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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **EASTERN DIVISION**

20 IMMIGRANT DEFENDERS LAW  
21 CENTER, *et al.*,

22 Plaintiffs,

23 v.

24 CHAD WOLF, *et al.*,

25 Defendants.

Case No. 2:20-cv-09893-JGB-SHK

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO  
TRANSFER VENUE**

Judge: Honorable Jesus G. Bernal  
Date: January 25, 2021  
Time: 9:00 a.m.  
Crtrm: 1

Action Filed: October 28, 2020

1 [Caption Page Continued - Additional Attorneys for Plaintiffs and putative  
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28 U.S.C. § 1404 ..... 1, 4, 6, 9

1 **I. INTRODUCTION**

2 Defendants’ motion to transfer should be denied. Importantly, Defendants do  
3 not argue that venue is improper in this District. Rather, Defendants argue that  
4 transfer is appropriate under 28 U.S.C. § 1404, which grants district courts discretion  
5 to transfer a civil action where the moving party has “ma[de] a strong showing of  
6 inconvenience.” *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843  
7 (9th Cir. 1986). Defendants have not made such a showing, and neither the  
8 convenience of the parties and potential witnesses nor the “interests of justice” favor  
9 transfer of this action.

10 As noted by Defendants, transfer under § 1404 is intended to “prevent the waste  
11 of time, energy and money and to protect litigants, witnesses and the public against  
12 unnecessary inconvenience and expense.” Mot. at 4 (citing *Van Dusen v. Barrack*,  
13 376 U.S. 612, 616 (1964) (internal quotations omitted)). Here, such considerations  
14 weigh strongly *against* transfer given that one of the Organizational Plaintiffs is a  
15 resident of this District, none of the Defendants or the Individual Plaintiffs reside in  
16 the Southern District, and Defendants have failed to specify any material witnesses  
17 located in the Southern District. Moreover, this Court is familiar with the complex  
18 legal issues at hand (*see* Notice of Related Cases, ECF No. 5), has several substantial  
19 fully-briefed motions pending (including for provisional class certification) and has  
20 heard argument on Plaintiffs’ motion for a preliminary injunction. ECF Nos. 35, 36,  
21 87, 88, 91, 93-1, 102; *see Commodity Futures Trading Comm’n v. Savage*, 611 F.2d  
22 270, 279 (9th Cir. 1979) (district court did not abuse its broad discretion in refusing  
23 § 1404(a) transfer in part because the “district court was familiar with the case and  
24 transfer may have led to delay”).

25 **II. STATEMENT OF FACTS**

26 In this action, two legal advocacy organizations (“Organizational Plaintiffs”)  
27 and eight individual asylum seekers trapped in Mexico, representing a proposed class  
28 of similarly situated individuals (“Individual Plaintiffs”), challenge the legality of

1 Defendants' implementation of the Migrant Protection Protocols ("Protocols" or  
 2 "MPP"). Defendants' Protocols, applied to Plaintiffs through the Return Policy, the  
 3 Deprivation of Counsel Policy, and the Presentation Requirement, have the  
 4 cumulative effect of (1) preventing Organizational Plaintiffs from accessing their  
 5 clients or providing meaningful legal services, and (2) forcing Individual Plaintiffs  
 6 and other members of the proposed class to live under life-threatening conditions in  
 7 Mexico without a mechanism to effectively access counsel or apply for asylum in  
 8 the United States. Compl., ECF No. 1 ¶¶ 98-242. Plaintiffs' claims arise under the  
 9 Administrative Procedure Act and the U.S. Constitution. *Id.* ¶¶ 250-333. In order  
 10 to remedy the harms caused by Defendants' illegal actions, Plaintiffs seek equitable  
 11 relief on behalf of themselves and all noncitizens who have expressed or will  
 12 express a fear of persecution in their home countries or a desire to seek asylum;  
 13 were or will be subjected to the Migrant Protection Protocols; and presented, will  
 14 present, or have been directed to present at the San Ysidro or Calexico port of entry.  
 15 *Id.* ¶¶ 79-81.

16 Organizational Plaintiff Immigrant Defenders Law Center ("ImmDef"), a  
 17 nonprofit organization, resides in the Central District of California and provides  
 18 critical services to immigrant communities in the Central District. *Id.* ¶¶ 13, 21.  
 19 ImmDef is headquartered in Los Angeles, California, and most of the organization  
 20 and its staff are based in Los Angeles. *Id.*; Toczykowski Decl., ECF No. 36-2  
 21 ¶¶ 2, 16. Defendants' unlawful implementation of the Protocols has frustrated  
 22 Organizational Plaintiff ImmDef's mission of providing legal representation and  
 23 other support services to immigrants and refugees in the greater Los Angeles area,  
 24 Compl. ¶ 21, Toczykowski Decl. ¶¶ 2, 5, 14, and forced them to divert significant  
 25 staff and monetary resources away from its Los Angeles headquarters. Compl.  
 26 ¶¶ 210-218; Toczykowski Decl. ¶¶ 17-22. Since January 2019, ImmDef has spent  
 27 approximately \$400,000 on costs associated with its representation of clients subject  
 28 to the Protocols through its Cross-Border Initiative ("CBI"), which has been funded



1 largely through a diversion of funding and fundraising resources from planned  
2 projects in the greater Los Angeles area. Compl. ¶¶ 217-218; Toczyłowski Decl.  
3 ¶ 22.

