

COBLENTZ PATCH DUFFY & BASS LLP
ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 • FAX 415.989.1663

Mark L. Hejinian (SBN 281417)
ef-mlh@cpdb.com
Marcia V. Valente (SBN 321852)
ef-mvv@cpdb.com
David C. Beach (SBN 226972)
ef-dcb@cpdb.com
Charmaine G. Yu (SBN 220579)
ef-cgy@cpdb.com
Evan G. Campbell (SBN 342223)
ef-egc@cpdb.com
Darien Lo (SBN 347244)
ef-dxl@cpdb.com
COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104
Telephone: (415) 391-4800

Neil K. Sawhney (SBN 300130)
nsawhney@aclunc.org
Lauren M. Davis (SBN 357292)
ldavis@aclunc.org
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493

Attorneys for Plaintiffs-Petitioners

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CARMEN ARACELY PABLO SEQUEN,
YULISA ALVARADO AMBROCIO,
MARTIN HERNANDEZ TORRES, and
LIGIA GARCIA,

Plaintiffs-Petitioners,

v.

SERGIO ALBARRAN, MARCOS
CHARLES, THOMAS GILES, MONICA
BURKE, KRISTI NOEM, U.S.
DEPARTMENT OF HOMELAND
SECURITY, TODD M. LYONS, SIRCE E.
OWEN, PAMELA BONDI, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT, UNITED STATES
DEPARTMENT OF JUSTICE, EXECUTIVE
OFFICE FOR IMMIGRATION AND
REVIEW, UNITED STATES OF AMERICA,

Defendants-Respondents.

Marissa Hatton (SBN 348678)
mhatton@lccrsf.org
Andrew Ntim (SBN 347084)
antim@lccrsf.org
Jordan Wells (SBN 326491)
jwells@lccrsf.org
Nisha Kashyap (SBN 301934)
nkashyap@lccrsf.org
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO BAY
AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444

Laura Victoria Sanchez (SBN 253736)
laura@carecensf.org
Tala Berardi Hartsough (SBN 230204)
tala@carecensf.org
CARECEN SF
3101 Mission Street, Suite 101
San Francisco, CA 94110
Telephone: (415) 642-4402

Case No. 5:25-CV-06487-PCP

CLASS ACTION

**PLAINTIFFS' OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS
AND MOTION TO SEVER**

Date: December 9, 2025
Time: 10:00 a.m.
Crtrm.: 8 - 4th Floor
Judge: Honorable P. Casey Pitts

Trial Date: None Set

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ONE MONTGOMERY STREET, SUITE 3000, SAN FRANCISCO, CALIFORNIA 94104-5500
415.391.4800 • FAX 415.989.1663

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INTRODUCTION

Reacting to an ostensible emergency need to detain as many immigrants as possible, ICE embarked on a terrifying campaign of arrests at immigration courthouses that—with the unquestioning acquiescence of EOIR—betrays the American promise of a fair day in court. In parallel, ICE began systematically using short-term holding cells for overnight and multi-night detention, with predictably disastrous results. Emergency or no emergency, these actions are subject to the basic constraints of constitutional and administrative law. Defendants would prefer to atomize Plaintiffs’ legal resistance into individual petitions for habeas corpus, but the Federal Rules of Civil Procedure permit Plaintiffs to band together in challenging systematic oppression.

The Court should deny the Motion to Dismiss And Motion to Sever (ECF No. 106 (“Motion” or “Mot.”)). First, the Court has jurisdiction over Plaintiffs’ habeas petitions and class claims. Plaintiffs had standing when the class complaint was filed, and the claims have not been mooted by the Court’s preliminary injunction orders or by Plaintiffs no longer being detained at ICE’s San Francisco Field Office. And, as this Court has recognized, Plaintiffs’ class claims do not invoke habeas jurisdiction, but instead have their own independent jurisdictional basis. Second, Defendants’ argument that Plaintiffs cannot state their APA claims simply duplicates Defendants’ opposition to Plaintiffs’ motions for preliminary relief and fails for the same reasons articulated in those briefs. Notably, Defendants do not challenge the sufficiency of the factual allegations underpinning Plaintiffs’ constitutional detention conditions claims. Third, the parties and claims are properly joined because the claims all arise out of Defendants’ same arbitrary and capricious policies and unlawful conduct. Joinder furthers the purpose of permissive joinder: judicial economy and expeditious resolution of disputes.

BACKGROUND**I. The 12-Hour Waiver Policy and “Hold Room” Conditions****A. ICE Impermissibly Waived a Longstanding Policy Against Confining Detainees in Hold Rooms for More Than 12 Hours**

At 630 Sansome Street, Defendant ICE maintains a “Holding Facility” with “Hold Rooms” in which ICE places “individuals awaiting removal, transfer, . . . or other processing into or out of

1 the facility.” *See* FAC ¶ 103 (citing 2011 ICE Performance-Based National Detention Standards
2 (“PBNDS”) § 2.6, I). Pursuant to ICE standards dating to at least 2011, “[n]o detainee shall be
3 confined in a Hold Room for more than 12 hours.” FAC ¶ 105 (citing PBNDS § 2.6, II.2). Because
4 the PBNDS require Hold Room detention to be less than 12 hours, they preclude ICE from putting
5 beds or mattresses in Hold Rooms. *Id.* (citing PBDNDS § V.A.5 (“Bunks, cots, beds and other
6 sleeping apparatus are not permitted inside Hold Rooms.”)).

7 Consistent with the PBNDS, ICE’s Office of Enforcement and Removal Operations
8 (“ERO”) issued Policy No. 11087.1 in 2014, which also limited use of Hold Rooms to 12 hours or
9 less, “[a]bsent exceptional circumstances.” FAC ¶¶ 76–77. Ten years later, in January 2024, the 12-
10 hour limit was reaffirmed in an updated and superseding policy titled Directive 11087.2. FAC ¶ 78.
11 Moreover, ERO officers were expected to “empty holding facilities upon the conclusion of daily
12 operations[.]” FAC ¶ 80.

13 On June 24, 2025, ICE issued an immediately effective Memorandum titled “Nationwide
14 Hold Room Waiver,” (hereinafter “12-Hour Waiver Memo”) suspending section 5.1 of Directive
15 11087.2. *See* FAC ¶¶ 52–58, 84, 87. The 12-Hour Waiver Memo allows ICE to detain immigrants
16 in Hold Rooms “for up to, but not exceeding, 72 hours, absent exceptional circumstances,” a six-
17 fold increase. *See* FAC ¶ 85.

18 The 12-Hour Waiver Memo claimed that “increased enforcement efforts” created a
19 “significant[] increase” in ERO’s average daily population, which meant “ERO field officers [] had
20 to resort” to waiving the 12-hour limit. *See* FAC ¶ 89. The memo fails to explain why waiving the
21 prior limit is the only viable option for ERO or whether it is practicable or constitutional to
22 immediately use short-term holding cells for long-term detention without any operational changes.
23 FAC ¶¶ 90–92. Because PBNDS remains in effect, ICE continues to bar beds or bedding in Hold
24 Rooms, leading to inhumane and unconstitutional conditions of confinement.¹ *See* FAC ¶¶ 106–
25 111.

26
27 ¹ Defendants challenge neither the sufficiency of the 630 Sansome conditions allegations, *see* FAC
28 ¶¶ 125–168, nor whether Plaintiffs adequately alleged their claims related to conditions of
confinement, *see* FAC ¶¶ 233–275 (Counts Three through Five). *See gen. Mot.*

II. Change in Courthouse Arrests Policy and Practice**A. The Long Practice Against Civil Immigration Arrests at Immigration Courts**

For decades, the government refrained from conducting civil immigration arrests at immigration courts. FAC ¶ 36. In 2021, the Department of Homeland Security (“DHS”) memorialized its longtime practice of abstaining from courthouse arrests. FAC ¶ 37. An April 27, 2021 DHS Memorandum precluded ICE agents from conducting “civil immigration enforcement action . . . in or near a courthouse” except in limited circumstances, i.e., “a national security threat,” “an imminent risk of death, violence, or physical harm to any person,” the “hot pursuit of an individual who poses a threat to public safety,” or the “imminent risk of destruction of evidence material to a criminal case.” FAC ¶¶ 37–38. The “core principle[]” underlying the policy was that “[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals’ access to courthouses, and as a result, impair the fair administration of justice.” FAC ¶ 37. DHS therefore limited courthouse arrests “so as not unnecessarily impinge upon the core principle of preserving access to justice.” FAC ¶ 37.

