UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.K.A., et al., Plaintiffs, v. UNITED STATES OF AMERICA, et al., Defendants.	Civil Action No. 23-2273 (APM)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER OR, IN THE ALTERNATIVE, DISMISS

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INTRODUCTION

Pursuant to Federal Rules of Civil Procedure ("Rules") 12(b)(1), 12(b)(3), and 12(b)(6), Defendants the United States of America ("United States") and the Department of Homeland Security (the "Department") (collectively, "Defendants"), by and through undersigned counsel, respectfully move to transfer or, in the alternative, dismiss this case.

This case belongs in the United States District Court for the Western District of Louisiana. Plaintiffs complain of alleged misconduct that occurred exclusively in the Western District of Louisiana; they only administratively exhausted claims pertaining to acts or omissions that occurred in the Western District of Louisiana; and they allege that the Department and its component, Immigration and Customs Enforcement ("ICE"), failed to abide by agency regulations through conduct that allegedly occurred within and while being transported from the Western District of Louisiana. By contrast, this case contains no meaningful connection to this District.

Accordingly, Defendants respectfully request that this Court grant its motion and either transfer the case to the Western District of Louisiana or dismiss the case for improper venue and other grounds stated herein. Transfer in the interests of justice would be appropriate in these circumstances because Plaintiffs should have brought this case in the Western District of Louisiana originally and both the private and public interest factors strongly weigh in favor of transferring the case. In the alternative, however, this Court could dismiss this case for improper venue because Plaintiffs plead no plausible, cognizable claims predicated on any act or omission occurring within this District.

BACKGROUND[1]

I. Factual Background

Plaintiffs J.K.A. and T.B.F. are Cameroonian nationals who came to the United States in August 2019 seeking asylum. ECF No. 29, Am. Compl. ¶¶ 20-21. The two men, who are twenty-two and twenty-nine years old respectively, are members of Cameroon's English-speaking, Anglophone minority. *Id.* ¶ 9. After Plaintiffs requested asylum, they were placed in immigration detention in the custody of the Department and ICE from August 2019 through October 2020 at Pine Prairie ICE Processing Center in Pine Prairie, Louisiana ("Pine Prairie"), located in the Western District of Louisiana. *Id.* ¶ 27.

In August 2020, Plaintiffs and approximately forty-five Cameroonians detained individuals at Pine Prairie renewed a hunger strike as protest for "their indefinite detention; racist treatment and conditions of confinement; blanket parole denials, particularly of the applications of Black detained people; across-the-board failure of ICE to respond to *pro se* parole applications; false and misleading statements by ICE regarding the sincerity of the custody review process; and the inhumanity of being detained during the global COVID-19 pandemic." *Id.* ¶ 32. On August 10, approximately the eighth day of Plaintiffs' hunger strike, ICE officers entered the unit where Plaintiffs were detained and explained that they would be removed to a unit of solitary confinement cells. *Id.* ¶ 33. Although Plaintiffs allegedly did not resist, approximately fifteen officers entered the unit with pepper spray and handcuffs and physically attacked Plaintiffs. *Id.* ¶¶ 34-35. Other detainees were allegedly placed in chokeholds, beaten, pepper sprayed, and held at gunpoint. *Id.*

[1] For purposes of Rule 12(b)(6) only, Defendants assume that the facts alleged in the complaint are true and "grant[s] [P]laintiff the benefit of all inferences that can be derived from the facts alleged." *Grant v. Ent. Cruises, Inc.*, 282 F. Supp. 3d 114, 116 (D.D.C. 2017).

¶ 35. Plaintiffs were allegedly pepper sprayed in the face without warning and then pinned to the floor and handcuffed before being "dragged" to the solitary confinement unit. *Id.* ¶ 36.

In solitary confinement, J.K.A. shared a cell with another Black migrant. *Id.* ¶ 37. Though J.K.A.'s his skin was "on fire" and his "eyes were burning intensely," he was not permitted access to an eyewash or provided medical treatment. *Id.* The "painful burning" allegedly lasted for than one week. *Id.* Meanwhile, T.B.F. was in a cell alone and was also not permitted to wash his eyes or provided medical treatment. *Id.* ¶ 38. He tried to rinse his eyes and skin using the toilet-sink in his cell but was unable to clear the pepper spray from his lungs, skin, and eyes, and "had a severe asthmatic reaction" to the pepper spray. *Id.* T.B.F., who "suffers from severe asthma" and "requires consistent access to his inhaler, which he is required to use three times a day," did not have his inhaler or asthma medication in his cell until August 14, four days later. *Id.* ¶¶ 21, 39.

While Plaintiffs were in their solitary confinement cells for approximately seven days, they were allegedly confined for twenty-four hours a day and had no access to recreational or outdoor time. *Id.* ¶ 40. Nor were they permitted to contact legal counsel, journalists, or family members via phone or tablet, and they did not shower or receive clean clothes for three days. *Id.* Plaintiffs allegedly only had access to the toilet-sink in their cells and were not provided drinking water or medical care to treat the effects of the pepper spray or their hunger strikes. *Id.* ¶ 41.

After being released from solitary confinement on August 21, 2020, Plaintiffs and others resumed their hunger strike. *Id.* ¶ 43. On August 24, officers in riot gear entered their unit and threatened the group that if they continued their strike, they would go back to solitary confinement. *Id.* ¶ 43. The officers allegedly handcuffed and pepper sprayed J.K.A. and handcuffed T.B.F. before taking them back to solitary confinement. *Id.* ¶¶ 45-46. The two men were placed in cells that were not cleaned or sanitized even though other detained individuals who were exposed to or

infected by the COVID-19 virus were previously housed in the cells. *Id.* ¶ 47. After three days in his new cell, J.K.A. developed a severe cough and fever but was not tested for COVID-19 and received no medical treatment. *Id.* ¶ 48. After four days in his new cell, T.B.F. developed a fever, cough, chest pain, and had difficulty breathing. *Id.* ¶ 49. T.B.F. was tested for COVID-19 but did not receive the results. *Id.*

Plaintiffs were in the solitary cells for approximately four days; they did not have access to clean clothes or a shower and were not allowed recreational outdoor time or access to a phone or tablet. *Id.* ¶ 50. Plaintiffs had no drinking water and J.K.A. was denied access to medical care. *Id.* ¶ 51. T.B.F. was allegedly told "if you don't eat food, you get no water" and was also denied access to medical treatment for his asthma. *Id.* ¶ 52.

After the August 2020 hunger strike, Plaintiffs notified ICE officials about their conditions of confinement and requested to speak with officials. *Id.* ¶ 53. While they were in solitary confinement, ICE officials allegedly met with other individuals "to negotiate a review of their pending parole applications in exchange for an end" to the hunger strike. *Id.* ¶ 54. Plaintiffs and others agreed to a "temporary pause" on the hunger strike after ICE officials said they would review pending parole cases of the protestors. *Id.* ICE allegedly failed to review the pending parole applications and negotiations failed. *Id.* ¶ 55.

"In an effort to repress their hunger strike," Plaintiffs were transferred to the LaSalle Detention Center in Jena, Louisiana. *Id.* ¶ 74. They were then told they were being transferred again "because they were going to have an opportunity to have a second Credible Fear Interview," a statement that was allegedly "false and intended to mislead and deceive" Plaintiffs. *Id.* ¶ 75. ICE officers allegedly "threatened TB[F] and presented him a travel document with a forged signature," and refused to listen when he said the signature was not his. *Id.* ¶ 76. Plaintiffs were bussed to

Alexandria Staging Facility in Alexandria, Louisiana and then to Prairieland Detention Center in Alvarado, Texas ("Prairieland"). *Id.* ¶ 77. J.K.A. understood he was being deported and when ICE officials approached him, he started crying. *Id.* ¶ 77-78. J.K.A. was handcuffed and chains were placed around his hands, legs, and waist. *Id.* ¶ 78.

