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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.	CASE NO. 25-cv-06487-PCP **REPLY IN FURTHER SUPPORT OF RESPONDENTS' MOTION TO DISMISS AND MOTION TO SEVER** Date: December 9, 2025 Time: 10:00 a.m. Courtroom: Courtroom 8 – 4th Floor Honorable P. Casey Pitts United States District Judge

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I. INTRODUCTION

Petitioners use their opposition to advance their preferred policy objectives while ignoring dispositive jurisdictional issues. Petitioners still have not established jurisdiction for all of their claims, and the forms of relief they are seeking. Petitioners oversimplify the Article III issues to avoid addressing the substantive justiciability issues with not only the claims they are pursuing, but the relief they are seeking. Petitioners' latest theory about when the Court should start its Article III analysis deprives the Court of jurisdiction over most of Petitioner, Carmen Aracely Pablo Sequen's ("Sequen"), new claims. The Court should dismiss those claims and forms of relief that it lacks jurisdiction over.

In addition, the Court should dismiss Petitioner's claims arising under the Administrative Procedure Act ("APA"). The challenged policies are not reviewable under the APA based on the discretion conferred to Respondents under the Immigration and Nationality Act ("INA"). And none of the challenged policies are arbitrary or capricious. OPPM 25-06, the Detention Policy, and the 2025 Courthouse Arrest Guidance are part of the Executive Branch's day-to-day operations to enforce President Trump's Executive Orders and the immigration laws of the United States.

II. ARGUMENT

A. Petitioners Forum Shopped to Bring This Action in This Court, and Respondents' Propose Severing the Claims.

Despite having multiple opportunities now, Petitioners simply refuse to respond to Respondents' arguments about why they felt the need transform Sequen's routine habeas case about her personal circumstances into a class action challenging the Federal Government's national immigration policies. Petitioners' explicit acknowledgement that "*every court in the Northern District of California* that has considered a habeas claim from someone in Ms. Pablo Sequen, Ms. Garcia, or Ms. Alvarado Ambrocio's position has concluded that petitioners met the requirements for injunctive relief" only strengthens and confirms Respondents' position. *See* Pls.' Opp'n to Resp'ts' Mot. to Dismiss and Mot. to Sever ("Opposition") at 25, ECF No. 126 (italics in original). Petitioners refuse to answer Respondents' questions of why this Court and why now. And Petitioners refuse to acknowledge that they obviously planned to forum shop based on the 54-page First Amended Complaint and Petition for Writ of Habeas Corpus ("FAC") (ECF No. 32), 26-page motion for class certification (ECF No. 33) with 11 supporting

declarations (ECF Nos. 33-1-12), and an emergency motion for a temporary restraining order on behalf of two separate people (ECF No. 34) that they filed less than two days after this Court granted Sequen's motion for a preliminary injunction. Petitioners' silence speaks volumes. Stated simply, Petitioners forum shopped. There is no other conclusion to reach.

To add context to Petitioners' improper conduct, Respondents are being forced to defend cases in other districts where petitioners initially receive relief on their individual habeas claims and later join new petitioners after that relief is granted to challenge the Federal Government's national immigration policies in a class action. In those cases, and like this case, the petitioners and their lawyers are hand-picking the judges they want to challenge the Federal Government's national immigration policies before. For example, in *Lazaro Maldonado Bautista, et al. v. Kristi Noem, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. 2025), after the district court granted a temporary restraining order as to four petitioners seeking bond hearings, the petitioners filed a class action complaint challenging the Federal Government's national immigration policies. And in *Frescia Garro Pinchi, et al. v. Kristi Noem, et al.*, No. 5:25-cv-05632-PCP (N.D. Cal. 2025),[1] after this Court granted a preliminary injunction as to a single petitioner for an individual habeas petition, three new petitioners joined and filed a class action challenging the Federal Government's national immigration policies.