In December 2023, recognizing the same concerns as DHS, EOIR issued Operating Policies and Procedures Memorandum 23-01 which, absent exigent circumstances outlined by DHS, prohibited civil immigration enforcement actions in or near an immigration court. FAC ¶¶ 39-40. EOIR articulated a variety of policy rationales, including the need to avoid a “chilling effect” on noncitizens appearing in immigration courts, inefficiencies that would be created through absenteeism resulting from fear of arrest at court, safety risks for others attending immigration court who are present during enforcement actions, and that the prohibition on enforcement actions would “reinforce the separate and distinct roles of DHS and [EOIR] in the eyes of the public.” FAC ¶ 39.

B. The DHS and EOIR Abandon the Prohibitions Against Courthouse Arrests

In rapid succession and with no reasoned explanation, DHS and EOIR reversed their longstanding policies against arrests at courthouses.

1. The ICE Policies

On January 20, 2025, the acting DHS Secretary directed DHS agencies to rescind guidelines relating to law enforcement “in or near so-called ‘sensitive’ areas.” FAC ¶ 43. The directive offered

1 no explanation or engagement with the rationales for earlier policy. *Id.*

2 On or about the same day, the acting ICE director issued guidance rescinding the 2021 DHS
3 Memorandum and broadly authorizing ICE to conduct civil immigration enforcement in and near
4 courthouses. FAC ¶ 44 (“ICE Interim Arrest Guidance”).

5 On May 27, 2025, Defendant Lyons issued a final version of the ICE Interim Arrest
6 Guidance, Policy No. 11072.4 (“Final ICE Courthouse Arrest Policy”). FAC ¶ 47; *see also* Johns
7 Decl., Ex. F. The Final ICE Courthouse Arrest Policy, which is “effective immediately,” is identical
8 to the ICE Interim Arrest Guidance in almost all material respects; the sole exception is that it
9 removes the provision of the ICE Interim Arrest Guidance preventing courthouse arrests where such
10 arrests would violate local law. FAC ¶ 47. The Final ICE Courthouse Arrest Policy does not address
11 the concerns in the 2021 DHS Memorandum, including the chilling effect that enforcement actions
12 could have. FAC ¶ 48. It only states, without support, that because courthouses are screened for
13 weapons and other contraband, courthouse arrests “can reduce safety risks.” *Id.* The Final ICE Arrest
14 Policy continued to prohibit immigration enforcement at “Non-Criminal or Specialized Courts”
15 absent specific approval for that particular enforcement action. Final ICE Courthouse Arrest Policy
16 at 2.

17 2. The EOIR Memo

18 On January 28, 2025, EOIR changed its own courthouse arrests policy when Defendant
19 Owen issued OPPM 25-06 (“EOIR Courthouse Arrest Memo”), rescinding OPPM 23-01. FAC ¶
20 50. The EOIR Courthouse Arrest Memo asserts that, because ICE had changed its policy regarding
21 courthouse arrests, “there is no longer a basis to maintain” the prior EOIR policy limiting
22 immigration enforcement actions in or near immigration courts. FAC ¶ 50. The memo disregards
23 the notion that reversal of the policy would chill the right to seek relief in immigration court, noting
24 only the concern was “vague,” “unspecified,” and “contrary to logic.” *Id.* Instead, without any
25 support, the Memo claims that individuals with valid immigration claims have “no reason to fear
26 any enforcement action by DHS.” *See* FAC ¶ 50.

27 3. Practical Effects of the Radical, Unexplained Change in Policy

28 ICE has acted on the ICE and EOIR policy reversals, arresting dozens of immigrants

1 appearing for court in immigration courthouses within ICE's San Francisco Area of Responsibility.
 2 FAC ¶¶ 59–63. These arrests occur regardless of the outcome of the immigrant's hearing. FAC ¶
 3 64. Accordingly, there has been a marked increase in absenteeism for hearings, and noncitizens
 4 with immigration hearings face the impossible choice between risking their freedom by appearing
 5 as ordered by the federal government, or missing their mandatory hearing, foregoing their
 6 immigration case, and receiving an *in absentia* removal order. FAC ¶ 66.

7 **III. Plaintiffs-Petitioners**

8 Ms. Carmen Pablo Sequen fled Guatemala in the face of credible threats. FAC ¶ 186. On
 9 July 31, 2025, Ms. Pablo Sequen appeared in San Francisco Immigration Court. FAC ¶ 192. DHS
 10 moved to dismiss her case, and the judge gave Ms. Pablo Sequen ten days to respond, and set a
 11 hearing for August. FAC ¶ 193. Upon leaving the courtroom, Ms. Pablo Sequen was arrested by
 12 multiple ICE agents acting aggressively. FAC ¶ 194. She was held overnight, and not released until
 13 the Court issued a temporary restraining order on her petition for habeas corpus. *Id.*

14 Ms. Yulisa Alvarado Ambrocio fled Guatemala, while pregnant, in the face of credible
 15 threats. FAC ¶ 199. On September 11, 2025, Ms. Alvarado Ambrocio attended a scheduled hearing
 16 at the San Francisco Immigration Court with her infant. FAC ¶ 201. ICE agents attempted to arrest
 17 Ms. Alvarado Ambrocio outside the courtroom. FAC ¶ 203. Two lawyers, not representing Ms.
 18 Alvarado Ambrocio, intervened to stop ICE agents from arresting her that day, fearing harm to her
 19 baby. FAC ¶ 204. The lawyers were able to get ICE agents to agree not to arrest Ms. Alvarado
 20 Ambrocio that day, but ICE refused to provide any assurances that she would not be arrested at her
 21 next court hearing on October 16, 2025. FAC ¶ 205.

22 Mr. Martin Hernandez Torres has lived in the United States for over thirty years. FAC ¶ 211.
 23 He has two adult U.S. citizen children, and is married to a lawful permanent resident. *Id.* Mr.
 24 Hernandez Torres has cancer, high blood pressure, and prostate issues. *Id.*

25 On September 17, 2025, Mr. Hernandez Torres was arrested by ICE agents when appearing
 26 for a reasonable fear interview. FAC ¶ 212. Mr. Hernandez Torres was held overnight at 630
 27 Sansome, where he was forced to sleep on a metal bench, without a mattress pad, pillow, or blanket,
 28 and was not given medical attention for more than 20 hours. FAC ¶¶ 212–214.

Ms. Ligia Garcia is an asylum seeker from Colombia. FAC ¶ 216. On September 18, 2025, Ms. Garcia was arrested by ICE agents at San Francisco Immigration Court after appearing for a master calendar hearing. FAC ¶ 217. At the time of filing the First Amended Complaint, she was being held in a holding cell at 630 Sansome. *Id.*

LEGAL STANDARD

I. Motion to Dismiss Under FRCP 12(b)(1)

“A Rule 12(b)(1) jurisdictional attack may be facial or factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). “In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment.” *Id.* (citing *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n. 2 (9th Cir. 2003)). “Where the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits, the jurisdictional determination should await a determination of the relevant facts on either a motion going to the merits or at trial.” *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983).

II. Motion to Dismiss Under FRCP 12(b)(6)

A Rule 12(b)(6) motion for “failure to state a claim is ‘proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory.’” *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). “In addition, to survive a motion to dismiss, a complaint must contain sufficient factual matter to state a facially plausible claim to relief.” *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). “On a motion to dismiss, all material facts are accepted as true and are construed in the light most favorable to the plaintiff.” *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012) (citation omitted).

III. Motion to Sever

Rule 21 establishes that, “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. Courts look to Rule 20 for guidance on a Rule 21 motion. *See Pan Am. World Airways, Inc. v. U.S. Dist. Ct. for Cent. Dist. of California*, 523 F.2d 1073, 1079

(9th Cir. 1975). “Rule 20(a) imposes two specific requirements for the permissive joinder of parties: (1) a right to relief must be asserted by, or against, each plaintiff or defendant relating to or arising out of the same transaction or occurrence or series of transactions or occurrences; and (2) some question of law or fact common to all parties must arise in the action.” *Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir. 1980). It is a “lenient” test. *Trove Brands, LLC v. CamelBak Prods., LLC*, No. 23-CV-04267-PCP, 2024 WL 619186, at *1 (N.D. Cal. Feb. 14, 2024) (Pitts, J.).

