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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

18 FRESCIA GARRO PINCHI, JUANY GALO  
SANTOS, and JOSE TELETOR SENTE, on  
19 behalf of themselves and others similarly  
situated,

20 Plaintiffs-Petitioners,

21 v.

22 SERGIO ALBARRAN, Field Office Director  
of the San Francisco Immigration and  
Customs Enforcement Office; KRISTI  
23 NOEM, Secretary of the United States  
Department of Homeland Security; TODD  
24 LYONS, Acting Director of United States  
Immigration and Customs Enforcement,  
25 acting in their official capacities; U.S.  
DEPARTMENT OF HOMELAND  
26 SECURITY; U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT,

27 Defendants-Respondents.  
28

Case No. 5:25-cv-5632-PCP

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO SEVER,  
TRANSFER AND CONSOLIDATE**

Date: January 22, 2025  
Time: 10:00am  
Dept: Courtroom 8 - 4th Floor  
Judge: Hon. P. Casey Pitts

Date Filed: July 3, 2025

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1 **I. INTRODUCTION**

2 Defendants have repeatedly attempted to transform this case into something that it is not.  
 3 Their latest attempt seeks to consolidate this action with *Pablo Sequen et al. v. Albarran et al.*,  
 4 5:25-cv-06487-PCP (N.D. Cal. 2025) (“*Pablo Sequen*”) and to transfer the cases to the District of  
 5 Columbia based on Defendants’ mistaken view that both actions similarly challenge their  
 6 “attempt and mission to apply, enforce, and implement the INA.” ECF No. 76 at 18. In particular,  
 7 Defendants reference their new and unsupported interpretation of 8 U.S.C. § 1225(b) as sweeping  
 8 authority for the various and distinct policies challenged in both actions. *Id.* But Defendants  
 9 cannot raise the specter of § 1225(b) as a shield for their unlawful Re-Detention Policy and then  
 10 use it as a sword for consolidation and transfer. The Court should deny Defendants’ Motion to  
 11 Sever,<sup>1</sup> Transfer, and Consolidate.

12 **First**, consolidation is not appropriate here because this case and *Pablo Sequen* challenge  
 13 distinct policies, raise different legal claims, rely on different administrative records and operative  
 14 facts, and involve meaningfully distinct classes. Under these circumstances, consolidation would  
 15 inject unnecessary confusion and potential delay into the proceedings, undermining judicial  
 16 efficiency. Defendants have not met their burden to show otherwise.

17 **Second**, transfer is not appropriate because the sole statutory provision upon which  
 18 Defendants’ transfer argument relies – 8 U.S.C. § 1252(e)(3) – is inapplicable to this case. That  
 19 provision covers only challenges to the expedited removal system, which this action is  
 20 indisputably not. Because Plaintiffs have shown, and Defendants do not contest, that venue is  
 21 proper in this District under 28 U.S.C. § 1391(e)(1), the motion for transfer should be denied.

22 **II. LEGAL STANDARD**

23 **A. Motion to Consolidate**

24 Federal Rule of Civil Procedure 42(a) provides that a court “may” consolidate actions that  
 25 “involve a common question of law or fact.” Fed. R. Civ. P. 42(a). Whether two cases should be  
 26 consolidated “is within the broad discretion of the district court.” *In re Adams Apple, Inc.*, 829  
 27

28 <sup>1</sup> The Court has already addressed Defendants’ motion to sever in its December 18, 2025 Order, ECF No. 84. Plaintiffs do not respond further to those arguments here.

1 F.2d 1484, 1487 (9th Cir. 1987). “The existence of common issues, while a prerequisite to  
2 consolidation, does not compel consolidation.” *Dodaro v. Standard Pac. Corp.*, No. EDCV 09-  
3 1666-VAP (OPx), 2009 WL 10673229, at \*3 (C.D. Cal. Nov. 16, 2009). The party seeking  
4 consolidation bears the burden of proving that the judicial economy and convenience associated  
5 with consolidation outweighs any prejudice. *Single Chip Sys. Corp. v. Intermec IP Corp.*, 495 F.  
6 Supp. 2d 1052, 1057 (S.D. Cal. 2007). In determining whether or not to consolidate cases, a  
7 reviewing court must weigh “the saving of time and effort consolidation would produce against  
8 any inconvenience, delay or expense that it would cause.” *Huene v. United States*, 743 F.2d 703,  
9 704 (9th Cir. 1984).