Petitioners' conduct is unfair, contrary to a balanced system, and undermines the random assignment process of Judges in this District. *See* Civil L.R. 3-3 (describing the assignment of an action to a Judge in the Northern District of California). Litigants should not be permitted to hand-pick the judges and courtrooms that they want to be in. And the Court retains discretion to refuse to permit amendment of the complaint if it determines that the action is also an attempt to forum shop. *See generally* Fed. R. Civ. P. 15(2) (providing the district court with authority to grant leave to file an amended pleading). To discourage Petitioners' forum shopping, and to also address the Court's question about severance, Respondents propose that the Court sever the claims such that Sequen's case remains with this Court and

[1] In *Pinchi, et al., v. Noem, et al.*, Case No. 25-5632, Respondents, in addition to filing a motion to dismiss, are considering moving in the alternative, to sever, transfer, and consolidate this case with *Pinchi* given the overlapping issues involved in the two cases.

the other cases are assigned randomly throughout this District. *See* Civil L.R. 3-3. Respondents contend that should be done before the pending motions are decided.[2]

B. Petitioners' Claims and Certain Forms of Relief Sought Do Not Satisfy Article III's Requirements.

A federal court only has jurisdiction under Article III to decide "Cases" and "Controversies." *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). "For there to be a case or controversy under Article III, the plaintiff must have a 'personal stake' in the case." *Id.* (citing *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). "Federal courts do not possess a roving commission to publicly opine on every legal question." *Id.* The plaintiffs "must demonstrate standing 'with the manner and degree of evidence required at the successive stages of the litigation.'" *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). The plaintiffs bear the burden of establishing jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

Petitioners' analysis of Article III oversimplifies the substantive issues. *See* Opposition at 7-11. The Court must address which Petitioner has a justiciable case and what relief each Petitioner can pursue, which Petitioners ignore. *See generally* Opposition. This case presents difficult questions under Article III because of Petitioners' forum shopping and litigation strategies to aggressively pursue relief on behalf of Yulisa Alvarado Ambrocio ("Ambrocio"), Ligia Garcia ("Garcia"), and Sequen.

1. Petitioners Lack Standing Under Article III and Lack Standing to Pursue All Forms of Relief They Are Seeking.

Standing exists only where the plaintiff demonstrates that (1) he has suffered an "injury in fact" that is concrete, particularized, and actual or imminent, (2) the injury is "fairly traceable" to the defendant's conduct, and (3) the injury can be "redressed by a favorable decision." *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (same). "[A] plaintiff must demonstrate standing separately for each form of relief sought." *See Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC)*, 528 U.S. 167, 185 (2000); *see also TransUnion LLC*, 594 U.S. at 431 ("plaintiffs must demonstrate standing for each claim that they press and for each

[2] Because Respondents propose severing the claims, they are not addressing whether the Court has jurisdiction over Petitioners' claims arising out of the conditions of their confinement in this habeas case. *See* Mot. at 15-16. Respondents are not waiving that argument or conceding that it lacks merit.

form of relief that they seek (for example, injunctive relief and damages"). The critical standing issues are when standing should be evaluated and who has standing to pursue the specific relief sought.

(a) Based on Petitioners' Standing Theory, the Court Should Dismiss Petitioners' First, Second, Third, Fourth, Fifth, and Sixth Claims as to Sequen and Her Claims for Injunctive Relief.

The parties disagree on when the Court must initiate its standing analysis. *Compare* Respt's' Mot. to Dismiss and Mot. to Sever at 13 (arguing the Court should evaluate standing when Sequen filed her complaint) *with* Opposition at 8 (arguing the Court should evaluate standing as to all Petitioners when they filed their FAC). However, both parties rely on *Skaff v. Meridian North American Beverly Hills, LLC*, 506 F.3d 832 (9th Cir. 2007) to support their analysis. *See* Mot. at 12; Opposition at 8-9. There, a single plaintiff filed a single complaint that was never amended challenging conditions at a hotel. *See Skaff v. Meridian N. Am. Beverly Hills, LLC*, 506 F.3d 832, 835-837 (9th Cir. 2007). After a dispute arose over standing and the plaintiff's claim for attorney's fees, the Ninth Circuit concluded that "[t]he existence of standing turns on the facts as they existed at the time the plaintiff filed the complaint." *See id.* at 838. *Skaff* does not support Petitioners' theory that the standing analysis starts when they filed their FAC.

