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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

16 FRESCIA GARRO PINCHI; *et al.*,

17 Plaintiffs-Petitioners,

18 v.

19 KRISTI NOEM, in her official capacity as
Secretary of Homeland Security; *et al.*,

20 Defendants-Respondents

) Case No. 25-cv-5632-PCP

) **RESPONDENTS' MOTION TO SEVER,
TRANSFER AND CONSOLIDATE**

) Date: January 22, 2026

) Time: 10:00 a.m.

) Courtroom: Courtroom 8 – 4th Floor

) Honorable P. Casey Pitts
) United States District Judge

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on January 22, 2026, at 10:00 a.m., or as soon thereafter as the matter may be heard by the Honorable P. Casey Pitts, in Courtroom Eight of the Robert F. Peckham Federal Building and United States Courthouse located at 280 South First Street, Fourth Floor, San Jose, California 95113, Respondents will respectfully move, in the alternative¹, for an order severing, transferring and consolidating Plaintiffs’ First Amended Complaint and Petition for Writ of Habeas Corpus (“FAC”). Respondents move to sever the claims of Plaintiffs Frescia Garro Pinchi (“Pinchi”), Juany Galo Santos Frescia (“Santos”), Jose Telefor Sente (“Telefor”) and their putative class, from the individual claims of lead Plaintiff Ms. Pinchi. The putative class claims, if not dismissed and if certified, should then be transferred to the District Court of the District of Columbia (“D.D.C”) and consolidated with Petitioner Carmen Aracely Pablo Sequen’s (“Sequen”) class claims in *Sequen, et al., v. Noem, et al.*, 25-cv-06487-PCP (2025)(N.D. Cal.). Respondents move under Rules 12(b)(1) and 12(b)(6) (pursuant to their motion to dismiss filed on November 14, 2025), and Rules 21 and 42 of the Federal Rules of Civil Procedure. Respondents’ Motion to Sever, Transfer and Consolidate is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, and all the matters of record filed with the Court.

STATEMENT OF RELIEF

By separate filings, Respondents opposed class certification and moved to dismiss. Dkt. Nos. 66, 68. If the case survives the dismissal motion, and the Court grants provisional class certification, Respondents, in the alternative, move to sever Plaintiffs’ FAC from Ms. Pinchi’s individual habeas petition, have the putative class claims transferred to D.D.C. and have this case consolidated with *Sequen, et al., v. Noem, et al.*, 25-cv-06487-PCP (2025)(N.D. Cal.).²

¹ Currently, Respondents have a Motion to Dismiss, filed November 14, 2025, pending before this Court and noticed for a hearing on January 22, 2026. Respondents maintain that this Court should dismiss this case in its entirety. Should the Court determine that this case may proceed, Respondents, in the alternative, request severance, transfer to D.D.C. and consolidation as discussed *infra*.

² In accordance with local rules, counsel for both parties discussed this motion in order to file their stipulation for response deadlines on November 20, 2025, which the Court granted. Dkt. No. 73. Plaintiffs oppose this motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs’ amended complaint is an improper attempt to transform Ms. Pinchi’s routine habeas
4 petition challenging her re-arrest and detention into a completely different lawsuit. Indeed, it purports to
5 bring a class action that adds two new Plaintiffs and pleads new claims that challenge national
6 immigration policies as seen in *Sequen*, which additionally challenges the location of the arrests e.g.
7 courthouses, as well as the conditions of confinement at the San Francisco holding facility where the
8 individual Plaintiffs in *Sequen*’s putative class action are no longer held. This new pleading in *Pinchi*
9 seeks an entire re-do of the original habeas case all to be heard before the same judge, even though Ms.
10 Pinchi received the relief she sought and is no longer detained. *See* Dkt. Nos. 1, 33, 38.

11 The Court should reject Plaintiffs’ attempt at forum-shopping where, by hand-picking the judge
12 after the Court ordered Ms. Pinchi’s release from detention based on her re-arrest, undermines the purpose
13 of the random assignment process in this District. First, the Court should sever Ms. Pinchi’s individual
14 habeas claims as it did in *Sequen*. *See Sequen* Dkt. No. 137. Second, 8 U.S.C. § 1252(e)(3) only permits
15 judicial review of challenges to policies pursuant to the implementation of section 1225(b) in the D.D.C.
16 Finally, any outcome in *Pinchi* would directly affect the provisionally certified class members in *Sequen*,
17 where both cases’ class definitions overlap, and class counsel are the same, thus supporting consolidation
18 of the two cases.

