

No. 26-6685

**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

**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3
FOR STAY PENDING APPEAL AND
FOR AN IMMEDIATE ADMINISTRATIVE STAY**
Administrative stay requested by Tuesday, October 13, 2026;
Stay pending appeal requested by Friday, October 16, 2026

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CIRCUIT RULE 27-3 CERTIFICATE

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2. Facts showing the existence and nature of the emergency

Defendants appealed the district court's July 16, 2026 preliminary injunction (CR 104) on July 30, 2026. CR 109. In that appeal, No. 26-4902, Defendants filed their opening brief on September 17, 2026 (Dkt. 23.1), Plaintiffs' answering brief is due October 15, 2026, and argument is set for December 15, 2026 (Dkt. 28). Twice since—on August 28, 2026 (CR 130; Mishra Decl. Ex. B) and September 11, 2026 (CR 147; Mishra

Decl. Ex. C)—the district court has rewritten the injunction under review, adding commands that CR 104 never contained: a privileged ex parte reporting channel from the court-appointed monitors to chambers; the court, its staff, and the United States Marshals on inspections of the facility; a posted authorization letter approving entry “within 10 minutes of arrival”; a “guarantee” of “read-only, 24/7 access (on-site or remote)” to “any electronic records,” which the district court has construed to mean mandatory *remote* access, at the Medical Monitor’s instigation and under threat of daily sanctions (CR 147 at 6; CR 146 at 1; CR 155 at 3); a detainee comment system routed “confidentially to Plaintiffs’ counsel”; a class-wide notice; and a monitoring charter enlarged from “paragraph 4” to “paragraphs 1 through 4.” CR 147 at 4–9; CR 130 at 1. Neither order states a reason. Between the two, the court docketed a “Tentative First Amended Preliminary Injunction Order” (CR 136) and chambers e-mailed counsel a further revised draft rather than docketing it. Mishra Decl. Ex. A; *id.* ¶ 3.

The added terms are being enforced now, on deadlines measured in hours and days, under express warnings of daily sanctions and civil contempt. CR 146; CR 155 at 1–3; CR 178. Within four days of CR 147,

the district court ordered Defendants to show cause why they should not pay “\$500 per violation (\$1,500 in total)” per day and “cautioned” that it “will consider holding Defendants in civil contempt.” CR 155 at 3. To meet that deadline, ICE had to renegotiate its contract with the facility operator within days to open a nonparty’s electronic records system to remote third-party access. CR 148 ¶¶ 5–9; CR 171. A further order to show cause issued October 2 on twenty-four monitor requests. CR 178. At the October 9, 2026 status conference on that order, the district court set two sanctions deadlines. Outstanding photographs must reach the Conditions Monitor by 5:00 p.m. on Tuesday, October 13, 2026; absent good cause, sanctions of \$500 per day follow. Mishra Decl. ¶ 7. And Defendants must file daily status reports, beginning Monday, October 12, 2026, documenting their efforts to give the Medical Monitor remote access to three additional modules of the facility operator’s electronic health-record system (CR 178 at 1); if that access is not provided by Friday, October 16, 2026, the court will impose sanctions of \$500 per day beginning Saturday, October 17, 2026. *Id.* The records-access items rest on paragraph 5(f) of CR 147—the “guarantee” of “read-only, 24/7 access (on-site or remote) to any electronic records,” CR 147 at 6—a term CR

104 did not contain; on-site access to the same records remains available. CR 181 at 5–6. The same day, the court denied Plaintiffs’ October 7 motion to enforce the amended decree and for civil-contempt sanctions of “\$500 per day” (CR 179) for noncompliance with Local Rule 7-3, without prejudice to renewal. Mishra Decl. ¶ 7. The district court has stated that it will continue to amend the injunction as the monitors request, filing each version as a “first amended, second amended, third amended” order. CR 157 at 3:24–4:7. The next monthly monitor reports are due November 1, 2026. CR 147 at 5.

This motion could not have been filed earlier. An appeal and stay motion by the United States require the Solicitor General’s authorization. The U.S. Attorney’s Office requested that authorization on an expedited basis on September 25, 2026, two weeks after CR 147 issued and three days after the district court discharged the order to show cause that had threatened daily sanctions and contempt. The Solicitor General authorized appeal on the morning of October 9, 2026. Defendants noticed this appeal the same day, CR 183, well within the sixty days allowed by Federal Rule of Appellate Procedure 4(a)(1)(B); requested a stay on the record at that afternoon’s status conference; and, when the district court

deferred ruling pending a written motion, applied ex parte for a stay the same evening. CR 185; Mishra Decl. ¶¶ 5–7, 11. The district court’s ruling on the application remains pending and the first sanctions deadline is three days away.

