¶ 118 (AOL admits that "[a]lmost all" of their "detained clients have mental health conditions, many of which require additional advocacy."). Because the organizational Plaintiffs have failed to sufficiently allege facts to establish standing, their claims should be dismissed under Fed. R. Civ. P. 12(b)(1).

Second, the organizational Plaintiffs fail to show a diversion of their resources because they summarily allege that assisting their clients with disabilities diverts resources and frustrates their mission. Compl. ¶¶ 100, 112. The

organizational Plaintiffs fail to show even an approximation of how many of their clients are disabled within the meaning of the statute or have serious medical needs. Furthermore, the organizational Plaintiffs fail to allege how many of their clients are receiving inadequate accommodations or inadequate medical treatment and do not show any evidence of the organization using resources for anything other than usual purposes. Notably, AOL describes how almost "all of [their] clients have mental health conditions, many of which require additional advocacy." Compl. ¶ 117. It is therefore impossible to determine if the organizations' resources are actually diverted to assist those individuals with disabilities or medical conditions who claim they received inadequate accommodations or medical treatment, or if Defendants already devote most of their resources to the representation of the clients with disabilities or other serious medical conditions.

ii. Even if the Organization Plaintiffs have Standing, They Fail to State a Claim upon Which Relief can be Granted.

This Court should deny the organizational Plaintiffs' claims, made on their own behalf, under the Rehabilitation Act for failure to state a claim upon which relief can be granted because they have not established that Defendants are within the zone of interests of the Rehabilitation Act. *See Lexmark Int'l, Inc. v. Static Control Components, Inc*., 134 S. Ct. 1377, 1387 (2014) (clarifying that the zone of interest test is substantive rather than jurisdictional). The Rehabilitation Act's statutory scheme authorizes remedy to "any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794." 29 U.S.C. § 794(a)(2). However, courts have interpreted "any person aggrieved" narrowly, "enabling suit by any plaintiff with an interest 'arguably sought to be protected by the statute . . . while excluding plaintiffs who might technically be injured in an Article III sense but whose interests are unrelated to the statutory prohibitions . . . . " *Thompson v. N. Am. Stainless, LP*,

562 U.S. 170, 178 (2011) (holding that the zone of interest for a statute with the term "any person aggrieved" should not be construed to protect anyone who may have been indirectly injured, but to protect only those whose injuries were directly related to the statutory prohibition).

Although the organizational Plaintiffs allege that their clients suffer injuries from inadequate disability accommodations, and that these injuries place those Plaintiffs within the zone of interests of the Rehabilitation Act, the organizational Plaintiffs themselves allege a completely different injury—diversion of resources and a frustration of their mission. Compl. ¶¶ 100, 112. The organizational Plaintiffs do not require disability accommodations, but rather advocate on behalf of their disabled clients for adequate accommodations. Accordingly, the organizational Plaintiffs' "interests are unarguably 'so marginally related to . . . the purposes implicit in the [regulation] that it cannot reasonably be assumed that Congress [and the regulators] intended to permit the suit.'" *Nw. Immigrant Rights Project v. United States Citizenship & Immigration Servs.*, 325 F.R.D. 671, 688 (W.D. Wash. 2016) (citing *Match–E–Be–Nash–She–Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2210 (2012)). Therefore, because the organizational Plaintiffs have not shown that they fall within the zone of interests contemplated by the Rehabilitation Act, their claims should be dismissed for failure to state a claim upon which relief can be granted.

G. PLAINTIFFS' IMMATERIAL, IRRELEVANT, AND UNNECESSARY ALLEGATIONS SHOULD BE STRICKEN UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(f)

Federal Rule of Civil Procedure 12(f) provides that a "court may strike from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." In doing so, "the court may act on its own" or "on motion made by a party [] before responding to the pleading . . . ." Fed. R. Civ. P. 12(f).

"The function of a 12(f) 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 . . ." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, 510 U.S. 517 (1994). Insufficient allegations in a pleading that do not consist of an entire claim for relief may be challenged by a motion to strike. *See Thompson v. Paul*, 657 F. Supp. 2d 1113, 1129-30 (D. Ariz. 2009); *Fantasy, Inc.*, 984 F.2d at 1527.