“Misjoinder of parties is not a ground for dismissing an action.” Fed. R. Civ. P. 21. “If plaintiffs fail to meet the standard for permissive joinder, ‘the district court may sever the misjoined plaintiffs, as long as no substantial right will be prejudiced by the severance.’” *Visendi v. Bank of Am., N.A.*, 733 F.3d 863, 870–71 (9th Cir. 2013) (quoting *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997)).

ARGUMENT

I. The Court Has Jurisdiction Over Plaintiffs’ Claims

Defendants recycle several jurisdictional arguments from their earlier-filed briefing, including that Plaintiffs lack standing, that their claims are simultaneously not ripe and moot, and that the Court lacks jurisdiction over Plaintiffs’ claims related to the conditions of their confinement. The Court has already rejected several of these arguments in an earlier order and should do so again. *See* ECF No. 90.

A. Plaintiffs Have Standing

To establish standing, a plaintiff must demonstrate (1) that they have suffered an injury in fact, (2) that their injury is fairly traceable to a defendant's conduct, and (3) that their injury would likely be redressed by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (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 ‘presum[e] that general allegations embrace those specific facts that are necessary to support the claim.’” *Id.* (quoting *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990).) “There is an exception to this general rule where the defendant brings a motion under Rule 12(b)(1) challenging subject matter jurisdiction as a factual—rather than

1 facial—matter.” *Mecinas v. Hobbs*, 30 F.4th 890, 896 (9th Cir. 2022). “The existence of standing
2 turns on the facts as they existed at the time the plaintiff filed the complaint.” *See Skaff v. Meridian*
3 *N. Am. Beverly Hills, LLC*, 506 F.3d 832, 838 (9th Cir. 2007)

4 Plaintiffs have met their burden to establish standing.² Defendants assert the doomed
5 argument that because the Court has granted some interim relief, that Plaintiffs no longer have
6 standing.³ But, as Defendants concede, “standing turns on the facts as they existed at the time the
7 plaintiff filed the complaint.” *See* Mot. 13 (citing *Skaff*, 506 F.3d at 838). Plaintiffs undoubtedly
8 had standing at the time the First Amended Complaint was filed.

9 On the day the First Amended Complaint was filed, Plaintiffs Mr. Hernandez Torres and
10 Ms. Garcia were both detained at 630 Sansome. *See* FAC ¶¶ 10, 12. Both Mr. Hernandez Torres
11 and Ms. Garcia were suffering “concrete” and “actual” injury from the unconstitutional conditions:
12 Mr. Hernandez Torres already had been detained for over 12 hours, and Ms. Garcia was at
13 “imminent” risk of being detained for more than 12 hours pursuant to the 12-Hour Waiver Memo.
14 *See Lujan*, 504 U.S. at 560; FAC ¶¶ 10, 212–215, 217

15 Similarly, Ms. Pablo Sequen and Ms. Garcia were arrested by ICE following immigration
16 hearings on July 31, 2025, and September 18, 2025. *See* FAC ¶ 10. Ms. Ambrocio only avoided
17 arrest because her nine-month-old baby was with her, and at the time of filing the Amended
18 Complaint, faced the impossible choice of attending her next hearing and risking immediate arrest
19 or receiving an order of removal *in absentia*. *See* FAC ¶¶ 11, 204–206. Those allegations adequately
20 established standing. Each suffered “concrete” and “actual” injury from the courthouse arrest
21 policies—including the harm of having to face arrest at a courthouse, regardless of whether they
22 were actually arrested.

23 Finally, Defendants suggest that Mr. Hernandez Torres, Ms. Ambrocio, and Ms. Garcia lack
24 standing because they had not yet been harmed when Ms. Pablo Sequen filed her habeas petition.
25 *See* Mot. at 13. Defendants cite only to *Skaff*, which does not support Defendants’ proposition that

26
27 ² It is unclear whether Defendants assert a facial or factual attack, but it fails in either case.

28 ³ Mr. Hernandez Torres has not been the subject of any interim relief.

1 new plaintiffs must have suffered harm at the exact same time as a party to an initial pleading to
 2 have standing in an amended pleading. *See id.* (citing *Skaff*, 506 F.3d at 838). Defendants’ reasoning
 3 would undermine the rule that, once filed, an amended complaint “is the only operative complaint
 4 before the district court.” *Askins v. U.S. Dep’t of Homeland Sec.*, 899 F.3d 1035, 1043 (9th Cir.
 5 2018). Because each named plaintiff had standing at time of the filing of the *amended* complaint,
 6 Defendants’ argument has no merit.

7 **B. Plaintiffs’ Claims Are Ripe**

8 Defendants wrongly assert that Plaintiffs’ claims “are not ripe for adjudication” because of
 9 “the Court’s Order granting preliminary injunctions.” Mot. at 13–14. The Court has already found
 10 this argument to lack merit. *See* ECF No. 90 at 7; *Lackey v. Stinnie*, 604 U.S. 192, 200 (2025)
 11 (“Preliminary injunctions . . . do not conclusively resolve legal disputes.”).⁴ “For a suit to be ripe
 12 within the meaning of Article III, it must present ‘concrete legal issues, presented in actual cases,
 13 not abstractions.’” *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky. v. Labrador*, 122 F.4th
 14 825, 839 (9th Cir. 2024) (citations omitted). It is evident that this case presents an actual controversy,
 15 not an abstract disagreement. Plaintiffs challenge policies and practices that they were actively or
 16 imminently subject to and harmed by at the time of filing. The challenged policies and practices
 17 have tangible real-world impact, as evidenced by both Plaintiffs’ own experiences and the volume
 18 of evidence submitted with Plaintiffs’ pending motions for preliminary relief. There is no risk that
 19 this case presents “hypothetical or speculative disputes” or “abstract disagreements.” *Flaxman v.*
 20 *Ferguson*, 151 F.4th 1178, 1184 (9th Cir. 2025).

21 **C. Plaintiffs’ Claims Are Not Moot Because of the Court’s Interim Orders**

22 Defendants’ mootness argument fails for the same reasons the ripeness argument does. *See*
 23 Mot. at 14–15. As the Court has already noted, interim relief is not a full adjudication of claims. *See*
 24 ECF No. 90 at 7; *Lackey*, 604 U.S. at 200.

25
 26 ⁴ *See also* ECF No. 90 (“But the Court’s prior order did not provide all the relief requested by Ms.
 27 Pablo Sequen. Her original complaint sought, among other things, a declaration that her detention
 28 without prior notice and a hearing violated the Fifth Amendment and a permanent injunction
 prohibiting her re-detention without such process.”).

1 Plaintiffs' claims also are not moot simply because Plaintiffs are no longer detained at 630
 2 Sansome. "Some claims are so inherently transitory that the trial court will not have even enough
 3 time to rule on a motion for class certification before the proposed representative's individual
 4 interest expires." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 399 (1980). As the Ninth
 5 Circuit has explained, an inherently transitory claim is one that "will certainly repeat as to the class
 6 either because the individual could nonetheless suffer repeated harm or because it is certain that
 7 other persons similarly situated will have the same complaint." *Pitts v. Terrible Herbst, Inc.*, 653
 8 F.3d 1081, 1090 (9th Cir. 2011) (cleaned up) (emphasis added); *see also Doe v. Wolf*, 424 F. Supp.
 9 3d 1028, 1039 (S.D. Cal. 2020) ("In cases concerning class actions, the named plaintiff need not be
 10 subjected to the same action again for the claim to be inherently transitory."). "In such cases, the
 11 named plaintiff's claim is 'capable of repetition, yet evading review,' and 'the "relation back"
 12 doctrine is properly invoked to preserve the merits of the case for judicial resolution.'" *Pitts*, 653
 13 F.3d at 1090 (citing *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975), and *Cnty. of Riverside v.*
 14 *McLaughlin*, 500 U.S. 44, 52 (1991)). Pursuant to that doctrine, the Court should evaluate this case
 15 as of the time the amended class complaint was filed. *See, e.g., Pitts*, 653 F.3d at 1091.