4 Individual Plaintiffs are eight noncitizens seeking asylum and presently  
5 trapped by Defendants under dangerous circumstances in or near Tijuana or  
6 Mexicali, Mexico. Compl. ¶¶ 14-20. Individual Plaintiff Daniel Doe, a citizen of  
7 Guatemala currently trapped in Tijuana, Mexico, intends to reside in this District if  
8 he is released into the United States. *Id.* ¶ 14; Daniel Doe Decl., ECF No. 39 ¶ 33.  
9 The remaining seven Individual Plaintiffs plan to reside across the country if they  
10 are released into the United States. *See* Hannah Doe Decl., ECF No. 40 ¶ 31  
11 (intending to reside in Florida); Benjamin Doe Decl., ECF No. 41 ¶ 27 (intending to  
12 reside in Georgia); Jessica Doe Decl., ECF No. 42 ¶ 17 (intending to reside in  
13 Georgia); Anthony Doe Decl., ECF No. 43 ¶ 32 (intending to reside in Florida);  
14 Nicholas Doe Decl., ECF No. 44 ¶ 21 (intending to reside in California); Feliza Doe  
15 Decl., ECF No. 45 ¶ 48 (intending to reside in Florida); Jaqueline Doe Decl., ECF  
16 No. 46 ¶ 58 (intending to reside in New Jersey).

17 Defendants are government officials sued in their official capacities and  
18 federal agencies, all of whom are residents of the District of Columbia. *See*  
19 28 U.S.C. § 1391(e)(1); *see* Mot. at 12 (citing *Emrit v. Soros*, Case No. 19-00125  
20 LEK-RLP, 2019 WL 1923629, at \*3 (D. Haw. Apr. 30, 2019) (“[D]istrict Courts  
21 within the Ninth Circuit have generally ruled that federal agencies are deemed  
22 residents of the District of Columbia, regardless of the locations of their regional  
23 offices.”)); *see also* *Tsi Akim Maidu of Taylorsville Rancheria v. United States*  
24 *Dep’t of Interior*, Case No. 16-cv-07189-LB, 2017 WL 2289203, at \*2 (N.D. Cal.  
25 May 25, 2017) (“Federal officers and employees reside at the official residence—  
26 i.e., where the official duties are performed—not the personal residence (where [the]  
27 defendant lives).” (internal citation and quotations omitted)).

28

1 **III. LEGAL STANDARD**

2 Defendants concede that venue is proper in this District and move for  
3 permissive transfer to the Southern District of California under 28 U.S.C. § 1404.  
4 Under this statute, a plaintiff’s choice of forum is “accorded substantial weight.”  
5 *Fraihat v. U.S. Immigration and Customs Enforcement*, Case No. EDCV 19-1546  
6 JGB (SHKx), 2020 WL 2759848, at \*7 (C.D. Cal. Apr. 15, 2020) (Bernal, J.). A  
7 case may only be transferred following an “individualized, case-by-case  
8 consideration of convenience and fairness.” *Id.* (quoting *Jones v. GNC Franchising,*  
9 *Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000)). This analysis addresses three factors:  
10 (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the  
11 interests of justice. 28 U.S.C. § 1404(a); *Fraihat*, 2020 WL 2759848, at \*7.

12 Defendants, as the moving party, “bear[] a heavy burden of proof to justify the  
13 necessity of the transfer.” *Amini Innovation Corp. v. JS Imports, Inc.*, 497 F. Supp.  
14 2d 1093, 1109 (C.D. Cal. 2007) (quoting *STX, Inc. v. Trik Stik, Inc.*, 708 F. Supp.  
15 1551, 1555-56 (N.D. Cal. 1988)). In considering a motion to transfer venue, the  
16 court “must draw all reasonable inferences and resolve factual conflicts in favor of  
17 the non-moving party.” *Universal Stabilization Tech., Inc. v. Advanced Bionutrition*  
18 *Corp.*, Case No. 17-cv-87-GPC(MDD), 2017 WL 1838955, at \* 9 (S.D. Cal. May 8,  
19 2017).

20 **IV. ARGUMENT**

21 **A. Defendants Have Failed to Establish That the Convenience of the**  
22 **Parties Favors Transfer**

23 Defendants have not met their “heavy burden of showing a clear balance of  
24 inconveniences” to them. *E. & J. Gallo Winery v. F. & P. S.p.A.*, 899 F. Supp. 465,  
25 466 (E.D. Cal. 1994). Defendants’ self-serving assertions about Plaintiffs’  
26 convenience should be given no weight because Defendants “cannot assert  
27 plaintiff’s inconvenience in support of a motion to transfer under 28 U.S.C.  
28 § 1404(a).” *Wireless Consumers All., Inc. v. T-Mobile USA, Inc.*, Case No. C 03-

1 3711 MHP, 2003 WL 22387598, at \*4 (N.D. Cal. Oct. 14, 2003); *see also*  
2 *Gonsalves v. Infosys Techs., LTD.*, Case No. C 09-04112 MHP, 2010 WL 1854146,  
3 at \*8 (N.D. Cal. May 6, 2010) (because plaintiff decides where to sue, “plaintiff’s  
4 inconvenience is a non-factor in determining whether to transfer [the] action.”).