On August 1, 2025, Sequen initiated this case by filing a habeas petition asserting individual habeas claims. *See* Pet. for Writ of Habeas Corpus, ECF No. 1. When Sequen filed her habeas petition, Ambrocio, Garcia, and Martin Hernandez Torres ("Torres") lacked standing to challenge OPPM 25-06, the Detention Policy, the 2025 Courthouse Arrest Guidance, and the conditions at 630 Sansome Street because they had not been affected by these policies or challenged conditions. After Sequen filed her habeas petition, the Court issued a temporary restraining order and preliminary injunction enjoining her future arrest and detention. *See* Orders, ECF Nos. 7, 27. On September 18, 2025, two days after the Court enjoined Sequen's future arrest and detention, Petitioners filed their FAC. Petitioners contend that standing for all four of them should be evaluated when they filed their FAC, ignoring what happened to Sequen before. *See* Opposition at 8.

Taking Petitioners at their word, and without conceding when the standing analysis should start, Sequen lacks standing to assert any claims challenging OPPM 25-06, the Detention Policy, the 2025

Courthouse Arrest Guidance, and the conditions at 630 Sansome. More importantly, Sequen lacks standing to pursue injunctive relief on behalf of a class of individuals nationwide challenging these policies. *See B.C. v. Plumas Unified Sch. Dist.,* 192 F.3d 1260, 1264 (9th Cir. 1999) ("A class of plaintiffs does not have standing to sue if the named plaintiff does not have standing"). By the time Petitioners filed their FAC, the Court redressed Sequen's claims for injunctive relief. Sequen, like the rest of Petitioners, "must demonstrate standing for each claim that they press and for each form of relief that they seek." *TransUnion LLC,* 594 U.S. at 431. To the extent Sequen had any remaining relief after the Court granted her motion for a preliminary injunction, it did not include pursuing relief on behalf of third parties across the United States. Accordingly, the Court should dismiss Petitioners' first, second, third, fourth, fifth, and sixth claims as to Sequen, and, at a minimum, dismiss her claims for injunctive relief.

(b) Petitioners Lack Standing to Pursue Injunctive Relief, and the Court Has Redressed Ambrocio, Sequen, and Garcia's Alleged Injuries.

"[S]tanding is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek (for example, injunctive relief and damages)." *Transunion LLC,* 594 U.S. at 431. To have standing, a petitioner must show that the injury must be "redressed by a favorable decision." *See Lujan,* 504 U.S. at 561. Article III grants federal courts the power to "redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions." *See TransUnion LLC,* 594 U.S. at 427.

Petitioners' standing analysis ignores that the Court has redressed Ambrocio, Sequen, and Garcia's alleged injuries arising out of OPPM 25-06, the Detention Policy, the 2025 Courthouse Arrest Guidance, and the conditions at 630 Sansome. *See* Opposition at 7-9. Under the Court's orders, Respondents cannot detain Ambrocio, Sequen, or Garcia at 630 Sansome or arrest them at a courthouse. *See* Orders Granting Prelim. Inj., ECF Nos. 27, 90. Ambrocio, Sequen, and Garcia cannot satisfy the dispositive standing requirement of redressability because their injuries have been redressed. *See id.* Even more significant, Petitioners repeatedly ignore that they must have standing for each form of relief sought. Petitioners are trying to stay OPPM 25-06, the Detention Policy, and the 2025 Courthouse Arrest Guidance across the

United States and stop alleged conditions at 630 Sansome. *See* FAC at 51-52. To pursue and receive that relief, each Petitioner must have standing to do so, which they do not have.

Ambrocio, Garcia, and Sequen all separately sought and received injunctive relief that the Court granted. *See* Orders Granting Prelim. Inj., ECF Nos. 27, 90. Based on the injunctive relief, none of them can be arrested as a courthouse or detained at 630 Sansome for any amount of time. *See id.* Accordingly, Ambrocio, Garcia, and Sequen lack standing to pursue additional injunctive relief for alleged injuries that the Court has already redressed. If Ambrocio, Garcia, and Sequen have any remaining relief, it is not to assert injunctive relief on behalf of third parties across the United States when their individual injuries have been redressed. Standing must be evaluated based on each person, but also the claims each person is pursuing. *Transunion LLC,* 594 U.S. at 436 (a plaintiff must "demonstrate standing separately for each form of relief sought"). The Court should dismiss Ambrocio, Garcia, and Sequen's claims for injunctive relief for Petitioners' first, second, third, fourth, fifth, sixth, and seventh claims.