While Plaintiffs were at Prairieland, they were allowed to make phone calls for the first two days. *Id.* ¶ 79. Officers allegedly denied Plaintiffs' request for access to their bags which contained sensitive documents related to their asylum applications. *Id.* ¶ 80. After Plaintiffs "began to protest this denial," "the officers brought out a small number of bags." *Id.* J.K.A. repeatedly asked for access to his bag and asked an ICE officer if he could access his bag to remove sensitive documents, but his requests were denied. *Id.* ¶ 82. Plaintiffs feared they would be killed if the sensitive documents in their bags were discovered by Cameroonian authorities. *Id.* ¶¶ 81-83. Plaintiffs were transferred to Fort Worth Alliance Airport in the Northern District of Texas without removing the sensitive documents from their luggage. *Id.* ¶ 89.

According to Plaintiffs, "ICE officials in Washington, D.C. planned and coordinated the October 13, 2020 flight, including by arranging for photo and video documentation of the flight and coordinating flight logistics." *Id.* ¶ 97. ICE officials in Washington, D.C. allegedly "communicated with State Department officials" "in advance of and after the flight." *Id.* ¶ 98. "ICE public affairs officials in Washington, D.C. received and responded to press inquiries regarding the [] flight" and "monitored press coverage and social media communications from advocacy groups in the lead up to and during the [] flight." *Id.* ¶¶ 99-100. ICE allegedly "designated" the flight a "Special High Risk Charter" flight, which, according to the ICE Air Handbook, was "to remove Failure to Comply [ ] and significant High-Profile Removals [ ] from

the United States." *Id.* ¶ 101. This designation allegedly placed a SWAT team of officers on the flights. *Id.*

On October 13, 2020, "Plaintiffs were restrained and forced onto a plane" at the Fort Worth Alliance Airport for a sixteen-hour flight to Cameroon, where they were allegedly "shackled in [] five-points restraints." *Id.* ¶¶ 102-03. Plaintiffs were unable to move and could not eat the bread or drink the water they were provided. *Id.* ¶ 104. ICE allegedly refused to remove the restraints and denied Plaintiffs access to the restrooms. *Id.* During the flight, J.K.A. experienced pain to his wrists and ankles from the chains and was allegedly left with cuts and bruises. *Id.* ¶ 105. T.B.F. was also restrained and allegedly cut and bruised, and he did not have his inhaler. *Id.* ¶ 106. ICE officers ignored his requests for the inhaler and medical assistance. *Id.*

Upon arrival in Douala, Cameroon, Plaintiffs saw Cameroonian authorities searching their bags. *Id.* ¶ 107. J.K.A. witnessed ICE officials give Cameroonian authorities his identification and belongings and he was then detained and interrogated by Cameroonian military police. *Id.* ¶ 108. He was asked questions about where he was coming from and why he was sent back to Cameroon and told by officials that "they knew information about him." *Id.* J.K.A. was transported to a house surrounded by military officials with guns and kept there for a week. *Id.* ¶ 109. Everyone there, including J.K.A., were members of the Southern Cameroons National Council and repeatedly called "traitors." *Id.* J.K.A. escaped and has been in hiding since. *Id.* ¶ 110.

T.B.F. was held at the airport and detained for two to three hours before being taken to "quarantine" in Yassa, Cameroon and detained for the night. *Id.* ¶ 111. His sister came to Yassa and paid a bribe for his release. *Id.* T.B.F. has since "lived in hiding in Cameroon and fears for his life and safety." *Id.* ¶ 112. A warrant was issued for his arrest by the Cameroon government on September 2, 2019. *Id.* The Cameroonian military threatened his sister for information about

T.B.F., which has caused him to "fear for his family's safety and has prevented him from returning to his hometown." *Id.* ¶ 113. Although the warrant was issued more than one year before his deportation from the United States to Cameroon, "T.B.F. believes the warrant was issued because of the documents related to his asylum claim in his luggage. T.B.F. does not have a national ID card in Cameroon and is unable to move within the country safely. T.B.F. also does not have a passport and is unable to leave Cameroon." *Id.* ¶ 114. T.B.F. struggles with anxiety and depression, is terrified of being caught by Cameroonian authorities, and struggled to afford and secure medication. *Id.* ¶ 115.

II. Plaintiffs' Exhaustion of Administrative Remedies

Plaintiffs allege that on August 9, 2020, they submitted "administrative claims" to the Department, ICE, and the Department of Health and Human Services, which were denied by the Department and ICE on February 7, 2023. *Id.* ¶ 17. Plaintiffs' SF-95 Forms focus solely on alleged misconduct by the Department and ICE officials that occurred at Pine Prairie. *See* Ex. 1, J.K.A. SF-95; Ex. 2, T.B.F. SF-95. Neither Plaintiff included in their SF-95 Forms any alleged misconduct that occurred after they were transferred from Pine Prairie. *See* Exs. 1–2. Additionally, and most significantly, neither Plaintiff included in their administrative claims presented to the Department or ICE any allegations of tortious conduct occurring within this District. *Id.*

III. The Instant Complaint

Plaintiffs sue the United States of America under the Federal Tort Claims Act, 28 U.S.C. § 1346 ("FTCA") for alleged abuse by ICE officers while Plaintiffs were in detention "out of retaliation for their peaceful hunger-striking protests." *Id.* ¶ 2. Plaintiffs claim, "high-level officers at the headquarters of" the Department and ICE "have been well-aware of persistent abuses by officers against hunger-striking individuals in ICE custody—including the range of abuses used

against Plaintiffs and other Cameroonians in the period relevant to this complaint—yet have done nothing to remediate these abuses or enforce existing agency policies and regulations that proscribe the abuses at issue here." *Id.* The Amended Complaint contains eight separate causes of action. Count I is a claim against the United States pursuant to the FTCA for abuse of process under Louisiana and District of Columbia law. *Id.* ¶¶ 116-120. Count II is an FTCA claim for negligent supervision under Louisiana and District of Columbia law. *Id.* ¶¶ 121-127. Count III is an FTCA claim for negligence under Louisiana law. *Id.* ¶¶ 128-134. Count IV is an FTCA claim for battery under Louisiana law. *Id.* ¶¶ 135-139. Count V is an FTCA claim for assault under Louisiana law. *Id.* ¶¶ 140-144. Count VI is an FTCA claim for intentional infliction of emotional distress under Louisiana and District of Columbia law. *Id.* ¶¶ 145-149. Count VII is a claim under the Administrative Procedure Act ("APA") and the *Accardi* doctrine (*United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954)) that alleges that the Department and ICE failed to comply with their own regulations for maintaining the confidentiality of asylum application materials. *Id.* ¶¶ 150-155. Finally, Count VIII is an APA claim against the Department and ICE that alleges that it failed to abide by its own standards for the use of force. *Id.* ¶¶ 156-158.

LEGAL STANDARDS

I. Rule 12(b)(1)

Rule 12(b)(1) requires dismissal of claims where the Court "lack[s] jurisdiction over the subject matter." Fed. R. Civ. P. 12(b)(1). "Rule 12(b)(1) presents a threshold challenge to the Court's jurisdiction . . . [and] the Court is obligated to determine whether it has subject-matter jurisdiction in the first instance." *Curran v. Holder*, 626 F. Supp. 2d 30, 32 (D.D.C. 2009) (internal citation and quotation marks omitted). "A federal court presumptively lacks jurisdiction in a proceeding until a party demonstrates that jurisdiction exists." *Commodity Futures Trading Comm'n v. Nahas*, 738 F.2d 487, 492 n.9 (D.C. Cir. 1984); *see Kokkonen v. Guardian Life Ins.*

Co. of Am., 511 U.S. 375, 377 (1994) ("[I]t is presumed that a cause lies outside [the federal courts'] limited jurisdiction."). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

A court may resolve a motion to dismiss brought pursuant to Fed. R. Civ. P. 12(b)(1) in two ways: a facial challenge or a factual challenge. In a facial challenge, the court may decide the motion based solely on the factual allegations in the complaint. *Herbert v. Nat'l Acad. of Sci.*, 974 F.2d 192, 197 (D.C. Cir. 1992); *Al-Owhali v. Ashcroft*, 279 F. Supp. 2d 13, 20 (D.D.C. 2003) ("A facial challenge attacks the factual allegations of the complaint that are contained on the face of the complaint.") (internal quotations and citations omitted). In contrast, to determine the existence of jurisdiction in a factual challenge, a court may look beyond the allegations of the complaint, consider affidavits and other extrinsic information, and ultimately weigh the conflicting evidence. *See Jerome Stevens Pharmacy, Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005) (Noting that, with respect to a factual challenge, the district court may consider materials outside of the pleadings to determine whether it has subject matter jurisdiction over the claims); *Herbert*, 974 F.2d at 197 (same).