19 **II. ISSUES TO BE DECIDED**

- 20 1. Whether Pinchi, Santos, and Telefor’s claims have been improperly joined and therefore
21 the Court should sever the individual habeas claims under Rule 21.
- 22 2. Whether the Court should transfer the claims of the putative class members, if certified, and
23 not dismissed, in *Pinchi* to D.D.C. pursuant to 8 U.S.C. § 1252(e)(3).
- 24 3. Whether the Court should consolidate the class members’ claims in *Sequen* with this case,
25 where the outcome of *Pinchi* directly affects the litigation in *Sequen*, and where it is in the best
26 interest of judicial economy and party resources.
- 27
- 28

1 **III. FACTUAL BACKGROUND**

2 **A. *Pinchi* Factual and Procedural Background**

3 Plaintiffs Frescia Garro Pinchi, Juany Galo Santos Frescia, and Jose Telefor Sente are nationals of
4 Peru, Honduras, and Guatemala, respectively. *Pinchi*, Dkt. No. 68, Ex. 1 (Declaration of Deportation
5 Officer Michael Silva Regarding Frescia Garro Pinchi and Juany Galo Santos) ¶¶ 7, 17; Ex. 2 (Declaration
6 of Deportation Officer Michael Silva Regarding Jose Waldemar Teletor Sente), ¶ 7. Each entered the
7 United States without admission or inspection and was charged as removable under 8 U.S.C.
8 § 1182(a)(6)(A)(i). *Id.*, Ex. 1 ¶¶ 7, 9, 17, 19; Ex. 2 ¶ 7, 8. DHS served each with a Notice to Appear and
9 placed them in removal proceedings under 8 U.S.C. § 1229a before the San Francisco Immigration Court.
10 *Id.*, Ex. 1 ¶¶ 9, 11, 19, 21; Ex. 2 ¶¶ 8, 10. Those proceedings remain pending. *Id.*, Ex. 1 ¶¶ 12, 14, 21; Ex.
11 2 ¶ 10.

12 On July 3, 2025, after a scheduled master-calendar hearing, U.S. Immigration and Customs
13 Enforcement (“ICE”) executed a previously issued arrest warrant for Ms. Pinchi and transferred her to the
14 Mesa Verde ICE Processing Center. *Id.*, Ex. 1 ¶¶ 8, 12, 13. DHS released her two days later pursuant to a
15 temporary restraining order. *Id.* ¶ 15. Ms. Galo Santos and Mr. Telefor Sente have not been taken into
16 custody since their initial encounters with immigration officials. *Id.* ¶ 20; Ex. 2 ¶ 9. None of the named
17 Plaintiffs have a criminal record alleged in the pleadings.

18 On July 3, 2025, Ms. Pinchi filed her habeas petition. Dkt. 1. On July 4, 2025, the Court granted
19 her temporary restraining order and ordered her release. Dkt. 6. On July 24, 2025, the Court granted a
20 preliminary injunction enjoining the Government from re-detaining her. Dkt. 33. On October 10, 2025,
21 Plaintiffs filed their FAC. Dkt. No. 38. The FAC asserts that recent enforcement actions reflect a broader
22 “Re-Detention Policy.” Dkt. No. 38 at ¶ 6. Plaintiffs allege that DHS and ICE began treating all
23 noncitizens who entered without inspection as subject to mandatory detention under 8 U.S.C.
24 § 1225(b)(2), rather than discretionary custody under 8 U.S.C. § 1226. FAC at ¶ 4. Plaintiffs seek
25 declaratory and injunctive relief under the Immigration and Nationality Act (“INA”), the Administrative
26 Procedure Act (“APA”), and the Fourth and Fifth Amendments, including a class-wide order restricting
27

1 DHS’s application of § 1225(b)(2) to such individuals, and writs of habeas corpus prohibiting DHS from
 2 detaining such individuals under its § 1225(b)(2) authority unless a custody hearing is first held. FAC at
 3 ¶¶ 119-145; Prayer for Relief at pp. 34-35.