16 "The inherently transitory rationale was developed to address circumstances in which the
 17 challenged conduct was effectively unreviewable, because no plaintiff possessed a personal stake in
 18 the suit long enough for litigation to run its course." *Wolf*, 424 F. Supp. 3d at 1039 (citing *Genesis*
 19 *Healthcare Corp. v. Symczyk*, 569 U.S. 66, 76 (2013) (internal quotation marks omitted)). "[T]he
 20 fact that a class 'was not certified until after the named plaintiffs' claims had become moot does not
 21 deprive [a court] of jurisdiction' when . . . the harms alleged are transitory enough to elude review."
 22 *Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plurality opinion) (citing *Cnty. of Riverside*, 500 U.S.
 23 at 52). Notably, in *Nielsen*, like in this case, the proposed class representatives had been released
 24 from custody, or obtained analogous relief, prior to class certification. *Id.* at 404 ("[T]he fact that
 25 the named plaintiffs obtained some relief before class certification does not moot their claims.").

26 Class claims arising out of conditions at a short-term detention facility are quintessentially
 27 claims that meet a mootness exception. *See Torres v. U.S. Dep't of Homeland Sec.*, 411 F. Supp. 3d
 28 1036, 1056 (C.D. Cal. 2019) ("The Court concludes that Plaintiffs resemble those plaintiffs before

1 them held in jail and so present a ‘classic example of a transitory claim.’”) (citing *Wade v. Kirkland*,
 2 118 F.3d 667, 670 (9th Cir. 1997)); *see also* *Lyon v. U.S. Immigr. & Customs Enf’t*, 300 F.R.D. 628,
 3 639 (N.D. Cal. 2014). Class claims challenging courthouse arrest policies are similarly transitory
 4 and therefore capable of repetition, yet evading review; for example, when the First Amended
 5 Complaint was filed, Ms. Alvarado Ambrocio’s upcoming immigration hearing was under a month
 6 away and thus would have occurred before the class certification motion could be ruled upon. *Cf.*
 7 *Hernandez v. Cnty. of Monterey*, 70 F. Supp. 3d 963, 975 (N.D. Cal. 2014) (concluding that class
 8 claims were not moot because 34-day period to raise claims was too short for court to resolve motion
 9 for class certification).

10 It is immaterial that Mr. Hernandez Torres and Ms. Garcia may not again be detained at 630
 11 Sansome, because other members of the putative Detention Class will be. Similarly, the Court’s
 12 preliminary injunction orders on Ms. Pablo Sequen, Ms. Garcia, and Ms. Alvarado Ambrocio’s
 13 habeas claims do not moot their class claims challenging Defendants’ courthouse arrest policies,
 14 because those policies indisputably remain in effect and harm class members. Thus, the class claims
 15 are capable of repetition, yet evading review, permitting relation back to the filing of the amended
 16 class complaint, when Plaintiffs had standing. Defendants ignore the clear application of *Pitts*, and
 17 the Supreme Court precedent upon which it is based, to the class claims.

18 **D. Plaintiffs Can Bring Their Conditions of Confinement Claims Along with**
 19 **Their Habeas Claims**⁵

20 This Court has already recognized that “the government has not argued or cited any authority
 21 holding that petitioners may not assert habeas and non-habeas claims together in a single complaint.”
 22 ECF No. 90 at 8 (citation omitted). Defendants rely on cases where habeas petitioners have
 23 purported to rely exclusively on habeas jurisdiction to bring claims outside the core of habeas related
 24 to conditions of confinement. *See, e.g., Pinson v. Carvajal*, 69 F.4th 1059, 1075 (9th Cir. 2023)
 25 (concluding that court does not have jurisdiction under federal habeas corpus statute to hear
 26 conditions claims outside historic core of habeas); *Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir.

27 ⁵ Defendants limit their argument to Plaintiffs’ conditions of confinement claims, saying nothing
 28 about Plaintiffs’ claims related to courthouse arrests. *See* Mot. at 15–16.

2016) (concluding that court does not have habeas jurisdiction to hear challenge to disciplinary proceeding which is outside historic core of habeas); *Allen v. S.V.S.P. -P.I.P.*, No. 24-CV-03197-PCP, 2025 WL 1101519, at *1 (N.D. Cal. Mar. 31, 2025) (concluding that court does not have habeas jurisdiction over challenge to prison transfer);⁶ *see also Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024) (“*Nettles* and *Pinson* addressed the different question of whether claims were cognizable in habeas at all.”).

Unlike in the cases Defendants cite, as this Court has noted, Plaintiffs’ “conditions-of-confinement claims do not invoke this Court’s habeas jurisdiction. Instead, they invoke the Court’s jurisdiction to adjudicate claims arising under the U.S. Constitution and the [APA] . . . and the Court’s equitable authority to restrain unlawful executive action.” ECF No. 90 at 8 (citations omitted). There is no Ninth Circuit precedent—or any case law at all—that precludes certification of a class challenging conditions of confinement in a lawsuit that also has individual habeas claims.

II. Plaintiffs Adequately State Their APA Claims

Plaintiffs allege that Defendants abruptly upended longstanding agency policies prohibiting immigration courthouse arrests and hold-room detentions longer than 12 hours—all without providing a reasoned explanation for these drastic policy shifts. This absence of reasoned decision-making demonstrates that the challenged policies are arbitrary and capricious under the APA.

For the most part, Defendants avoid grappling with the substance of Plaintiffs’ APA claims. Instead, they baselessly contend that their policies are unreviewable and confusingly devote pages of their motion to disputing a common-law privilege that is largely immaterial to this case. When they do address the claims on the merits, Defendants simply reiterate the deficient analysis that appears on the face of the policies. That is not enough to satisfy the APA’s requirements. The motion to dismiss the APA claims should be denied, and Plaintiffs should be permitted to develop their claims based on the full administrative record.

⁶ Defendants distort this Court’s holding in *Allen*. *See* Mot. at 15. Like *Pinson* and *Nettles*, *Allen* was brought solely pursuant to habeas jurisdiction, but the petitioner, proceeding *pro se*, asserted claims regarding conditions of his confinement. *Allen*, 2025 WL 1101519, at *1. This Court gave the petitioner the option to either convert the habeas action into one filed under as a 1983 case, or to dismiss his petition. *Id.*

A. Plaintiffs' Claims Are Appropriate for Judicial Review**1. Section 701(A) Does Not Bar Review of Plaintiffs' Claims**

Without citing to any supporting case law, Defendants argue that 8 U.S.C. § 1226(e) provides ICE limitless and unreviewable authority for “decisions about the location of arrests with a warrant” that should bar this action. *See* Mot. at 17. Not so.

There exists a “strong presumption that Congress intends judicial review of administrative action.” *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 670 (1986); *see also Mach Mining, LLC v. E.E.O.C.*, 575 U.S. 480, 489 (2015) (“[L]egal lapses and violations occur, and especially so when they have no consequence. That is why this Court has so long applied a strong presumption favoring judicial review of administrative action.”). “The presumption may be rebutted only if the relevant statute precludes review, 5 U.S.C. § 701(a)(1), or if the action is ‘committed to agency discretion by law,’ § 701(a)(2).” *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018).

First, for Section 701(a)(1) to bar the claims, Section 1226(e) must itself preclude review of Plaintiffs’ claims. It does not. Courts have “consistently” rejected Defendants’ claim that section 1226(e) gives ICE unlimited authority over arrests. *See Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018); *Doe v. Trump*, 784 F. Supp. 3d 1297, 1313 (N.D. Cal. 2025), *modified*, No. 25-CV-03140-JSW, 2025 WL 2430494 (N.D. Cal. Aug. 22, 2025) (“Defendants argue the Court has no authority to prevent Defendants from arresting, incarcerating, or transferring the Plaintiffs outside the District pending resolution of the proceedings, citing 8 U.S.C. sections 1252(g) and 1226(e). The Court keeps its analysis to a minimum because this too is an argument that has been consistently rejected by courts around the country.”) Thus, review of these claims is not precluded by Section 701(a)(1).