3. When and how counsel notified

On October 9, 2026, at approximately 3:18 p.m., counsel for Defendants-Appellants telephoned lead counsel for Plaintiffs-Appellees, Rebecca Brown of Public Counsel, and left a detailed voicemail describing the stay application Defendants would file in the district court that day and its grounds; at approximately 3:30 p.m., Amelia Piazza of Public Counsel returned the call, conferred with counsel for approximately six minutes about the relief and the grounds, and stated that Plaintiffs will oppose a stay. Mishra Decl. ¶ 10. Earlier that day, at the status conference, Defendants stated on the record that they would seek a stay of the added terms pending appeal. *Id.* ¶ 7. On October 10, 2026, at 2:48 p.m., counsel notified Plaintiffs’ counsel by e-mail that Defendants would file this emergency motion, of the relief it seeks, and of the dates by which relief is requested, and asked whether Plaintiffs oppose; the motion is

served on all counsel through the Court’s electronic filing system upon filing. Plaintiffs oppose the motion. *Id.* ¶ 13.

4. Submissions to the district court

The relief sought here was first sought in the district court. At the October 9, 2026 status conference, Defendants requested on the record that the terms added to the injunction since CR 104 be stayed pending appeal; the court deferred ruling until it had a written motion before it. Mishra Decl. ¶ 7. The same day, Defendants applied ex parte under Federal Rule of Civil Procedure 62(d) and Federal Rule of Appellate Procedure 8(a)(1) for a stay of CR 130 and CR 147 pending appeal, in every respect in which those orders add to or change CR 104. CR 185. Under the district court’s standing order, an opposition to an ex parte application is due within 24 hours and the application is decided on the papers without a hearing. As of this filing, the district court has not ruled on the application. The court deferred ruling on the oral request until it saw a written motion, and the sanctions deadlines it set on October 9 are running; it has therefore “failed to afford the relief requested” Fed. R. App. P. 8(a)(2)(A)(ii). Defendants request an immediate

administrative stay because the first of the district court's deadlines falls on October 13.

5. Decision requested by

Defendants request an immediate administrative stay of the terms CR 130 and CR 147 added to CR 104, pending disposition of this motion, as soon as possible, and in any event before 5:00 p.m. on Tuesday, October 13, 2026, when the first sanctions deadline set on October 9 falls, and before Friday, October 16, 2026, when the second falls; and a decision on the motion for a stay pending appeal by Friday, October 16, 2026. CR 147 at 5.

Dated: October 10, 2026

Respectfully submitted,

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I. INTRODUCTION

This is a narrow motion. It does not ask the Court to revisit its August 20 order declining to stay the July 16 preliminary injunction (CR 104). No. 26-4902, Dkt. 22.1. It asks the Court to stay what the district court added to that injunction *after* it was appealed—and to leave every word of CR 104 in force while this Court reviews it.

Defendants noticed their appeal from CR 104 on July 30, 2026. CR 109. That notice “confer[red] jurisdiction on the court of appeals and divest[ed] the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam). Eight days after this Court lifted its administrative stay, the district court nonetheless rewrote the injunction, CR 130, and within fourteen days produced four versions of the decree, one of them a draft chambers e-mailed to counsel “[a]s opposed to docketing this order.” Mishra Decl. Ex. A. The new decree adds a privileged ex parte channel from the court’s monitors to chambers, the United States Marshals on inspections, a ten-minute entry letter, a “guarantee[d]” remote window into a nonparty’s records system, a comment system run by opposing counsel, a class notice, and a charter

enlarged from “paragraph 4” to “paragraphs 1 through 4.” CR 147 at 4–9. Neither order states a reason. CR 130 at 1; CR 147 at 1.

The district court lacked jurisdiction to do this. Once an injunction is on appeal, the district court keeps only the power “to preserve the status quo,” and anything it does under that power “may not materially alter the status of the case on appeal.” *Nat. Res. Def. Council, Inc. v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). An order that goes further “was rendered without jurisdiction and must be vacated.” *McClatchy Newspapers v. Cent. Valley Typographical Union No. 46*, 686 F.2d 731, 735 (9th Cir. 1982). The court amended, then enforced the amendments within days under threat of \$500-per-day sanctions and contempt, CR 155 at 3, and announced that it will keep filing “the first amended, second amended, third amended” version “anytime the Court amends the preliminary injunction for any reason” CR 157 at 3:24–4:7. That is a salami approach taken to an injunction under review: slice by slice, the decree this Court is reviewing becomes a different decree, each slice entered on a monitor’s request, enforced before it can be appealed, and shielded from review by a privilege the court conferred on its own agents.

