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8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11 OAKLAND DIVISION

12
 13 **RIANA BUFFIN AND CRYSTAL
 PATTERSON,**

14 Plaintiffs,

15 v.

16
 17 **CITY AND COUNTY OF SAN
 FRANCISCO; et al.,**

18 Defendants.

4:15-cv-04959-YGR

**DEFENDANT ATTORNEY GENERAL
 KAMALA HARRIS' NOTICE OF
 MOTION AND MOTION TO DISMISS
 PLAINTIFFS' THIRD AMENDED
 COMPLAINT; MEMORANDUM OF
 POINTS AND AUTHORITIES**

Date: August 16, 2016
 Time: 2:00 p.m.
 Courtroom: 1, Fourth Floor
 Judge: Honorable Yvonne Gonzalez
 Rogers
 Action Filed: October 28, 2015

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1 TO PLAINTIFFS RIANA BUFFIN AND CRYSTAL PATTERSON:

2 TAKE NOTICE THAT on August 16, 2016 at 2:00 p.m., or as soon as this motion may be
 3 heard, in the United States District Court for the Northern District of California, Oakland
 4 Division, Defendant Attorney General Kamala Harris will move to dismiss the claims against her
 5 under Federal Rule of Civil Procedure 12(b)(6). Initially, Plaintiffs' claims against Defendant
 6 Harris are duplicative of the same claims raised in another action, pending in the United States
 7 District Court for the Eastern District of California, *Welchen v. County of Sacramento*, No. 16-cv-
 8 185-TLN (E.D. Cal.). Moreover, Attorney General Harris is immune from suit in federal court,
 9 and, in any event, Plaintiffs fail to state a claim upon which relief can be granted against her.

10 This motion is based on the Third Amended Complaint, the documents attached to the
 11 complaint, the concurrently filed request for judicial notice, and the attached memorandum of
 12 points and authorities.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **INTRODUCTION**

15 Plaintiffs Riana Buffin and Crystal Patterson have been charged in ongoing state criminal
 16 proceedings, and were unable to post bail. In this civil rights action under 42 U.S.C. § 1983, they
 17 challenge the City and County of San Francisco's enforcement of a bail schedule, claiming that it
 18 violates their rights under the Equal Protection and Due Process Clauses. They further claim that
 19 the county "Sheriff and the Attorney General enforce unconstitutional state laws" requiring the
 20 use of money bail, irrespective of an arrestee's ability to pay. (ECF No. 71 at 3.)

21 Because Plaintiffs' claims against the Attorney General are duplicative of the claims raised
 22 in *Welchen*, they should be dismissed in their entirety. Alternatively, the Attorney General is
 23 immune from suit in federal court, and Plaintiffs fail to state a claim. Thus, this Court should
 24 dismiss the claims against the Attorney General, with prejudice.

25 **PROCEDURAL HISTORY**

26 Plaintiffs Riana Buffin and Crystal Patterson initially filed this action on October 28, 2015.
 27 (ECF No. 1.) Defendants City and County of San Francisco and the State of California moved to
 28 dismiss the action, also opposing class action certification and injunctive relief. The Court held a

1 hearing on January 26, 2016, addressed these motions and indicated that it would dismiss the
2 claims against the State. An order to that effect issued on February 1, 2016. (ECF No. 55.)

3 On January 29, 2016, three days after this Court held a hearing on the motion to dismiss, an
4 action was brought in the United States District Court for the Eastern District of California
5 against the Attorney General, raising the same Due Process and Equal Protection challenges to
6 California bail law. (Def.'s Req. for Jud. Not., Exh. 1 [Class Action Complaint].) Like this case,
7 the *Welchen* litigation was filed by Equal Justice Under the Law, the same attorneys litigating this
8 action. (*Id.*) Like this case, the *Welchen* action claims that the Attorney General, as the chief law
9 enforcement officer in California, "is charged with the enforcement of California's laws," and
10 that she requires the enactment of a bail schedule under section 1269b, "thereby creating a
11 wealth-based detention scheme." (*Id.* at 4 ¶ 13.) Like this action, that case seeks declaratory and
12 injunctive relief, as well as class certification. (*Id.* at 13-14.) Both defendants moved to dismiss
13 the action, and that motion is currently under submission, pending before the Honorable Troy
14 Nunley.