Torres[3] presents different standing issues with respect to redressability and the relief he is seeking. Torres lacks standing to pursue injunctive relief and on behalf of third parties. As Respondents confirmed at the hearing on November 10, 2025, and without conceding any other argument, Torres had Article III standing when Petitioners filed the FAC. After that, Torres was transferred to two different detention facilities and later removed to Mexico because of a final removal order. *See* Decl. of Sellenia Olson ("Olson Decl. I") ¶¶ 6-15, ECF No. 108; *See* Supplemental Decl. of Sellenia Olson ("Olson Decl. II") ¶¶ 4, 7, Ex. V, ECF No. 114.

Torres is challenging the Detention Policy and pursuing claims arising out of the conditions at 630 Sansome. *See* FAC at 42 (third claim for relief – sleep deprivation); at 43 (fourth claim for relief – deprivation of adequate medical care); at 45 (fifth claim for relief – deprivation of sanitary and hygienic conditions); at 47 (sixth claim for relief – 12-Hour Waiver Policy); at 48 (seventh claim for relief – access to counsel). Torres is only seeking declaratory and injunctive relief. *See id.* at 51-52.

[3] The Article III analysis as to Torres presents overlapping issues of standing, ripeness, and mootness because he has been removed to Mexico.

Torres cannot satisfy the necessary standing requirements for injunctive relief because redressing his injuries with injunctive relief will only benefit third parties, not him. *See Lujan,* 504 U.S. at 561. If the Court stops the Detention Policy and redresses the sleeping issues, medical care issues, unsanitary conditions, and access to counsel problems, Torres will not receive any benefit. He will not return to 630 Sansome. For his claim for injunctive relief, Torres lacks a personal stake. *See TransUnion LLC,* 594 U.S. at 423 (explaining that a justiciable "case" or "controversy" under Article III requires the plaintiff to have a "personal stake"). Thus, the Court should dismiss Torres' claims for injunctive relief because he lacks standing (i.e., a personal stake) to pursue those claims.

2. Petitioners' Claims Are Unripe, and Ambrocio, Sequen, and Garcia No Longer Have a Ripe Claim.

Ripeness is another Article III doctrine that Petitioners must satisfy. Once again, Petitioners ignore Respondents' arguments about ripeness and fail to grapple with the substantive issues. *See* Opposition at 9. The central concern of the ripeness inquiry is "whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Richardson v. City and County of Honolulu,* 124 F.3d 1150, 1160 (9th Cir. 1997). "Whether a claim is ripe generally turns on the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id.* The Court has not considered whether Petitioners' claims are still ripe. *See* Opposition at 9; *see also* Order Granting Prelim. Inj. at 7, ECF No. 90 (analyzing mootness).

Even if Ambrocio, Sequen, and Garcia had a ripe claim at one point in time, they no longer do because of relief they affirmatively sought and that the Court granted. Based on the Court's orders, Ambrocio, Sequen, and Garcia cannot be arrested at a courthouse or detained at 630 Sansome unless they are provided a pre-detention bond hearing before a neutral immigration judge where the Government bears the burden of demonstrating by "clear and convincing evidence" that they are a flight risk or danger to the community and "that no conditions other than re-detention would be sufficient to prevent such harms." *See* Orders Granting Prelim. Inj. at 24 ECF No. 90; at 16, ECF No. 27. Consequently, the likelihood of Ambrocio, Garcia, and Sequen being affected by OPPM 25-06, the Detention, Policy, or the 2025 Courthouse Arrest Guidance, or being detained at 630 Sansome for any amount of time is currently

"uncertain" and "contingent" on the findings of a neutral immigration judge. Ambrocio, Sequen, and Garcia may never be detained or arrested again without a pre-detention bond hearing.

Petitioners' failure to address any of these issues or Respondents' arguments is not coincidental; it is because their claims no longer present concrete legal disputes but rather an abstract challenge to Respondents' national immigration policies. Petitioners acknowledge that at one point in time "they were actively or imminently" subject to the challenged conduct, but fail to address whether they still are. *See* Opposition at 9. Petitioners only reference the "tangible real-world impact" of Respondents' policies without stating whether that "real-world impact" still applies to them. *See id.* Based on the relief they sought, Ambrocio, Sequen, and Garcia are not impacted by the policies or conditions they are challenging.