The remaining factors follow. The harm is recorded: a contract renegotiated on the court's clock to open a nonparty's records system; a letter posted at every gate; privileged communications that can never be reviewed; and \$500-per-day sanctions set to begin on October 14 and October 17 for terms that exist only in the amended decree. CR 148 ¶¶ 8–9; Mishra Decl. ¶ 7. A stay costs the class nothing CR 104 gave it: the conditions commands, the remedial plan, two funded monitors, unannounced inspections, and reasonable access all remain. And the public interest favors one fixed decree, reviewed once, by this Court.

Defendants therefore request a stay of CR 130 and CR 147 pending appeal in every respect in which they add to or change CR 104, so that CR 104 is the operative injunction while this appeal and No. 26-4902 proceed, and an immediate administrative stay of those added terms while the Court considers this motion.

II. STATEMENT

A. CR 104, the Appeal, and This Court's Rulings

CR 104 enjoined Defendants in four substantive paragraphs (conditions, headcounts, segregation, and a remedial plan) and, in paragraph 5, appointed two “independent, third-party monitors” “[t]o ensure compliance with the remedial plan described in paragraph 4 . . .

.” CR 104 at 2–5. The monitors would “observe and report,” submit monthly “findings and recommendations,” and conduct “unannounced, independent inspections,” with “reasonable access to Adelanto Processing Center East and West, any physical and electronic health records relevant to the implementation of this order, staff, and detainees.” *Id.* at 5–6.

Defendants appealed on July 30, 2026, CR 109, and sought a stay. This Court stayed the injunction administratively on August 6 because the district court had not stated its reasons and the Court was “unable to review the injunction.” No. 26-4902, Dkt. 15.1 at 1. After the district court issued its reasons (CR 121), this Court denied a stay pending appeal on August 20 and set an expedited schedule. No. 26-4902, Dkt. 22.1 at 7. In rejecting Defendants’ Rule 65 arguments, the Court relied on the premise that “any recommendations made by the monitors must be adopted by the district court before they become effective.” *Id.* at 5 (citing *Melendres v. Skinner*, 113 F.4th 1126, 1139–40 (9th Cir. 2024)).

B. CR 130

One week after this Court ruled, Plaintiffs applied ex parte for an emergency hearing, telling the district court that “[t]he Monitors cannot

fulfill their Court-ordered obligations without further direction from the Court.” CR 123 at 4. Defendants objected. CR 127. The court set a hearing for September 1, CR 128, but on August 28—without a hearing—entered CR 130, whose entire statement of reasons is: “Upon further review of the preliminary injunction, the Court modifies the following highlighted language to the Independent Monitors’ section.” CR 130 at 1.

CR 130 added inspections by “any additional persons assisting the monitors”; “the Court and its staff, including the United States Marshals,” on inspections “as needed”; a new paragraph permitting the monitors “to confer ex parte with the Court regarding any issue arising under or relating to the preliminary injunction order,” with “[a]ll communications . . . privileged and . . . not subject to discovery”; and a class notice. CR 130 at 2–4. The amendments came from the monitors’ e-mails to chambers. CR 150 at 4:18–25.

C. The September Hearings and CR 147

On September 2, “[a]fter further reviewing the proposed remedial plan and considering its discussions with the Medical and Conditions Monitors,” the court docketed a “Tentative First Amended Preliminary Injunction Order.” CR 136 at 1. On September 3, chambers e-mailed

counsel a revised draft containing “a new paragraph in Section 5(d)—confidential monitor conversations with detainees, family members, and staff—explaining that “[a]s opposed to docketing this order, we are emailing it to you” Mishra Decl. Ex. A; *id.* ¶ 3; *see* CR 157 at 26:18–27:25.

At the September 4 status conference the court explained that the amendments responded to the monitors’ “requests to make their job a little bit easier,” and that “anytime the Court amends the preliminary injunction for any reason” it will file “the first amended, second amended, third amended” version. CR 157 at 3:19–4:7. Defendants objected to the scope of electronic-records access, to the monitors’ use of their own telephones and cameras, and to a separate comment system. *Id.* at 12:15–15:24, 22:21–26:8, 33:22–36:12. The court also announced that the monitors’ original charter “makes it seem that the independent monitors are only to ensure compliance with the remedial plan. However, that’s not correct.” *Id.* at 19:25–20:20.