15 In the meantime, Plaintiffs in this action filed an amended complaint on February 25, 2016,
16 which contained no claims against the State of California or its Attorney General. (ECF No. 58.)
17 On March 17, 2016, Plaintiffs filed a second amended complaint, which also contained no claims
18 against the State of California or its Attorney General (ECF No. 62.) In response to the City's
19 motion to dismiss the SAC, Plaintiffs sought leave to file a Third Amended Complaint, which the
20 Court authorized. (ECF No. 70.) The TAC, filed on May 27, 2016, added claims against the
21 Sheriff of San Francisco, and the Attorney General, as described below. (ECF No. 71.)

22 **FACTS ALLEGED**

23 Plaintiffs Riana Buffin and Crystal Patterson claim that Defendants City and County of San
24 Francisco, the County's Sheriff, and the Attorney General violate their due process and equal
25 protection rights through the City's bail procedures. (ECF No. 71 at 1-3.) Specifically, they
26 claim that they were arrested by the City, and were told that they would be released pending their
27 initial appearances if they paid money. (*Id.* at 6-8 ¶¶ 27-39.) They are allegedly indigent, and
28 cannot afford to pay these fees. (*Id.*) This treatment is allegedly caused by provisions of

1 California’s Penal Code “that are enforced by the Sheriff and the Attorney General,” and by the
2 policies and practices of the Sheriff and the City. (*Id.* at 11 ¶ 55.)

3 Plaintiffs complain about various purported policies and practices of the Sheriff and the
4 City, none of which bear on the claims against the Attorney General. (*Id.* ¶¶ 56-60.) To the
5 contrary, they contend that “No provision of California law expressly prohibits the Sheriff and the
6 Sheriff’s Department from releasing indigent arrestees from jail even if they have not paid their
7 money bail amount.” (*Id.* at 11-12 ¶ 61.) Nevertheless, they challenge California Penal Code
8 section 1269b(b), claiming that it violates the Equal Protection and Due Process clauses because
9 it “direct[s] that arrestees’ money bail amounts [be] set without regard to ability to pay.” (*Id.* at
10 12 ¶ 66.) Section 1269b allows release of an individual on bail, and provides that superior court
11 judges in each county should adopt a uniform bail schedule. Plaintiffs further claim, without
12 citing any other provisions of state law, that any provision “that require[s] the use of secured
13 money bail to detain individuals due to their inability to pay are unconstitutional because they
14 violate the principle that no person should have to spend a single day in jail simply because she
15 cannot make a monetary payment.” (*Id.* at ¶ 65.)

16 Plaintiffs claim that the Attorney General is liable under federal law “for enforcing
17 California law in supervising the Sheriff and requiring imposition of money bail irrespective of an
18 arrestee’s ability to pay.” (ECF 71 at 12-13 ¶ 68.) They further claim that the Sheriff and the
19 City are liable “for the policy and practice of detaining all individuals who do not pay money bail
20 while releasing those individuals who do pay money bail.” (ECF 71 at 13 ¶ 69.) Plaintiffs seek
21 injunctive and declaratory relief, damages, and attorneys’ fees. (*Id.* at 20-21.)

22 LEGAL STANDARD

23 Under Federal Rule of Civil Procedure 12(b)(6), a complaint should be dismissed if it fails
24 to state a claim upon which relief can be granted. Although a complaint attacked by a motion to
25 dismiss does not need “detailed factual allegations,” it must contain “more than labels and
26 conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell*
27 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation omitted). A court should
28

1 dismiss a complaint “if it fails to plead enough facts to state a claim to relief that is plausible in its
2 face.” *In re Cutera Securities Litig.*, 610 F.3d 1103, 1107 (9th Cir. 2010) (citation omitted).

