No. 26-4902

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

L.T., et al.,
Plaintiffs-Appellees,
v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, et al.,
Defendants-Appellants.

Appeal from the United States District Court
Central District of California
No. 5:26-cv-00322-SSS-SP

DEFENDANTS-APPELLANTS' OPENING BRIEF

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I. INTRODUCTION

This appeal presents a single, dispositive question: Whether a federal court may attribute to the United States the day-to-day conduct of a nonparty private contractor and, on pain of contempt, enjoin and prescribe conditions that only the contractor performs. The core of this case is the district court's superintendence of a detention facility owned and operated by GEO—a contractor the government does not control. The court did so at a facility already governed, in every respect the decree addresses, by ICE's comprehensive Performance-Based National Detention Standards (PBNDS)—standards GEO must meet by contract and that Plaintiffs called "the benchmark for the Court to enforce." Plaintiffs never claimed those standards fall short of the Constitution. Their quarrel is with the contractor's day-to-day performance.

The district court knew from the get-go that ICE "does not provide the day-to-day services" at Adelanto. In denying Plaintiffs' first preliminary injunction, it called GEO "the group managing the day-to-day operations of the Adelanto facility" and asked the question this appeal presents: If the court "ordered 12 nurses" and "GEO Group says, well, we're only going to give nine, how does the Court then enforce that against GEO Group if they're not a party to the proceeding other than telling ICE . . . to do so?" It then decreed that ICE do it anyway. But in reciting ICE's obligations across six pages, the court began nearly every operative sentence the same way: **"GEO Group must."** That recital proves the point: The district court has enjoined the wrong party.

The Supreme Court settled attribution for federal contractors half a century ago: Where "the day-to-day operations of the contractor's facilities were to be in the hands of the contractor," *Logue v. United States*, 412 U.S. 521, 529–30 (1973), a contract that "fix[es] specific and precise conditions to implement federal objectives" does not "convert the acts of entrepreneurs . . . into federal governmental acts," *United States v. Orleans*, 425 U.S. 807, 814–16 (1976). Attribution infects every element of the district court's analysis—Article III standing, 8 U.S.C. § 1252(f)(1) remedial bar, the *Fraihat* and *Bell* merits findings, Rule 65(d) and equity, and Rule 23. Strip it away and nothing is left.

Plaintiffs banked on that theory and closed every other route: They asserted no third-party-beneficiary claim; disavowed any "abdication" theory because "that's about enforcement of a contract"; disclaimed any challenge to ICE's detention standards or its "level of enforcement with respect to the PBNDS" because the standards are "the benchmark for the Court to enforce"; and chose not to sue GEO on account of its "defenses."

The record since the notice of appeal proves the rest. Ten days after assuring this Court that the injunction "state[s] its terms specifically," Plaintiffs ran ex parte to the district court complaining that the court monitors "cannot fulfill their Court-ordered obligations without further direction from the Court." They got that further direction overnight, followed by a First Amended Preliminary Injunction extending the monitors' charter to the decree. This was done without jurisdiction given this pending appeal. Days later, the court warned that unless the United States gave the monitors remote access to a nonparty's electronic records by the next afternoon, it would begin imposing daily sanctions—access the amended injunction itself had made optional, requiring only that the monitors reach the records on-site or remotely.

That is not enforcement. It is commandeering the Executive's contract—on the court's clock, under threat of contempt, the "so-called 'hostage' theory of contempt" that "has no legal support." An Article III court has usurped an Article II function, violating separation of powers.

The injunction must be reversed.

II. STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1292(a)(1). The district court granted a preliminary injunction on July 16, 2026. 1-ER-44. Defendants timely appealed on July 30, 2026. 5-ER-893; Fed. R. App. P. 4(a)(1)(B). The provisional class-certification ruling is reviewable in connection with the appealable injunction. *See Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1040 (9th Cir. 2012).

III. STATEMENT OF THE ISSUES

1. Whether the district court erred in finding that Plaintiffs have Article III standing against Defendants for alleged conditions produced by a nonparty contractor's independent and discretionary acts, where 8 U.S.C. § 1231(h) makes ICE's § 1231(g) acts unenforceable and 8 U.S.C. § 1252(f)(1) withdraws authority to enter classwide relief.

2. Whether the district court erred in finding each *Winter* factor satisfied: likelihood of success without applying the mandatory-injunction standard and on findings that attribute GEO's conduct to ICE, irreparable harm presumed rather than shown, and equities and public interest never weighed.

3. Whether the injunction is unlawful in form and scope because:

(i) Rule 65(d) does not permit an injunction that requires ICE to guarantee the contractor's performance and the injunction lacks the requisite specificity; (ii) the court made no tailoring, necessity, or cost findings; and (iii) the court installed standing judicial superintendence of a federal detention facility.

4. Whether the district court abused its discretion in provisionally certifying a class and disability subclass on questions that ask only whether ICE "failed to ensure" a nonparty's performance.

IV. STATEMENT OF THE CASE

A. Background and Statement of Facts

1. Adelanto and the ICE–GEO Contract

The Adelanto ICE Processing Center (APC) is a detention facility in San Bernardino County, owned and operated by GEO Group, Inc. 1-ER-3. ICE detains noncitizens there under a 2019 contract (the APC Contract) under which GEO furnishes detention, transportation, and medical services in compliance with the 2011 Performance-Based National Detention Standards (PBNDS). 1-ER-3–4; 3-ER-509–12, 3-ER-514 ¶¶ 4, 8, 12. GEO's warden bears "the ultimate responsibility for managing and operating the contracted detention facility," 4-ER-598; GEO employs approximately 100 medical staff and 350 security and operations personnel; and ICE's approximately 52 on-site personnel "strictly perform an oversight role that is separate and apart from GEO Group's contracted role and mission set," 3-ER-510 ¶ 5. The contract "does not reserve to ICE any direct control of any part of the contracted work," 3-ER-512–13, and its quality-assurance plan "is based on the premise that the Contractor, and not the Government, is responsible for the day-to-day operation of the facility," 4-ER-600. "No ICE employee dispenses or administers medication or sets medication times; conducts intake or custody-classification screening; assigns housing units, bunks, or segregation placements; grants or denies disability accommodations; . . . provides medical, mental-health, food, or custodial services; or oversees water or food quality." 3-ER-512–13 ¶ 10.

2. Conditions and Medical Care at Adelanto

Adelanto is not the facility the complaint describes. As of May 2026, it held approximately 1,592 detainees against a rated capacity of 1,940, 3-ER-509 ¶ 2, and it holds external accreditation from the National Commission on Correctional Health Care (NCCHC) (June 2022) and the American Correctional Association (ACA) (January 2023), 3-ER-513–14. The September 2025 inspection by ICE's Office of Detention Oversight

(ODO) "found the facility compliant on 26 of 29 standards and identified no medical-care deficiency," 3-ER-515–16—none in Medical Care, Food Service, Environmental Health and Safety, Recreation, or Visitation, and no repeat deficiencies from any prior inspections, 3-ER-579–80, 3-ER-582; 3-ER-399–400, 3-ER-402 (3-ER-573, less redacted).

Water. The supply is municipal; there "has not been a contamination violation" in any Consumer Confidence Report from 2021 through 2024; and "[p]ractically everyone at APC," including ICE's own on-site staff, "drinks the same water." 3-ER-516–17, 3-ER-528 ¶¶ 19, 57–58. A January 2026 National Environmental Laboratory Accreditation Program (NELAP)-accredited laboratory sampling found Legionella "Not Detected," "No Coliforms Detected," no detected arsenic, lead below the EPA action level, and every parameter within EPA limits. 2-ER-280, 2-ER-282, 2-ER-301, 2-ER-315. Detainees prefer jugs to the round-the-clock fountains "because they mistakenly believe that the water fountains do not provide clean water." 2-ER-259–60 ¶ 8. But "[a]ll water distributed at APC, even in water jugs, which GEO Group provides at the request of detainees, comes from the City of Adelanto." 3-ER-521–22

¶ 38; *see* 2-ER-194–95; 2-ER-202–03 ¶¶ 6–7.[1]

Food. Eight weeks before the injunction, the San Bernardino County Health Department inspected the kitchen and found it compliant with county food-safety standards for handling, preparation, and cleanliness. 2-ER-260–61 ¶ 9; 2-ER-269. Menus are dietician-approved and calorie-tested, and a compliance officer eats a randomly selected meal at every service. 2-ER-260–61 ¶ 9.

Medical and disability care. GEO's medical unit is "fully staffed and equipped to support all detainees at APC 24 hours a day," 3-ER-510 ¶ 5, with "initial emergency care before transfer to a local emergency room," 3-ER-512–13, 3-ER-531–32 ¶¶ 10, 71. GEO employs roughly 100 medical staff—registered nurses, licensed vocational nurses, nurse practitioners, physician assistants, and doctors. 3-ER-510 ¶ 5. ICE supervises that care through ICE Health Service Corps (IHSC)'s "site visits and record sampling," 3-ER-532 ¶ 73. Disability screening occurs within twelve hours, seventy-four accommodations were active, and "[a]t no time has

[1] When a detainee reported a worm in the water in August 2026, GEO inspected the jugs and the point source and found "no contamination, insects or larvae." 2-ER-202 ¶ 6. No clinical finding attributes any illness to the water. 2-ER-194–95; 2-ER-202–03 ¶¶ 6–7.

GEO Group denied L.T. an accommodation request that has been properly vetted." 3-ER-520, 3-ER-534 ¶¶ 32, 80.

Sanitation, recreation, and counts. The facility is cleaned daily, "is inspected for mold during daily cleaning," and none has been identified; laundry runs six days a week, with three sets of clothing and two blankets per detainee. 2-ER-261–63 ¶¶ 10, 12–13; 3-ER-529–30, 3-ER-534–35 ¶¶ 60, 63, 81. Detainees have two hours of large-yard time daily, a "medium yard" that is open all day, and a 990-square-foot mini-yard with a handball court, a basketball half-court, and equipment. 2-ER-263–64 ¶ 14. Most overnight counts are visual "security observations," lights off, no one woken. 2-ER-165–66 ¶¶ 5–7.