II. Rule 12(b)(3)

Under Rule 12(b)(3), "a defendant may, at the lawsuit's outset, test whether the plaintiff 'has brought the case in a venue that the law deems appropriate.'" *Black v. City of Newark*, 535 F. Supp. 2d 163, 166 (D.D.C. 2008) (citing *Modaressi v. Vedadi*, 441 F. Supp. 2d 51, 53 (D.D.C. 2006)). "Similarly, 28 U.S.C. § 1406(a) requires the Court to dismiss, or if it be in the interest of justice, transfer, a case filed . . . in the wrong division or district." *Sanchez-Mercedes v. Bureau of Prisons*, 453 F. Supp. 3d 404, 414 (D.D.C. 2020) (internal quotation marks omitted), *aff'd*, No. 20-5103, 2021 WL 2525679 (D.C. Cir. June 2, 2021). "Together, Section 1406(a) and Rule 12(b)(3) allow dismissal only when venue is wrong or improper." *Id.* (internal quotation marks

omitted). "Whether venue is wrong or improper depends exclusively on whether the court in which the case was brought satisfies the requirements of federal venue laws[.]" *Id.* (internal quotation marks omitted).

The plaintiff bears the burden of proving that venue is proper. *See Myers v. Holiday Inns, Inc.*, 915 F. Supp. 2d 136, 144 (D.D.C. 2013). "[Rule] 12(b)(3) instructs the court to dismiss or transfer a case if venue is improper or inconvenient in the plaintiff's chosen forum." *Hamilton v. Paulson*, No. 07-1365 (RBW), 2008 WL 4531781, at *2 (D.D.C. Oct. 10, 2008) (quoting *Pendleton v. Mukasey*, 552 F. Supp. 2d 14, 17 (D.D.C. 2008)). "In considering a Rule 12(b)(3) motion, the court accepts the plaintiff's well-pled factual allegations regarding venue as true, draws all reasonable inferences from those allegations in the plaintiff's favor, and resolves any factual conflicts in the plaintiff's favor." *Sanchez-Mercedes*, 453 F. Supp. 3d at 414. "The court need not, however, accept the plaintiff's legal conclusions as true, and may consider material outside of the pleadings." *Id.*

III. Rule 12(b)(6)

A motion made under Rule 12(b)(6) tests whether a complaint has successfully "state[d] a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). While detailed factual allegations are not necessary to withstand a Rule 12(b)(6) challenge, a plaintiff must nonetheless provide "more than labels or conclusions" or "a formulaic" recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible only when a plaintiff pleads factual content that enables the

Court to "draw [a] reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

While the Court must assume that any "well-pleaded factual allegations" in a complaint are accurate, conclusory allegations "are not entitled to the assumption of truth." *Id.* at 679. Further, the Court "need not accept inferences drawn by the plaintiff if such inferences are unsupported by the facts set out in the complaint. Moreover, the court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Jack's Canoes & Kayaks, LLC v. Nat'l Park Serv.*, 937 F. Supp. 2d 18, 27 (D.D.C. 2013) (internal quotation marks and citations omitted). A complaint that "pleads facts that are merely consistent with a defendant's liability, [ ] stops short of the line between possibility and plausibility of entitlement to relief," and is insufficient to withstand a Rule 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 679 (quoting *Twombly*, 550 U.S. at 555, 557) (internal quotation marks omitted). "In deciding a motion under Rule 12(b)(6), a court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits or incorporated by reference, and matters about which the court may take judicial notice." *Haines v. Gen. Pension Plan of Int'l Union of Operating Eng'rs*, 965 F. Supp. 2d 119, 123 (D.D.C. 2013) (citing *Abhe & Svoboda, Inc. v. Chao*, 508 F.3d 1052, 1059 (D.C. Cir. 2007) (internal quotation marks and citation omitted)).

ARGUMENT

I. The Court Should Transfer This Action

A case may be transferred to any district where venue is proper "[f]or the convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a). "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." *Ctr. for Env't Sci., Accuracy & Reliability v. Nat'l Park Serv.*, 75 F. Supp. 3d 353, 356 (D.D.C. 2014) (internal

quotation marks omitted). "Thus, transfer . . . must . . . be justified by particular circumstances that render the transferor forum inappropriate by reference to the considerations specified in that statute." *Id.* (internal quotation marks omitted). "The movant bears the burden of persuasion that transfer of an action is proper." *Id.* Importantly, "[c]ourts in this circuit must examine challenges to personal jurisdiction and venue carefully to guard against the danger that a plaintiff might manufacture venue in the District of Columbia. By naming high government officials as defendants, a plaintiff could bring a suit here that properly should be pursued elsewhere." *Cameron v. Thornburgh*, 983 F.2d 253, 256 (D.C. Cir. 1993).

Similarly, when a plaintiff files an action in the wrong district, 28 U.S.C. § 1406(a) directs courts to "dismiss, or if it be in the interest of justice, transfer such case" to the proper venue. 28 U.S.C. § 1406(a). Generally, the "interest of justice" requires courts to transfer cases to the appropriate judicial district, rather than dismiss them. *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 466–67 (1962); *James v. Booz-Allen*, 227 F. Supp. 2d 16, 20 (D.D.C. 2002).

This matter bears striking resemblance to *Spotts v. Untied States*, 562 F. Supp. 2d 46 (D.D.C. 2008). In *Spotts*, the plaintiffs brought multiple FTCA claims in this District for, among other torts, negligence, deliberate indifference, and intentional infliction of emotional distress. *Id.* at 51. The plaintiffs challenged the Bureau of Prison's decision not to relocate inmates to different prisons before the arrival of Hurricane Rita in 2005. *Id.* at 50. The government moved to transfer the case to the Eastern District of Texas, where the inmates were housed, but the plaintiffs argued that venue was proper in the District of Columbia because the "acts or omissions complained of occurred at the BOP's Central Office in Washington, D.C." *Id.* at 53. Much like the Plaintiff's in the present matter, the plaintiffs in *Spotts* argued that "the decisions to keep them at USP Beaumont during Hurricane Rita and regarding their care after the hurricane occurred at the Central Office."

Id. The Court agreed with the government and stressed that the "mere involvement on the part of federal agencies who are located in Washington, D.C. is not determinative" and explained that the plaintiffs could not "establish that any of the acts giving rise to their tort claims occurred in the District of Columbia, let alone that sufficient activities of that type occurred here." *Id.* at 55 (citations omitted).

Much like *Spotts*, this matter presents a controversy with no meaningful connection to the District of Columbia whatsoever. As such, whether analyzed under section 1404 or 1406, the Court should transfer this case to the Western District of Louisiana where "the act[s] or omission[s] complained of occurred" that gave rise to Plaintiffs' FTCA claims. 28 U.S.C. § 1402(b).

A. This Case Could Have Been Brought in the Western District of Louisiana

"The first step in resolving a motion for transfer of venue under § 1404(a) is to determine whether the proposed transferee district is one where the action 'might have been brought.'" *Ctr. for Env't Sci.*, 75 F. Supp. 3d at 356. Here, the FTCA contains a specific venue provision that dictates that venue is proper only in "the judicial district where the plaintiff resides or wherein the act or omission complained of occurred." 28 U.S.C. § 1402(b). Here, neither Plaintiff resides in the District of Columbia. Moreover, as discussed above, Plaintiffs' Amended Complaint alleges that they were subjected to tortious conduct by federal employees primarily in the Western District of Louisiana. Am. Compl. ¶¶ 32-52. Moreover, each of Plaintiffs' administrative claims alleged as the bases for their respective claims involve tortious conduct that occurred in the Western District of Louisiana. Ex. 1, J.K.A. SF-95; Ex. 2, T.B.F. SF-95. Plaintiffs, therefore, might have brought their FTCA claims in that district.