Similarly, Section 701(a)(2)’s bar on judicial review of agency action “committed to agency discretion by law” is a “very narrow exception.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971); *cf. Lincoln v. Vigil*, 508 U.S. 182, 191 (1993) (explaining § 701(a)(2) applies in “rare circumstances” where “a court would have no meaningful standard against which

1 to judge the agency’s exercise of discretion”) (*citing Heckler v. Chaney*, 470 U.S. 821, 830 (1985)).⁷
 2 Courts have regularly and uniformly held that agency policies governing discretion in the
 3 immigration context are subject to APA review. *See, e.g., Biden v. Texas*, 597 U.S. 785, 798–807
 4 (2022); *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 17–19 (2020). Therefore,
 5 Section 701(a)(2) does not bar review either.

6 2. Defendants Misrepresent the Availability of Other Remedies

7 Defendants claim, without citing to any statutes, that Plaintiffs “have another remedy [] in
 8 the form of either a habeas action or potential claim for damages,” and so their APA claims are
 9 unreviewable. *See* Mot. at 17. Defendants misstate the law.

10 As explained in *Bowen v. Massachusetts*, the availability of other traditional remedies does
 11 not preclude judicial review under the APA. *See* 487 U.S. 879, 904–905 (1988). Instead, where
 12 Congress created *specific* procedures for review of *specific* agency actions pursuant to a statute other
 13 than the APA, APA review is barred because it duplicates that process. *See id.* The case cited by
 14 Defendants proves this logic. In *Brem-Air Disposal v. Cohen*, the Ninth Circuit found it lacked
 15 jurisdiction to review an APA challenge to a RCRA action because the statute already provided for
 16 a citizen-suit remedy. 156 F.3d 1002, 1005 (9th Cir. 1998). Defendants have not pointed to any
 17 specific statutory process or remedy that would apply to this particular action.

18 B. Defendants’ Courthouse Arrests Polices and 12-Hour Waive Memo Are 19 Arbitrary and Capricious

20 Under the APA, agency action may be set aside if it is arbitrary or capricious. 5 U.S.C. §
 21 706(2)(A). “[T]he touchstone of ‘arbitrary and capricious’ review under the APA is ‘reasoned
 22 decisionmaking.’” *Altera Corp. & Subsidiaries v. Comm’r of Internal Revenue*, 926 F.3d 1061, 1080
 23 (9th Cir. 2019) (citation omitted). “[A]n agency’s action can only survive arbitrary or capricious
 24 review where it has articulate[d] a satisfactory explanation for its action including a ‘rational

25 _____
 26 ⁷ Such instances “typically involve[] either an agency’s power to manage its own docket . . . or issues
 27 where [the Court] have neither standards nor expertise, such as when we are asked to review
 28 questions of national security . . . or an agency’s decision to deny a discretionary federal loan.”
Pinnacle Armor, Inc. v. United States, 648 F.3d 708, 720 (9th Cir. 2011). This case is not analogous
 to any of these situations.

1 connection between the facts found and the choice made.” *Alliance for the Wild Rockies v. Petrick*,
2 68 F.4th 475, 493 (9th Cir. 2023).

3 Where an agency changes its previous position—including when it “abandons [a] decades-
4 old practice” applied in enforcement actions—it must (1) “display awareness that it is changing
5 position,” (2) “show that there are good reasons for the new policy,” and (3) balance those good
6 reasons against “engendered serious reliance interests.” *Encino Motorcars, LLC v. Navarro*, 579
7 U.S. 211, 221–22 (2016). And even where an agency has explained its change in position, its action
8 remains arbitrary and capricious if the agency has “entirely failed to consider an important aspect
9 of the problem.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
10 (1983) (citation omitted). To engage in “reasoned decision-making,” agencies must “look at the
11 costs as well as the benefits” of their actions. *Id.* at 52–54.

12 If Defendants are to reverse a decades-long policy abstaining from immigration courthouse
13 arrests, the APA requires them to own that decision by forthrightly acknowledging it as a dramatic
14 shift, stating logical reasons for it, and balancing their reasons against countervailing considerations.
15 *See Alliance for the Wild Rockies*, 68 F.4th at 493. ICE and EOIR have not done so here.

16 1. Second Claim: The ICE Courthouse Arrests Policy.

17 ICE’s Courthouse Arrest Policy is arbitrary and capricious for at least three reasons, none of
18 which are rebutted by Defendants: ICE failed to properly account for the significant change in its
19 approach to *immigration* courthouse arrests, it failed to consider the policy’s chilling effect, and
20 Defendants obfuscate that ICE’s Courthouse Arrest Policy has worked a seismic shift in immigration
21 courthouse arrests, which all around the country have gone from virtually nonexistent to a weekly
22 or even daily occurrence.

23 Defendants’ narrative conceit that ICE has long engaged in courthouse arrests relies entirely
24 on past policies primarily related to *criminal courthouse* arrests, not any actual practice with respect
25 to *immigration courts* specifically. Mot. at 2–4. Their blinkered account of the relevant history was
26 adopted by the Southern District of New York at the preliminary relief stage in *African Communities*
27 *Together* and put that court’s arbitrary-and-capricious analysis on an erroneous footing. *See African*
28 *Communities Together v. Lyons*, No. 25-cv-6366, 2025 WL 2633396, at *19–22 (S.D.N.Y. Sept.

12, 2025). The Court, however, need not adopt that account here, where Plaintiffs have painted a more accurate picture to aid the Court’s eventual arbitrary and capricious analysis.

a. ICE’s Sub Silentio Departure From Prior Policy

The written ICE Courthouse Arrest Policy replicates and reflects its predecessor policies’ contemplation that the limited universe of ICE courthouse arrests would take place primarily (if not exclusively) at *criminal* courts, absent exceptional circumstances with high-level approval. *Accord* Johns Decl., Ex. C (2018 directive with same instruction to avoid non-criminal courthouses). The longstanding focus on criminal courthouses can further be seen both in ICE’s targeting of individuals with substantial criminal history (*see, e.g.*, Johns Decl., Ex. A (2014 guidance limiting courthouse arrests to terrorism, national security, and public safety threats); Ex. C (same)) and in ICE’s justification—expressed in both the current policy and the 2018 policy—that courthouse arrests are “necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody.” Johns Decl., Ex. C; Ex. F. Thus, whatever the wisdom of the current and previous policies with respect to ICE arrests at *criminal* courthouses, ICE at least consciously identified relevant considerations.

The same cannot be said of ICE’s new policy with respect to *immigration* courthouses. Indeed, beyond the explicit instruction to avoid arrest operations at non-criminal courthouses, other features of the ICE Courthouse Arrest Policy make clear that the agency did not consider concerns relating to immigration courthouse arrests. For example, the Policy states that agencies “routinely engage in enforcement activities in or near courthouses because many individuals appear in courthouses *for unrelated criminal or civil violations*.” *See* Mot. at 4 (emphasis added). Of course, that does not describe immigration arrests at immigration courts. While immigration arrests at *non-immigration* courthouses serve to apprehend individuals in order to place them into removal proceedings or to effectuate removal, no such function is served by ambushing a person in immigration court who has been previously released by either DHS or an immigration judge and is *voluntarily* appearing for their day in court, in reliance on the basic expectation that they can safely go home afterward. *See* FAC ¶ 231; *cf. Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (explaining that release “reflects a determination by the government that the noncitizen is not

1 a danger to the community or a flight risk”). Had the policy considered this distinction, one naturally
 2 would expect it to include language setting out that arrest partway through removal proceedings is
 3 prohibited absent a “change of circumstances” warranting detention. *Matter of Sugay*, 17 I. & N.
 4 Dec. 637, 640 (BIA 1981).

5 It is “[a] central principle of administrative law is that, when an agency decides to depart
 6 from decades-long past practices and official policies, the agency must at a minimum acknowledge
 7 the change and offer a reasoned explanation for it.” *Am. Wild Horse Pres. Campaign v. Perdue*, 873
 8 F.3d 914, 923 (D.C. Cir. 2017). That the ICE Courthouse Arrest Policy does not evince *any*
 9 awareness of the sea change it works in ICE arrest practices around *immigration* courthouses—let
 10 alone address the significant ways in which immigration courthouse arrests involve considerations
 11 far different from the primarily criminal courthouse arrest enforcement that both the current policy
 12 and its predecessors contemplate—demonstrates that the Policy is not the product of reasoned
 13 decision-making. *Cf. Encino Motorcars, LLC*, 579 U.S. at 221–22 (holding that when an agency
 14 changes its position—including by abandoning a “decades-old practice” related to enforcement
 15 actions—it must (1) “display awareness that it is changing position,” (2) “show that there are good
 16 reasons for the new policy,” and (3) balance those good reasons against “engendered serious reliance
 17 interests.”).