5 As explained in Section II, named Plaintiff ImmDef is headquartered in Los  
6 Angeles and has multiple offices within this District. Compl. ¶¶ 13, 21;  
7 Toczyłowski Decl. ¶ 2. At least two ImmDef employees who intend to testify in  
8 this action work in ImmDef’s Los Angeles office. *See* Toczyłowski Decl. ¶¶ 2, 22;  
9 Noche Decl., ECF No. 36-3, ¶ 2. Further, Plaintiff Daniel Doe intends to reside  
10 with his cousin in this District if he is released into the United States. Daniel Doe  
11 Decl. ¶ 33. Last, regardless of whether this case is litigated in this District or the  
12 Southern District, the Individual Plaintiffs will have to travel from Mexico to  
13 California in the absence of equitable relief.

14 Defendants have also failed to meet their burden of establishing that they will  
15 be “seriously inconvenienced if required to litigate in the CDCA.” *Caltex Plastics,*  
16 *Inc. v. Great Pac. Packaging, Inc.*, Case No. CV 14-2794 RSWL (JEMx), 2014 WL  
17 4060144, at \*3 (C.D. Cal. Aug. 12, 2014). Defendants’ argument that their  
18 “primary residence is not within the Central District of California” is unavailing  
19 because they are also not residents of the Southern District. *See* Mot. at 12. And  
20 when a defendant is not a resident of either district, “the convenience of defendant  
21 does not favor transferring the case.” *Wireless Consumers All., Inc. v. T-Mobile*  
22 *USA, Inc.*, Case No. C 03-3711 MHP, 2003 WL 22387598, at \*4 (N.D. Cal. Oct. 14,  
23 2003).

24 **B. Defendants Have Failed to Establish That the Convenience of the**  
25 **Witnesses Favors Transfer**

26 As a preliminary manner, this Court should reject Defendants’ arguments  
27 related to the convenience of the witnesses because they failed to provide “any  
28 evidentiary support” for this factor. *Lucas R. v. Azar*, Case No. CV18-5741-DMG

1 (PLAx), 2018 WL 7200716, at \*5 n.8 (C.D. Cal. Dec. 27, 2018). “Affidavits or  
2 declarations are required to identify key witnesses and a generalized statement of  
3 their anticipated testimony.” *E. & J. Gallo Winery*, 899 F. Supp. at 466; *see also*  
4 *Lucas R.*, 2018 WL 7200716, at \*5 n.8; *Caltex Plastics*, 2014 WL 4060144, at \*4.  
5 Defendants have not produced a single affidavit or declaration in support of their  
6 motion. For this reason alone, the Court should weigh this factor against transfer.

7 Even if Defendants’ unsupported statements of witness convenience could be  
8 credited, Defendants’ argument is based entirely on the supposed advantages for  
9 certain party witnesses — namely, Defendants’ employees and the Individual  
10 Plaintiffs and class members. Defendants cite *Amini Innovation Corp. v. JS*  
11 *Imports, Inc.*, 497 F. Supp. 2d 1093, 1111 (C.D. Cal. 2007), for their argument that  
12 “convenience of witnesses is often the most important factor in determining whether  
13 a transfer pursuant to § 1404 is appropriate.” Mot. at 6. Defendants, however, omit  
14 a critical aspect of that court’s analysis: courts ordinarily accord “less weight to the  
15 inconvenience of party witnesses.” *Amini Innovation*, 497 F. Supp. at 1111.  
16 Indeed, the Central District of California has repeatedly emphasized that “the  
17 convenience of party witnesses, as opposed to third parties, is accorded little weight  
18 in the transfer analysis.” *Flo & Eddie, Inc. v. Sirius XM Radio Inc.*, Case No. CV  
19 13–5693 PSG (RZx), 2013 WL 12137591, at \*2 (C.D. Cal. Dec. 3, 2013) (citing  
20 *Allstar Mktg. Grp., LLC v. Your Store Online, LLC*, 666 F. Supp. 2d 1109, 1132  
21 (C.D. Cal. 2009)); *Amini Innovation*, 497 F. Supp. 2d at 1111 (collecting cases); *see*  
22 *also Caltex Plastics*, 2014 WL 4060144, at \*4 (noting “courts discount  
23 inconvenience to employee witnesses”).

24 Defendants are also mistaken that “the most important witnesses in this case”  
25 will likely be government officials located in the Southern District. Mot. at 7.  
26 As noted in Plaintiffs’ Reply in Support of Class Certification, Plaintiffs do not seek  
27 to establish the existence of fact-specific “local policies and practices,” *id.*, which  
28 would more likely require the kind of testimony broadly described by Defendants.

1 ECF No. 91 at 10-11. Rather, Plaintiffs challenge the legality of the manner in  
2 which Defendants have implemented established policies and practices under the  
3 Protocols, *see* Compl. ¶¶ 250-333, which were promulgated by Defendants in  
4 Washington, D.C., and apply uniformly across the U.S.-Mexico border, *see id.* ¶ 70.  
5 Thus, the location where these policies were applied to Individual Plaintiffs has  
6 minimal relevance. It is far more likely that Defendants’ witnesses will be located  
7 primarily in the District of Columbia, where the Defendant federal agencies are  
8 headquartered. To the extent that testimony is required from Defendants’  
9 employees located in the Southern District, any minimal convenience to these party  
10 witnesses should be afforded little weight.<sup>1</sup> *See supra* at 6.