3 If a complaint’s defects are not curable, the court should dismiss without leave to amend.
4 *See Coakley v. Murphy*, 884 F.2d 1218, 1222 (9th Cir. 1989).

5 ARGUMENT

6 I. THE COURT SHOULD DISMISS, OR HOLD IN ABEYANCE, THE DUPLICATIVE CLAIMS 7 AGAINST THE ATTORNEY GENERAL.

8 Initially, this Court should dismiss, or alternatively stay, Plaintiffs’ claims against the
9 Attorney General because they are duplicative of identical claims pending in another federal
10 court.

11 Federal courts avoid entertaining duplicative lawsuits that involve the same issues in
12 separate actions. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982);
13 *see also Sensormatic Sec. Corp., v. Sensormatic Electronics Corp.*, 452 F. Supp. 2d 621, 626 (D.
14 Md. 2006) (discussing “claim splitting” aspect of res judicata doctrine). “Normally[,] sound
15 judicial administration would indicate that when two identical actions are filed in courts of
16 concurrent jurisdiction, the court which first acquired jurisdiction should try the lawsuit and no
17 purpose would be served by proceeding with a second action.” *Pacesetter Systems, Inc.*, 678 F.2d
18 at 95. This first-filed doctrine “is designed to avoid placing an unnecessary burden on the federal
19 judiciary, and to avoid the embarrassment of conflicting judgments.” *Church of Scientology of*
20 *Cal. v. U.S. Dept. of Army*, 611 F.2d 738, 750 (9th Cir. 1979). In such situations, a district court
21 may stay, transfer, or dismiss a duplicative later-filed action. *Alltrade, Inc. v. Uniweld Products,*
22 *Inc.*, 946 F.2d 622, 623 (9th Cir. 1991). The first-filed doctrine requires chronology, identity of
23 parties, and similarity of issues. *Intersearch Worldwide, Ltd. v. Intersearch Group, Inc.*, 544 F.
24 Supp. 2d. 949, 957 (N.D. Cal. 2008).

25 Here, as noted above, the claims against the Attorney General for her purported role in
26 enforcing section 1969b were filed in the *Welchen* case on January 29, 2016. (Def.’s Req. for
27 Jud. Not., Exh. 1 [Class Action Complaint].) Although Plaintiffs filed this action on November 2,
28 2015, they did not raise any claims against the Attorney General until they filed the Third

1 Amended Complaint on May 27, 2016. Accordingly, the *Welchen* action predated the claims
2 against the Attorney General here. Moreover, the issues raised in both actions meet the similarity
3 requirement. Both actions allege that the Attorney General, as the chief law enforcement officer
4 in California, has oversight to enforce section 1969b, and that the alleged requirement of a money
5 bail schedule violates the equal protection and due process rights of indigent arrestees.