On September 11 the court entered CR 147 “[f]or ease of reference,” attributing some changes to the September 1 hearing and others to “the Court’s conversations with the monitors.” CR 147 at 1, “Page 15 of 19”

n.1. Beyond re-entering CR 130's additions, CR 147 extended the monitors' charter to "paragraphs 1 through 4," *id.* at 4; required admission of "any materials, items, or equipment needed" and, "[w]ithin 24 hours," a posted letter approving "entry into the facility within 10 minutes of arrival," *id.* at 6; commanded that "Defendants must guarantee . . . read-only, 24/7 access (on-site or remote) to any electronic records," *id.*; and replaced the monitor-only grievance system with a "Comment System" routed "confidentially to Plaintiffs' counsel," *id.* at 7–8. The letter, the ten-minute standard, and the Marshals were never mentioned at either hearing.

D. Enforcement of the Added Terms

The same day it entered CR 147, the court—told by the Medical Monitor that remote access to the electronic health records had not been provided—warned of "daily monetary sanctions," CR 146 at 1, and four days later ordered Defendants to show cause why "daily sanctions . . . in the amount of \$500 per violation (\$1,500 in total)" should not issue unless remote access was delivered by 5:00 p.m. the next day, and "cautioned" that it "will consider holding Defendants in civil contempt." CR 155 at 1–3. The records system belongs to the facility operator, GEO, and ICE

“cannot grant access” to it, CR 148 ¶¶ 5–8; ICE negotiated a contract modification under which GEO provided remote access, and the court discharged the order to show cause. CR 171 at 1. On October 2, a further order to show cause directed Defendants to answer twenty-four monitor requests. CR 178 at 1–4. At the October 9 status conference the court set two deadlines on the CR 178 items: outstanding photographs to the Conditions Monitor by 5:00 p.m. on October 13, on pain of \$500 per day absent good cause; and remote access for the Medical Monitor to three further modules of GEO’s electronic health-record system by October 16, with daily status reports beginning October 12, on pain of \$500 per day beginning October 17. Mishra Decl. ¶ 7. On-site access to those records remains available; the deadline concerns remote access under paragraph 5(f). CR 181 at 5–6. Both items are GEO’s to produce: the photographs were taken by and remain with GEO staff, and remote access to GEO’s system can be provisioned only by GEO. Mishra Decl. ¶¶ 8–9.

E. This Appeal

The Solicitor General authorized an appeal from CR 130 and CR 147, and this motion, on October 9, 2026. Defendants noticed the appeal the same day, CR 183; this Court docketed it as No. 26-6685. Both orders

are appealable as orders “modifying” an injunction. 28 U.S.C. § 1292(a)(1). Also on October 9, Defendants requested a stay on the record at the status conference—the court deferred ruling pending a written motion—and then applied ex parte for a stay of CR 130 and CR 147 pending appeal. CR 185; Mishra Decl. ¶¶ 7, 11. The court has not ruled. Plaintiffs have moved to consolidate the two appeals and to reset the schedule in No. 26-4902. No. 26-4902, Dkt. 29.1. Defendants do not oppose consolidation but oppose any delay, and have no objection to referral of this motion to the panel considering that appeal.

III. ARGUMENT

A stay pending appeal turns on “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation modified). A “reasonable probability” or “fair prospect” of success suffices. *Leiva-Perez v. Holder*, 640 F.3d 962, 967–68 (9th Cir. 2011) (per curiam) (citation modified).

A. Defendants Are Likely to Succeed Because the District Court Lacked Jurisdiction to Enter CR 130 and CR 147

1. The Notice of Appeal Divested the District Court of Power To Enlarge the Injunction

“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs*, 459 U.S. at 58; *accord Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023). The rule exists to prevent two courts from “simultaneously analyzing the same judgment.” *Griggs*, 459 U.S. at 59. The one exception is the power “to preserve the status quo,” now codified in Rule 62(d), and “any action taken pursuant to Rule 62(c) [now Rule 62(d)] ‘may not materially alter the status of the case on appeal.’” *Sw. Marine*, 242 F.3d at 1166.

The Rules supply the procedure for anything more. When a party seeks relief “that the court lacks authority to grant because of an appeal that has been docketed and is pending,” the district court may issue an indicative ruling, Fed. R. Civ. P. 62.1(a), and this Court “may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal,” Fed. R. App. P. 12.1(b). That is the path for amending an

injunction under review. No one invoked it, and the district court did not purport to proceed under it.

McClatchy marks the line. After a notice of appeal from a judgment confirming an arbitration award, the district court amended the judgment to require reinstatement of striking employees. This Court held that the amendment “required a change from the status quo,” “materially affect[ed] substantial rights of the parties not decided in its original disposition of the case,” and so “was rendered without jurisdiction and must be vacated.” 686 F.2d at 735. *Southwest Marine*, by contrast, upheld post-appeal refinements that “left unchanged the core questions before the appellate panel,” would “effectively be reversed” if the core requirements were reversed, and followed “a full and fair hearing on these core issues before the district court.” 242 F.3d at 1167.