11 For the reasons stated above, Defendants have failed to establish that this  
12 factor weighs in favor of transfer.

13 **C. Defendants Have Failed to Establish That the Interests of Justice**  
14 **Favor Transfer**

15 Transferring this case to the Southern District of California, following  
16 briefing on significant motions and an oral argument, would plainly not serve the  
17 interests of justice. In determining whether the “interests of justice” favor transfer,  
18

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19 <sup>1</sup> During the COVID-19 pandemic, the Central District of California has issued  
20 several orders and notices that expand the use of testimony taken remotely via  
21 telephone or video conference. *See, e.g.*, Central District of California, General Order  
22 20-09 (Aug. 6, 2020), [https://www.cacd.uscourts.gov/sites/default/files/  
23 general-orders/GO%2020-09.pdf](https://www.cacd.uscourts.gov/sites/default/files/general-orders/GO%2020-09.pdf); Central District of California, Amended General  
24 Order 20-08 (May 28, 2020), [https://www.cacd.uscourts.gov/sites/default/files/  
25 general-orders/GO%2020-08%20Amended.pdf](https://www.cacd.uscourts.gov/sites/default/files/general-orders/GO%2020-08%20Amended.pdf); Central District of California, Order  
26 of the Chief Judge 20-042 (Mar. 19, 2020), [http://www.cacd.uscourts.gov/  
27 sites/default/files/documents/Order20-042.pdf](http://www.cacd.uscourts.gov/sites/default/files/documents/Order20-042.pdf). As of the date of this Opposition, all  
28 appearances in civil cases in this District are only proceeding remotely via telephone  
or video conference. *See* Central District of California, Press Release: Activation of  
Continuity of Operations Plan (Dec. 7, 2020), [https://www.cacd.uscourts.gov/  
sites/default/files/documents/2020-12-07%20Press%20Release%20-%20Activation  
%20of%20the%20COOP%20Plan.pdf](https://www.cacd.uscourts.gov/sites/default/files/documents/2020-12-07%20Press%20Release%20-%20Activation%20of%20the%20COOP%20Plan.pdf). Thus, it is unclear whether witnesses in this  
case will even be able to testify in-person in court. And even if permitted, the  
“availability of technology to take testimony remotely cuts against [Defendants’]  
arguments of hardship and inconvenience.” *In re United States*, Case No. 4:18-cv-  
00065-DN-PK, 2020 WL 5775863, at \*5 (D. Utah Sept. 28, 2020).

1 the Court may consider multiple factors, including: (1) the plaintiff’s choice of  
2 forum; (2) the location where the operative events occurred; (3) the respective  
3 parties’ contacts with the forum and ability to access evidence; (4) the differences in  
4 the costs of litigation in the two forums; (6) the local interest in the lawsuit; and (7)  
5 the pendency of related litigation in the transferee forum. *See Jones*, 211 F.3d at  
6 498-99; *Decker Coal Co.*, 805 F. 2d at 843 (noting that courts may consider the  
7 “local interest in having localized controversies decided at home”); *Int’l Aero*  
8 *Prods., LLC v. Aero Advanced Paint Tech., Inc.*, 325 F. Supp. 3d 1078, 1084 (C.D.  
9 Cal 2018) (noting that a case may be transferred “when a complaint involving the  
10 same parties and issues has been filed in another district”). As described below,  
11 Defendants have failed to show that these factors sufficiently weigh in favor of  
12 transferring this case.

13 **i. Plaintiffs’ Choice of Forum Is Entitled to Deference**

14 Defendants recognize that “Plaintiffs’ choice of litigating in the Central  
15 District of California would be entitled to significant deference.” Mot. at 9.  
16 Plaintiffs are entitled to this deference. *See Feller v. Transamerica Life Ins. Co.*,  
17 Case No. 2:16-cv-01378-CAS (AJWx), 2016 WL 9114157, at \* 3 (C.D. Cal. Aug.  
18 22, 2016) (finding that plaintiffs’ choice of forum in a class action lawsuit was  
19 entitled to deference where one named plaintiff resided in the district and defendant  
20 made no showing of improper forum shopping). Defendants have failed to establish  
21 that this deference should be diminished. *See Lodestar Anstalt v. Bacardi & Co.*,  
22 Case No. 2:16-cv-06411-CAS-FFM, 2017 WL 1434265, at \* 4 (C.D. Cal. April 1,  
23 2017) (burden is on the moving party to establish that deference is diminished).

24 Defendants’ assertion that Plaintiffs’ choice of forum is entitled to “no  
25 deference” is unfounded. Mot. at 13. Defendants rely on *Ctr. for Biological*  
26 *Diversity & Pac. Env’t v. Kempthorne*, Case No. C-07-0894 EDL, 2007 WL  
27 2023515, at \*3 (N.D. Cal. 2007), in which the court explicitly acknowledged the  
28 inapplicability of the § 1404 factors in environmental cases. *Id.* at \*5. Defendants

1 have not cited any other case suggesting that Plaintiffs’ chosen forum should be  
2 afforded *no* weight. *See Nguyen v. Barnes & Noble Inc.*, Case No. SACV 12-  
3 00812-JLS (RNBx), 2015 WL 12752442, at \*4 (C.D. Cal. Feb. 17, 2015) (“‘Less  
4 weight,’ however, is not the same as ‘no weight.’”).

