1 2	D.	PLAINTIFFS ADEQUATELY ALLEGE THAT DEFENDANTS UNLAWFULLY SUBJECT THEM TO PUNITIVE CONDITIONS
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1	<i>E. Bay Sanctuary Covenant v. Trump</i> , 932 F.3d 742 (9th Cir. 2018) 24, 25, 27
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	Fraihat, et al. v. ICE, et al., Case No. 19-cv-01546-JGB(SHKx) iv
	<i>Fraihat, et al. v. ICE, et al.</i> , Case No. 19-cv-01546-JGB(SHKx) iv Pltfs' Opp. To Defts' Motion to Sever, Dismiss, Transfer, and Strike

1	Loeffler v. Staten Island Univ. Hosp., 582 F.3d 268 (2d Cir. 2009)27
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	Fraihat, et al. v. ICE, et al., Case No. 19-cv-01546-JGB(SHKx) V

Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 8 of 39 Page ID #:633

I. <u>INTRODUCTION</u>

Plaintiffs' class action complaint paints a detailed picture of the unlawful conditions at prison-like facilities tI.

Fraihat, et al. v. ICE, et al., Case No. 19-cv-01546-JGB(SHKx) Pltfs' Opp. To Defts' Motion to Sever, Dismiss, Transfer, and Strike Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 10 of 39 Page ID #:635

Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 11 of 39 Page ID #:636

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

a.

Claims Arise From the Same Occurrence.

Claims arising from the "same systematic pattern of events" on the part of defendants meet the "same transaction or occurrence" requirement. *Coughlin*, 130 F.3d at 1350; *Almont Ambulatory Surgery Ctr.*, *LLC*, 99 F. Supp. 3d at 1188 (rejecting defendants' argument that plaintiffs' claims stemmed from "thousands of independent and unique out-of-network benefit claims" and holding that "eh ne

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Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 13 of 39 Page ID #:638

Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 14 of 39 Page ID #:639

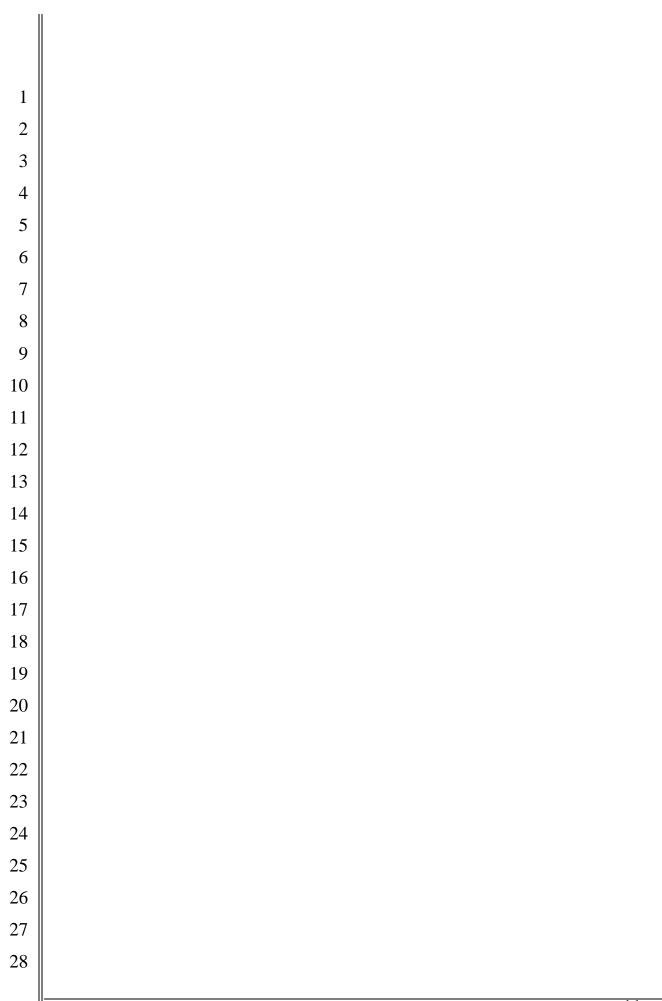
1	such class relief to compel Defendants to fulfill their constitutional and statutory	
2	obligations by correcting systemic deficiencies that affect not only Plaintiffs but	
3	also current and future putative class members. See ¶¶ 600-623.	
4	Class actions can drive such systemic change in part because they promote	
5	judicial economy. <i>See, e.g.</i> , , 634 F.3d 524, 536	
6	(9th Cir. 2011) ("Rule 23 encourages judicial economy by eliminating the need for	
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Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 16 of 39 Page ID #:641

Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 17 of 39 Page ID #:642

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

Second, numerous allegations establish that Defendants' response to the risks posed by the Challenged Practices has been objectively unreasonable, including Defendants' decision to continue to use the same monitoring and inspection system despite the fact that Defendants' own departments, as well as other governmental and nongovernmental entities, have repeatedly found that the system is fatally flawed (and has been for a long time);¹¹ Defendants' own employees' warning that ICE's primary inspection system has "no credibility because of the volume of problems it has failed to uncover at multiple facilities



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1	are punitive. Defendants cursorily assert that these claims fail simply because
2	Plaintiffs did not allege that they were segregated "for punitive purposes," ignoring
3	contrary Ninth Circuit precedent. ECF No. 54
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	Fraihat, et al. v. ICE, et al., Case No. 19-cv-01546-JGB(SHKx) 15

1	by referencing assertions in the [Complaint] or by reference to judicially noticeable
2	material showing the detainees are treated better than prisoners." Id. at *It9
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these conditions violate the Eighth Amendment, by definition they violate the Fifth
 Amendment rights of civil people in civil detention. *See Bell*, 441 U.S. at 545. The
 Complaint cites multiple reports establishing that the conditions in segregation
 violated the rights of people in civil detention, that disciplinary and non disciplinary segregation are indistinguishable, and that conditions are "overly
 restrictive." ¶¶

Fraihat, et al. v. ICE, et al., Case No. 19-cv-01546-JGB(SHKx) Pltfs' Opp. To Defts' Motion to Sever, Dismiss, Transfer, and Strike

of punitiveness by properly alleging that there are less harsh alternatives to segregation. Crucially, since the Plaintiffs and class and subclass members are in civil immigration detention, Defendants have the authority to release the majority of them pending their hearings. See ¶ 156-57 (citing 8 C.F.R. § 212.5 and § 1236.1). Plaintiffs further allege that equally effective and significantly less harsh alternatives to detention are available. ¶ 158. Finally, Plaintiffs allege that Defendants' own standards require "a host of protections that are not implemented in practice." ¶ 455.²² And even though it is a defense on which Defendants have the burden of proof, Plaintiffs also allege facts showing that the restrictions are excessive in relation to the ostensible interests served.²³ In sum, Plaintiffs have pleaded individual and systemic facts 3ae714.0B g0 Gpt8 0.06 Tc[*Fraihat, et al. v. ICE, et al.*, Case No. 19-cv-01546-JGB(SHKx) Pltfs' Opp. To Defts' Motion to Sever, Dismiss, Transfer, and Strike

See Aramark Facility Servs. v. SEIU Local 1877, 530 F.3d 817, 8924 n.2 (9th Cir. 1 2 2008) (failure to adequately brief an argument waives the argument.).

3 On the merits, Defendants' treatment of people with disabilities in ICE custody is also impermissibly punitive. The Complaint provides examples of 4 5 people with disabilities who received needed accommodations in jails or prisons, 6 but were not provided them in immigration detention. ¶ 597-99. This is precisely 7 the kind of comparison with criminal facilities that this Court recently found 8 sufficient to create a presumption of punitiveness for people in immigration detention. Torres, 2019 WL 5883685 at *19. Plaintiffs also allege that people with 9 10 disabilities are placed in segregation in lieu of providing services or accommodations and without the monitoring required by their disabilities. ¶¶ 463, 12 465, 491-92, 542, 544.

13 Ultimately, as this Court recently held as to these same Defendants, their "policies and procedures are so needlessly restrictive as to be punitive." Torres, 14 15 2019 WL 5883685, at *2. As in *Torres*, Plaintiffs here allege that Defendants have 16 failed to afford them "more considerate treatment than that typically afforded nonimmigration detainees;" these allegations "are sufficient to create a presumption of 17 18 punitiveness." Id. at *19. Plaintiffs have properly alleged that the Disability 19 Plaintiffs and Disability Subclass could be detained under less harsh conditions, for example, by being paroled. These allegations suffice to establish two of the 20 21 Jones/King/Torres presumptions—either one of which is sufficient—and to shift

Fraihat, et al. v. ICE, et al., Case No. 19-cv-01546-JGB(SHKx) Pltfs' Opp. To Defts' Motion to Sever, Dismiss, Transfer, and Strike