4 Plaintiffs seek provisional certification of the following class and subclass:

5 “**Class:** All noncitizens in the jurisdiction of the San Francisco ICE Field Office who (1) entered
 6 or will enter the United States without inspection; (2) have been or will be charged with
 7 inadmissibility under 8 U.S.C. § 1182 and have been or will be released from DHS custody; and
 8 who (3) are in removal proceedings under 8 U.S.C. § 1229a, including any § 1229a proceedings
 9 that have been dismissed where the dismissal is not administratively final; and (4) are not
 10 subject to detention under 8 U.S.C. § 1226(c).”

11 **Bond/Release on Recognizance Subclass (“Bond/RoR Subclass”):** All members
 12 of the Class whose release from DHS custody was or will be on bond, conditional
 13 parole, or their own recognizance under 8 U.S.C. § 1226(a) and/or 8 C.F.R. §
 14 236.1(c)(8).”

15 Dkt. No. 49, Motion to Certify Class at 1-2.

16 **B. The Claims Presented in *Sequen***

17 On September 18, 2025, and less than 48 hours after the Court issued a preliminary injunction
 18 enjoining detention of *Sequen* (the sole Petitioner in that case), Petitioners amended *Sequen*’s complaint to
 19 add three new Petitioners, nine new Respondents, and seven new claims. Whereas in the original habeas
 20 action *Sequen* had sought relief exclusively based on her specific circumstances, the FAC purported to
 21 assert claims on behalf of an alleged class of people.

22 In *Sequen*, Petitioners challenge the Federal Government’s policies about immigration
 23 enforcement. Their FAC alleges nine claims that can be divided into three groups. *See Sequen* FAC at 40-
 24 51. First, Petitioners allege three claims under the APA challenging the following policies: (1) Operating
 25 Policies and Procedures Memorandum 25-06 (“OPPM 25-06”); (2) the Interim Guidance and the 2025
 26 Courthouse Arrest Guidance; and (3) the Detention Policy. *See id.* at 40-41, 47-48. Petitioners seek a
 27 declaration that each of these policies violates the APA and seek an order setting them aside. *See id.* at 51-
 28 52.

29 Second, *Sequen* Petitioners allege four constitutional claims: that (1) the alleged sleep deprivation
 30 violates the Due Process Clause; (2) the alleged deprivation of adequate medical care violates the Due
 31 Process Clause; (3) the alleged deprivation of adequate medical care violates the Due
 32 Process Clause; and (4) the alleged deprivation of adequate medical care violates the Due
 33 Process Clause.

1 Process Clause; (3) the alleged unsanitary and unhygienic conditions at 630 Sansome violate the Due
2 Process Clause; and (4) Petitioners are being denied access to counsel. *See* FAC at 42-47, 48-49.
3 Petitioners seek an injunction to stop the alleged harmful conditions at 630 Sansome. *See id.* at 51-52.

4 Third, three *Sequen* Petitioners (Sequen, Ambrocio, and Garcia) allege two habeas claims, *see*
5 FAC at 49-51, alleging that (1) their detention violates substantive due process under the Fifth
6 Amendment to the United States Constitution, *see id.* at 49, and (2) their detention violates procedural due
7 process under the Fifth Amendment, *see id.* at 50. They seek an order releasing them from custody and
8 prohibiting Respondents from detaining them again unless their detention is ordered by a neutral arbitrator
9 after Respondents demonstrate, by clear and convincing evidence that they are a flight risk or danger to
10 the community. *See id.* at 51-52.

11 During the late evening on the same day they filed their FAC, *Sequen* Petitioners moved for class
12 certification. *Sequen*, Dkt. No. 33. The same night, Garcia and Ambrocio moved for a temporary
13 restraining order. *See* Dkt. Nos. 34, 35. The next day on September 19, 2025, the Court granted Garcia and
14 Ambrocio's *ex parte* motion in part and denied it in part. *See* Order Granting in Part Mot. for TRO at 8,
15 Dkt. No. 36. On October 15, 2025, the Court granted Ambrocio and Garcia's motion for a preliminary
16 injunction. *See* Order Granting Prelim. Inj. at 24, Dkt. No. 90 (enjoining the arrest and detention of
17 Ambrocio and Garcia).

18 The Petitioners sought certification for the following classes:

19 **Courthouse Arrest Class:** All persons who have an immigration court
20 hearing in a proceeding on the Executive Office for Immigration Review's
21 ("EOIR") non-detained docket in an immigration courthouse in ICE's San
22 Francisco Field Office Area of Responsibility.