5 In any event, Defendants have not even shown that some diminished level of  
6 deference should be given to Plaintiffs’ choice of forum. Contrary to Defendants’  
7 assertion, Plaintiffs do not claim that all the injuries alleged occurred in the  
8 Southern District. Mot. at 10. Rather, Plaintiffs specifically allege that Plaintiff  
9 ImmDef has been harmed in the Central District through the diversion of resources  
10 from its Los Angeles operations.<sup>2</sup> Compl. ¶¶ 215-217; Toczyłowski Decl. ¶¶ 2, 7,  
11 12, 13, 14, 17, 21, 22. For example, ImmDef’s representation of individuals  
12 subjected to the Protocols required 200-mile roundtrips to Tijuana and Mexicali that  
13 “took staff away from other projects in Los Angeles,” Toczyłowski Decl. ¶ 17;  
14 “diverted funding from planned projects in Los Angeles,” *id.* ¶ 21; and redirected  
15 the focus of ImmDef’s executive leadership, *id.* ¶¶ 17, 18, 22. The Central District  
16 thus has an interest in the subject matter of this litigation, as Defendants’ actions  
17 have directly harmed an organization headquartered in and primarily operating  
18 within this District. These actions have further impacted residents of this District by  
19 detracting from ImmDef’s work serving the Los Angeles community. *See, e.g., id.*  
20 ¶ 21 (describing diversion of staff and funding from Family Unity Project in Los  
21 Angeles, resulting in ImmDef’s representation of “far fewer cases of families at risk  
22 of separation in the Los Angeles area, despite the continued need”); *see also*  
23 Cargioli Decl., ECF No. 37, ¶ 13 (explaining that Abigail Lloyd, ImmDef’s Los  
24 Angeles-based Supervising Attorney for the Litigation and Advocacy Unit, focuses  
25 a substantial portion of her time on MPP-related issues, whereas in the absence of  
26 the Protocols, she would focus on appellate litigation involving a broader range of  
27

28 <sup>2</sup> Further, as discussed in Section IV.C.ii, *infra*, Individual Plaintiffs have been harmed primarily in Mexico, not in the Southern District.

1 issues). Defendants’ actions have also required ImmDef to divert the work of its  
2 Los Angeles-based staff to overseeing its CBI Project in San Diego. Noche Decl.,  
3 ¶¶ 2-3 (indicating that, although she is based at ImmDef’s Los Angeles office, she  
4 oversees ImmDef’s CBI Project); Cargioli Decl., ¶¶ 5, 13 (ImmDef’s staff based at  
5 its headquarters in Los Angeles (Joyce Noche, Abigail Lloyd, and Munmeeth Soni)  
6 all work on the CBI Project).

7 Given the connections between the subject matter of this litigation and the  
8 Central District, Plaintiffs’ chosen forum is entitled to substantial deference and  
9 Defendants have failed to establish that this deference should be diminished.

10 **ii. The Operative Events Did Not All Occur Within the Southern**  
11 **District**

12 Contrary to Defendants’ assertion, the operative events alleged in the  
13 Complaint did not “all occur[] within the Southern District.” Mot. at 8. First, all of  
14 the critical policies challenged were developed in the District of Columbia, not the  
15 Southern District, and Plaintiffs’ challenge to the Return Policy does not focus on  
16 actions that occurred within the Southern District. *Id.* Rather, Plaintiffs assert that  
17 the Return Policy “forces asylum seekers to live indefinitely under perilous  
18 conditions in Mexico[.]” Compl. ¶ 3; *see also id.* ¶¶ 57-70. The harm caused by the  
19 Return Policy occurs in Mexico, not in the Southern District. Similarly, Plaintiffs’  
20 challenge to the Deprivation of Counsel Policy is not limited to the one-hour period  
21 during which asylum seekers are purportedly allowed to speak with attorneys prior  
22 to their immigration court hearings (Mot. at 8-9, 10). Rather, Plaintiffs are  
23 challenging Defendants’ policies that subject them to conditions, including return  
24 across an international border, that obstruct their ability to access meaningful legal  
25 representation.<sup>3</sup> Compl. ¶ 77. Finally, Plaintiffs’ challenge to the Presentation

26 \_\_\_\_\_  
27 <sup>3</sup> These hypothetical immigration hearings and in-person consultation periods are, in  
28 any event, irrelevant for present purposes, as all hearings (and corresponding  
consultation periods) have been indefinitely suspended due to the Hearing Suspension  
Directive. Compl. ¶¶ 88-97. In any event, the one-hour consultation period that is

*Footnote continued to next page.*



1 Requirement does not allege harm caused in the Southern District (Mot. at 9), but  
2 instead that this requirement “traps Plaintiffs and others similarly situated in the  
3 dangerous zones and transit corridors around the port of entry,” *i.e.*, in Mexico.  
4 Compl. ¶ 86; *see also id.* ¶¶ 84-87.