Moreover, "[i]n actions raising a federal question by naming as a defendant a federal agency or United States official in his or her official capacity, venue is proper in any judicial

district where (1) a defendant in the action resides; (2) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is subject of the action is situated; or (3) a plaintiff resides if no real property is involved in the action." *Ctr. for Env't Sci.*, 75 F. Supp. 3d at 356 (quoting 28 U.S.C. § 1391(e)(1)) (internal quotation marks omitted). Here, for similar reasons, a substantial part of the alleged acts or omissions giving rise to Plaintiffs' APA claims occurred in the Western District of Louisiana. Am. Compl. ¶¶ 154, 157. Accordingly, the claims in this case "might have been brought" in that district.

B. The Relevant Factors Support Transferring this Case to the Western District of Louisiana

After determining that this suit could have been brought in the Western District of Louisiana, the Court must turn to the core of the matter, namely whether the case is more conveniently handled in the Western District of Louisiana rather than this District. This inquiry requires the Court to "weigh the public and private interests." *McAfee LLC v. USCIS*, Civ. A. No. 19-2981 (DLF), 2019 WL 6051559, at *1 (D.D.C. Nov. 15, 2019). Here, the private and public interest factors favor transferring this case.

1. Private Interest Factors

In weighing transfer, "the Court considers the following private interest factors: (1) the plaintiffs' choice of forum, unless the balance of convenience is strongly in favor of the defendants; (2) the defendants' choice of forum; (3) whether the claim arose elsewhere; (4) the convenience of the parties; (5) the convenience of the witnesses of the plaintiff and defendant, but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and (6) the ease of access to sources of proof." *Bourdon v. United States Dep't of Homeland Sec.*, 235 F. Supp. 3d 298, 305 (D.D.C. 2017).

a. The Parties' Chosen Forums, the Locus of the Claims, and the Convenience of the Parties

Plaintiffs' choice of forum is afforded minimal weight because the District of Columbia is not Plaintiffs' home forum and the District of Columbia has few, if any, factual ties to this case. *See, e.g., id.* ("Although the plaintiff's choice of forum is ordinarily entitled to deference, that choice is conferred considerably less deference when it is not the plaintiff's home forum, has few factual ties to the case at hand, and defendants seek to transfer to plaintiff's home forum"); *Pasem v. U.S. Citizenship & Immigr. Servs.*, Civ. A. No. 20-0344, 2020 WL 2514749, at *4 (D.D.C. May 15, 2020) (concluding that deference to a plaintiff's choice of forum "'is minimized when the forum chosen is not the plaintiff's home forum'") (quoting *Trout Unlimited v. Dep't of Agric.*, 944 F. Supp. 13, 16 (D.D.C. 1996)). Here, Plaintiffs do not reside in the District of Columbia and do not allege that any relevant factual events occurred in this District. In such circumstances, "[t]his factor . . . provides little if any support for maintaining venue in the District of Columbia." *Bourdon*, 235 F. Supp. 3d at 305; *see also, e.g., Wolfram Alpha LLC v. Cuccinelli*, 490 F. Supp. 3d 324, 333 (D.D.C. 2020) ("deference to [plaintiff's] choice is limited because [p]laintiff is not a resident of the District of Columbia and this action lacks meaningful ties to the District of Columbia"); *Aftab v. Gonzalez*, 597 F. Supp. 2d 76, 81 (D.D.C. 2009) (plaintiff's "choice of this district as a forum commands diminished deference" where "the claim involves identifiable relevant events occurring in the transferee district and virtually none in this district").

Rather, the private interest factors that are "of predominant importance" are those demonstrating that a plaintiff's claims arose in another District. *Bourdon*, 235 F. Supp. 3d at 305; *see also, e.g., Wolfram Alpha*, 490 F. Supp. 3d at 333 ("The location of activities giving rise to the action weighs heavily in favor of transfer"). Here, Defendants seek to transfer this action to the Western District of Louisiana because the alleged tortious misconduct common among all of

Plaintiffs' claims occurred there. Both Plaintiffs allege they were subjected to abuse of process, negligent supervision, negligence, battery, assault, and intentional infliction of emotional distress when they were allegedly subjected to "numerous abuses" while in immigration detention in the Western District of Louisiana. Indeed, materials cited in Plaintiffs' Amended Complaint concede that the alleged tortious acts or omissions underlying their claims truly belong in Louisiana. Am. Compl. ¶ 90 n.33 (citing a letter signed by four human rights groups that states that the conduct underling this matter occurred in Pine Prairie, Louisiana, not in this District).

b. Remaining Private Interest Factors

The remaining private interest factors are neutral or favor transfer. As the *McAfee* Court explained for "claims [that] arose primarily in the Central District [of California,]" that "District likely will be more convenient for potential witnesses and evidence." *McAfee*, 2019 WL 6051559, at *2. Here, all relevant evidence regarding the alleged conduct of ICE employees in the Western District of Louisiana is located in that district. The pertinent ICE facilities and personnel at issue are located there. *Wolfram Alpha*, 490 F. Supp. 3d at 333 ("When claims arise within a geographic district, that district is more likely to be convenient for potential witnesses and more likely to house evidence.").

The Government notes that there is some authority within this District for the proposition that "[i]n a case involving review of an agency action, the location of witnesses is not a significant factor, but the location of the administrative record, however, carries some weight." *Aftab v. Gonzalez*, 597 F. Supp. 2d 76, 83 (D.D.C. 2009) (cleaned up). The Government respectfully submits that *Aftab* is readily distinguishable from the instant case, notwithstanding the face of the Amended Complaint suggesting that the case may involve an administrative record, because *Aftab* did not include a claim under the FTCA subject to that statute's specific venue provision. *See also Polidi v. Boente,* Civ. A. No. 21-2875 (FYP), 2022 WL 3594594, at *3-4 (D.D.C. July 18, 2022)

(determining that the plaintiffs' claims under the FTCA were not filed in the proper venue, and transferring the FTCA claims and the APA claims to the appropriate venue notwithstanding the fact that "the United States may often be appropriately sued under the APA in the District of Columbia," because "the mere naming of the government as a defendant is not determinative of venue"), *appeal dismissed*, No. 22-5223, 2023 WL 5500662 (D.C. Cir. Mar. 22, 2023).

At bottom, "where, as here, the only real connection [the] lawsuit has to the District of Columbia is that a federal agency headquartered here is charged with generally regulating and overseeing" the handling of detention and deportation of unsuccessful asylum applicants, "venue is not appropriate in the District of Columbia." *Bourdon*, 235 F. Supp. 3d at 307 (internal quotation marks omitted; alterations in original). Accordingly, the private interest factors in this case weigh in favor of transfer.

2. Public Interest Factors

There are three public interest factors that the Court must also consider in assessing a request to transfer: "(1) the transferee's familiarity with the governing laws and the pendency of related actions in the transferee's forum; (2) the relative congestion of the calendars of the potential transferee and transferor courts; and (3) the local interest in deciding local controversies at home." *Bourdon*, 235 F. Supp. 3d at 308 (quotation marks omitted). Here, each such factor is either neutral or weighs in favor of transfer.

In cases like this one, "[t]he interest in deciding local controversies at home is the public interest factor of most importance[.]" *Id.*; *see also, e.g., Wolfram Alpha*, 490 F. Supp. 3d at 338-39 ("perhaps most important amongst the public factors, the local interest in deciding local controversies at home factor weighs in favor of transfer"). To determine whether the case presents a local controversy, courts "consider a wide variety of factors, including: where the challenged decision was made; whether the decision directly affected the citizens of the transferee state; the

location of the controversy[;] . . . and whether there was personal involvement by a District of Columbia official." *Bourdon*, 235 F. Supp. 3d at 308.

As discussed herein, this matter presents a local controversy that should be decided by the Western District of Louisiana. This public interest factor, which the Court explained is "most importan[t]," *Bourdon*, 235 F. Supp. 3d at 308, weighs heavily in favor of transfer. Plaintiffs' Amended Complaint primarily focuses on the alleged unlawful acts by ICE officials while they were in immigration detention in the Western District of Louisiana. Conversely, and critically, there are no allegations whatsoever of misconduct occurring in this District included in either the Amended Complaint or Plaintiffs' administrative claims. Plaintiffs' allegations thus present a quintessential local controversy—allegations of tortious misconduct within the Western District of Louisiana, and wholly outside this District.