### 10 **B. Motion to Transfer Venue**

11 In lawsuits against the federal government, like this one, venue is proper where “(A) a  
12 defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the  
13 claim occurred, or a substantial part of property that is the subject of the action is situated, or (C)  
14 the plaintiff resides if no real property is involved in the action.” 28 U.S.C. § 1391(e)(1).  
15 Although district courts have discretion to transfer venue to another forum where a case could  
16 have originally been brought, “[t]ransfer is not appropriate if it “merely shift[s] rather than  
17 eliminate[s] the inconvenience” from one party to another. *Nachison v. Am. Airlines, Inc.*, No. 24-  
18 cv-00530-PCP, 2024 WL 3153216, at \*2 (N.D. Cal. June 24, 2024) (citing *Decker Coal Co. v.*  
19 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986)).

### 20 **III. ARGUMENT**

#### 21 **A. Consolidation with *Pablo Sequen* would not promote judicial economy or 22 convenience.**

23 Plaintiffs respectfully request that the Court deny Defendants’ motion to consolidate this  
24 case with the class-action claims in *Pablo Sequen*. Defendants have not met their burden to show  
25 that consolidation would promote judicial economy and convenience. Rather, consolidation  
26 would frustrate the purposes of Rule 42(a) because this case and *Pablo Sequen* challenge distinct  
27 policies, raise different legal claims, rely on different administrative records and operative facts,  
28 and involve meaningfully distinct classes.

1 As a threshold matter, Defendants’ arguments in support of consolidation run headlong  
2 into the severance arguments that this Court largely rejected in its Order to Show Cause, ECF No.  
3 82 at 5–6. In requesting severance, Defendants contend that factual differences between the  
4 personal circumstances of each habeas petitioner are so substantial as to preclude resolution in the  
5 same action. *See* Mot. to Consolidate at 9.<sup>2</sup> That is, Defendants have argued that even Plaintiffs  
6 who are bringing nearly identical claims for habeas relief should be separated into separate cases.  
7 Yet in their consolidation arguments, Defendants attempt to collapse any claim broadly  
8 implicating the federal government’s immigration policies into a challenge to “Respondents’  
9 attempt and mission to apply, enforce, and implement the INA,” therefore requiring  
10 consolidation. *Id.* at 13. Plaintiffs’ claims in this case cannot at once be so unrelated to one  
11 another as to require severance yet also be so overlapping with an entirely different case as to  
12 require consolidation with *Pablo Sequen*. Simply put, Defendants cannot have it both ways.

13 **1. Plaintiffs challenge a distinct immigration policy from the policies at**  
14 **issue in *Pablo Sequen*.**

15 This Court should deny the motion to consolidate for the basic reason that this case  
16 challenges a distinct immigration policy from the ones at issue in *Pablo Sequen*. Here, Plaintiffs  
17 challenge Defendants’ Re-Detention Policy, which authorizes the re-arrest of noncitizens  
18 previously released by Defendants without inquiry into whether there has been a material change  
19 in the noncitizen’s circumstances. Plaintiffs allege that while this Policy is most visible in recent  
20 enforcement activities at courthouses, *see* Am. Compl. ¶ 4, the Policy applies to all class  
21 members subject to the jurisdiction of the San Francisco ICE Field Office. *See id.* ¶¶ 4-5. Thus,  
22 class members are at risk of re-detention not only at courthouses, but also at their immigration  
23 check-ins, their workplaces, in their homes, or indeed anywhere within the Area of  
24 Responsibility. The *Pablo Sequen* class, on the other hand, challenges three written, nationwide  
25 policies that reverse DHS and the Executive Office for Immigration Review’s (“EOIR”) prior  
26 policy prohibiting immigration enforcement actions in sensitive locations like immigration  
27 courthouses: the “ICE Interim Arrest Guidance,” “Final ICE Arrest Memorandum,” and the

28 <sup>2</sup> “Mot. to Consolidate” refers to Defendants’ Motion to Sever, Transfer and Consolidate, ECF  
76.