18 “[T]he requirement that an agency provide reasoned explanation for its action would
 19 ordinarily demand that it display awareness that it *is* changing position.” *F.C.C. v. Fox Television*
 20 *Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis in original). ICE has not done so here regarding
 21 immigration courthouse arrests. Thus, its sub silentio departure from prior policy is arbitrary and
 22 capricious.

23 **b. ICE’s Failure To Consider Chilling Effect**

24 The ICE Courthouse Arrest Policy is arbitrary and capricious for the separate and
 25 independent reason that it “entirely failed to consider an important aspect of the problem.” *Motor*
 26 *Vehicle Mfrs. Ass’n*, 463 U.S. at 43. ICE previously recognized the “core principle” that courthouse
 27 arrests chill court access. *See, e.g.*, FAC ¶ 37. Yet Defendants point to nothing showing that ICE
 28 considered the chilling effect of permitting courthouse arrests, let alone considered it in specific

1 relation to *immigration* courthouse arrests. *See* Mot. at 21. Furthermore, the Court may take judicial
 2 notice that the Administrative Record, filed this week in the Southern District of New York,
 3 damningly confirms that ICE also did not otherwise consider the issue of chilling court access in
 4 formulating the policy. *See* Notice of Filing of Administrative Record, *African Communities*
 5 *Together*, No. 25-cv-6366, ECF No. 64 (S.D.N.Y. Nov. 4, 2025).

6 Defendants unresponsively point to generic instructions to avoid disrupting court
 7 proceedings, Mot. at 21, but those instructions have nothing to do with addressing the chilling effect
 8 of courthouse arrests. The chilling effect on immigration courthouse access arises from the prospect
 9 of being snatched up and abruptly incarcerated in the middle of ongoing removal proceedings, not
 10 from how ICE conducts arrests (although the arrests have, in fact, been disorderly). *See* FAC ¶ 66.
 11 ICE’s failure to address this central consideration—indeed, the primary concern animating the
 12 government’s longstanding policies and practices *prohibiting* courthouse arrests—renders the ICE
 13 Courthouse Arrest Policy arbitrary and capricious.

14 c. ICE’s Inapposite Invocation Of Ostensible Safety Risks

15 Finally, Defendants fall back on courthouse arrests’ purported reduction of safety risks. Mot.
 16 at 21–22. But whatever justification that may provide for arrests in *non-immigration* courthouses,
 17 *but see New York v. U.S. Immigr. & Customs Enf’t*, 466 F. Supp. 3d 439, 449 (S.D.N.Y. 2020),
 18 *vacated as moot*, No. 20-2622, 2023 WL 2333979 (2d Cir. Feb. 28, 2023) (conclusory invocations
 19 of reduced safety risk were insufficient to save ICE’s 2018 policy from being found arbitrary and
 20 capricious), Defendants fail to rebut Plaintiffs’ point that it makes little sense in the context of
 21 arresting people attending *immigration* court whom the government already has determined do *not*
 22 present a safety threat or flight risk. *See* FAC ¶¶ 197, 209, 220.

23 2. First Claim: The EOIR Memo

24 Plaintiffs allege similar facts about the EOIR Memo as they do the ICE Courthouse Arrest
 25 Policy. *See* FAC ¶¶ 39–51; 224–225; *see* FAC ¶¶ 39–41. Defendants’ Motion gives those allegations
 26 short shrift, simply asserting in conclusory fashion that the Memo explains itself and “addresses”
 27 Plaintiff’s chilling argument. *See* Mot. at 22. For the same reasons Plaintiffs’ claim regarding the
 28 ICE Courthouse Arrest Policy should survive, so too should their EOIR Memo claim.

3. Sixth Claim: 12-Hour Waiver Memo

Defendants spend a single paragraph, Mot. at 22, attacking Plaintiffs’ sixth claim concerning the 12-Hour Waiver Memo, which alleges that the waiver’s change in policy is arbitrary and capricious because it has “no rational connection between the overcrowding problems faced by ERO” and “overlooked important aspects of the problem posed by overcrowding and extended detention, including [] violat[ing] the PBNDS.” *See* FAC ¶¶ 281–284; *see also* FAC ¶¶ 85–92. Defendants do not dispute Plaintiffs’ allegations that, prior to the 12-Hour Waiver Memo, hold room detention was restricted to no more than 12 hours, absent exceptional circumstances. FAC ¶ 278; *see also* FAC ¶¶ 82–83. Instead, they assert that the 12-Hour Waiver Memo was well-reasoned by simply referring to the text of the Memo itself. *See* Mot. at 22. But an assertion that a policy “is essentially self-explanatory” does not suffice to show that a sudden departure from past practice is acceptable. *See Washington v. U.S. Dep’t of Homeland Sec.*, 614 F. Supp. 3d 863, 879 (W.D. Wash. 2020). Neither the policy itself nor Defendants in their Motion explain the processes that led to extending hold room detention length *six-fold* without mandating any operational changes to account for important aspects of the problem, including the logistical, humanitarian, and constitutional implications of long-term confinement in short-term holding cells.

Defendants’ conclusory statement that they will continue to apply current requirements in hold rooms completely fails to address that current requirements are tailored to brief detention, not overnight and multi-day detention. *See* Mot. at 22. For example, ICE’s own national standards prohibit hold room detention over twelve hours and state that “[b]unks, cots, beds and other sleeping apparatus are not permitted inside Hold Rooms,” which plainly contradicts constitutional minimums for overnight detention. *See* FAC ¶¶ 108–109 (citing 2011 PBNDS § 2.6. at I, V.A.5). Defendants make no attempt to resolve the conflict between the 12-Hour Waiver Memo and current requirements. “[A]n internally inconsistent analysis is arbitrary and capricious.” *Nat’l Parks Conservation Ass’n v. E.P.A.*, 788 F.3d 1134, 1141 (9th Cir. 2015).

Defendants also fail to demonstrate that alternatives to avoid long-term confinement in hold rooms were considered. *See* FAC ¶¶ 93–94, 98. In response, Defendants assert simply that the policy would “ensure the ‘safety and security’ of detained aliens,” Mot. at 22, without actually addressing

1 whether alternatives were considered and, if so, why they were rejected. That is not enough to render
 2 the agency action rational. *Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d 919, 963 (N.D. Cal.
 3 2021) (“To be regarded as rational, an agency must also consider significant alternatives to the
 4 course it ultimately chooses.”).

5 Next, Defendants aver that the 12-Hour Waiver Memo simply implements President
 6 Trump’s Executive Orders. Mot. at 22. But they point to nothing in those Executive Orders that
 7 mandates that ICE make new arrests at rates beyond its capacity to detain people in accordance with
 8 the Constitution. *See id.* Defendants do not cite any source for the purported end of all discretionary
 9 release, beyond the 12-Hour Waiver Memo’s circular and conclusory reasoning; the EOs do not
 10 expressly eliminate such discretion. Moreover, the government’s desire to implement policies
 11 favoring mass arrests and eschewing discretionary release authority cannot justify violating
 12 constitutional rights. *See Mercado v. Noem*, No. 25-cv-6568, 2025 WL 2658779, at *36 (S.D.N.Y.
 13 Sept. 17, 2025) (“Defendants have chosen to use the [ICE ERO hold rooms] as a *de facto* medium
 14 term detention facility while failing to comply with the Constitution and their own nationwide
 15 standards governing detention facilities. The logistical difficulties defendants invoke flow from that
 16 their [*sic*] own decisions.”).