"'Immaterial' matter is that which has no essential or important relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc.*, 984 F.2d at 1527 (quoting 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at 706–07 (1990)). "'Impertinent' matter consists of statements that do not pertain, and are not necessary, to the issues in question." *Id.*; *see also United Studios of Self Defense, Inc. v. Rinehart*, 2019 WL 1109682, No. 8:18-CV-01048-DOC-DFM, at *3 (C.D. Cal. Feb. 22, 2019). Finally allegations that are unnecessary, burdensome to answer, and unduly prejudicial to Defendant should be stricken. *See In re "Agent Orange" Product Liab. Litig.*, 475 F. Supp. 928, 935 (E.D.N.Y. 1979); *see also Verfuerth v. Orion Energy Systems, Inc.*, 65 F. Supp. 3d 640, 65 (E.D. Wis. 2014) ("where 73 of complaint's 96 pages contained only unnecessary 'background' facts and motion was granted because requiring defendant to pay counsel to investigate and respond to such facts 'definitely falls into the category of prejudice.'"). A motion to strike is a proper procedural vehicle to challenge insufficiently pled allegations pursuant to Rule 8(a), as interpreted by the Supreme Court in *Iqbal* and *Twombly*. *See In Re Toyota Motor Corp.*, 826 F. Supp. 2d 1180, 1207-08 (C.D. Cal. 2011) (striking legal conclusions in complaint that were cast as factual allegations).

This Rule 12(f) motion is timely. Although Rule 12(f) motions to strike must generally be brought before responding to the pleadings, Defendants seek the same

relief they are concurrently seeking in the motion to dismiss for failure to state a claim. Moreover, courts in this District have found a motion to strike timely when brought at any point in the case, reasoning that the courts are considering the issue of their own accord. *See e.g.*, *San Pedro Boat Works, Inc. v. Water Quality Ins. Syndicate*, No. 04-08495-DDP (RCx), 2006 WL 4811383, at *2 (C.D. Cal. Jan. 13, 2006) ("[c]ourts have read Rule 12(f) to allow a district court to consider a motion to strike at any point in the case . . . despite the fact that its attention was prompted by an untimely filed motion.").

The only way to remove the multitude of improper allegations that plague the Complaint is to bring this Motion in conjunction with the simultaneous Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b). This way, should the case proceed past the pleading stage, the operative Complaint will state only proper allegations. As presently pled, many of Plaintiffs' allegations throughout the Complaint are, at minimum, immaterial and impertinent to their claims. Paragraphs 139 to 202 are essentially a history of issues concerning immigration detention centers. Compl. ¶¶ 139-202 (discussing general history and statistics that are unrelated to the present case, letters from 2012 about facilities that do not house any of the named Plaintiffs, reports from 2014 about statistics unrelated to issues in this case, articles about noncitizen veterans who are not parties to this case, and general "conditions of confinement in prisons and jails," and more); *see also* ¶¶ 343-49, 458, 480 (discussing reports, some a decade old, on unrelated issues). The rest of the Complaint, paragraphs 203-657, is littered with irrelevant material. *See* Compl. ¶¶ 223-25 (discussing irrelevant and unnecessary detainee death reviews from detention centers across the country); ¶¶ 226-36, 270-79, 296-305, 319-34, 350-55, 365-66, 378-86, 404-12, 426-28, 466, 473-78, 496-500 (repeatedly describing in detail the health issues and deaths of individuals not parties to this action); ¶¶ 241, 287, 294, 317-18, 370-76, 442-43, 448-49, 452-54, 490, 494, 540

(discussing old reports about facilities not at issue in this case); ¶¶ 209-13, 242, 282-84, 295, 308-09, 356, 370, 399-400, 416, 424-25 (providing vague allegations about un-specified individuals and facilities). None of the allegations in these paragraphs involve any of the named Plaintiffs or relate specifically to any of their allegations or claims for relief, and thus are immaterial and impertinent. *See Fantasy, Inc.*, 984 F.2d at 1527; *Rinehart*, 2019 WL 1109682 at *3. Indeed, even if this Court deemed those paragraphs relevant, it would be overly onerous to answer and unduly prejudicial to Defendants. Accordingly, if these allegations are not stricken from the Complaint, Defendants will be prejudiced as it will be virtually impossible to respond in any meaningful way to the improper, immaterial, and impertinent claims. *See In re "Agent Orange" Product Liab. Litig.*, 475 F. Supp. at 935. Therefore, all of the above Paragraphs should be stricken from the Complaint.