Safety and emergency codes. The contract requires GEO to "[m]aintain [i]nstitutional [e]mergency [r]eadiness" and to keep an evacuation plan, 4-ER-651, 4-ER-658, and prescribes detailed emergency procedures through PBNDS 4.3, 3-ER-532 ¶ 74.

Emergency medical care. GEO staff "render emergency medical care" and "triage before transport to a local hospital"; the protocol "does not reflect overcrowding," as both buildings sit below rated capacity. 3-ER-521, 3-ER-531–33 ¶¶ 36, 71, 74–75.

Grievance process. The contract builds in a tiered PBNDS grievance system, 4-ER-596, 4-ER-598, 4-ER-647, layered atop DHS's Rehabilitation Act complaint process before the Officer for Civil Rights and Civil Liberties, 6 C.F.R. § 15.70; ODO samples "at least 25 grievances" at each inspection. 3-ER-514–15 ¶¶ 13–14.

The named Plaintiffs. Their own records tell a different story. L.T.'s show no missed medication distributions—"Medications are not being withheld"—and a clinical substitution of a diabetes medication, 3-ER-519 ¶¶ 27–30; Mesrobian's show that he "has refused doses of prescribed seizure medication" and that during seizures he experienced at Adelanto, staff "respond[] immediately and stay[] at his bedside" until EMS arrives, 3-ER-522–23 ¶¶ 39–40; and Salazar Garza's show fourteen days in administrative segregation following an investigation for disruptive behavior, not thirty, with his amputation site "well healed," 3-ER-523–25 ¶¶ 42, 44. Three of the four never filed a grievance; the fourth filed two—one about a Wi-Fi outage and another about the large-yard closure for repairs. 3-ER-518, 3-ER-523 ¶¶ 23–24, 40.[2]

[2] By the time the court modified its decree, Plaintiffs' own accounts had evolved—from no privacy to curtains, from glass-barrier visits to contact visits, from larvae and hospitalizations to complaints about taste,

3. ICE's Oversight and the Compliance Record

ICE's oversight is contractual, not operational: "ICE cannot issue directives or orders to GEO Group employees and its only recourse for a deficiency is contractual." 3-ER-512 ¶ 9. The Contracting Officer's Representative "administers the contract—reviewing invoices and monthly reports and documenting deficiencies with no direct operational control over APC operations," and the tools for any GEO deficiency are "contractual in nature via a discrepancy report, a corrective-action plan, inspections and remedial measures, withheld payment, or contract termination." 3-ER-512 ¶ 9. Scope changes proceed only by written modification through the Contracting Officer. 4-ER-604.

ICE exercises that oversight in fact: ODO inspects annually and samples "at least 25 grievances" to test GEO's compliance, 3-ER-514–15 ¶¶ 13–14, and ERO directs and verifies correction of deficiencies, 3-ER-514 ¶ 13; 3-ER-581–82; 3-ER-401–02. Other federal entities—ERO's Detention Monitoring Unit, the Office of Professional Responsibility, and the DHS Inspector General—also inspect, with any deficiency addressed

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and from a month without the large yard to daily outdoor time. 2-ER-198 (collecting citations); *see* 2-ER-202–03, 2-ER-206 ¶¶ 6, 8, 16; 2-ER-261–62, 2-ER-264–65 ¶¶ 11, 15; 3-ER-579–80, 3-ER-582.

through a corrective-action plan. 3-ER-513–14 ¶ 11.

The six deficiencies ODO found in September 2025 concerned custody classification, funds and personal property, and the grievance system; ERO notified GEO in writing, GEO submitted a corrective-action plan addressing all six, 3-ER-584, and completed the corrective action, 3-ER-514 ¶ 13. ODO nonetheless lowered the facility's rating from "Superior" to "Good." 3-ER-579–80. By contrast, the Inspector General reports on which the complaint relied "date from 2017 through 2019" and "were addressed years ago." 3-ER-515–16 ¶ 17.

The contract backs that oversight with money: GEO must hold staffing to monthly averages of 85% for custody and other departments and 80% for health services, must report monthly vacancies, and faces deductions from its monthly invoice for positions left unfilled. 3-ER-552.

B. Course of Proceedings Below

1. The Preliminary-Injunction Proceedings

Plaintiffs—four detainees (two since released) and the Coalition for Humane Immigrant Rights (CHIRLA)—sued ICE, DHS, and federal officials and moved for a preliminary injunction. 1-ER-3, 1-ER-19. The district court denied the motion as "too broad" and "neither tied to the injuries of any of the named Plaintiffs nor necessarily related to the constitutional violations alleged." 4-ER-857. Plaintiffs amended and renewed their request for an injunction, 4-ER-681; 5-ER-923, adding no new facts about conditions but new "control" allegations—that ICE exercises "pervasive operational control," 4-ER-709 ¶ 58—while still conceding that ICE "contracts with GEO to run Adelanto," 4-ER-694–95 ¶ 32. They relied on declarations describing different encounters with different GEO personnel. 1-ER-12–18. The government responded with the contract, the inspection and accreditation record, the certified water and kitchen results, and individualized medical and grievance histories. 3-ER-492; 3-ER-516–29 ¶¶ 19–59; *see also* 2-ER-259–66 ¶¶ 8–17.

2. The Injunction, Stay, and 27-Day-Late Memorandum

On July 16, 2026, the district court granted Plaintiffs' renewed motion in part and provisionally certified an "Adelanto Class" of "[a]ll people who are now, or who in the future will be," detained at Adelanto, and a "Disability Subclass." 1-ER-50. The order dictates facility operations—water, meals, cleaning, privacy, clothing, yard access, visitation, headcounts, segregation—and a remedial plan for medical and disability systems, 1-ER-45–48 ¶¶ 1–4; installs a Medical Monitor and a Conditions Monitor "for the duration of this litigation," with "unannounced, independent inspections" authority; requires Defendants to pay the monitors; and waives the bond, 1-ER-48–50 ¶¶ 5(b)–(g), 7.

Defendants appealed, 5-ER-893; the district court denied a stay, 2-ER-255, and appointed a medical monitor at $500 per hour, payable by Defendants. 2-ER-252. This Court entered an administrative stay on August 6 because the injunction issued without reasons. Dkt. 15.1 at 1. On August 12, the district court issued its memorandum. 1-ER-2. On August 20, this Court denied the stay. Dkt. 22.1 (Stay Order).

3. Expansions of the Preliminary Injunction and Threatened Contempt Sanctions

One week later, Plaintiffs filed an ex parte application for an "emergency hearing," supported by detainee declarations, one captioned in support of a "Motion to Enforce the Preliminary Injunction." 2-ER-227; 2-ER-239 ¶ 1. On August 28—before its own response date had run, 2-ER-176—the court entered an "Order Modifying Preliminary Injunction," reciting only that it acted "[u]pon further review of the preliminary injunction." 2-ER-168–71. That order added an ex parte monitor-to-court channel, Marshals on inspections, a classwide notice with the monitors' contact information, and quarterly ex parte logs, 2-ER-169–71—none of it in the original decree. On September 11, after "discussions with the

Medical and Conditions Monitors," 2-ER-153–54, the court entered the First Amended Preliminary Injunction Order, 2-ER-128–31. Entered "[f]or ease of reference," 2-ER-125, that order extended the monitors' charter from "the remedial plan described in paragraph 4," 1-ER-48, to "this order (namely, paragraphs 1 through 4)," 2-ER-128, and added "read-only, 24/7 access (on-site or remote)" to electronic records, "confidential conversations" with detainees, families, and staff, and a detainee "Comment System" under which "Plaintiffs' counsel may categorize or prioritize comments for the Monitors' review." 2-ER-129–31. The same day it warned of "daily monetary sanctions in the amount of $250" over remote access to GEO's electronic health records (Sapphire), 2-ER-144; 2-ER-123–24 ¶¶ 6–9. On September 15 it ordered Defendants to show cause why they had "failed to comply," warned of "daily sanctions . . . in the amount of $500 per violation," and "cautioned" that it "will consider holding Defendants in civil contempt." 2-ER-104–05.

V. SUMMARY OF THE ARGUMENT

The district court rewrote the operating rules of a detention facility that Defendants do not operate. Every function the decree governs is performed by GEO, whose warden bears "the ultimate responsibility for managing and operating the contracted detention facility." 4-ER-598. GEO is not a party. That fact runs through every error below.

Start with Article III. Because GEO's operational choices produce the conditions Plaintiffs challenge, their injuries are neither fairly traceable to ICE nor redressable by an injunction against it. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–62 (1992). The court answered the standing question with a merits rule—non-delegable-duty cases that never mention Article III and that make the operator suable, not excused—and substituted a contract for the plaintiff-specific showing *Murthy v. Missouri*, 603 U.S. 43, 58–61 (2024), demands. The one lever ICE can pull without GEO, relocating the detainees, is the § 1231(g)(1)[3] placement authority that § 1252(f)(1) puts beyond classwide restraint, *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022), and every act the court attributed to ICE is a § 1231(g) act that creates no right "legally enforceable by any party against the United States," 8 U.S.C. § 1231(h).

Plaintiffs also did not clearly establish a violation. The decree is

[3] 8 U.S.C. § 1231(g)(1) provides: "The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal."

mandatory, so the law and facts had to "clearly favor" them, *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc); the court instead found them "likely to succeed, or at least raise serious questions," 1-ER-32. It purported to satisfy *Fraihat*'s elements by attribution, made none of the practice-by-practice findings *Bell v. Wolfish*, 441 U.S. 520 (1979), requires, omitted causation from the Rehabilitation Act ruling, presumed irreparable harm to Plaintiffs who had been released, and weighed nothing on the Government's side.