6 Although the named plaintiffs are not the same for both actions—the *Welchen* case was
7 nominally filed by Gary Welchen, while this case was nominally filed by Riana Buffin and
8 Crystal Patterson— courts have held that there is no requirement of “strict identity of parties for
9 the first-to-file rule to apply.” *British Telecommunications Plc v. McDonnell Douglas Corp.*, No.
10 C-93-0677-MHP, 1993 WL 149860, at *4 (N.D. Cal. May 3, 1993). Here, there is no dispute that
11 both actions were filed and are being prosecuted by the same attorneys, from the Equal Justice
12 Under Law organization. These attorneys have brought similar claims in various jurisdictions
13 throughout the country. (ECF No. 7 at 14-15 [“Equal Justice Under Law has also been the lead
14 attorney in several recent constitutional civil rights class action lawsuits raising similar issues.”].)
15 Thus, the parties in the two actions are “sufficiently identical” for purposes of the first-filed rule.
16 *Intersearch Worldwide Ltd.*, 544 F. Supp. 2d at 958 & fn.6 (noting that the first-filed rule does
17 not require “exact identity”); *Guthy-Renker Fitness, LLC v. Icon Health & Fitness, Inc.*, 179
18 F.R.D. 264, 270 (C.D. Cal. 1998) (assessing “similarity of the parties” under the first-filed rule).
19 The same result obtains under the claim-splitting doctrine of res judicata, which bars a second suit
20 “if the claim involves the same parties *or their privies* and ‘arises out of the same transaction or
21 series of transactions’ as the first claim.” *Sensormatic Sec. Corp.*, 452 F. Supp. 2d at 626
22 (emphasis added).

23 **II. THE ATTORNEY GENERAL IS IMMUNE FROM SUIT IN FEDERAL COURT, AND**
24 **THEREFORE THE COURT SHOULD DISMISS THE CLAIMS AGAINST HER.**

25 Alternatively, Plaintiffs fail to state a claim against the Attorney General because she is
26 immune from suit.

27 The Eleventh Amendment provides, in relevant part, that “The judicial power of the United
28 States shall not be construed to extend to any suit in law or equity, commenced or prosecuted

1 against one of the United States by Citizens of another State.” The Supreme Court has interpreted
2 this Amendment to apply to suits by citizens against their own states. *Bd. of Trs. of the Univ. of*
3 *Ala. v. Garrett*, 531 U.S. 356, 363 (2001). “The ultimate guarantee of the Eleventh Amendment
4 is that nonconsenting States may not be sued by private individuals in federal court.” *Id.* Thus, it
5 “erects a general bar against federal lawsuits brought against a state.” *Coal. to Defend*
6 *Affirmative Action v. Brown*, 674 F.3d 1128, 1133 (9th Cir. 2012) (quoting *Porter v. Jones*, 319
7 F.3d 483, 491 (9th Cir. 2003)).

8 Although the Eleventh Amendment does not bar actions for prospective declaratory or
9 injunctive relief against state officers in their official capacities, a party raising such a claim must
10 show that the state official sued has “some connection with the enforcement of the [challenged]
11 act.” *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012) (quoting
12 *Ex Parte Young*, 209 U.S. 123, 157 (1908)). This connection “must be fairly direct; a generalized
13 duty to enforce state law or general supervisory power over the persons responsible for enforcing
14 the challenged provision will not subject an official to suit.” *Id.* (quoting *L.A. Cty. Bar Ass’n v.*
15 *Eu*, 979 F.2d 697, 704 (9th Cir. 1992)). The *Ex Parte Young* exception is not “an indiscriminate
16 exception” to sovereign immunity, and thus a “plaintiff may not challenge any statute’s
17 constitutionality simply by naming some random state officer, rather than the state itself, as the
18 defendant.” *Shalaby v. State of Cal.*, No. C-03-01922-CRB, 2003 WL 21556930, at *4 (N.D.
19 Cal. July 3, 2003). For example, the Ninth Circuit has held that the governor of California is
20 immune where his only connection to the challenged law was his general duty to enforce
21 California law. *Association des Eleveurs de Canards et D’Oies du Quebec v. Harris*, 729 F.3d
22 937, 943 (9th Cir. 2013).

23 Plaintiffs’ complaint does not allege that the Attorney General has any connection with
24 enforcing California Penal Code section 1269b, the challenged provision. In fact, the only
25 allegations regarding the Attorney General in the Complaint are that she “is charged with the
26 enforcement of California’s laws,” allegedly “requires the Sheriff to impose bail pursuant to a bail
27 schedule,” supervises county sheriffs, and can potentially prosecute criminal violations of the bail
28 law. (ECF No. 71 at 6 ¶¶ 23-25.) There is no allegation that the Attorney General is involved in

1 overseeing the City's adoption of a bail schedule, its enforcement of it, or any attempts to modify
2 it. (*See generally*, ECF No. 71.)