IV. CONCLUSION

For all the foregoing reasons, Defendants respectfully request that the Court dismiss the Complaint. Specifically, Defendants request that the Court:

1. Sever the claims of the Plaintiffs who are not detained within the jurisdiction of the Central District of California;

2. Dismiss the claims of the Plaintiffs who are not detained within the jurisdiction of the Central District of California, or alternatively, transfer those claims to the jurisdiction where each Plaintiff is detained;

3. Sever and dismiss the claims of the Plaintiffs detained within the jurisdiction of the Central District of California;

4. For claims that are not severed and dismissed or transferred, dismiss Plaintiffs' claims for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) where appropriate, or for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6);

5. Dismiss the organizational Plaintiffs for lack of standing;

6. Strike the irrelevant, immaterial, and unnecessary paragraphs of the Complaint.

Dated: November 27, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

WILLIAM C. PEACHEY
Director

JEFFREY S. ROBINS
Deputy Director

/s/ *Lindsay M. Vick*
LINDSAY M. VICK
Trial Attorney
United States Department of Justice
Office of Immigration Litigation
District Court Section

Attorneys for Defendants

EXHIBIT 1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*, Plaintiffs, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.* Defendants.	No. 5:19-CV-01546 JGB **DECLARATION OF BRIAN ORTEGA**

I, Brian Ortega, hereby declare as follows:

1. I am the Supervisory Detention and Deportation Officer for the Florence Detention Center, United States Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS), Florence, Arizona. In this position, I am responsible for the supervision of Deportation Officers responsible for detaining aliens.

2. The matters contained in this declaration are based on my personal knowledge, or information provided to me in my official capacity.

3. Mr. Sergio Salazar-Artaga, Alien Number 215 881 683, was ordered released on conditional parole on September 12, 2019, by an Immigration Judge. As part of my duties, I reviewed the release of Mr. Salazar-Artaga and signed the associated paperwork. The documents attached to this motion are found in Mr. Salazar-Artaga's A file.

4. Pursuant to 28 U.S.C. § 1746, and under penalty of perjury, I declare the forgoing is true and correct to the best of my knowledge.

Brian Ortega
Supervisory Detention and Deportation Officer
U. S. Immigration and Customs Enforcement
Department of Homeland Security

11/26/2019
Date

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE

Event Number: [redacted]

File No.: [redacted]

Date: September 12, 2019

Name: SALAZAR-ARTAGA, SERGIO

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

[X] You must report for any hearing or interview as directed by Immigration and Customs Enforcement or the Executive Office for Immigration Review.

[X] You must surrender for removal from the United States if so ordered.

[X] You must report in (writing) (person) to Duty officer at See I-831 on 10/22/2019 09:00 as directed.

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

[X] You must not change your place of residence without first securing written permission from the officer listed above.

[X] You must not violate any local, State or Federal laws or ordinances.

[X] You must assist Immigration and Customs Enforcement in obtaining any necessary travel documents.

[ ] Other: *Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the Department of Homeland Security. Electronic monitoring is a requirement and a curfew may be imposed. Failure to comply with the conditions of your release or the requirements of the ATD program may result in a redetermination of your release conditions or your arrest and detention.*

[ ] See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revo[redacted] and your arrest and detention by Immigration and Customs Enforcement.

[redacted]
ICE Official

Alien's Acknowledgement of Conditions of Release under an Order of Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the _____ language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

[redacted] [redacted] 09/12/2019

(Signature of ICE Official serving order) (Signature of Alien) Date

I hereby cancel this order of release because:

[ ] The alien failed to comply with the conditions of release. [ ] The alien was taken into custody for removal.

(Signature of ICE Official canceling order) Date

ICE Form I-220A (8/15)

FILE COPY

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE
CONTINUATION PAGE

Alien Name SALAZAR-ARTAGA, SERGIO	Picture [redacted]	Right Index Print [redacted]
File Number [redacted]		
Date September 12, 2019		
Alien's Signature [redacted]		
Alien's Telephone Number (if any) [redacted]		
Alien's Address [redacted]		

PERSONAL REPORT RECORD

Date	Officer	Comment/Changes

Signature [redacted]	Title DO

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE ADDENDUM

File No.: [redacted]

Date: September 12, 2019

Name: SALAZAR-ARTAGA, SERGIO

- [x] That you do not associate with known gang members, criminal associates, or be associated with any such activity.
- [ ] That you register in a substance abuse program within 14 days and provide ICE with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a counselor.
- [ ] That you register in a sexual deviancy counseling program within 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, the address of the program, duration and objectives of the program as well as the name of a counselor.
- [ ] That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide ICE with written proof of such within 10 days.
- [x] That you do not commit any crimes while on this Order of Release on Recognizance.
- [ ] That you report to any parole or probation officer as required within 5 business days and provide ICE with written verification of the officer's name, address, telephone number, and reporting requirements.
- [x] That you continue to follow any prescribed doctor's orders whether medical or psychological including taking prescribed medication.
- [x] That you provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.
- [x] That you provide ICE with written responses from the Embassy or Consulate regarding your request.
- [x] Any violation of the above conditions will result in revocation of your employment authorization document.
- [x] Any violation of these conditions may result in you being taken into ICE custody and you being criminally prosecuted.
- [x] Other; "You are restricted from visiting any ICE detention center upon your release from custody on this order. Should you need to visit someone at any ICE detention center you will need to first obtain authorization from the Officer In Charge or the Assistant Field Office Director of the facility".