22 **Detention Class:** All persons who are now or will be detained in a holding
23 cell in ICE's San Francisco Field Office.

23 *Sequen*, Dkt. No. 109, Respondents' Opposition to Petitioners' Motion for Class Certification at p. 17.

24 On November 24, 2025, the Court granted the Government's Motion to Sever the individual
25 habeas petitions from the class claims. *Sequen*, Dkt. No. 137. On November 25, 2025, the Court granted
26 provisional class certification. *Sequen*, Dkt. No. 138. Both the individual habeas cases and the class
27 action case remain with this Court. *Sequen* Dkt. Nos. 137, 138.
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1 **IV. LEGAL STANDARD**

2 Under Rule 21 of the Federal Rules of Civil Procedure, “[o]n motion or on its own, the court may
3 at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. “The court may also sever any claim
4 against a party.” *Id.* In evaluating motions to sever pursuant to Rule 21, courts look to Rule 20 for
5 guidance. *Bias v. Wells Fargo & Co.*, No. 12-cv-664-YGR, 2012 WL 2906664, at *2 (N.D. Cal. July 13,
6 2012). And while “there is no established test in the Ninth Circuit for when a district court should exercise
7 its broad discretion to sever a claim under Rule 21, courts consider the following five factors: “(1) whether
8 the claims arise out of the same transaction or occurrence; (2) whether the claims present some common
9 questions of law or fact; (3) whether settlement of the claims or judicial economy would be facilitated; (4)
10 whether prejudice would be avoided if severance were granted; and (5) whether different witnesses and
11 documentary proof are required for the separate claims.” *See Arcure v. Cal. Dep’t of Dev. Services*, No.
12 1:13-cv-00541-LJO-BAM, 2014 WL 346612, at *6 (E.D. Cal. Jan. 30, 2014); *see also Hernandez v. City*
13 *of San Jose*, No. 16-cv-03957-LHK, 2017 WL 2081236, at *4 (N.D. Cal. May 15, 2017) (listing five
14 factors). When a claim is severed, it becomes an entirely new and independent cause of action. *See*
15 *Herklotz v. Parkinson*, 848 F.3d 894, 898 (9th Cir. 2017).

16 Permissive joinder under Fed. R. Civ. P. 20(a) is appropriate only if both “(1) the plaintiffs
17 asserted a right to relief arising out of the same transaction and occurrence *and* (2) some question of law
18 or fact common to all the plaintiffs will arise in the action.” *Coleman v. Quaker Oats Co.*, 232 F.3d 1271,
19 1296 (9th Cir. 2000). “If the test for permissive joinder is not satisfied, a court, in its discretion, may sever
20 the misjoined parties, so long as no substantial right will be prejudiced by the severance.” *Coughlin v.*
21 *Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997).

1 **V. ARGUMENT**

2 **A. Should The Court Not Dismiss *Pinchi's* FAC, In The Alternative, The Court Should**
 3 **Sever Ms. Pinchi's Adjudicated Habeas Claims From All Other Claims.**

4 If the claims survive the motion to dismiss, the disparate factual scenarios involved in the alleged
 5 harms will likely lead to some manner of fact development on each set of claims, confusing the record and
 6 complicating the balancing of factors in each distinct set of factual circumstances unless the cases are
 7 severed. *See Stith v. California*, No. 23-947, 2023 WL 4274043, at *3–4 (E.D. Cal. June 29, 2023) (“The
 8 joinder of multiple Plaintiffs with varying factual allegations ‘does not promote judicial economy and
 9 confuses and complicates the issues’ because there are questions of fact and causation unique to each of
 10 their alleged injuries.” (quoting *Milton v. California*, No. 21-cv-08545, 2022 WL 17978802, at *4
 11 (N.D. Cal. Dec. 28, 2022))).

12 The Court should sever the class action complaint from Ms. Pinchi's individual habeas case for
 13 misjoinder under Rule 21. Generally, Rules 18, 20, and 21 govern joinder and severance of parties. Rule
 14 20 generally permits joinder if: (1) the claims arise “out of the same transaction, occurrence, or series of
 15 transactions or occurrences,” and (2) there is a “common” question of law or fact. Fed. R. Civ. P. 20(a)(1)-
 16 (2). “There is no authority for permitting multiple petitioners to file a single habeas petition under 28
 17 U.S.C. § 2254, and doing so generally is not permitted.” *Acord v. California*, No. 1:17-cv-01089-MJS
 18 (HC), 2017 WL 4699835, at *1 (E.D. Cal. Oct. 19, 2017).