1 OPPM 25-06, collectively referred to as “the courthouse arrest policies.” *Pablo Sequen*, (Sep. 19,  
2 2025) ECF No. 32, Am. Compl. ¶¶ 44-50. The *Pablo Sequen* class additionally challenges the  
3 inhumane detention practices at 630 Sansome Street that directly followed the sudden and  
4 extreme increase of enforcement activities in these historically protected spaces. *See id.* ¶¶ 119-  
5 168.

6 Given the distinct policies at issue, the *Pablo Sequen* class and the proposed class in the  
7 instant case allege dissimilar and unrelated issues of law and fact. For example, the *Pablo Sequen*  
8 class asks this Court to review the lawfulness of ICE and EOIR guidance on immigration  
9 activities at courthouses, the June 2025 waiver of the 12-hour limit on confinement in short-term  
10 hold rooms, the warehousing of detainees in hold rooms not equipped for long-term stays, and the  
11 lack of access to medical care and legal counsel. *See Pablo Sequen* Am. Compl. ¶¶ 59-99, 119-  
12 168. The proposed class in this case, on the other hand, asks this Court to evaluate ICE’s  
13 unprecedented policy of re-detaining individuals who were previously released from detention by  
14 ICE without any individualized consideration of changed circumstances. Plaintiffs in this case do  
15 not challenge the courthouse arrest policies identified in the *Pablo Sequen* case (and in fact do not  
16 make any arguments about arrests that occur in sensitive locations), nor do Plaintiffs make any  
17 claims regarding the conditions of confinement at 630 Sansome Street.

18 The government has also advanced distinct defenses in response to the two cases. For  
19 example, Defendants acknowledge the existence of the courthouse arrest policies challenged in  
20 *Pablo Sequen*, but they dispute the existence of the Re-Detention Policy in this case. As a result,  
21 the two actions are on different evidentiary tracks. *Compare Pablo Sequen* Defendants’  
22 Opposition/Response to Plaintiffs’ Motion to Certify Class at 13, (Oct. 10, 2025), ECF No. 109  
23 (collectively referring to challenged policies as “the courthouse arrest policies”), *with* Mot. to  
24 Consolidate at 8, 9, 13 (referring to the “alleged” Re-Detention Policy) and Stay Opp.<sup>3</sup> at 11-12  
25 (maintaining that there is “no rule, order, guidance, or directive” that Plaintiffs can challenge). As  
26 a result, the Court has already ordered Defendants in *Pablo Sequen* to produce the relevant

27 \_\_\_\_\_  
28 <sup>3</sup> “Stay Opp.” refers to Defendants’ Opposition/Response to Plaintiffs’ Motion to Stay Effective  
Date of Agency Action or Preserve Status of Rights, ECF No. 67.

1 administrative record, and the *Pablo Sequen* plaintiffs have indicated that they intend to move  
 2 quickly for a decision on the merits under Section 706 of the APA upon receipt of the  
 3 administrative record. Here, on the other hand, Defendants have not even acknowledged the  
 4 existence of the Re-Detention Policy.

5 Accordingly, the two cases are likely to proceed on different tracks and will present  
 6 different evidentiary issues such that consolidation would not promote judicial economy or  
 7 convenience.

8 **2. The claims in this case are substantively different than those alleged in**  
 9 ***Pablo Sequen*.**

10 Beyond challenging distinct policies and requiring separate evidentiary tracks, this case  
 11 asserts substantively different legal claims than those at issue in *Pablo Sequen*. Defendants  
 12 overstate the commonality of the legal claims in the two cases by characterizing them very  
 13 broadly as “APA and Constitutional challenges to nationwide immigration detention policy.”  
 14 Mot. to Consolidate at 13.<sup>4</sup> This is inaccurate for several reasons.

