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5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF ARIZONA**

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8 A.I.I.L., et al.,

9 Plaintiffs,

10 v.

11 Unknown Parties, et al.,

12 Defendants.

No. CV-19-00481-TUC-JCH

ORDER

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14 Before the Court is the Individual Defendants' Rule 54(b) Motion for Entry of
15 Judgment. Doc. 103. Individual Defendants move to certify the Court's Order dismissing
16 all claims, without leave to amend, against the Individual Defendants as a final and
17 appealable judgment under Fed. R. Civ. P. 54(b). Doc. 103. Plaintiffs oppose the motion.
18 Doc. 106. Individual Defendants filed a Reply. Doc. 107.

19 Rule 54(b)¹ permits the Court, at its discretion, to direct entry of judgment on less
20 than all the parties or claims. Fed. R. Civ. P. 54(b). Specifically, when an action involves
21 multiple parties, Rule 54(b) provides that a "court may direct entry of a final judgment as
22 to one or more, but fewer than all, ... parties only if the court expressly determines that
23 there is *no just reason for delay*." (emphasis added). The first prong is easily satisfied here

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25 ¹ Rule 54(b) of the Federal Rules of Civil Procedure provides:

26 the court may direct entry of a final judgment as to one or more, but fewer
27 than all, claims or parties only if the court expressly determines that there is
28 no just reason for delay. Otherwise, any order or decision, however
designated, that adjudicates fewer than all the claims or the rights and
liabilities of fewer than all the parties does not end the action as to any of the
claims or parties and may be revised at any time before the entry of a
judgment adjudicating all the claims and all the parties' rights and liabilities.

1 as the Court's Order fully resolved all claims against the Individual Defendants. There
2 remains a question, however, whether there is "just reason for delay."

3 Two sets of considerations bear on whether there is "just reason" for delaying entry
4 of judgment. *Jewel v. NSA*, 810 F.3d 622, 628 (9th Cir. 2015). First, courts analyze
5 "juridical concerns," primarily whether the certified order is sufficiently divisible from the
6 other claims such that the case would not inevitably come back to the appellate court on
7 the same set of facts. *See id.*; *see also Wood v. GCC Bend, LLC*, 422 F.3d 873, 878–79 (9th
8 Cir. 2005) (suggesting that the term "juridical concerns" is synonymous with
9 "consideration of judicial administrative interests"). "This inquiry does not require the
10 issues raised on appeal to be completely distinct from the rest of the action, so long as
11 resolving the claims would streamline the ensuing litigation." *Jewel*, 810 F.3d at 628
12 (internal quotation marks omitted). Courts in the Ninth Circuit embrace a "pragmatic
13 approach focusing on severability and efficient judicial administration." *Wood*, 422 F.3d at
14 880 (internal quotation marks omitted). Thus, claims may have "overlapping facts" and
15 still be "separate for purposes of Rule 54(b)." *Id.* at 881.

16 Second, courts undertake an "equitable analysis." *Jewel*, 810 F.3d at 628. District
17 courts are "encourage[d]" but not required to "make factual findings and to explain their
18 reasons for certifying." *Id.* Under the equitable analysis, courts "focus on traditional
19 equitable principles such as prejudice and delay." *Gregorian v. Izvestia*, 871 F.2d 1515,
20 1519 (9th Cir. 1989). For example, the Court may consider whether the timing of the entry
21 of judgment "would inflict severe financial harm" on either side. *Wood*, 422 F.3d at 878
22 n.2. Rule 54(b) certification is proper if it will aid expeditious decision of the case. *Texaco,*
23 *Inc. v. Ponsoldt*, 939 F.2d 794, 797 (9th Cir. 1991) (internal quotation marks omitted).
24 "However, Rule 54(b) certification is scrutinized to prevent piecemeal appeals in cases
25 which should be reviewed only as single units." *Id.* at 797-98 (internal quotation marks
26 omitted). Entry of judgment under Rule 54(b) "is not routine" in ordinary cases and "should
27 not become so." *Wood*, 422 F.3d at 879. The Ninth Circuit has further advised that it
28 "cannot afford the luxury of reviewing the same set of facts in a routine case more than

1 once without a seriously important reason." *Id.* at 882. It has also repeatedly admonished
2 that "Rule 54(b) should be used sparingly." *Gausvik v. Perez*, 392 F.3d 1006, 1009 n.2 (9th
3 Cir. 2004).

4 Here, the Individual Defendants argue that their dismissal, based on threshold
5 defenses including lack of personal jurisdiction, the unavailability of a *Bivens* remedy, and
6 qualified immunity, has no overlap with respect to the remaining FTCA claims. Doc. 103
7 at 5. They maintain that the legal issues against the Individual Defendants are distinct and
8 severable. *Id.* Plaintiffs respond that the proper inquiry is not whether the claims involve
9 different legal concepts but whether claims arise from the same set of facts. Doc. 106 at 4.
10 Plaintiffs suggest that the Ninth Circuit would have to revisit these facts if there is an appeal
11 from the remaining FTCA claims. *Id.* at 4–5. Plaintiffs also argue that because the
12 Individual Defendants will necessarily remain involved in this litigation by participating in
13 FTCA discovery, Rule 54(b) certification will not promote judicial efficiency. *Id.* at 6.
14 They further contend that certification may hinder rather than "streamline" the resolution
15 of remaining discovery disputes not yet before the Court. *Id.* at 6.

16 The Court finds that the considerations weigh in Plaintiffs' favor. The underlying
17 facts and law of the remaining claims and those asserted against the Individual Defendants
18 are not unrelated. Plaintiffs' FTCA claims are premised on conduct by federal employees
19 and officers including Individual Defendants. Moreover, granting certification will create
20 two separate appeal tracks and will increase the complexity and expense of this litigation.
21 Any hardship to the Individual Defendants caused by the entry of a single final judgment
22 is outweighed by Plaintiffs' concerns regarding the burden of being forced to litigate
23 piecemeal appeals while attempting to proceed in discovery on their FTCA claims. The
24 Court will exercise its discretion and denies the Motion for Entry of Judgment under Rule
25 54(b). Doc. 103. Accordingly,

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IT IS ORDERED DENYING Individual Defendants' Motion for Entry of Final Judgment (Doc. 103).

Dated this 31st day of March, 2023.


Honorably John C. Hinderaker
United States District Judge