Moreover, the Western District of Louisiana will be more acquainted with applying Louisiana state law pursuant to which Plaintiffs have brought six tort claims,[2] and there is no reason to suspect that any federal district court is unfamiliar with federal law governing APA claims. *See W. Watersheds*, 942 F. Supp. 2d at 101 ("Judges in both districts are presumed to be equally familiar with the federal laws governing this dispute, and thus this factor is not germane[.]"). Because Plaintiffs pursue federal claims requiring interpretation of federal law, "[t]he transferee district is presumed to be equally familiar with the federal laws governing [the plaintiff's] claims." *Wolfram Alpha*, 490 F. Supp. 3d at 334 (alterations in original; quotation

[2] Plaintiffs have asserted six torts under Louisiana law, versus only three under District of Columbia law. Am. Compl. at 30-36. For the reasons discussed below, however, Plaintiffs fail to state legally cognizable and plausible claims under District of Columbia law predicated on any conduct alleged to have occurred within this District.

marks omitted). This factor thus weighs in favor of transfer—or at worst is neutral with respect to transfer.

Lastly, there can be no dispute that each District (this District and the Western District of Louisiana) faces congested dockets. *See* U.S. District Court—Caseload Statistics Data Tables, available at https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables (latest Table C-5, Median Time from Filing to Disposition of Civil Cases by Action Taken). Moreover, "[t]hese statistics are not perfect indicators of court congestion as they may be influenced by additional factors" and "[d]epending on which metric a Court chooses to assess relative congestion, the weighing of this factor [often] points in different directions." *Wolfram Alpha*, 490 F. Supp. 3d at 336-37. Accordingly, this factor is neutral or, at best, only slightly moves the needle one way or another. *See id.*

At bottom, given the local nature of this controversy, this Court should transfer the case to the Western District of Louisiana.

II. If Not Transferred, Plaintiffs' Claims Should Be Dismissed for Several Reasons

Plaintiffs' claims are also subject to dismissal because of their lack of connection to this District. That is, Plaintiffs' Amended Complaint contains no factual allegations that make plausible the FTCA claims asserted against Defendants based on conduct that allegedly occurred within this District. Specifically, Plaintiffs do not allege that any act or omission that gave rise to their tort claims occurred within this District. As such, whether this failure is viewed as a direct defect in venue or renders the claims against the Secretary and the Acting Director susceptible to being dismissed for either lacking subject matter jurisdiction or failing to state a claim, the result is the same. Venue for Plaintiffs' action is not properly found in this District.

As an initial matter, were the Court to transfer this action under Section 1404, the Court need not consider Defendants' motion to dismiss. Indeed, confronted with both a motion to transfer and a motion dismiss, the Court has routinely denied without prejudice and with leave to refile the motion to dismiss when granting the motion to transfer. *See, e.g., Mohammadi v. Scharfen*, 609 F. Supp. 2d 14, 16 n.2 (D.D.C. 2009) ("In light of the transfer, the court does not address the defendants' motion to dismiss.") (citing *Abusadeh v. Chertoff*, Civ. A. No. 06-2014, 2007 U.S. Dist. LEXIS 52549, at *2 (D.D.C. July 23, 2007) ("the Court shall not address the substance of Defendants' motion to dismiss but shall deny that motion without prejudice so that Defendants may refile it, if appropriate, upon transfer")). This is especially true here when Defendants' motion to dismiss raises arguments concerning venue.[3] That said, dismissal of much of Plaintiffs' Amended Complaint—including every claim predicated on conduct occurring within this District—would plainly be warranted as discussed below.

A. Venue Is Improper Because Plaintiffs Plead No Plausible Claims Predicated on D.C.-Based Actions or Omissions by Defendants

As noted above, this jurisdiction has long recognized that a litigant cannot name high-ranking officials residing here to manufacture venue in this District. *See Cameron*, 983 F.2d at 256. Indeed, the D.C. Circuit has expressly cautioned "[b]y naming high government officials as defendants, a plaintiff could bring a suit here that properly should be pursued elsewhere." *Id.* The Circuit's longstanding holding of *Cameron* has led the Court to find venue as lacking where the complaint merely rests venue on a "bare assumption that policy decisions made in Washington might have affected" the matter. *Id.* at 258.

[3] For this reason, Defendants have drafted their Proposed Order as one granting Defendants' motion to transfer this action to the Western District of Louisiana and denying as moot, without prejudice, and with leave to refile in the transferee court, a subsequent Rule 12 motion as appropriate.

There are insufficient ties to the District of Columbia in this case. Plaintiffs' conclude that "ICE officials in Washington, D.C. planned and coordinated the October 13, 2020 flight, including by arranging for photo and video documentation of the flight and coordinating flight logistics," "ICE officials in Washington, D.C. communicated with State Department officials about the October 13, 2020 flight in advance of and after the flight," and "ICE public affairs officials in Washington, D.C. received and responded to press inquiries" and "monitored press coverage and social media communications from advocacy groups in the lead up to and during the October 13, 2020 removal flight." Am. Comp. ¶¶ 97-100. However, Plaintiffs' Amended Complaint makes it clear that the conduct they complain about occurred while Plaintiffs were in immigration detention elsewhere – and never in this District. Even though ICE and the Department are headquartered in this District, it is well-settled that "the mere involvement on the part of federal agencies, or some federal officials who are located in Washington D.C. is not determinative of the question of venue." *Patel v. Phillips*, 933 F. Supp. 2d 153, 165 (D.D.C. 2013). "There is no real connection between DC and this litigation other than the presence of federal agencies in this forum." *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 26 (D.D.C. 2002).

Cameron's instruction is particularly important here when examining the substance of Plaintiffs' claims. As discussed above, the FTCA's venue provision permits Plaintiffs only to bring those claims in "the judicial district where the plaintiff resides or wherein the act or omission complained of occurred." 28 U.S.C. § 1402(b); *Polidi*, 2022 WL 3594594, at *3 (finding that venue is improper where both the plaintiff resided and the acts or omissions that gave rise to the claims occurred outside the District). Plaintiffs' lengthy Amended Complaint details an array of alleged misconduct occurring wholly outside this District. For example, both Plaintiffs were allegedly subjected to unlawful acts and excessive force within the Western District of Louisiana. The

substance of Plaintiffs' torts—*i.e.*, where the alleged "act[s] or omission[s] complained of occurred," 28 U.S.C. § 1402(b)—all took place elsewhere.

By contrast, Plaintiffs' Amended Complaint is devoid of any non-conclusory acts or omissions that allegedly occurred in this District for purposes of the FTCA's venue provision. Plaintiffs do not—because they cannot—allege that any alleged unlawful acts occurred within this District. They plainly allege that occurred in the Western District of Louisiana. And, although Plaintiffs conclusively allege that officials in this District committed an abuse of process as to Plaintiffs, harmed Plaintiffs through negligent supervision, and committed an intentional infliction of emotional distress, those are merely legal conclusions not entitled to any deference by this Court. Instead, the Amended Complaint is devoid of any specific factual allegations that they may proceed on legally cognizable and plausible tort claims predicated on conduct that occurred in this District. *See infra* Arg. § II.C.

Moreover, Plaintiffs cannot avail themselves of the doctrine of pendent venue to save their improper FTCA claims by pleading APA claims. *See infra* Arg. § II.D. As a preliminary matter, it is not apparent that Plaintiffs may maintain their *Accardi* doctrine claims in this District, as those claims are premised on the Department and ICE officials failing to comply with regulations and policies through acts or omissions that all occurred outside of this District. The Amended Complaint makes plain, for example, that any alleged failure to comply with the Department or ICE regulations regarding the use of force occurred primarily within the Western District of Louisiana, outside of this District. Am. Comp. ¶¶ 157-58. Likewise, the allegations related to confidentiality of Plaintiffs' asylum papers occurred in the Western District of Louisiana, during transport to other facilities, and elsewhere outside this District. *Id.* ¶¶ 151, 155. The substance of Plaintiffs' *Accardi* doctrine claims, therefore, occurred elsewhere and not in this District.