For a separate reason, Torres' claims are no longer ripe. That is, Torres has been removed to Mexico as a result of a final removal order. It is unlikely that Torres will ever be affected by any of the challenged policies or conditions of 630 Sansome in the future.

3. Petitioners' Claims Are Moot and Do Not Satisfy Any of the Exceptions to Mootness.

A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). To avoid mootness, "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). Mootness is the doctrine of standing set in a time frame. *See Doe v. Wolf*, 424 F.Supp.3d 1028, 1037 (S.D. Cal. 2020). As with the standing and ripeness analysis described above, the mootness analysis is different for each Petitioner and the relief he or she is seeking.

Starting with Ambrocio, Garcia, and Sequen, Petitioners first contend their claims are no longer moot under the inherently transitory exception to the mootness doctrine. *See* Opposition at 10-11. Under that doctrine, courts recognize that "some claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires." *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011) (quoting *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991)). Thus, the named plaintiff's claim is "capable

of repetition, yet evading review." *Id.* The district court must decide whether the inherently transitory exception applies. *See Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997).

Here, Ambrocio, Garcia, and Sequen's claims are not "capable of repetition" based on relief that they expressly sought from this Court. Thus, the inherently transitory exception does not apply to Ambrocio, Garcia, and Sequen because they have received relief enjoining Respondents from arresting and detaining them at 630 Sansome. *See* Orders Granting Prelim. Inj., ECF Nos. 27, 90. Petitioners argument that their claims are "capable of repetition, yet evading review" is not accurate. *See* Opposition at 11. Petitioners sought relief in the form of temporary restraining orders and preliminary injunctions to preclude the challenged conduct from being "capable of repetition." *See id.*

Once again, and although Sequen initiated the case with her habeas complaint, Petitioners ask this Court to start the inherently transitory analysis when they filed their FAC. *See* Opposition at 10. For the same reasons expressed above, if the Court starts the inherently transitory analysis when Petitioners filed their FAC, Sequen's claims challenging OPPM 25-06, the Detention Policy, the 2025 Courthouse Arrest Guidance, and the conditions at 630 Sansome would have become moot. Even more significant, Sequen's claims for injunctive relief would have become moot. For the same reasons expressed above, the Court should dismiss Petitioners' first, second, third, fourth, fifth, and sixth claims as to Sequen, and, at a minimum, dismiss her claims for injunctive relief.

C. The Court Should Dismiss Claims for Allegations that No Petitioner Has Experienced.

Although Petitioners challenge every possible aspect of 630 Sansome, their FAC fails to allege facts that they actually experienced all of the challenged conditions. The Court should dismiss those claims and allegations under Article III and Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim.

To start, Petitioners' seventh claim arising out of lack of access to counsel should be dismissed under Rule 12(b)(1) and Rule 12(b)(6). *See* FAC at 48-49. Petitioners' FAC does not allege any facts that any of the four of them experienced problems accessing counsel. *See* FAC at ¶¶ 10, 17, 186-198 (allegations pertaining to Sequen); ¶¶ 10, 12, 20, 211-215 (allegations pertaining to Torres); ¶¶ 11, 18, 199-210 (allegations pertaining to Ambrocio); ¶¶ 19, 216-221 (allegations pertaining to Garcia). In their

FAC, Petitioners concede that Sequen, Ambrocio, and Garcia had access to counsel. *See* FAC at ¶ 17, 18, 19, 194, 204, 205. And in submissions to the Court, Sequen, Garcia, and Torres declare that they had access to counsel. Decl. of Carmen Sequen ¶ 5, ECF No. 33-1; Decl. of Ligia Garcia ¶ 12, ECF No. 77; Decl. of Martin Hernandez Torres ¶ 18, ECF No. 78. Based on any of the Article III doctrines discussed above and Rule 12(b)(6), Petitioners' seventh claim should be dismissed.