17 Finally, Defendants do not address at all the allegations that the 12-Hour Waiver Memo is
 18 contrary to law. FAC ¶¶ 283–284. Plaintiffs need not show that the 12-Hour Waiver Memo
 19 contradicts a specific right to detention of less than twelve hours. It is enough that there is a
 20 constitutional “violation *resulting* from the agencies’ policy and practice.” *Kidd v. Mayorkas*, 734
 21 F. Supp. 3d 967, 984 (C.D. Cal. 2024) (emphasis added). The constitutional violations in hold
 22 rooms—including unsanitary conditions and sleep deprivation in rooms expressly designed to be
 23 inhospitable to overnight detention—are caused by extended periods of detention authorized by the
 24 12-Hour Waiver Memo. FAC ¶ 284 (“As a result of Defendants’ enforcement of the 12-Hour Waiver
 25 policy, Plaintiffs have languished in harsh and unsafe conditions at 630 Sansome for prolonged
 26 periods.”); *see also* FAC ¶¶ 125–168 (allegations of unconstitutional conditions at 630 Sansome).

1 **C. Defendants Draw No Connection Between Their Common-Law Privilege**
2 **Argument and Why Plaintiffs Failed to State an APA Claim**

3 Plaintiffs’ complaint includes a single paragraph regarding the common-law privilege
4 against courthouse arrests.⁸ See FAC ¶ 41. That allegation merely illustrates the long-established
5 practice of law enforcement refraining from conducting civil arrests at courthouses, which is
6 relevant to Plaintiffs’ claims that Defendants’ policies are arbitrary and capricious. See, e.g., FAC ¶
7 224. While Defendants devote a considerable portion of their brief discussing the common-law
8 privilege, at no point do they articulate *why* the existence or absence of a common-law privilege
9 means that this Court should dismiss Plaintiff’s APA claims. Moreover, Defendants’ reliance on the
10 First Circuit’s decision in *Ryan v. U.S. Immigr. & Customs Enf’t*, 974 F.3d 9, 14 (1st Cir. 2020), is
11 misplaced. Mot. at 20. The Ninth Circuit has not adopted the holding from that case. Instead, the
12 most recent case from a court within the Ninth Circuit rejected *Ryan*’s flawed analysis of the
13 common-law privilege. See *Velazquez-Hernandez v. U.S. Immigr. & Customs Enf’t*, 500 F. Supp.
14 3d 1132, 1145 (S.D. Cal. 2020) (explaining “[t]he essence of the privilege is the sanctity of the
15 court” and observing that *Ryan* “wholly ignores” the threat to “the administration of justice . . . if
16 parties are liable to be civilly arrested or served while attending court”). To be clear, unlike in *Ryan*,
17 Plaintiffs here discuss the doctrine only to show that the challenged policies are contrary to a long-
18 running presumption against courthouse arrests that is rooted in protecting the integrity,
19 accessibility, and functioning of judicial systems. See FAC ¶ 41.⁹

20 **III. The Court Should Deny The Motion To Sever**

21 **A. Plaintiffs Have Properly Joined Their Claims and Neither Dismissal Nor**
22 **Severance Is Warranted**

23 Plaintiffs’ claims meet the Rule 20 standard for permissive joinder because they arise out of
24 a systematic pattern of events and share at least one common question of law or fact.

25 ⁸ Defendants do not state how the common-law privilege is connected to the 12-Hour Waiver Memo.

26 ⁹ Defendants also point to the Congress’ 2006 amendment “to add 8 U.S.C. § 1229(e), which
27 expressly acknowledges the practice of conducting immigration enforcement actions against aliens
28 at courthouses.” Mot. at 19. But that amendment “does not demonstrate that Congress
unambiguously intended to displace the state common law privilege against courthouse civil
arrests.” *State v. U.S. Immigr. & Customs Enf’t*, 431 F. Supp. 3d 377, 393 (S.D.N.Y. 2019).

1 First, Defendants argue that multiple petitioners generally may not join a single habeas
 2 petition, citing *Acord v. California*, No. 1:17-cv-01089-MJS, 2017 WL 4699835, at *1 (E.D. Cal.
 3 Oct. 19, 2017) and *Buriev v. Warden, Geo, Broward Transitional Ctr.*, No. 25-cv-60459, 2025 WL
 4 1906626, at *1 (S.D. Fla. Mar. 18, 2025). Mot. at 23. However, multi-petitioner cases frequently
 5 have proceeded in the Northern District of California and elsewhere. *See, e.g., Cordero Pelico v.*
 6 *Kaiser*, No. 25-cv-7286, ECF No. 5 (N.D. Cal. Aug. 29, 2025); *Espinoza v. Kaiser*, No. 1:25-cv-
 7 1101-JLT, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Ortuño v. Jennings*, No. 20-cv-02064,
 8 2020 WL 1701724 (N.D. Cal. Apr. 8, 2020).¹⁰ Contrary to Defendants’ contention (Mot. at 23), the
 9 *Espinoza* court considered—and rejected—a motion to sever, concluding that it was “not
 10 unprecedented” for multiple petitioners to assert claims in a single habeas action “involv[ing] a
 11 ‘systemic pattern of events’ that is common to” them all. 2025 WL 2675785, at *9; *see also*
 12 *Espinoza*, 2025 WL 2581185, at *9 (E.D. Cal. Sept. 5, 2025) (same). Section 1252(f)(1) also does
 13 not affect joinder; at most it restricts the Court’s injunctive power. 8 U.S.C. § 1252(f)(1). Moreover,
 14 Section 1252(f)(1) has no application if the Court simply issues separate injunctive orders as to each
 15 habeas petitioner, as the Court has done here. *See* ECF No. 90 at 24. No court has applied Section
 16 1252(f)(1) to deny relief in multi-petitioner immigration detention cases.

17 Second, Ms. Alvarado Ambrocio, Ms. Garcia, and Mr. Hernandez Torres easily meet the
 18 Rule 20 standard for permissive joinder. Rule 20 permits joinder where claims “arise out of a
 19 systematic pattern of events” and “have a ‘very definite logical relationship,’” and where there is a
 20 common question of law or fact. Fed. R. Civ. P. 20(a); *Washington v. Sandoval*, No. C-10-0250-
 21 LHK-PR, 2011 WL 1522349, at *2 (N.D. Cal. Apr. 19, 2011). “[J]oinder of claims, parties[,] and
 22 remedies is strongly encouraged,” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966),
 23 and “[p]ermissive joinder is to be liberally construed to promote the expeditious determination of
 24 disputes, and to prevent multiple lawsuits.” *Cuprite Mine Partners LLC v. Anderson*, 809 F.3d 548,
 25 552 (9th Cir. 2015) (citation omitted); *see also Almont Ambulatory, Surgery Ctr., LLC v.*

26
 27 ¹⁰ In *Buriev*, the court even acknowledged that other district courts had permitted multi-petitioner
 28 habeas cases. 2025 WL 1906626, at *1 n. 2.

1 *UnitedHealth Grp., Inc.*, 99 F. Supp. 3d 1110 (C.D. Cal. 2015) (noting that the “transaction and
2 common-question requirements” of Rule 20(a) are “flexible concepts” that should be “read as
3 broadly as possible . . . to promote judicial economy”) (citation omitted).¹¹

4 Ms. Alvarado Ambrocio, Ms. Garcia, and Mr. Hernandez Torres’s claims arise from the
5 same “systematic pattern of events” as Ms. Pablo Sequen’s—courthouse arrests and prolonged post-
6 arrest detention in short-term holding cells resulting in unconstitutional conditions. *See* FAC ¶¶ 43–
7 51, 61, 125–68, 172–73. Ms. Pablo Sequen and Ms. Garcia were both arrested after their
8 immigration court hearings pursuant to the challenged courthouse arrest policies, while Ms.
9 Alvarado Ambrocio narrowly avoided a similar arrest only because her breastfeeding infant was
10 with her. FAC ¶¶ 10–11. Indeed, when Ms. Pablo Sequen first filed her habeas petition, she cited
11 the challenged courthouse arrest policies. *See* ECF No. 1 ¶¶ 39–60, Exs. 1–3. Further, Ms. Pablo
12 Sequen, Ms. Garcia, and Mr. Hernandez Torres were all detained for more than 12 hours at 630
13 Sansome, pursuant to the challenged 12-Hour Waiver and, while detained, subjected to a common
14 set of practices. *See* FAC ¶¶ 10, 132–157. Finally, like in *Espinoza*, Ms. Pablo Sequen, Ms. Garcia,
15 and Ms. Alvarado Ambrocio’s habeas petitions involve a “systemic pattern of events,” i.e.,
16 courthouse arrests of noncitizens previously released pending civil removal proceedings, without a
17 pre-detention hearing. *See* ECF No. 27; ECF No. 90. Accordingly, Plaintiffs’ claims arise out of the
18 same transaction, and at least one common question of law or fact will arise in the action. *See*
19 *MadKudu Inc. v. U.S. Citizenship & Immigr. Servs.*, No. 20-CV-02653-SVK, 2020 WL 5628968,
20 at *5 (N.D. Cal. Sept. 14, 2020) (denying motion to sever because claims challenged USCIS’s
21 “alleged pattern and practice” of arbitrary H-1B petition denials); *Hamilton v. Signature Flight*
22 *Support Corp.*, No. C 05-490 CW, 2005 WL 1514127, at *8 (N.D. Cal. June 21, 2005) (denying
23 motion to sever claims alleging pattern or practice of discrimination); *see also Jones v.*
24 *CertifiedSafety, Inc.*, No. 17-CV-02229-EMC, 2019 WL 758308, at *3 (N.D. Cal. Feb. 20, 2019)
25 (permitting joinder of additional plaintiff with class claims against new defendant).

