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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FAOUR ABDALLAH FRAIHAT, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 5:19-CV-01546 JGB (SHKx)

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO SEVER AND DISMISS PLAINTIFFS' CLAIMS, ALTERNATIVELY TRANSFER ACTIONS, AND MOTION TO STRIKE PORTIONS OF THE COMPLAINT

Before The Honorable Jesus G. Bernal
Hearing Date: February 24, 2020
Hearing Time: 9:00 a.m.

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ARGUMENT

I. Plaintiffs' Claims Are Not Properly Joined And Should Be Severed Or Alternatively Transferred To The Appropriate Jurisdiction

First, all 15 individual Plaintiffs' claims should be severed because their claims do not arise from the same transaction or occurrence and their claims do not involve common questions of law or fact. Instead, Plaintiffs' claims involve a wide variety of medical and mental health issues, disability issues, and administrative segregation issues, and ultimately lack factual overlap. For example, detainees with hearing, vision, or back conditions display different symptoms and require different accommodations, and Defendants' efforts to treat or accommodate each detainee necessarily diverges from case to case. Further, Plaintiffs' segregation claims reflect the fact that detainees may be placed in administrative segregation for different reasons. Ultimately, Plaintiffs allege a different factual basis for how Defendants' actions affected each of them.

component." (internal quotation marks omitted)). Plaintiffs have cited no cases that involve detainees in custody in different judicial circuits with deliberate indifference medical care claims. Nor have Plaintiffs explained why detainees in custody in one judicial circuit should be subject to the applicable legal standard in a different judicial circuit. Furthermore, an independent factual inquiry would be required to determine whether Defendants violated any particular Plaintiff's right to due process regarding their medical care.

Ultimately, the Complaint in this case truly is one that formulates its claims for declaratory and injunctive relief "at a stratospheric level of abstraction." *Shook v. Bd. of Cty. Comm'r's of Cty. of El Paso*, 543 F.3d 597, 604 (10th Cir. 2008). Plaintiffs have failed to challenge specific policies and procedures that would have an actual effect on Plaintiffs' claimed substantial risk of harm. Instead, they challenge policies and pro

and facilities run by one contractor. *See id.* at 1044. Here, Plaintiffs allege factual circumstances that are unique to each individual Plaintiff and not necessarily experienced by each detainee in Defendants' custody. *See* Compl. ¶¶ 133 (indicating that different ICE facilities are run by different entities and different types of contracts); *see also* Immigration and Customs Enforcement, Detention Standards, https://www.ice.gov/detention-standards/2019 (last visited Feb. 7, 2020). Thus, an adequate response to Plaintiffs' claims necessarily requires witnesses from multiple states, documents concerning varied policies and procedures across contract and non-contract facilities under Defendants' control, varied policies and procedures by each contractor depending upon location, as well as the application of different legal standards across judicial circuits.

Further, Plaintiffs' cases cited in support of their argument that they have satisfied the requirements for permissive joinder are inapposite. In *Almont Ambulatory Surgery Ctr., LLC v. United Health Group, Inc.*, while plaintiffs brought suit against 800 defendants concerning the denial of health care benefit claims, the court found that each claim involved the same "claim lines" and plan terms such that joinder was appropriate. *See* 99 F. Supp. 3d 1110, 1187-8 (C.D. Cal. 2015). That case also involved only ERISA as the sole, legal basis for relief. *See id.* Here, each Plaintiffs' allegation that Defendants violated their rights results from a different set of facts and in many cases involves different legal standards depending upon whether the claim concerns constitutionally inadequate medical care, punitive conditions of confinement, or violation of the Rehabilitation Act.

Plaintiffs' citation to *S. Poverty Law Ctr. v. U.S. Dep't of Homeland Sec.* is similarly distinguishable. *See* No. 18-760, 2019 WL 2077120, *2-3 (D.D.C. May 10, 2019). That case involves immigrants' access to counsel at certain detention facilities limited to a particular region within the same judicial circuit. The court denied defendants' motion to sever and transfer venue because resolution of the

legal and factual issues turned on the same legal standards. Here, Plaintiffs bring systemic challenges to a variety of policies and procedures applicable to different groups of immigrant detainees in immigration detention centers nationwide. For example, they challenge policies and procedures related to timely receipt of medical and mental health care, Compl. ¶¶ 209-236; timely receipt of medically necessary specialty and chronic care, Compl. ¶¶ 237-280; care provided by trained and qualified personnel, Compl. ¶¶ 281-306; timely emergency health care, Compl. ¶¶ 307-335; adequate physical and mental health intake screening, Compl. ¶¶ 336-356; adequate staffing of medical and mental health care; adequate mental health care, Compl. ¶¶ 357-413; adequacy of medical records and documentation, Compl. ¶¶ 414-429; monitoring and overseeing segregation practices, Compl. ¶¶ 430-501; access to ICE programs and services for individuals with disabilities, Compl. ¶¶ 502-521; adequate screening to identify, track, and accommodate detained individuals with disabilities, Compl. ¶¶ 522-537; use of segregation for individuals with disabilities, Compl. ¶¶ 538-548; providing individuals with disabilities reasonable accommodations, auxiliary aids, and effective communication, Compl. ¶¶ 549-579; ensuring contractors do not subject detained individuals with disabilities to discrimination, Compl. ¶¶ 580-592.