The decree fails Rule 65(d) and equity. It binds a nonparty's operations without any active-concert finding, *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 110–12 (1969); commands obedience to open-ended and constantly evolving standards through two monitors; incorporates a remedial plan that does not exist; and has since been rewritten twice without reasons, 2-ER-168, 2-ER-125. It makes no tailoring findings for the overlay beyond the contract, and superintending federal detention through resident monitors is the "virtual power of review" separation of powers forbids. *GEO Grp., Inc. v. Newsom*, 50 F.4th 745, 751 (9th Cir. 2022) (en banc). And the provisional classes cannot carry any of it: Questions asking whether Defendants "failed to ensure that GEO Group" performed a dozen functions have no answer "in one stroke," *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011), and a facility-wide class of present and future detainees armed with a structural decree is the universal injunction *CASA* forbids.

A federal court may not run a contractor's facility through the contractor's customer. The preliminary injunction should be reversed.

VI. STANDARD OF REVIEW

Article III standing is reviewed de novo, *Washington v. U.S. Food & Drug Admin.*, 108 F.4th 1163, 1172 (9th Cir. 2024), as are the legal conclusions; factual findings, for clear error. *Fraihat v. U.S. Immigr. & Customs Enf't*, 16 F.4th 613, 635 (9th Cir. 2021).

VII. ARGUMENT

A. Plaintiffs Lack Article III Standing

1. No Traceability: The Court's Non-Delegable-Duty Answer Is a Merits Rule, Not Article III

Standing requires an injury "likely caused by the defendant," *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021), and where the injury turns on "the independent action of some third party not before the court," traceability is "substantially more difficult" to establish. *Lujan*, 504 U.S. at 560–62. At the preliminary-injunction stage, "the plaintiff must make a 'clear showing' that she is 'likely' to establish each element of standing." *Murthy*, 603 U.S. at 58.

The district court skipped that inquiry. At the hearing it announced it was "not going to ask . . . about the standing issue" and "intend[ed] to find that the plaintiffs have resolved that issue . . . with the Amended Complaint." 3-ER-345. "[S]tanding is not dispensed in gross"; "plaintiffs must demonstrate standing for each claim that they press" and a court errs "by treating the defendants, plaintiffs, and [third parties] each as a unified whole." *Murthy*, 603 U.S. at 61 (cleaned up). Denying the first motion, it required "facts to show that Defendants' unlawful conduct was 'a substantial factor motivating the third parties' actions,'" 4-ER-855 (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1013 (9th Cir. 2014)); but its standing analysis, 1-ER-20–28, never applies that rule.

The inquiry it skipped has four parts, and the district court satisfied none. First, the plaintiff must connect a particular federal act or omission to a discrete injury; the "lack of specific causation findings with respect to any discrete instance" of the challenged conduct is a record's "primary weakness." *Murthy*, 603 U.S. at 59. The court connected nothing, instead resting on the general charge that "Defendants have failed to hold GEO

Group accountable" and that this "failure . . . has allowed these issues to persist." 1-ER-21. Second, the federal conduct must be "at least a substantial factor motivating the third parties' actions." *Mendia*, 768 F.3d at 1013. The court found none; the only federal conduct it identified was the 2019 decision to contract, 1-ER-30—hiring the operator, not motivating a discretionary choice the operator made. Plaintiffs' claims require ICE's "expressed intent to punish," *Bell*, 441 U.S. at 538, or, for medical conditions, ICE's own "reckless disregard," *Fraihat*, 16 F.4th at 619—yet the sole ICE act it found is an "intentional decision . . . requiring *compliance* with PBNDS medical standards," 1-ER-30 (emphasis added), the very antithesis of the requisite intent under the analysis.

Third, the nonparty's choice must be the product of "coercion" or "significant encouragement," not "mere 'communication,'" *Murthy*, 603 U.S. at 69—encouragement so significant "that the choice must in law be deemed to be that of the State," *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)—and where the complaint is a failure to regulate the nonparty, "much more is needed," because causation "hinge[s] on the response of the regulated (or regulable) third party to the government action or inaction," *Lujan*, 504 U.S. at 562. That is this case: The theory is that

ICE "failed to hold GEO Group accountable," 1-ER-21—yet the court found no "coercion" and "no significant encouragement" of GEO. Fourth, every link must be proved "without relying on 'speculation' or 'guesswork' about the third parties' motivations," *Mendia*, 768 F.3d at 1013, and particularized at each step—a particular defendant, a particular pressure, a particular nonparty act, a particular plaintiff. *Murthy*, 603 U.S. at 61. The court particularized none of it, instead inferring that oversight failures "allowed these issues to persist." 1-ER-21. It swapped a duty for an act, a contract for coercion, and an inference for proof.

The conditions challenged are produced by GEO's employees exercising GEO's judgment at GEO's facility. 3-ER-509–14 ¶¶ 4–5, 8, 10–11. The court agreed: GEO "manag[es] the day-to-day operations," 5-ER-864; ICE "does not provide the day-to-day services," 1-ER-21, and "lacks direct day-to-day control," 1-ER-9. Plaintiffs' pleading agrees—ICE's contract "mandates compliance with the PBNDS," 4-ER-697 ¶ 36—and Plaintiffs withdrew the enforcement theory: "[W]e are not challenging the defendants' level of enforcement with respect to the PBNDS." 3-ER-367. Nothing federal remains to trace the injury to.

Contractual oversight does not convert GEO's conduct into that of the government. Under a detention contract the government "could take action to compel compliance with federal standards, but it did not supervise operations," *Orleans*, 425 U.S. at 815; the "critical element" is "the power of the Federal Government 'to control the detailed physical performance of the contractor.'" *Id.* at 814. The APC Contract reserves inspection, not operation or control. 3-ER-511–14 ¶¶ 8, 10–11.

The district court dismissed *Logue* and *Orleans* as FTCA cases where "traceability was not an issue," 1-ER-21–22, but the simple principle of attribution governs wherever the question is whose act is whose: In Article III standing, an injury "that results from the independent action of some third party not before the court" is not the defendant's, whether under the FTCA, under § 1983, or in habeas.[4]

Rather than apply that rule, the district court connected no missed notice, investigation, or contractual remedy to any identified injury. The

[4] *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 42 (1976); *accord Allen v. Wright*, 468 U.S. 737, 757–60 (1984); *Logue*, 412 U.S. at 527–30 (control, not the function performed, governs); *Rendell-Baker v. Kohn*, 457 U.S. 830, 840–41 (1982) ("Acts of . . . private contractors do not become acts of the government by reason of their . . . engagement in performing public contracts."); *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004) ("In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.").

"links in the chain of causation" that run through a nonparty's independent judgment are "far too weak for the chain as a whole to sustain [Plaintiffs'] standing." *Allen*, 468 U.S. at 759.

The district court answered a different question. It rested traceability on the contract and on a non-delegable-duty theory drawn from *West v. Atkins*, 487 U.S. 42 (1988), 1-ER-21–22, 1-ER-30. The court distinguished *Logue* and *Orleans* because "traceability was not an issue." *Id. West* does not address Article III either; it decided that a contract physician treating state prisoners "act[s] under color of state law"—the "only issue" presented, 487 U.S. at 48–49. *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 752, 757 (9th Cir. 2020), Stay Order 3, decided the same for a private psychiatric hospital and its staff, which "were acting under color of state law with respect to the actions for which [the detainee] attempts to hold them liable." GEO is that operator. Like the physician in *West* and the hospital in *Rawson*, GEO performs the custodial functions the decree governs, 3-ER-512–13 ¶ 10, and it must therefore answer for them in its own name—not ICE.

What those cases decided facially cuts against the court's decree: They make the ***operator*** answerable. In *West* the physician, not the

State, answered, 487 U.S. at 54, 56, and in *Rawson* the hospital, 975 F.3d at 757. Operators performing this "traditional, exclusive public function" are suable as constitutional actors, *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809, 814 (2019). The remedies likewise run against the operator—an injunction, because "injunctive relief has long been recognized as the proper means for preventing entities from acting unconstitutionally," *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001), or state tort actions, which California courts "have specifically applied . . . to jailers, including private operators of prisons," *Minneci v. Pollard*, 565 U.S. 118, 128, 131 (2012).

GEO's amenability to suit is no abstraction. One named Plaintiff has already sued GEO in state court. *See Salazar-Garza v. Johnson*, No. 5:26-cv-02726-SB-RAO (C.D. Cal.), ECF 1 at 75 (named Plaintiff identifying that state-court case in his habeas petition). Plaintiffs kept GEO out of this case "because of the particular defenses that GEO Group might have to claims against it." 5-ER-886. ICE was likely chosen for the EAJA fee remedy it carries,[5] not for the conduct it performs.

[5] 2-ER-194 (quoting CHIRLA's admission that "[n]on-profit legal aid organizations rely heavily on timely EAJA fee recoveries to maintain operational liquidity" and that its client executed "a valid contractual

Congress drew the same line. Every act the court attributes to ICE is an exercise of § 1231(g): legal custody, 1-ER-38; "arrang[ing]" detention by contracting with GEO, 1-ER-21; the "intentional decision" of "contracting in 2019 with GEO Group," 1-ER-30. To that, Congress attached an unqualified rule: "Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person." 8 U.S.C. § 1231(h). Plaintiffs "cannot, by invoking [the court's] equitable powers, circumvent Congress's exclusion of private enforcement." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 328 (2015). The district court never engaged with *Armstrong*.

2. No Redressability: The One Lever ICE Can Pull Alone Is the One § 1252(f)(1) Withholds

Redressability independently requires that the injury be "likely . . . redressed by judicial relief," *TransUnion*, 594 U.S. at 423, and, where relief depends on a nonparty, a "clear showing" that the nonparty "will likely react in predictable ways" to the challenged federal conduct, *Murthy*, 603 U.S. at 58. An order that ICE "ensure" conditions under the

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assignment of all EAJA fees directly to CHIRLA" there, *Ayala v. Semaia*, No. 5:26-cv-02429-AJR (C.D. Cal.), ECF 18 at 5 (Aug. 17, 2026)).