3 As other courts have held, lawsuits seeking a declaration that a particular state statute is
4 unconstitutional or injunctive relief from state law do not suffice to take the case out of sovereign
5 immunity. In *Bolbol v. Brown*, 120 F. Supp. 3d 1010 (N.D. Cal. 2015), the plaintiff sued the
6 California Governor and its Attorney General, seeking a declaration that certain provisions of the
7 California Workplace Violence Safety Act were unconstitutional. The court concluded that these
8 claims were barred by sovereign immunity because "Plaintiffs' requested declaration and
9 injunctive relief are targeted at the application of [the state statute] in the State of California
10 generally, not by the particular defendants in this case." *Id.* at 1017. Thus, these claims sought
11 "relief that is directed against the State of California, and such claims are barred under the
12 Eleventh Amendment." *Id.*; *see also Lee v. State of Or.*, 891 F. Supp. 1421, 1429 (D. Or. 1995)
13 (dismissing claim against state Attorney General challenging state Death With Dignity Act, as
14 barred by Eleventh Amendment). Under Ninth Circuit caselaw, Plaintiffs' generic allegations
15 that the Attorney General has a general duty to enforce state law does not overcome Eleventh
16 Amendment immunity. This Court should dismiss without leave to amend.

17 Plaintiffs' allegation that the Attorney General supervises county sheriffs and can prosecute
18 violations of the bail law does not change this result. (ECF 71 at 6 ¶¶ 24-25.) Assuming the
19 accuracy of these allegations, Plaintiffs' suit is not aimed at the Attorney General's role in
20 prosecuting bail law violations. Although the Eleventh Amendment does not bar actions for
21 prospective declaratory or injunctive relief against state officers in their official capacities, a party
22 raising such a claim must show that the state official sued has "some connection with the
23 enforcement of the [challenged] act." *Coal. to Defend Affirmative Action*, 674 F.3d at 1134.
24 Courts must ask "whether there is the requisite causal connection between [state officials']
25 responsibilities and any injury that the plaintiffs might suffer, such that relief against the
26 defendants will provide redress." *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908,
27 919 (9th Cir. 2004). In *Nichols v. Brown*, 945 F. Supp. 2d 1079, 1105-06 (C.D. Cal. 2013), the
28 plaintiff challenged a California statute banning the carrying of a loaded firearm in public,

1 including a provision authorizing warrantless firearm searches. The district court held that the
2 Attorney General was a proper defendant, given her “particularly broad responsibility and
3 expansive powers in the enforcement of criminal law.” *Id.* at 1106. Likewise, the Ninth Circuit
4 has held that the Attorney General was not immune in a case challenging a state statute barring
5 force feeding of certain animals because violations the statute could be prosecuted by district
6 attorneys, and the Attorney General had express authority to prosecute by stepping into the shoes
7 of the district attorney. *Ass’n des Eleveurs de Canards et d’Oies du Quebec*, 729 F.3d at 944-45;
8 *Bolbol*, 120 F. Supp. 3d at 1019. By contrast, Plaintiffs do not allege that the Attorney General
9 has utilized her supervisory powers over the sheriffs or district attorneys in any way to impose the
10 purported “wealth based system” underlying their claim—indeed, they contend that “state law
11 does not expressly bind the decision-making authority of the Sheriff and Sheriff’s Department
12 with regard to release and detention decisions.” (ECF No. 71 at 5 ¶ 18.) Nor do Plaintiffs claim
13 that the Attorney General took any role in their bail proceedings, or otherwise used her authority
14 to prosecute the violation of any bail provision in their case. In short, Plaintiffs’ allegations fall
15 short of showing the requisite causal connection between the Attorney General’s “responsibilities
16 and any injury” that they might suffer.

