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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

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

Defendants.

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

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

Date: February 24, 2020

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I. INTRODUCTION

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

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

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

II. STANDARD OF REVIEW

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

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

III. ARGUMENT

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

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

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

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

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

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

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

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

1. Plaintiffs Satisfy the Test for Permissive Joinder.

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

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

a. Plaintiffs' Claims Arise From the Same Occurrence.

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

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

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

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

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

b. Plaintiffs' Claims Share Common Questions of Law and Fact.

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

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

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

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

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

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

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

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

3. Severance Would Not Promote Efficiency or Fairness.

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

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

[S]plitting the claims into separate cases would unnecessarily

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

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

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

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

1. Plaintiffs Adequately Allege Deliberate Indifference.

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

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

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

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

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

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

[6] ¶¶ 238, 241, 346.

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

[8] ¶ 186; *see also* ¶ 374.

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

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

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

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[9] ¶ 376.
[10] *See, e.g.*, ¶¶ 214-19, 246-67, 289-92, 313-16, 337-41, 359-62, 390-97, 419-22.
[11] ¶¶ 167, 178-85, 188-89, 191-92.
[12] ¶ 190; *see also* ¶ 186.
[13] ¶¶ 161-62, 196-202.
[14] ¶ 198.
[15] ¶¶ 165-69.
[16] ¶ 193.

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

a. Plaintiffs' Request for Injunctive Relief is Proper.

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

b. Plaintiffs Need Not Allege Actual Injury.

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

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

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

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

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

c. Plaintiffs Adequately Allege Objective Deliberate Indifference.

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

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

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

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

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

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

d. Defendants' "Professional Judgment" Argument Should be Rejected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plaintiffs also satisfy *Jones's* alternative test for establishing a presumption

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

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

of punitiveness by properly alleging that there are less harsh alternatives to segregation. Crucially, since the Plaintiffs and class and subclass members are in civil immigration detention, Defendants have the authority to release the majority of them pending their hearings. *See* ¶¶ 156-57 (citing 8 C.F.R. § 212.5 and § 1236.1). Plaintiffs further allege that equally effective and significantly less harsh alternatives to detention are available. ¶ 158. Finally, Plaintiffs allege that Defendants' own standards require "a host of protections that are not implemented in practice." ¶ 455.[22] And even though it is a defense on which Defendants have the burden of proof, Plaintiffs also allege facts showing that the restrictions are excessive in relation to the ostensible interests served.[23]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Frustration of mission occurs when "challenged practices have perceptibly

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

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

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

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

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

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

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

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

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

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

his or her disability." 29 U.S.C. § 794a(a)(2). Courts have interpreted the Act's zone of interest to extend broadly, including not only people with disabilities, but also those who advocate for them. *See 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); *P.P. v. Compton Unified Sch. Dist.*, 135 F.Supp.3d 1098, 1125 (C.D. Cal. 2015) (finding standing for both students with disabilities and their teachers); *Oster v. Lightbourne*, 2012 WL 691833, at *11 (N.D. Cal. Mar. 2, 2012) (finding standing for both people with disabilities who require supportive services and the union representing the service providers). It is sufficient that the organization's "asserted interests are consistent with and more than marginally related to the purposes of" the statute. *E. Bay Sanctuary Covenant*, 932 F. 3d 768.

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

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

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

themselves—to a substantial risk of serious harm.

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

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

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

[25] Indeed, Defendants betray their motive for asking the Court to strike the bulk of the Complaint's allegations by conceding that the allegations are "undoubtedly . . . troubling." ECF No. 54 at 11.

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

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

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

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

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

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

The Motion to Strike should be denied in its entirety.

IV. CONCLUSION

For the reasons above, Defendants' motions to severe, dismiss, and strike should be denied.

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Dated: January 20, 2020

Respectfully Submitted,

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