15 First, while *Pablo Sequen* challenges new courthouse arrest policies that on their face  
 16 have nationwide effect, this case challenges the adoption and implementation of the Re-Detention  
 17 Policy within the San Francisco ICE Area of Responsibility. Second, five of the nine claims  
 18 raised in *Pablo Sequen* relate to conditions of confinement—an issue not raised here—and all of  
 19 the constitutional and APA claims raised by the *Pablo Sequen* class concern enforcement  
 20 activities related to the courthouse policies not challenged here. *Compare Pablo Sequen* Am.  
 21 Compl. ¶¶ 40-51 with Am. Compl. ¶¶ 30-34. Third, the actions do not raise the same legal claims  
 22 for purposes of Rule 42(a) simply because both actions invoke the Administrative Procedure Act  
 23 and, in some instances, refer to similar constitutional principles. *See, e.g., Comeaux v. Mackwani*,

24 <sup>4</sup> Defendants continue to mischaracterize Plaintiffs’ claims in this case as a challenge to  
 25 Defendants’ “detention authority arising from statute 8 U.S.C. § 1225(b)(2).” Mot. to Consolidate  
 26 at 13. As explained in greater detail in Plaintiffs’ Stay Motion, Plaintiffs’ claims challenge  
 27 Defendants’ broader policy change of re-detaining noncitizens without individualized  
 28 consideration – *regardless* of the post-hoc rationale provided by the government. *See* Mot. to Stay  
 at 7. In any event, Defendants’ insistence that § 1225(b)(2) is the operative statute at issue in this  
 action is without merit: Numerous courts in this district have held that § 1225(b)(2) “applies only  
 to noncitizens ‘seeking admission,’” which does not include noncitizens like Plaintiffs who have  
 been “living in the interior of the country.” *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC,  
 2025 WL 2637503, at \*8-9 (N.D. Cal. Sept. 12, 2025) (collecting cases).

1 124 Fed. App'x 909, 911 (5th Cir. 2005) (holding there was no common question of fact or law  
 2 under Rule 42(a) merely because both suits alleged Eighth Amendment violations”); *see also*  
 3 *Texas v. United States*, No. 6:21-cv-00016, 2021 WL 3171958, at \*3, (S.D. Tex. July 26, 2021)  
 4 (denying government motion to consolidate two actions challenging immigration practices  
 5 despite both raising APA claims). Defendants’ sweeping reliance on § 1225(b)(2) to justify  
 6 myriad unlawful policies does not compel consolidation either. The legal claims in both actions  
 7 are not homogenous challenges just because Defendants raise § 1225(b)(2) as a defense in both  
 8 cases. *See, e.g., CX Reinsurance Co. v. Leader Realty Co.*, No. JKB-15-3054, 2016 WL 6696050  
 9 at \*2 (D. Md. Nov. 15, 2016) (rejecting defendants’ request to consolidate although defendants  
 10 “are likely to assert the same defenses” in each action). “Identical legal theories do not constitute  
 11 a common question of law.” *Id.* Defendants’ suggestion that any case that Defendants consider to  
 12 be a challenge to their “attempt and mission to apply, enforce, and implement the INA” should be  
 13 consolidated into one action cannot withstand scrutiny. If that were true, an enormous number of  
 14 pending cases would be swept up into one sprawling, consolidated action simply because  
 15 Defendants have chosen to defend their various unprecedented immigration-enforcement policies  
 16 with the same *post hoc* rationale.

17 **3. The proposed class and the Defendants in this case are distinct from**  
 18 **the *Pablo Sequen* case.**

19 Finally, the proposed class in this case is distinct from the class certified in *Pablo Sequen*.  
 20 Defendants do not grapple with the differences between the classes. Instead, Defendants  
 21 summarily state that both classes are composed of individuals who “could be re-arrested and  
 22 detained within the jurisdiction of the San Francisco Field office.” Mot. to Consolidate at  
 23 12. While the proposed class here includes some individuals who “could be re-arrested and  
 24 detained within the jurisdiction of the San Francisco Field Office,” the class definition requires  
 25 that proposed class members entered the country without inspection, were detained and later  
 26 released by DHS, and have currently pending removal proceedings before the immigration court.  
 27 On the contrary, the *Pablo Sequen* class does not require that class members were previously  
 28 detained or that they entered the country without inspection—in other words, the class definition  
 there does not require *re*-arrest or *re*-detention at all. Additionally, while the proposed class here

1 explicitly excludes individuals subject to detention under 8 U.S.C. § 1226(c), the *Pablo Sequen*  
2 class does not. These differences belie the assertion that the two cases are “redundant.” Mot. to  
3 Consolidate at 12. Consolidation would not compel “streamlining of the class definitions and  
4 legal challenges[;]” rather, it could lead to confusion for the Court and for the class members  
5 themselves. *Id.* at 13.