X [redacted]
Alien's Signature

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE
OUT-PROCESSING CHECKLIST

Sex Offenders

- ☐ Probation/Parole Officer Notified
- ☐ Registered as sex-offender as required by state statute within 7 days
- ☐ Victim/Witness Coordinator Notified
- ☐ Victim/Witness Notified
- ☐ Written Proof of Counseling

Substance Abusers

- ☐ Probation/Parole Officer Notified
- ☐ Written Proof of Counseling

All Aliens

- ☐ Probation/Parole Officer Notified
- ☐ Obtain address where living and telephone number
- ☐ Enter into IDENT FINS#: [redacted]
- ☐ NCIC Check
- ☐ Travel Document Application
- ☐ Other: _____

Completed By Deportation Officer [redacted]	Date 09/12/2019
Concurrence By Supervisory Detention and Deportation Officer [redacted]	Date 09/12/2019

EXHIBIT 2

Form I-216
U.S. DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION & CUSTOMS ENFORCEMENT
(Rev.04/26/11)

Manifest No. [redacted] (Page 1 of 1)

Transfer Date: 10/23/19

RECORD OF PERSONS TRANSFERRED

FROM: FLORENCE STAGING FACILITY (I
Origin FO: FLORENCE, AZ, PROCESSING CI

VIA (1) AROCC
VIA (2)

TO: EL SALVADOR 10/23
Dest. FO: EL SALVADOR 10/23

MODE: ICE AIR
Other:

File No.	Name of Person LAST	FIRST	DOB	Nationality	Status (3)	Sex	[redacted]	Gang Membership	Class. Level	Fins #	Subject ID	Comments (2)
[redacted]	SEGOVIA BENITEZ	JOSE	[redacted]	ELSAL	3	M	[redacted]	N	HI	[redacted]	[redacted]	TD issued

I certify compliance with all ICE Detention and Transfer Standards and ICE Air Boarding Requirements for this ICE Air/Charter movement.

Name and Title: Office: Contact Number(s):

(1) - Show whether transfer or removal. For transfers show whether NTA or Final Order (F/O)

(2) - Show medical conditions, high risk, flight risk, epileptic, insane, etc.

Use a separate line for each person transferred.
This form is to be executed in sufficient number of copies to allow receiving officer to retain one copy of his personal expense voucher and two additional copies for station of final delivery.

Received the above listed persons

Signature:

Title:

Place and Date:

[redacted]
U.S. Immigration and Customs Enforcement

10-23-19

EXHIBIT 3

DECLARATION OF DAVID DE LA GARZA

I, David de la Garza, pursuant to 28 U.S.C. § 1746, and based on my personal knowledge and information made known to me from official records reasonably relied upon by me in the course of my employment, declare under penalty of perjury the following:

1. I am a Deportation Officer employed by the Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations. I am the Deportation Officer assigned to Edilberto García Guerrero.
2. I am making this declaration in my capacity as a Deportation Officer, based on my personal knowledge and on information furnished to me in the course of my official duties.
3. On May 15, 2019, Mr. García Guerrero was granted Voluntary Departure Under Safeguards at the conclusion of his removal hearing by an Immigration Judge in Aurora, Colorado.
4. On June 5, 2019, Mr. García Guerrero filed an appeal with the Board of Immigration Appeals (BIA).
5. On October 31, 2019, the BIA dismissed Mr. García Guerrero's appeal and denied his motion to remand. The original Voluntary Departure order was reinstated and will expire on November 25, 2019.
6. Due to the ICE Air schedule, the next departure available will be on November 26, 2019.

7. Mr. García Guerrero will be granted a one-day extension to facilitate compliance with the Voluntary Departure order.

8. As of the date of this declaration, I see no impediments to the execution of the Voluntary Departure Under Safeguards or to Mr. García Guerrero's departure on November 26, 2019.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the above statements are true and correct to the best of my knowledge and belief.

11/21/2019
Date

David de la Garza
Deportation Officer
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
Denver, Colorado