5 Defendants also allege that a “substantial number of events giving rise to  
6 Plaintiffs’ claims arose [in the Southern District],” (Mot. at 1) but the “events” that  
7 they cite are largely irrelevant to Plaintiffs’ claims. For example, Plaintiffs do not  
8 challenge the apprehension of individuals near the U.S-Mexico border or  
9 transportation of Individual Plaintiffs and putative class members to the San Diego  
10 Immigration Court from the U.S.-Mexico border, and Plaintiffs’ claims are not  
11 limited to specific events or omissions at the San Diego Immigration Court. *Id.* For  
12 these reasons, the “most important witnesses in this case” are not likely to be those  
13 with knowledge of specific experiences at proceedings in the San Diego  
14 Immigration Court, attorney-client representation in San Diego, or the experience of  
15 class members as they present at ports of entry to attend their immigration hearings.  
16 Mot. at 7. Defendants attempt to narrow the scope of Plaintiffs’ arguments to  
17 specific events occurring immediately before, during, and after immigration  
18 hearings in the Southern District, but Plaintiffs’ claims are not so limited. *See*  
19 Compl. ¶¶ 54-97.

20 Defendants’ reliance on *Al Otro Lado* is misplaced. *See* Mot. at 9 (citing *Al*  
21 *Otro Lado Inc. v. Kelly*, Case No. CV 17-5111-JFW (JPRx), 2017 WL 10592130  
22 (C.D. Cal. Nov. 21, 2017)). The claims in *Al Otro Lado* focused on an unarticulated  
23 government policy that was allegedly evidenced by the systematic actions of local  
24 Customs and Border Protection officials, including “misrepresentations, threats and  
25 intimidation, verbal and physical abuse, and coercion by border patrol agents.”  
26 2017 WL 10592130 at \*1. Unlike in *Al Otro Lado*, Plaintiffs here do not seek to

27 \_\_\_\_\_  
28 supposed to be provided to asylum seekers under the Protocols is wholly inadequate  
to provide effective representation. *Id.* ¶ 77.

1 establish the existence of a policy through the specific conduct of individual CBP  
2 officers, which would require many fact witnesses to testify regarding day-to-day  
3 operations. Rather, Plaintiffs challenge the implementation of Defendants’  
4 articulated policies and practices under the Protocols, which resulted in harms that  
5 extend far beyond the Southern District. For these reasons, this factor does not  
6 weigh in favor of transfer to the Southern District.

7 **iii. Defendants Have Not Established That the Parties’ Contacts**  
8 **with the Forum and the Ability to Access Evidence Favor**  
9 **Transfer**

10 Neither Plaintiffs nor Defendants have stronger contacts with the Southern  
11 District than with this District. First, Plaintiff ImmDef is headquartered in Los  
12 Angeles, has multiple offices within this District, and receives funding from local  
13 governments in this District. Compl. ¶¶ 13, 21; Toczyłowski Decl. ¶¶ 2, 8. While  
14 ImmDef also has a smaller presence in San Diego, ImmDef has shown that the  
15 implementation of the Protocols has significantly impeded critical programming in  
16 the Central District. Toczyłowski Decl. ¶¶ 2, 7, 12, 13, 14, 17, 21, 22. Specifically,  
17 ImmDef has diverted funding and resources from planned projects in Los Angeles  
18 to fund MPP representation work under its Cross-Border Initiative—including  
19 eliminating staff positions in its Los Angeles-based Family Unity Project, which has  
20 significantly decreased ImmDef’s ability to take on cases of families at risk of  
21 separation in the Los Angeles area, *id.* ¶ 21, and diverting the work of its Los  
22 Angeles-based staff to the CBI Project based in San Diego. Noche Decl., ¶¶ 2-3;  
23 Cargioli Decl., ¶¶ 5, 13. Further, Plaintiff Daniel Doe intends to reside in this  
24 District if he is released into the United States. Daniel Doe Decl. ¶ 33. Second,  
25 Defendants have not established (by declaration or otherwise) that they have  
26 “stronger contacts” with the Southern District. As discussed above, Defendants are  
27 all residents of the District of Columbia. *See* Mot. at 12 (citing *Emrit v. Soros*, 2019  
28 WL 1923629, at \*3); *Tsi Akim Maidu*, 2017 WL 2289203, at \*2.

1 Defendants have also failed to establish that the ability to access evidence  
2 weighs in favor of transfer. As an initial matter, to the extent Defendants argue that  
3 relevant documents are located in the Southern District, “they fail to identify  
4 specific records, the importance of the records, or that they are so voluminous that it  
5 would be difficult to transport them to the Central District.” *Fekrat v. United States*,  
6 Case No. CV 13-00594 MMM (PJWx), 2013 WL 12131739, at \*5 (C.D. Cal. May  
7 6, 2013). Even had they identified such information, this factor would still be, at  
8 most, neutral because “advances in technology have made it easy for documents to  
9 be transferred to different locations.” *Byler v. Deluxe Corp.*, 222 F. Supp. 3d 885,  
10 906 (S.D. Cal. 2016). Depositions of fact witnesses are likewise neutral because  
11 likely witnesses are located in both this District and the Southern District, as well as  
12 in the District of Columbia and Mexico. *See supra* Section IV.B. The same is true  
13 for likely expert witnesses who are located in Mexico, New York, Washington,  
14 D.C., France, and Northern California. *See* Berlin Decl., ECF No. 47 (based in  
15 Mexico City); Kizuka Decl., ECF No. 48 (based in New York); Isacson Decl., ECF  
16 No. 49 (based in Washington, D.C.); Bochenek Decl., ECF No. 50 (based in  
17 France); Reingold Decl., ECF No. 51 (based in Berkeley, California).