17 **III. PLAINTIFFS FAIL TO STATE A CLAIM UNDER THE EQUAL PROTECTION AND DUE**
18 **PROCESS CLAUSES.**

19 Plaintiffs’ allegation that the bail system discriminates based on wealth is belied by the
20 statutory scheme. State law allows for bail in noncapital offenses, and requires that county bail
21 systems set bail amounts based on the seriousness of the offense at issue. Cal. Pen. Code § 1269b
22 (c)-(e). In assessing the seriousness of the offense, superior court judges must “assign an
23 additional amount of required bail for each aggravating or enhancing factor chargeable in the
24 complaint.” *Id.* § 1269b(e). State law also allows for release of criminal defendants on their own
25 recognizance. *Id.* § 1270(a). The Ninth Circuit has noted that “California law requires that non-
26 capital defendants be offered bail,” and that state courts “may neither deny bail nor set it in a sum
27 that is the functional equivalent of no bail.” *Galen v. Cty. Of Los Angeles*, 477 F.3d 652, 661 (9th
28 Cir. 2007) (citing California Penal Code).

1 San Francisco's bail schedule reflects these statutory requirements, with preset bail amounts
2 tied to the seriousness of the offense. For example, the highest bail amounts correspond to drug
3 offenses involving the largest amounts of drugs, aggravated mayhem, forcible sex offenses, and
4 destroying property while committing a felony. (ECF No. 1-1 at 6-9.) The lowest bail amounts
5 are for non-violent offenses, like marijuana possession, marijuana sale, and sex offenses without
6 the use of force or other aggravating factors. (*Id.* at 7, 4.)

7 Against this backdrop, Plaintiffs cannot state a claim under equal protection or due process.

8 **A. Plaintiffs' Equal Protection Claim Fails Because Wealth Is Not a Suspect**
9 **Class.**

10 Federal courts have consistently held that "wealth is not a suspect category in Equal
11 Protection jurisprudence." *N.A.A.C.P. Los Angeles Branch v. Jones*, 131 F.3d 1317, 1321 (9th
12 Cir. 1997) (citing *Harris v. McRae*, 448 U.S. 297, 322-23 (1980)); *San Antonio Independent*
13 *School Dist. v. Rodriguez*, 411 U.S. 1, 24 (1973) ("[A]t least where wealth is involved, the Equal
14 Protection Clause does not require absolute equality or precisely equal advantages."). "The
15 guarantee of equal protection . . . is not a source of substantive rights or liberties, but rather a right
16 to be free from invidious discrimination in statutory classifications and other governmental
17 activity." *Harris*, 448 U.S. at 322. Thus, "where a statutory classification does not itself impinge
18 on a right or liberty protected by the Constitution, the validity of classification must be sustained
19 unless 'the classification rests on grounds wholly irrelevant to the achievement of [any legitimate
20 governmental] objective.'" *Id.* (bracketed language in original; citation omitted).

21 Because Plaintiffs cannot show that the bail system classifies individuals based on a suspect
22 classification, Penal Code section 1269b and the bail system are subject to rational basis review.
23 *N.A.A.C.P. Los Angeles Branch*, 131 F.3d at 1324. As explained above, the bail system does not
24 make classifications based on wealth, but instead on the seriousness of criminal offenses. To the
25 extent Plaintiffs argue that the practical effect of the bail schedule impacts indigent individuals,
26 the caselaw makes clear that the state is not constitutionally required to remove obstacles not of
27 its own creation. *See Maher v. Roe*, 432 U.S. at 470-71; *Harris*, 448 U.S. at 317.