19 Plaintiffs have engaged in improper joinder and forum shopping. “Forum shopping refers to [t]he
 20 practice of choosing the most favorable jurisdiction or court in which a claim might be heard.” *R.R. St. &*
 21 *Co. v. Transp. Ins. Co.*, 656 F.3d 966, 981 (9th Cir. 2011) (citation and quotation marks omitted; collecting
 22 cases finding plaintiffs engaged in forum shopping). Telltale signs of forum shopping include choosing a
 23 forum for tactical advantages, including more favorable law, “the habitual generosity of juries . . . in the
 24 forum district,” or “the inconvenience and expense to the defendants resulting from litigation in that
 25 forum.” *Vivendi SA v. T-Mobile USA, Inc.*, 586 F.3d 689, 695 (9th Cir. 2009). If the Court finds that
 26 plaintiffs have engaged in forum shopping, it may dismiss their case. *Coalition for Clean Air v. VWR Int'l,*
 27 *LLC*, 922 F.Supp.2d 1089, 1112 (E.D. Cal. 2013) (collecting cases). A court can reasonably infer forum
 28 shopping when the plaintiffs, represented by the same counsel, filed identical suits in other venues, and

1 then voluntarily dismissed them in close proximity to filing another lawsuit. *Walker v. Discover Fin.*
2 *Servs.*, No. 10-3013, 2010 WL 4269193, at *3 (N.D. Cal. Oct. 25, 2010).

3 Plaintiffs have transformed Ms. Pinchi’s routine habeas case about her personal circumstances into
4 a class action challenging the Federal Government’s national immigration enforcement and have done so
5 after Ms. Pinchi herself obtained relief. Indeed, far from its origins as a request for release from detention
6 and injunction against re-detention without a pre-deprivation hearing for a single petitioner, following this
7 Court’s grant of Ms. Pinchi’s requested relief for a preliminary injunction, this case has now
8 metamorphized into a wholesale challenge to ICE’s detention authority. The apparent motive for this
9 transformation is forum shopping.

10 Indeed, Respondents are now defending cases in multiple districts where petitioners, like Ms. Pinchi,
11 initially received relief on their individual habeas claims and later join new petitioners after that relief is
12 granted to challenge the Federal Government’s national immigration policies in a class action. *See, e.g.,*
13 *Sequen, et al., v. Noem, et al.*, Case No. 25-cv-06487-PCP (N.D. Cal.); *Lazaro Maldonado Bautista, et*
14 *al., v. Noem, et al.*, Case No. 25-cv-01873-SSS-BFM (C.D. Cal.). Notably, this Court, the same judge,
15 has *two* proposed class actions – *Pinchi and Sequen* – spawning from individual habeas claims, where
16 opposing counsel is the same. This runs contrary to a balanced system and undermines the random
17 assignment process of judges in this District. *See* Civil L.R. 3-3. Litigants should not be permitted to
18 hand-pick the judges and courts that they want. To discourage further forum shopping, this Court should
19 sever and retain Ms. Pinchi’s individual habeas claim and transfer the class action challenges to the
20 alleged “Re-Detention Policy” to D.D.C. so that it may be reassigned randomly to another judge (as
21 discussed *infra*).³ *See* Civil L.R. 3-3. In the alternative, Respondents request that the Court transfer the
22 class claims to another judge within the district. *Id.*