ICE–GEO contract does not itself change what GEO's employees do daily. Plaintiffs told this Court as much: "[T]he contract is not a self-enforcing mechanism . . . ." Dkt. 6.1 at 27.[6] Remedies "operate with respect to specific parties," *California v. Texas*, 593 U.S. 659, 672 (2021), and redress dependent on an independent actor requires specific evidence of its likely response, *id.* at 675; *Murthy*, 603 U.S. at 57–58. A menu of options—"withholding payment, terminating its contract, or relocating the detainees to another facility," 1-ER-22–23—is not that showing.[7]

Take the levers in turn. Withholding payment and terminating the contract are unilateral acts, but neither changes a single condition inside Adelanto; whether the water gets cleaner still depends on how GEO

[6] The court's proceedings illustrate the gap. Asked how the monitors could reach GEO's records, the court said, "I don't know how their system works," and government counsel said, "I do not know how GEO's systems . . . work generally." 2-ER-66 at 14:10–17. The record says why: "ICE officers at APC do not have access to [GEO's health records database] Sapphire and cannot grant access to Sapphire." 2-ER-123–24 ¶ 6.

[7] The authority cited in this Court's Stay Order makes the point. In *Disabled Rts. Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861 (9th Cir. 2004), Stay Order 3, relief was complete without the arena's public owner because the injunction enjoined the private operators "from making certain kinds of operational decisions regarding conditions over which they have control . . . ." 375 F.3d at 880. This decree runs against the one party holding none of the operational controls it presupposes.

responds—the shortcut the Supreme Court rejected as "purely speculative." *Simon*, 426 U.S. at 42–43. ICE can act alone; it cannot redress alone. Only the third lever operates without GEO, but what it produces is an emptied facility, not a remedied one—moving elsewhere nearly 1,800 detainees, 1-ER-13, without changing Adelanto at all.

That lever Congress put beyond class relief. Section 1252(f)(1) withdraws jurisdiction "to enjoin or restrain the operation of" §§ 1221–1232 except "with respect to the application of such provisions to an individual alien." It "bars class-wide injunctive relief," *Aleman Gonzalez*, 596 U.S. at 554–55, "[r]egardless of the nature of the . . . claim," *id.* at 553. The power to move detainees "arises from" § 1231(g)(1)'s directive to "arrange for appropriate places of detention," so "a district court has no jurisdiction to restrain the Attorney General's power to transfer aliens to appropriate facilities by granting injunctive relief in a . . . class action suit." *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999); *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1441 (9th Cir.), *amended by* 807 F.2d 769 (9th Cir. 1986) (avoiding "the supervision of the Attorney General's daily exercise of his discretion to select the place of detention").

The district court held that § 1231(g)(1) stops at site selection. 1-

ER-23–24. But it cannot find redressability through relocating detainees away from the detention center yet still find § 1231(g) inapplicable; what Congress forecloses in one step a court cannot accomplish in two: A classwide order to relocate the detainees would violate § 1252(f)(1) outright; an order that can be obeyed only by relocating them imposes the same restraint one step removed. *Aleman Gonzalez*, 596 U.S. at 550–51 (this bar "prohibits lower courts from entering injunctions that order federal officials to . . . carry out the specified provisions"); *see also United States v. Texas*, 599 U.S. 670, 690–93 (2023) (Gorsuch, J., concurring in the judgment). The statute forecloses the decree a second way. The decree adds mandatory procedural steps to the operation of detention—remedial plans, monthly reports, a monitor grievance channel—which too is "injunctive relief that directly adds a new procedural step to the Government's operation of covered provisions," *Al Otro Lado v. EOIR*, 138 F.4th 1102, 1125 (9th Cir. 2025), *rev'd on other grounds sub nom. Mullin v. Al Otro Lado*, 146 S. Ct. 2079 (2026), also barred by § 1252(f)(1).

The decree's classwide form violates the statute: *Aleman Gonzalez* rejected the argument that classwide relief survives because a class is composed of individuals, 596 U.S. at 554–55, and this class—"[a]ll people who are now, or who in the future will be," detained at Adelanto, 1-ER-50—"includes future, yet-to-be detained aliens against whom proceedings have not been initiated," *Nielsen v. Preap*, 586 U.S. 392, 424–25 (2019) (Thomas, J., concurring in part and concurring in the judgment), is further still. The court's site-selection carve-out appears in no statute or decision. *Aleman Gonzalez*, 596 U.S. at 553 (emphasizing § 1252(f)(1)'s broad prefatory clause (citing *Nielsen*, 586 U.S. at 424–25)).

3. No Named Plaintiff—and Not CHIRLA—Has Standing to Seek Prospective Relief

Standing to seek an injunction also requires a "real and immediate" threat of future injury, "not 'conjectural' or 'hypothetical,'" *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–02 (1983), that persists "through *all stages* of the litigation," *Trump v. New York*, 592 U.S. 125, 131 (2020) (emphasis added). Two of the named Plaintiffs have left Adelanto: J.M. was released twenty-four days before the operative complaint, 3-ER-520–21 ¶ 35, and Mesrobian was released under a habeas judgment that enjoins his redetention "without evidence that his removal is reasonably foreseeable," 3-ER-522–23 ¶ 39; *Szvak v. Warden*, No. 25-02629, ECF 35 at 7 (C.D. Cal. May 27, 2026).

The court nonetheless said that "the only filing to indicate that any of the plaintiffs have been released is the [First Amended Complaint], which notes only that J.M. has been released," 1-ER-27 n.193—wrong on the record's face—and its answer for J.M., that "[d]etention at Adelanto pending removal is a concrete likelihood," 1-ER-28, is the chain of contingencies *Lyons* forbids. "[T]he past is relevant only insofar as it is a launching pad for a showing of imminent future injury," *Murthy*, 603 U.S. at 59; a "highly attenuated chain of possibilities" does not suffice, *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013); and "[u]nless the named plaintiffs are themselves entitled to seek injunctive relief, they may not represent a class seeking that relief," *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1045 (9th Cir. 1999) (en banc).

The four nonparty declarants whose accounts the court aggregated cannot supply the standing the named Plaintiffs lack, and each had in any event been released—in January, February, April, and May 2026—before the decree issued. 3-ER-525–27 ¶¶ 45, 47, 49, 52. CHIRLA's standing fails on both theories. Its organizational theory is resource diversion alone—CHIRLA "expends more of its resources seeking to address the medical needs of its members and clients than it did before," 4-ER-677 ¶ 35—which this Court, en banc, has since held "is not itself an injury-in-fact." *Ariz. All. for Retired Ams. v. Mayes*, No. 22-16490, 2026 WL 2277101, at *6–7 (9th Cir. Aug. 7, 2026) (en banc) (cleaned up).

CHIRLA's associational theory fails too. Counsel conceded no named Plaintiff is a member. 5-ER-873–74. An association must "identify members who have suffered the requisite harm," *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). The district court excused the anonymity under *Vasquez Perdomo v. Noem*, 148 F.4th 656, 676–77 (9th Cir. 2025), 1-ER-27—the injunction the Supreme Court stayed, *Noem v. Vasquez Perdomo*, 146 S. Ct. 1 (2025).

That is also not good law. *See Ariz. All. for Retired Ams.*, 2026 WL 2277101, at *4 n.1 (no associational standing where organization "has not identified a member who" suffered the injury). Moreover, anonymity may be excused only where the defendant "need not know the identity of a particular member to understand and respond to an organization's claim of injury," *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015); here identity is the defense: ICE answered each named Plaintiff with that Plaintiff's own records, 3-ER-518–25 ¶¶ 25–44, but cannot for a member it cannot identify. Also, CHIRLA offered four anonymous accounts, 4-ER-671–77 ¶¶ 17–30. Two of those members have left Adelanto, 4-ER-671, 4-ER-675–76, and the injuries the others describe—undelivered lab results, undercooked food, a guard's profanity—are GEO staff conduct, 4-ER-674–77, so the unnamed members fail as the named Plaintiffs do: No injury traceable to ICE, Part VII.A.1, *supra*, and no relief that § 1252(f)(1) permits, Part VII.A.2, *supra*.

Claims turning on each member's condition and accommodation are the paradigm of claims whose "relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). The court failed to hold Plaintiffs to their requisite burden. *Associated Gen. Contractors of Am., S.D. Chapter, Inc. v. Cal. Dep't of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013).

B. The District Court Abused Its Discretion Under Every *Winter* Factor

The injunction rests on a Fifth Amendment medical-care claim, a Fifth Amendment conditions-of-confinement claim, and a Rehabilitation Act claim. 1-ER-29–37. Each fails under a standard the court never applied—a legal error—and on findings that are clearly erroneous.

1. Plaintiffs Are Not Likely to Succeed on the Merits

a. The Court Skipped the Mandatory-Injunction Standard

The injunction does not preserve the status quo. It rewrites rules for recreation, visitation, counts, segregation, medical and disability systems, grievances, and monitoring. 1-ER-45–50 ¶¶ 1–5. It is mandatory, so "the law and facts [must] *clearly favor*" the movant, *Garcia*, 786 F.3d at 740—as Plaintiffs conceded below, 3-ER-423. The court applied none of this. Its findings are disjunctive—Plaintiffs are "likely to succeed, or at least raise serious questions," 1-ER-32, 1-ER-35–37—a formulation below ordinary likelihood of success that, even for prohibitory relief, requires "a balance of hardships that tips sharply towards the plaintiff," *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011), which the court never found. That is legal error, *Doe v. Kelly*, 878 F.3d 710, 719–20 (9th Cir. 2017), infecting every command.

b. The Fifth Amendment Claims Fail as a Matter of Law

The constitutional duty to a person in custody attaches to the custodian who physically holds him, and relief runs against that custodian. *West v. Atkins*—the case on which the district court built its non-delegable-duty theory, 1-ER-21–22, 1-ER-30—illustrates the rule: "The State bore an affirmative obligation to provide adequate medical care to West; the State delegated that function to respondent Atkins; and respondent voluntarily assumed that obligation by contract"—and the physician, not the State, answered. *West*, 487 U.S. at 54, 56. The prisoner "must sue his 'jailer,'" the person who "exercises day-to-day control over [the detainee's] physical custody," *Padilla*, 542 U.S. at 435, 439; a jailer is the one who holds a prisoner "under his custody and control," *United States v. Edwards*, 415 U.S. 800, 804 n.6 (1974); and remedies for a private jailer's failures run against the jailer—be it an injunction, *Malesko*, 534 U.S. at 74, or state tort damages, *Minneci*, 565 U.S. at 128.