6 Similarly, while there is some overlap in the federal agencies and actors who are named  
7 defendants in the two actions, there are also “appreciable differences” between the defendants  
8 here and in *Pablo Sequen. Texas*, 2021 WL 3171958, at \*3 (finding “appreciable differences”  
9 between defendants in two actions despite the overlap of defendants DHS and ICE); *see also Pac.*  
10 *Recovery Sols. v. Cigna Behavioral Health Inc.*, No. 5:20-cv-02251-EJD, 2021 WL 577394, at \*4  
11 (N.D. Cal. Feb. 16, 2021) (denying consolidation where one of the defendants was named in one  
12 action but not the other). Unlike this case, which challenges the adoption and implementation of  
13 ICE’s unwritten policy change in the San Francisco Area of Responsibility, *Pablo Sequen*  
14 includes a challenge to a national policy promulgated by EOIR, which is housed within the  
15 Department of Justice. The *Pablo Sequen* class therefore seeks relief against numerous  
16 individuals not party to this action, including EOIR itself and several EOIR officials like Marcos  
17 Charles, Thomas Giles, Monica Burke, and Sirce E. Owens. Thus, consolidation in this case  
18 would not further the purpose of Rule 42 because “plaintiff’s claims against different defendants  
19 raise potentially different issues[.]” *Johnson v. Gaines*, No. 09-cv-1312-LAB (POR), 2011 WL  
20 766685, at \*4 (S.D. Cal. Jan. 26, 2011) (citing *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir.  
21 1997)).

22 In sum, this action and *Pablo Sequen* challenge different policies, raise different legal  
23 claims, will rely on different evidentiary records, and concern distinct proposed plaintiff classes.  
24 For all of these reasons, consolidation would not promote judicial economy or convenience.

25 **B. Venue is proper in the Northern District of California.**

26 Defendants do not contest that the Northern District of California is a proper venue based  
27 on the requirements set forth in 28 U.S.C. § 1391(e)(1). *See* Mot. to Consolidate at 10–11.  
28 Instead, Defendants argue that a different venue statute, 8 U.S.C. § 1252(e)(3), applies. *See* Mot.

1 to Consolidate at 10. Defendants’ venue arguments misread the statute and misstate Plaintiffs’  
2 claims. The Court should reject them.

3 Plaintiffs’ claims fall outside the scope of § 1252(e)(3). That statute covers only the  
4 expedited removal system codified at 8 U.S.C. § 1252(b)(1), which is not at issue here. *See*  
5 *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1156–57 (9th Cir. 2022) (holding that § 1252(e)  
6 applies only to expedited removal policies); *East Bay Sanctuary Covenant v. Biden*, 993 F.3d  
7 640, 667 (9th Cir. 2021) (same). Indeed, § 1252(e) is titled “Judicial review of orders under  
8 section **1225(b)(1)**.” 8 U.S.C. § 1252(e) (emphasis added).

9 The statutory context makes clear that § 1252(e)—including § 1252(e)(3)—applies only to  
10 expedited removal. *Cf. Home Depot U. S. A., Inc. v. Jackson*, 587 U.S. 435, 441 (2019) (“[T]he  
11 words of a statute must be read in their context and with a view to their place in the overall  
12 statutory scheme.”). Section 1252(a)(2)(A) strips jurisdiction over claims involving  
13 § 1225(b)(1)—expedited removal. *See* 8 U.S.C. § 1252(a)(2)(A)(i)-(iv). By its terms, it applies to  
14 no other statute besides § 1225(b)(1). *Id.* The provisions at § 1252(e) operate in tandem with  
15 § 1252(a)(2)(A) to shield most lawsuits challenging § 1225(b)(1) from federal court review, while  
16 preserving jurisdiction over a specific subset of claims. Whereas § 1252(a)(2)(A) withdraws  
17 jurisdiction from claims related to expedited removal, § 1252(e) provides exceptions that preserve  
18 jurisdiction only for certain categories of challenges to expedited removal. Section 1252(a)(2)(A)  
19 references § 1252(e) as the sole source of exceptions to its broad withdrawal of jurisdiction.