In any event, courts within this District have consistently declined to apply the doctrine of pendent venue to maintain FTCA claims within this District after they had been filed in an improper venue. For example, the D.C. Circuit affirmed dismissal of an FTCA claim on improper venue grounds in *Reuber v. United States*, 750 F.2d 1039 (D.C. Cir. 1984), *abrogated on other grounds by Kauffman v. Anglo-Am. Sch. of Sofia*, 28 F.3d 1223, 1226 (D.C. Cir. 1994). In *Reuber*, the district court dismissed the plaintiff's FTCA claim because the plaintiff's tort claim had occurred in Maryland, not the District of Columbia. 750 F.2d at 1046. The D.C. Circuit affirmed by noting that "the United States can be held liable under the FTCA only for the tortious acts of its employees, *see* 28 U.S.C. § 1346(b), and Reuber can point to no act in the District by any government employee that caused him any tortious injury." *Id.* at 1047. The D.C. Circuit also rejected the plaintiff's attempt to keep the FTCA claim in the District of Columbia through pendant jurisdiction because of the "distinct issues of proof" for the Privacy Act claim that was proper within the District and because "the convenience and fairness of allowing the FTCA claim to proceed in federal court here, must be assessed in light of the general rule that, when the United States waives sovereign immunity, it may choose the conditions under which a suit against it is to proceed" and had done so by limiting venue through section 1402(b). *Id.*at 1048. This latter point, the D.C. Circuit held, "created a strong negative presumption against courts finding discretionary pendent venue elsewhere." *Id.* at 1049.

Accordingly, courts within this District have cured the venue defect for a plaintiff's FTCA claim by transferring the case to a proper venue under section 1402(b), rather than applying the doctrine of pendant venue to keep the case here. *See*, *e.g.*, *Attkisson v. Holder*, 241 F. Supp. 3d 207, 214-15 (D.D.C. 2017) (transferring the entire case to the proper venue under the FTCA, notwithstanding the fact that the non-FTCA claims were properly venued within the District of

Columbia, "to ensure that the claims are all heard together in the interest of preserving judicial and party resources.") (quoting *Yuanxing Liu v. Lynch*, Civ. A. No. 14-1516 (APM), 2015 WL 9281580, at *3 (D.D.C. Dec. 8, 2015)); *Polidi*, 2022 WL 3594594, at *3-4 (transferring properly venued APA claims out of the District after determining that the FTCA claims were brought in an improper venue); *see also Coltrane v. Lappin*, 885 F. Supp. 2d 228, 236–37 (D.D.C. 2012) (observing that it is "common in this Circuit" to transfer the entirety of the case when some but not all claims are improperly venued here).

Finally, even if this Court were to determine that Plaintiffs did in fact plead legally cognizable and plausible tort claims predicated on D.C.-based conduct, Defendants respectfully submit that this District is nonetheless an inconvenient forum for Plaintiffs to litigate because only a small fraction of the case, if any, would have been found to occurred here in stark contrast to the overwhelming majority of factual allegations supporting Plaintiffs claims that have occurred the Western District of Louisiana. Given that it would be very inconvenient to litigate in this District under these circumstances, especially compared to the relative convenience of litigating in the Western District of Louisiana, this Court could nonetheless transfer to the Western District of Louisiana pursuant to 28 U.S.C. § 1404 to the more convenient venue. As recognized by the Supreme Court, "the purpose of [§ 1404(a)] is to prevent waste 'of time, energy and money' and 'to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (quoting *Cont'l Grain Co. v. The Barge FBL-585*, 364 U.S. 19, 26, 27 (1960)); *see id*. at 622 ("'The idea behind § 1404(a) is that where a 'civil action to vindicate a wrong—however brought in a court—presents issues and requires witnesses that make one District Court more convenient than another, the trial judge can, after findings, transfer the whole action to the more convenient court.'") (quoting *Cont'l Grain Co.*, 364 U.S. at

26). Accordingly, the Court should alternatively transfer this case to the Western District of Louisiana pursuant to 28 U.S.C. § 1404(a). *See Spotts*, 562 F. Supp. 2d at 49 (granting the government's motion to transfer to the Eastern District of Texas because it was more convenient to litigate FTCA claims there).

B. Plaintiffs Have Failed to Exhaust Certain Administrative Remedies by Failing to Present Certain Claims to The Department and ICE Pre-Complaint

The FTCA mandates pre-lawsuit exhaustion in order to effect a waiver of sovereign immunity. *Benoit v. Dep't of Agric.*, 608 F.3d 17, 20 (D.C. Cir. 2010) (citations omitted); *see also McNeil v. United States*, 508 U.S. 106, 113 (1993) ("The FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies."). Claimants exhaust their administrative remedies by presenting an administrative FTCA claim within two years after accrual of the claim and then filing a complaint in district court within six months after the agency denies the claim. *See* 28 U.S.C. § 2401(b); *Schuler v. United States,* 628 F.2d 199, 201-02 (D.C. Cir. 1980); *Bryant v. Carlson,* 652 F. Supp. 1286, 1287 (D.D.C. 1987). Courts must dismiss tort claims against the United States when plaintiffs fail to comply with the administrative claim requirement. *See, e.g., McNeil,* 508 U.S. at 110-11; *Mac'Avoy v. Smithsonian Inst.,* 757 F. Supp. 60, 68-69 (D.D.C. 1991); *Liles v. United States*, 638 F. Supp. 963, 966-67 (D.D.C. 1986).

To exhaust their administrative remedies, Plaintiffs had to first file a "written statement sufficiently describing the injury to enable the agency to begin its own investigation, and . . . a sum-certain damages claim" and have their claims finally denied in writing. *Hoffman v. District of Columbia*, 643 F. Supp. 2d 132 (D.D.C. 2009) (omission in original) (quoting *GAF Corp. v. United States*, 818 F.2d 901, 919 (D.C. Cir. 1987)); *see also* 28 U.S.C. § 2675(a).

Here, however, certain aspects of Plaintiffs' claims have not been administratively exhausted and the only exhausted claims concern alleged misconduct by actors solely located

outside the District. Specifically, Plaintiffs allege that they were placed in solitary confinement cells previously occupied by quarantined individuals exposed to or infected by COVID-19. Am. Comp. ¶ 47. Plaintiffs were then "forced" into those cells without ICE officers cleaning or sanitizing them. *Id.* Within a few days, Plaintiffs development symptoms consistent with COVID-19. *Id.* ¶¶ 48-49. Although both Plaintiffs use this allegation to bolster their FTCA claims for negligent supervision (*id.* ¶ 124(f)), negligence (*id.* ¶ 131(g)), battery (*id.* ¶ 137(d)), and assault (*id.* ¶ 142(d)), a review of J.K.A.'s administrative claim shows that he did not bring a claim related to being put in the allegedly infected cells. *See* Ex. 1, J.K.A. SF-95. Accordingly, J.K.A. may not bolster his tort claims with that alleged conduct now.

Additionally, Plaintiffs' Amended Complaint speaks to alleged misconduct they faced after being transferred from Pine Prairie, Louisiana. *See* am. comp. ¶¶ 5 ("ICE agents cruelly shackled Plaintiffs and threatened them with violence to force them onto the deportation flight back to Cameroon."); 28 ("Both J.K.A. and T.B.F. were then forcibly deported to Cameroon on October 13, 2020, from the Fort Worth Alliance Airport."); 74-79 ("When ICE officials came, J.K.A. and the others started crying because they were terrified of being deported back to Cameroon. ICE officials responded by handcuffing J.K.A. and putting chains around his hands, legs, and waist."); 102 ("On October 13, 2020, Plaintiffs were restrained and forced onto a plane even though they expressed fears about facing harm if they were returned to Cameroon."); 103 ("For the approximately 16-hour flight back to Cameroon, Plaintiffs remained shackled in the five-point restraints they were placed in at the Fort Worth airport. They were handcuffed with chains around their waist and legs, making it impossible to move. As a result of ICE's negligent use of five-point restraints, Plaintiffs experienced and continue to experience significant physical and psychological harm."); 104 ("Since they were shackled in place for the duration of the flight, Plaintiffs were

unable to eat the bread and bottled water that they were provided. ICE refused to remove the restraints to allow Plaintiffs to eat. ICE also denied Plaintiffs and others access to the restroom on the airplane for the duration of the 16-hour flight. Plaintiffs witnessed other people ask ICE officers to use the restroom, only to be denied. Many of these people were forced to soil themselves in their seats."); 105 ("During the flight, J.K.A. experienced excruciating pain because the handcuffs and chains of the five-point restraints were so tight that they cut off the circulation to his wrists and ankles. He was left with deep cuts and bruises on his wrists and ankles from the chains and he experienced severe pain for several days after his deportation."); 106 ("T.B.F. was restrained during the flight and experienced pain in his legs and wrists. The chains made cuts and bruises on his body. T.B.F. also did not have his inhaler during the flight. He told the ICE officers on the plane about his medical need, and they ignored him. He had difficulty breathing and chest pains during the flight. He requested medical assistance during the flight and told the officers he was having difficulty breathing but again no one helped him. T.B.F. experienced severe emotional distress because of this denial of medical treatment.").