At Adelanto that custodian is GEO. GEO owns the facility, staffs it, and performs every custodial function the decree addresses, 3-ER-509–10, 3-ER-512–13 ¶¶ 4, 10; its warden bears "the ultimate responsibility for managing and operating the contracted detention facility," 4-ER-598; and, as this Court has said of ICE's contractors, "[p]rivate contractors do not stand on the same footing as the federal government," *Newsom*, 50 F.4th at 750. ICE holds legal custody; GEO holds the keys to conditions. The district court found a failure to supervise, 1-ER-32—a negligence rubric, and negligence by a private jailer is redressed against the jailer. The Fifth Amendment does not convert a negligence case against GEO into a structural injunction against ICE.

(1) Medical Care: The Court Misapplied *Fraihat* to ICE

A civil detainee's medical-care claim requires that "*the defendant* made an intentional decision with respect to the conditions" of confinement; that the conditions put the plaintiff at substantial risk of serious harm; that the defendant "did not take reasonable available measures to abate that risk"; and that "by not taking such measures, the defendant caused the plaintiff's injuries." *Fraihat*, 16 F.4th at 636. It requires "more than negligence but less than subjective intent—something akin to reckless disregard." *Id.*

The district court's first-element analysis is one sentence: "Defendants intentionally set conditions by contracting in 2019 with GEO Group to detain, transport, and provide medical services at Adelanto, requiring compliance with PBNDS medical standards, which reflects what the Fifth Amendment guarantees to civil detainees." 1-ER-30. That sentence defeats itself. The decision it identifies is one to require constitutionally adequate care through PBNDS—not to impose the challenged conditions—and Plaintiffs agree. Plaintiffs said "[t]he PBNDS creates the benchmark for the Court to enforce," 3-ER-367. That is the decision Congress prescribed: to "arrange for appropriate places of detention," 8 U.S.C. § 1231(g)(1), a grant that "plainly encompasses the use of private detention facilities," *Newsom*, 50 F.4th at 757 n.6.

The reckless-disregard finding, 1-ER-32, is clearly erroneous. The record it omits is the monitoring. ODO's September 2025 inspection found no medical-care deficiency, 3-ER-514–16 ¶¶ 13, 15, 17; 3-ER-579–80, 3-ER-582; and IHSC oversees that care through site visits and sampling, 3-ER-532 ¶ 73. The steps ICE took answer the charge. GEO's medical unit is "fully staffed and equipped to support all detainees at APC 24 hours a day," 3-ER-510 ¶ 5; the facility is accredited by the NCCHC and the ACA, 3-ER-514 ¶ 12; ODO rated it compliant on twenty-six of twenty-nine standards with no repeat deficiencies, downgraded the rating from "Superior" to "Good," notified GEO, and obtained corrective action, 3-ER-514–16 ¶¶ 13, 15, 17; 3-ER-579–82; 3-ER-584; and the Inspector General reports the complaint invokes "date from 2017 through 2019" and "were addressed *years* ago," 3-ER-515–16 ¶ 17 (emphasis added). An overseer that accredits, inspects, downgrades, and secures correction does not act with "reckless disregard." *Fraihat*, 16 F.4th at 619.

The district court applied a negligence rubric—Defendants "have not taken reasonable measures"; "[p]roper monitoring would likely have identified and corrected these issues," 1-ER-32—but it is black letter law that "[l]iability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process," *Kingsley v. Hendrickson*, 576 U.S. 389, 396 (2015). It does not suffice that harm "could have been avoided if an officer had had better or more training," because "[s]uch a claim could be made about almost any encounter resulting in injury . . . ." *City of Canton v. Harris*, 489 U.S. 378, 391 (1989).

Fraihat drew that line. ICE's COVID-19 response "may have been imperfect, even at times inadequate," but its "guidance, directives, and mandatory requirements . . . belie[d] the notion that ICE acted with the 'reckless disregard' necessary to support a finding of unconstitutional, system-wide deliberate indifference." 16 F.4th at 618–19. Prospective relief requires prospective disregard: Plaintiffs "must demonstrate the continuance of defendants' disregard during the remainder of the litigation and into the future." *Id.* at 639. Plaintiffs disclaimed abdication, 5-ER-883, leaving only the claim that ICE did too little—"a mere difference of medical opinion," which "is insufficient, as a matter of law, to establish deliberate indifference." *Fraihat*, 16 F.4th at 642.

Causation fares no better. The district court leaped from a purported expert opinion about systems GEO administers to the conclusion that "Defendants'" inaction created imminent harm, 1-ER-31–32, without finding that any ICE official knew of a named Plaintiff's request (*e.g.*, through a filed grievance), could countermand GEO's clinicians, or caused any treatment outcome—findings the record forecloses, because "GEO Group and its medical contractor provide all clinical care at APC independently from ICE," 3-ER-532 ¶ 73; *see* Part IV.A.1. Even the court's own nonbinding authority, *Reaves v. Dep't of Corr.*, 333 F. Supp. 3d 18, 24 (D. Mass. 2018), 1-ER-30, requires that the official "knew of the prisoner's need for medical care and yet failed to provide the same." No such showing was made here.

The named Plaintiffs' own files make the point: L.T.'s medication substitution, staff at Mesrobian's bedside during his seizures, and Salazar Garza's healed amputation site, 3-ER-519, 3-ER-522–25 ¶¶ 29–30, 39–40, 42, 44, are documented responses, not reckless disregard.

(2) Conditions: The Court Skipped *Bell* and Named No Punitive ICE Act

"[I]f a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Fraihat*, 16 F.4th at 647 (quoting *Bell*, 441 U.S. at 539). The inquiry "must reflect" constitutional requirements "rather than a court's idea of how best to operate a detention facility," *Bell*, 441 U.S. at 538–39; courts "should ordinarily defer" to security judgments absent "substantial evidence in the record to indicate that the officials have exaggerated their response," *id.* at 540 n.23. Courts reverse decrees that skip these questions—because the government's mitigation measures are "material to the District Court's assessment of the conditions challenged as punishment, yet it addressed none of them," *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 327–28 (3d Cir. 2020); and because, once a court finds that "many factors counseled against" a practice, "its inquiry should have ended," *Block v. Rutherford*, 468 U.S. 576, 589 (1984).

The district court did none of that. For "life's basic necessities" it adopted a so-called expert's conclusion; for privacy, visitation, recreation, and restrictive housing it rested on the same expert's view that the practices serve "no penological purpose." 1-ER-33–35. It never asked what legitimate purpose each practice serves or "whether it appears excessive in relation to the alternative purpose assigned," *Bell*, 441 U.S. at 538, and ignored the government's security justifications: Contraband passed through a contact visit two months earlier, 2-ER-264–65 ¶ 15; an escape attempt under a cut fence that prompted security construction in the yards, 2-ER-263–64 ¶ 14; 2-ER-206 ¶ 16; overnight counts that serve suicide prevention, contraband interdiction, medical-emergency detection, and assault prevention, mostly lights-off window observations, 2-ER-265–66 ¶ 16; 2-ER-165–66 ¶¶ 5–7; and open sightlines, a deliberate suicide- and contraband-prevention feature, 2-ER-261–62 ¶ 11.

Nor did the court find any justification pretextual or exaggerated, as *Bell* requires. 441 U.S. at 540 n.23. An expert's say-so is not the "substantial evidence" that displaces deference, *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 330 (2012), and the Supreme Court reversed a ruling rested "solely on some case histories and a statistical study," *Schall v. Martin*, 467 U.S. 253, 271–72 (1984).

The expert's yardstick is the wrong one. Professional and agency standards "simply do not establish the constitutional minima . . . ." *Bell*, 441 U.S. at 543 n.27; *accord Rhodes v. Chapman*, 452 U.S. 337, 348 n.13 (1981) (expert opinions "as to desirable prison conditions" do not "establish contemporary standards of decency"). Neither the contract nor the PBNDS it incorporates sets the constitutional floor, yet the court equated them with "what the Fifth Amendment guarantees," 1-ER-30.

The necessities record, finally, refutes the finding on its own terms. The water is municipal, with certified laboratory results within EPA limits, 3-ER-516–17, 3-ER-528 ¶¶ 19, 57–58; 2-ER-280, 2-ER-282, 2-ER-301; the county found the kitchen compliant eight weeks before the injunction, 2-ER-260–61 ¶ 9; 2-ER-269; and the facility is cleaned and inspected for mold daily, 2-ER-261–63 ¶¶ 10, 12–13. *See* Part IV.A.2, *supra*. Conditions that meet or exceed professional standards are not punishment. *Bell*, 441 U.S. at 539.

The court also asked the wrong actor's question. *Bell* asks whether the *government's* restriction is "excessive in relation to the alternative purpose assigned" to it. 441 U.S. at 538. The only act of these Defendants is legal custody for effective case management pending removal proceedings, and a neutral immigration judge sustained that custody for every named Plaintiff who sought bond: L.T. as "both a danger and a flight risk," 3-ER-518 ¶ 25; J.M., twice, on a criminal history the Immigration Court called "severe" and "extensive," 3-ER-520–21 ¶ 35; 3-ER-544; and Salazar Garza as "such a significant flight risk that no amount of bond . . . would be appropriate," 3-ER-523–24 ¶ 42. The court's answer—that Plaintiffs "challenge not whether the reasons used to justify their detention are legitimate, but the failure to provide them with basic necessities," 1-ER-35—concedes the point: The only federal restriction is custody, and the asserted "failure to provide" is the performance of GEO, the physical custodian Plaintiffs elected not to sue.