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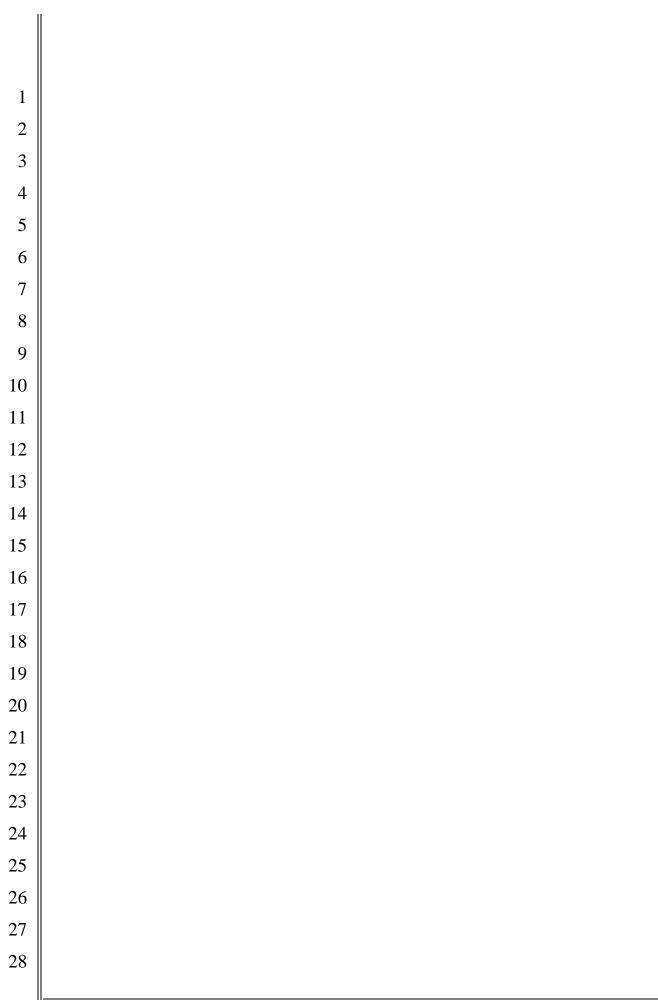
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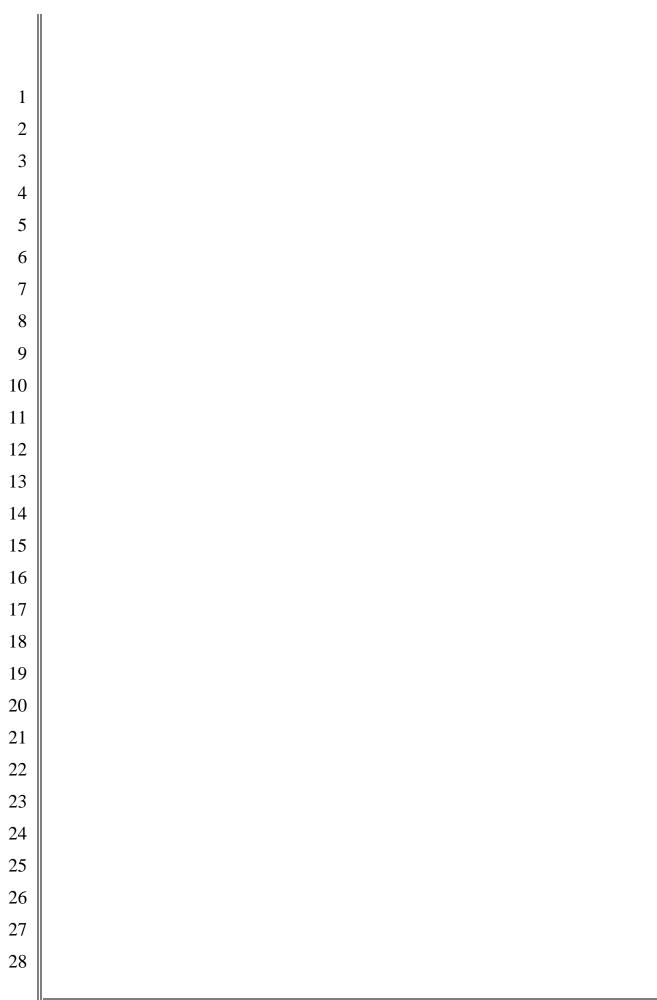
Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 29 of 39 Page ID #:654