CR 130 and CR 147 fail each part of that test. *First*, they change the subject of the appeal. As to paragraph 5, No. 26-4902 asks whether a district court may appoint monitors to “ensure compliance” with a remedial plan at a facility a contractor operates, with “reasonable access” to it and its health records. No. 26-4902, Dkt. 23.1 at 50–57. The decree now charters the monitors over “paragraphs 1 through 4,” admits the

court, its staff, and the Marshals, licenses privileged ex parte reporting, and “guarantee[s]” remote access to “any electronic records.” CR 147 at 4–8. None of that is before the merits panel. *Second*, reversal of CR 104 would not undo these terms: privileged communications cannot be unmade, a class notice cannot be recalled, and a contract modified under threat of sanctions is not restored. *Third*, none of the added terms issued after a full and fair hearing. CR 130 was entered on monitor e-mails to chambers, without a hearing, before Defendants’ response was due, CR 128; CR 130 at 1; CR 150 at 4:18–25, and CR 147 attributes its further changes to “the Court’s conversations with the monitors,” CR 147 at “Page 15 of 19” n.1.

2. The Orders Are Not Enforcement of the Existing Decree

The status-quo exception reaches the *enforcement* of an existing decree. A district court may act after a notice of appeal “to achieve the same enforcement purpose” when the appeal is from “a contempt order (or other supervisory action) that was issued to force compliance” with a decree already in place, *McClatchy*, 686 F.2d at 735; *Meinhold v. U.S. Dep’t of Def.*, 34 F.3d 1469, 1480 n.14 (9th Cir. 1994). Neither happened here. The court disclaimed enforcement on September 1: “I don’t intend

to issue any orders enforcing a compliance with the preliminary injunction at this time” CR 150 at 3:18–21. It called the amendments responses to the monitors’ “requests to make their job a little bit easier.” CR 157 at 3:19–23. An order adding obligations to accommodate the court’s own agents does not enforce the decree against an adjudicated violation; it is the “change from the status quo” *McClatchy* forbids. 686 F.2d at 735.

A&M Records, Inc. v. Napster, Inc., 284 F.3d 1091 (9th Cir. 2002), confirms the limit. There the district court, “[a]fter three months of monitoring,” found Napster “was not in satisfactory compliance” with an injunction that already required it to block noticed works and “adopt reasonable measures to identify variations of the file name,” and it required a better filter. *Id.* at 1095–98. This Court upheld that step because it enforced an existing command—the new filter “still requires Napster to search files located on the index”—after an adjudicated violation and through a technical advisor who “never unilaterally issued findings of fact or conclusions of law regarding Napster’s compliance.” *Id.* at 1097–99. And the same opinion restates the rule that governs here: A district court “lacks jurisdiction to modify the injunction in such

manner as to ‘finally adjudicate substantial rights directly involved in the appeal.’” *Id.* at 1099 (quoting *Newton v. Consol. Gas Co.*, 258 U.S. 165, 177 (1922)).

CR 130 and CR 147 fall on the other side of that line. No term they add maps to a term of CR 104: nothing in the July decree corresponds to the *ex parte* channel, the Marshals, the ten-minute letter, the class notice, the comment system run by opposing counsel, or “24/7” remote access to “any electronic records.” CR 147 at 6. They followed no adjudicated violation, CR 150 at 3:18–21, and their only stated source is the monitors’ privileged “conversations” with chambers, CR 147 at 15 n.1—the opposite of *Napster*’s advisor. Whatever this Court makes of the July decree, the district court had no authority to enlarge it while it was under review.

3. The Orders Are Modifications, Not Clarifications

Labels do not control. An order that “substantially changed the terms and force of the injunction as it stood immediately prior” is “a modification, not a mere clarification.” *Gon v. First State Ins. Co.*, 871 F.2d 863, 866 (9th Cir. 1989). An order adding obligations “cannot be justified, either as an effort to enforce the consent decree or as a valid

modification,” and a reservation of power to effectuate a decree’s purposes does not authorize commands beyond its “four corners.” *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 565, 574–76 (1984). “[C]ourts may not, under the guise of modification, impose entirely new injunctive relief.” *Salazar v. District of Columbia*, 896 F.3d 489, 498 (D.C. Cir. 2018). This Court applied the same rule to a “clarification” of an ICE detention injunction, describing it as “a further order imposing more detailed requirements” before setting it aside. *Fraihat v. ICE*, 16 F.4th 613, 618, 631 (9th Cir. 2021).