The contested conditions also include recognized security measures. A complete ban on contact visits is "an entirely reasonable, nonpunitive response to the legitimate security concerns identified," *Block*, 468 U.S. at 586, 588; Adelanto's narrower limits, adopted only after contraband was in fact passed, 2-ER-264–65 ¶ 15, cannot be more excessive. Headcounts are among the "inherent incidents of confinement." *Bell*, 441 U.S. at 537, 542. And "there is no bright line test to determine if and when inmates are entitled to outdoor exercise." *Norbert v. City & Cnty. of S.F.*, 10 F.4th 918, 933 (9th Cir. 2021). A facility "has considerable discretion to curtail access to exercise based on security concerns," *Pierce* *v. Cnty. of Orange*, 526 F.3d 1190, 1212 (9th Cir. 2008); and Adelanto offers two hours of large-yard time daily plus an all-day medium yard and an equipped mini-yard, 2-ER-263–64 ¶ 14. A decree mandating outdoor recreation at four hours per day, seven days per week, on its view of best practice purports to draw a line—indeed, a contempt tripwire—this Court has declined to draw. *Norbert*, 10 F.4th at 933.

c. The Rehabilitation Act Claim Omits Causation and Any Individualized Inquiry

Section 504 requires proof that a qualified individual was excluded, denied benefits, or discriminated against "solely by reason of her or his disability," 29 U.S.C. § 794(a); *Weinreich v. L.A. Cnty. Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997), through "a fact-specific, individualized analysis of the disabled individual's circumstances and the accommodations" at issue, *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1083 (9th Cir. 2004). The district court found that three Plaintiffs have impairments, are qualified, and experienced asserted accommodation failures at the hands of GEO staff, 1-ER-35–37, but never found that any denial occurred *solely by reason of* disability, never identified the accommodation requested but refused, and never addressed the contrary record: GEO screens within twelve hours of intake and has never denied L.T. a properly vetted accommodation request. 3-ER-520 ¶ 32, 3-ER-534 ¶ 80; Part IV.A.2, *supra*. The two "denials" the court identified—a temporary first-floor room assignment and Mesrobian's seizure episodes, 1-ER-36—are refuted by the same records: L.T. held lower-bunk, cane, and restraint-exemption accommodations, and Mesrobian's episodes trace to his noncompliance with prescribed medication. 3-ER-518–20, 3-ER-522–23 ¶¶ 26, 32, 39.

The district court's chosen authority makes the same demand. *Castle v. Eurofresh, Inc.*, 731 F.3d 901 (9th Cir. 2013), itself remanded because "we cannot determine on this record whether a violation actually occurred," *id.* at 910—the individualized determination never made here. And the accommodation function is GEO's: "ICE does not perform these screenings or evaluations for an accommodation or krono; the screenings are solely controlled by GEO Group Medical." 3-ER-534 ¶ 80.

d. The Findings Are Clearly Erroneous on the Objective Record

The district court's conditions factual findings do not survive the objective record recited in Part IV.A.2, none of which it acknowledges. It found unsafe water, 1-ER-33–34, against certified laboratory results and four years of Consumer Confidence Reports without a violation, 2-ER-

280, 2-ER-282, 2-ER-301; 3-ER-516–17, 3-ER-528 ¶¶ 19, 57–58—reflecting detainees' perception, not objective potability, 2-ER-259–60 ¶ 8. It found the meals constitutionally inadequate, 1-ER-34, eight weeks after the county health department's food-safety inspection found the kitchen compliant, 2-ER-260–61 ¶ 9; 2-ER-269. And it credited the named Plaintiffs' accounts of withheld medication, unaided seizures, and a thirty-day segregation against their own records, which show a clinical substitution, refused doses and staff at the bedside, and fourteen days segregation. 3-ER-519, 3-ER-522–25 ¶¶ 29–30, 39–40, 42, 44.

The point is not that a reviewing court reweighs evidence; it is that the district court never weighed it in the first place. The court aggregated allegations about different people, conditions, times, and GEO employees into facility-wide findings, 1-ER-30–36, and never analyzed 3-ER-509—the declaration carrying the ODO report, the water and kitchen results, and the named Plaintiffs' records—or the declaration of ICE's Assistant Field Office Director Ryan Smith, 2-ER-257. Where "[d]ocuments or objective evidence may contradict the witness' story," this Court "may well find clear error even in a finding purportedly based on a credibility determination." *Anderson v. City of Bessemer City*, 470 U.S. 564, 575

(1985). Defendants sought prudential exhaustion precisely for this reason in their motion to dismiss. 3-ER-504–05; 3-ER-418. That asks whether "relaxation of the requirement would encourage the deliberate bypass of the administrative scheme," *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); the court has yet to address it—it has not ruled on that pending motion. Gaps in an account are not proof that federal officials did nothing; they are Plaintiffs' unmet burden. Findings drawn from untested, anonymous declarations, and contradicted by the very records the court declined to engage, cannot "clearly favor" the most intrusive injunction the law recognizes. *Garcia*, 786 F.3d at 740.

2. Irreparable Harm: The Court Presumed Injury to Released and Treated Plaintiffs

The district court disposed of irreparable harm in a single sentence: Because "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury,'" Plaintiffs "need not show anything more." 1-ER-37. That is the merits conclusion restated, and it falls with the merits. Relief may not issue "based only on a possibility of irreparable harm," *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008), and the likely harm must be to the named Plaintiffs: "Unless the named plaintiffs are themselves entitled to seek injunctive relief, they may not represent a class seeking that relief." *Hodgers-Durgin*, 199 F.3d at 1045. Two of the four had left Adelanto before the decree issued. Part VII.A.3, *supra*. For the rest, the record shows care delivered, 3-ER-519 ¶¶ 27–30, and no clinical finding, only subjective belief, linking any illness to the conditions alleged. 2-ER-250–51 ¶¶ 13–14; 2-ER-194–95; 2-ER-202–03 ¶¶ 6–7. The named Plaintiffs also have no live conditions injuries: None submitted any grievance as to the water, food, sanitation, or housing now litigated, 3-ER-518 ¶¶ 23–24; their own accounts of those conditions have since collapsed, 2-ER-198; 2-ER-202–03, 2-ER-206 ¶¶ 6, 8, 16; and the objective record refutes each, *see* Part IV.A.2. A presumption cannot supply what the record refutes. *See* Part VII.B.1.d, *supra*.

3. Equities and Public Interest: The Court Weighed Nothing on the Government's Side

When the government is a party, the last two *Winter* factors merge, *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014), but still demand weighing "the competing claims of injury" and "the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24. The district court weighed nothing. It borrowed from *Gomez Ruiz v. ICE*, No. 25-09757 (N.D. Cal.)—"avoiding 'preventable human suffering' outweighs any administrative or financial concerns Defendants may have," 1-ER-37—and stopped. That is a conclusion, not a balance, resting on no finding about cost, burden, security, or the public's interest in who administers detention. *Winter* reversed on that ground alone: The lower courts "significantly understated the burden the preliminary injunction would impose" and "the injunction's consequent adverse impact on the public interest." 555 U.S. at 24.

The decree consists of commands that mirror the APC Contract and commands that go beyond it. The mirror provisions—potable water, sanitary meals, cleaning, clothing, baseline medical and disability care, 1-ER-45–46 ¶¶ 1(a)–(c), (e)–(f), 4—restate obligations GEO already owes under the PBNDS, 3-ER-408–09; 1-ER-4–9. Their dollar cost may be zero, but their legal cost is not: A contract term enforced by ICE is enforced through inspection findings, corrective-action plans, payment consequences, and termination, 3-ER-512 ¶ 9; the identical term enforced by decree is enforced through contempt against the United States for GEO's non-performance—the "virtual power of review over the federal determination" that "frustrate[s] the expressed federal policy," *Newsom*, 50 F.4th at 751 (quoting *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 189–90 (1956)). The mirror provisions do not enjoin the government's own violations; they command that GEO's employees perform GEO's contract, on pain of contempt against the United States.

The overlay provisions impose new, priced burdens: Two monitors at "reasonable rates" for the life of the litigation, 1-ER-50 ¶ 5(g), one since fixed at $500 per hour payable by Defendants, 2-ER-252—a regime the court acknowledges may generate "60,000 complaints," 2-ER-84, that "the Government has been ordered to foot the bill on," 2-ER-98; a four-hour individual-yard mandate requiring "modification of preexisting real property structures" and "contract changes," 2-ER-263–64 ¶ 14; and headcount and visitation commands that displace measures serving "suicide prevention, prevention of introduction of contraband, identifying medical emergencies, [and] prevention of physical assault," 2-ER-264–66 ¶¶ 15–16. Every added requirement flows to the Treasury, 4-ER-595; 3-ER-512 ¶ 9; 3-ER-569—and those outlays are unrecoverable, because the court waived Rule 65(c)'s bond in full, 1-ER-50 ¶ 7, purportedly because "Defendants offered no evidence supporting a bond," 1-ER-38. A bond may be waived only "when [the court] concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct."

Johnson v. Couturier, 572 F.3d 1067, 1086 (9th Cir. 2009). Not so here. *Winter* requires the court to weigh that hardship; it never did.[8]

The public-interest side fares no better. The court invoked the maxim that the public "always has an 'interest to prevent the violation of [Plaintiffs'] constitutional rights,'" 1-ER-37. The maxim assumes the violation; it cannot establish one, and it too falls with the merits. Nor does it speak to the public consequences on the other side: a decree that exceeds the court's authority under § 1252(f)(1), that sets the Executive's contract timetable on pain of contempt, and that places two resident monitors, at public expense and without sunset, inside a facility Congress committed to the Executive. That interest weighs on the Government's side, and the district court never put it on the scale.

C. The Injunction Is Also Unlawful in Form and Scope

1. The Injunction Violates Rule 65(d)

Rule 65(d) specificity challenges "are reviewed de novo." *Premier Commc'ns Network, Inc. v. Fuentes*, 880 F.2d 1096, 1100 (9th Cir. 1989).