However, both Plaintiffs' administrative claims focus solely on alleged misconduct that occurred while at Pine Prairie in Louisiana. *See* Ex. 1, J.K.A. SF-95 ("[J.K.A.] was detained by [ICE] for approximately 14 months, from August 2019 through October 2020. During his detention, he suffered medical negligence and gross negligence and misconduct by ICE officials, primarily during and after participating in a peaceful protest in August 2020 at [Pine Prairie]"). During the 14 months in dentation, [J.K.A.] suffered severe medical negligence and negligent use of force."); Ex. 2, T.B.F. SF-95 ("[T.B.F.] was detained by [ICE] for approximately 14 months, from August 2019 through October 2020. During his detention, he suffered medical negligence and gross negligence and misconduct by ICE officials, primarily after participating in a peaceful

protest in August 2020 at Pine Prairie ICE Processing Center in Louisiana."). Neither administrative claim describes conduct post-transfer from Pine Prairie. And, critical to this instant motion, Plaintiffs wholly failed to raise any administrative claim predicated on conduct occurring in this District. *See* Exs. 1–2.

This fails to put Defendants on notice regarding the nature of Plaintiffs' claims that took place after their transfer from Pine Prairie and permit the agencies to investigate the claims so that they may first have the opportunity to remedy the issue before being hauled into court. As the D.C. Circuit explained in other contexts, exhaustion is necessary "so that [an] agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Oglesby v. Dep't of Army*, 920 F.2d 57, 61 (D.C. Cir. 1990); *see also Park v. Howard Univ.*, 71 F.3d 904, 907 (D.C. Cir. 1995) ("The administrative charge requirement serves the important purposes of giving the charged party notice of the claim and narrowing the issues for prompt adjudication and decision." (cleaned up)); *Hoeller v. Soc. Sec. Admin.*, 670 F. App'x 413, 414 (7th Cir. 2016) ("[E]xhaustion must be completed before initiating suit in order to realize the goal of allowing administrative remedies to relieve the burden of litigation on the courts[.]"); *Taylor v. Appleton*, 30 F.3d 1365, 1369 (11th Cir. 1994) ("Allowing a FOIA requester to proceed immediately to court to challenge an agency's initial response would cut off the agency's power to correct or rethink initial misjudgments or errors."). More fundamentally, the FTCA requires exhaustion of claims in order to effect the waiver of sovereign immunity. *McNeil*, 508 U.S. at 110-11, 113. Defendants have not waived sovereign immunity as to claims by Plaintiffs for conduct that occurred outside Pine Prairie, Louisiana or by actors in this District because Plaintiffs

failed to exhaust their administrative remedies. Additionally, Defendants have not waived sovereign immunity as to J.K.A.'s allegation that he was detained in an infected cell.

C. Plaintiffs' D.C.-Based Torts Fail for Several Additional Reasons

Beyond the exhaustion grounds, Plaintiffs fail to plausibly allege any cognizable tort claims based on acts or omissions that occurred within this District for several additional reasons.

First, Plaintiffs have not adequately pleaded that the United States has waived sovereign immunity regarding any intentional torts allegedly committed by tortfeasors in this District. The United States has not consented to be sued for intentional torts like abuse of process and intentional infliction of emotional distress unless committed by a federal law enforcement officer acting within the scope of his employment. *See* 28 U.S.C. § 2680(h). "[T]he United States is . . . immune not just for claims enumerated in 28 U.S.C. § 2680(h), but also for any 'claim arising out of' these claims." *Peter B. v. United States*, 579 F. Supp. 78, 82-83 (D.D.C. 2008) (quoting *Kugel v. United States*, 947 F. 2d 1504, 1507 (D.C. Cir. 1991)). For purposes of determining "the essential nature of the cause of action," it is necessary to look at the "government conduct that is alleged to have caused the injury[.]" *Edmonds v. United States*, 436 F. Supp. 2d 28, 35-36 (D.D.C. 2006). Unless the law enforcement proviso of section 2680(h) applies, Plaintiffs' abuse of process and intentional infliction of emotional distress claims are barred under the doctrine of sovereign immunity. *Chien v. United States*, Civ. A. No. 17-2334 (CKK), 2019 WL 4602119, at *9 (D.D.C. Sept. 23, 2019) (holding that there is no waiver of immunity with regard to claims of fraud or abuse of process); *Charles v. United States*, Civ. A. No. 21-0864 (CKK), 2022 WL 558181, at *4 (D.D.C. Feb. 24, 2022) ("As defamation and intentional infliction of emotional distress are intentional torts arising from actions for which the FTCA does not waive sovereign immunity, Plaintiff cannot maintain an FTCA action against the United States for his defamation claim or for an IIED claim.").

Here, Plaintiffs do not allege that any alleged tortious conduct in the District of Columbia that may give rise to abuse of process and intentional infliction of emotional distress was committed by a federal law enforcement officer acting within the scope of his employment. *See* 28 U.S.C. § 2680(h). At most, Plaintiffs allege that high-level officers of the Department and ICE that were District of Columbia-based were on notice of alleged abuses of individuals in ICE custody, yet failed to remediate those abuses, scheduled the deportation flights with a Special High Risk Charter designation and coordinated other flight logistics, responded to inquiries from members of Congress regarding the Pine Prairie hunger strike, and monitored press coverage. Am. Compl. ¶¶ 6, 18, 97-100. None of these allegations suggest conduct by D.C.-based federal officials that were carrying out investigative or law enforcement officer functions. *Menifee v. Dep't of Interior*, 931 F. Supp. 2d 149, 162 (D.D.C. 2013) (employee's did "not authorize him to conduct searches, seize evidence, or make arrests, meaning that he is not an investigative or law enforcement officer as defined within the relevant provision of the FTCA" (cleaned up)); *see also Cao v. United States*, 156 F. App'x. 48, 50 (9th Cir.2005) (dismissing malicious prosecution claim because neither agency attorneys nor immigration judge involved in removal proceedings were investigative or law enforcement officers within the meaning of § 2680(h)).

Second, Plaintiffs cannot plead a cognizable claim under District of Columbia law due to a lack of judicial process here. Under District of Columbia law, "[t]o establish abuse of process, a plaintiff must show 'a perversion of the judicial process and achievement of some end not anticipated in the regular prosecution of the charge.'" *Whelan v. Abell*, 953 F.2d 663, 670 (D.C. Cir. 1992) (citing *Morowitz v. Marvel*, 423 A.2d 196, 198 (D.C. 1980)). "[T]he D.C. Court of Appeals decided that simply initiating a legal proceeding with an ulterior motive is in and of itself

insufficient to give rise to an abuse of process claim[.]" *Page v. Comey*, 628 F. Supp. 3d 103, 132 n.20 (D.D.C. 2022) (citing *Bown v. Hamilton*, 601 A.2d 1074, 1080 (D.C. 1992)).