Measured by text, every added term goes beyond CR 104. “[R]easonable access to . . . electronic health records” became “must guarantee . . . read-only, 24/7 access (on-site or remote) to any electronic records,” *compare* CR 104 at 6, *with* CR 147 at 6—and “on-site or remote” became “remote” the same day, when the Medical Monitor reported to chambers that remote access had not been provided and the court warned of daily sanctions for “failure to provide the Medical Monitor with remote access,” CR 146 at 1; CR 155 at 3. The term meant whatever the monitor asked for. A grievance box “only accessible by” the monitors became a system in which Plaintiffs’ counsel “categorize or prioritize” what the

monitors see. *Compare* CR 104 at 6, *with* CR 147 at 7–8.

Nor are the changes “implementation.” The district court itself distinguished substantive amendments, which require “some sort of motion to amend,” from “how it is implemented.” CR 157 at 8:9–18. A term that compels an agency to renegotiate a contract within days under threat of \$1,500-per-day sanctions, CR 155 at 2–3, or admits armed federal officers under the Judiciary’s direction into a contractor-operated detention facility, is not implementation of “reasonable access.” It is new relief, entered without the motion the court said substantive change requires. Rule 65 forbids that sequence: to change an injunctive provision, the party “must move the district court,” with “notice of the proposed modification and an opportunity to be heard.” *LabMD, Inc. v. FTC*, 894 F.3d 1221, 1237 n.44 (11th Cir. 2018). CR 178’s twenty-four requests, and the sanctions deadlines set on October 9, are the next turn of the cycle.

B. Defendants Are Also Likely to Succeed Because the Orders Violate Rule 65(d) and Were Built Through an Ex Parte Channel

1. The Orders State No Reasons, and Their Terms Are Not Specific

“Every order granting an injunction . . . must: (A) state the reasons

why it issued.” Fed. R. Civ. P. 65(d)(1)(A). An order that “substantially change[s] the terms and force of the injunction” grants injunctive relief, *Gon*, 871 F.2d at 866, and a modification that imposes new commands “without the requisite findings for an injunction . . . crosse[s] the line from permissibly modifying into impermissibly enjoining,” *Salazar*, 896 F.3d at 491. CR 130’s entire statement of reasons is “[u]pon further review.” CR 130 at 1. CR 147’s is “[f]or ease of reference” and a footnote attributing its changes to “conversations with the monitors.” CR 147 at 1, “Page 15 of 19” n.1. The only reasons in the record are privileged. When CR 104 issued without reasons, this Court was “unable to review the injunction” and stayed it. No. 26-4902, Dkt. 15.1 at 1. The same defect, in orders entered without jurisdiction, warrants the same response.

Rule 65(d) also requires every injunction to “state its terms specifically” and “describe in reasonable detail . . . the act or acts restrained or required.” Fed. R. Civ. P. 65(d)(1)(B)–(C). “The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one.” *Int’l Longshoremen’s Ass’n v. Phila. Marine Trade Ass’n*, 389 U.S. 64, 76 (1967). This Court rejected a specificity challenge to CR 104 only because the monitors’

recommendations “must be adopted by the district court before they become effective.” No. 26-4902, Dkt. 22.1 at 5. The added terms are the adopted commands—and they are not specific: Defendants must admit “any materials, items, or equipment needed,” admit the Marshals “as needed,” and “guarantee” access to “any electronic records that will help facilitate their general duties.” CR 147 at 5–6. The Eleventh Circuit vacated as overbroad a monitor’s grant of “full access to persons, employees, facilities, buildings, programs, services, documents, records, and any other materials necessary to assess [Florida’s] compliance with the injunction,” because “unfettered access to staff and facilities goes beyond what is necessary for the monitor to accurately assess compliance” *United States v. Florida*, 172 F.4th 1201, 1249 (11th Cir. 2026). What is “needed” and which records “help” is left to the monitors, whose communications with the court are privileged. The court could not say what the records term covers (“Well, I don’t know how their system works” CR 157 at 14:10–11), yet days later found noncompliance on the monitors’ say-so, CR 155 at 2–3. An order whose content its enforcers fix after the fact is “too vague to be understood.” *Longshoremen’s*, 389 U.S. at 76.

Plaintiffs’ own positions confirm the point. On August 17 they told this Court that CR 104 “complies with Rule 65(d)(1)(B)–(C)’s requirements to ‘state its terms specifically’” No. 26-4902, Dkt. 20.1 at 11. A week later they told the district court that “[t]he Monitors *cannot fulfill* their Court-ordered obligations *without further direction* from the Court.” CR 123 at 4 (emphases added). A party “may not thereafter, simply because his interests have changed, assume a contrary position” *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). An injunction amended whenever its monitors ask, with a “first amended, second amended, third amended” version to follow, CR 157 at 3:24–4:7, is not a decree with specific terms. It is a perpetual one.