[8] The only path to compliance with the remote-access demand was a modification of the ICE–GEO contract, 2-ER-124 ¶¶ 8–9, and a contract modification negotiated to a court's deadline—and the threat of contempt, 2-ER-144, 2-ER-104–05—is negotiated without the leverage procurement ordinarily gives the government. *See* Part IV.B.3, *supra*.

a. The Decree Binds GEO Through ICE Without an Active-Concert Finding

"[N]o court can make a decree which will bind any one but a party; . . . it cannot lawfully enjoin the world at large, no matter how broadly it words its decree." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832 (2d Cir. 1930) (L. Hand, J.). The active-concert clause does not change that: "[A] nonparty with notice cannot be held in contempt until shown to be in concert or participation," and "[i]t was error to enter the injunction against [the nonparty] without having made this determination in a proceeding to which [the nonparty] was a party." *Zenith*, 395 U.S. at 112.

The memorandum nowhere mentions Rule 65(d)(2). Yet every operational command in the decree—intake screening, medication administration, cleaning, headcounts, visitation, segregation—is performed by GEO, 3-ER-512–13 ¶ 10; "all terms of the Preliminary Injunction impose requirements that cannot be implemented by ICE without agreement of and action by a party not before this Court," 2-ER-259 ¶ 6. The court made no active-concert finding; it adjudicated GEO's obligations by enjoining the party that pays GEO's invoices.

The clause is also the wrong tool. It exists so that "defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors," *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945); GEO is not ICE's instrument but the actor whose conduct it targets, and "mere inactivity is simply inadequate to render them aiders and abettors in violating the injunction," *Blockowicz v. Williams*, 630 F.3d 563, 568 (7th Cir. 2010). In *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 180–81 (1973), the nonparty was bound only after it was made a party and heard. Not so here—and by Plaintiffs' design. 3-ER-354 (proposing terms that "run[] to the defendants" not "to GEO").

b. The Decree Would Make ICE Answer in Contempt for Outcomes Only GEO Can Produce

Plaintiffs assured this Court that the injunction "complies with Rule 65(d)(1)(B)–(C)'s requirements to 'state its terms specifically,'" and that "[t]he remedial plan and monitors do not render the order vague." Dkt. 20.1 at 11–12. Seven days after the administrative stay was lifted, they told the district court the opposite, on an emergency basis: The court's own monitors "cannot fulfill their Court-ordered obligations without further direction from the Court." 2-ER-231; 2-ER-228, 2-ER-234. The court did not simply clarify; it rewrote the decree, twice. 2-ER-168–71; 2-ER-128–31; *see* Part IV.B.3, *supra*.

Rule 65(d)(1) forbids that. "[T]hose against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits," because a contempt power "founded upon a decree too vague to be understood . . . can be a deadly one." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 444 (1974). "If an injunction does not clearly describe prohibited or required conduct, it is not enforceable by contempt," *Gates v. Shinn*, 98 F.3d 463, 468 (9th Cir. 1996).

Plaintiffs' counsel described the decree's design candidly: If water is not accessible, "[m]ake it accessible. How they do that is—is up to the defendants." 3-ER-353. An injunction that commands results and leaves the acts to the enjoined party is not the "specific" decree Rule 65(d) requires, *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974)—and when the acts belong to someone else, the defect is structural. What the decree requires of the United States is that it make its contractor perform: specific performance of the APC Contract, ordered against a party that is not the promisor, at the behest of plaintiffs who concede they do not sue to enforce that contract, 3-ER-427. Put another way, that is contract performance in constitutional dress.

The contempt consequences confirm the misdirection. Civil contempt "depends upon the ability of the contemnor to comply with the court's order," *Shillitani v. United States*, 384 U.S. 364, 371 (1966), and this Court asks whether defendants took "all reasonable steps within their power to insure compliance," *Stone v. City & Cnty. of S.F.*, 968 F.2d 850, 856 (9th Cir. 1992). A decree whose every operative act is performed by a nonparty puts the United States permanently on the defensive whenever GEO falls short on its acts or on the court's timeline. And that compliance is not the government's to hasten: Meeting the staffing-dependent commands requires "contract alternatives, which could take up to several months for additional GEO Group manpower." 2-ER-173–74 ¶¶ 8–10.[9]

The "'hostage' theory of contempt . . . has no legal support," *Newman v. Graddick*, 740 F.2d 1513, 1528 (11th Cir. 1984), and "[n]or should a contempt order require the contemnor to overstep his lawful authority," *United States v. Int'l Bhd. of Teamsters*, 899 F.2d 143, 147 (2d

[9] The court has since set the pace itself, giving the United States until noon the next day, on pain of daily sanctions, to open a system that "ICE officers at APC do not have access to" and "cannot grant access to." 2-ER-144; 2-ER-123–24 ¶ 6; 2-ER-103–05; *see* Part IV.B.3, *supra*.

Cir. 1990). The remedy is not to litigate inability motion by motion; it is to vacate a decree that commands acts the enjoined party does not perform—and cannot perform on the court's timeline.

c. The Decree Delegates Its Terms to Monitors and a Future Remedial Plan

An injunction may not order a defendant to obey a body of law and leave the details for later. *NLRB v. Express Publ'g Co.*, 312 U.S. 426, 435–36 (1941) ("This Court will strike from an injunction decree restraints upon the commission of unlawful acts which are thus dissociated from those which a defendant has committed."). Beyond its numbers, the decree governs an entire facility through open-textured standards—"[a]dequate sanitation," "[n]utritious and sanitary meals," "[a]dequate privacy . . . consistent with the safety needs of the facility," counts that "minimize disruption," 1-ER-45–46 ¶¶ 1–2—and leaves what they require in operation to two monitors with unannounced-inspection authority, a monitor-only grievance channel, and monthly reporting duties. 1-ER-48–50 ¶ 5. Plaintiffs do not dispute this; their counsel described the design to the court this way: "[T]he answer is in the remedial plan with the independent monitoring, . . . only then does the Court approve it." 3-ER-350. The Court adopted it. 1-ER-48 ¶ 5(b).

Melendres v. Skinner, 113 F.4th 1126 (9th Cir. 2024), Stay Order 5, proves the defect. This Court upheld the monitorship there because it vested the monitor with "control over narrow areas of a governmental defendant's operations," *Skinner*, 113 F.4th at 1136, in service of "compliance with the [order's] very specific requirements," *id.* at 1140, and distinguished the "enigmatic" decree that "essentially commanded the defendant to obey a broad category of laws generally and delegated authority to the special master to fill in the huge gaps created by that vague and general requirement," *id.*—this decree is that "enigmatic" decree in operation. *Skinner* also marked the boundary: "[W]ide-ranging extrajudicial duties" "not limited to 'superintending compliance with the district court's decree'" lie outside the judicial function. *Skinner*, 113 F.4th at 1135 n.12. Monitors with unannounced-inspection authority and monthly reporting to the court, 1-ER-48–49 ¶ 5, are those duties.

Rule 65(d)(1)(C) forbids describing the acts required "by referring to . . . other document." The decree does so prospectively: A remedial plan to be developed after monitor and party feedback "will be incorporated by reference into this order." 1-ER-48 ¶ 5(b). Incorporation is a "rare exception," and courts "should be particularly cautious where the injunctive order is issued at the outset of litigation." *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1133 (9th Cir. 2006). An unwritten document gives notice of nothing; this Court vacated the portion of the Adelanto injunction in *Roman v. Wolf*, 977 F.3d 935 (9th Cir. 2020), that incorporated outside guidance because its "lack of specificity makes it a poor guidepost for mandatory injunctive relief." *Id.* at 946.[10]

2. No Tailoring Cabins the Relief to Any Violation

This decree cannot stand because it outruns any violation. "[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs," *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); "federal-court decrees must directly address and relate to the constitutional violation itself," and they "exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation," *Milliken v. Bradley*, 433 U.S. 267, 281–82 (1977). An overbroad injunction is itself an abuse of discretion. *Lamb-Weston, Inc. v. McCain*

[10] Two months on, no plan has been adopted, 2-ER-327; 2-ER-145; 2-ER-125; Plaintiffs concede the consequence: "Currently, Defendants are under no obligation to remedy" the systems the plan would address. 2-ER-234.

Foods, Ltd., 941 F.2d 970, 974 (9th Cir. 1991). This Court has already stayed this decree once because it issued without reasons and the Court was "unable to review" it, Dkt. 15.1 at 1; the memorandum that followed supplies no tailoring reasons either.

The district court nowhere finds that a four-hour individual large-yard mandate is necessary to remedy any proven violation; that halving the overnight headcounts cures anything; that unlimited contact visitation is compelled despite a documented contraband incident; or that two litigation-long monitors are the least intrusive means of securing obligations GEO already owes by contract. The words "four hours" and "two headcounts" appear in the order, 1-ER-45 ¶¶ 1(g), 2, but in no finding. A decree whose most intrusive provisions are never connected to a violation is overbroad as a matter of law. *Milliken*, 433 U.S. at 281–82.

The decree fails tailoring on both sides of the contract line. The provisions that "mirror the requirements in the Government's contract with GEO," Stay Order 5, are tied to no violation: They transcribe GEO's existing contractual duties—a PBNDS floor that binds regardless, 3-ER-408–09—into a federal decree, converting a contract question into a constitutional command. The beyond-contract overlay—the two monitors, the four-hour individual-yard mandate, the headcount caps, the visitation commands, the West facility retrofits, and the remedial-plan regime—exceeds every violation found. The contract already promises "a minimum of four hours per day of outdoor recreation" and "contact visitation," 4-ER-603–04; the decree adds their judicially specified form: "individual access to the yard (i.e., not the 'mini-yard') for at least four hours per day, seven days per week," and visits that "must not be subject to time limits," 1-ER-45 ¶¶ 1(g), 1(h).

Roman set aside provisions of exactly that sort at this facility—"the provisions of the injunction ordering . . . specific changes in conditions at the facility"—and directed courts to "avoid imposing provisions that micromanage the Government's administration of conditions at Adelanto." 977 F.3d at 945–46. This Court's *Armstrong* orders show what tailoring against a non-operating overseer looks like: Orders that "do not require that defendants compel the counties to do anything," only "minimal measures, consisting largely of notifications, collection of data, and reports." *Armstrong v. Brown*, 732 F.3d 955, 962 (9th Cir. 2013). This decree commands the nonparty's performance, guarantees it by contempt, and ties none of it to any injury a named Plaintiff proved.