Moreover, Plaintiffs cite *Revilla v. Glanz*

questions of law and fact among the individual plaintiffs because they were limited to factual circumstances and legal bases that applied equally to each plaintiff, unlike the factual circumstances and legal bases that do not apply to each Plaintiff here.

not relevant" is unavailing. Plaintiffs simply have not rebutted the presumption that attaches to professional judgment; specifically, they have not shown that Defendants' medical personnel are unqualified or that any medical decision made with respect to an individual Plaintiff was grossly negligent. *See Houghton v. South*, 965 F.2d 1532, 1536 (9th Cir. 1992) (holding that "courts must restrict their inquiry to two questions: (1) whether the decisionmaker is a qualified professional entitled to deference, and (2) whether the decision reflects a conscious indifference amounting to gross negligence, so as to demonstrate that the decision was not based upon professional judgment.").

Contrary to Plaintiffs' contention, Defendants do not argue that actual harm is required, Pls.' Opp. 11, but Plaintiffs must still show a substantial risk of harm, which they have not done either. *See Gordon*, 888 F.3d at 1125. Determining whether there is substantial risk generally requires an analysis of the specific medical claim. Plaintiffs contend that they have adequately pled facts that demonstrate Defendants' deliberate indifference. But, they rely on numerous paragraphs of their Complaint, none of which involve the specific allegations of any individual Plaintiff and instead involve conclusory statements, memos, and reports by outside agencies and sources not parties to this action about individuals who are also not parties to this action. *See* Pls.' Opp. 9-10. "[A] court need not blindly accept conclusory allegations, unwarranted deductions of fact, and unreasonable inferences." *Fabricant v. Paymentclub Inc.*, No. 219CV02451ODWASX, 2019 WL 5784174, at *1 (C.D. Cal. Nov. 6, 2019) (citing *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

Moreover, for similar reasons that Plaintiffs' claims should be severed and dismissed or transferred to the proper venue, Plaintiffs' systemic challenges are overbroad and conclusory such that they fail to state a claim. *See Shook*, 543 F.3d at 604. For example, Plaintiffs challenge policies and procedures related to

individual without violating the Constitution). With respect to Plaintiff Ali, her allegations of "effective segregation" are conclusory and do not demonstrate that she was placed in segregation at all, let alone in segregation for punitive reasons. Compl. ¶ 447. That the facility housed her alone in a dorm designed for more people could have been for any number of operational reasons, including a lack of other female detainees. None of the named Plaintiffs sufficiently allege that they were placed in segregation for punitive reasons.

Plaintiffs' misapply the second prong of the *Jones v. Blanas* standard for a presumption of punitiveness, *see* 393 F.3d 918 (9th Cir. 2004), and they also inappropriately attempt to extend the requirement for a due process hearing in *Mitchell v. Dupnik*, 75 F.3d 517, 524 (9th Cir. 1996) to non-disciplinary segregation. First, Plaintiffs' arguments concerning a presumption of punitiveness with respect to Defendants' use of segregation ignores the statutory and regulatory scheme for immigration detention because not everyone is subject to release. Whether less harsh or less restrictive alternatives to detention exist for an immigration detainee depends upon the detention authority governing that detainee's detention. *See, e.g.*, 8 U.S.C. § 1225(b) (requiring mandatory detention for aliens pending final determination in credible fear proceedings); § 1226(c) (requiring mandatory detention for aliens who have committed certain criminal offenses); § 1231(a)(2) (requiring mandatory detention during the 90-day removal period after a final order of removal is entered). Second, *Mitchell* involved due process concerns surrounding when a pretrial detainee may be subject to disciplinary segregation. The court held in *Mitchell* that "pretrial detainees may be subjected to disciplinary segregation only with a due process hearing to determine whether they have in fact violated any rule." 75 F.3d at 524. Here, no Plaintiff has sufficiently alleged that his or her segregation occurred for disciplinary or punitive reasons, and therefore, Plaintiffs reliance on *Mitchell* is misplaced.

Plaintiffs cite *Torres*' holding that plaintiffs in that case demonstrated a "presumption of punitiveness" with respect to conditions at certain immigration detention facilities within the Central District of California that "are not 'more considerate' than at criminal facilities." 411 F. Supp. 3d at 1064-65. However, Plaintiffs have not demonstrated a basis for this Court to expand that finding to facilities outside this judicial district where different legal standards for analyzing conditions of confinement may apply. *See Matherly v. Andrews*, 859 F.3d 264, 275-76 (4th Cir. 2017) (declining to follow the Ninth Circuit's decision in *Jones* concluding that "[*Jones*] places too great of a burden on prison administrators to justify their every move" and "the Supreme Court has made clear that the judiciary should not be in the business of administering institutions. But *Jones* does just that [].").