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26 ³ Ms. Pinchi lacks standing to participate in the class action because, by the time Plaintiffs filed
27 their FAC, the Court had already redressed Ms. Pinchi’s claims for injunctive relief. *See* ECF 33;
28 *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (plaintiffs “must demonstrate standing for each
claim that they press and for each for of relief that they seek”). To the extent that Ms. Pinchi had any
remaining relief after the Court granted her motion for a preliminary injunction, it did not include
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1 This Court should exercise its discretion to sever under Rule 21. In exercising its broad discretion to
 2 sever a claim under Rule 21, courts have found that claims may be severable “if they arise from different
 3 factual situations or pose different legal questions.” *See Arcure v. Cal. Dep’t of Dev. Servs.*, No. 1:13-
 4 cv-00541-LJO-BAM, 2014 WL 346612, at *6 (E.D. Cal. Jan. 30, 2014) (listing Rule 21 factors).
 5 Plaintiffs’ claims do not arise out of the same transaction or occurrence, where they assert APA and
 6 constitutional claims all arising out of different facts. *See generally* FAC, ECF 45. Ms. Pinchi is the sole
 7 named Plaintiff to have actually been impacted by the alleged “policy,” and is the sole named Plaintiff to
 8 have already received relief. Moreover, habeas and due process claims are inherently individualized
 9 claims. This Court granted severance in *Sequen* and should do so here as well, where both cases
 10 involved individual habeas cases mutated into policy class actions. *See Sequen* Dkt. No. 137. Severance
 11 would facilitate judicial economy by allowing each petitioner to develop their own case and pursue the
 12 nuances of their legal claims. Thus, the individualized nature of habeas and the applicable immigration
 13 statutes and regulations for each petitioner factor in favor of severance.
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 16 Finally, severance will not prejudice any Plaintiff’s substantive rights. Dismissal is appropriate
 17 for plaintiffs with severed claims who cannot lay venue in this district. *See infra* Section B. But those
 18 dismissals would be without prejudice to refile in a district where venue would lie. *Oaks of Woodlake*
 19 *Phase III, Ltd. v. Hall, Bayoutree Assocs. (In re Hall, Bayoutree Assocs.)*, 939 F.2d 802, 804 (9th Cir.
 20 1991). And because Plaintiffs allege a continuing injury, the statute of limitations will not bar them from
 21 refile. *See Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 144 S. Ct. 2440, 2450 (2024).
 22

23 In sum, severance is warranted—Plaintiffs’ claims are misjoined because they arise from three
 24 different series of transactions, occurrences or non-occurrences.⁴ Severance will alleviate the undue
 25

26 pursuing relief on behalf of third parties.

27 ⁴ To be clear, Santos and Telefor have not been re-detained and did not have recent habeas
 28 petitions. However, any member of the putative *Pinchi* class could be subject to detention in the future
 and thus seek habeas. The Court should sever those individual habeas claims as well.

1 burden imposed on the parties and this Court to conduct individualized analyses in a single case,
 2 especially if these claims proceed to factual development or trial. And Plaintiffs’ substantive rights will
 3 not be prejudiced by severance.

4 **B. Venue Is Improper In This District, And The Court Should Transfer The Putative**
 5 **Class Claims.**

6 “Plaintiff[s] ha[ve] the burden of showing that venue [i]s properly laid in the [Northern] District
 7 of California.” *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979). If a
 8 court determines that venue is improper, it must dismiss the action or, if it is in the interest of justice,
 9 transfer it to a district in which it could have been brought. 28 U.S.C. § 1406(a); *see also King v.*
 10 *Russell*, 963 F.2d 1301, 1304 (9th Cir. 1992) (reviewing district court’s decision whether to dismiss or
 11 transfer for abuse of discretion). But such a transfer is not permitted unless the transferor court has
 12 subject-matter jurisdiction. *Abrams Shell v. Shell Oil Co.*, 165 F. Supp. 2d 1096, 1103 (C.D. Cal. 2001).
 13 When a defendant challenges venue, the plaintiff must show that venue is proper. *Piedmont Label Co. v.*
 14 *Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979).

15 In cases involving government officials, venue is proper in the district where “(A) a defendant in
 16 the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a
 17 substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no
 18 real property is involved in the action.” 28 U.S.C. § 1391(e)(1).⁵

19 Here, Plaintiffs frame this case as a challenge to a “Re-Detention Policy,” but the detention
 20 authority at issue arises from statute, not policy. Under 8 U.S.C. § 1225(b)(2), any noncitizen who is
 21