20 For example: § 1252(a)(2)(A)(ii) and (iv) set forth the general rule that policies invoking  
21 and implementing § 1225(b)(1) are unreviewable, “except as provided in subsection (e).” Section  
22 1252(e)(3) then provides the exception that certain “[c]hallenges on the validity of the system”  
23 remain justiciable. As with the rest of § 1252(a)(2)(A), the jurisdiction-stripping provisions at  
24 § 1252(a)(2)(A)(ii) and (iv) expressly apply only to § 1225(b)(1)—**not** § 1225(b)(2). Because  
25 § 1252(e)(3) exists only to preserve certain challenges to expedited removal, there is no plausible  
26 reading of the statute that could extend its application beyond expedited removal. Defendants do  
27 not cite a single case holding otherwise. As the Ninth Circuit held in both *Mendoza Linares v.*  
28 *Garland* and *M.M.V. v. Garland*, § 1252(e) applies to challenges to expedited removal. *See*

1 *Mendoza Linares*, 51 F.4th at 1157; *M.M.V.*, 1 F. 4th 1100, 1109 (D.C. Cir. 2021). Expedited  
 2 removal is not at issue here; indeed, the proposed class definition includes *only* individuals who  
 3 have currently pending “regular” removal proceedings under 8 U.S.C. § 1229a.

4 Moreover, even if § 1252(e)(3) covered all challenges arising under § 1225(b)—and it  
 5 does not—this case would still fall outside its ambit. This case does not challenge *any* provision  
 6 of § 1225(b). Defendants argue that Plaintiffs are not challenging the Re-Detention Policy and  
 7 instead are challenging Defendants’ statutory authority under 8 U.S.C. § 1225(b)(2). Mot. to  
 8 Consolidate at 10. Not so. It is Defendants who now—as a *post hoc* rationalization for the Re-  
 9 Detention Policy—invoke § 1225(b)(2) at every turn. But their own exhibits show that Plaintiffs  
 10 here were initially detained and released under § 1226—a different detention statute. *See* ECF  
 11 Nos. 68-1 ¶¶ 8, 18; 68-2 ¶ 9. Indeed, Defendants have conceded that Plaintiff Garro Pinchi was  
 12 subject to § 1226 at the time of her re-detention. *See* ECF No. 20. Plaintiffs are challenging the  
 13 arbitrary policy of re-detention without individualized consideration of changed circumstances,  
 14 not the statute that Defendants have raised as a *post hoc* defense. And although Defendants now  
 15 seek to justify their Re-Detention Policy by invoking § 1225(b)(2), that statute does not apply to  
 16 Plaintiffs and the proposed class, who were previously detained and released, and now face re-  
 17 arrest while living in the United States. Courts have thus repeatedly held that § 1252(e) does not  
 18 apply to challenges to such re-detention. *See, e.g., Guerrero Orellana v. Moniz*, No. 25-cv-12664-  
 19 PBS, 2025 WL 3033769, at \*6 (D. Mass. Oct. 30, 2025); *Guerra v. Noem*, No. 1:25-cv-134,  
 20 12025 WL 3204289, at \*3 (W.D. Mich. Nov. 17, 2025); *J.A.M. v. Streeval*, No. 4:25-cv-342  
 21 (CDL), 2025 WL 3050094, at \*1 (M.D. Ga. Nov. 1, 2025). Because § 1252(e)(3) does not apply  
 22 to Plaintiffs’ claims, venue is proper in this District.

#### 23 **IV. CONCLUSION**

24 For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants’  
 25 motion to consolidate and transfer venue.

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