Petitioners' first and second claims challenging the 2025 Courthouse Arrest Guidance and OPPM 25-06 should be dismissed as to Ambrocio. It is undisputed that Ambrocio has never been arrested at a courthouse or detained at 630 Sansome. *See generally* FAC. Petitioners expressly allege in the FAC that Respondents exercised their discretion and declined to arrest her. *See* FAC at ¶¶ 18, 204, 205. The Court issued an order enjoining Respondents from arresting her in the future. *See* Order Granting Prelim. Inj. at 24, ECF No. 90. Ambrocio not only fails to state any claim challenging either 2025 Courthouse Arrest Guidance or OPPM 25-06, but she does not have a justiciable claim under Article III.

D. The Court Should Dismiss Petitioners' APA Claims.

Petitioners do not dispute the Federal Government's broad power over immigration related matters. *See Arizona v. United States,* 567 U.S. 387, 394 (2012); *see* U.S. Const. art. I § 8, cl. 4 (granting Congress the power to "establish an uniform Rule of Naturalization"). Nor do Petitioners dispute President Trump's Executive Orders on which the policies they are disputing are based on. *See generally* Opposition. Many of Petitioners' APA arguments erroneous rely on Respondents having the same policies for "decades" on immigration-related matters. *See* Opposition at 3, 15, 17. As Respondents have demonstrated (Mot. at 2-4), the power to decide immigration-related matters is positioned with the Executive Branch and policies vary from one presidential administration to another with the electorate having considerable influence on the types of policies that are pursued.

1. OPPM 25-06, the Detention Policy, and the 2025 Courthouse Arrest Are Discretionary and Unreviewable Under the APA.

OPPM 25-06, the Detention Policy, and the 2025 Courthouse Arrest Guidance govern Respondents' day-to-day operations including their law enforcement related operations. And day-to-day operations of federal agencies are generally not considered final agency action, and thus not subject to APA review. *See Lujan,* 497 U.S. at 899 (plaintiffs "cannot demand a general judicial review of the

[agency]'s day-to-day operations" under the APA). None of these policies mandate that Respondents take any specific action about arresting aliens at a courthouse or detaining aliens at 630 Sansome longer than 12 hours. *See* Decl. of Douglas Johns ("Johns Decl.") ¶ 7, Ex. F; Johns Decl. ¶ 9, Ex. G; Johns Decl. ¶ 9, Ex. H. Throughout their opposition, Petitioners suggest that OPPM 25-06, the Detention Policy, and the 2025 Courthouse Arrest Policy mandate that Respondents take certain action while ignoring the discretionary nature of these policies. OPPM 25-06, the Detention Policy, and the 2025 Courthouse Arrest Guidance are unreviewable under the APA for the following reasons.

First, OPPM 25-06 and the 2025 Courthouse Arrest Guidance are operational guidance about where to conduct arrests, which are committed to U.S. Immigration and Customs Enforcement's ("ICE") discretion. ICE has discretion under the INA about where to conduct arrests, and the agency action is not subject to judicial review where the action "is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). OPPM 25-06 and the 2025 Courthouse Arrest Guidance relate to ICE's civil arrest authority and afford ICE discretion about where to conduct arrests. Based on the INA, OPPM 25-06, and the 2025 Courthouse Arrest Guidance, there is no "meaningful standard" by which a court can evaluate the appropriateness of ICE's discretionary choice of public locations for targeted immigration enforcement actions. *See* 8 U.S.C. § 1226(a); *id.* § 1357(a). The INA's broad language grants ICE discretion to determine the location of a civil enforcement action against an alien illegally present in the United States. More significantly, Congress amended the INA in 2006 to add 8 U.S.C. § 1229(e), which expressly acknowledges the practice of conducting immigration enforcement actions against aliens at courthouses. *Id*. § 1229(e)(1)–(2).

Petitioners do not contest that the INA confers authority on ICE to determine where to conduct arrests. *See* Opposition at 13. Instead, Petitioners try to challenge ICE's authority with cases that do not address ICE's discretion about where to conduct arrests. For example, *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018) does not address the scope of ICE's discretionary authority about where to conduct arrests. Nor does *Doe v. Trump*, 784 F.Supp.3d 1297, 1313 (N.D. Cal. 2025). The INA expressly confers ICE with discretion to decide where to conduct arrests, which comports with the discretion described by OPPM 25-06 and the 2025 Courthouse Arrest Guidance. The Court should dismiss Petitioners' first claim

and second claim challenging OPPM 25-06 and the 2025 Courthouse Arrest Guidance because these policies are not reviewable under the INA.