22 ⁵ Although the Ninth Circuit once suggested that actions against federal defendants may be
 23 brought “in any judicial district in which a plaintiff resides,” *Immigrant Assistance Project of L.A. Cnty.*
 24 *Fed’n of Lab. (AFL–CIO) v. INS*, 306 F.3d 842, 868 (9th Cir. 2002), that proposition was conceded, not
 25 decided; the defendants argued instead that the plaintiff residing in the relevant district could not lay
 26 venue because that plaintiff lacked standing. *See Br. for Def’ts–Appellants, id.* (No. 99-35472),
 27 1999 WL 33607010, at *29–30. Likewise in another case involving a different venue statute. *Ry. Lab.*
 28 *Execs.’ Ass’n v. Interstate Com. Comm’n*, 958 F.2d 252, 256 (9th Cir. 1991) (deciding proper venue for
 petition for review under 28 U.S.C. § 2343, which lacks the joinder restrictions of § 1391(e)(1)).
 Because § 1391(e)(1)’s interpretation was not presented for considered decision, the Ninth Circuit’s
 statements in those cases do not bind this Court on this question. *See United States v. Rivera-Valdes*,
 105 F.4th 1118, 1122–23 (9th Cir. 2024) (“Questions which merely lurk in the record, neither brought to
 the attention of the court nor ruled upon, are not to be considered as having been so decided as to
 constitute precedents.” (quoting *United States v. Ped*, 943 F.3d 427, 434 (9th Cir. 2019))).

1 present in the United States without admission and placed in full removal proceedings “shall” be
2 detained pending those proceedings. Congress has expressly withdrawn jurisdiction for such class-wide
3 challenges. See 8 U.S.C. § 1252(e)(1)(B). Indeed, section 1252(e)(3) permits judicial review of
4 “determinations under section 1225(b) of this title and its *implementation*”—i.e., review on challenges to
5 the system—but only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3) (emphasis
6 added); *see also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1157 (9th Cir. 2022) (noting challenges to
7 the validity of the system “must be brought exclusively as ‘an action instituted in the United States
8 District Court for the District of Columbia’” (quoting 8 U.S.C. § 1252(e)(3)(A))). Paragraph (e)(3)
9 confines this limited review further; any challenge to the system is limited to (1) whether the section or
10 implementing regulation is constitutional; or (2) whether a regulation or other written policy directive,
11 guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii);
12 *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021) (jurisdiction to challenge the
13 implementation of § 1225(b) is conditioned on meeting these requirements).

14
15
16 Because Congress provided only circumscribed judicial review of the Government’s
17 implementation of § 1225(b) under paragraph (e)(3), § 1252(e)(1)(B) bars this Court from certifying
18 Plaintiffs’ proposed class and subclass and from reviewing their broad-based challenge to DHS’s
19 execution of its statutory detention authority.

20
21 As such, Plaintiffs have not filed their class action in the appropriate venue. *Cf. Abrams Shell*,
22 165 F. Supp. 2d at 1108 n.9 (discussing the Ninth Circuit’s “clear implication . . . that courts should
23 assume that ‘special venue statutes’ are meant to *expand* rather than *restrict* the availability of venue,”
24 leading the court to consider whether plaintiffs satisfied venue under § 1391(b)).

25 **C. The Court Should Consolidate *Pinchi* And *Sequen***

26 This Court should consolidate the putative class claims in *Pinchi* and *Sequen*. Consolidation serves
27 the interests of judicial economy, promotes efficiency and conservation of party resources, and prevents
28 the risk of inconsistent judgements. Under Federal Rule of Civil Procedure 42(a), if actions before the
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1 court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all
2 matters at issue in the actions; (2) consolidate the actions; (3) issue any other orders to avoid unnecessary
3 cost or delay. See Fed. R. Civ. P. 42(a). Consolidation under Rule 42(a) is particularly useful when
4 multiple actions between the same parties or involving similar issues are pending in the same court. Here,
5 both class actions are before the *same judge*, and consolidation would lead to more efficient use of judicial
6 resources, reduce the risk of inconsistent rulings, and potentially shorten the time to resolution for all
7 involved. Rule 42(a) allows for the combination of hearings, trials, and even discovery processes,
8 depending on how closely related the cases are. If this Court determines that one issue in a case is
9 particularly complex or would unduly delay the resolution of other simpler issues, then the court might
10 order that the complex issue be heard separately even if the Court moves forward with the consolidation
11 of both actions.
12

13
14 Here, consolidation would assist this Court, or a sister court administer justice efficiently,
15 economically, and fairly, balancing the needs of that court and the parties. *First*, counsel for both parties
16 in both cases consists of attorneys from the same organization.⁶ Streamlining briefing and hearing
17 schedules would be of benefit to the parties. Indeed, as it stands both hearings for *Pinchi* and *Sequen* are
18 already scheduled for the same day on December 9, 2025. Consolidating the actions would effectively
19 make this the status quo moving forward.
20

21 *Second*, both *Pinchi* and *Sequen* would have overlapping class members if the Court were to
22 certify both putative classes. For instance, a *Pinchi* putative class member, as defined, could be re-
23 arrested and detained within the jurisdiction of the San Francisco Field Office, and *Sequen*'s "Detention
24 Class" includes noncitizens that would be subjected to detention within the same jurisdiction.