2. The Orders Convert Ex Parte Requests Into Decree and Build an Ex Parte Enforcement Channel

This Court’s premise in August was that monitor recommendations become effective only when “adopted by the district court.” No. 26-4902, Dkt. 22.1 at 5 (citing *Melendres*, 113 F.4th at 1139–40). Adoption is a judicial act: notice, the other side’s input, findings, and a reviewable order. That is not what happened. The monitors wrote to chambers and the court amended the decree without a hearing. CR 150 at 4:18–25; CR

130 at 1. The court then docketed a tentative rewrite drafted after “considering its discussions with the Medical and Conditions Monitors,” CR 136 at 1, e-mailed a further draft rather than docketing it, Mishra Decl. Ex. A, and entered CR 147 “based upon [its] discussion with the monitors,” CR 157 at 8:21–22. The order to show cause rested on what “has come to the Court’s attention through its communications with the Medical and Conditions Monitors,” CR 155 at 2–3, and the decree makes those communications “privileged and . . . not subject to discovery,” CR 147 at 8. Defendants thus answer, under threat of contempt, to findings whose source they cannot examine.

That is the structure the D.C. Circuit vacated in *Cobell v. Norton*, where a monitor “authorized . . . to engage in ex parte communications” played “an investigative, quasi-inquisitorial, quasi-prosecutorial role that is unknown to our adversarial legal system,” and the ex parte contacts “so clearly cast a shadow over [his] impartiality that the district court abused its discretion” 334 F.3d 1128, 1141–44 (D.C. Cir. 2003). “[J]udicial monitoring [is] only appropriate to the extent that it [is] based on specific findings of unlawful behavior,” and “[a] court cannot order programmatic supervision of an agency’s operations” *Cobell v.*

Kemphorne, 455 F.3d 301, 306, 317 (D.C. Cir. 2006). A court may not invest a monitor with authority to direct a defendant “to take or to refrain from taking any specific action to achieve compliance” or “to adjudicate violations of the order as ‘a roving federal district court.’” *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1150 (D.C. Cir. 2009) (quoting *Cobell*, 334 F.3d at 1143).

The monitor in *Melendres* exercised “quite narrow” authority after a bench trial, a permanent injunction, “twenty-one days of evidentiary hearings,” and two adjudicated contempts, under a decree providing that “[t]he ultimate arbiter of compliance is the Court,” and this Court upheld the order because nothing in it “precludes an emergency motion to the district court for expeditious judicial review of the Monitor’s decision.” 113 F.4th at 1130–31, 1136–40. *Melendres* presupposes a reviewable record; paragraph 5(j)(1) leaves none. These monitors were appointed under Federal Rule of Evidence 706 as “the Court’s expert,” CR 119 at 2—a witness who must “advise the parties of any findings the expert makes” and is subject to deposition and cross-examination, Fed. R. Evid. 706(b). A privileged channel to chambers is the opposite of what Rule 706 contemplates, and monitors who write the commands they police exercise

“wide-ranging extrajudicial duties” outside the judicial function. *Melendres*, 113 F.4th at 1135 n.12 (quoting *Cobell*, 334 F.3d at 1142). The result is what this Court told district courts to avoid at this very facility: “provisions that micromanage the Government’s administration of conditions at Adelanto.” *Roman v. Wolf*, 977 F.3d 935, 946 (9th Cir. 2020).

3. Defendants Preserved Their Objections

Defendants appealed CR 104; objected to the records scope, the equipment term, the comment system, and the charter change, CR 157 at 12:15–15:24, 20:11–12, 22:21–26:8, 33:22–36:12, 44:4–8; were never heard on the ex parte channel, the Marshals, the class notice, or the authorization letter; and have complied under protest. Subject-matter jurisdiction “can never be forfeited or waived,” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (citation modified), and acquiescence in an order the district court lacked power to enter does not restore that power. *Griggs*, 459 U.S. at 58–60.

C. Defendants Are Suffering Irreparable Harm From the Added Terms

The harm is recorded, not predicted, and every injury rests on a term CR 104 did not contain.

The sanctions mechanism. Within four days of CR 147, the court

ordered Defendants to show cause why they should not pay \$500 per violation per day for not providing remote records access on paragraph 5(f)'s clock, and warned of contempt. CR 155 at 3. A further order to show cause followed October 2. CR 178. On October 9 the court set the next two clocks: \$500 per day beginning October 14 unless outstanding photographs reach the Conditions Monitor by 5:00 p.m. on October 13, and \$500 per day beginning October 17 unless the Medical Monitor has remote access to three further modules of GEO's records system by October 16, with daily status reports in the meantime. Mishra Decl. ¶ 7. Both clocks run on acts only GEO can perform. *Id.* ¶¶ 8–9. The bond is waived, CR 147 at 9, so nothing secures Defendants against sanctions under an order later vacated. In August this Court was prepared to “assume that the potential, unsecured, cost of implementing certain provisions of the injunction would amount to irreparable injury,” faulting only the absence of a cost analysis. No. 26-4902, Dkt. 22.1 at 5–6 & n.2. Here the costs are fixed in dollars per day. Serial sanctions proceedings under terms entered without jurisdiction are themselves the loss of “the benefit of a successful appeal” *Sw. Marine*, 242 F.3d at 1168.