1 Under rational basis review, Penal Code section 1269b and the bail system pass muster. As
2 the Supreme Court has held in addressing a challenge to the federal bail process under the
3 Excessive Bail Clause, “the Government’s regulatory interest in community safety can, in
4 appropriate circumstances, outweigh an individual’s liberty interest.” *U.S. v. Salerno*, 481 U.S.
5 739, 748 (1987). “While we agree that a primary function of bail is to safeguard the courts’ role
6 in adjudicating the guilt or innocence of defendants, we reject the proposition that the Eighth
7 Amendment categorically prohibits the government from pursuing other admittedly compelling
8 interests through regulation of pretrial release.” *Id.* at 753. And the Ninth Circuit has likewise
9 rejected challenges to state bail procedures. *Galen v. County of Los Angeles*, 477 F.3d 652, 660
10 (9th Cir. 2007) (“*Salerno* makes clear that the Excessive Bail Clause does not bar the state from
11 detaining even noncapital arrestees without bail, or from considering interests other than flight
12 prevention in setting bail.”). In short, “The mere fact that [a person] may not have been able to
13 pay the bail does not make it excessive.” *White v. Wilson*, 399 F.2d 596, 598 (9th Cir. 1968).¹

14 **B. Under Either Variation of Due Process, Plaintiffs’ Complaint Does Not**
15 **State a Claim.**

16 Nor do Plaintiffs state a claim under the Due Process Clause. Although the complaint does
17 not specify whether Plaintiffs bring a procedural or substantive due process claim, they cannot
18 state a claim for substantive due process. “As a general matter, the Court has always been
19 reluctant to expand the concept of substantive due process,” and thus the protections of this clause
20 “have for the most part been accorded to matters relating to marriage, family, procreation, and the
21 right to bodily integrity.” *Albright v. Oliver*, 510 U.S. 266, 272 (1994).

22 Moreover, the Supreme Court has taken a deferential approach to state criminal laws when
23 they are challenged under the Due Process Clause. *Medina v. California*, 505 U.S. 437, 443
24 (1992) (noting that “beyond the specific guarantees enumerated in the Bill of Rights, the Due

25 _____
26 ¹ The Ninth Circuit recently struck an Arizona law that categorically denied bail to an
27 entire class of individuals charged with non-capital offenses, namely undocumented immigrants.
28 *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014) (en banc). But the bail system at issue
here does not categorically deny bail to any group of individuals; to the contrary, it allows any
individual (other than those charged with capital crimes or other serious offenses) to obtain bail.

1 Process Clause has limited operation”) (internal citation omitted). “The Bill of Rights speaks in
 2 explicit terms to many aspects of criminal procedure, and the expansion of those constitutional
 3 guarantees under the open-ended rubric of the Due Process Clause invites undue interference with
 4 both considered legislative judgments and the careful balance that the Constitution strikes
 5 between liberty and order.” *Id.* Under this test, a state criminal law does not violate due process
 6 unless “it offends some principle of justice so rooted in the traditions and conscience of our
 7 people as to be ranked as fundamental.” *Id.* at 445 (quoting *Speiser v. Randall*, 357 U.S. 513, 523
 8 (1958)). Thus, while criminal trial of an incompetent individual violates due process, states do
 9 not violate due process by putting the burden of proof on the criminal defendant to establish his
 10 lack of competency. *Id.* at 453; *see also Bell*, 441 U.S. at 535-36 (“In evaluating the
 11 constitutionality of conditions or restrictions of pretrial detention that implicate only the
 12 protection against deprivation of liberty without due process of law, we think that the proper
 13 inquiry is whether those conditions amount to punishment of the detainee.”).

14 Thus, Plaintiffs’ claim fails under substantive or procedural due process.

15 CONCLUSION

16 Plaintiffs cannot bring in this action the same claims against the Attorney General that are
 17 raised in the *Welchen* matter, and thus Court should dismiss or stay those claims. Moreover, the
 18 Attorney General is immune, and Plaintiffs fail to state a claim against her.

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Respectfully Submitted,

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23
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 28 Defendant AG Harris Motion to Dismiss.doc