Trump v. CASA, Inc., 606 U.S. 831 (2025), then fits this decree. "'Complete relief' is not synonymous with 'universal relief,'" *id.* at 851, and "[c]omplete relief is not a guarantee—it is the maximum a court can provide," *id.* at 854. This decree is measured not by the parties before the court but by the institution—every person "now, or who in the future will be," detained at Adelanto, 1-ER-50. And it is a template. Because the only ICE act the court identified was the 2019 decision to contract, 1-ER-29–30, the decree transfers to ***any*** contractor-run facility nationwide: A district court need only recite that ICE "contract[ed]" for detention and "failed to ensure" performance, 1-ER-21, 1-ER-30, 1-ER-40–41, to superintend any such facility through resident monitors and a remedial plan—and in California alone, ICE "relies almost exclusively on privately operated detention facilities," *Newsom*, 50 F.4th at 750. That is the universal injunction *CASA* forbids.

3. The Decree Offends the Separation of Powers

Installing resident federal monitors with unannounced-inspection authority over an ICE detention facility, 1-ER-49 ¶ 5, and dictating its daily operations by decree, assumes a detention-management function that belongs to the Executive.[11]

Congress committed detention arrangements to the Executive's "broad discretion," *Newsom*, 50 F.4th at 751, 757 n.6; a coordinate authority may not assume "a 'virtual power of review' over ICE's detention" operations, *id.* at 751; and this Court avoids "the supervision of the Attorney General's daily exercise of his discretion" over detention, *Comm. of Cent. Am. Refugees*, 795 F.2d at 1441. A "periodic reporting" regime is "nothing less than an ongoing federal audit" working "a major continuing intrusion of the equitable power of the federal courts into the daily conduct of" executive affairs. *O'Shea v. Littleton*, 414 U.S. 488, 500–02 (1974). This Court, sitting en banc, has refused "injunctive relief that would restructure the operations of" a federal immigration agency and "require ongoing judicial supervision of an agency normally, and properly, overseen by the executive branch," *Hodgers-Durgin*, 199 F.3d at 1044–45. The authority to arrange detention and to contract for it is the Executive's under Article II and § 1231(g); a decree superintending

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[11] The superintendence now reaches the agency's communications with its contractor: "[T]here's not to be any prior notice given to GEO Group of the monitors' visiting of the facility," and "the order is to be followed regardless of what ICE or what ICE or GEO Group would like the order to be." 2-ER-112, 2-ER-115.

that contract's daily performance has assumed it.

D. Class Certification Was an Abuse of Discretion

Certification is reviewed for abuse of discretion, which a court commits by resting on "impermissible legal criteria." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 980 (9th Cir. 2011).

1. No Commonality: Questions About a Nonparty's Performance Cannot Be Resolved Classwide

The court certified twelve class questions and three subclass questions, each asking whether "Defendants failed to ensure that GEO Group" performed a function. 1-ER-40–41. That concedes two defects. Each question incorporates the attribution theory refuted above—failing "to ensure" a nonparty's performance—so the class rests on the same error as the merits. And the questions are a list, not a common contention: What matters is "the capacity of a class-wide proceeding to generate common answers," not "the raising of common 'questions'—even in droves." *Wal-Mart*, 564 U.S. at 350. Twelve repetitions of the elements yield no answer "in one stroke," only detainee-by-detainee inquiries.

That is *Wal-Mart*'s defect, not its cure: GEO's officers and clinicians exercise independent judgment—the decentralized discretion that defeated certification there, 564 U.S. at 355–57—and Plaintiffs show no "common mode of exercising discretion that pervades the entire" facility, *id.* at 356. This Court vacated a Rule 23(b)(2) certification "because the district court did not identify questions common to the class." *Black Lives Matter L.A. v. City of L.A.*, 113 F.4th 1249, 1265 (9th Cir. 2024).

Other courts agree. *Cody v. City of St. Louis*, 103 F.4th 523, 534 (8th Cir. 2024) (reversing where the analysis "falls short of the 'rigorous analysis'" required); *see also Ronduen v. GEO Grp., Inc.*, No. 23-00481, 2025 WL 3050059, at *7 (C.D. Cal. Sept. 26, 2025) (denying certification of an Adelanto class because of "substantial variation in exposure levels experienced by different detainees"); *see* 3-ER-471–72. A twelve-question bundle spanning every domain of facility life fares no better.

2. The Court Certified Non-Members and Skipped Rule 23(a)'s Other Prerequisites

Rule 23(a) has four prerequisites; the court analyzed one. Its typicality finding is two sentences and its adequacy one, 1-ER-42 & n.240, and neither engaged Defendants' renewed opposition, because the analysis never reached the renewed papers: It cites the first motion and the opposition to it, grounded in the superseded complaint, 1-ER-38 n.237, 1-ER-19 n.158, not the renewed motion (5-ER-922) or renewed opposition (3-ER-466)—as Defendants flagged, Dkt. 18.1 at 22–23. A certification that never acknowledges—let alone addresses—the operative papers is no rigorous analysis of anything.

Two of the four representatives were not class members: The class comprises persons "who are now, or who in the future will be," detained at Adelanto, 1-ER-50, and J.M. and Mesrobian had left before certification, 3-ER-520–23 ¶¶ 35, 39. A representative "must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977). *Falcon* reversed a certification that bridged the "wide gap" between one plaintiff's claim and the class's by presumption. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157–61 (1982). The gap here is wider: The representatives' claims diverge—paralysis, epilepsy, wound care, a cardiac arrhythmia—each turning on different specialties and GEO staff, 3-ER-472–73; 3-ER-519–24 ¶¶ 29–42, so they are not "reasonably coextensive with those of absent class members," *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017).

Adequacy independently fails here: "Unless the named plaintiffs are themselves entitled to seek injunctive relief, they may not represent a class seeking that relief," *Hodgers-Durgin*, 199 F.3d at 1045, and three of the four never raised grievances related to the conditions they now allege. 3-ER-475; 3-ER-518 ¶¶ 23–24. Numerosity repeats the substitution. The court found "at least 25 to 30 detainees" at risk, conceded that "current numbers are not specified"—though the record stated them, 3-ER-509 ¶ 2—and reached the forty-member threshold only by invoking a 1,940-bed capacity and "future, unknowable class members," 1-ER-39; the subclass rests on eight, *id.* "Mere speculation as to satisfaction of this numerosity requirement does not satisfy Rule 23(a)(1)." *Nguyen Da Yen v. Kissinger*, 70 F.R.D. 656, 661 (N.D. Cal. 1976). Counting beds rather than injured members is not the "rigorous analysis" Rule 23 requires. *Wal-Mart*, 564 U.S. at 350–51.

3. Rule 23(b)(2) Cannot Carry the Universal Injunction *CASA* Forbids

Rule 23(b)(2) "does not authorize class certification when each individual class member would be entitled to a different injunction," *Wal-Mart*, 564 U.S. at 360; it demands "a single injunction" giving indivisible relief to "each member," *id.* This decree instead consists of condition-specific mandates irrelevant to many; GEO addresses food, water, medical care, and accommodations through its own operations and detainee-specific processes—not through any uniform policy of the federal Defendants. 3-ER-527–34 ¶¶ 54–81. The court did not analyze indivisibility, 1-ER-42–43, and never asked "whether a Rule 23(b)(2) class action litigated on common facts is an appropriate way to resolve" due-process claims. *Jennings v. Rodriguez*, 583 U.S. 281, 313–14 (2018).

Denying the first preliminary injunction motion, the court held Plaintiffs' request for "timely and adequate responses to medical requests and urgent medical needs" "will inherently require an individualized determination and may vary based on a detainee's health condition." 4-ER-857. Nothing changed but the result. "That all the class members have 'suffered' as a result of disparate individual . . . violations is not enough; it does not establish that the individual claims have any question of law or fact in common." *Jamie S. v. Milwaukee Pub. Schs.*, 668 F.3d 481, 497 (7th Cir. 2012). A class warrants no certification "where providing the requested relief at the level of specificity required by Rule 65(d) would render a class action unmanageable." *Shook v. Bd. of Cnty. Comm'rs*, 543 F.3d 597, 614 (10th Cir. 2008) (Gorsuch, J.).

The class definition makes the point concrete: "[a]ll people who are now, or who in the future will be," detained at the facility, 1-ER-50—no temporal limit, no injury requirement, no tie to any condition. A one-day detainee with no need, and a person not yet arrested, are members in whose name the decree runs. An injunction relieves a member of nothing when there is nothing to relieve: "Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *TransUnion*, 594 U.S. at 431. A class sweeping in everyone who will ever pass through the facility is coextensive with the facility, not with any set of injured plaintiffs—relief for "*everyone* potentially affected by an allegedly unlawful act," not just "*to the plaintiffs before the court*," which the Supreme Court rejected. *CASA*, 606 U.S. at 852.

Justice Alito was specific: District courts must not treat *CASA* "as an invitation to certify nationwide classes without scrupulous adherence to the rigors of Rule 23," or "the universal injunction will return from the grave under the guise of 'nationwide class relief.'" *Id.* at 868 (Alito, J., concurring). A facility-wide class of present and future detainees, certified on a disjunctive merits finding and a dozen "failed to ensure" questions, is that return—a template that can be used nationwide, because the decree's formula transfers to any contractor-run facility, *see* Part VII.C.2, *supra*. The certification, entered only to define the injunction's beneficiaries, falls with the decree—and on its own terms, because § 1252(f)(1) withdraws the authority to enter the classwide injunction it exists to obtain, *see* Part VII.A.2, *supra*. A class cannot be certified to pursue relief the court cannot grant.

VIII. CONCLUSION

For the foregoing reasons, the Court should reverse the preliminary injunction and vacate the provisional class-certification order.

Dated: September 17, 2026

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  - [ ] a party or parties are filing a single brief in response to a longer joint brief.
- ( ) complies with the length limit designated by court order dated ______.
- ( ) is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/ Pushkal Mishra **Date** 9/17/2026
(use "s/[typed name]" to sign electronically-filed documents)