26
27 ¹¹ Defendants do not challenge Ms. Pablo Sequen’s ability to amend the complaint, which she was
28 permitted to do pursuant to Federal Rule of Civil Procedure 15.

1 This case is readily distinguishable from *Coughlin v. Rogers*, in which the plaintiffs had
 2 failed to allege a common “pattern or policy.” 130 F.3d at 1350.¹² Courts have routinely
 3 distinguished *Coughlin*, concluding that joinder is proper where plaintiffs allege a “common reason”
 4 or “common policy” underlying their claims. *See, e.g., Gutta v. Renaud*, No. 20-cv-6579-DMR,
 5 2021 WL 533757, at *6 (N.D. Cal. Feb. 12, 2021) (finding immigration plaintiffs satisfied same
 6 transaction prong where plaintiffs “adequately alleged that their petitions have all been delayed for
 7 a common reason”); *Ray v. Cuccinelli*, No. 20-cv-6279-JSC, 2020 WL 7353697, at *3 (N.D. Cal.
 8 Dec. 15, 2020) (same); *Najafi v. Pompeo*, No. 19-cv-5782-KAW, 2019 WL 6612222, at *4 (N.D.
 9 Cal. Dec. 5, 2019) (allegations “challenging a common policy” satisfied same transaction prong).

10 Irrelevant differences in Plaintiffs’ factual circumstances do not preclude joinder. The fact
 11 that Ms. Alvarado Ambrocio narrowly avoided a courthouse arrest does not alter the predicate of
 12 her APA claims, which arise out the same “common policy” as Ms. Garcia and Ms. Pablo Sequen’s
 13 claims. This Court’s preliminary injunction orders similarly do not affect the “systematic pattern of
 14 events” that undergird the claims. Defendants also note Mr. Hernandez Torres’ criminal history and
 15 removal order,¹³ without explaining how either undermines joinder of claims challenging the
 16 detention conditions that he, Ms. Garcia, and Ms. Pablo Sequen all experienced. Courts deny
 17 motions to sever based on immaterial factual differences. *See, e.g., Fraihat v. U.S. Imm. & Customs*
 18 *Enf’t*, No. 19-cv-1546, 2020 WL 2759848, at *11–13 (C.D. Cal. April 15, 2020) (permitting
 19 noncitizens with varying disabilities and health conditions detained in different ICE facilities to
 20 jointly challenge failure to oversee health care); *Gutta*, 2025 WL 533757, at *5 (permitting plaintiffs
 21

22 ¹² The holding in *Washington*, 2011 WL 1522349, at *1, is similarly distinguishable. There, a
 23 prisoner sought to join unrelated claims arising from (1) a toilet leak, (2) a jaw fracture, and (3) a
 24 bed mattress but identified no common transactions or occurrences linking the claims. *Id.* at *2.
 25 Here, Plaintiffs’ claims arise from systemic policies and practices and involve common factual and
 26 legal questions.

27 ¹³ Defendants attached the Declaration of Sellenia Olson to their Motion, which presents factual
 28 averments outside the pleadings regarding Mr. Hernandez Torres’s prior legal history. ECF No. 108.
 The Court should not consider the Olson Declaration, which appears intended to disparage Mr.
 Hernandez Torres’ character. *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th
 Cir. 2001) (“...extraneous evidence should not be considered in ruling on a motion to dismiss.”).

1 from different countries who filed visa applications within a two-year period to jointly challenge
2 adjudication delays that “stem[med] from the same underlying course of conduct”).

3 Finally, Defendants do not identify any reason why joinder would not “comport with the
4 principles of fundamental fairness,” or result in prejudice. *Visendi*, 733 F.3d at 870 (citation
5 omitted). To the contrary, given the overlap in legal and factual questions and evidence, joinder of
6 Plaintiffs’ claims “implement[s] the purpose of Rule 20(a) . . . promot[ing] judicial economy.”
7 *Almont Ambulatory Surgery Center, LLC*, 99 F. Supp. 3d at 1188 (citation omitted).

8 In the absence of any case law barring joinder, Defendants resort to accusing Plaintiffs of
9 judge shopping. Defendants’ cases demonstrate the weakness of this accusation. In *KC Processing*
10 *Company*, the court suspected judge shopping because the plaintiffs sought a temporary restraining
11 order after the court granted plaintiffs a preliminary injunction in an analogous matter. *KC*
12 *Processing Co., LLC v. J.L.E.T. Enters. SWF, LLC*, No. 4:25-CV-00442-DGK, 2025 WL 1683476,
13 at *2 (W.D. Mo. June 16, 2025). By contrast, *every court in the Northern District of California* that
14 has considered a habeas claim from someone in Ms. Pablo Sequen, Ms. Garcia, or Ms. Alvarado
15 Ambrocio’s position has concluded that petitioners met the requirements for injunctive relief. *See*,
16 *e.g.*, ECF No. 90 at 10 (collecting cases); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL
17 2606983, at *2 (N.D. Cal. Sept. 9, 2025) (noting the “tsunami of similar cases in this District” where
18 the government’s “theory has been uniformly rejected”). Moreover, although Plaintiffs’ class claims
19 arise from the same transaction as Ms. Pablo Sequen’s habeas petition, the merits of the class claims
20 are legally distinct from the merits of the habeas claim and thus, the Court’s prior order provides no
21 undue advantage on the class claims. *In re Medtronic* is even further afield; there, the court suspected
22 judge shopping because plaintiffs filed a recusal motion after an unfavorable ruling on related
23 claims. *In re Medtronic, Inc. Sprint Fidelis Leads Prods. Liab. Litig.*, 601 F. Supp. 2d 1120, 1132
24 (D. Minn. 2009), *aff’d sub nom. In re Medtronic, Inc., Sprint Fidelis Leads Prods. Liab. Litig.*, 623
25 F.3d 1200 (8th Cir. 2010). Nothing analogous has happened here.

26 CONCLUSION

27 For these reasons, Plaintiffs respectfully request that the Court deny Defendants’ Motion to
28 Dismiss And Motion To Sever.

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DATED: November 7, 2025

LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE
SAN FRANCISCO BAY AREA

By: /s/ Marissa Hatton
MARISSA HATTON
ANDREW NTIM
JORDAN WELLS
NISHA KASHYAP
Attorneys for Plaintiff-Petitioners

DATED: November 7, 2025

CARECEN SF

By: /s/ Laura Victoria Sanchez
LAURA VICTORIA SANCHEZ
TALA BERARDI HARTSOUGH
Attorneys for Plaintiff-Petitioners

DATED: November 7, 2025

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

By: /s/ Neil K. Sawhney
NEIL K. SAWHNEY
LAUREN M. DAVIS
Attorneys for Plaintiff-Petitioners

DATED: November 7, 2025

COBLENTZ PATCH DUFFY & BASS LLP

By: /s/ Mark L. Hejinian
MARK L. HEJINIAN
MARCIA V. VALENTE
DAVID C. BEACH
CHARMAINE G. YU
EVAN G. CAMPBELL
DARIEN LO
Attorneys for Plaintiff-Petitioners