Second, and in the same vein, the Detention Policy is operational guidance that confers Respondents with discretion about how long to detain an alien. *See* Johns Decl. ¶ 9, Ex. H. The Detention Policy does not instruct Respondents to hold an alien for more than 12 hours. Rather, it expressly states that "[d]etainees shall be in a holding facility for the least amount of time required for their processing, transfer, release, or repatriation as operationally feasible." *See id.* at 2. Based on the discretion provided by the Detention Policy, it is not reviewable under the APA. The Detention Policy pertains to Respondents' day-to-day operations, which are not reviewable under the APA. *See Lujan,* 497 U.S. at 899 (plaintiffs "cannot demand a general judicial review of the [agency]'s day-to-day operations" under the APA).

2. OPPM 25-06, the 2025 Courthouse Arrest Guidance, and the Detention Policy Are Neither Arbitrary Nor Capricious, and the Court Should Dismiss Petitioners' First, Second, and Sixth Claims Challenging Them.

When reviewing whether a policy is "arbitrary and capricious," a "court is not to substitute its judgment for that of the agency." *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). "[T]he agency must "examine the relevant data and articulate a satisfactory explanation for its action." A court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. *See id.* "Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.* Petitioners continue to challenge OPPM 25-06, the 2025 Courthouse Arrest Guidance, and the Detention Policy with their preferred policy objectives while ignoring the reasons why these policies were issued as well as what they say. All of Petitioners' arguments lack merit.

First, Petitioners argue that Respondents fail to account for the "significant change" in its approach to immigration courthouse arrests. *See* Opposition at 15-16. Respondents set forth the history of courthouse enforcement actions starting with President Obama through the current administration. *See*

Mot. That history demonstrates the evolution of courthouse enforcement actions such that Petitioners' claim about a "significant change" in policy is exaggerated. *See* Opposition at 15. As the Southern District of New York recognized, and Petitioners never refute, there is no common-law privilege against courthouse enforcement actions, nor are they prohibited. *See African Communities Together v. Lyons*, No. 25-cv-6366 (PKC), 2025 WL 2633396, at *20-21 (S.D. N.Y. Sept. 12, 2025). The INA expressly contemplates the practice of conducting immigration enforcement actions against aliens at courthouses. *See* 8 U.S.C. § 1229(e). Petitioners' preferred location about where arrests take place is just that, their preference. But Respondents have articulated reasons for conducting enforcement actions at courthouses including safety and jurisdictions failing to cooperate with them. *See* Johns Decl. ¶ 7, Ex. F (2025 Courthouse Arrest Guidance). These reasons preclude a finding that the policies are arbitrary and capricious.

Second, Petitioners contend that Respondents failed to consider a vague "chilling effect." *See* Opposition at 17-18. OPPM 25-06 directly addresses Petitioners' argument and refutes it. *See* Johns Decl. ¶ 7, Ex. G at 1-2. OPPM 25-06 correctly acknowledges that the "chilling effect" was unsupported, and questions its foundation based on established data. *See id.* For example, OPPM 25-06 notes that from the time when OPPM 23-01 was issued until January 27, 2025, over 530,000 aliens failed to attend their scheduled hearing, thus suggesting that President Biden's policy to limit enforcement actions near courthouses was not contributing to aliens failing to attend their scheduled hearings. *See id.* at 2. And as the district court recognized in *African Communities*, Respondents "acknowledged the existence and rescinding of the prior policy, which is an implicit and sufficient statement of belief that the new policy is better." *See African Communities Together*, 2025 WL 2633396, at *21.