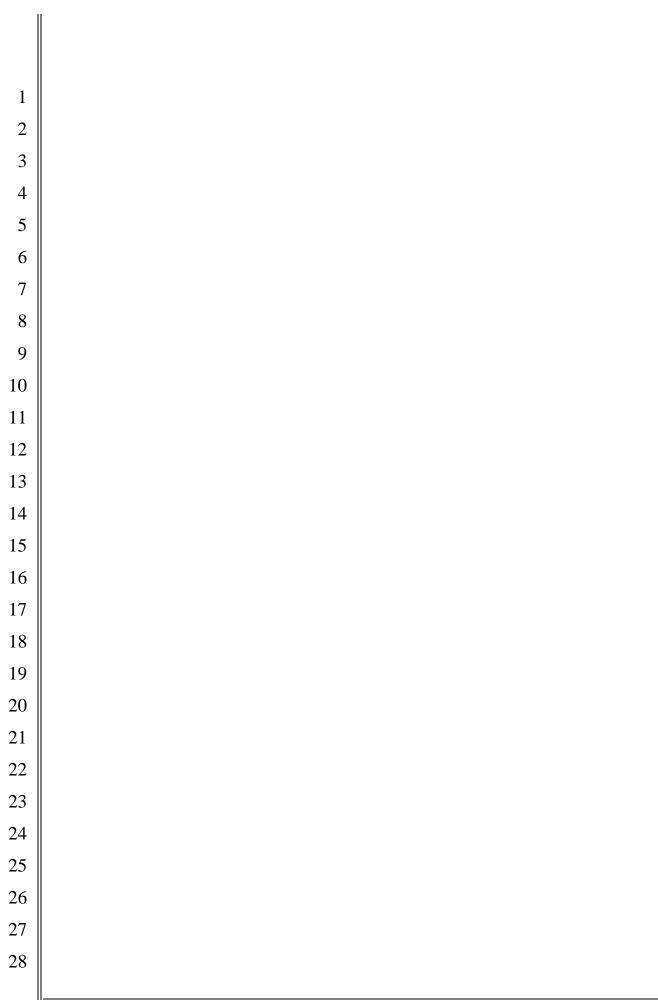
these requests (¶¶ 557-558); that Defendants continue to deny Plaintiff Sudney 1 2 access to a wedge and special shoes for his physical disabilities, despite the fact 3 that he received those same accommodations while in prison (¶ 567 (noting detention facility official's comment that ICE has a "different standard")); that 4 5 Plaintiff Mencias Soto remains without access to crutches and physical therapy for 6 his mobility disabilities, despite multiple requests (¶¶ 76-77, 266-67); that 7 Defendants continue to deny Plaintiff Hernandez, who has mobility disabilities, a 8 special chair he requested after experiencing increased pain with prolonged sitting 9 or standing and handrails to assist him in using the toilet (¶¶ 568-70); that despite the fact that ICE designated Mr. Hernandez's cell as "accessible," its lack of 10 11 handrails for the toilet further demonstrates the breakdown in ICE's system for 12 accommodating disability-related needs (*id.*); that Defendants continue to deny 13 Plaintiff Sanchez Martinez a back brace, twice daily insulin checks, and an 14 appropriate diet for his diabetes, despite being on notice of those needs (¶ 260-64, 290); that Defendants still fail to provide Plaintiff Baca Hernandez 15 16 accommodations for his vision disability, thus requiring him to have others read his 17 immigration documents to him (¶ 16); that Defendants still fail to provide Plaintiff 18 Munoz an appropriate diet for his diabetes, despite his extensive history of 19 complications from diabetes, including an insulin overdose while in ICE custody (¶¶ 313-15); that Defendants still fail to provide Plaintiff Rodriguez Delgadillo 20 21 appropriate therapy for his mental health disabilities, despite being on notice of 22 that need (¶¶ 72-73, 361, 521); and that Defendants continue to place Plaintiff 23 Murillo Hernandez in 24-hour segregation rather than providing him 24 accommodations for his severe allergies in a more integrated setting (¶ 47, 520, 25 547).

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

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	Fraihat at al. v. ICE at al. Case No. 19-ev-01546-ICB(SHKy) 23

Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 32 of 39 Page ID #:657





Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 37 of 39 Page ID #:662

Case 5:19-cv-01546-JGB-SHK Document 69 Filed 01/20/20 Page 38 of 39 Page ID #:663

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	Fraihat, et al. v. ICE, et al., Case No. 19-cv-01546-JGB(SHKx)	51