The compelled contract modification. CR 104 required “reasonable

access” to health records. CR 147 ¶ 5(f) “guarantee[s]” 24/7 access, “on-site or remote,” to “any electronic records,” and the court demanded remote access on pain of sanctions. CR 147 at 6; CR 155 at 3. The records system is GEO’s; ICE “cannot grant access” to it. CR 148 ¶¶ 5–6. To comply, ICE had to obtain a contract modification admitting third parties remotely into GEO’s system, negotiated without the leverage procurement ordinarily gives the Government. CR 148 ¶¶ 5–9. The modification is executed, and reversal does not undo it.

The privileged ex parte channel. Paragraph 5(j)(1) permits the monitors “to confer ex parte with the Court regarding any issue arising under or relating to the preliminary injunction order,” and makes “[a]ll communications . . . privileged and . . . not subject to discovery.” CR 147 at 8. That channel generated CR 130, CR 147’s changes, and the order to show cause. CR 150 at 4:18–25; CR 147 at 15 n.1; CR 155 at 2. It can never be reviewed, and a defendant made to answer under threat of contempt to the privileged reports of agents it is ordered to pay suffers a harm no judgment repairs. *Cobell*, 334 F.3d at 1142–44.

The comment system, the Marshals, the notice, and the charter. The United States must install opposing counsel’s boxes in every housing unit

and route class-member communications to opposing counsel, who decide what the monitors see; nothing disclosed to an adversary is recovered. CR 147 at 7–8. The Marshals provision places armed federal officers under the Judiciary’s direction inside an Executive detention facility “as needed.” *Id.* at 5. The class notice cannot be withdrawn. *Id.* at 8–9. And the charter extension turns monitors appointed to “observe and report” on a remedial plan into enforcement agents over every paragraph of the decree. *Id.* at 4.

Serial amendment. The court has issued four versions of the decree in fourteen days and has said it will keep amending. CR 157 at 3:24–4:7. A decree its author expects to re-issue serially cannot be obeyed, reviewed, or stayed as a fixed set of terms—the harm *Griggs* named, 459 U.S. at 59. And the Government “suffer[s] irreparable harm from the District Courts’ entry of injunctions that likely exceed the authority conferred” on them. *Trump v. CASA, Inc.*, 606 U.S. 831, 860 (2025).

D. A Stay Will Not Substantially Injure Plaintiffs or the Class

The stay leaves in force every term of CR 104: paragraphs 1 through 4; two monitors for the life of the litigation; monthly reports; “unannounced, independent inspections”; “reasonable access” to the

facility, its health records, staff, and detainees; a monitor-only grievance system; and the monitors' pay. CR 104 at 5–7. It leaves the protective order (CR 145) and the district court's power to enforce paragraphs 1 through 4 by motion, as that court prescribed. CR 150 at 3:18–4:6. The stay removes only what the court added after the appeal: who may speak to the court *ex parte*, who escorts whom, on what clock a gate opens, who curates detainee comments, and whether a nonparty's records system must open remotely. Whatever the monitors' reports say about paragraphs 1 through 4 is enforceable under paragraphs 1 through 4. No one contends that the Fifth Amendment requires a ten-minute gate or a privileged channel to chambers.

E. The Public Interest Favors a Stay

“[T]he public interest lies with maintaining the status quo while the appeal is pending,” *Doe #1 v. Trump*, 957 F.3d 1050, 1068 (9th Cir. 2020), and the status quo is the decree under review. The public interest in “careful review and a meaningful decision,” *Nken*, 556 U.S. at 427, favors a fixed decree reviewed once; the public also has an interest in adversarial adjudication, *Cobell*, 334 F.3d at 1142, and in the Executive's administration of detention, *Bell v. Wolfish*, 441 U.S. 520, 548 (1979). It

has none in an enforcement apparatus the district court had no jurisdiction to build.

IV. CONCLUSION

The Court should grant this motion.

Dated: October 10, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify this motion complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font, and that it complies with the type-volume limitation of Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 5,586 words, according to Microsoft Word.

/s/ *Pushkal Mishra*
PUSHKAL MISHRA