III. Plaintiffs Have Failed To Demonstrate That Defendants Deny Detainees With Disabilities Meaningful Access To Benefits Under the Rehabilitation Act

Plaintiffs have failed to show that Defendants denied any named Plaintiff a reasonable accommodation that he needed to receive meaningful access to serp/ TD.0l0l-.

reasonable accommodations that comply with federal law, including the Rehabilitation Act. *See*

IV.

paragraphs consist mostly of background facts and compile something more akin to a treatise on immigration detention rather than a complaint for declaratory and injunctive relief. *See* Compl. ¶¶ 139-202, 317-18, 343-49, 370-76, 442-43, 448-49, 452-54, 458, 480, 490, 494, 540 (discussing general history, statistics, letters, and reports unrelated to any of the named Plaintiffs in the present case); ¶¶ 226-36, 270-79, 296-305, 319-34, 350-55, 365-66, 378-86, 404-12, 426-28, 466, 473-78, 496-500 (describing the health issues and deaths of individuals not parties to this action); *see also Verfuerth v. Orion Energy Systems, Inc.*, 65 F. Supp. 3d 640, 652 (E.D. Wis. 2014) (where 73 of complaint's 96 pages contained only unnecessary background facts and motion was granted because requiring defendant to pay counsel to investigate and respond to such facts "definitely falls into the category of prejudice."). All of these paragraphs consisting of unrelated or even tangentially related information should be stricken.

"[S]ystem-wide injunctive relief is not available based on alleged injuries to unnamed members of a proposed class." *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1044–45 (9th Cir. 1999). Any relief must be limited to the injury established by the named Plaintiffs. *Id.* Here, the named Plaintiffs fail to state a claim under any of the causes of action in this case, and Plaintiffs' cannot resolve the shortcomings of the pleading by incorporating numerous improper allegations about individuals not parties to this action. Insufficient allegations in a pleading that do not consist of an entire claim for relief may be challenged by a motion to strike. *See Thompson v. Paul*, 657 F. Supp. 2d 1113, 1129-30 (D. Ariz. 2009); *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993). Thus, Plaintiffs historical and background allegations unrelated to the named Plaintiffs in this action should be stricken.

Finally, the slew of allegations unrelated to the Plaintiffs and their claims in this case prejudice Defendants, and Plaintiffs' systemic allegations related to

specific claims for relief that the individual Plaintiffs do not themselves allege should also be stricken. Even if a class is certified, many of the allegations in the Complaint relate to detainees who died or committed suicide, and Plaintiffs do not list deceased individuals as members of the putative class. *See* Compl. ¶¶ 223-226, 228, 274, 276-78, 299-302, 319-20, 327, 329-34, 351-355, 365-66, 378-86, 404-412, 426, 473-78, 496-500 (discussing deaths of individuals not parties to this action and detainee death re

rule should not apply here where 12 named Plaintiffs remain to represent the claims of the putative class if they themselves can state valid claims. Plaintiffs Sergio Salazar Artaga, Jose Segovia Benitez, and Edilberto Garcia Guerrero[1] were released from ICE custody prior to the filing of any motion for class certification in this case, and therefore, their claims are moot.

Furthermore, Plaintiffs contend that they qualify for an exception to mootness because they are a putative class challenging ongoing government policies and their claims are "inherently transitory." Pls.' Opp. to Defs.' Mot. to Sever and Dismiss, Transfer Actions, and Strike Portions of the Compl. ("Pls.' Opp.") 4-5, ECF No. 69. In other words, Plaintiffs seem to argue that the class claims challenging Defendants' ongoing policies predominate and that their declaratory and injunctive relief claims should survive, even though they are inherently transitory, because a class action in this context is a superior method to adjudicate their claims. *See* Fed. R. Civ. Pro. 23(b)(3); *Wal-Mart Stores, Inc., v. Dukes*, 564 U.S. 338, 360-67 (2011) (analyzing the differences between Federal Rule 23(b)(2) and 23(b)(3) class claims for declaratory and injunctive relief, and holding that claims for monetary relief may not be certified under Federal Rule 23(b)(2) where monetary relief is not incidental to declaratory and injunctive relief). However, because of their unique, factually dependent nature, inadequate medical care claims require an individualized analysis of each Plaintiff's eligibility for relief and of Defendants' defenses in relation to each allegation. The individualized analysis required here is even more evident in this case where Plaintiffs propose a nationwide class involving detainees held in facilities that are run under different contracts, policies, and procedures. *See* Compl. ¶¶ 133

[1] Plaintiff Edilberto Garcia Guerrero was medically cleared for departure and departed the United States on January 7, 2020. *See* Ex. 1, Declaration of Eric Ilarraza.

(indicating that different ICE facilities are run by different entities and different types of contracts); *see also* Immigration and Customs Enforcement, Detention Standards, https://www.ice.gov/detention-standards/2019 (last visited Feb. 7, 2020). Plaintiffs generally may seek other forms of individualized or monetary relief, such as claims under the (adequate7,

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