18 Last, Defendants’ contention that site visits “will naturally occur within the  
19 Southern District of California” lacks merit and specificity. *See* Mot. at 13. As  
20 alleged in the Complaint, the implementation of the Protocols continually violates  
21 Plaintiffs’ rights through interlocking policies, and these violations are not limited to  
22 certain designated “sites.” Compl. ¶¶ 10, 53, 56. To the extent that Defendants’  
23 vague reference to the “sites where Plaintiffs allege the inability to adequately meet  
24 with their counsel” refers to Plaintiffs’ demand for an adequate facility in the United  
25 States for legal visitation, this is an irrelevant consideration because no such “sites”  
26 currently exist. *See* Compl. ¶ 7, Prayer for Relief at 80 ¶ (f). And to the extent that  
27  
28

1 the “sites” refer to the San Diego immigration court,<sup>4</sup> Defendants have failed to  
2 “detail why this [visit] is so [necessary] or provide any legal support for the  
3 argument.” *Fekrat v. United States*, 2013 WL 12131739, at \*5. Defendants have  
4 not “persuasively demonstrated that this is a case that will require a visit” to the San  
5 Diego Immigration Court because “[t]here is no indication that relevant evidence  
6 regarding the physical layout of the [site] cannot, if relevant, be proved up through  
7 photographs, videotapes, or a model of the [site].” *Id.* For these reasons,  
8 Defendants have failed to show that the parties’ contacts with the forum and ability  
9 to access evidence favor transfer.

10 **iv. Defendants Have Not Established That the Cost of Litigation**  
11 **Favors Transfer**

12 Defendants’ assertion that the cost of litigation will be reduced if this case is  
13 transferred is purely speculative and without merit. Again without providing any  
14 support, Defendants claim that “most—if not all—of the material witnesses are  
15 located in the Southern District of California.” Mot. at 16. This disregards the fact  
16 that likely witnesses are dispersed around the world, including in Washington D.C.,  
17 Mexico, and throughout California. *See supra* Sections IV.B and IV.C.iii. Further,  
18 Defendants claim that transferring the case “*could* reduce the costs of bringing  
19 [witnesses located in the Southern District of California] to trial” without providing  
20 any evidentiary support. Mot. at 16-17 (emphasis added). As discussed above, it is  
21 also not clear that in-person testimony of witnesses would be required. *See supra*  
22 note 1. Last, Defendants’ assertion that “Plaintiffs are currently located in Mexico”  
23 ignores Plaintiff ImmDef’s residency in this District. Mot. at 17. Thus, a transfer  
24

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25 <sup>4</sup> The San Diego immigration court relocated on June 29, 2020—three months after  
26 MPP hearings were first postponed. *See* U.S. Department of Justice, “Executive  
27 Office for Immigration Review to Relocate the San Diego Immigration Court” (June  
28 22, 2020), <https://www.justice.gov/eoir/page/file/1287756/download>; Compl. ¶¶ 88-  
90. Thus, the “site” where Plaintiffs allege that legal representatives had an illusory  
one-hour window to meet with their clients before a scheduled hearing (Compl. ¶ 4)  
is a location that no longer operates as an immigration court.

1 would not reduce the costs of litigation for either party and, as Defendants concede,  
2 would not “eliminate the inconvenience of costs” for both parties. *In re Ferrero*  
3 *Litig.*, 768 F. Supp. 2d 1074, 1081 (S.D. Cal. 2011); *see Pizana v. SanMedica Int’l*  
4 *LLC*, Case No. 1:18-cv-00644-DAD-SKO, 2020 WL 469336, at \*6 (E.D. Cal. Jan.  
5 29, 2020) (“defendant has failed to show that transfer would eliminate, rather than  
6 shift, the inconvenience of costs.”); Mot. at 17 (“the burdens of [this] litigation  
7 cannot be eliminated, regardless of the venue.”). For these reasons, Defendants  
8 have not established that this factor weighs in favor of transfer.

9 **v. This District Has a Local Interest in This Lawsuit**

10 As discussed in Section IV.C.ii, the Central District has an interest in this case  
11 because Defendants’ policies have directly harmed ImmDef, which provides critical  
12 services in this District. Compl. ¶¶ 215-217; Toczyłowski Decl. ¶¶ 2, 7, 8, 12, 13,  
13 14, 17, 21, 22. ImmDef not only provides legal resources to the immigrant  
14 community in the greater Los Angeles area, but it does so through contracts with  
15 local government entities located in the Central District. *Id.* ¶ 8. ImmDef has been  
16 forced to divert resources from its planned projects in the Los Angeles area in order  
17 to address the harms caused by Defendants’ illegal actions. *See id.* ¶ 21, *supra*  
18 Section IV.C.i. This District therefore has a clear interest in addressing Defendants’  
19 illegal actions. For these reasons, the Central District has a clear interest in the  
20 subject matter of this lawsuit.