Third, Petitioners' challenges to the Detention Policy conflate the policy with the alleged conditions at 630 Sansome, which are issues requiring different legal analysis. *See* Opposition at 20. As the Detention Policy explicitly states, after President Trump declared a national emergency and issued two separate Executive Orders, "Protecting the American People Against Invasion" and "Securing Our Borders," to prioritize enforcing the immigration laws of the United States, "ERO's daily population significantly increased." *See* Johns Decl. ¶ 9, Ex. H. And as the Detention Policy recognizes, the

Executive Branch shifted from "catch and release" to a thorough enforcement of immigration laws. *See id.* The Detention Policy is, in part, a response to that increase and shift in the Executive Branch's approach to enforcing immigration laws. Petitioners suggest that the Detention Policy requires Respondents to detain aliens for more than 12 hours, but that is not the case. The Detention Policy plainly provides Respondents with discretion about how long to hold aliens and even encourages holding aliens "for the least amount of time required for their processing, transfer, release, or repatriation as operationally feasible." *See* Johns Decl. ¶ 9, Ex. H at 2. Contrary to Petitioners' argument, there is no constitutional right for aliens to be detained less than 12 hours. *See* Opposition at 20.

Petitioners' approach to the APA requires Respondents to seek approval of operational guidance about how to enforce the immigration laws of the United States. Petitioners are asking this Court to craft immigration policy about where aliens can be arrested and how long aliens can be detained, which is a power conferred to the Executive Branch. *See Arizona v. United States*, 567 U.S. 387, 394 (2012) ("the Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens"). Even the policies Petitioners are challenging do not require that arrests take place at specified locations or mandate how long aliens are detained.

E. Ambrocio, Garcia, and Torres Have Been Improperly Joined in Sequen's Habeas Case and Should Be Severed from Her Case.

The cases should be severed. As discussed above, Respondents propose severing the cases with Sequen's case remaining with this Court and the other cases are assigned randomly throughout this District. *See* Civil L.R. 3-3. Notwithstanding, the cases should be severed based on misjoinder and under Rule 21. On balance, and putting aside whether the Court accepts Respondents' proposal, it should exercise its discretion and sever Ambrocio, Torres, and Garcia's claims from Sequen's claims under the Rule 21 factors. *See Arcure v. Cal. Dep't of Dev. Services*, No. 1:13-cv-00541-LJO-BAM, 2014 WL 346612, at *6 (E.D. Cal. Jan. 30, 2014) (listing Rule 21 factors). First, Petitioners' claims do not arise out of the same transaction or occurrence. Petitioners assert habeas, APA, and constitutional claims all arising out of different facts and legal analysis. *See generally* FAC.

Second, Petitioners' claims do not present common questions of law or fact. In this one lawsuit, Petitioners are making individual habeas claims for three separate people (FAC at 49-50), challenging

conditions at 630 Sansome (FAC at 42-49), and seeking a nationwide stay of Respondents' immigration policies (FAC 40-41). Each Petitioner presents different Article III issues arising not only out of claims they assert but relief they are seeking. Petitioners also lack common questions of fact. Each Petitioner was detained at 630 Sansome on different days and for different periods time. Each Petitioner had a different experience at 630 Sansome that was unique to them. And Ambrocio has never been detained at 630 Sansome. Finally, Petitioners' habeas, APA, and constitutional claims lack common questions of law. Each type of claim requires different elements, litigation strategies, and methods to ultimate resolution. While Petitioners' APA claims may be resolved on summary judgment, there may be triable issues of fact pertaining to Petitioners' constitutional claims. *See* FAC (demanding a trial). Because of the scope of Petitioners' lawsuit, the claims at issue do not present common questions of law or fact.

Third, prejudice would be avoided if Petitioners' claims were severed because they would not be permitted the benefit of improper forum shopping. Petitioners' conduct suggests they perceive a benefit to being in this Court. By severing and reassigning the improperly joined claims, the prejudice to Respondents would be avoided.

Fourth, Petitioners' habeas, APA, and constitutional claims require different witnesses and proof. In general, APA claims require the production of an administrative record and resolution by summary judgment. Petitioners' claims arising out of 630 Sansome could result in a trial. Fifth, severance would facilitate judicial economy by allowing each court to develop a case management plan for each type of claim. Right now, as a practical matter and demonstrated by the numerous briefs filed over the last month, Petitioners' current lawsuit involves several different cases. The Rule 21 factors support severance of Petitioners' claims. For many of the same reasons, Petitioners' joinder arguments are misplaced. *See* Opposition at 22-24.

III. CONCLUSION

For the foregoing reasons and the reasons set forth in Respondents' opening motion, the Court should dismiss Petitioners' FAC and sever the claims.

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Respectfully submitted,

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