Case No. **EDCV 19-1546 JGB (SHKx)** Date April 15, 2020

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

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

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

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

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

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

5. Rule 12(f)

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

III. DISCUSSION

A. Motion for Reconsideration

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

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

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

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

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

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

1. Rule 12(b)(1)

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

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

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

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

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

b. Organizational Plaintiffs' Standing

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

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

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

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

Plaintiffs also share common questions of law and fact. Each of the four claims for relief involves DHS and ICE, and the alleged violations occurred around the same time. Although there are surely differences in how Defendants' practices impacted each Plaintiff, Plaintiffs assert violations of the same rights and complain of similar types of injuries. Overwhelming overlap is

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

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

4. Rule 12(b)(6)

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

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

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

a. Medical Indifference

Plaintiffs' first claim for relief is that Defendants' failure to monitor and prevent certain failed healthcare practices violates the Due Process Clause of the Fifth Amendment. (Compl. at 189.) Both parties agree that the objective deliberate indifference standard is an appropriate

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

b. Punitive Conditions

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

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

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

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

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

c. Rehab Act Section 504

Section 504 of the Rehabilitation Act provides:

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

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

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

5. Rule 12(f)

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

Plaintiffs' allegations—though lengthy—are material and are warranted in light of the
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