21 **vi. The First-to-File Rule Is Inapplicable and Does Not Require**  
22 **Transfer**

23 The transfer analysis is not impacted by the pendency of two cases in the  
24 Southern District that were brought on behalf of different classes of plaintiffs and  
25 that challenge distinct aspects of the Protocols. The first-to-file rule allows a district  
26 court to transfer, stay, or dismiss an action “if a similar case with substantially  
27 similar issues and parties was previously filed in another district.” *Kohn Law Grp.,*  
28 *Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1239-40 (9th Cir. 2015).

1 Defendants cite one case that was previously filed in the Southern District, *Doe et*  
2 *al. v. Wolf*, 19-cv-2119 (S.D. Cal.). The transient class in *Doe* consists of  
3 individuals who are (1) “detained in CBP custody in California,” (2) “awaiting or  
4 undergoing non-*refoulement* interviews pursuant to [the Protocols],” and (3) “who  
5 have retained lawyers.” *Doe v. Wolf*, 424 F. Supp. 3d 1028, 1035 (S.D. Cal. 2020).  
6 The class in *Doe* is therefore significantly narrower than the proposed class here,  
7 which includes both represented and unrepresented individuals subject to the  
8 Protocols who are currently trapped in Mexico. *Compare* Cert. Mot., ECF No. 35 at  
9 7 (class includes at least 4,000 individuals), *with Doe*, 424 F. Supp. 3d at 1040  
10 (approximate class size of “46 people”). Furthermore, the claims and factual  
11 allegations at issue in *Doe* relate to Defendants’ actions only with respect to non-  
12 *refoulement* interviews that take place in the Southern District of California. *Doe*,  
13 424 F. Supp. 3d at 1041. There is minimal overlap in the factual allegations in these  
14 cases, as Plaintiffs’ claims (and accordingly, the factual allegations underlying these  
15 claims) are different than those in *Doe*. *See Int’l Aero Prod.*, 325 F. Supp. at 1088  
16 (noting that the “similarity of issues” factor “focuses on the underlying factual  
17 allegations.”). Finally, the relief sought in *Doe* is specifically tailored to address  
18 access to counsel for non-*refoulement* interviews for individuals detained in  
19 California. *Id.* at 1041. The relief granted in *Doe* has no bearing on the relief  
20 sought here on a distinct set of claims, on behalf of different plaintiffs (individuals  
21 trapped in Mexico and organizations harmed by the Protocols). Any relief issued in  
22 this case also would not affect the relief granted in *Doe*.

23 With respect to the second case cited by Defendants, *E.A.R.R. et al. v. U.S.*  
24 *D.H.S., et al.*, Case No. 3:20-cv-02146 (S.D. Cal.), the “first-to-file” analysis fails as  
25 a threshold matter because *E.A.R.R.* was initiated *after* the present case. *See Int’l*  
26 *Aero Products*, 325 F. Supp. 3d at 1087 (“The first—and most fundamental—  
27 requirement is that the action in the transferee district court must have been filed  
28

1 prior to the action in the transferor district court.”).<sup>5</sup> Moreover, the plaintiffs in  
2 *E.A.R.R.* have proposed three much narrower classes consisting of individuals with  
3 disabilities or health issues and family members of such individuals who have been  
4 subjected to the Protocols. *E.A.R.R.*, Case No. 3:20-cv-02146 (S.D. Cal.), ECF No.  
5 1, ¶ 228. The factual allegations in *E.A.R.R.* focus specifically on the government’s  
6 treatment of individuals with disabilities or health issues in the context of the  
7 Protocols. *Id.* ¶¶ 61-96. Moreover, the legal claims at issue in *E.A.R.R.* are  
8 substantially different from the claims here. *Id.* ¶¶ 242-266 (asserting two claims  
9 under the Rehabilitation Act and one claim under the *Accardi* doctrine). As with  
10 *Doe*, the relief sought in *E.A.R.R.* is narrowly tailored to address the specific harms  
11 faced by this distinct class and would not affect the relief sought here on behalf of a  
12 broader class. Moreover, any relief issued in the present case would not prevent the  
13 *E.A.R.R.* class from seeking relief to address the distinct claims raised in that case.

## 14 V. CONCLUSION

15 Defendants have failed to meet their burden to demonstrate that litigating this  
16 case in the Southern District of California would be more convenient for the parties  
17 and potential witnesses and would better serve the interests of justice. The Southern  
18 District is no more convenient for any parties or witnesses, and Plaintiffs’ choice of  
19 venue in this District—which has a strong interest in and connection to this case—is  
20 entitled to substantial deference. Accordingly, the Court should deny Defendants’  
21 motion to transfer venue.

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27 <sup>5</sup> While Defendants initially erroneously stated that *E.A.R.R.* had been filed first (Opp.  
28 to Class Cert. at 24-25), they now concede that it was filed after the present action.  
Mot. at 15-16.

1 Dated: January 4, 2021

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NATIONAL IMMIGRATION PROJECT  
OF THE NATIONAL LAWYERS GUILD

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