Here, Plaintiffs fail to allege that any D.C.-based federal employee has perverted some judicial process in furtherance of ends not anticipated in the regular prosecution of the charge. As discussed above, at most, Plaintiffs allege that D.C.-based high-ranking Department or ICE officials failed to remedy known issues within ICE facilities outside this District and coordinated logistics for the departure flights. Am. Compl. ¶¶ 6, 18, 97-100. There is no plausible allegation that those alleged tortfeasors abused judicial process. Indeed, at no point in Plaintiffs' Amended Complaint do Plaintiffs allege that Plaintiffs were improperly deported despite qualifying for asylum. *See generally* Am. Compl. Even if this were the case, however, the lack of any D.C.-based federal employee or official abusing a judicial proceeding would be fatal to such a claim. *Wagdy v. Sullivan*, Civ. A. No. 16-2164 (TJK), 2018 WL 2304785, at *3 (D.D.C. May 18, 2018) (dismissing abuse of process claim under District of Columbia law for lack of a judicial process that had been abused).

Third, Plaintiffs fail to allege a cognizable claim of intentional infliction of emotional distress under District of Columbia law based on D.C.-based conduct by federal employee or official—even if this Court finds that sovereign immunity has been waived as to such a claim. To state a claim under District of Columbia law for intentional infliction of emotional distress, a plaintiff must show "(1) extreme and outrageous conduct on the part of the defendant which (2) either intentionally or recklessly (3) causes the plaintiff severe emotional distress." *Kassem v. Wash. Hosp. Ctr.*, 513 F.3d 251, 255 (D.C. Cir. 2008). "Liability will not be imposed for mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *District of Columbia v. Tulin*, 994 A.2d 788, 800 (D.C. 2010). "As to the first element, '[l]iability has been

found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Kotsch v. District of Columbia*, 924 A.2d 1040, 1045–46 (D.C. 2007) (quoting Restatement (Second) of Torts § 46, cmt. d (1965)). Notably, in the context of excessive force claims, "[t]he 'extreme and outrageous' standard for intentional infliction of emotional distress is different from, and more exacting than, the 'reasonableness' standard used for evaluating claims of excessive force." *Id.* at 1046 n.5. Here, none of Plaintiffs' allegations against D.C.-based federal employee or official of the Department or ICE—failing to remediate known abuses, scheduling deportations flights and coordinating other flight logistics, responding to politicians' inquiries, and monitoring press coverage—constitute "extreme and outrageous" conduct understood under District of Columbia law. Thus, this is an additional reason for this Court to dismiss Plaintiffs' claims of intentional infliction of emotional distress under District of Columbia law against D.C.-based actors.

Finally, Plaintiffs fail to plausibly allege a negligent supervision claim against any D.C.-based high-ranking federal official. Under District of Columbia law, the tort of negligent supervision is "derived from this standard negligence tort, [and] recognizes that an employer owes specific duties to third persons based on the conduct of its employees." *Griffin v. Acacia Life Ins. Co.*, 925 A.2d 564, 575 (D.C. 2007). Here, Plaintiffs fail to allege that any D.C.-based federal employee or official breached a duty of care owed to them. Plaintiffs conclude that "[t]he government's employees in supervisory roles have a duty to properly supervise detention officers and to oversee their treatment of immigrants in their custody." Am. Compl. ¶ 123. This alleged failure to "properly supervise detention officers" or to "oversee their treatment of immigrants in their custody" is an act or omission that occurred where the subordinate employees allegedly

engaged in tortious behavior—the Western District of Louisiana. *Id.* ¶ 124. This conduct all occurred outside this District. Accordingly, Plaintiffs have failed to plausibly allege that any D.C.-based employee of the Department or ICE negligently supervised the conduct complained of in this lawsuit.

Elsewhere within the Amended Complaint, Plaintiffs allege that "[Department] and ICE officials in the District of Columbia directly oversaw conditions at the detention facilities[.]" *Id.* ¶ 18. This allegation, however, is no more than a legal conclusion, which is not entitled to an assumption of truth. *Iqbal*, 556 U.S. at 678. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* at 679. Plaintiffs fail to allege any plausible *facts*—as opposed to legal conclusions—that the Department or ICE employees located in the District of Columbia were responsible for daily supervision of the conduct occurring within ICE facilities in Louisiana. Rather, the only plausible inference is that those responsibilities would not be vested in agency headquarters hundreds or thousands of miles away but rather within the facilities themselves. *Cf. Macharia v. United States*, 238 F. Supp. 2d 13, 27 (D.D.C. 2002) (observing, in the context of applying the FTCA's foreign country exception, that the training of local guards responsible for providing security at an embassy would have occurred at the embassy itself and not in the District of Columbia), *aff'd*, 334 F.3d 61 (D.C. Cir. 2003). Plaintiffs thus fail to plausibly allege a negligent supervision claim predicated on acts or omissions that occurred within this District.

Thus, Plaintiffs fail to allege any cognizable claim against Defendants predicated on allegedly tortious acts or omissions occurring within the District of Columbia. Accordingly, should this Court reach the issue of dismissal prior to analyzing Defendants' motion to transfer,

Defendants respectfully request that the Court dismiss Plaintiffs' tort claims to the extent they are predicated on acts or omissions within this District.

D. The Adequate Remedy Bar Under the APA Forecloses Plaintiffs' *Accardi* Doctrine Claims

Counts VII and VII, although styled as claims under the APA and the *Accardi* doctrine, are merely recast variations of Plaintiffs' tort claims. Count VII alleges APA and an *Accardi* doctrine violation stemming from the alleged failure of the Department and ICE to comply with its own regulations for maintaining the confidentiality of asylum application materials, whereas Count VIII alleges APA and an *Accardi* doctrine violation stemming from the alleged failure to comply with the Department and ICE use of force policies. Regardless of the form that Plaintiffs have pleaded, the substance of these claims echo their already-pleaded FTCA claims for, *inter alia*, abuse of process, intentional infliction of emotional distress, assault, and battery. These claims should be dismissed because Plaintiffs have adequate remedies under law pursuant to the FTCA.

"Although the APA was enacted to 'provid[e] a broad spectrum of judicial review of agency action,' such review is only permissible if 'there is no other adequate remedy' at law." *Chaverra v. ICE*, Civ. A. No. 18-0289 (JEB), 2018 WL 4762259, at *3 (D.D.C. Oct. 2, 2018) (quoting *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988), and 5 U.S.C. § 704). "The relevant question under the APA, then, is not whether private lawsuits against the third-party wrongdoer are as effective as an APA lawsuit against the regulating agency, but whether the private suit remedy provided by Congress is adequate." *Garcia v. Vilsack*, 563 F.3d 519, 525 (D.C. Cir. 2009). "[I]n determining whether an adequate remedy exists, [the D.C. Circuit] has focused on whether a statute provides an independent cause of action or an alternative review procedure." *El Rio Santa Cruz Neighborhood Health Ctr., Inc. v. Dep't of Health & Hum. Servs.*, 396 F.3d 1265, 1270 (D.C. Cir. 2005).

The alleged final agency action in this case is Defendants' failure to comply with their own policies. *See* Am. Comp. ¶¶ 151, 158. Plaintiffs challenged these alleged failures under the FTCA and could have brought additional FTCA claims (*e.g.*, incidents that occurred post-transfer from Pine Prairie) in this suit, had they timely exhausted their administrative remedies. Specifically, Plaintiffs have asserted FTCA claims predicated on the Department and ICE's alleged failure to comply with its own regulations and policies governing the use of force. *See id.* ¶¶ 137-42. They also allege as a basis for their negligent supervision claim that supervisors' negligence led to "[t]he blatant disregard for ICE's own internal policies and regulations," including those regarding the confidentiality of Plaintiffs' asylum paperwork. *Id.* ¶¶ 88, 124. Because the FTCA forecloses Plaintiffs' "cause of action under the APA," *Reliable Automatic Sprinkler Co., Inc., v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003), the Court should dismiss Plaintiffs' APA claims under Rule 12(b)(6). *See Fletcher v. Dep't of Just.*, 17 F. Supp. 3d 89 (D.D.C. 2014). Accordingly, Counts VII and VIII should be dismissed because the FTCA provides an alternative and adequate remedy.

* * *

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant Defendants' motion and either transfer Plaintiffs' case to the Western District of Louisiana or dismiss the action.

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Respectfully submitted,

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