25 Effectively, both classes would challenge detention authority making them redundant as two separate
26
27

28 ⁶ The docket report for both cases indicate that attorneys for the ACLU are counsel of record.
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1 classes in two separate actions. Whereas consolidation of the cases would further compel streamlining of
2 the class definitions and legal challenges. Importantly, any outcome in *Pinchi* in terms of ICE’s
3 application of section 1225(b) would necessarily affect the legal issues in *Sequen* because any re-arrest
4 or re-detention is a precursor to any issue regarding the location of the arrest or condition of
5 confinement. Because the class memberships overlap, the class allegations stem from similar legal
6 issues, and the cases are currently before the same judge with both parties providing the same counsel in
7 both cases, it makes sense to consolidate both actions into one consolidated case docket for ease of case
8 management.
9

10 *Third*, both cases contain APA and Constitutional challenges to nationwide immigration
11 detention policy thereby implicating 8 U.S.C. § 1252(e)(3) and mandating transfer to the District Court
12 for the District of Columbia. Given that both cases challenge national immigration policies, this Court
13 should consolidate them and transfer them to D.D.C. Again, *Pinchi* is a challenge to an alleged “Re-
14 Detention Policy” pursuant to detention authority arising from statute 8 U.S.C. § 1225(b)(2). In *Sequen*,
15 Petitioners challenge Respondents’ courthouse arrest policies including the 2025 Courthouse Arrest
16 Guidance, the Detention Policy, and the conditions at 630 Sansome. Likewise, all of these policies are
17 part of Respondents’ attempt and mission to apply, enforce, and implement the INA including, but not
18 limited to, 8 U.S.C. § 1225. As such, it implicates 8 U.S.C. § 1252(e)(3) which again confines any
19 challenge to the system to D.D.C.
20
21

22 Both class actions challenge these policies through two classes and two subclasses in two
23 separate actions. In other words, the *Pinchi* Plaintiffs and *Sequen* Petitioners seek class action litigation
24 for multiple classes that directly infringe on Respondents’ application, enforcement, and implementation
25 of § 1225(b). Congress provided only circumscribed judicial review of the Government’s policy
26 implementing § 1225(b) under 8 U.S.C. § 1252(e)(3). Given that this Court has already severed the
27 habeas petitions in *Sequen* from its class action claims, it makes sense to do so here as well, and
28

1 consolidate the actions where they both implicate 1225(b) and trigger 8 U.S.C. § 1252(e)(3)(A)(i)-(ii),
2 requiring transfer to D.D.C.

3 *Finally*, at the very least, Respondents request that the Court consolidate the hearing set for
4 December 9, 2025, with the hearing set for January 22, 2026, so that the Court may hear all issues
5 related to all motions for both cases on January 22, 2026. The threshold issues of jurisdiction and venue
6 should be heard in conjunction with the pending motions to dismiss and for class certification.
7

8 Accordingly, the Court should at a minimum consolidate these two putative class actions’
9 hearings. Ideally though, the Court should sever and transfer so that the transferee court may consolidate
10 both of the cases moving forward in their entirety in the interest of judicial economy.
11

12 VI. CONCLUSION

13 Respondents respectfully request that, in the alternative should the Court deny their pending
14 motion to dismiss, the Court sever Petitioners’ FAC with their individual habeas petitions, and transfer
15 any remaining claims, if any, of the putative class, if certified, to the District Court of Columbia; this will
16 enable the transferee Court to consolidate this case with *Sequen, et al., v. Noem, et al., 25-cv-06487-PCP*
17 (2025)(N.D. Cal.). Finally, Respondents request that the Court hear all pending motions in both cases at
18 the hearing on January 22, 2026.
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1 DATED: November 28, 2025

Respectfully Submitted,

2
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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District of California, by using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

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